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**Formalizing indigenous commons:  
The role of ‘authority’ in the formation of territories  
in Nicaragua, Bolivia and the Philippines**

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## **Highlights**

- the formalization of indigenous territories can unleash conflicts over the politics of authority
- new authorities often must be forged for territory governance
- overlapping ambiguous and conflicting powers undercut the legitimacy of authorities
- effective authorities emerge with supporting accountability and control mechanisms

## **Abstract**

Indigenous peoples have sometimes sought the formalization of their customary territories to ensure the enforcement of their borders. The process of formalization, however, generates new conflicts. The process of constituting collective territories is intimately related to the constitution of authority, as it involves not only the negotiation of physical boundaries but also the recognition of a particular entity to represent the collective. Similarly, given that ‘authority’ implies legitimacy, such legitimacy will have to be produced. Comparing indigenous territories in Nicaragua, Bolivia and the Philippines, this article shows how authority emerges from conflictive processes and shapes rights and powers over forests.

**Key words:** indigenous rights, formalization, property rights, governance, Latin America, Philippines

## INTRODUCTION

The vast majority of the world's forests (approximately 76%) are the property of the state (RRI 2014). Since the 1980s, however, there has been a notable increase in reforms devolving forest rights to communities that have managed or used them historically under customary institutions (Agrawal, Chhatre & Hardin, 2008; Larson, Barry, Dahal & Colfer, 2010a; Pacheco, Barry, Cronkleton & Larson, 2012; Sunderlin, Hatcher & Liddle, 2008; White & Martin 2002). The recognition of local forest rights has its roots in a long history of national and international agrarian and indigenous rights movements. Today just over 30% of the forestlands in developing countries are formally in the hands of indigenous people and communities; the largest portion of this shift from state to local land tenure – for which there is reliable data from 2002 to 2013 – comprises areas now owned or managed by indigenous and traditional peoples in Latin America (RRI, 2014).

The types of rights recognized vary around the world. They may involve rights to resources or resource revenues that were not previously acknowledged; they may be temporary or conditional (Larson, Barry & Dahal, 2010b). In the case of indigenous peoples, particularly in Latin America, the recognition of rights is more likely to involve the demarcation and titling of large territories, rooted in the struggle for identity, representation and cultural reproduction, as well as control over resources (Yashar, 1999; Van Cott, 2000; Offen, 2003; Gonzalez, Burguete Cal y Mayor & Ortiz-T., 2010).

This article explores one narrow but important aspect of these complex processes that has not only practical implications for territory titling but also presents a challenge for the long term success of indigenous social movements: the question of authority. The emphasis is primarily on Latin America, whereas the vast majority of related literature (on authority and property) is from Africa, and on decentralization (Turner, Ayantunde, Patterson & Patterson, 2012). It responds to what the authors have seen on the ground as a lack of understanding of and/ or a tendency to romanticize the 'customary' (see also Peters, 2009). It seeks to explain vulnerabilities in the hopes of contributing to solutions that support indigenous rights and self-determination.

Authority is a central issue in the recognition of indigenous rights to land and forest. The idea of 'recognizing' collective rights implies a simple process of giving one's blessing, in this case the state's legal blessing, to something that already exists. The relevant definitions in Webster's dictionary define the term to *recognize* as 'to admit the fact of' or 'to acknowledge formally' (Webster, 1967). But the reality of recognizing people's rights to land is a far more complex process (Peters, 2009; Alden Wily, 2008; Fitzpatrick, 2006). This article looks specifically at issues of 'authority' as they become apparent in three different ways:

First, recognizing land tenure rights involves choosing an entity or person to be the legal representative of the rightsholders (Fitzpatrick, 2005). Even in cases whereby the names of all

the people receiving rights appear on the land title (as in some cases of communal lands in the Guatemalan highlands, for example), some entity needs to act on behalf of the group. Often the title or right is granted in the name of this entity, on the assumption that it is a legitimate representative of residents.

Second, establishing this representative involves defining its domain of powers and responsibilities. Legal recognition by definition changes the rules regarding action and decision making (Ribot, 2007). What decisions can this entity make with external actors in representation of rightsholders? What power does it have over community members' access to resources? And, what responsibilities does it have to its constituents?

Third, the definition of a group of rightsholders and its representative is intimately tied to the definition of the physical space – the land area and resources – to which rights are being recognized (Sikor & Lund, 2009). On the one hand, the specific spatial configuration, as through the demarcation of borders, determines who has rights to the area in question and who does not, with obvious consequences (Alden Wily, 2008; see also literature on the definition of belonging or indigeneity, e.g. Worby, 2001; Berry, 2009). On the other hand, the defining a territory may have broader implications, playing a central role in geopolitical negotiations (see Sikor & Lund, 2009), such as between indigenous peoples and the state (Larson, 2010), or between subnational and central governments.

This article shows that each of the three issues discussed above constitutes a potentially conflictive process taking place at the intersection between civil society and the state: between the 'community' demanding the recognition of rights and the state or an entity within the state apparatus. Central to this process is the definition of the third player: the entity that is chosen or that emerges to represent the newly recognized multi-community territories. The paper explores three different cases in which indigenous territorial rights were recognized, in Nicaragua, Bolivia and the Philippines, and demonstrates how recognition can lead to competition, conflict and/or negotiation over the construction of legitimate authority.

## **AUTHORITY RELATIONS AND COMMUNAL TENURE**

The term 'authority' is used in several ways, particularly in the realms of policy and practice; it is used to refer both to the abstract notion of power (e.g. to hold authority) and to the person or institution holding that power – the first two points raised in the introduction. According to Weber (1968), authority refers to power that is 'legitimate'. Legitimacy refers to 'a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions' (Suchman, 1995: 574). Legitimacy empowers authority (Walker and Zelditch, 1993) and 'leads people to defer voluntarily to decisions, rules and social arrangements' (Tyler, 2006: 376). Of course, apparently

voluntary compliance should not be taken as proof of legitimacy, as violence or threats of violence may be used to obtain compliance.

The issue of legitimacy raises additional questions about authority; in particular: who considers this authority – the entity or its power – legitimate, and how is legitimacy produced? If authority requires legitimacy, it cannot be a fixed attribute that is mandated or assumed. Rather, it must be constructed through social interaction and is subject to conflict and negotiation (Jackman, 1993; Lund, 2006; Sikor & Lund, 2009). In this process, which may be instigated by the recognition of rights, actors will use a variety of means to win legitimacy for their preferred entity or representative, particularly in light of competing options – a kind of ‘forum shopping’ (von Benda Beckmann, 1981).

Authority appears to be a central factor affecting the outcomes and success of forest tenure reforms. Land struggles may be more about authority and legitimacy than property itself (Berry, 2002; Moore, 2005). 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, issues concerning authority define the extent of decision-making power held at different levels, from the community to the state. They are also important in understanding on-the-ground dynamics of power, which shape access to resources and benefits.

If the term authority implies legitimacy, then it is misleading to use it simply to refer to an entity in power. For example, the term ‘traditional authority’ assumes that the traditional system grants legitimacy, but for any particular leader legitimacy should not be taken for granted. In general, we prefer the term ‘authority relations’ to refer to the process of constructing legitimate power. Nevertheless, it is difficult to avoid use of the term authority without creating confusion, particularly in reference to such ‘traditional authorities’ or to legal mandates, such as the communal and territorial authorities established by legislation in Nicaragua.

The central issue of concern in this article is the entity selected to represent the collective – in this case a group of indigenous communities – that ‘receives’ formal rights under new legal arrangements (see Ribot, Chhatre & Lankina, 2008). Both the nature of this entity – a territorial authority in the making – and its domain of powers are fundamental to the distribution of access to land and forest resources and to the benefits they generate. The actor or group chosen to represent the collective by law or policy 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 entity 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.

When a community or group receiving new or formal rights already has customary rights to the land, it might seem that the simplest solution is to recognize the entity that is currently in power. There are at least two problems with this, however. First, formally recognizing an institution<sup>1</sup> changes it: it strengthens it, imbuing it with a new source of legitimacy (Ribot et al., 2008). The call to respect customary rights, such as traditional land rights, has been central to indigenous struggles in Latin America. For some, respecting or recognizing tradition refers to the enfranchisement of peoples whose rights have been denied (Taylor, 1994); but 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 against conflating customary rights or practices with customary *authority*. When the state recognizes, in the tenure reform, a particular entity as the community representative, it is granting that entity external legitimacy. This entity may not have internal legitimacy, or it may have strong internal legitimacy, but not necessarily to manage the particular set of powers now being granted (Fay, 2008). There is evidence of such problems in some African nations in which chiefs and headmen have been granted powers under decentralization (Ntsebeza, 2005; Ribot et al., 2008). At the same time, customary authorities can play an important role in leadership, conflict resolution (Turner et al., 2012) and defence of community rights (see Latin America social movement literature, e.g. Yashar, 1998).

Second, the granting of tenure rights may involve the formation of new entities to represent the beneficiaries. In countries where indigenous people gained important land and forest rights historically, they were often required to assume new forms of social organization in response to opportunities provided by the state; some were highly effective, such as the *comunas* of Ecuador (Becker 1999) or the *calbidos* of Bolivia (see below). Though current reforms are less likely to require this, indigenous movements in several Latin American countries, including Bolivia and Nicaragua, have promoted a multi-community territory model to facilitate the demarcation and titling of large areas of historic occupation and use – areas in which customary norms, cultural reproduction and self-government can be legally exercised (Hvalkof, 2002).

The territory model has encountered problems, however, due to the choice of entity to represent the collective. When multiple communities are grouped together in territories, there is often an assumption that an overarching governance structure exists; but these territories usually require the formation of new governance institutions. In his review of experiences with indigenous territory legalization in four South American countries, Stocks (2005: 98) 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’. The Nicaragua, Bolivia and Philippine cases here all represent indigenous territories comprising multiple communities.

Communities are clearly capable of defining or selecting a new, representative entity for territorial governance and of learning from such processes over time, and it is not possible or desirable for an external actor – eg. the state – to impose such an entity. The point is that it will not always – or perhaps ever – be a simple matter of ‘choosing’ or ‘forming’ a new authority or even ‘defining’ a domain of powers. The outcomes of these processes have material as well as symbolic importance, hence it is not particularly surprising that they would be subject to conflict and negotiation.

The demands for recognition themselves have usually emerged from conflict, including the righting of historical wrongs, as in many cases of indigenous peoples around the world. For example, the first stage in indigenous rights recognition in Nicaragua emerged in a new Constitution after almost a decade of war; in the Philippines case, the demand for land rights initially arose out of protests over a government plan to build a vacation resort inside customary territory; in Bolivia, new property rights were won through a prolonged process of protest and mobilization by the country’s lowland indigenous population. In all cases, land titling and demarcation is subject to conflict and negotiation over the definition of borders as well as over the fate of ‘outsiders’ holding land inside the territory.

But the relationship between authority and property goes beyond this. Sikor and Lund (2009: 2) argue that ‘struggles over property are as much about the scope and constitution of authority as about access to resources.’ In fact, property and authority depend on each other and are mutually constitutive. These authors argue that land claimants appeal to authorities to legitimize their land claim, while the act of authorizing the land claim legitimizes that authority’s power. In both the Nicaraguan and Bolivian cases, the process of defining the entity representing the new territories has to be understood in light of broader, historical geopolitical struggles related to the positioning of regional actors, both in and outside the state, vis a vis the central government; they are also conflicts over territorialization – the ordering of space and people within geographic boundaries (Vandergeest & Peluso, 1995) – and the control of resources and people. The control of territory is a source of power; the control of power is a source of territory.

## **THE CASE STUDIES**

The case studies presented here were all undertaken as part of a research project led by the Center for International Forestry Research, under the auspices of the Rights and Resources Initiative, in 2006-2008. The research was aimed at understanding processes of forest tenure reform in several developing countries (for a full explanation of methods, see Larson et al., 2010a, 2010b). The cases did not have authority relations as a subject of study; rather this was an issue of interest that emerged later in the analysis and comparison of the findings.

This section presents three cases of forest tenure reform. Nicaragua and Bolivia provide examples where large indigenous territories were demarcated and titled in the wake of changes in national legislation that recognized indigenous land rights. The Nicaragua case is based on a study of the Northern Caribbean Autonomous Region (RACN in Spanish, recently changed from North Atlantic Autonomous Region, RAAN), which falls under the jurisdiction of an autonomous regional council, and in-depth research on two particular territories. The study highlights conflicts between indigenous leaders and communities over the configuration of territories and territory representatives. The Bolivian case discusses the demarcation and titling of the Guarayos indigenous territory in the lowland department of Santa Cruz. In that case, the indigenous organization that led the struggle for land rights held the title as representative of the Guarayos people but with ambiguous authority in a context of contested rights, leading to a split in the organization and the breakdown of local governance.

The third case refers to another indigenous territory, the Ikalahan ancestral domain, in the Philippines. Unlike the Nicaragua and Bolivia cases, the Ikalahan land claim was not originally part of a national process to recognize indigenous lands, though this occurred later. The official ‘territorial authority’ is the Kalahan Educational Foundation (KEF), which was also established, as in Guarayos, to fight for the land claim. The KEF has managed to avoid the kinds of conflicts seen in the other two cases and maintains a high level of legitimacy as a representative local authority.

### **Indigenous territories in the RACN, Nicaragua**

Indigenous people in Nicaragua won formal rights to their communal lands in the 1987 Constitution, and in the same year, the Autonomy Law was passed, creating the North and South Autonomous Regions. These rights were won after years of conflicts with the Nicaraguan state, since the region’s ‘reincorporation’ in 1894, and in particular as part of peace negotiations after almost a decade of war with the revolutionary Sandinista government during the 1980s (for more detail, see Hale, 1994; Offen, 2003; Gordon, Gurdian & Hale, 2003). The first regional governing councils were elected in 1990. These regions represent about 45 per cent of the national territory but only 12 per cent of the population (INEC, 2005). Nevertheless, the autonomous regions are home to the vast majority of Nicaragua’s indigenous population – 8.6 per cent of the total Nicaraguan population; the Miskitu comprise the largest group with 121,000 people (INEC, 2005). (For more information on this case, see Larson, 2010; Larson & Mendoza-Lewis, 2009).

After indigenous land rights were formally recognized in the Constitution, it took another 15 years and an international court case for the National Assembly to pass the Communal Lands Law (Law 448). The court case held significance for indigenous rights throughout Latin America. In that case, the community of Awas Tingni filed a demand before the Inter-American

Court for Human Rights (CIDH) against the Nicaraguan government for granting a forest concession on their traditional lands and without community consent in 1995. In 2001, the CIDH ruled in favour of Awas Tingni, holding that ‘the international human right to enjoy the benefits of property includes the right of indigenous peoples to the protection of their customary land and resource tenure’ (Anaya & Grossman, 2002: 1). It found 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 and ordered the creation of an effective mechanism for demarcation and titling for indigenous communities ‘in accordance with their customary laws, values, customs and mores’ (Judgment, cited in Anaya & Grossman, 2002: 13).

Until this time, the central government had continued to treat the region’s natural resources as state property. The regional councils were very weak and had little funding or power, and if their permission was required, it was usually granted. The idea of regional autonomy had lost much of its symbolic power, and a study of land demands by the Caribbean Central American Research Council (CCARC), funded by the World Bank, identified claims to large blocs of territory (Gordon et al, 2002; see also Offen, 2003).

The communal lands law was finally passed in late 2002 (in effect in 2003) with the support of World Bank pressure and effective grassroots organizing, as were the long-awaited implementing regulations of the Autonomy Statute (2003). The first titles were delivered in late 2006, but it was thanks largely to an alliance between the new government administration entering in 2007 and the Miskitu political party Yatama that most of the indigenous territorial claims in the RACN, 13 territories for a total of almost 1.6 million ha, had been titled by mid-2010 (PGR, 2010); 21 territories out of 23 total had been titled as of March, 2014, for a total of 3.6 million ha and 28% of the national territory (CONADETI, 2014). Today, the greatest direct threat to indigenous lands and resources comes from invasions by colonist peasants and ranchers; indigenous communities see titles as a way to strengthen their claim.

Like the Constitution, the communal lands law formally recognizes indigenous land rights but also establishes the institutional framework for demarcation and titling, with procedures for titling as either a single community or a group of communities. The law recognizes traditional communal authorities as the legal representative (externally) and government (internally) of the community (Art. 3). The most important of these are the *síndico* (the authority normally in charge of land and natural resource allocation) and *wihta* (judge). In practice the *síndico* has usually been designated as the local official whose signature is needed to legally represent the decision of the collective. In Nicaragua’s indigenous communities, these authorities are elected annually.

When communities form multi-community territories, the territorial authority is to be 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 new legal framework states that *community or territorial authorities*, if and when ‘they have the express mandate of the Community Assembly’, should authorize all contracts for resource exploitation. 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).

Two groups of communities were studied in-depth, Tasba Raya and Layasiksa. The former had decided to form a 7-community territory as of 2005, the latter was comprised of 2 communities. Both designed their territories based on common history and affiliation as a group of communities, and both had elected their territorial authorities according to the procedures established by law. Nevertheless, the autonomous government would not provide accreditation, and indigenous political leaders refused to recognize their territories.

Political leaders from Yatama were pressuring communities throughout the region to form territories based on a design of their own conception. According to Miskitu leaders, they were interested in forming territories that covered a significant part of the land area, including all indigenous communities inside territories and moving quickly while the political moment was favourable, in order to position themselves ‘in between’ the central government and the region’s communities and resources (CRAAN, 2007). Most importantly, their design involves reshaping the region’s electoral districts; the municipal structure imposed by the central government would be eliminated and replaced with an ‘indigenous’ structure of territories and territorial authorities.<sup>2</sup>

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, felt represented by Yatama or trusted the motivations of the region’s political leaders:

We believe that the national, regional and municipal government[s] pass laws in order to always be able to maintain control over the administration of our natural resources. They don’t want us to decide what to do with them on our own, because they would lose large sums of money that they get from cooperation agencies and enterprises by promoting

indigenous territories' areas and forests internationally and nationally (focus group, Tasba Raya).

In the two cases studied, the lack of accreditation of their elected authorities had concrete consequences, including the communities' inability to access funds designated for the territory. Both territories were subsumed into larger groups of communities according to Yatama's design. And though the law mandates that 'territorial authorities' be elected, 'elections' that had taken place in several territories were evidently manipulated. For example, in one case the people certified were not the ones elected. In other cases, the head of the territory was unknown to community leaders, who clearly did not participate in his election (Larson & Mendoza-Lewis, 2009).

The choices that Tasba Raya and Layasiksa had made – both in terms of territory and territorial authorities – enjoyed a large degree of internal legitimacy. Though there had been evidence of corruption among previous leaders, both had worked with NGOs to help improve accountability, and the *síndicos* at the time of our study had been re-elected and were viewed favourably. These local leaders, in representation of their communities, used a variety of tactics to try to win the external legitimacy – specifically the regional government's recognition – of these choices. Layasiksa, for example, expanded beyond its 2-community conception and began negotiating with bordering communities to become a larger 'territory', though still much smaller than the one proposed by leaders; they also obtained donor funding from DFID to demarcate their territory themselves. Both Tasba Raya and Layasiksa lobbied the government and sought support from local NGOs and organizations.

Political leaders, for their part, used political pressure and advocacy to try to win the legitimacy – or at least acceptance – of their position among communities. In June 2010, the elected territorial authority of Tasba Raya received a title in representation of the much larger territory of Wangki Twi–Tasba Raya; he was able to negotiate a title that recognized two 'sub-territories' and the inclusion of the name 'Tasba Raya' on the title. Layasiksa's project had failed to win acceptance.

### **Guarayos TCO, Bolivia**

The recognition of indigenous land claims in Bolivia has resulted from a slow process of policy reform, starting from the 1953 agrarian reform and driven in more recent decades by mass marches and other forms of protest. These efforts led to the creation of a type of indigenous property known as a TCO or *Tierra Comunitaria de Origen* (Native Community Land), ratified in the 1996 agrarian reform law. The experience presented here is based on the study of the Guarayos TCO, located in what was a rapidly changing forest frontier province in the north of Bolivia's Santa Cruz department (for more information on this case, see Cronkleton et al. 2009; Larson et al., 2010c).

In the 19<sup>th</sup> century Franciscan missionaries were granted land in the area that is now the Guarayos province in northern Santa Cruz and created settlements to pacify indigenous populations in the region. After Bolivia's 1952 revolution, the government secularized the mission's landholdings. Regional elite took possession of some lands and indigenous people established *de facto* control over areas around their villages, but the subsequent agrarian reform had little impact on redistributing land. Patterns of local authority established during the mission period persisted, with village organizations called *cabildos* headed by small groups of hereditary chiefs or *caciques* sanctioned by the Catholic Church. The power of these authorities was limited to the community scale.

The 1953 agrarian reform did not recognize specific indigenous property rights but instead required indigenous people to adopt the organizational strategies used by rural campesino unions called *sindicatos*. In Guarayos communities began forming *sindicatos* to occupy and allocate land in the 1970s. These *sindicatos*, known locally as agrarian zones (*zonas agrarias*), were headed by presidents selected by traditional village leaders. The presidents' powers were limited to assigning agricultural plots to local families, but their decisions defined the pattern of land occupation and use around indigenous communities. By the early 1990s, this governance system comprised 12 village level agrarian zones and 6 larger towns with multiple agrarian zones grouped under umbrella organizations known as *centrales*. In both large and small settlements, communal assemblies headed by *caciques* continued to hold decision-making power and mediate disputes. These village-level organizations provided the basis for the system of indigenous political power.

Competition for land in Guarayos had been gradually increasing since the 1970s, as timber industries, ranchers, large-scale commercial farmers and smallholder colonists began moving into the region for its forests and fertile soils. Change accelerated in the 1990s with the construction of an interdepartmental highway that further opened the province to outsiders, and tensions rose accordingly. The Guarayos people responded by creating a second level organization, called the Central Organization of Native Guarayos Peoples (COPNAG), to pressure the government to acknowledge their land claims. COPNAG's leaders were elected by a general assembly of Guarayos people that consisted of representatives of all towns and villages scattered across the province.

In 1996 COPNAG presented a TCO demand for almost 2.2 million ha, which was subsequently reduced to 1.3 million ha after the government's spatial needs study (VAIPO, 1999). Through a mechanism referred to as 'immobilization,' the government froze land transactions within the proposed TCO boundaries, and new third-party claims in the area were prohibited while titling was taking place. Nevertheless, grassroots confidence in the process was undercut when the Forest Superintendence renewed logging concessions to more than 500,000 ha, much of which

was inside the proposed TCO (Vallejos, 1998). COPNAG protested that the concessions constituted 'new claims', but the government accepted the previous logging permits as pre-existing rights.

The Guarayos created COPNAG primarily to pressure the government to recognize their land claim, but as the titling process began, the state granted it new domains of power, with significant administrative responsibility over the territory. The Bolivian legislation creating TCOs stated that internal resource use and governance would take place in accordance with traditional use and practice (*usos y costumbres*). COPNAG would hold the land title in the name of the Guarayos people; it was responsible for representing Guarayo interests to the government, allocating resources by vouching for the legitimacy of community groups submitting forest management plans in titled TCO lands, and certifying the authenticity of pre-existing land claims made by nonindigenous people. Previously, resource allocation and decision-making had taken place at the community scale, embedded within local social networks that mediated conflict and governed access. Under the new TCO rules, authority shifted to the second level organization COPNAG, but the oversight mechanisms that had functioned at the local level did not immediately emerge. COPNAG was a young organization that needed to develop new capacities, and faced major obstacles to govern such a vast territory. Besides the interdepartmental highway and a few secondary roads, the province had limited transportation infrastructure, and there were great distances between communities. It was very difficult and costly to maintain communication with and accountability to their constituents.

As an additional complication, the territorial powers granted to COPNAG's leaders were ambiguous because the Guarayos TCO was superimposed over three municipalities, only one of which had an indigenous majority. Decentralization reform in the 1990s had given municipal governments official mandates in public administration as well as budgets from public coffers to fulfil their responsibilities. COPNAG did not have these advantages and found that it was competing with multiple municipal governments with different fields of authority.

COPNAG played a key role representing Guarayo interests to the government while the boundaries of the TCO were defined and demarcated for titling. Demarcation involves the evaluation and validation of third-party property claims prior to issuing the TCO's collective titles. Legitimate third party claims included those that already had title and those that could prove their long history in the region. In practice, this meant that COPNAG leaders had significant power to determine who had legitimate property claims. However, because this was a new responsibility, there were no existing customary mechanisms to ensure transparency or accountability.

At first, demarcation of the TCO moved quickly because the titling agency started in remote areas where there were fewer competing claims. Hence, by the end of 2003, the government had titled about 1 million ha, but by late 2006 they had only titled an additional 18,000 ha. They had

made little progress titling lands near the highway and main town, where most of the population was concentrated and land was most contested. These accessible areas were subject to heavy pressure from colonists, loggers and other actors strategically placed to take advantage of the situation to occupy land.

Among other things, long delays and the government's strategy of avoiding conflictive areas in the early stages allowed illicit land transactions to take place in the accessible lands that were highly prized by both indigenous people and outsiders. Competing claims often involved economically and politically powerful individuals, and COPNAG leaders were implicated in the forgery of certification documents for landowners (López, 2004; Moreno, 2006). Charges surfaced that in 2001 there had been 44 fraudulent transactions involving private landowners, COPNAG leaders and INRA technicians (López, 2004).

The accusations of fraud and the influence of competing interests generated turmoil in COPNAG and the Guarayos political movement. In 2007, the Guarayos expelled several COPNAG leaders charged with corruption. COPNAG held new elections and a woman was elected president. However, the organization split in two as the expelled leaders formed a parallel group they called the 'authentic' COPNAG. This group claimed legitimacy because they were recognized as the official representative of the Guarayos TCO by the Santa Cruz departmental government and the *Comité Cívico* of Santa Cruz, both of which were at the time in conflict with the national government over regional autonomy. The splintering of COPNAG served the interests of regional elite in Santa Cruz who were opposed to the government of President Evo Morales and sought to undercut his grassroots indigenous support. As a result, local disputes over authority divided along the contours of the national political conflict between the central and regional governments.

### **Kalahan Education Foundation, Philippines**

The first indigenous community in the Philippines to receive recognition of its forest rights was that of the Ikalahan people, who obtained a 25-year agreement for the right to use, manage and exclude third parties from the Kalahan Forest Reserve in 1974. 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. It took 32 more years for the community to receive a permanent certificate of ancestral domain, in 2006. The Kalahan Education Foundation (KEF, a legal entity originally created to establish a high school) is the formal representative of the Ikalahan, or Kalanguya people, and the designated institution with decision-making power over land and forest management (for more information on this case, see Dahal & Adhikari, 2008; Dizon, Pulhin, & Cruz, 2008; Larson et al., 2010c; Pulhin, Dizon, Cruz, Gevana, & Dahal, 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 6000 ha to 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. Therefore, like the Guarayos people in Bolivia, they decided to organize to fight for formal recognition of their land claim. With the assistance of an American missionary who had lived in the community since 1965, Pastor Delbert Rice, the KEF became that organization.

The KEF obtained a 25-year Memorandum of Agreement (MOA) after two years of negotiations with the Bureau of Forest Department. Four villages were included initially; in 1982, two more were added and, later, another bringing the total to seven. Two years before the MOA expired, the Indigenous People's Rights Act was passed in 1997. Hence rather than renewing the MOA, the KEF was issued a 5-year Certificate of Ancestral Domain Claim (CADC), and finally a Certificate of Ancestral Domain Title (CADT) in 2006. The title recognizes rights to 14,730 ha. Village elders had originally hoped to unify three provinces, for 58,000 ha, under one title; this was not possible due to border conflicts (Dizon et al., 2008).

The KEF now has about 500 member households in seven communities (*barangays*, 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. Parallel to the KEF, in each village, all adults are voting members of a Barangay Assembly. 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 people recognized as effective at providing leadership and resolving disputes, but they do not represent 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 people come together to discuss a conflict or problem; the elders make the final judgment, aimed at reconciliation (Rice, 1994).

The 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 three others (an additional representative from the most populous community, a youth representative and a non-voting representative of the *barangay* local government offices). General assembly meetings are held twice a year. Today, there are 15 voting members and representatives serve two-year terms. The KEF establishes and enforces rules and regulations for the reserve. These include regulations regarding swidden farming, tree cutting, chainsaw registration, fishing, quarrying, hunting and land claims. They include permanent or temporary bans on the use of certain timber or non-timber species, as well as penalties for violations. The KEF approves the allocation of all

household parcels by issuing certificates of stewardship signed by the farmer and the board of trustees. The board must also approve land transfers among tribal members. Land clearance and tree cutting require permits from the KEF's agroforestry office. Sales of timber are prohibited.

The relationship between the KEF and *barangay* governments is based on trust and mutual cooperation, including shared revenue from timber permits (Dahal & Adhikari, 2008). Community members largely respect the rules, which were presented and discussed in each *barangay* before final approval by the board of trustees. The regular general assembly meetings are open to all, and when important issues are discussed, attendance and participation are high (Dizon et al., 2008). The Tongtongan continues to be an important 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. Notably, 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 & Adhikari, 2008). A third-party financial audit is conducted every year. Pastor Rice, who played an important role in building social capital and encouraging fair internal management, served as executive director of the KEF and helped mediate relationships between the community and external actors, such as the government, donor agencies and NGOs until his death in 2014. A native Ikalahan trained by Pastor Rice succeeded him as the new KEF executive officer.

KEF is a founding member of the national indigenous coalition *Koalisyon ng Katutubong Samahan ng Pilipinas, Inc.* (KASAPI), established in 1997, which strives to advance the welfare of Indigenous Peoples and protect ancestral land rights and cultural integrity. KEF provides training for other indigenous peoples on rights, land use planning, forest and natural resource management and protection and the integration of indigenous culture in the secondary curriculum. All of these factors have granted the KEF substantial internal and external legitimacy.

## **LESSONS ON AUTHORITY IN THE RECOGNITION OF INDIGENOUS RIGHTS**

The cases present different ways in which authority relations have played out in three distinct contexts of rights recognition in indigenous or ancestral lands. Though many of the issues vary, there are a number of common threads. Most importantly for this article, all the cases involve the forging of a new 'authority' at a scale associated with the multi-community territory being recognized and titled. This section briefly summarizes the central issues associated with authority relations in each case then examines two issues more closely: the roots of conflict and the roots of legitimacy.

The Nicaraguan case demonstrates how property borders became the negotiating ground in a larger battle between indigenous leaders and the state for legitimate power over the region. This

issue shaped the nature of representation. That is, the member communities should elect the legal representative of their territory, but in practice regional government authorities refused to recognize these leaders, in part because they resisted recognizing the territories that were being contemplated or designed by communities. Indigenous leaders used territorial strategies to consolidate their power vis a vis the central government in a broader, legitimate geopolitical struggle: central governments have tried to control the region's resources, and this broader plan positions 'the region' better for the future. Hence the political configuration of territory is deeply linked to the struggle for economic power and control over natural resources.

Nevertheless, the process sidelined the needs and desires of the communities whose rights were being recognized and placed indigenous leaders at odds with communities, at least in some cases. These political leaders sought to impose their own territorial 'representatives', whose domain of powers includes allocating natural resources, both internally and to external actors. In other words, defining the configuration of territories became a way to strengthen indigenous political power *and* to control community resources. The territories and authorities that communities chose were marginalized; communities were pressured into accepting a particular shape and size of territory, which determines who is eligible to elect the territorial authority. At the same time, the heads of the imposed territories were sometimes designated by party leaders rather than elected. Leaders and communities thus sought *different entities* as the legitimate territorial representative, based in part on the configuration of the territory itself. This case demonstrates that the battles over legitimate territory and legitimate representation are inextricably linked.

In Guarayos, communities elected their indigenous territorial representative. Though COPNAG was originally a secondary advocacy organization lobbying for property rights, it was given a new domain of powers over territorial governance as titling proceeded. At the same time, COPNAG's domain of power beyond the titling process was ambiguous in relation to existing municipal governments. Political and economic pressures, a new domain of unfamiliar and ambiguous powers and lack of oversight and accountability resulted in corruption and a split in the leadership. As in Nicaragua, the process of representation was fundamentally shaped by the broader geopolitical struggle for indigenous rights vis a vis central government. In spite of having central government support, the Guarayos territory was located in a lowland department that was dominated by powerful politicians and economic actors that did not sympathize with indigenous people's demands for rights. When the process began, vested external interests interfered with titling and sought ways to corrupt the system.

As in Guarayos, the organization created to represent the Ikalahan collective in the Philippines case was the same one that was originally set up to fight for land rights. But the Philippines ancestral domain case presents a success story. The KEF had a number of advantages over COPNAG: the territory is much smaller and more homogeneous, thus communication for accountability is much simpler; powerful outsiders seeking to invade Ikalahan lands were

defeated in court over 30 years ago; and the area is a now forest reserve, hence there is probably less incentive for elite land grabs. The situation was much more conflictive in the Guarayos territory. Also key to the KEF's success, however, was finding the appropriate balance between the new entity with powers over land and natural resources and the traditional institution for solving community problems, as well as significant efforts to guarantee transparency and accountability. A trusted, embedded external broker facilitated these processes.

### **Roots of conflict**

The cases all illustrate rights demands that have emerged from conflict. The conflicts often involved indirect or broader-scale struggles relating to the denial of indigenous rights historically; but direct conflicts, principally incursions into territories claimed by indigenous communities, were precipitating factors. The definition of territorial boundaries also often resulted in disputes and negotiation, as competing claims from neighbouring communities or from people living inside indigenous territories had to be resolved, either during titling, as in Bolivia, or after, as in Nicaragua.

It is no surprise, then, that the recognition of rights – and indigenous rights in particular – does not signify an end to conflict but rather the beginning of a new phase of struggle. Struggles over territory and authority are intimately linked. Territory leaders, or authorities, become key loci around which issues of political and economic power converge.

For indigenous people, particularly those organized in vast regions as in much of Latin America, communities and territories are embedded in broader struggles over political rights and autonomy with an important historical, geopolitical component. Political demands include the right to self-determination and development, including economic rights to land and natural resources. Hence regional indigenous political leaders in Nicaragua define their interests in relation to a central state administration that is currently friendly but historically has been far more often hostile. Their interest in the configuration of territories and territorial authorities, then, is grounded in this historical geopolitical conflict and is aimed at strengthening 'the region'.

In Bolivia the issues are similar but the tables are turned. The regional authorities, tied to economic elite, were also at odds with the central state administration for control of the region in their demand for autonomy; in this case the regional authorities were also hostile to indigenous rights, and the conflict with the central government erupted precisely when an indigenous president came to power. They managed to divide the indigenous movement to try to undermine COPNAG's potential for political and economic control of the region. Their interest in the territorial authority, then, was both to strengthen 'the region' vis a vis central government but also to control resources and weaken community rights.

That is, in both cases there was a component of control that looked outward, interested in blocking the meddling interests of the central government, and another that looked inward, toward the communities and indigenous peoples of the region. This was the point where the broader political and economic interests started blending into personal interests. This clearly occurred in the Bolivia case, where the (non-indigenous) regional politicians were not the champions of indigenous rights. In Nicaragua, it is not clear how or to what extent the political champions of indigenous rights actually hoped to strengthen rights at the community level, as they also, at least at times, sought to control territorial authorities.

In all three cases, territorial authorities had power over people and resources inside the territory and also served as the legal representatives of community interests externally. Hence, communities depended on them for access to land and resources and for political representation in their interest. For external actors seeking control over people and resources on the ground, controlling the territorial authority was key.

### **Roots of legitimacy**

In all three cases, communities chose their representatives through processes that were both backed by law (the Communal Lands Law in Nicaragua, laws of incorporation in Bolivia and the Philippines) and embedded, at least to some extent, in indigenous or local traditions. The combination appears to be important for both *local* legitimacy and accountability. But this alone is not enough to guarantee their success, particularly in light of outside pressures.

Bolivia's tenure reform laws allowed indigenous organizations to develop their own by-laws, and the election of COPNAG was carried out through the existing rural organizational structure of *centrales*. The result was a process of legitimate representation, which began with communities electing representatives to an organization that advocated for their territorial claim, but once successful, its role changed. COPNAG gained authority to approve community groups developing forest management plans and validate property claims to land by outsiders, when the authority to allocate access to land had previously been held at the agrarian zone at the village level. When the problems with corruption arose, the corporate legal structure was used to oust the unaccountable directors and elect new ones.

In the Philippines, each *barangay* elects both its local government officials and its representative to the KEF board; many board members are village elders. Though some problems are resolved through the corporate structure, important problems and conflicts are debated before the traditional tribal court, the *Tongtongan*.

Nicaragua's indigenous communities elect their traditional communal authorities who then come together, as defined in the Communal Lands Law, to elect the new territorial authority. The problems with this process were associated with powerful outside actors trying to control, reorganize or manipulate it – for this they appeared to have little recourse.

All of the cases demonstrate the importance of the legitimacy of the territorial leader being proposed, but the specific circumstances are different in each. In the Philippines case, both external and community-level actors accept the same entity as the legitimate representative of the territory. In Nicaragua, this was a specific point of contention, as regional political leaders and communities proposed different entities. And in Bolivia, the ousting of the directorate of COPNAG resulted in a split such that one original entity became two – one legitimate to regional politicians, the other legitimate to the communities that had organized the new election.

When there was contention, each side sought to win the legitimacy of its choice. But communities are clearly the weaker contestants. Their efforts to use advocacy and support networks to push forward their choices were largely ignored. It is not clear, after all, to what extent those in power need legitimacy or just the appearance of legitimacy to get their way (see Deephouse & Suchman, 2008). But there were clearly efforts at negotiation to win voluntary compliance in the Nicaraguan case, once it became clear that pressure alone would not work.

Finally, much can be learned from the Philippines case specifically. It is notable that the only case here in which an authority emerged that was legitimate both to the state and to the community involved a highly respected, embedded external broker. Pastor Rice served as an effective intermediary between the community and the government (Dahal & Akhikari, 2008). This is also the oldest case, suggesting the importance of learning over time: the court case that reversed the Marcos government's plan for a resort took place in 1972. The KEF has not remained static but has evolved, with changes in the size and configuration of its board of directors. It is neither entirely new nor entirely traditional but rather appears to have found an acceptable balance between the two. The results should be analysed based on the role that Pastor Rice played, in an exceptional case, rather than suggesting that an external broker is required: he maintained the legitimacy of the institutions and relations of authority over time by assuring transparent rules of the game and the implementation of effective accountability mechanisms.

## **CONCLUSION**

The three cases together provide an instructive panorama of the issues surrounding authority that emerge in the recognition of indigenous land rights. They demonstrate the complex and often conflictive political processes unleashed by such policies and show that the recognition of forest tenure rights is far from straightforward and predictable. Six lessons emerge:

First, the entities chosen to represent communities or territories matter. As authorities, legitimated by the state through the recognition process, by communities through election, etc., they have concrete effects on outcomes for indigenous people. In the RACN, leaders at the territorial level approve logging permits and have access to tax income designated for the territory. In Guarayos, COPNAG was granted the power to validate nonindigenous land claims. In the Philippines, the KEF grants land and forest access permits and establishes management norms defining resource access. Recognition means new roles for authorities that communities need to learn to navigate.

Second, apparently simple solutions, such as recognizing the existing ‘authority’, may not be an option. In all three cases, there was no existing governance institution at the scale required. Scaling up from existing community organizations in Nicaragua, *barangays* in the Philippines or *centrales* in Bolivia is a viable alternative, but these processes take time and may be highly conflictive depending on the interests at stake and the degree of attention to issues such as accountability.

Third, even when communities elect their representative and defend the local legitimacy of this authority, a state entity – or other key actor – may have a conflicting interest. This is what happened in the RACN. Hence representation at the territory level, tied to the configuration of territories, became the battleground with indigenous (Miskitu) leaders, who in turn sought to reshape the design of representation at the regional level to their political advantage vis a vis the central government.

Fourth, the election of entities at the territory level may lead to overlapping, ambiguous and conflicting domains with existing state government structures such as municipalities. In Guarayos, for example, indigenous property is superimposed over several municipal borders, creating a situation in which the population is under distinct local governments with specific powers, administrative roles and budgets while COPNAG’s domain of powers is ill-defined and vague. In Nicaragua, if legislation is not passed to replace the existing municipal structures with territorial boundaries, the problem of jurisdiction will also have to be resolved.

Fifth, representative authorities may begin with a certain amount of legitimacy, but this can also break down without effective accountability and control mechanisms. In recent decades, indigenous organizations have been forced into a role involving increasing interaction with the state and actors outside their traditional arena, which requires constant adaptation and learning. Effective representation and accountability can be very difficult at a territorial scale, particularly if it is large and sparsely populated and if there have been no governance institutions at this scale previously. Some COPNAG leaders fell into corrupt practices under heavy pressure from powerful economic interests and individuals; previous communal and territorial leaders in both Tasba Raya and Layasiksa had been accused of corruption.

Sixth, effective representation is possible. The KEF is an effective organization with high levels of both internal and external legitimacy. The role of Pastor Rice suggests the significance of a mediator and community advocate who has moral authority both internally and externally. There is no reason that such leaders cannot emerge locally, and it is likely that indigenous organizations in the RACN and Guarayos will adapt to their new demands over time. But as the cases above suggest, this is a very challenging task as long as the property is still under negotiation.

This article has demonstrated that the issue of authority should not be ignored, or assumed to be unproblematic, in the process of recognizing indigenous rights to forest or land. The recognition of rights is often contentious and is likely to result from grassroots struggle – and the struggle does not end once rights are granted. One key arena of contention is the choice of entity to represent the collective, an issue intimately tied to the control of land, resources and political power. Hence it is no surprise that the choice of territorial ‘authority’ is subject to conflict and negotiation.

The three cases show that simply choosing the correct, downwardly accountable institution to represent those receiving rights may not be an option; in fact, in none of the cases did such an entity exist at the scale required. More to the point, legitimate power cannot be chosen: it has to be constructed.

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<sup>1</sup> The term institution here is used in the sense Ribot et al. (2008) refer to 'institutional choice' rather than in reference to social rules and norms.

<sup>2</sup> This would involve legal reforms that would have to be approved by the legislature. Since territories cross municipal borders currently, it is unclear how the two institutional structures will relate with each other as long as both exist. Under the territorial structures, however, non-indigenous residents have no guaranteed form of representation.