**Formalizing indigenous commons:**

**The role of ‘authority’ in the formation of territories**

**in Nicaragua, Bolivia and the Philippines**

**Anne Larson# and Peter Cronkleton\***

#Corresponding author, Center for International Forestry Research, Managua, Nicaragua

a.larson@cgiar.org

\*Center for International Forestry Research, Lima, Peru

pcronkleton@cgiar.org

A previous version of this paper was presented at the Conference of the International Association for the Study of the Commons (IASC), Hyderabad, India, January 11-14, 2011; and at the Speaker Series on Democracy and Environment, Social Dimensions of Environmental Policy Initiative, University of Illinois, Urbana-Champagne, April 8, 2011.

**Total word count: 10027**

**Abstract**

Indigenous peoples have sometimes sought the formalization of their customary territories to demand the enforcement of their borders, which have often not been respected by outsiders or the state. The process of formalization, however, generates new conflicts. This article explores how the recognition of indigenous forest commons is connected to questions about authority. 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. Though an entity that holds leadership powers may already exist, it is likely to be endowed with new decision-making powers and responsibilities; and in many cases a new entity will have to be created. This is not a ‘local’ process but rather emerges at the intersection of relations between the community, or territory, and the state. Similarly, given that ‘authority’ implies legitimacy, such legitimacy will have to be produced. Drawing on a comparison of cases of two indigenous territories in Nicaragua and Bolivia and an ancestral domain in the Philippines, this article shows how authority emerges from often conflictive processes of constructing the commons and shapes community rights to – and powers over – forests and forest resources.

**Key words:** indigenous rights, demarcation, forest commons, formalization, property rights

**INTRODUCTION**

Since the mid 1980s, governments have begun to recognize the rights of communities living in forests that they have managed or used historically under customary institutions (Agrawal et al., 2008; Larson et al., 2010a; Sunderlin et al., 2008; White and Martin 2002). Today about a quarter of the forestlands in developing countries are formally in the hands of indigenous people and communities (Hatcher, pers. comm., based on data from Sunderlin et al., 2008). The largest portion of this shift from state to local land tenure comprises land now owned or managed by indigenous and traditional peoples in Latin America, and one of the most important factors behind it has been the international indigenous movement.

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 et al., 2010b). In the cases of indigenous peoples, however, 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 (Bae, 2005; Barry et al., 2010; Plant and Hvalkof, 2001).

What does authority have to do with the recognition of indigenous rights to land and forest? The idea of recognizing 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. 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 (see 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, or sphere of competence (Fay, 2008). Legal recognition by definition changes the rules regarding action and decision making. 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. 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. On the other hand, the definition of territory may have broader implications, playing a central role in geopolitical negotiations (see Sikor and 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 chapter explores three different cases in which indigenous territorial rights were recognized, in Nicaragua, Bolivia and the Philippines, and demonstrates how recognition leads 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. In particular, 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 (Fay, 2008) – 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 some people may use violence or threats of violence 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 and 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.

The question of authority appears to be a central factor affecting the outcomes and success of forest tenure reforms, yet this issue has not been well researched.[[1]](#footnote-1) 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’, used often in reference to indigenous or traditional peoples, assumes that the traditional system grants legitimacy; but simply accepting the term, then, leaves little room to question that. 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 et al., 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[[2]](#footnote-2) changes it: it strengthens it, imbuing it with a new source of legitimacy (Ribot et al., 2008). This raises concerns regarding 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*.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 internal legitimacy but not to manage the particular set of powers now being granted (Fay, 2008). An example is the recognition of nondemocratic actors – chiefs and headmen who inherit their posts – in some African nations undergoing decentralization (Ntsebeza, 2005; Ribot et al., 2008; see also Fitzgerald, 2005).

Second, the granting of tenure rights may necessarily involve the formation of new entities to represent the beneficiaries, 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. These territories are expected to facilitate the demarcation and titling of large areas covering the lands 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 demarcation process, and the use of resource management models that combine traditional and modern practices for long-term development (Davis and Wali, 1994).

The territory model has encountered serious 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 or will simply emerge. 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’. One of the problems is that this is the scale at which governance institutions do not currently exist. Hence defining both the entity and the domain of powers involves forging new ground. The Nicaragua, Bolivia and Philippine cases here all represent indigenous territories comprising multiple communities.

The point is not, however, that communities are incapable of defining or electing a new, representative entity for territorial governance, or that it is possible or desirable for another actor – eg. the state – to ‘create’ such an entity (though this has sometimes had positive results, Bray et al., 2006). Rather, the issues mentioned so far present a somewhat simplified view of these political processes. 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 outcome of these processes has 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 addition, in cases involving land titling, 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 and 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 refer to large indigenous territories being demarcated and titled in the wake of important changes in national legislation to recognize indigenous land rights. The Nicaragua case is based on a study of the 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 municipalities 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), 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 RAAN, 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. 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 the 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 and Mendoza-Lewis, 2009; Larson et al., 2010c).

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, to the Korean company SOLCARSA in 1995. The community’s legal representatives had fought the concession in the national courts to no avail, in spite of a Supreme Court ruling in 1997 that the concession was unconstitutional for failing to obtain the legally-required approval of the Regional Council (Wiggins, 2002). 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 and 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. The Court ordered the state to adopt the relevant legislative and administrative measures necessary 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: 13).

Until this time, the central government had continued to treat the region’s natural resources as state property; if regional council permission was required, it was usually granted. The regional councils were very weak and had little funding or power. By 2003, this began to change. Three factors played key roles: the communal lands law (in effect as of January, 2003), the long-awaited approval of the implementing regulations of the Autonomy Statute (2003), and, most importantly, a change of government (January, 2007). The first titles were delivered in late 2006, but it was thanks largely to an alliance between the government administration entering in 2007 and the Miskitu political party Yatama that most of the indigenous territorial claims in the RAAN, 13 territories for a total of almost 1.6 million ha, had been titled by mid-2010 (PGR, 2010). 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 communal lands law formally 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 legal signature is needed to represent the decision of the collective. In Nicaragua’s indigenous communities, these authorities are usually 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 (the current central administration), 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.[[3]](#footnote-3)

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 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.

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 has failed to win acceptance.

**Guarayos TCO, Bolivia**

The recognition of indigenous land claims in Bolivia has resulted from a slow process of policy reform driven by mass marches and other forms of protest to pressure government decision makers. One result was the creation of a new type of indigenous property, known as a TCOor *Tierra Comunitaria de Origen* (literally, original community land), ratified in the 1996 agrarian reform law. The experience presented here is based on the study of the Guarayos TCO, located in 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).

The Guarayos province in northern Santa Cruz was established in the 19th century as a Franciscan mission. The mission was secularized as a result of the 1952 revolution, but the subsequent agrarian reform had little impact. Regional elite took possession of some lands and indigenous people established *de facto* control over areas around their villages. Patterns of local authority established during the mission period have persisted, with village organizations called *cabildos* headed by small groups of hereditary chiefs or *caciques*. The power of these authorities was limited to the community scale but was sanctioned by the Catholic Church.

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 in the 1970s, communities began forming *sindicatos* to occupy and allocate land. These *sindicatos* became known as agrarian zones (*zonas agrarias*) with presidents chosen by traditional village leaders to assign plots to local families. These presidents’ power did not extend beyond the allocation of arable land in the zone, but their decisions defined the pattern of land occupation and use around indigenous communities. By the early 1990s, indigenous land use was organized around 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 provide the basis for the system of indigenous political power.

The Guarayos property claim emerged in part due to tensions arising from competition for land, after an interdepartmental highway opened the province to outsiders, including timber industries, ranchers, large-scale commercial farmers and smallholder colonists. Many of these actors were moving to the region for its forests and fertile soils. As a result, in 1992, the Guarayos people created 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 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 until titling is completed. 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 area claimed (Vallejos, 1998). COPNAG protested that the concessions constituted ‘new claims’, but the government accepted their previous logging permits as pre-existing claims.

Though it had been created primarily to pressure the government to recognize the Guarayos’ land claim, in the titling process COPNAG was given significant power and administrative responsibilities over the territory. It was made responsible for representing Guarayo interests to the government, allocating resources by supporting forest management petitions of indigenous residents and certifying the authenticity of pre-existing land claims by nonindigenous people. Importantly, COPNAG would hold the land title in the name of the Guarayos people.

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*). But in fact, COPNAG was granted a very new domain of powers as the process progressed – and with significant limitations. It was a young organization that needed to develop new capacities, while facing major obstacles due to the characteristics of this vast territory, with limited infrastructure and great distances between communities. It was very difficult and costly to maintain communication with and accountability to their constituents. Also, the power granted indigenous leaders over the territory is ambiguous because the Guarayos TCO is superimposed over three municipalities. 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 does not have these advantages and their authority falls under multiple municipal governments with competing goals.

COPNAG represented Guarayo interests to the government while the boundaries of their TCO were defined and demarcated for titling. Demarcation involves the evaluation and ‘regularization’ of third-party claims before issuing collective titles. Legitimate claims include those with long histories in the region or those already with title. At first, demarcation moved quickly, because the titling agency chose to start in remote areas. Hence by the end of 2003, about 1 million ha had been titled. But by late 2006 only an additional 18,000 ha had been titled. Little progress had been made near the highway and main town, where most of the population is concentrated. This is also the area subject to heavy pressure from colonists, loggers and others strategically placed to take advantage of the situation to occupy land.

Among other things, long delays and the government strategy to avoid 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 providing forged 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 several COPNAG leaders were expelled, new elections were held, and a woman was elected president. But the organization split in two as the expelled leaders formed a parallel group they called the ‘authentic’ COPNAG. Their source of legitimacy came from the Santa Cruz departmental government and the *Comité Cívico* of Santa Cruz, which represents the interests of the industrial timber sector; these two groups recognized them as the official representative of the Guarayos TCO. 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 grassroot indigenous support. As a result, local disputes over authority divide much along the contours of the national political conflict between the central government and departmental governments.

**Kalahan Education Foundation, Philippines**

The first indigenous community in the Philippines to receive recognition of its forest rights was the community 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 intended 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 and Adhikari, 2008; Dizon et al., 2008; Larson et al., 2010c).

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 has 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, a third. By the time the MOA had expired in 1999, the Indigenous People’s Rights Act had been passed, two years earlier. 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. In each village, 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 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 and 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 and 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, serves as executive director of the KEF and helps mediate relationships between the community and external actors, such as the government, donor agencies and NGOs. 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 has shaped the nature of representation. That is, the member communities should elect the legal representative of their territory, but in practice regional government authorities have refused to recognize these leaders, in part because they have resisted recognizing the territories that were being contemplated or designed by communities. Indigenous leaders have 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 has 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 have 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 have been marginalized; communities have been 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 have sometimes been 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 an advocacy organization that was given a new domain of powers under changing circumstances. At the same time, its influence on the titling process was undermined by decisions such as the renewed logging concessions, and its domain of powers beyond the titling process were 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 is located in a lowland department that is dominated by powerful politicians and economic actors that do not sympathize with indigenous people’s demands for rights. When the process began, vested interests at both central and departmental levels 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 forest reserve, hence there is probably less incentive for elite land grabs today. The current situation is much more conflictive in the Guarayos territory. Also key to the KEF’s success, however, has been finding the appropriate balance between the new entity with powers over land and natural resources and the traditional institution for solving community problems, and significant efforts to guarantee transparency and accountability. It is notable that a trusted, embedded external broker has 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, are precipitating factors. The definition of territorial boundaries also often results in disputes and negotiation, as competing claims from neighbouring communities or from people living inside indigenous territories must 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, are also at odds with the central state administration for control of the region in their demand for autonomy; this time the regional authorities are 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, is 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 is a component of control that is looking outward, interested in blocking the meddling interests of the central government, and another that is looking inward, toward the communities and indigenous peoples of the region. This is the point where the broader political and economic interests start blending into personal interests. This clearly occurred in the Bolivia case, where the (non-indigenous) regional politicians are not the champions of indigenous rights. In Nicaragua, it is not clear to what extent the political champions of indigenous rights actually hope to strengthen rights at the community level, as they also, at least at times, have sought to control territorial authorities.

In all three cases, territorial authorities have power over people and resources inside the territory and also serve as the legal representatives of community interests externally. Hence, communities depend 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 is 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 allow 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 benefiting communities electing representatives in the process of advocating for their territorial claim, but then faltered. 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 existing 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 and 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 has served as an effective intermediary between the community and the government (Dahal and Akhikari, 2008). This is also the oldest case: the court case that reversed the Marcos government’s plan for a resort took place in 1972. The KEF has evolved over time, with changes in the size and configuration of the board of directors. It is neither entirely new nor entirely traditional but rather appears to have found an acceptable balance between the two types of institutions. Rice has played a key role in maintaining legitimacy 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 RAAN, 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 support logging petitions and to certify the validity of land claims. In the Philippines, the KEF grants land and forest access permits and establishes management norms defining resource access.

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 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 RAAN. 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, elected, representative authorities may begin with a certain amount of legitimacy, but this can also break down without effective accountability and control mechanisms. Effective representation and accountability can be very difficult at a territorial scale, particularly if it is large, sparsely populated and without previous governance experience at this scale. The COPNAG leadership 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.

This article has demonstrated that the issue of authority should not be ignored or treated lightly 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 there is no reason to believe the struggle ends once rights are granted (see Larson et al., 2010b). 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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1. With the exception of a number of decentralization studies concerning customary authority led by Jesse Ribot in various African countries. [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)
3. 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. [↑](#footnote-ref-3)