

Formalizing Indigenous Commons: The Role of ‘Authority’ in the Formation of Territories in Nicaragua, Bolivia, and the Philippines

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Summary. — 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.
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1. 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, 2010; 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, 2010). 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 (González, Burguete Cal y Mayor, & Ortiz-T, 2010; Offen, 2003; Van Cott, 2000; Yashar, 1999).

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 (Alden Wily, 2008; Fitzpatrick, 2006; Peters, 2009). 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

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definition changes the rules regarding action and decision making (Ribot, Chhatre, & Lankina, 2008). 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., Berry, 2009; Worby, 2001). 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.

2. 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, p. 574). Legitimacy empowers authority (Walker & Zelditch, 1993) and 'leads people to defer voluntarily to decisions, rules and social arrangements' (Tyler, 2006, p. 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, 2001).

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 *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 institution¹ 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 defense of community rights (see Latin America social movement literature, e.g., Yashar, 1998).

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