Land Tenure Rights and Access to Forests in Nicaragua's North Atlantic Autonomous Region: Making the Rules of the Game

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Abstract

Nicaraguan indigenous groups won property rights to their historic territories with the enactment of the Communal Lands Law in 2003. The law establishes mechanisms and institutions for land demarcation and titling, the extent and limits of third party rights, and procedures for natural resource exploitation designed to guarantee community consent. It also formally recognizes each community's right to choose its own authorities and establishes mechanisms for their certification. This paper is based on research examining the extent to which new tenure rights have, in practice, resulted in increased access to forest benefits in two indigenous territories in Nicaragua's North Atlantic Autonomous Region (RAAN). The article explores concepts of rights, property, access and authority in the process of constructing the "rules of the game" in the formalization of community property rights. The recognition of traditional lands is a highly political process that shapes the nature of rights through the act of formalization. It is forcing institutional changes at the community level in order to fit the model being imposed by the regional government. Based on conflicting priorities, actors at different scales pursue different configurations of territory that shape control over land and natural resources and over political power. The article argues that what is fundamentally at stake is the nature of the authority that will enforce the rules.

Key words: *Community forestry, indigenous communities, property rights, access, recognition, authority*

INTRODUCTION

A substantial portion of the world's forests, between 79% (White and Martin 2002) and 84% (FAO 2006/DS cite), is public property under the formal ownership of the state. Hence the passing of a 2003 law granting property rights to Nicaragua's indigenous and ethnic communities, and establishing the institutional mechanisms for titling, constitutes an important exception. Though territories are still being demarcated, the indigenous communities of the country's autonomous Caribbean Coast regions are now the recognized owners of a significant portion of Nicaragua's forests and virtually the only remaining "national forests" outside of protected areas in the country.

This article explores concepts of rights, property, access and authority. Property refers to "relations among social actors" (Benda-Beckman, Benda-Beckman and Wiber 2006) and represents an "enforceable claim" (McPherson 1978). It is enforceable because, at least to some degree, it is legitimate, "in the sense that the state or some other form of political-legal authority sanctions" it (Sikor and Lund, forthcoming). Ribot, Chhatre and Lankina (2007) emphasize that, while property refers to the "rules of the game," greater

attention should be paid to the role of authorities in enforcing those rules. This research involves a prior moment between the granting of the statutory rights, or the act of recognition, and property: the process of *making* the rules.

What has this new ownership right meant for indigenous communities? Has it improved local control over land and forest and community access to forest resources? What problems have arisen from the formalization, or legal recognition, of customary tenure and authorities?

Sikor and Lund (forthcoming) also examine the process of constituting property. They look at the way in which land claimants appeal to authority for legitimacy, to turn "mere access" into property, and how authorities use property to legitimate and consolidate their own authority. In the case of Nicaragua's communal lands, actors at different scales appeal to each other for legitimacy, but the central issue is not about legitimating access, in the first case, or legitimating authority in the second. Rather, what is at stake in the constitution of property is control over land and natural resources and over political power.

In Nicaragua's North Atlantic Autonomous Region (RAAN), three different levels of authorities, created by custom, law and political practice, correspond to different configurations of property – specifically in regard to the size of territories – with a variety of interests and political and economic implications. The communities studied have found it in their political interest to come together as multi-community territories in order to appeal more effectively to regional government authorities for recognition at the scales they see as acceptable for political representation and control over resources for livelihood benefits. Coast political leaders and government authorities, for their part, have appealed to the region's indigenous communities to form much larger territories in the interest of Coast autonomy to consolidate indigenous political control over the region and its resources.

In this struggle over the exercise and meaning of the statutory right to indigenous traditional lands, this study found that communities began to exercise their new rights in a variety of ways before the laws were implemented. Their exercise of those rights has in turn shaped the nature of the rights that are being won, while the rights that are won then shape the possibility of exercising rights over resources more fully. In the context of negotiations regarding the scale of territories, the central issue of debate is precisely over defining the *authority that will be enforcing the rules*.

This article is based on fieldwork conducted between September 2006 and December 2007 in the RAAN, Nicaragua, including case studies in the territory of Tasba Raya and in the communities of Layasiksa. At the regional level, the research included over three dozen interviews with key informants (other researchers, government officials, NGOs and community leaders) both on historical and current issues, the participation in a variety of events as well as discussion groups with government representatives and with project organizers, preliminary scoping studies to over a dozen communities from five different territories, and the review of key published and grey literature. The community level research, as well as additional regional research, was carried out by the University

of the Autonomous Regions of the Caribbean Coast of Nicaragua (URACCAN) under the auspices of CIFOR.

The research in Tasba Raya built on URACCAN's previous and ongoing work supporting participatory development and governance strategies in those communities; an important and well-respected territory leader participated in the research team. The research in Layasiksa was more limited[1] but was complemented by a variety of existing published and unpublished documents[2], and substantial comments, internal reports and written additions from, and a variety of discussions with, members of the team of technical professionals who worked with the World Wildlife Fund (WWF) in Layasiksa from 2001 to present, now known as Masangni. The methodology for the community level research included a variety of interviews and focus groups with key informants, community and territory leaders and community members. These interviews were guided by a series of open-ended research questions on community history, land tenure, forest management norms and regulations, credit and markets for forestry and community organization.

The rest of this article is organized as follows. The next section discusses the central concepts used to analyze the cases. The third section discusses indigenous land tenure rights and the Communal Lands Law; the fourth presents the case studies. The fifth section provides a discussion of the findings in light of the central research questions and the theoretical framework and is followed by a short conclusion.

THE CONSTITUTION OF PROPERTY

The rights-based approach to livelihoods combines the concern for human rights and livelihood improvements – central issues for addressing the problems of Latin America's indigenous populations and for understanding the effect of property rights changes on indigenous communities. The rights-based approach represents an attempt to re-politicize development and bring in normative, pragmatic and ethical issues by empowering people to make claims against their governments and demand accountability (Nyamu-Musembi and Cornwall 2004).

The struggle for rights to land and natural resources has been one of the central goals of a variety of contemporary indigenous peoples' movements in Latin America. At least three different approaches to indigenous property rights can be distinguished (Plant and Hvalkof 2001). Protective approaches are those aimed to isolate indigenous people to keep them safe from what are seen as possibly harmful interventions. Environmental approaches are those that seek to protect biodiversity and see indigenous peoples as good stewards of nature. Rights-based approaches vary conceptually, and claims may be based on recognizing indigenous historical claims to territories (protected by ancient

[1] A team of two researchers visited each community for 12 days. Further visits were interrupted by Hurricane Felix in September 2007.
[2] For example, Mairena (2007), Soto (2007), Salazar and Gretzinger (2004), Kiwatingni financial reports, a WWF internal evaluation, documents developed for the land claim process (community descriptions and histories, meeting notes).

land titles); original and immemorial rights (rights that were never sacrificed after conquest); and/or discrimination and the righting of past injustice (Plant and Hvalkof 2001).

As of 2004, the most advanced legal frameworks for indigenous land tenure and rights were those of Bolivia, Brazil, Colombia, Costa Rica, Panama, Paraguay and Peru (Roldan 2004). As of 2007, Barragán (2007) included Ecuador and Nicaragua as well, as countries that have recognized collective domain in perpetuity and the use of their own forms of self-government. Achieving new legislation that recognizes indigenous territorial rights is a significant victory, but the exercise of these rights is not fully possible until the statutory right has been implemented and enforced. This involves a political process that is likely to challenge vested interests at every step. At the ground level, a rights-based approach is successful, then, when the power dynamics of access to resources are altered, and formerly excluded and marginalized groups have greater access to livelihood assets (Larson and Ribot 2007).

Land titling can be an important way to guarantee property rights. Property refers to an enforceable claim (McPherson 1978), and a property title is supposed to guarantee security, though this is not necessarily the case in practice. Bromley (2005) argues that titles can increase insecurity for the poorest sectors (see also Cousins et al. 2005), and that titles without the full backing of the state that issued them are meaningless. Broegaard (2005) argues that *perceived* tenure security is more important than the possession of a title in determining farmers' investment behavior. In his study of farmers in rural Nicaragua, he found that those who felt secure but did not have title recognized other local sources of legitimacy that were more important. Legitimacy is an important source of security because it makes the property claim enforceable (Sikor and Lund, forthcoming). Like Broegaard, Nygren (2004) found that the legal system is only seen as available to those who can manipulate it, thus excluding the poor.

Land tenure security is also a central issue with regard to forests, and deforestation has been found to be lower when property rights are secure and well-defined (Kaimowitz and Angelsen 1998, see also Ellsworth 2002). One of the most important issues for forest sustainability under common property regimes is the right and ability to exclude outsiders (Ostrom 1999), and one of the central problems for lowland indigenous peoples in Latin America is the invasion of land by colonists. Hence, to be effective for people and forests, the recognition of indigenous property rights requires, at a minimum, security (through title or embedded social structures), legitimacy, the ability to exclude outsiders and the backing of the state in defending those rights.

What does it mean for indigenous land rights when the state is needed to grant and guarantee common property rights and land titles, but it this same state that has sought to undermine common property regimes (Richards 1997; Tucker, Randolph and Castellanos 2007), as well as to assimilate (if not annihilate) indigenous populations historically (Van Cott 1994), and has often been the primary competitor for access to the natural resources located on indigenous lands? It is no surprise that the act of granting new tenure rights does not necessarily result in the changes aspired to, and that real gains are often only achieved through ongoing political struggle.

The legal recognition of customary land rights is not a simple process either. Fitzpatrick (2005) compares models in a variety of African and Asian countries and argues that "the nature and degree of State legal intervention in a customary land system should be determined by reference of the nature and causes of any tenure insecurity." One key problem is that the process of formalization can cause the breakdown of property rights systems into open- or contested-access areas due the superposition of and conflict between state-based, or formal, property systems and norm-based, or customary, regimes; this can result in "forum shopping," where different claimants appeal to their framework of choice in order to justify access, and institutions for exclusion break down (Fitzpatrick 2006).

Studies of overlapping and complex tenure systems in Africa have demonstrated that embedded social relations are altered by the issuance of a title (Alden Wily 2008; Cousins et al. 2005; Cousins and Hornby 2000). As Ribot et al. (2007) argue with regard to the recognition of authorities, recognition is not a simple act of acknowledging a traditional structure that already exists but rather alters that structure through the act and practice of recognition; it is therefore a highly political act that is subject to negotiation, contestation and manipulation. The question of "recognition" in Nicaragua involves the formalization of customary community lands and multi-community territories, but the latter has not actually existed in many parts of the RAAN. The law recognizes customary authorities, which are usually elected by communities, and a new authority to represent the territories: that is, "recognition" creates a new "traditional" structure at the scale of the territory. In the law, this is largely presented in the spirit expressed by Alden Wily (2008: 46), who argues that recognizing customary tenure is not necessarily about the substance of old rules or authorities but rather recognizing that the community, not the state, "is the source of decision making, norm making, regulation and enforcement."

To what extent has the new property rights law in Nicaragua actually changed rights to resources on the ground? Property is recognized as a "bundle of rights," and communal property systems can be highly complex. Tenure rights in natural resources are usually expressed along a continuum from access, to withdrawal, management, exclusion and alienation. Not only can the rights be broken down by type, but communal property systems also demonstrate a variety of "rights holders". The studies here are summarized and adapted to a framework from Meinzen-Dick (2006) that examines how rights are distributed among the state (here broken down to include the central and regional autonomous government), the collective and individuals.

Ribot and Peluso (2003) distinguish between property as a bundle of rights and access as a "bundle of powers," highlighting the specific mechanisms by which people are able to act, whether or not they have rights, in order to gain benefits from natural resources. In particular, specific authorities enforce property rules (Ribot et al. 2007, Sikor and Nguyen 2007). In complex communal property systems, there may be not one but rather a variety of decision makers. Mwangi and Meinzen-Dick (n.d.) divide the continuum of rights between use rights (for access and withdrawal) and control or decision-making rights (management, exclusion and alienation). But there are also

those who decide who holds which rights (CITE) and those who enforce rights at different scales. The decision over "which scale" in the Nicaraguan cases is ultimately a political negotiation over which authority will have the right to control and enforce access to which rights and benefits.

INDIGENOUS LAND RIGHTS IN NICARAGUAN POLITICAL CONTEXT

The enactment of the Communal Lands Law[3], No. 445, in January 2003[4] constituted an important landmark for land tenure rights in Nicaragua, but it was not the *first* step for securing indigenous and ethnic rights over their historic territories. The current Nicaraguan Constitution, approved in 1987, recognizes and guarantees the rights of Atlantic Coast communities to their cultural identity, forms of organization and property, as well as to the enjoyment of their waters and forests. That same year, the Autonomous Regions in the North (RAAN) and South (RAAS) were created based on the Autonomy Statute (Law 28) that was passed by the Sandinista government, as part of the peace negotiations taking place with dissident groups that supported counterrevolutionary forces in the 1980s' war. The Autonomy Law created the framework for establishing the first Regional Autonomous Councils in both Regions by popular election in 1990.

It took 15 more years for additional legal changes to take place, including the approval of the Regulatory Law (Reglamento), required for the implementation of the Autonomy Law, paving the way to operationalize fully the normative and regulative functions of the Regions' administrative institutions. Law 445 was passed shortly thereafter. Like the Constitution, the Communal Lands Law formally recognizes the rights of indigenous and ethnic communities to their historic territories, but it also establishes the institutional framework for demarcation and titling and for the formal recognition of indigenous authorities.

The Law was not written or passed without a struggle. It was the result of the demands of Coast indigenous communities and, more specifically, of commitments acquired by the Government of Nicaragua in the ruling by the Inter-Amercian Court for Human Rights in the case Awas Tingni v. Nicaragua. The community of Awas Tingni filed the international Court demand against the government for granting a forest concession to the Korean company SOLCARSA, in 1995, on their traditional lands without community consent. 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 it was unconstitutional for failing to obtain the prior approval of the Regional Council as established by law (Wiggins 2002).

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[3] Abbreviated from: the Law for the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maiz Rivers.

[4] The law was passed in December 2002 and became law in January 2003.

In 2001, the International Court ruled in favor 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 y Grossman 2002). 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 Awas Tingni and other indigenous communities, "in accordance with their customary laws, values, customs and mores" (Judgment, cited in Anaya and Grossman 2002).

The World Bank played a key role in applying the initial pressure for the Nicaraguan government, then under President Arnoldo Alemán, to develop legislation protecting indigenous property rights, by including the introduction (though not the approval) of an indigenous lands bill to the National Assembly among its conditions for loan disbursement. This process began prior to the Court ruling but was also influenced by the Awas Tingni case and lobbyists in favor of the community (Cunningham, pers. comm. 29/3/07). The Alemán government presented a bill, however, without consultation with or support from indigenous communities or their advocates.

Coast professionals responded with harsh criticism and organized support for the development of a communal lands law that would better reflect the needs and aspirations of Nicaragua's indigenous peoples and ethnic communities. The two coast universities URACCAN and BICU, prominent lawyers, NGOs, the Council of Elders, community leaders, the Regional Councils, and other Coast political leaders finally came to consensus around a single proposal presented by the Regional governments to the National Assembly Commission on Ethnic Affairs. Law 445 was passed by taking advantage of a key political moment, the day after former president Alemán was stripped of his immunity.

Until this time, the Nicaraguan government had justified its control over the forest resources on indigenous lands by claiming that these were "national lands," in spite of the Constitutional recognition of communal property. Legal procedures had shifted only to the point of requiring regional government approval. Many logging companies, for their part, however, had begun to include direct negotiations with communities in an attempt to avoid local opposition that would interfere with their access to timber. The formal participation of communities in this process did not begin until 2003, with Law 445 and, later that year, the new Forestry Law.

Conflicts with the central Government were not the only impetus for a law protecting indigenous property rights. The primary ongoing threat to the integrity of indigenous lands is colonization by non-indigenous peasants, mainly in search of cheap land, from the Central and Pacific regions of the country. Though specific figures are not available, there is little doubt that in-migration has been a central element of population growth and demographic change in the Atlantic Coast. An analysis of census data shows that the Coast population grew almost twice as fast as the national population from 1995 to 2005, rising from 12% to 14% of the total; between 1950 and 2005 the Coast population

grew nine times, the highest in the country (INEC 2005). Both of our case study sites have had to address problems with invasions of their lands and forests.

The Communal Lands Law

The Autonomy Law is generally seen as "what was possible at the time," but for many proponents it does not go nearly far enough in promoting the right to free determination for Coast peoples. The Communal Lands Law, on the other hand, represents a much more sweeping change in fundamental rights. It recognizes traditional forms of possessing the land and historic ownership rights, regardless of the role of the Nicaraguan state (Acosta 2004), and it forms a bridge between traditional and formal government institutions by recognizing communities as legal entities (*personería jurídica*), as well as the authorities that represent them, according to their use, customs and traditions (CALPI n.d.).

The Communal Lands Law creates the institutional framework for demarcation and titling. The National Commission for Demarcation and Titling (CONADETI) is a large organization comprised of Regional Council presidents, a variety of central and municipal government representatives and one delegate of each ethnic group in the autonomous regions. CONADETI is charged with directing the process, ruling on petitions for demarcation and titling and coordinating with the Rural Titling Office (OTR) for the issuance of titles. Operations are to be carried out by Intersectoral Demarcation and Titling Commissions (CIDTs) in the two autonomous regions.

Conflicts between neighboring communities should be resolved, if at all possible, through conflict negotiation among the communities themselves with the support of their territorial authorities. Unresolved conflicts will be decided by the Regional Council with the support of the corresponding CIDT; the decision in plenary session of the Regional Council is definitive after one appeal. In the case studies, Layasiksa is in the process of negotiating with neighbors; an important overlapping claim in the Tasba Raya case has been resolved, by the Regional Council.

Law 445 also establishes the basic guidelines regarding how third parties in indigenous territories should be addressed. These state that colonists with legitimate titles issued prior to 1987 who have been in possession of their land may remain, but if they wish to leave they must sell the improvements to the community. Those who have illegitimate titles should be indemnified and the lands returned to the community. Those who have no title but wish to stay should leave or pay rent. These rules are not entirely clear to people on the ground and some indigenous people (and colonists) believe that all colonists will have to leave when the community receives title. It is also not entirely clear what should happen with formal, government-issued titles that were given out after 1987: this situation is relevant in both of our case study areas.

The law makes it possible to demarcate lands either as a community or as a territory. The idea of territorial demarcation, or demarcation as groups of communities, took hold in Nicaragua several years after the approval of the Autonomy Law. According to the researchers who undertook an important comprehensive analysis land tenure demands in the Coast regions in the late 1990s, "if the analysis had been undertaken in the

1980s, which were characterized by broad-based *costeña*[5] mobilization around territorial rights and autonomy, the figure of [multiple-community] blocs probably would not have arisen," because the demand was not focused on smaller sub-territories but rather on autonomy and the entire Coast region (Gurdián, Hale and Gordon 2002). But by the time of their study, "the vision of territorial autonomy had lost much of its symbolic power" in the wake of 10 years of autonomous government with few results, and 116 out of 128 communities had grouped themselves into multi-community blocs. Only 12 preferred demarcation as individual communities: these 12 include 6 of the communities now grouped now in the territory of Tasba Raya.

With regard to governance institutions, Law 445 creates the figure of territorial authorities to oversee the demarcation process for each group of communities. These authorities are to be elected in assemblies of the traditional community authorities that represent the group of communities forming a territorial unit; they are "administrative organs of the territorial unit that they legally represent" (Law 445).

Natural resource rights are also protected by the law, which guarantees "full recognition of rights over communal property, [and] use, administration and management of traditional lands and its natural resources" (Art. 2). In Article 10, traditional community authorities are granted the right to authorize the sale of natural resources to third parties, when the Community Assembly[6] expressly mandates it (or of resources common to a territory, the Territorial Assembly[7]). And all resource extraction (instigated by outside actors) must obtain community approval or undertake a negotiating process that involves indemnification and community participation in the project; though the law does not expressly give the community the right to say no, there is a presumption that the community must approve of any such project in the end because they must sign the final agreement. Hence with regard to the five components of property rights, communities have the right by law, with regard to forest resources, to access, use/withdrawal, management and exclusion, but not alienation of these rights; indigenous lands are inalienable, nontransferable and non-mortgageable.

Demarcation and titling in practice

Since the Communal Lands Law was passed, the implementation of provisions for demarcation and titling moved at a snail's pace until 2007. CONADETI and the two CIDT offices were not authorized operating budgets until 2005, and once they were, it was not clear how the funds were spent: large sums were used for travel and per diems for CONADETI members, budgets have apparently been highly inflated, and they have not been managed transparently (Acosta 2006). The Commission was paralyzed for several months in 2006 because the Northern Region (RAAN) president refused to hand over operations after the required two years to the Southern (RAAS) president. And conflicts over the budget were delaying CONADETI's activities as of March 2007 as well.

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[5] Coast peoples.
[6] All community members, which in our two study communities refers to all adults.
[7] All communal authorities in the communities comprising a territory.

In spite of all of these obstacles, demarcation has still moved forward, as communities and territorial organizations have aligned themselves with NGOs, donors and other supporters to conduct the required diagnostic studies. A CONADETI report from June 2006 showed 22 RAAN communities or territories in some part of the process toward titling (cited in Acosta 2006). The first titles were handed out under the Bolaños government in 2006, but it appears that this "titling" was more of a media event than anything else; only one such title is now valid, after community leaders from one of those territories, Mayangna Sauni As, actively pursued the issue.

In May 2006, Brooklyn Rivera, leader of the Miskito political party Yatama, signed an accord with the FSLN's then-presidential candidate Daniel Ortega, promising FSLN support on specific issues regarding demarcation, autonomy, Coast elections, forests and the agricultural frontier, among others. Not all Yatama members were in favor of signing accords with their former enemy, Rivera argued in a radio interview that the FSLN, "in spite of having had a confrontation" with the Coast, is the one that "has learned the most, to respect the aspirations of the indigenous peoples and ethnic communities of the Coast." After winning the election, the FSLN began to fulfill at least some of its promises. One of those was to include Coast leaders in ministerial posts in the central government. Brooklyn Rivera was elected to the National Assembly in alliance with the FSLN. These central government authorities together with regional elected authorities comprise the Caribbean Coast Development Council, which has taken the lead in decisions relating to the autonomous regions.

Rivera has been pushing community leaders to reach agreements for the conformation of territories for demarcation. He and other Coast leaders are interested in designing territories that cover all of the land area, leaving nothing behind as national land; moving quickly while the political moment is favorable; and reshaping electoral districts to eliminate the municipal structure imposed by the central government and to return political power to the indigenous minority (both elected Regional Councils now have a *mestizo* majority). In a meeting in Waspam between regional authorities and community leaders in May 2007, Rivera announced that the procedures for demarcation and titling were being simplified to facilitate the process. He argued that communities should form larger territories in order to "move quickly," emphasizing that "it isn't to have the land but to put our government in between" the central government and the Coast, and to have greater strength for facing the central government and the invasion of colonists (CRAAN 2007). He spoke of the importance of resolving the demarcation and titling issue in order to move forward on the other points of the accord with Ortega.

TENURE CHANGE IN THE CASE STUDY SITES

The case study sites were selected to represent contrasts with regard to two issues: the presentation of demands as a territory or as a community, and the importance of logging. Tasba Raya, comprised of nine communities, elected its territorial authorities in 2005 and has been working for demarcation as a territory since that time. The research studied certain issues at the territorial scale but focused on two communities for local-scale concerns. Layasiksa has presented its demands as a community, though it actually consists of two communities – Layasiksa Laguna and Layasiksa Bosque –

located about 50 km apart. As of January, 2008, however, shortly after the completion of the fieldwork for this study, Layasiksa joined with a third community and also formed a territorial organization and a new territory, Prinzu Rao. The research focused on the two Layasiksa communities.

With regard to logging, Tasba Raya has a more typical history, with community members selling timber to logging companies and intermediaries, but little more; Layasiksa, on the other hand, has had the support of the World Wildlife Fund (WWF) in community forestry and now has the most advanced community forest enterprise on the Caribbean Coast. This section presents each of the two cases with regard to three specific issues: the change in tenure rights and the effect of that change on local control over land; forest management[8]; and issues arising from the formalization of land tenure and customary authorities.

Before proceeding to address current rights in each community, it is important to examine the constellation of rights prior to the passage of Law 445. The situation of Awas Tingni, which took the Nicaraguan government to the international court, as well as information from the case study sites and the region as a whole, is used as the basis for generating the following box (see Figure 1). The box presents the five components of the bundle of rights on the vertical axis and the various holders of rights along the horizontal axis (see Meinzen-Dick 2006). The rights discussed present the *actual* way in which forest tenure was managed prior to the Communal Lands Law, which does not necessarily coincide with prior law.[9] In general the left half of the diagram refers more to rights expressed by statutory law, whereas the rights at the community level are based on customary practices that were not captured in legislation.

Before the Awas Tingni decision, the central government granted itself the right to alienate indigenous lands that it considered national lands, expressed primarily through land giveaways in the 1990s to former combatants after demobilization, and to grant logging concessions on those lands to third parties. By law the Regional Autonomous governments had to approve the concessions, but indigenous communities themselves did not, though they were sometimes asked to do so.

For their part, community members participated in the sale of timber to logging companies and their intermediaries, both as individuals and in groups of individuals, in formal and informal markets.[10] This timber may have come from their family plots or from common use areas. If the timber to be sold was located in common areas, residents were usually supposed to obtain the permission of community authorities, specifically the (elected) *wihta* (judge) or *síndico*, which have been traditionally in charge of monitoring natural resource use; in some communities a portion of proceeds from such sales should have accrued to the community as a whole, but this was often

[8] The information for these sections is liimited to the issues relevant to this article.
[9] For example, the International Court in the Awas Tingni case found that the Constitution was not being respected.
[10] In Tasba Raya, we found that community members who had sold wood during this period usually had no idea if the buyer had a legal permit or not.

ignored, as was the request for permission at all.

In some cases agreements were made with *síndicos* or other community leaders in representation of the community as a whole, in which case the entire sale price of the timber should have accrued to the collective. Obtaining the *síndico's* written permission became the legally required procedure for all logging on communal lands after the passing of Law 445 and the Forestry Law in 2003. Though they were not authorized to do so by law or by their communities, some *síndicos* sold communal lands to third parties.

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are needed to see this picture.

*The collective holds the rights but these are enforced in practice by the elected authority that represents the collective, which is usually the *wihta* or *síndico* – the authorities in charge of natural resources.

Tasba Raya[11]

Tasba Raya is a group of communities with an atypical history for the RAAN, since few

[11] The field report for this site was written by Ceferino Wilson White with the support of Constantino Rommel and Taymond Robins Lino, under the coordination of Jadder Mendoza Lewis (URACCAN) and Anne Larson (CIFOR).

other indigenous communities have individual land titles. Though many communities have suffered from population movement and displacement, particularly during the 1980s war, the communities of Tasba Raya were established as resettlement areas in the 1960s and early 1970s, to relocate Nicaraguan Miskitos from the lower Río Coco – an area subject to high risk of inundations, scarce agricultural land and border conflicts with Honduras (in 1960, part of the Nicaraguan Mosquitia was ceded to Honduras after the Mocorón war in 1958). The settlements, designed by the Nicaraguan Agrarian Institute (IAN), were laid out in a grid as blocs of agricultural lands that were assigned and titled to individual families, and a separate communal area was designated for housing. Though IAN did not formally assign (through titling) other communal lands, residents claim that they were given free use of an area adjacent to their titled lands, which they identify by specific landmarks, and which they have used as a common use area both for hunting and forest products and for the assignation of new lands to growing families and new community members.

Seven communities were founded in this way, with the first in 1960, and the other six between 1969 and 1972. The last two communities are still fighting for recognition as "communities"; they are both "development poles" established after the 1980s war, but most of their residents live in the other seven Tasba Raya communities. They have begun to demand recognition as communities because of the family members who have gone to live on the assigned lands in order to protect them from invasion, thus establishing population centers in those areas. For the purposes of this article we have chosen to refer to Tasba Raya as nine communities. Our community-level research focused on the communities of Francia Sirpi and Wisconsin.

(1) Tenure change and the control of land and forest

Because of the way that policy and practice has evolved, and the way in which different communities and territories have responded to the opportunities (and threats) offered by new tenure rights, it is not possible to define a single moment of tenure change throughout the RAAN. For Tasba Raya, the first change occurred with the Constitution of 1987, which reaffirmed their rights to the adjacent land area, over which they have had no formal control. 1987 was also the beginning of the post-war period for *costeños*, when families began to return to the communities they had abandoned during the war. This includes the population of Tasba Raya, many of whom had joined the Indigenous Resistance, fled to Honduras or been relocated to the settlement area Tasba Pri, established by the Sandinista government in the 1980s.

Law 445 reaffirmed tenure rights over the communities' adjacent land areas and introduced a series of opportunities as well, though it is likely that the extent of private land titles in Tasba Raya mean that the law had less of an effect there than in many other Coast communities. Tasba Raya has won the right of exclusion over communal lands to which it has gained legal control. This means that the state can no longer grant logging – or any other – natural resource concessions on the untitled lands claimed by indigenous communities without community approval, though this had not apparently been an issue in Tasba Raya.

In addition, the state can no longer alienate so-called “national lands” to third parties. This is relevant to Tasba Raya, since the Chamorro government assigned 26 titles to blocs of land, principally forests, to 260 former combatants (in Collective Blocs of 10 people each) as part of demobilization agreements in 1996, for a total of about 11,500 hectares. In spite of the cut-off date of 1987 for all legal land acquisitions in indigenous territories, established in Law 445, there appears to be no interest currently in Tasba Raya or elsewhere in challenging these land grants to former indigenous combatants. This is in part because most beneficiaries live in Tasba Raya communities as well as out of respect for those who took up arms during the war.

The Law has had other important implications as well, however, with direct effects in Tasba Raya. First, it established procedures for coming together as a territory and forming territorial authorities. In the late 1990s, when CCARC conducted their analysis of land demands in the Coast, six communities that now comprise most of Tasba Raya expressed their desire for demarcation as individual communities. In particular, residents were concerned that they could lose the individual property titles they had already been authorized if they participated in the territorial demarcation process. This concern was partly alleviated by Law 445, which explicitly respects agrarian titles as long as owners were occupying the land prior to 1987. More recently, the communities began to see coming together as a territory as in their strategic interest. This was primarily inspired by the need to make a collective land claim in response to Awas Tingni’s, which overlaps with theirs by 41,000 hectares, but is also related to protecting their common interests as communities that have a different and atypical history, and fighting colonist land invasions as a united front. As mentioned above, Tasba Raya formed a territory and elected territorial authorities in 2005. This process, which was done with the support of external projects and facilitators, has played an important role in increasing local capacity and internal organization.

Second, the Law established procedures for resolving border conflicts between communities. Awas Tingni’s land claim overlaps with much of the area that three Tasba Raya communities claim as communal land. The Law calls on neighboring community and territory leaders to “use all efforts at dialogue and agreement necessary” to resolve their conflicts. When these efforts at conciliation fail, however, the decision moves through several stages in the Regional Council, with the final verdict falling to the plenary of the Council. In this case, it is likely that conflict resolution was more difficult because of the ethnic differences between the communities involved: Awas Tingni is a Sumo-Mayangna community and the Tasba Raya communities are Miskito. The conflict was finally resolved by the Regional Council (Resolution #26, Feb 14, 2007), which authorized 20,000 hectares to Awas Tingni and 21,000 to Tasba Raya. Though by law this decision represents the conclusion of the issue, at least with regard to administrative procedures (as opposed to the courts), it appears that none of the communities see it as legitimate.

Third, the Law makes it clear that colonist invasions of lands claimed by indigenous communities are illegal, though the role of the state in protecting indigenous rights against such invasions has been very weak. Together with the greater degree of organization of the community and territorial authorities, this has given leaders greater

courage to confront colonists and other invaders – in a sense to take the law into their own hands, though in the case of Tasba Raya, this has apparently not resulted in violence as it did in Layasiksa (below). While the field research was being carried out for this study, a small group of *mestizos* invaded a forested area claimed by Tasba Raya, not to set up an agricultural settlement but rather to log. Unconfirmed rumors suggested that they were tied to the relative of a current regional government member, which could have made community leaders more hesitant to act. Nevertheless, they chose to confront the invaders, who left with their chainsaws and most of their other tools, but left behind three barrels of fuel and the wood they had cut, all of which were confiscated by the community. Leaders argued that it was Law 445 that gave them the authority and the courage to act.

Finally, the Law also raises a new and interesting issue with regard to collective control over private land rights. This includes the individual titles issued throughout Tasba Raya as well as the collective forest blocs granted to former soldiers. Up until recently, community leaders had no influence over the private lands of community members. But one of the problems they have had to face are the effects of land sales, which bring outsiders – sometimes *mestizos* – into a community, who bring with them different models for land and natural resource use as well. In particular, *mestizos* tend to fell much larger forest areas and convert them to pasture rather than leaving them as fallows for forest regeneration. Also, in one case seven of the Collective Blocs sold their forest to a logging company, which raised substantial concern among Tasba Raya leaders. Las 445 states that possession of land after 1987 is not recognized, and land sales should go to communities. Hence Tasba Raya's leaders have established a set of norms to try to stop outside sales. These include notifying the buyer and seller of the illegality of the transaction, expelling or undertaking actions to impede the buyer from gaining access to the land purchased, notifying the appropriate government authorities and prohibiting anyone selling land from acquiring new lands in common use areas.

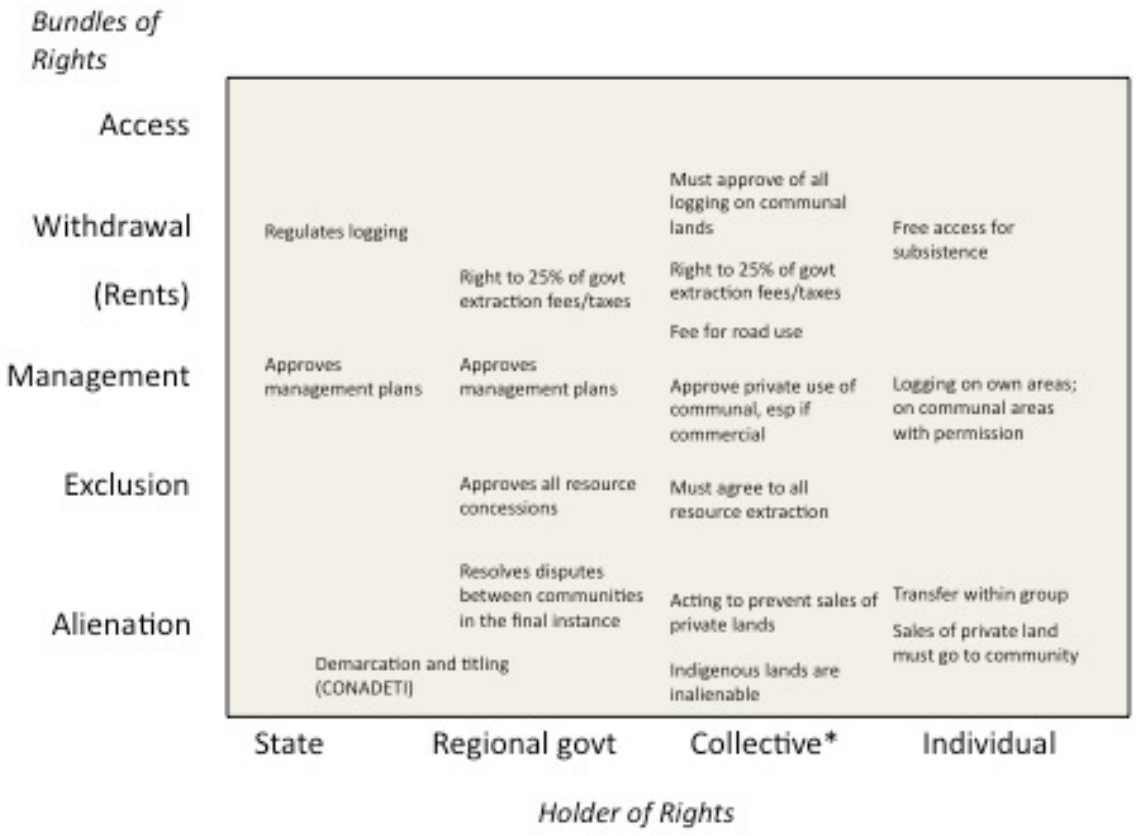
Figure 2 reflects most of these changes in tenure rights as they have been experienced in Tasba Raya since the Communal Lands Law. It also reflects changes that will be discussed below regarding access to forests.

(2) Forest management

In general one of the indirect effects of the tenure change has been the attempt of local authorities to enforce land and resource management rules and norms, for the use of common property areas, more effectively, such that community leaders approve all assignment of these lands and all timber extraction as well. Authorities told us that norms are based on verbal agreements and are regulated by the *síndicos*. Logging requires specification of the number of trees and species to be logged, with a limit of 5000 board feet, and that the area will be inspected by the *síndico* first. This set of rules appears to be more of a goal, however, that is not yet effectively implemented in practice. Though the sale of timber on communal lands should imply income to the community, it still appears that individuals can be given rights to sell timber for personal benefit from communal areas. This practice appears to have a long tradition throughout the RAAN and is difficult to change. One rule that the community has been able to

enforce is a small fee ranging from C$25 to C$100 for logging, which is invested in road maintenance.

Figure 2. Tasba Raya – after Law 445: communal and private lands



* The collective still often refers to the síndico in legal terms, but Tasba Raya is making an effort for more decisions to be made by a larger group of leaders as well as by the community assembly in some cases.
Note: Logging permits and regulations are still the final responsibility of the central government, but the regional government has begun to play an increasingly important role in this process.

Though many communities in the region have had *síndicos* for far longer, these authorities have been implemented more recently in Tasba Raya; in Francia Sirpi, for example, the first was elected in 1996, primarily to help resolve border conflicts between neighboring communities. Today the *síndico* plays the primary role in negotiations involving natural resources, as well as territorial conflicts and demarcation issues.

There was little sale of timber prior to 2000, and from 2000 to 2002, most sales involved the transfer of small volumes to the municipal capitals of Waspam and Puerto Cabezas by a few community members and local merchants, using rustic and largely manual logging methods. The first logging companies with registered permits arrived in 2002. From 2002 to 2005, permits were approved for about 11,500 cubic meters of wood and

almost 4000 trees, mostly for three companies. One of these had permits to log about 3,000 m3 in our study community of Francia Sirpi in 2003, and the vast majority appears to have been logged from private lands. Another 3,000 m3 was logged from the Collective Blocs whose owners lived mainly in our second study community, Wisconsin. The sale price per tree has usually been about C$250, or $13, though there is some variation depending on the species.

There is no record in either community of logging from communal lands, and we were unable to obtain any further information about the 2003 permit in Francia Sirpi. We were told that after one deal between the *síndico* and a logging company, each family received less than $2.00 each from the *síndico* – and never received any information regarding the amount logged or the total amount the *síndico* received. In another case, a logging company ended up hiring the *síndico* as its contractor, who then negotiated the contracts with community members and representatives of the Collectives. Once again there was never any report regarding the terms of his employment or the use of the income that was generated.

The Communal Lands Law increased community income from forests in one direct way, by redistributing the taxes paid to the government for extraction rights: 25% of these funds now go to the community where the logging takes place (and the other 75% is distributed equally among the central, regional and municipal governments). Nevertheless, Tasba Raya has not had access to those funds for reasons explained in the next section.

(3) Problems with formalization

The formalization of customary tenure and community authorities has presented both opportunities and risks. As mentioned above, Tasba Raya chose to organize as a territory fairly recently. This was clearly because they believed they were at a disadvantage in external negotiations if they continued to organize only by community. The configuration of the territory, however, is a highly political process.

From the communities' point of view, the nine communities of Tasba Raya have a natural affinity due to their ethnic composition; common history and forms of land tenure; close proximity and traditional sociocultural and productive interchange over the years; familial ties; and the development of systems for negotiation, mediation and conflict resolution regarding access to and use of resources in shared areas without violence. This composition of this territory, however, apparently conflicts with the goals of Coast political leaders. In the meeting in May 2007 discussed earlier, Yatama leader Brooklyn Rivera was partly directing his calls to demarcate large areas quickly at Tasba Raya. His proposal calls for a much larger territory of 23 communities, including Awas Tingni. The fundamental issue here is what this will mean in terms of access to resources and the role of territorial authorities in the future.

The territorial authority has no traditional basis, but Law 445 establishes that territorial authorities will be elected according to community customs and traditions. The territorial assembly is comprised of all the traditional authorities from all the communities in the

territory and is the highest authority in the territory. The territorial authority is elected in the assembly of community authorities, according to the procedures they choose (Law 445, Art. 3). The only rule is that a representative of the corresponding Regional Council should be present as witness, but if not, the territorial assembly only needs to remit the Election Minutes to the Council for registration.

According to Law 445, the election should be certified, and the authority should be recorded in a registry held by the Regional Council. As of the time of this research, Tasba Raya had been unable to register its elected authorities for two years. According to local leaders, regional authorities told them that their territorial structure had to conform to the same model established in a previously certified territory, which was made up of 17 members. This clearly violates their right to elect the authority as they choose, as stated in the law. Later, they were simply unable to get a response. Leaders from Tasba Raya believe that the reasons are entirely political, because many of them are supporters of an opposing political party.

The inability to certify their authority has had at least one direct repercussion so far in Tasba Raya: they have not had access to the 25% of government taxes on logging that should be returned to the communities where extraction takes place. The representative that has the authority to access these funds is the *síndico* for the territory of Tasba Raya who is certified by the Regional Council. Leaders of the territory oppose participating in the design of a much larger territory because of these kinds of problems. They are concerned about other implications this could have in the future.

Another problem with formalization is also related to the question of representation. As mentioned earlier, the Communal Lands Law and the legal framework for Forestry established that community approval was needed for natural resource extraction. In practice it is the *síndico* that has been designated as the local authority whose legal signature is needed to represent the decision of the collective. Unfortunately, this decision has given significant power to an individual authority in a context where traditional mechanisms of accountability and control have largely broken down yet have not been replaced by any other system. This has led to the kinds of situations mentioned above with regard to the behavior of *síndicos*; problems in other communities have been even worse. The only sanction to date in Tasba Raya – and in many other communities as well – has been not to reelect that person to office. They have since taken measures to prevent abuses in the future: among the other efforts at better organization and control is the recent rule that any company interested in logging must make a full presentation of its offer to the community assembly, rather than to the *síndico* alone.

Layasiksa[12]

Established in the late 1800s, Layasiksa is a much older community than those of Tasba Raya. It has one of the first and only titles granted to indigenous communities on

[12] Fieldwork at this site was carried out by Taymond Robins Lino and Onor Coleman Hendy.

the Nicaraguan Coast, from the Mosquitia Titling Commission established by the 1906 Harrison-Altamirano Treaty.[13] This title, from 1917, granted the community 2,060 hectares divided between two sites, one for agriculture and one for ranching. These titles were based on a standard agrarian measure of 8 to 12 *manzanas* per family (CCARC 2000) and did not recognize community rights over territories they used for hunting or forest resources; nevertheless, many years later these titles have been key evidence for validating historical possession under current land claims.

In 1996, Layasiksa obtained a resolution signed by the president of the Regional Council for the right to 35,000 hectares of the land, in broadleaf forest, that it claimed as part of its historic territory. In 1998, a small group of residents moved into this forest area and founded the second community, Layasiksa Bosque (Forest), to protect the forest from invasions by colonists and neighboring communities, and to take advantage of forest resources as a new source of income. Today 51 families live in Layasiksa Bosque, while the majority, 118 families, still live in the "mother" community.

(1) Tenure change and the control of land and forest

As in Tasba Raya, Law 445 was not the only or necessarily the most important moment of tenure change over the past two decades. The Constitution and Autonomy Law of 1987 provided an important basis for negotiating the Council resolution recognizing Layasiksa's rights over 35,000 hectares. This resolution, however, was not enough to ensure the community's control over this area. Two neighboring communities, Kukalaya and Haulover, also laid claim to these forests: they developed forest management plans that overlapped with this area in 1999 and 2000 and were approved by the National Forestry Institute in 2001 (Salazar and Gretzinger 2004).

Also in 2001, Layasiksa leaders signed their own agreement with the logging company PRADA, which developed a management plan in 4,950 hectares. By this time, NGOs – beginning with FADCANIC and later, WWF – had begun working in Layasiksa to promote a community forestry project. When the community looked for an area for developing its own forest management plan, little area was left and all of the forest had been intervened. The area under community management totals 4,467 hectares; the community forestry enterprise will be discussed further in the next section.

The enactment of Law 445 is seen by the community as an important moment as well, and, since that time, Layasiksa has been consolidating its control over the 35,000 hectares and developing its claim to a much larger area. In general the benefits for Layasiksa are the same as for Tasba Raya. Logging and other resource extraction cannot occur on lands claimed by the community without following the procedures established in the law for community approval; these lands are no longer considered "national" and cannot be assigned to third parties. As in Tasba Raya, the central government granted land claimed by the community, in this 35,000-hectare area, to

[13] In this treaty, Great Britain recognized Nicaragua's sovereignty over the Coast region and established commissions to provide land titles to indigenous communities in the former Mosquitia Reserve (UNDP 2005).

former combatants in 1995 – in this case 5,000 hectares of broadleaf forest. Again, it appears that most but not all of the beneficiaries are from Layasiksa. A community member claiming to be their legal representative was recently reported to be trying to sell the land; this is completely illegal according to the Communal Lands Law, and his co-owners from Layasiksa have taken steps to denounce this before the competent authorities (Ramirez, pers. comm.).

Layasiksa did not refer to its two communities as a territory or organize as such until 2008, after the fieldwork upon which this article is based was completed. In 2007 community leaders obtained a grant from the Great Britain's Department for International Development (DFID) to carry out the diagnostic studies and demarcation of its claim. For several years they have been negotiating border conflicts with a number of neighboring communities, but the DFID funding has facilitated the process.

Over the past few years, Layasiksa leaders were claiming an area that, according to their calculations, totals 135,000 hectares. Specific conflicts included an area of some 3,000 hectares, which includes part of PRADA's concession, in dispute with the neighboring community of Isnawas and a lagoon used by Walpasiksa traditionally for fishing. In these two cases Layasiksa has agreed to cede the area claimed (Masangni 2008). A third conflict, with Prinzubila, has been (at least temporarily) resolved by joining with this community in the formation of the new territory Prinzu Rao, which is currently estimated at about 115,600 hectares.

The most serious border conflict is with Kukalaya, which claims rights over the forested areas claimed by Layasiksa. Part of Kukalaya's territory has been invaded by colonists. The community has not been belligerent in protecting its lands from invasion, but also, according to Layasiksa and other observers, its *síndico* had been selling land to colonists. Layasiksa leaders argue that Kukalaya's demand for land from Layasiksa is based only on their failure to defend their own territory and control their own corrupt leaders.

Part of Layasiksa's lands were also invaded by colonists. In a case that received national attention as well as the visit of a foreign ambassador, Layasiksa took the law into their own hands to force their departure in 2004. The colonists had been living in the area for several years, and their population, and hence their land claim, continued to grow as new families arrived. Layasiksa authorities spent two years trying to address the problem by following the appropriate legal procedures: they filed charges before judges in Rosita and Siuna and petitioned members of the Regional Council; they requested the intervention of the Demarcation Commission and the Mayor of Prinzapolka. According to the Nicaraguan daily *La Prensa* (Feb 8, 2004), "The complete lack of response from judicial, police and political authorities from the area, after two years of protests by Layasiksa's Miskitos, led them to make the decision to solve the problem by their own means." The conflict led to two deaths and, finally, government intervention. The colonists abandoned the area with the government's promise to provide other lands.

(2) Forest management

The community directly improved forest resource access by establishing a second community in the broadleaf forest area that the Regional Council resolved to be Layasiksa's land. Members of the community sold wood informally there, but there is no record of these activities. Prior to the establishment of Layasiksa Bosque, it appears that most of the beneficiaries from these sales were not from Layasiksa. The first documented sale with a legal management plan, by Layasiksa, is the PRADA concession, which was negotiated by a community leader with the support of WWF in 2001. The concessions for Kukalaya and Haulover, which were also inside or overlapping with these 35,000 hectares, were suspended after one and two years, respectively: the former was shut down by INAFOR for anomalies and the latter withdrew operations after Layasiksa actively protested the sale of wood from their land (Ramirez, pers. comm.).

The PRADA concession provided employment and income to what was then a small community in Layasiksa Bosque, to the extent that a WWF study published in 2004 found that 70% of community income came from forestry activities (Salazar and Gretzinger 2004). The most important development with regard to access to forest resources and benefits, however, was the founding of the community forest enterprise Kiwatingni and the development of their own management plan. WWF started working in Layasiksa in 2001 to organize and support this process both financially and technically. Today the community manages and supervises the entire operation but owns very little of its own machinery: it subcontracts heavy machinery during the logging phase, and it subcontracts both milling and transportation.

Though WWF had a technical bias to its priorities, it became very apparent that resolving social and organizational issues would be central to building an effective and sustainable community forestry operation. Previous experience in Layasiksa did not generate confidence in the existing leaders' ability to manage such an endeavor competently or transparently. As in Tasba Raya, earlier experiences with logging had involved the failure to provide any accounting reports with regard to the use of funds. There was little clarity with regard to the extent oral rules were enforced at all and no evidence of sanctions when rules were broken. Only a small group of people were benefitting from the sale of timber. At one point a *síndico* absconded with all the funds, and at another moment the same *síndico*, after being replaced, managed to take additional funds from a community bank account.

Rights to forest resource access within the community have changed as well. As in Tasba Raya, Layasiksa leaders also began to try to organize and control forest resource management more effectively, only in this case all of the territory is communal land. Among other things rules are stricter, and it is harder for individuals to sell timber on their own to meet immediate needs. In principle, all community members have access to common forest resources for domestic use (firewood and timber) and do not need to ask permission of the *síndico* unless the wood will be transported outside the community. Access for firewood or timber that will be sold requires permission of the

síndico as well as meeting all of the legal requirements established by the Forestry Institute (INAFOR). Permission for private use of communal lands has only been granted under extraordinary circumstances.[14] In general, tenure rights in Layasiksa are similar to those of Tasba Raya, but without the private land areas and with a more developed system for community forest management (see Figure 3).

QuickTime™ and a
decompressor
are needed to see this picture.

* The collective refers to a more developed system of community governance than in Tasba Raya though the *síndico* is still the central authority

(3) Problems with formalization

The Layasiksa communities and now the new territory of Prinzu Rao are located inside a much larger territory comprising 26 communities called Prinzu Awula. As in Tasba Raya, Coast leaders are interested in facilitating the demarcation and titling of large areas in order to establish autonomous government control over the region as quickly

[14] For example, 3-4 areas of 50 hectares each were recently granted to former community leaders who assumed debts more than seven years ago in the name of the community. At the same time, these areas were affected by Hurricane Felix in September 2007, hence there has been intense pressure to sell the fallen wood before it rots.

as possible. Layasiksa has largely ignored this larger process and pursued its particular interests on its own, obtaining funds from DFID as of 2007 to develop the required diagnostic studies and pursue the negotiating process with neighboring communities. It is apparent that the community forestry operation – and the community's attention to the area as a whole – not only strengthened Layasiksa's claim but also increased its members' capacity to develop and negotiate their claim. In the negotiation process, however, Layasiksa leaders have also demonstrated willingness to recognize other communities' claims at least to some degree.

There is no inherent reason that the existence of the larger territory of Prinzu Awula would necessarily be a problem for Layasiksa, but in fact their experience has been similar, as well, in some ways, to that of Tasba Raya. Because government leaders decided that only territorial *síndicos* have access to the communities' 25% portion of taxes on logging, it was the síndico of Prinzu Awula who withdrew the majority of the funds, at least in 2005. Layasiksa has no information regarding how these were spent. Layasiksa's *síndico* was unable to gain accreditation, but another community member was, in fact, accredited and withdrew the remainder of the funds. Layasiksa's *síndico* was later certified, but re-certification occurs annually, and he was again facing delays in 2008. Prior to the current *síndico*, who has been reelected several times now, Layasiksa suffered the same fate as numerous other Coast communities with regard to the formalization of these authorities as community representatives in outside transactions, as mentioned above. They too failed to find effective systems, at that time, for holding these leaders to account or establishing sanctions for corrupt behavior.

THE MEANING OF TENURE CHANGE: WHOSE TERRITORY COUNTS?

Tenure change in Nicaragua's autonomous regions cannot be reduced to a single moment or even a single law. Rather, the first important statutory change regarding rights to indigenous territories, in the 1987 Constitution, began to have effects even before the central government took significant steps to implement it. The changes were more important in Layasiksa, which sought and gained formal recognition from the Regional Council for part of the territory it claimed, even if it was unable to enforce its exclusive rights over that area for several years. Its land claim also appears to have grown over time, based on the various maps produced over the past ten years.

The central government, for its part, only began to enforce indigenous communities' Constitutional rights – which meant limiting its own powers – after it was forced to. The Awas Tingni court case led to the suspension of logging concessions authorized without community approval in the RAAN and the designation of the *síndico* as the formal representative of communities for signing contracts; it also led to Law 445 and the creation of the specific institutional mechanisms for recognizing indigenous customary property rights and authorities. Still, the central government dragged its feet on providing funding for the demarcation commission CONADETI, and it was almost five full years before the first and only legal title was actually issued.

At the community level, tenure changes can be grouped into four categories based on the communities' relationship with other actors: the central government, neighboring

communities, colonists and internal relations. In relation to the central government, communities gained import exclusion rights. The central government can no longer declare protected areas or authorize resource concessions of any kind without obtaining community approval or following a detailed negotiating process. It can no longer assign Coast lands that are claimed by a community or territory to third parties.

With regard to neighboring communities, conflicts throughout the region undoubtedly increased (Finley-Brook 2007), though they were not new. Conflicts over territory boundaries have arisen historically when outside companies, particularly logging companies, have sought to purchase timber (Taylor, pers. comm.). Layasiksa was in a strong position to negotiate control over a substantial area, and its internal control over land and forests has given it moral authority over its most conflictive competitor, which has been unwilling or unable to manage its current territorial base. Tasba Raya won rights to half of an area overlapping with its neighbor Awas Tingni, though it is unclear whether the apparent "half and half" division of the overlapping claim will be accepted as legitimate, or will lead to further conflict.

Both territories have take actions, based on their sense of legitimate land rights, to evict colonists. Layasiksa's case was much more problematic and violent and demonstrates the failure of the state – in this case not only the central but also regional autonomous authorities – to back up the communities' rights. Colonists throughout the region are in a vulnerable situation because of racial tensions, and because it is unclear who will have to leave or how: anyone without title should either leave or pay rent, and those with title (post-1987) should receive indemnification, but there are no funds available for this (Finley-Brook 2007).

Internally, both territories have made substantial progress with regard to organization, the control over land and resource management and the construction of legitimate and accountable authorities. This came after a period, however, of important failures associated with the recognition of the *síndico* as the community's legal representative, without sufficient controls in place. This legal provision may actually have *facilitated* access to community forests for logging companies, who now had a simple mechanism by which to obtain "community" permission, and would negotiate with this representative for both legal and illegal logging. These improvements in governance appear to be related to the process of claiming the land and assuming the authority over it that was granted by law, but there is no doubt that this process was heavily influenced in Layasiska by WWF; Tasba Raya has had outside facilitators working with them on these issues as well, though to a much lesser degree. With regard to community organization in Tasba Raya, by establishing the prohibition of land transfers, Law 445 has also created a mechanism for promoting collective control over the area that is not a commons (Meinzen-Dick 2006) – or, in this case, even communal – with the result of strengthening the collective authority.

In general, both territories studied have a reasonably high degree of security over a substantial portion of their land and forest and have enforced, sometimes by force, their exclusion rights. In Tasba Raya, of course, this is because the majority of the land is individually titled, though the communities have also now gained formal rights to an

additional 21,000 hectares. In Layasiksa, it is largely because of their organizational capacity and the logging operations. That is, the granting of rights over 35,000 hectares made it possible to improve their access to forest resources, but the logging operations also secured the community's tenure rights over the area.

The most important source of *insecurity* is associated with future control over natural resources at the scale of the territory, as well as political representation, because of conflicting priorities between grassroots and higher-level political interests. Which territory is the one that will have formal recognition, which will have local legitimacy, and what will this mean in terms of resource access and control? Specifically, what powers will the territorial authority have? We share the concern of Ribot et al. (2007) here that greater attention should be "trained on… the origins and construction of the authorities 'enforcing' the rules [of the game]" established by property arrangements.

According to the law, the territorial authority's specific responsibilities are to administer "the communal property rights and those of common use areas," together with community authorities (Art. 30). They also are the ones who authorize the use of natural resources that are for the "common use of the territory's member communities" to third parties (Art. 10). According to Article 5, they are "administrative organs of the territorial unit that they legally represent." Hence these authorities play a central role in resource access within the territory as well as in excluding (or permitting) third party access. In practice this is the authority authorized to withdraw tax income in the name of the territory from national accounts. But this is not all. Coast political leaders are hoping to use the territorial structure to go much further in the restructuring of Coast autonomy as a whole (Canales, pers comm.). One of the goals is to redesign the electoral districts, eliminating the municipal structure imposed by the Electoral Law, and replacing them with the newly demarcated territories. One of the main goals here is to reinvoke the spirit of the autonomy law: because of the immigration of so many non-indigenous people and the current design of electoral districts, both regional autonomous governments have a mestizo, or non-indigenous, majority (see UNDP 2005). Territorial authorities would then also be formally recognized as the lowest tier of government. Hence their decision-making power would be much greater than what is contemplated in current legislation.[15]

This new governance structure could bring a more substantial devolution of authority to the indigenous and ethnic populations of the Coast, though not all Coast ethnic groups feel represented by Yatama. Experience to date, both at the community and government level, however, has already demonstrated the risks. At the community scale, the experience of granting substantial decision-making authority over resources to a single community or territory representative, the *síndico*, was fraught with corruption and the almost complete failure of communities to control or sanction this behavior. If control over community leaders is so weak, what happens at the territory scale, and then as the formal "territory" becomes increasing large? With regard to territories so far, government failures are particularly apparent, in the failure to

[15] This change would require a Constitutional amendment, however.

recognize a territory's elected authorities, the failure to certify the territorial *síndico* in particular, in order to have access to the tax fund and, even worse, the certification of individuals who were not elected who then withdrew those funds. The nature of territory and territorial authority has concrete political and economic consequences for indigenous communities.

CONCLUSIONS

The process of constituting property, or defining the new rules of the game, began when RAAN communities started exercising the rights they had been granted by the Constitution in 1987. The Communal Lands Law became an additional tool in a process that was already underway – a tool that has been used differently by community and regional political authorities to advance their different, but overlapping, political and economic interests.

Overall, in the communities studied, their efforts have resulted in increased land tenure security and control over natural resources, as well as strengthened community organization, after a difficult period, with regard to land and resource management. Increased tenure security also made it possible for an organization like WWF to make the long-term investment in promoting the community forestry operation in Layasiksa. Though WWF primarily provided economic, technical and logistical support, the result has increased the community's political negotiating power as well.

The process of recognition has created new authorities and given greater power to old ones. Indigenous political authorities have sought to build territories that allow them to increase political control over the region and its resources, vis a vis the central government and non-indigenous immigrants, and possibly in relation to other ethnic and indigenous groups as well. Communities want to control *their* territories and resources, as well as their elected authorities. The bottom line is that they want to make sure that the new rules of the game for the control of resources will be enforced by authorities that will be accountable.

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