

# Empowering Indigenous Populations in Costa Rica to Protect Their Rights

HAZEL FEIGENBLATT AND ISRAEL ARAGÓN

## Out of Sight and Out of Mind

For many indigenous leaders in the Atlantic region of Costa Rica, the nearest bus stop to town is eight hours away on foot. Rain or shine, every month, they traverse mountains, rivers, and whatever nature may put on their path to hold the meetings of the Bribri-Cabecar Indigenous Network (RIBCA, in Spanish). RIBCA is an organization formed by the indigenous communities in the Costa Rican Atlantic to empower and strengthen their participation in the decision-making processes that affect them, improve their welfare and access to public services by negotiating with public institutions, and to guarantee their rights. They created the network 10 years ago, and the lack of roads and other basic means of communication in their territories has not diminished their determination to work together.

Indigenous people are less than 2% of the population of Costa Rica, consisting of eight groups – some with their own language – spread in 24 territories. In a country proud of its 97.8% literacy rate, indigenous literacy is 89% and average schooling attendance is just 5.7 years, with only 65% ever attending formal education. Average access to Internet is 15%, compared to 63% in the rest of the country, and unemployment is 50%.<sup>1</sup>

These numbers are no accident. Language barriers, secluded locations, lack of resources and exclusion from decision-making that directly affect them have made them one of the most underrepresented and underserved populations. They were granted the right to vote only in 1991. They also have a right to be consulted on projects that affect them, but this right – recognized by international conventions signed by Costa Rica – has been overlooked administration after administration.

This has opened the door to several problems. Land grabs are one example.

A 1977 law recognized their territories as protected reserves that could not be sold to non-indigenous people. The law also said that good-faith landowners who were already there before the law should be removed and compensated. This never happened. Even worse, even larger portions of land are now controlled by non-indigenous ranchers and farmers.

The government has failed to protect indigenous land, and no systematic approach has been put in place to deal with illegal titles. Land disputes have caused several violent incidents between indigenous and non-indigenous people in the last few years. For instance, the Bribí have been subject to attacks by machete- and club-wielding “whites” trying to chase them off the land, burning their houses and crops.

A Bribí leader, Sergio Rojas, was the object of an apparent assassination attempt near the reserve. “There’s no reason for our people to live like that when we have an ancestral home which is ours not only by tradition but under the Indigenous Law, so we organized an effort to take it back,” he has said.<sup>2</sup>

The El Diquís project, a large hydroelectric dam meant to guarantee future electric supply, offers another example of lack of appropriate consultation.

Though its construction would significantly affect – in some cases flood – parts of some indigenous people’s lands, they were not consulted. Once the project gained “national interest” status in 2008, state-owned Costa Rican Institute of Electricity (ICE, in Spanish) moved into the area and started works and studies. Indigenous consultation, it said, would be done later, and it refused to release key documents to the communities.

<sup>1</sup> Statistics and Census National Institute (INEC). *Indigenous Territories. Main Demographic and Socioeconomic Indicators*. X Population National Census and VI Households Census 2011. April 2013.

<sup>2</sup> McPaul, John. “Costa Rica Struggles with Indigenous Land Rights.” Oct, 2015. <https://www.culturalsurvival.org/news/costa-rica-struggles-indigenous-land-rights>

In 2011, legal action by one of the reserves brought the project to a halt. Separately, a United Nations Special Rapporteur concluded that in that case: “Indigenous peoples’ ability to exercise their right to self-determination was diminished (...) The state/ICE should not assume the project will necessarily go forward, since the final decision should be subject to the results of the consultation.” Since then, the project has been paralyzed and cannot continue until an appropriate consultation takes place.

RIBCA represents about a third of Costa Rican indigenous territories. They have learned from experience that working together and engaging with government is their best shot at improving lives in their communities. That is why when they learned about the Open Government Partnership (OGP) platform, they saw an opportunity to achieve the creation of a consultation mechanism that allows them to be part of decision-making processes, in both short- and long-term improvement in public services.

## An Opportunity to be Heard

Costa Rica joined Open Government Partnership in 2012. By mid-2015, the Political Affairs and Citizen Dialogue Vice Ministry (a unit of the Ministry of the Presidency) was preparing the second National Action Plan (NAP) with help from the civil society organization Yo Soy Gobierno Abierto (YSGA), which had been assigned to conduct consultations around the country.

The same Vice Ministry has also been engaged since 2014 in a dialogue with RIBCA on improvements for the RIBCA communities. When representatives from YSGA became aware of this ongoing dialogue, they informed RIBCA leaders about OGP. “This actually delayed our schedule,” said Susana Soto, from YSGA, “but we knew it was worth it. That’s why we traveled to the Atlantic coast to take part of RIBCA’s meeting.”

In RIBCA’s July network meeting, in a borrowed small community center in Talamanca, RIBCA proposed to include in the NAP the continuation and strengthening of the ongoing dialogue with the goal of replicating the model in other regions. This became a milestone in a broader commitment to citizen participation in the second NAP. The milestone reads: “Accompanying the Dialogue Mechanism for Good Living with Indigenous Peoples.”

As can be seen, the milestone is vague, which makes all the more surprising the chain of actions it soon sparked in two key topics of RIBCA’s dialogue agenda: 1) the creation of a consultation mechanism for indigenous groups (long term) and 2) improvement in public services (short term).

What follows is not a “before and after OGP” story. Rather, it is the story of how the OGP platform served as an accelerator or incubator that produced - in a few months - actions and results that for many years had been just ideas, plans, and conversations in those two key areas.

## Making Good on a Historical Debt

From a long-term perspective, the most significant action that emerged from the inclusion of RIBCA’s dialogue with the government in the OGP process is - after 23 years of waiting and less than a year after the OGP became involved - the creation of a consultation mechanism for indigenous groups

Some context is important to appreciate the relevance of this result on indigenous representation. Exclusion from decision-making processes has placed indigenous populations among the most underrepresented and underserved in the country. Even though their traditional structures are recognized by the national law, a 1978 regulation bypassed their authority by imposing “Associations of Community Development.” Indigenous people say these associations don’t represent them and that they, in fact, negate their right to self-government. This was confirmed in a 2011 report by the UN Rapporteur on the Rights of Indigenous Peoples, James Anaya.

A bill promoted since the early 90s by indigenous leaders would correct this representation model, but it has been ignored by Congress. In 2010, on the International Day of the Indigenous Populations, a group traveled to Congress to ask for explanations but was forcibly removed by riot police.

Appropriate representation could also be achieved by implementing the Indigenous and Tribal Peoples Convention, or C169, to which the country subscribed in 1993 and which mandates a “free, informed and timely” consultation mechanism. However, 23 years after subscribing to the convention, the consultation mechanism has not been created.

Vice Minister Ana Gabriel Zúñiga says there have only been “a few attempts where mechanisms were imposed.”<sup>3</sup>

---

<sup>3</sup> Ávalos, Ángela. “Ana Gabriel Zúñiga: ‘Estado no tiene que confrontarse con indígenas.’” La Nación, April 11, 2016. [http://www.nacion.com/nacional/politica/Olvido-historico-autoctonos-confrontarse-indigenas\\_0\\_1554044590.html](http://www.nacion.com/nacional/politica/Olvido-historico-autoctonos-confrontarse-indigenas_0_1554044590.html)

She decided to address this “historical debt” with the OGP framework and philosophy of “co-creation,” collaboration between government and civil society. In other words, after 23 years of waiting, inclusion of the RIBCA dialogue in the OGP process served as the needed push for the country to finally officially start the creation of the mechanism and comply with C169.

William Vega, the Vice Ministry officer leading the process, said that in order to co-create the consultation mechanism they are visiting the indigenous territories to discuss what it should be like. He has visited all 24 territories and used the input gathered to prepare a draft describing a proposed mechanism. As of October 2016, he had started a second round of visits to consult the indigenous people on the specifics of the draft.

When ready, the mechanism will become the protocol that every public organization, ministry or institution in any government branch will have to activate every time they have an initiative that would affect the indigenous population in any way. This will ensure that consultations are standard, fair and correctly applied, instead of allowing each institution to decide what it considers sufficient.

Furthermore, the approach Vega is proposing includes assigning a neutral office with execution of the mechanism. “A problem we have seen is that the government institution that needs to consult [the indigenous groups] becomes the judge and the judged,” he said. In the future, organizations that need to consult on anything will go to this neutral office to activate the protocol for consultation.

Regarding the ongoing consultation led by Vega, Luis Ortiz, an indigenous leader from Alto Chirripó, said: “This is the first time I see a consultation with a translator to actually explain everything and include us all in a conversation in our own tongues.”

“It feels different this time. The government came to ask our opinion and feedback, not to tell us how we should proceed. They are consulting us to see how we would like to be consulted,” said Aída Elizondo, from the Maleku Indigenous Territory.

### Improvements in Public Service Delivery

From a short-term perspective, inclusion of RIBCA’s dialogue in the NAP has fast-forwarded results from RIBCA’s cooperation with the government.

Previously, RIBCA’s dialogues with public institutions and government branches received more attention from some organizations than others. When they included their dialogue in the NAP, many more institutions came on board, and the Vice Ministry of Political Affairs and Citizen Dialogue assigned more resources to the dialogue, including a person dedicated to follow up on implementation of the agreements. This person noticed that some of the demands required action from other institutions as well as local governments that were not yet part of the dialogue, so he started coordinating with them and involving them in the dialogue. Today, more than 20 institutions are engaged with RIBCA, and results have similarly multiplied.

Leví Sucre, a Bribrí from Talamanca who leads RIBCA and is an expert in community organization, said that inclusion in OGP created momentum, committed the government to take action and set deadlines. He said that involvement of the Vice Ministry freed resources and pressed institutions to deliver. Vice Minister Zúñiga said that making progress was possible because “OGP came to reinforce part of the work my office was doing and helped give it legitimacy among the rest of the administration.”

The government does not currently have data specifically tracking results across the 20 institutions, but interviews with some of them show examples of the results with direct impact on life in these communities.

**Education:** The Education Ministry started working with RIBCA a few months before the dialogue was included as an OGP milestone, but Ministry representative Orlando de la O Castañeda said: “OGP made conversations more productive by bringing more institutions to the table [including the high-level Vice Ministry] and allowing to triangulate with the regional offices.” Key agreements were reached in the framework of OGP and have already been implemented.

For example, three schools have been built and two more are under way, each with capacity for 200 students, but that was just the first step. Can students make it to the schools, despite the tough traveling conditions in the reservations? Many of them could not afford the cost of travel. That was the case of a group of children in Sepecue. Every day they need to take a 20-minute horse ride to reach a point where a tractor or truck, depending on the day, picks them up. After a half-hour drive, they arrive at Telire River, where they go on a 40-minute boat ride. Once in Suretka, they still have to walk a kilometer to the school.

Unfortunately, students were not eligible to receive transportation aid because the scholarship agency only covers the cost of fares officially approved by the country's Public Services Regulatory Authority. Horse, tractor or boat rides are not common public transportation means in the country and therefore have no approved fares. Thanks to the dialogue, the scholarship agency and RIBCA agreed that RIBCA would map out the routes and estimate the average cost, which was then verified with other sources. The children have now started to receive about \$150 per month. "Without this, many of them simply would not receive education because they would not be able to pay for transportation," Sucre said.

For other students, the challenge comes from the fact that at a certain age they are expected to work in agricultural tasks to contribute to the community, and going to school during the day would disrupt that. As a result of the dialogue, four night high schools have been built and currently host a total of 1,200 students. "This is allowing adults to compete for better jobs in the area, and the number of young students enrolling has increased by 40 per cent," said Sucre.

Other improvements in education include reopening and renovation of Ministry offices in the Keköldi and Sulá territories that previously lacked water, electricity, and other basic facilities, and the appointment of 18 pedagogical advisors to support teachers working with indigenous students in Sulá. This led to the creation of a committee of indigenous educators and the development of a special curriculum for indigenous students, which is mindful of their worldview and uses an appropriate education methodology.

**Health:** Two health institutions are part of the dialogue process. The Ministry of Health started after the OGP milestone was set and is now coordinating the delivery of food supplies - every four months - to Alto Telire, in Talamanca canton, which RIBCA then distributes according to the number of members of each family. Given the food crisis in this community, the Ministry has also started working on a food sustainability strategy specific to the indigenous communities. The second health institution involved is the Costa Rican Social Security Bureau (CCSS, in Spanish), which is in charge of health services. It was the most actively engaged with RIBCA before the OGP milestone, but some of the most impactful results were achieved in the framework of the OGP process and cover a population of 35,000 thousand people: Medical students used to be deployed for short periods to these areas. Permanent doctors have now been appointed and the position of Indigenous Community Assistant created. This allows the health institution to hire members of the indigenous territories to accompany the doctors and nurses visiting the reservations, or tend to the communities themselves in the cases of those who are health professionals.

Pharmacists have also been appointed and drones will soon start delivering medicines to hard-to-reach reservations. A new Indigenous Health Committee was created, composed exclusively by indigenous representatives, to monitor health services. Committees have been established in four RIBCA communities and an additional four will be established soon.

Said Sucre of RIBCA: "There was no record of illnesses and epidemics in the area. That was solved with electronic files, which was possible thanks to fiber optics installed to connect all the health centers. All located in Talamanca are now connected and they continue to work on the rest." A project to build two health offices in Alto Telire de Talamanca was awarded to a contractor and is scheduled for completion before the end of 2016.

Telemedicine services have been expanded to more territories, and a more efficient process to pay indigenous pensions was put in place. Traditional indigenous medicine is incorporated into service delivery when possible, as well as in health campaigns.

**Housing:** "We were never consulted about the type of houses we needed," explained Sucre. "They simply started building 'match boxes' that did not take our beliefs into consideration. As a result, indigenous people did not want to live in them. They used them for storage, to rent or to get shade, what ever, they just did not live in them. They would instead build their ranch next to them."

What was so wrong with the houses? One example was the bathrooms. In the Bribri communities, the idea of having bathrooms inside the house is a matter of hygiene: they consider it dirty and simply out of the question - bathrooms need their own space, outside. Tiny backyards were another problem. For indigenous families, the backyard is the children's first school, where they learn the basics of agriculture.

In other communities, like the Maleku's, to the government officials' surprise, the families started breaking the floor of the living room with picks after a relative died. That is because they believe the gods allow good people to remain with their families after they die, so it was important for them to be able to bury them in their homes, explained Geiner Blanco, an indigenous government advisor.

Thanks to the dialogue, new designs take indigenous people's beliefs into account. For example, they are now using wood instead of concrete, bathrooms are located outside and backyards are larger.

The dialogue started before OGP, but the OGP framework facilitated it, according to Sucre. "The Vice Ministry became more involved because of OGP, and that was the leverage we needed to get middle-level decision-makers to make changes. It also brought to the table all parts involved for faster coordination," he said. In 2017, a new 40-unit project will be piloted.

**Water:** The water institution (Aqueducts and Sewers, or AyA, in Spanish) joined the process after the OGP milestone was created and is focused on filling infrastructure gaps (only 80 per cent of the territories have access to drinking water pipelines) and is beginning to show some early results. :

Aqueducts in rural areas are generally managed on behalf of AyA by community associations, and prices are set by the Public Services Regulatory Authority. This was a problem for the reservations because they consider water a good provided by nature, not something that can be sold or purchased, particularly if the price is set by an institution they are not familiar with. Additionally, they had no representation in these community associations. As a result, in many cases they preferred to continue using their own wells. After the dialogue, an agreement was reached to create Indigenous Associations to manage their own water services. To date, 10 aqueducts have been built under this model.

The Indigenous Territories program was created to engage with indigenous communities in finding solutions to water issues.<sup>4</sup> Nineteen projects have been identified as priorities. In September 2016 a project in the Alto Chirripó community was inaugurated, an investment of \$240,000 to bring water to 800 indigenous people.

In May 2016, works (rehabilitation of 12.5km of water pipes, five storage tanks, etc.) were launched to carry drinking water to the Guatuso reserve (a project conceived before OGP).

## Looking Ahead

As encouraging as these initial results are, it is clear that reversing the lack of institutional representation and the poor living conditions in these communities will take more than a couple of years. Likewise, challenges like solving land grabs or implementing an institutional framework compatible with indigenous authority structures are not short-term goals.

OGP's co-creation model - in which government and civil society engage directly - seems to be permeating the approach both sides are taking. In relation to land grabs, RIBCA's dialogue within OGP has prompted the Institute for Rural Development (INDER, in Spanish) to start mapping the land taken by non-indigenous farmers and ranchers inside the reservations. This is the first step to legally remove them, as different processes are needed depending on whether they are deemed to be there in good faith (with a right to compensation) or not.

In terms of representation, the El Diquís Hydroelectric Project mentioned earlier will likely be the first to benefit from consultation using the new mechanism that the Vice Ministry is currently co-creating with the indigenous communities. Depending on the result, the voice of the indigenous groups could impact the country's population's ability to expand the national electric supply as planned. This is unprecedented in the country.

For indigenous groups, the gains resulting from RIBCA's OGP experience mean that in the future they will no longer need to start by explaining why they should have a place at the table when a decision is being made. Rather, there will be a standard consultation mechanism and a neutral entity to apply it in a fair way. There will also be a good precedent of what dialogue can achieve once the jungle of filters and obstacles to their self-representation are lifted, and direct channels to decision-makers put in place. In that sense, OGP's impact goes beyond a specific commitment or milestone.

The big question is how to ensure that this approach and the consultation mechanism will really be used in the future, considering that it has been avoided for two decades, and the approach of administrations to come cannot be known.

"We are betting that when civil society has a right and is able to make it effective once, it doesn't give it up. Regardless of the administration in power at any given time, indigenous groups need to know the

---

<sup>4</sup> AyA, Programa Territorios Indígenas 2015-2018, <https://www.aya.go.cr/ASADAS/gestionObras/Programa%20Territorios%20Ind%C3%ADgenas.pdf>

institutionalized mechanisms, ways and spaces to demand that right,” Vice Minister Zúñiga said.

Luis Ortiz, the indigenous leader from Alto Chirripó, highlighted the value of making such rights known in their own languages. “It was unreal to expect that indigenous people, with the high illiteracy levels, will read laws about them in another language,” he said.

Looking for options to guarantee the continuity of this initiative, the government created the Reformers Network on Open Government, which includes 59 employees from 41 public institutions who should not change when a new administration comes in. Out of these organizations, 34 are accountable for at least one of the commitments in the NAP and have actively embraced open government initiatives.

The RIBCA leaders are certainly preparing to use any space they can. In their July 2015 meeting in Talamanca, after deciding to propose the commitment to the OGP action plan, they also discussed their general strategy. The minutes of the meeting show one of them summed it up well: “With our joint knowledge - my knowledge and the knowledge of each one of you - we are strong. We are no victims here.”

They do know they have a long way to go, though - much longer than the eight-hour walk back home.



# Open Government Partnership

