

# Land rights and autonomy: the Nicaraguan experience

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## Early history

The Caribbean Coast of Nicaragua, commonly called the Atlantic Coast, was amongst the first places in the continent to suffer European invasion, after the third voyage of Columbus.

However, we remained isolated from Spanish colonisation. The first Spanish settlements were established on the Pacific rather than the Atlantic Coast of the Central American Isthmus.

Nicaragua extends over 130,000 square kilometres. The Atlantic Coast has an area of 60,036 square kilometres. From 1641 to 1894 the Nicaraguan Caribbean was under British control. The British were mainly interested in pillaging the region's precious timbers and gold. There was also the potential for an inter-oceanic canal.

In 1850, a pact between representatives of the United States and England established a reserve known as the Mosquitia on the Atlantic Coast. The Mosquitia became an English semi-colony.

The English established a Constitution with a king from the dominant Miskito tribe, a General Council and an Executive Council. The Miskito king formally represented the interests of his people to foreigners; he was the judge and the chief military authority. His position was legitimised by the English, and his coronation took place either in Jamaica or Belize.

The Mosquitia Kingdom created some legal precedents and the indigenous people still refer to Royal Titles which granted them possession and dominion over community lands. While these were validated by the Harrison-Altamirano Treaty of 1905 they were only implemented in 23 communities. Indigenous social organisation is strongly bound to the identification of indigenous people with the land and their right to control it.

However, the Miskito king was really the puppet of the English king. The Miskito king signed over

natural resources to the British. The people became workers for the English lumber companies and for the transnationals who followed them in the twentieth century. The exploiters always considered local people as unskilled, and therefore, without the right to enjoy the fruits of the land on which they lived. The British brought African slaves from Jamaica.

The Miskito played a price for British colonisation. Before the British took control, Miskito warriors had terrorised the Spanish colonisers and dominated neighbouring tribes. They controlled an area of over 80,000 square kilometres, but under the British their population fell to 7,500 people who were restricted to a 30,000 square kilometre area.

The Kingdom of Mosquitia ended in 1894 when the government of General Jose Santos Zelaya put an end to the autonomy of the Reserve and incorporated it into Nicaragua as a Province (Departamento).

In 1894, after a series of clashes between the ethnic communities and the Nicaraguan army, the Miskito Convention decided to recognise the Constitution of Nicaragua, its laws and its government through the Reincorporation Decree. General Zelaya's government committed itself to a series of concessions, such as: exemption from military service; village self-government; recognition of the Regional Chief of the communities; as well as; reinvesting profits earned in the region back into the region.

The Convention recognised in Article Two that all the wealth and taxes should remain in the Mosquitia, regulated by the central government. But it's now 104 years later, and all tax revenues have been flowing to the Pacific in clear violation of the law reincorporating the Coast into Nicaragua.

## **The Coast remains isolated**

Despite reincorporation in 1894 the Atlantic Coast remained isolated and exploited by the central government. Both the Spanish and English left their cultural influence on the diverse cultures, traditions, ethnic groups, and languages of the Coast.

However, unlike the Pacific region, where homogeneity is much greater, the different peoples of the Coast did not intermarry to any great extent and the ethnic distinctions remained to this day. Miskitos mainly live in the north, Mestizos and Sumus-Mayagnas in the agricultural frontier zone, Creoles in urban zones, Ramas and Garifunas in coastal communities. Each group has its own language.

There is a distinct geographic demarcation between these socio-ethnic groups and the rest of Nicaraguan society with its Mestizo majority.

Each ethnic group has its own language. The African slaves developed their own new language, Nicaraguan Creole English. Miskito, Raama, Sumo and, of course, Spanish are spoken as well. The dictatorship of the Somoza family kept the region in backwardness and exploited its natural resources.

Before 1979 the Somoza family dictatorship governed Nicaragua. Our economy was subordinated to the US. Our coffee, beef, lobsters, oil seed and sugar all went to the United States. On the Atlantic Coast region of Nicaragua, US companies exploited our forests and fishing reserves without even paying royalties. The Somozas and their allies silenced any opposition.

Despite the repression, by July 1979 the situation was different. The FSLN was victorious. The Somoza family not only stole from the poor. They also stole from their rich allies. This mistake by Somoza allowed us to galvanise discontent among the working people and sections of the economic elite to overthrow the dictatorship.

We attempted to create a new Nicaragua.

A literacy campaign won a UNESCO prize and within a year reduced the illiteracy rate from 52% to 14%. On the Atlantic Coast we carried out the campaign in the four main languages, Miskito, Spanish, Creole English and Sumu. Miskito and Sumu are the languages of the indigenous peoples.

The revolution nationalised Somoza's properties. His land became the basis for an extensive land reform. The poorest people were granted house titles and farming land. This directly benefited over half a million people. Land went to those who farmed it. The economic democracy which lay behind the land reform provided the true base for the achievements of the revolution in other areas. The revolution promoted social equality, it increased the country's cultural awareness and access to health and education. The repressive National Guard of Somoza was replaced by a peoples' army and police force which were pledged to uphold the Constitution and the human rights.

All of these achievements were made possible by the active participation of the people. The Nicaraguan revolution was a people's revolution and the creation of democratic traditions is one of its most valuable contributions.

After the victory of the Sandinista revolution the revolutionary government tried to solve the problems of the Coast. We carried out an ambitious social and economic program. We tripled the number of teachers and made available services which had never been seen before. For the first time Costeños (people from the Coast) were appointed to important political positions and administrative posts. Never before had so much attention been directed towards the problems of the region.

However, this was not sufficient. The latent contradiction arising from five centuries of separation between the Pacific and Atlantic regions started to unravel right from the beginning. We could not turn around the region's problems overnight.

Sandinistas from the Pacific Coast arrived with the best of intentions to help improve the conditions on the Coast. However, they did not really have the understanding or experience necessary to promote successful intercultural relations. Serious mistakes were made from the start. Forms of social organisation that had worked well in the struggle to depose Somoza on the Pacific side did not automatically apply on the Coast. The people saw many of the revolutionary measures we implemented as a threat to their culture and forms of social organisation.

These mistakes were put to advantage by those who opposed the revolution. You know about the United States-backed war of aggression against us which cost 70,000 lives.

The contradictions and solutions to this problem were not easy nor fast. They required a process of respect and mutual understanding between the people of the Pacific and the Coast.

### **Right to autonomy recognised**

The revolution came to the conclusion that the only way to achieve peace and democracy was to recognise and preserve the cultural richness and diversity of the Costeños. The only way to do this

was to work towards regional Autonomy.

Despite the immense difficulties caused by the war, on 30 October 1987 the national parliament passed the Autonomy Law, and created two administrative regions, the RAAS and the RAAN. In a related measure, the Sandinista government also abolished the Somoza Constitution of 1974 and passed new Constitution on January 9, 1987.

For the first time in history the Nicaraguan Constitution recognised, in Article 8 of Section II, that **The people of Nicaragua are by nature multi-ethnic ...'** Chapter 6 of the Constitution stipulates the rights of Atlantic Coast communities. Chapter 9 established for the first time that the State will organise itself, in the Atlantic Coast on the basis of a Autonomous Regime Law. Article 5 establishes in its Fundamental Principles that, The State recognises the existence of Indigenous peoples who shall enjoy the rights, responsibilities, and guarantees provided by the Constitution. In particular, those of maintaining and developing their identity, culture, own forms of social organisation and administration of local affairs; likewise, to maintain communal forms of property on their lands, to use, and enjoy the same, in full conformity with the Law."

Article 180 of the Constitution notes that, **The communities of the Atlantic coast have the right to live and develop themselves under forms of social organisation that correspond to their historical and cultural traditions.'** It continues on: The State guarantees these communities enjoyment of their natural resources, effectiveness in their forms of communal property and free election of their authorities and legislative representatives."

Clearly the autonomy legislation recognised special economic, social, cultural and political rights for the people of the Autonomous regions of the Atlantic Coast of Nicaragua.

### **Regional self-government**

The autonomous governments were loosely based on the ethnic settlements and zones of socioeconomic influence.

The Autonomy Law established Regional Autonomous Councils as the local authorities in charge of the development of both regions and the administration of its natural resources. These Councils are elected every four years and consist of 45 people each.

However, the specific regulations necessary for the enactment and full enforcement of the Autonomy law were never passed. They were lamentably postponed due to the problems associated with the war, the destruction of the national economy and the unexpected electoral defeat in 1990. The responsibility of enacting this legislation fell to the government of Violeta Chamorro. However, her government was deaf to the legitimate claims of the Costeños.

The present right-wing government of Arnaldo Aleman has also refused to pass the regulation which would enact the Autonomy Law.

Autonomy implies the freedom to organise and structure our administrative apparatus with the power to set laws for each Region.

The Central Government however, has appointed its own representatives in both regions without the approval of the Regional Councils. They have illegally authorised fishing licences, mining approvals

and timber concessions to foreign companies. They have systematically undermined Bilingual Intercultural Education, so necessary for the maintenance of the identity of indigenous peoples and ethnic communities.

Other difficulties which have limited the advance of the autonomy process are the ambiguity of the law and refusal of the central government to respect the spirit and intent of the law. The government has also made little investment in the Coast and has done nothing to alleviate the deep poverty.

The Coast is administered as a colonial territory. Now, just like Somoza in the old days, President Aleman has announced that he will govern from the Coast various days a month, instead of assuring compliance with the law and the functioning of the autonomous councils.

We have never had the political support of the national government and this has restricted our ability to achieve an effective administration of our regional affairs. There are also reasons linked to business and the economic interests of multinational companies and ideological institutions.

On the other hand, the weaknesses of the region and the fact that the majority of its leaders have actually worked against the institutional consolidation of the Autonomy Law have also contributed to this situation. The members elected to the Regional Governments in 1990 and 1994 lacked the political will necessary to lead a process as complex as autonomy.

The Regional Authorities have an extremely limited budget. In the last budget approved by the National Assembly we had a 64% expenditure cut. We do not have independent sources of income, through taxes, commercial operations, or licences or fees for the use of our natural resources.

### **Social problems on the Coast**

The Atlantic Coast population has been growing rapidly due to migration from the Central and Northern parts of the country. Also, since 1990 poles of development were created in the Atlantic Zones and round Las Minas for the demobilised members of the Nicaraguan Resistance and their families.

The Regional Governments have given little consideration to the formulation of public policies that give an opportunity to improve the condition of women, or indeed men. The traditional sources of work have been so reduced that unemployment is up to 90%. There are also few opportunities to access health services and education in your native tongue.

The attitude has arisen that autonomy is just a declaration. The cost of living is sky high. The communities have high unemployment and generalised poverty. Land transport is abysmal and only possible in summer. Although there are two airlines that fly to the Coast, few people can afford to use them. This generalised poverty and backwardness is also turning the Nicaraguan Caribbean Coast into a territory used by drug cartels to move drugs from South America to Mexico and the United States.

Now, under a Liberal government, Nicaragua has never been as poor, not even in the worst days of the United States' aggression. We are now the second poorest country in Latin America. 74% of the people live in poverty. One half of our children suffer malnutrition. Illiteracy has jumped to 40% and is even higher in rural areas and among women.

The World Bank and IMF dictate the government's economic policies through structural adjustment programs.

The rich prosper. The poor now have no employment or income security. Salaries are frozen. The poor farmers who benefited from land reform are being threatened by the government and the old landlords.

The World Bank claims that the economy has grown, but is silent about the increase in poverty, declining salaries and unemployment. Social reality is divorced from macro-economic indicators. The Autonomous Regions however, are where the largest forestry reserves, the richest fishing and lobster grounds and mineral reserves are located. Nevertheless, natural resources exploitation is irrational and the forests are being cut down. This process contravenes the Autonomy Law, which authorises the Coast to determine the use of its natural resources.

## Land rights

However, the spirit and intention of autonomy was to recognise that for the indigenous peoples of the Atlantic Coast land gives rise to life. Land is the basis of food production and their social organisation. While this is similar to other indigenous communities, the uniqueness of Costeños derives from their various languages, their vision of the universe, their myths and realities.

The Constitutional Reforms of July 1995 established that the concessions that effect the natural resources of the Coast have to be approved by the Regional Governments.

The lack of regulations has led to differences in legal interpretation. One ongoing debate is the question of regional control over the use to which our natural resources are put.

The government is currently trying to legislate an Indigenous Communities Law'', a World Bank prerequisite for obtaining financing for the central government. It is not clear how the government will define this kind of law. 22 communities subscribed to the 1894 Incorporation document. The Sandinista land reform recognised the land titles which had been previously recognised by the Miskito King and the British protectorate. This created an interesting precedent in International Constitutional Law. The Autonomy Law conceives property as an abstract element for use, possession, and enjoyment. However, it doesn't define who is the owner. The government's interest is to create national lands given that they can be privatised. The central government defines itself as a facilitating instrument for recognising different kinds of property as the motor-force of wealth. However, they want to make themselves owners of Indigenous communities. Recently, however there was an important test case. The South Korean Sol del Caribe (SOLCARSA) logging company obtained a 30 year concession for forest exploitation on 62,000 hectares in the Bosawas reserve of the North Atlantic Region. This was approved by the Executive power but not by the North Atlantic Autonomous Government. The rights of the indigenous communities were clearly violated as 1,000 families had lived for time immemorial in the zone. The community took their case to the Supreme Court and finally, last February, the concession was declared unconstitutional. It ordered the president of the republic to suspend the operations of the company. In this case there was both moral and material damage. Compensation claims can be made for moral damage. The indigenous community was successful because it forced the company to close and created a precedent for recognising ecological crime. The United Nations has declared the Bosawas reserve a biosphere reserve. This is one of the



highest categories for an ecological reserve. It also obliges the Government to maintain the integrity of the reserve. This is an enormous victory for autonomy. 17% of Nicaragua's national territory is conservation reserves. In the rest of Latin America, the average is 6%. This is a fruit of the revolution. It shows that if there is political will, conservation is possible. There is enormous wealth on the Coast. A mahogany tree sells in foreign markets for \$8,000-\$10,000 and what benefit comes to the nation as a whole or, in particular, to Indigenous communities? The Atlantic Coast stays marginalised despite the fact that it represents almost half the national territory with great mineral, timber, and fish wealth, in 1997, bringing in almost 100 million US dollars. {{{Conclusion}}} With the Autonomy law the revolution made one of its most important contributions to Nicaraguan democracy, guaranteeing the effective participation of all groups and people. For the first time, we recognised the indigenous peoples and those of African descent as legitimate sources of our national identity. This significance has transcended our borders and has had a resonance in other Latin American countries. Our legislation is recognised as the most advanced on the continent in its recognition of the rights of indigenous peoples and ethnic communities. The Central American Presidents in 1992 recognised that democracy in the Central American context has to be multi ethnic and multi cultural. The Draft Decree of the Inter American Declaration on the Rights of Indigenous Peoples, approved by the Central American Parliament last March, is essentially based on our Autonomy Statute. Autonomy is a part of the historic program to build genuine reconciliation in Nicaragua, with a democracy characterised by justice and equality, and unity based on respect for our diversity."

The defence and consolidation of the aspirations of autonomy require a strategic vision which looks toward a 20 year development strategy, and a new system of multilingual and inter-cultural education implemented through the present Program of Bilingual Education and the human resources to achieve this.

Multi ethnic unity is fundamental if we want autonomy to be successful. The multi ethnic society is an imperative that we can achieve if the rights of each community, independent of their level of development, are totally respected and all the communities comply with their duties.

The will of the majority in decision making must be respected.

The question of Autonomy on the Atlantic Coast must be kept on the national and international agenda.

Autonomy in Nicaragua needs the support of the international community to survive. The decrease of international cooperation with Nicaragua makes obtaining funds for the Atlantic Coast extremely difficult.

Autonomy is the instrument that enables endangered cultures of the Caribbean Coast of Nicaragua to overcome the forces that threaten to convert our culture into museum pieces. Autonomy is an instrument for cultural survival and national cohesion.

For many years we have undervalued our Indigenous and African heritage while overvaluing the European contribution to what we are.

Despite these difficulties we have achieved the following.

We've elected regional authorities in 1990, 1994 and 1998 despite the enormous distances involved in obtaining a ballot and getting to the ballot box.

We've also enjoyed the model of multi-ethnic fellowship and coexistence established by autonomy. It's possible to live together; it's possible for Miskito and Mayagna to like one another; for Mestizos and Blacks to respect each other; for Garifuna and Rama to accept each other.

While our first autonomous institutions, governments and regional councils may be weak they're our governments, OUR councils. Finally after 500 years, our own institutions, committing errors, yes, but our errors!

In 1990, of the 90 councillors elected to both governments only nine were women. In 1994, there were 11 elected. This year women formed a group called *Caribbean Women's Voice* to lift the profile of women candidates and 15 women councillors were elected. Still only 17%, but an advance. The National Assembly approved the Official Use of Community Languages Law in June 1993. However, the Inter-cultural Bilingual education program has only been maintained through supplementary funds that we have managed to secure. Young Costeños now study the history of the Caribbean Coast and are preparing an oral history of the Coast from the perspective of Costeña women. For the first time the Coast has a university. 3,000 students study in campuses in Bluefields, Puerto Cabezas (Bilwi) and Siuna. These are the first steps to reverse the brain drain that has afflicted us for over 100 years.

It will be up to local organisations to guarantee the full participation of the people in the rational and sustainable use of natural resources.

Local human rights committees proliferate in the different municipalities.

All of these programs and efforts of our society are possible thanks to the support of international cooperation agencies for the autonomy process.

In closing, I just want to stress that while we still have a long way to go we have made great achievements, but at a high price. Yes, we have carried out a revolution but we have had to, and will have to, defend it and seek to extend it.