

## NICARAGUA

The cultural and historic roots of the seven indigenous peoples of Nicaragua lie both in the Pacific region, which is home to the Chorotega (221,000), the Cacaopera or Matagalpa (97,500), the Ocanxiu or Sutiaba (49,000) and the Nahoá or Náhuatl (20,000), and also on the Caribbean (or Atlantic) Coast, which is inhabited by the Miskitu (150,000), the Sumu-Mayangna (27,000) and the Rama (2,000). Other peoples who enjoy collective rights in accordance with the Political Constitution of Nicaragua (1987) are the black populations of African descent, known as “ethnic communities” in national legislation. These include the Creole or Afro-descendants (43,000) and the Garífuna (2,500).

Among the most important regulations are Law 445 on the Communal Property System of Indigenous Peoples and Ethnic Communities of Nicaragua’s Atlantic Coast and of the Bocay, Coco, Indio and Maíz Rivers which, from 2003 on, also stipulates the right to self-government in the titled communities and territories. The 2006 General Education Law also recognises a Regional Autonomous Education System (SEAR). In 2007, Nicaragua voted in favour of the UN Declaration on the Rights of Indigenous Peoples and, in 2010, ratified ILO Convention 169.

The Sandinista National Liberation Front (FSLN) came to power in Nicaragua in 1979, subsequently having to face an armed insurgency supported by the United States. Indigenous peoples from the Caribbean Coast, primarily the Miskitu, took part in this insurgency. In order to put an end to indigenous resistance, the FSLN created the Autonomous Regions of the North and South Atlantic (RAAN/RAAS), on the basis of a New Political Constitution and the Autonomy Law (Law 28). Having lost democratically-held elections in 1990, Daniel Ortega, of the FSLN, returned to power in 2007. Despite the fact that Nicaragua’s Constitution does not permit re-election, Ortega is now in his third term of office (2011-2016).

## Sumu-Mayangna habitat at risk of disappearing

The government is employing a pro-indigenous rights discourse that is favourable to natural resource conservation. However, in reality, indigenous peoples are feeling ever more threatened on their territories for lack of any real state intervention. The Deputy Minister for Environment and Natural Resources (MARENA) has stated that 70,000 hectares of forest are being lost every year, primarily in the Sumu-Mayangna and Miskitu territories, which overlap with the BOSAWAS Biosphere Reserve. Technicians from the National Demarcation and Titling Commission (CONADETI), indicate that, according to assessments conducted between 2005 and 2013, the estimated number of settlers moving onto indigenous territories has tripled over this period. In some cases, particularly on the Mayangna territories, this illegal trend has been increasing ever since the collective property titles were issued.

For this reason, and in order to defend their right to life, in February 2013 the Sumu-Mayangna people - in alliance with civil society organisations - held public protests and organised road blocks demanding the establishment of the Special Regularisation Commission<sup>1</sup> of CONADETI along with a state budget for its operations. The immediate outcome of this was that five people were wounded in clashes although, over the year, one Mayangna and two settlers died as a consequence of conflict on the territories.

Alongside these actions, the RAAN territorial authorities, presided over by Aricio Genaro from the Sumu-Mayangna nation, organised protests in front of the National Assembly, the National Human Rights Institution (*Procuraduría para la Defensa de los Derechos Humanos*), the media and human rights protection centres in Managua during 2013. As a result, Decree 15-2013 was enacted. This decree anticipates protecting the forest resources and implementing the regularisation process for indigenous and Afro-descendant territories titled under Law 445. To this end, the Inter-Institutional Commission for the Defence of Mother Earth on Indigenous and Afro-descendant Territories in the Caribbean and Alto Wanki-Bocay was created.<sup>2</sup> Nonetheless, Brooklyn Rivera MP, who is supposed to be a member of this Commission by virtue of his membership of the Ethnic Affairs Committee of the National Assembly, has stated that this body has never met to establish a plan of action, and has not yet even been formed.



However, some actions were undertaken by government officials and their institutions, and the head of the army stated that the army’s environmental battalion had done its job and put a stop to settlers advancing into the heart of the BOSAWAS reserve. In actual fact, what it had done was to seek out some illegal land and timber traffickers – land registrars, mayoral assistants - while the Attorney-General’s Office asked the Supreme Court to investigate 17 lawyers. The former Vice-Minister for Indigenous Affairs accused the army of inefficiency, and also accused a chief of police of encouraging and leading the land invasion, calling on the government to remove him from post.

Some of the lawyers and notaries who had “legalised individual plots on indigenous lands” without any legal basis were punished and corrupt officials removed.

The Mayangna Sauni As territorial government, for its part, was also successful in winning court cases taken against the usurpers and traffickers of indigenous

lands, including a deputy commissioner in the national police. The indigenous authorities intend to intensify this kind of legal process against the invaders.

It is notable that, during these processes, the FSLN's political secretary for the Mining Triangle in the RAAN promised the mestizos that no-one would be evicted from the lands they were in possession of because it was not the policy of President Ortega's government to do so; moreover, at least 17 trucks containing timber from indigenous territories were stopped in the RAAN and found to have no documentation or extraction permits. Days later, it emerged that the wood belonged to the Alba-Forestal company, linked to the President of the Republic, and the trucks and timber were subsequently released under police and army escort.

Colonisation and deforestation are thus continuing, leading the indigenous authorities to conclude that satisfactory action has not yet been taken. Various territorial governments and indigenous authorities are now threatening to evict the settlers by force, and plan to appeal to the Inter-American Commission on Human Rights.

James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, for his part, observed the case and also noted his concern at the lack of effective measures and that the deforestation on reserves was putting the habitat of the indigenous peoples living there at risk.

## **The titling process at an unexpected end?**

To date, CONADETI has issued 21 titles recognising collective ownership (of the 23 territories claimed). There are also new calls for autonomy being made by Sumu-Mayangna communities who were initially included within Miskitu territories; these demands have not been dealt with because CONADETI's work has been at a standstill since its presidency transferred from the RAAS to the RAAN in June 2012.

Indigenous authorities now fear that political efforts to reform Law 445 itself may become a reality without their consent. One critical amendment proposed is that the indigenous and Afro-descendant peoples will be forced to accept "co-habitation" with the illegal mestizo population on their territories. This model draws its inspiration from what the Rama-Kriol territorial government calls an "offer of co-existence". This is very different, however; in this latter case, it is a vol-

untary offer that depends on an assessment by the territorial authorities themselves and admission criteria being applied: social, environmental behaviour, and recognition of the indigenous government. It furthermore only applies to those mestizos who were living in the territory when a territorial assessment was conducted at the start of the demarcation and collective titling process. This is very different from the recent influx of settlers who are threatening the survival of the Sumu-Mayangna nation.

### **International cooperation departs and NGO work becomes more complicated**

Financial support from international cooperation declined by 67% in 2013, as compared with 2012, and was at its lowest level for 19 years. Austria, the Netherlands and Finland all withdrew, officially stating that their decision was based on the general reduction in poverty in Nicaragua.

The decline in bilateral cooperation also included the Joint Support Fund to Civil Society for Democratic Governance in Nicaragua (FGD), the primary beneficiaries of which were the indigenous peoples. However, Danish cooperation (DANIDA) is continuing to implement the Regional Human Rights Programme (PRODERECHOS) for the country's indigenous peoples, and this is currently set to continue until 2015. The Netherlands will also continue its work in Nicaragua via a regional human rights programme.

In any case, the space in which Nicaraguan NGOs are able to operate has been reduced. Not only is financial cooperation disappearing; bodies that are not aligned with official government policy are being persecuted, and some indigenous authorities have received orders not to work with NGOs.

### **The interoceanic canal and the RAAS regional council on the wrong path?**

The Nicaraguan Interoceanic Grand Canal project is moving forward via a contract with the HKND company, owned by the Chinese businessman Wang. Its aim is to link the Pacific and Atlantic oceans, enabling the passage of larger boats than can currently be accommodated by the Panama Canal; there will also be the

provision of a rail link, an oil pipeline, two deep-water ports, two airports and free zones, at a cost of 40 billion dollars, according to official information from the Nicaraguan government.

In order to facilitate the project, Law 840 was approved, published on 14 June 2013. This is the “Special Law for the Development of Nicaraguan Infrastructure and Transport Specific to the Canal, Free Trade Zones and Associated Infrastructure”, which repeals various other legal provisions.<sup>3</sup>

Authorities from the Rama-Kriol territory, the Miskitu community of Tasbapounie in the territory of the Cuenca de Laguna de Perlas and the Black Creole Indigenous Community of Bluefields, all in the South Atlantic Autonomous Region (RAAS), submitted an appeal to the Supreme Court of Justice – one of a total of 31 appeals for unconstitutionality – claiming that the law violated 23 articles of the Political Constitution and other international instruments promoting and protecting indigenous peoples ratified by Nicaragua. The Supreme Court of Justice, however, rejected all these appeals in just one ruling, claiming that the consultations of public officials from the autonomous regions supplanted the property rights of indigenous and Afro-descendant peoples, thus prioritising the investment of a private equity-backed transnational corporation over the traditional and historic collective ownership of the indigenous peoples of Nicaragua. The ruling is based on Resolution No. 703 23-05-2013, issued by the Regional Council of the RAAS. In this resolution, the regional councils cite their exclusive right to take decisions regarding the indigenous territories, even though in actual fact the only legal representatives of the communities and territories are their own authorities, legally-constituted in accordance with the provisions of Law 445 (but not Law 28 on the regional autonomy regime).<sup>4</sup>

The project is now being managed by the China Railway Construction Corp with McKinsey & Company, the British environment consultancy firm ERC and the Kirkland firm of American lawyers. In 2013, 4,000 people commenced the technical and feasibility studies, at a cost of 900 million dollars.

Routes commencing in the Kriol community of Monkey Point have thus far been ruled out, as has a path along the San Juan de Nicaragua River from the Caribbean. There remain four possible official routes through the RAAS, of which three would affect the Rama-Kriol territory, namely via the Bluefields Lagoon, the Kukra River or the Punta Gorda River. The first would mean the partial or total relocation of 80% of the indigenous Rama population living in the communities of Rama Cay, Tiktik Kaanu and Sumu Kaat.

The reaction of the indigenous peoples of the RAAS to: 1) the negligent attitude of the Regional Council; 2) the publicising of the canal as the only development pathway for the region; and 3) the lack of attention to regularising the indigenous territories has led to a distancing between the Council/Regional Autonomous Government and the territorial and communal authorities.

The process that seems to be of greatest importance to the indigenous peoples of the Caribbean Coast is that of amending the current 1987 Statute of Autonomy in favour of eliminating the interference of political parties, resolving the overlap of political/administrative jurisdictions in favour of indigenous territoriality as opposed to the imposed municipal structure, and guaranteeing a direct link between communal/territorial/regional/national authorities, from the bottom up.

## Justice?

On 29 October 2003, the Inter-American Commission on Human Rights (IACHR) granted a merits hearing in the case of the murder of Francisco José García Valle, husband of María Luisa Acosta,<sup>5</sup> who was involved in defending the indigenous and Afro-descendant communities affected by the sale of the Pearl Cays (Cayos Perlas) on the Internet. The perpetrators of this crime remain at large. Ten years on, the petitioners now consider that all arguments have been sufficiently discussed and the Nicaraguan state has been unable to counter the allegations made by the petitioners and the victims, and so at the merits hearing they asked the IACHR to issue the report established in Article 50 of the American Convention, recognising that the Nicaraguan state has failed in its international obligation to sufficiently investigate and punish those responsible for the death of Mr. García Valle. ○

## Notes and references

- 1 "Regularisation" refers to the resolution of conflicts with third parties, those private individuals or legal entities that claim property rights within a titled communal land.
- 2 This Commission is made up of the General-Attorney's Office, the Supreme Court of Justice, the Ministry for the Caribbean Coast, the Ministry for Environment and Natural Resources, the National Assembly's Ethnic Affairs Committee, the Ministry for the Family, the Coordinating Body of the Autonomous Governments, the Police and the Army but this commission is not that which should have been established according to CONADET's Regularisation Manual, approved on 23

February 2008: two representatives from the Property Intendancy, the legal representatives of the territory subject to regularisation, a representative of the Attorney-General's Office, the Presidents of the two Autonomous Regional Councils, an INETER technician and a cartography specialist from the SDC/Indigenous Component

- 3 It even repeals Law 800 of 2012 (Law on the Legal Regime for the Nicaraguan Interoceanic Grand Canal and on the Creation of the Authority for the Nicaraguan Interoceanic Grand Canal).
- 4 The ruling states: "...effectively come[s], in accordance with the Political Constitution, from the legitimately constituted Authority and that the plaintiffs, in the capacity in which they are acting, are communal authorities from the noted municipalities, but they do not form part of the CRAAS, which alone has the representation and competence to issue resolutions; and so, consequently, there is no reason to consult them.
- 5 Read more about the case here: <http://hrbrief.org/2013/11/case-12-792-maria-luisa-acosta-et-al-nicaragua/>

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