

# EL GRAN CANAL DE NICARAGUA

## Between the Politics of Land, Survival, and Autonomy on the Caribbean Coast of Nicaragua

By Alex Berryhill

The struggle for autonomy and multicultural governance, in both rich and poor countries alike, is riddled by contradictions—this, the literature largely agrees on. On the Caribbean Coast of Nicaragua, recent events illustrate these contradictions and provide further insight on how multi-ethnic states can promote autonomous rights and in particular, protect indigenous land rights. Through a narrative of indigenous people’s centuries-old struggle for autonomy on the Caribbean Coast of Nicaragua, leading up to the most recent state-sponsored expropriation of indigenous territory to build *el Gran Canal*, this paper utilizes first-hand interviews, legal documents, and Nicaraguan news articles to illustrate both the successes and pitfalls of recent reforms to decentralize and strengthen indigenous land rights as part of the region’s broader, ongoing autonomous process. In doing so, this paper argues that while the Caribbean Coast’s current autonomy regime advances the indigenous right’s agenda by opening up new spaces for political participation, such advances are limited both by Nicaragua’s structural conditions and the inherent contradictions of state-sponsored autonomy. The paper concludes with the argument that in order to fulfill the promises for autonomous rights first set out in the 1860 Treaty of Managua, Nicaragua’s *costeños* must strengthen grassroots movements. As long as autonomy remains dependent on the state, it will remain nothing but a lofty goal.

### I. Introduction

Nicaragua’s struggle to protect its indigenous communities, while also engaging in much-needed economic development, has played out in often contentious battles on a global stage.<sup>1</sup> Following

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1 “Indigenous” is a term used frequently in this paper, yet is a highly debated term. Its definition is elaborated more in depth in Chapter three, page 22. For now, it is important to recognize that in the context of the Caribbean Coast, this term includes groups that self-identify as indigenous as well as ethnic minorities that were brought to the territory during colonization. Although the latter are not “indigenous” according the more technical definition of the

a decade of heated civil conflict, the Central American country was recognized internationally in 1987 as a model for conflict resolution when the Caribbean Coast's ethnic communities won autonomy from the central state.<sup>2</sup> In 2001, Nicaragua again became the center of debates on land rights and autonomy when the Inter-American Court of Human Rights (IACHR) ruled against the state for expropriating ancestral land to a foreign logging company in *Mayagna (Sumo) Community of Awas Tingni v. Nicaragua*. The court's verdict became a landmark case in international law and prompted national legislation that has since been accredited for the demarcation of over 30 indigenous territories.<sup>3</sup>

The legislation, Law 445, reaffirmed rights originally articulated by the Autonomy Statute to protect indigenous peoples' ancestral land rights and traditional forms of self-governance. With the aim of strengthening the long-ignored autonomous process and returning to indigenous people's the use and ownership rights of their ancestral territories, Law 445 provided a framework for demarcating territories and decentralizing decision-making powers. The law also required the consultation and approval of indigenous communities before the state could use their territory or resources.<sup>4</sup>

Nicaragua's plans to build an inter-oceanic canal return the nation to the center of these indigenous rights debates. On June 13, 2013, the National Assembly granted a 116-year concession to a Hong Kong-based firm to build a canal, along with other development projects. This announcement quickly prompted a flurry of constitutional challenges by indigenous leaders and civil society groups who claim that affected communities were not sufficiently consulted as national and international law requires.<sup>5</sup> The proposed canal route, published the following year, would bisect the Rama-Kriol Territory, which received an inalienable and non-transferable title in 2009. It would also impact the territory claimed by the Black Creole Indigenous Community of Bluefields, which is in the midst of the demarcation and titling process. Neither of these have yet to be consulted about their displacement, the use of their land, or future reparations.<sup>6</sup> As *Awás Tingni v. Nicaragua* illustrated, such land sales are a violation of national and international law, and represent the state's continued disrespect of the delicate, yet enduring autonomous process for indigenous communities on Nicaragua's Caribbean Coast.

Many indigenous leaders and human rights activists in Nicaragua have been quick to discredit these unconstitutional land concessions to the autocratic rule of Sandinista President, Daniel Ortega.<sup>7</sup> Yet, while holding elected officials accountable for violating indigenous rights is of course vital for the enforcement of citizen's rights, it is not enough to center on an individual actor. Throughout different states, including those with liberal and socialist governments, as well

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term, they remain culturally distinct and identify as "indigenous" on the Caribbean Coast of Nicaragua.

2 Luciano Baracco, *National Integration and Contested Autonomy: The Caribbean Coast of Nicaragua*. (New York: Algora Publishing, 2011).

3 James S. Anaya and Claudio Grossman. "The Case of Awas Tingni v. Nicaragua: A Step in the International Law of Indigenous Peoples" *Arizona Journal of International and Comparative Law*, 19 (2002): 1-395.

4 Nicaraguan National Assembly, "Ley de ruan National Assemblyomunal de los pueblos indmblyas y comunidades uafinition is elaborated more in depth in Chapter indmblyas y comunidades os R RRiBocay, Coco, Indio y MaCo, Ley No. 445"e Managua, Nicaragua, December 2002, accessed November 1, 2014.

5 Fabiola Galo, "Nicaragua y el Canal," *La Prensa*, July 2, 2013, accessed October 12, 2014, <http://www.laprensa.com.ni/2013/07/02/153082-nicaragua-y-el-canal>.

6 Wilfredo Miranda Aburto, "Nicaragua: "Concesión del Gran Canal viola derechos indigenas," *Servindi.org*, June 11, 2013, accessed October 12, 2014, <http://servindi.org/actualidad/89254>.

7 Octavio Enriquez, "Nicaragua ya es enclave de Wang Jing," *Confidencial*, June 14, 2013, accessed October 12, 2014, <http://www.confidencial.com.ni/articulo/12286/>.

as democratic and authoritarian leaders—the expropriation of indigenous territory continues.<sup>8</sup> As such, this paper seeks a more nuanced understanding of why indigenous people’s rights to land and autonomy continue to be abused on the Caribbean Coast of Nicaragua. Rather than solely analyzing President Ortega’s violations of land rights, this paper includes a broader narrative of autonomy in order to investigate how the structure of Law 445 both advances and limits the indigenous rights agenda.

Based on secondary sources, government and court documents, newspaper articles, and personal interviews, this paper argues the following: the current autonomy regime’s structure both promotes and limits the indigenous rights agenda on the Caribbean Coast of Nicaragua. Although the decentralization of decision-making powers via Law 445 has effectively increased political participation, the inherent contradiction of state-administered autonomy limits Law 445’s ability to fulfill its stated goals. In order to fulfill the promises for indigenous rights set out in the Autonomy Statute, *costeños* must strengthen grassroots movements, fully autonomous from the state. Put concisely, this paper argues that as long as autonomy remains dependent on the state, it will remain nothing but a lofty goal.

This research project contributes to the existing literature in several significant ways. Participatory observational methods and personal interviews with indigenous leaders on the Caribbean Coast provide new, original research on the consequences land rights and democratic decentralization have had on indigenous communities’ political participation. This paper’s findings that Law 445 has prompted communities to re-learn their histories, re-claim their rights, and, for some, take on new leadership roles in indigenous rights advocacy, provide important contributions to literature that often refers to abstract terminology rather than concrete, real observations. In addition, this paper also advances theoretical frameworks for understanding the limits and significance of autonomous rights and multicultural governance. While *costeño* politics have long captivated the curiosity of social scientists and historians, academia’s continued attention on the region has important merits, as the Caribbean Coast’s autonomous regime remains, despite its flaws, a pioneering government structure for indigenous peoples worldwide. Lastly, this research is significant in that it leads to recommendations for policymakers and human rights activists on effective methods for defending the rights of indigenous peoples, ethnic minorities, and populations of “others.” In an ever-diversifying, multicultural world, such endeavors are of utmost importance.

### A. *Methodology*

These findings are based upon a mix of research methodologies. This thesis project began with an in-depth literature review of indigenous rights, autonomy on the Caribbean Coast of Nicaragua, debates in law and development, and the history of *Awas Tingni v. Nicaragua*. I then spent the month of January 2015 conducting field research in Bluefields, the capital of the Southern Caribbean Coast Autonomous Region (otherwise known as the RAAS). During my time on the Caribbean Coast, I met with indigenous leaders, spokespersons for the canal, civil society organizations, journalists, students, government officials, and active indigenous rights lawyers. The interviews that were not conducted in Bluefields were conducted in the Pacific Coast cities of Managua and Chinandega. I also spent several days in a Rama community on the island of Rama Cay speaking with indigenous leaders. Upon returning from Nicaragua, additional data was

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<sup>8</sup> Alison Brysk, *From Tribal Village to Global Village: Indian Rights and International Relations in Latin America*. (Palo Alto: Stanford University Press, 2000).

attained via email correspondence with individuals that were more difficult to contact directly. The analysis and findings of this research project are primarily based upon these interviews.

For all interviews, I explained the purpose of the research project and the institution through which I am publishing my thesis. I confirmed if the participant would like to remain anonymous or publish their name along with their statements. The majority of the interviews were in Spanish, with a few in English, Creole, and Rama-Creole. I always asked the interviewee which was preferred. If the interviewee granted permission, I recorded the interview, allowing me to transcribe the correspondence. I was able to do this with each interview. The list of interviewees is listed in the bibliography of this research paper. Upon returning to Berkeley to complete the research project, I continued to read articles from Nicaraguan news organizations. I conducted further research with secondary sources, new government documents, and World Bank data sets. From February to April, I took the time to analyze, write, and finalize the text.

This research project faced several inevitable limitations, many of which might be expected with any undergraduate research project in a foreign country. By researching an issue within a foreign cultural context, this project is vulnerable to the danger of misinterpreting information that is predicated on the region's unique culture. Furthermore, the fact that Spanish is not my first language is of course another limitation, although I am confident that my experience in the region and fluency in Spanish after years of coursework and living in Spanish speaking countries prevented such limitations from having a significant impact on my research findings. It is also worth nothing that inevitably this research project is limited in its scope and timescale. More interviews, further exploration of legal and historical documents, and additional time would have surely assisted in more fully addressing the question this paper poses. Yet even with the limitations of an academic school year, I am confident that the conclusions are nonetheless both significant and relevant.

In order to illustrate the political consequences of Law 445 and the limitations of the autonomy regime in advancing indigenous rights, this paper is organized as follows: Chapter 2 provides a discussion on what autonomy means for indigenous rights, how the indigenous rights movement has evolved in recent years to include new national and international protections, and some "big picture" limitations to autonomy. Chapter 3 provides a broader historical narrative of indigenous rights on the Caribbean Coast, including a detailed description of the autonomous government's structure and administration. Chapter 4 continues the previous chapter's history of autonomy by providing a narrative of the land concessions made to construct *el Gran Canal* and a detailed report on the opposition movement the canal's prompted.

Providing the heart of this paper's claims, the last chapters illustrate the dynamic influence of Law 445 on indigenous rights on the Caribbean Coast. Chapter 5 discusses the positive impacts Law 445 has had for achieving autonomy, while chapter 6 discusses the law's limitations and illustrates the inherent contradiction of state-administered autonomy. The paper concludes with the argument that in order to fully achieve autonomy, indigenous peoples on the Caribbean Coast must rely less on the state—which will always have an incentive to broaden its power—and instead, engage in and further strengthen autonomous grassroots movements. These remain key for holding the state accountable for protecting and respecting indigenous rights. Chapter 6 concludes the research project, providing recommendations for future research as well as a brief discussion on the larger implications of the paper's findings and the events that continue to unfold on the Caribbean Coast of Nicaragua.

## II. Significance and Contradictions of Autonomy

The struggle of indigenous peoples for autonomy is a defining feature of contemporary Latin American politics. Especially before the 1990s, Latin American policy and discourse “discouraged politicized indigenous identification,”<sup>9</sup> and trampled on indigenous and ethnic minorities. Both the neoliberal state, motivated by “accumulation by dispossession,”<sup>10</sup> and the socialist state, aimed at constructing a unified, modern nation-state, ignored indigenous peoples’ cultural and ethnic differences, ancestral ties to land, and inherent political rights as citizens.<sup>11</sup> Beginning in the late 1980s, indigenous movements began to actively organize to challenge these norms and demand their basic rights to self-determination and cultural distinctiveness.<sup>12</sup> Occurring at a time of the “weakening of the state” due to neoliberal economic reforms, these movements grew in size and scope to fundamentally challenge liberal notions of citizenship.<sup>13</sup>

Autonomy is both the most fundamental of human rights, as well as among the most nebulous to grasp and achieve. In a governmental context, autonomy is defined as the right to self-governance and organize by one’s traditional customs. It is the right to regional, community and self-development, free of coercion by the state.<sup>14</sup> Autonomy is often used synonymously with the notion of self-determination: the basic right “to rule one’s self, to control one’s own life, a basic given of the human existence.”<sup>15</sup> Furthermore, autonomy challenges liberal individual rights by embracing the communal. Indigenous movements claim *collective* grievances and demand *collective* rights. Autonomy in this manner, is also the empowerment of “identities that valorize difference, in particular Indian-ness.”<sup>16</sup> In other words, autonomy gives indigenous peoples the right to live in a separate manner from the dominant ethnicity or culture. It is the very right to be different.

In the last twenty years, grassroots indigenous movements’ demands for protection from extractivist states and inclusion in the international order have attained important domestic and international policy achievements.<sup>17</sup> Of particular importance for indigenous rights is the International Labor Organization’s Convention on Indigenous and Tribal Peoples, Convention No. 169, approved in 1989. Representing a marked departure in international policy regarding indigenous peoples, ILO 169 moves from a philosophy of integration to one of autonomy. To date, twenty two countries have ratified ILO 169, with Nicaragua being among the most recent, having ratified the convention in 2010.<sup>18</sup> ILO 169 is an important tool for indigenous peoples’ defense of ancestral land rights in that it recognizes “the aspirations of indigenous peoples to exercise control of their own institutions” and to “maintain and develop their identities, languages and religions, within the framework of the states in which they live.”<sup>19</sup> As such, ILO 169 holds states party to the convention accountable for having indigenous peoples’ “free, prior, and informed consent” *before* using, selling, or impacting in any way, indigenous people’s territories.<sup>20</sup>

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9 Jean Jackson and Kay B. Warren, “Indigenous Movements in Latin America, 1992-2004: Controversies, Ironies, New directions,” *Annual Review of Anthropology* 34 (2005): 549-573.

10 Ibid.

11 Ibid.

12 Ibid.

13 Rachel Sieder, “Introduction” in *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy* (Basingstoke: Palgrave Macmillan, 2002), 74.

14 S. James Anaya, *Indigenous Peoples in International Law*, (Oxford: Oxford University Press, 2004).

15 Dov Ronen, *The Quest for Self-Determination*, (New Haven: Yale University Press, 1979).

16 Anaya, *Indigenous Peoples in International Law*.

17 Jackson and Warren, “Indigenous Movements in Latin America.”

18 International Labor Organization, “Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169),” accessed April 28, 2015.

19 Anaya, *Indigenous Peoples in International Law*.

20 Ibid.

Communal land rights are of central importance to indigenous peoples' claims to autonomy because they ensure a community's economic and cultural survival. With protected land rights, indigenous peoples can pursue their own means of economic development.<sup>21</sup> The potential loss of land affects the very "viability of autonomy and local indigenous political institutions that operate in and assume a relatively well-defined and stable geographic space."<sup>22</sup> Indigenous land claims "extend beyond material concerns for land as a productive resource," as land holds both spiritual and political economic value.<sup>23</sup> Especially given the rising value of land in a resource-scarce world, creating and maintaining land tenure systems that ensure the effective protection of indigenous people's communal land rights continues to be a highly contested endeavor. Around the world, different perspectives on the value of land (productive versus spiritual), along with contradictory understandings of the land's historic ownership, continue to result in violent conflict between individuals, communities, or even entire nations.<sup>24</sup>

Yet, these are not the only struggles autonomous and indigenous rights efforts face. Although by definition autonomy requires self-governance, even in the most progressive of governments rarely does the release of power over resources, politics, culture, etc., come with much enthusiasm by the central state.<sup>25</sup> The state's primary goal is more often than not to *extend* their power and influence over a region, rather than to retract it as autonomy demands. As such, autonomy rights remain vulnerable to the central state's influence.<sup>26</sup> Without sufficient accountability mechanisms, the state has the incentive of attempting to extend its influence over the autonomous regions.<sup>27</sup> Yet with that said, the state's influence is, in a way, inevitable for ensuring autonomous regions still remain an active participant of the nation. It is this tension in particular that makes autonomy such a difficult and complicated endeavor.

Creating an autonomous region requires new institutions and structures to administer autonomy. This is often attained through decentralizing decision-making powers and re-distributing land titles. While decentralization is a means to localize decision-making and thus strengthen democracy, it also may be a means of institutionalizing autonomy or the indigenous movement at large.<sup>28</sup> Institutionalization has long been a central concern of social movements.<sup>29</sup> The institutionalization of autonomy creates a dependency on the state, and may lead to autonomy being administered in a 'top-down' approach, rather than from the grassroots. Even when the indigenous movement's *goal* is to have autonomy be a 'bottom-up' process, in conditions of weak state capacity the administration of autonomy may end up a project of the central state rather than 'the people.' Autonomy is particularly endangered when being administered by a corrupt central state that lacks accountability mechanisms. This may lead to autonomy being administered in a manner that contradicts visions of development shared by the indigenous communities.<sup>30</sup>

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21 Deborah J. Yashar, "Contesting Citizenship: Indigenous Movements and Democracy in Latin America," *Comparative Politics* 31 (1998): 23-42.

22 Ibid.

23 Ibid.

24 Yash Ghai, *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States*, (Cambridge: Cambridge University Press, 2000).

25 Cristina Corduneanu-Huci et al, "Understanding Policy Change: How to Apply Political Economy Concepts in Practice," World Bank eLibrary, 2012, accessed April 25, 2015, <http://dx.doi.org/10.1596/978-0-8213-9538-7>

26 Ghai, *Autonomy and Ethnicity*.

27 Corduneanu-Huci, "Understanding Policy Change."

28 Anne M. Larson, and Fernanda Soto, "Decentralization of Natural Resource Governance Regimes," *Annual Review of Environment and Resources* 33 (2008): 213.

29 Kiyoteru Tsutsui et al. "International Human Rights Law and Social Movements: States' Resistance and Civil Society's Insistence," *Annual Review of Law and Social Science* 8 (2012): 367-396.

30 Johannes Gerschewski, "The three pillars of stability: legitimization, repression, and co-optation in autocratic

In a corrupt state, accountability mechanisms may be hard to find. Thus, if facing a corrupt state, indigenous movements often bring their claims to international bodies, as was the case in *Awás Tingni v. Nicaragua* and in ongoing protests against land concessions for *el Gran Canal*. This paper argues, however, that indigenous peoples' claims to autonomy will forever be limited if they remain dependent on domestic governments or international institutions. States have the incentive to breach autonomy, as discussed above. But on the other hand, international institutions fail to hold state's accountable to protecting autonomy on a regular basis. Indigenous rights activists should not be satisfied with their state's being held accountable for protecting national and international laws every decade or so—accountability mechanisms must *always* be accessible. Thus, in order to fulfill the promises of autonomy, indigenous peoples must strengthen and rely more heavily on autonomous grassroots movements. Separate from the state and international governance bodies, 'bottom-up' activism is central for the real fulfillment of autonomy, self-determination, and cultural survival in today's globalized world.

### III. Origins of Autonomy

Distinct histories, cultures, languages, and geographies have long divided Nicaragua's Caribbean and Pacific Coasts—so much so that it is not uncommon to hear the regions referred to as two separate countries. Like most of Latin America, the Pacific Coast was colonized by the Spanish in the early sixteenth century. In contrast, the Caribbean Coast had a colonial history more similar to that of island states like Jamaica. In 1655, Great Britain established a protectorate on the Caribbean Coast of Nicaragua. Unlike her Spanish counterparts, Great Britain allowed the region to maintain their traditional governance systems and rarely sent British delegates to administer the region, thus allowing the region to retain a fair degree of independence.<sup>31</sup> In part as a result of these unique colonial histories, the two coasts are also distinguished by their distinct demographic compositions. The Pacific Coast region is primarily *mestizo* due to Spanish colonizers intermixing with local indigenous peoples. In contrast, the Caribbean Coast's has retained a primarily indigenous population composed of six ethnic groups: the Miskitu, Mayanga, and Rama peoples, as well as the Afro-Caribbean Creoles<sup>32</sup> and Garífunas.<sup>33</sup> Combined, these groups compose just four percent of the national population.<sup>34</sup>

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regims,' *Democratization*, 10 (2013):13-38

31 With that said, local leadership on the Caribbean Coast, known as the Mosquito kingdom, were by no means peaceful to the more rural indigenous minorities in the region. The Mosquito kingdom governed the region with Great Britain's support and ensured the protectorate was a profiting holding. To accrue such profits, the kingdom subordinated indigenous minorities political and economically. This story is often romanticized and overlooked in contemporary narratives of the Caribbean Coast, yet is revealing of modern hierarchies *between* indigenous peoples and ethnic minorities in the region. For more on this history and its legacy, refer to: Gabbert, Wolfgang. "The Kingdom of Mosquitia and the Mosquito reservation: Precursor of Indian autonomy," in *National Integration and Contested Autonomy: The Caribbean Coast of Nicaragua*, pages 11-43.

32 This paper uses the spelling Creole for the language and Bluefields Creole government, but then uses the spelling Kriol when talking about the Rama-Kriol government. Although both spellings constitute the broader ethnic community that is recognized, including sharing the same language and customs, for example, on the census, these different communities *do* identify distinctly. That is to say, the Creole's of Bluefields are *distinct* from the Kriol's of Monkey Point. Yet, both would mark their ethnicity as Creole on the national census.

33 Only within the last decade has the Caribbean Coast's demographics begun shifting towards a *mestizo* majority, which is largely seen as a result of the eastern expansion of Nicaragua's agricultural frontier.

34 Francisco Sequeira, "Juventud y régimen autonómico: Conocimientos, percepciones y formas de participación de las juventudes en la costa caribe de Nicaragua," Editorial Académica Espajola (2012).

The 1860 Treaty of Managua was both the first government document to establish autonomy on Caribbean Coast, as well as among the first attempts by Pacific Coast authorities to exert their power and influence over their Caribbean counterparts. In the early nineteenth century, a wave of American investors began residing on the Caribbean Coast. In response to the US's growing presence and as part of a broader global strategy, the British began preparing to withdraw from the region. Part of these preparations was the signing of The Treaty of Managua, which attempted to formalize the region's autonomy by mandating that the central state respect the Caribbean Coast population's right to self-government.<sup>35</sup> As an early 20th century US congressional record on the agreement states of the Caribbean Coast following the treaty: "although it forms an integral and inseparable component of the aggregate territory of Nicaragua, it is to be considered as primarily and immediately owned by the Indians as their own country."<sup>36</sup>

In 1894, shortly after the Treaty of Managua, the Caribbean Coast was "reincorporated" into the newly sovereign state of Nicaragua. In order to integrate the Coast into the newly sovereign nation, with American support, President José Santos Zelaya López forcefully dismantled pre-existing governance structures against *costeños'* will, and established English as the new official language although the majority of the region did not speak it. The majority of the Caribbean Coast's leadership fled to Jamaica, leaving *costeños* subject to new *mestizo* administrators, and creating a new ethnic hierarchy with *mestizos* claiming the region's social, political, and economic power. To this day, the legacy of the oppressive "Spaniards" on the Caribbean Coast remains reflected in *costeños* commonly shared mistrust of Pacific Coast authorities.<sup>37</sup>

#### A. *Costeños* and the Sandinista Revolution

From 1936 to 1979 Nicaragua was ruled by the US-supported Somoza family dictatorship and their infamously violent military, *La Guardia Nacional*. In 1961 the Sandinista National Liberation Front (FSLN) began organizing in response to the Somoza regime's violence and corruption, as well as the general poor conditions oppressing lower and middle class Nicaraguans. Very much inspired by the Cuban Revolution of 1959, the FSLN sought a socialist revolution that would overthrow Somoza's regime and free Nicaragua from imperialism. The FSLN succeeded in at least two of these goals. After years of bloody warfare, on July 17, 1979 Somoza resigned and fled to Miami, and his successor quickly seceded power to the FSLN. On July 19, the FSLN army took over the National Palace and began re-organizing the Nicaraguan government, marking what some scholars have since considered the first and only social revolution to succeed in Central America.<sup>38</sup>

Of course, not all Nicaraguans were sympathetic with the Sandinistas' success. This was particularly true on the Caribbean Coast, where *costeños* had been much less affected by the Somoza regime and largely uninvolved with the FSLN revolution. Many *costeños* remained suspicious of the revolution and actively opposed their new government. The region's general

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35 Hurst Hannum, *Autonomy, Sovereignty, and Self-determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 2011).

36 "Second International Conference of American States, Document 330, Session 10, Mosquito Question since 1860" in *A Digest of International Law: As Embodied in Diplomatic Discussions, Treaties and Other International Agreements, International Awards, the Decisions of Municipal Courts, and the Writings of Jurists*, US Government Printing Office, 1906.

37 Baracco, *National Integration and Contested Autonomy*.

38 James Mahoney. *The Legacies of Liberalism: Path Dependence and Political Regimes in Central America* (Baltimore: John Hopkins University Press, 2001): 256

distrust and opposition of the revolution was further exacerbated by US involvement. Leveraging this opposition, throughout the 1980s the US Central Intelligence Agency armed and trained local militias known as the *Contras*, to overthrow the new government.<sup>39</sup> Throughout the decade the *Contras* and the Sandinistas fought in civil war that was particularly destructive on the Caribbean Coast region, displacing multiple communities and taking hundreds of lives caught in between armed conflict.<sup>40</sup> It soon became clear that the centuries-old division between the two regions had set the FSLN's revolutionary project in grave danger.

Recognizing that stability and trust from the Caribbean Coast would be vital if the revolution was to have any hope at success, in 1984 the new government began a process of peace negotiations. To do so, they created the National Autonomy Commission and engaged in a thorough, door-to-door consultation with *costeños* on what autonomy should look like.<sup>41</sup> The culmination of these extensive consultations came in 1987, when the National Assembly passed Law 28, the Autonomy Statute for the Caribbean Coast of Nicaragua, and approved a new political constitution that recognized the autonomous regions and their respective rights to self-governance. These new legal bodies continue to be models for indigenous rights and autonomous governments worldwide, defining autonomy on the Caribbean Coast as a process that:

...enriches the national culture, recognizes and strengthens ethnic identity groups; it respects the specificities of the cultures of the communities of the Caribbean Coast; it redeems the history of the same; it recognizes property rights on communal land and repudiates any type of discrimination; it recognizes religious freedom and, without deepening differences, recognizes distinct identities as coming together to build national unity.<sup>42</sup>

As indicated above, Law 28 and the new constitution explicitly recognizes the nation's multiethnic composition along with each individual's right to ethnic self-assignment, establishes that *costeño* communities had a right to self-determination and inclusion in regional and national policy discussions, and protects communal land rights. As such, the law also established communities' right to reject any national or regional development plans that might affect their regional recourses and ancestral territories.<sup>43</sup> Perhaps most importantly for indigenous rights activists today, the law outlined new governance structures meant to decentralize administration on the Caribbean Coast and to better include previously marginalized *costeños* in regional, as well as national, political and economic development. As summarized by indigenous rights activists, the law gave the region "the right to develop in the *costeño* way."

Towards this end, Law 28 established the two regional councils—Región Autónoma del Atlántico Sur (RAAS) and Región Autónoma del Atlántico Norte (RAAN)—as the maximum authorities of the autonomous region. The councils include representatives from each ethnic community and are responsible for the administering autonomy, enforcing land rights, and

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39 Baracco, *National Integration and Contested Autonomy*.

40 Ibid.

41 Michael Campbell (Director of Centro de Derechos Humanos Ciudadanos y Autonómicos) in discussion with author, January 13, 2015.

42 Nicaraguan National Assembly, "Autonomy Statute for the Regions of the Caribbean Coast of Nicaragua. Ley No. 28." Managua, Nicaragua, October 1987, accessed October 12, 2014, [http://calpi.nativeweb.org/doc\\_3.html](http://calpi.nativeweb.org/doc_3.html).

43 Centro de Investigaciones y Documentación de la Costa Atlántica and Stockholms Universitet, *Ethnic Groups and the Nation State: the case of the Atlantic Coast in Nicaragua* (Stockholm: University of Stockholm, Department of Social Anthropology, 1987).

ensuring that the governance structures created for each community “take into account [their] social, cultural, and economic characteristics.”<sup>44</sup> No decision can pass through the regional body without the permission of whichever communities would be impacted by the policy. The regional councils also maintain veto power over any national concessions—a particularly important tool for protecting *costeños* from private and state-sponsored land grabs.<sup>45</sup>

### B. *Initial Struggles*

Law 28 set out a plan of ambitious goals for multicultural governance and indigenous rights. Its framework is considered pioneering in the field of indigenous rights’ worldwide. As Michael Campbell, son of one of the “founders of autonomy,” stated:

We are light years ahead of other countries. Nicaragua is the only country in Central America that actually had a revolution that went all the way. We had our revolution, we overthrew a dictatorship, we were granted autonomy, we had years of transition, we went into democratic election, and now are looking to grow.<sup>46</sup>

In many ways, Campbell is right. The region has legal autonomy (on paper) and mechanisms for self-government—which many indigenous and ethnic minorities do in fact lack. Yet, as this section illustrates, initiatives to implement and fulfill the promises of the Autonomy Statute have faced immense challenges since the law’s passage. In particular, following the passage of the Autonomy Statute, the central state failed to provide sufficient fiscal and political support to the new institutions necessary for facilitating and administering autonomy, leaving the region without the capacity to fulfill the hefty goals of the Statute.

In large part, the Autonomy Statute’s limitations were at first merely a reflection of the period’s unique political context. In 1990 the FSLN lost the presidential election to a more conservative government. The new president, Violeta Chamorro of the anti-Sandinista alliance, the National Opposition Union party, was a strict adherent of the international lending community’s structural adjustment programs. As such, there was a large “pulling back of the state” during her presidency and throughout the leadership of her two liberal predecessors, Jose Arnaldo Alemán (1997-2002) and Enrique Bolaños (2002-2006).<sup>47</sup> This “pulling back of the state” included the reduction of funds from the Caribbean Coast as well, funds that were necessary for building up an entirely new government structure on the Caribbean Coast and carrying out the administrative functions necessary to begin fulfilling the requirements and goals of the Autonomy Statute. The autonomous process was further limited at this time by Law 28’s ambiguous language, which left local leaders without clear guidelines on how to administer the newly decentralized regional governments. Lastly, the lack of a formally educated body of leaders proved to be a serious detriment to the newly autonomous region as well. Since reincorporation in 1894, the region lacked an education system and few *costeños*, including local authorities, spoke or read

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<sup>44</sup> Freddy Alfaro Morales, (Rama-Kriol Government Project Coordinator) in discussion with author, January 7, 2015.

<sup>45</sup> Nicaraguan National Assembly, *Autonomy Statute*.

<sup>46</sup> Michael Campbell (Director of Centro de Derechos Humanos Ciudadanos y Autonómicos) in discussion with author, January 13, 2015.

<sup>47</sup> Thomas W. Walker and Christine J. Wade, *Nicaragua: Living in the Shadow of the Eagle* (Boulder: Westview Press, 2003).

Spanish—a basic necessity for working with the national government. Thus, without appropriate funding from the state, a clear map on how to administer new government bodies, and necessary language skills, by the end of the 1990s, many *costeños* lost any hope that the promises set out in the 1987 Autonomy Statute would ever be realized on the Caribbean Coast.<sup>48</sup>

Although many indigenous rights actors remained present in regional and national politics, it would take an international court case almost a decade later to address the Nicaraguan state's failure to adequately implement the Autonomy Statute, or even marginally begin to hold third parties accountable to abiding by its legal framework.<sup>49</sup>

### C. *Awas Tingni v. Nicaragua*

In December 1993, the Autonomy Statute's limitations became strikingly clear. The Chamorro government awarded a Dominican-owned company, Maderas y Derivados de Nicaragua, S.A. (MADENSA), 43,000 hectares of land for a logging project—much of which belonged to several indigenous communities. In a way, this concession was nothing particularly special. The Nicaragua state, like many in Latin America, has a long history of gifting territory owned by indigenous communities to international companies.<sup>50</sup> And like the many before it, the state failed to consult the community before selling the territory to MADENSA. In this particular case, a large swath of the territory sold by the government was held by the Mayagna-Suma community Awas Tingni, located in the northern autonomous region. As was the case with *all* of the Caribbean Coast's indigenous communities, Awas Tingni had yet to receive the legal land titles promised in the Autonomy Statute.<sup>51</sup> However, unique to many other indigenous communities that have found themselves in similar circumstances, after seeking out the help of the RAAS Regional Council to defend the community's right to consultation and failing to find any adequate response, in 1994 Awas Tingni leaders chose to seek out international support by contacting a group of indigenous rights lawyers about this violation of their rights to autonomy and land.<sup>52, 53</sup>

Shortly afterwards, lawyers based in the US formed the “Iowa Project” with the goal of attaining the Awas Tingni community's long awaited land titles. The project was a partnership between the Awas Tingni community, various experts in indigenous law, and the World Wildlife Fund. These actors quickly began to work with the community's leadership to file national complaints of the MADENSA concession.<sup>54</sup> According to a Nicaraguan attorney working on the case, Maria Acosta, both the indigenous communities and the state authorities found their claims of indigenous rights “crazy.” “They thought that I was reading poetry rather than laws. [The communities] knew this was politically wrong, but they didn't know this was legally wrong, and that the international courts would protect them,”<sup>55</sup> Acosta said.

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48 Baracco, *National Integration and Contested Autonomy*.

49 Ibid.

50 Anaya and Grossman. “Case of Awas Tingni v. Nicaragua.”

51 Ibid.

52 It might seem odd that a rural community of less than [population] were able to create or utilize such a network. However, there was another coincidence: At the time, Maria Acosta, a young Nicaraguan human rights lawyer, was finishing her studies as a Fulbright Scholar at Iowa University under the supervision of Law Professor James Anaya, now United Nations Special Rapporteur on the Rights of Indigenous Peoples. Anaya supported Acosta's studies of her country's indigenous land rights, and thus had been in contact with indigenous communities for quite some time.

53 “IACHR Case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of January 31, 2001,” Judgment of January 31, 2001, Series C, No. 79.

54 Anaya and Grossman, “Case of Awas Tingni v. Nicaragua.”

55 Maria Acosta (Coordinator of Centro de Asistencia Legal a Pueblos Indígenas) in discussion with the author,

Requests to nullify the concessions and grant communities' respective land titles were repeatedly dismissed by the national courts. Despite contradicting the Autonomy Statute, the national courts claimed that the lands in question were state-owned, making the Awas Tingni community's claims null. After three years of litigation and negotiations with the government, "it became apparent that the government was determined to go ahead and grant the concession."<sup>56</sup> The Awas Tingni community would need to bring their land claims to the higher courts if they were to have any hope at attaining their titles.<sup>57</sup> With the "Iowa Project's" assistance, in 1995 the Awas Tingni community submitted a petition to the Inter-American Commission on Human Rights, requesting international intervention to protect the Awas Tingni community's communal land rights and dispute the constitutionality of the 1993 and 1994 concessions.<sup>58</sup>

August 31, 2001, the Inter-American Court of Human Rights (IACHR) ruled in favor of the Awas Tingni community, becoming the first international tribunal to uphold the collective land and resource rights of indigenous peoples in the face of a state's failure to do so. In *Awas Tingni v. Nicaragua* the IACHR found that it was not enough that Nicaragua's legal bodies recognized the rights of indigenous peoples to the lands they traditionally use and occupy. Rather, Nicaragua "must secure the effective enjoyment of those rights, which it had not done for Awas Tingni nor for the vast majority of indigenous communities on the Caribbean Coast region of Nicaragua."<sup>59</sup> The decision reads:

Nicaragua has not adopted the adequate domestic legal measures to allow delimitation, demarcation, and titling of indigenous community lands, nor did it process the amparo remedy filed by members of the Awas Tingni Community within a reasonable time.... the State must adopt in its domestic law the necessary legislative, administrative, or other measures to create an *effective* mechanism for delimitation and titling of the property of the members of the Awas Tingni Mayagna Community, *in accordance with the customary law, values, customs and mores of that Community.* (emphasis added)<sup>60</sup>

As such, the court mandated that the Nicaraguan state create legislation that explicitly outlines the administrative and structural process for fulfilling indigenous people's rights to autonomy. After two years of consultation and pressure via the World Bank's conditional loans, in 2003 the National Assembly passed Law 445, the Law of Communal Property Regime, otherwise known as the Law of Demarcation.<sup>61</sup> Along with reaffirming the rights originally endowed in the 1987 Autonomy Statute, Law 445 also provides the procedures for the demarcation, or titling, of lands on the Caribbean Coast and outlines legal structures to regulate and protect them.<sup>62</sup>

Law 445 is by no means flawless. The law leaves the relationship between central, municipal, regional and territorial governments ambiguous and the Caribbean Coast's indigenous communities without sufficient mechanisms for ensuring state accountability. Yet, like it's

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January 16, 2015.

56 Anaya and Grossman, "Case of Awas Tingni v. Nicaragua."

57 Anaya and Grossman, "Case of Awas Tingni v. Nicaragua."

58 In 1994 the Nicaraguan state sold land that resided within the Awas Tingni territory's borders to an additional private company, this time from South Korea.

59 Anaya and Grossman, "Case of Awas Tingni v. Nicaragua."

60 "IACHR Case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of January 31, 2001." Judgment of January 31, 2001. Series C, No. 79.

61 Freddy Alfaro Morales, (Rama-Kriol Government Project Coordinator) in discussion with author, January 7, 2015.

62 Nicaraguan National Assembly. *Ley No. 445*.

predecessor, the Autonomy Statute, it has been an important milestone for indigenous rights on the Caribbean Coast, and a vital mechanism for promoting self-governance and autonomy.<sup>63</sup> Specifically, as this paper argues, Law 445 has created a “widow of opportunity” for indigenous peoples—but a window that continues needing *active* employment in order to accrue any benefits for a population that had long grown tired of what they deemed a racist central state.

#### D. *Law 445 and the Demarcation Process*

One of the most significant changes from Law 445, and a key difference in indigenous affairs today in comparison to the 1990s, is the demarcation of indigenous territories and the decentralization of government functions. In particular, the demarcation process has been vital for the region’s progress towards autonomy. As Director of the Human Rights Observatory of the Bluefields Indian and Caribbean University, Francisco Sequeira states,

...without territorial demarcation, self-determination becomes meaningless. No indigenous person can feel a sense of self-determination of the Caribbean Coast of Nicaragua, nor can they achieve the full deployment of their capabilities and potential, or in other words, their human development, without secure land rights.<sup>64</sup>

Demarcation and decentralization are necessary for ensuring that each community has the freedom of self-governance, or rather, governing their community by their traditional customs. However decentralization has had another important impact on the Caribbean Coast: by ensuring each community’s representation, the law increases political participation, thus broadening and strengthening democracy in the region. Quantitatively more *costeños* are involved with resource management decisions and other government functions—rights that for many of the Coast’s indigenous communities had been revoked for centuries. Yet, as a later chapter will explore with greater depth, such policy goals remain limited by the Coast’s impoverished conditions and the state’s lack of capacity or political will.

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<sup>63</sup> Ibid.

<sup>64</sup> Francisco Sequeira (Director of the Human Rights Observatory of the Bluefields Indian and Caribbean University) in email correspondence with author, March 19, 2015.

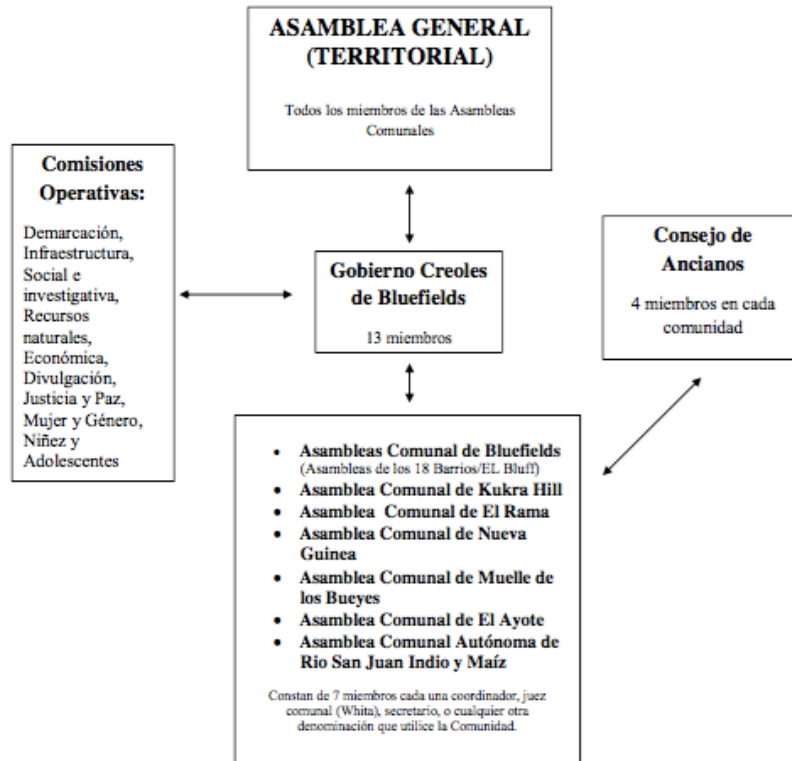


FIGURE 1: MAP OF THE BLACK CREOLE BLUEFIELDS COMMUNAL GOVERNMENT, AND IT’S RELATION WITH OTHER GOVERNMENT BODIES. (SOURCE: BLACK CREOLE BLUEFIELDS COMMUNAL GOVERNMENT’S DIAGNOSTIC FOR A LAND TITLE. AVAILABLE UPON REQUEST.)

There are 23 communal territorial governments in the RAAS, and 19 in the RAAN, the majority of which now have their legal land titles. Although the internal functions and structure of each territorial government varies by its ethnic makeup and geography, there are some general consistencies to ensure fair representation of each territory. Each territory is composed of multiple communities. Each community has its own communal government, elected by community leaders according to the community’s customs. From these communal governments, individuals are elected to serve on the territorial assembly, which is endowed with the responsibility of representing the communities’ desires on any decision or policy the government is planning (See Figure 1).<sup>65</sup>

From that territorial assembly, individuals are nominated to serve on the territorial authority. This is a smaller administrative body of the territory and includes an executive responsible for communicating the needs of the community to the regional council (although the specific relation remains ambiguous and is often a source of tension). The territorial authority is endowed with the responsibility of carrying out necessary administrative functions, facilitating the Regional Council’s and central states consultations with communities, and leading the territories development plans. At least one authority from each community must serve in the government. Before any policy or action affecting the region is approved—and no matter which body first proposes the policy—each level of government must be consulted, starting at the community level. First, assembly representatives must consult their respective communities, abiding by traditional customs in order to acquire the community’s firm approval. Once approved by the communities,

65 Freddy Alfaro Morales (Rama-Kriol Government Project Coordinator) in discussion with author, January 7, 2015.

the proposal moves to the territorial assembly. If approved by the territorial assembly, then the territorial authority can act on the policy and decide how—and if—the Regional Council will become involved with the matter. Through this ‘bottom-up’ decision-making structure, the territorial governments ensure all community members’ democratic participation.<sup>66</sup>

Each territorial government has a technical advisor from the National Commission of Demarcation and Titling (CONADETI), the administrative body tasked with the land titling process. There are five steps to demarcation:

*Diagnosis: The territorial government and a CONADETI adviser together create a technical diagnostic defining the boundaries of the various communities’ territories.*

*Conflict Resolution: Relevant parties and communities residing within the territory discuss and resolve any issues regarding overlapping land claims or disputes over natural resources.*

*Boundary Setting: Once conflicts are resolved, the territorial boundaries are set.*

*Titling: CONADETI submits the territorial claim to the Regional Council and National Assembly, who in turn issue a collective title.*

*Sanearamiento (healing): In this stage, illegal settlers, or those without proper land titles, are asked to either pay rent. If they moved to the territory after a set year, they are asked to vacate the property.<sup>67</sup>*

This last stage is particularly difficult because the terms of land disputes are often quite complex. According to the Rama-Kriol government’s Project Coordinator Freddy Alfaro Morales, indigenous peoples land claims are rooted in concerns of cultural preservation. In contrast, the “foreign” ethnic communities residing on indigenous land (usually *mestizo*) are interested in the territory for monetary goals.<sup>68</sup> Another reason for “foreigners” to reside on indigenous territory is that hundreds were given land titles as gifts from the government for serving in the FSLN revolution.<sup>69</sup>

Yet, even the most progressive and well-structured laws remain dependent on the degree of state support they enjoy. In the case of the Caribbean Coast of Nicaragua, state support remains severely limited politically and consequently, fiscally as well. Autonomy, and fulfilling the obligations of Law 445, remains dependent on political influences, clientelism, and blatant corruption. Nonetheless, the spaces of political participation opened up through the law have resulted in important political and cultural transformations. As has become especially evident with recent events, since Law 445 indigenous communities have become cognizant of their legal rights and are actively, autonomously, mobilizing to defend those rights.

#### ***IV. El Gran Canal de Nicaragua***

Countless colonizers have dreamt of a canal through Nicaragua, from the Spanish conquistadors,

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<sup>66</sup> Ibid.

<sup>67</sup> “Demarcation Process,” Bluefields Rights: Black Creole Indigenous Communal Government of Bluefields, Nicaragua.

<sup>68</sup> Freddy Alfaro Morales, (Rama-Kriol Government Project Coordinator) in discussion with author, January 7, 2015.

<sup>69</sup> Diego Aquilar (Communal leader of Rama Cay) in discussion with author, January 9, 2015.

to the US industrialist, Cornelius Vanderbilt. Recent presidents have played with various contracts, with most recent bid proposed by President Enrique Bolaños in 2006.<sup>70</sup> The current Sandinista president, Daniel Ortega, had criticized talk of a canal in the 1990s on the grounds that it would be an affront to national sovereignty. “I would never risk the great Lake Cocibolca for all the gold in the world,” he has been documented stating.<sup>71</sup>

Of course, Ortega has since changed such convictions. On July 9, 2012 his government revived the nation’s old dream of *el Gran Canal*. On this date, the Sandinista-majority National Assembly passed Law 800, Law on the Legal Regime of the Grand Canal of Nicaragua Interoceanic Establishment of the Authority and the Grand Canal, which introduced the goal of creating a canal that would “serve the international community.”<sup>72</sup> A year later, talk of an interoceanic canal began once more, this time bringing more urgent reasons for concern. Voting along strict party lines, on June 13, 2013 Sandinista lawmakers unilaterally passed Law 840, granting the privately operated Hong Kong Nicaragua Canal Development Group<sup>73</sup> exclusive rights to build, operate and accrue profits from an interoceanic canal for the next 116 years.<sup>74</sup> On July 7, 2014, the approved route was published. The HKND group announced plans to begin construction by year’s end.

Dubbed “the biggest engineering project in human history,” the canal would be wider, deeper, and longer than Panama’s. The most recently published route for the waterway would start at the mouth of the Brito River on the Pacific Coast and flow through the Punta Gorda River into the Caribbean Ocean (See Figure 2). Its route would shave about 500 miles off the shipping route from New York to Los Angeles.<sup>75</sup> According to HKND group, even if the Panama Canal is expanded as planned, about ten percent of the global shipping market will still be unable to pass through, thus leaving a sizable market for a larger Nicaraguan canal.<sup>76</sup> Along with the canal, the HKND group also has plans to build two ports, a Free Trade Zone, multiple holiday resorts, an airport, and new highways and roads.<sup>77</sup>

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70 “Nicaragua plans rival canal route,” *BBC News*, October 4, 2006.

71 Alfonso Serrano, “Titanic Canal Project Divides Nicaragua,” *Al Jazeera America*, April 6, 2015.

72 Nicaraguan National Assembly. “Ley del regimen jurídico de el Gran Canal interoceanico de Nicaragua y de creación de la autoridad de el Gran Canal interoceanico en Nicaragua, Ley No. 800,” Managua, Nicaragua, July 2012, accessed October 12, 2014.

73 Hong Kong Nicaragua Canal Development Group will hereafter be recognized as HKND group.

74 Nicaraguan National Assembly. “Ley Especial para el Desarrollo de Infraestructura y Transporte Nicaraguense Atingente a El Canal, Zonas de Libre Comercio e Infraestructuras Asociadas. Ley No. 840.” Managua, Nicaragua, June 2013, accessed October 12, 2014.

75 Elizabeth Zach, “In Paradisiacal Nicaragua, Contemplating a Canal,” *The New York Times*, April 24, 2015.

76 Michael Campbell (Director of Centro de Derechos Humanos Ciudadanos y Autonómicos) in discussion with author, January 13, 2015.

77 “Canal Projects” HKND Group, <http://hknd-group.com/portal.php?mod=list&catid=36>.



FIGURE 2: THE PLANNED CANAL ROUTE. SOURCE: NEW YORK TIMES. ("IN PARADISIACAL NICARAGUA, CONTEMPLATING A CANAL," THE NEW YORK TIMES, APRIL 24, 2015 <[HTTP://WWW.NYTIMES.COM/2015/04/26/TRAVEL/26NICARAGUA-COVER.HTML?\\_r=0](http://www.nytimes.com/2015/04/26/travel/26NICARAGUA-COVER.HTML?_r=0)>)

The concessions made to HKND group to build the canal granted through Law 840 quickly prompted a flurry of constitutional challenges by civil society groups who claim that—among a wide array of legal breaches—impacted communities were not sufficiently consulted, the majority of which are poor indigenous peoples and ethnic minorities.<sup>78</sup> The Nicaraguan constitution and Autonomy Statute, along with a multitude of international treaties, require the state to consult indigenous communities prior to interfering their territory. In passing Law 840, the state violated these legal bodies. Despite the fact that forty percent of the planned route crosses through internationally protected indigenous territory, neither the state nor HKND group have yet to receive impacted communities' approval of the project or the sale and use of their land.<sup>79</sup>

Instead of seeking the approval from the multiple levels of government bodies as required by Law 445, FSLN legislators chose a quicker avenue. Shortly before the law's passage, the National Assembly sent a letter to the RAAS regional council stating that the region approved of the canal concession. In Bluefields, "the FSLN Regional Council members were called to a meeting and told to approve the document without touching so much as a comma," according to a Nicaraguan academic expert on Caribbean Coast affairs.<sup>80</sup> "The letter was presented in the Regional Council the day after that and approved with no changes because the FSLN and its allies have a majority."<sup>81</sup> The letter, which can reportedly be found in Law 840's appendix, quickly returned to Managua for final approval by the FSLN-dominated National Assembly.<sup>82</sup>

The legal freedoms endowed in Law 840 have posed serious concerns for citizens and citizen groups. Along with giving HKND group exclusive rights to build, operate, and accrue

78 Monica Lopez Baltodano, "Truths about the canal concession all Nicaraguans should know," *Envio*, (Managua: University of Central America, 2014)

79 Allen Claire Duncan (President of Monkey Point) in discussion with author, December 31, 2014,

80 Hegg, Manuel Ortega, Point) in discussion with author, December 31, 2014, as HKND group. *Envio* (Managua: University of Central America, Managua, 2013).

81 Allen Claire Duncan (President of Monkey Point) in discussion with author, December 31, 2014, Nora Newball (Coordinator of the Black Creole Bluefields Indigenous Communal government) in discussion with author, January 9, 2015

Doleen Miller (Advisor to the Black Creole Bluefields Indigenous Communal communal government) in discussion with the author, January 9, 2015.

82 Ibid.

profits from the canal, Law 840 establishes an entirely separate legal system, parallel and distinct from national laws. Furthermore, Law 840 does not specify a route, meaning that HKND group's rights to national territory are boundless.<sup>83</sup> Unlike Law 800, Law 840 "completely assigns all sovereignty rights not to a foreign government, but to a foreign company," leaving the state just one percent of the shares for 116 years. As Richard Feinberg, a professor at the University of California, San Diego's Graduate School of International Relations and Pacific Studies stated, "That any government in the twenty-first century would sign a piece of paper like that is flabbergasting."<sup>84</sup> Lastly, Law 840 provides zero requirements on how HKND must compensate those who will be displaced, nor for any environmental damage. Although the company states they are taking the considerations of fair compensation of property owners and environmental protection seriously, a full impact report and consultation process has yet to be completed.<sup>85</sup>

### A. *Opposition to the Nicaraguan Canal*

Outraged with the canal project's potential environmental impacts and the extensive legal privileges granted to a relatively mysterious foreign, private corporation, civil society groups and activists were quick to bring the law to the national courts. They claim that expropriating land in such a manner, among other legal issues, is a violation to the national constitution. "Nicaraguan citizens will have to face grave challenges in order to rid themselves of colonizers," Mónica López Baltodano, an environmental lawyer and a lead organizer of the opposition movement told local media in December. "We're going to have to initiate a struggle for national liberation, much like Sandino," Baltodano stated, referring to Augusto César Sandino, a national icon and inspiration for the president's political party, the Sandinistas.<sup>86</sup> By February, over 70,000 *campesinos* had engaged in protests against the canal, with a total of 30 protests across the country—including both affected and unaffected Nicaraguans. Furthermore, the main opposition campaign, based in the Pacific Coast, gathered over 60,000 signatures denouncing the canal. Before the inauguration of the canal's construction December 2014, the national courts received 32 appeals claiming law's unconstitutionality.<sup>87</sup>

The Supreme Court quickly dismissed claims against the law's unconstitutionality, leading human rights lawyers to appeal to the Inter-American Commission on Human Rights (IACHR).<sup>88</sup> Prepared on December 1, 2014, the petition asks the commission for a hearing and emergency protecting measures—including a freeze on the construction of HKND group's development until the state attains the Caribbean Coast's indigenous communities' "free, prior, and informed consent," as required by national and international law.<sup>89</sup> The petition, submitted by the same attorney that defended the Awas Tingni community just 13 year earlier, states:

Our application is a situation of gravity and urgency that presents a risk of irreparable damage to the rights to life clear, dignified, and ancestral property, as well as to due

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83 Baltodano, "Truths about the canal concession all Nicaraguans should know," *Envio*.

84 Danielle Renwick, "Nicaragua's Grand Canal," *Council on Foreign Relations*, April 24, 2015

85 "Canal Projects," *HKND Group*, <http://hknd-group.com/portal.php?mod=list&catid=36>.

86 Monica Lopez Baltodano, "Que el mundo debe saber lo que pasa en Nicaragua," Speech, February 19, 2015. Document available upon request.

87 Maria Acosta (Coordinator of Centro de Asistencia Legal a Pueblos Indígenas) in discussion with the author, January 16, 2015.

88 *Ibid.*

89 Anaya, *Indigenous Peoples in International Law*.

process, judicial protection, and political participation of the petitioners, all residents of the State of Nicaragua...neither the state nor HKND has consulted with the above mentioned communities, it has failed to completed or publish studies on its environmental and cultural viability, as well as the financial, economic and commercial practicality...the state has the duty to consult with communities about any development or mega-project and must obtain the prior, free and informed consent, in accordance with their customs and traditions."<sup>90</sup>

During this time, indigenous authorities also sent a formal letter of complaint to the government, addressing their concerns for the lack of information regarding the project and its violation of the Autonomy Statute, Law 445, and international treaties. The state responded in January 2015 with promises to fulfill their obligations of completing thorough consultations, yet made no concrete promises on upcoming actions. The letter states:

Since the year 2007, the Government of Reconciliation and National Unity has sought the welfare of the multi-ethnic and pluri-cultural Nicaraguan people by means of reclaiming the historical rights of the indigenous, Afro-descendent and *mestizo* communities of Nicaragua's Caribbean Coast....the National Commission of Development of el Gran Canal has interest in realizing the consultation process and obtaining the prior, free, and informed consent of the Rama-Kriol territory for the construction of the interoceanic canal of Nicaragua.<sup>91</sup>

Despite "celebrating" the government's titling of the Rama-Kriol territory in 2009, the state, and this letter specifically, fail to provide any explanation for why such consultations had not happened *before* the concessions were sold. In a personal interview about a month after this letter was delivered to the Rama-Kriol government, spokespersons for the canal provided their own explanations on why they began consulting indigenous communities so late: they couldn't begin consulting communities until environmental impact and economic feasibility studies were complete, and the route was determined. So now that the route has been determined, the consultations will begin.<sup>92</sup> Yet, based on available publications and the informants of this research project, to date, the communities have yet to receive a consultation that meets the standards set by national law and the ILO Indigenous and Tribal Peoples Convention No. 169, which President Ortega signed in 2010.<sup>93</sup>

On March 16, 2015, indigenous leaders and human rights activists were granted a slot

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90 Solicitud de medidas cautelares, Dra. María (Coordinadora Centro de Asistencia legal a Pueblos Indigenas) Thomas Antkowiak (Director de la Clinica de DDHH Seattle University School of Law) Nora Newball ( Coordinadora Comunidad Negra Creole Indigena de Bluefields) Steve Eduardo Martin Cudthbert (Miembro Comunidad Miskitu de Tasbapounie) Santiago Emmanuel Thomas (Miembro Pueblo Rama) Rupert Allen Clair Duncan (Presidente Gobierno ComunalMonkey Point), Direct to Dr. Emilio Alvarez Icaza, Executive Secretary of Inter-American Commission on Human rights, December 1, 2014. Letter available upon request.

91 Nicaraguan government, Hernan Estrada, Procurador General de la Republica, Miembro de la Comision Nacional de Desarrollo del Gran Canal Inter-oceanico de Nicaragua, Letter to Hector Thomas Mcree, President of the Rama-Kriol Governemnt, January 27, 2015. Copy available upon request.

92 Danilo Chang (spokesperson for the canal) in discussion with the author, January 5, 2015.

93 ILO Indigenous and Tribal Peoples Convention No. 169, hereafter referred to as ILO 169, is the only legally binding international instrument that specifically addresses Indigenous Peoples' rights. "Nicaragua Ratifies ILO Indigenous and Tribal Peoples Convention No. 169» Cultural Survival <<https://www.culturalsurvival.org/news/nicaragua/nicaragua-ratifies-ilo-indigenous-and-tribal-peoples-convention-no-169>>

to present their human rights concerns at the IACHR in Washington, DC. Speaking against the canal were representatives from the Center for Justice and International Law (CEJIL), the National Council for the Defense of Our Land, Lake and National Sovereignty, The Alexander von Humboldt Centre, Center for Legal Assistance to Indigenous Peoples, and the Citizens Union for Democracy, among others. During the hour and a half meeting, these representatives presented a summary of the state's legal violations, including: their failure to consult communities or publish environmental and social impact reports before selling the concession, the creation of a parallel government separate from the state's laws via Law 840, the state's failure to provide the Black Creole Indigenous Communal Government their land titles, documented attempts to buy communities signatures' to approve an inadequate consultation, and severe police violence against canal protestors. The focus was largely on the most direct violation of the Constitution, that being the state's failure to provide consultation to affected communities. As Rama leader and human rights attorney Becky McCray stated at the meeting, "[the state] ignored our relationship with our territory, and our right to self-determination and participation."<sup>94</sup>

Representatives of the state were given the chance to respond to the above accusations. The state's delegation included: Denis Moncada, Nicaragua's Ambassador to the OAS; Telemachus Talavera, spokesperson for the canal; and Kamilo Lara, an environmental expert defending the canal. Talavera spoke of the state's recent economic achievements, stating that Nicaragua is currently in an important economic boom that they must take full advantage of. The construction of the project will allow the state to do so and improve the living conditions of the population significantly, he claimed. Kamilo Lara stated that the canal would prevent the environmental deterioration caused from the nation's extreme poverty and is expected to directly benefit some of the nation's protected forests, as some of the funds created from the project will be allocated to their protection. Currently such forests have degraded due to the state's lack of capacity to provide such support, according to Lara.<sup>95</sup>

The IACHR commissioners' response to these claims left many confident that the commission would take further action to hold the state accountable for some of the cited human rights abuses. The commissioners stated their "disappointment" that the state didn't explain or respond to many of the activists' accusations. Of particular concern was the state's failure to consult indigenous communities and the legal freedoms granted to HKND group. IACHR commissioner Rose Marie Belle Antoine provided a particularly compelling response:

In development projects, human rights concerns often become questioned, but we know that human rights must always win... I got the sense of what was being said is that there seems to be separate legal regime created that suggests it outs human rights, or precludes certain constitutional procedures....seems the constitution is no longer the highest law of the land....this is not okay.<sup>96</sup>

## **B. *El Gran Canal's Impact on the Caribbean Coast***

The tradeoffs the canal project presents to *costeños*—only some of which were mentioned at the

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94 "Periodo de Sesiones CIDH 154, Audiencias Publicas," March 16, 2015, video clip, accessed March 16, 2015, <https://www.youtube.com/watch?v=oOxVVwrKnBc>.

95 Ibid.

96 Ibid.

IACHR hearing—are complex, to say the least. Despite the abuses stated above, many indigenous peoples remain mixed in their opinions on the project. Three factors have risen of particular concern: the canal’s potential impact on the environment, national and local economies, and the region’s autonomous process.

As the poorest region in the second poorest country in the Americas, the Caribbean Coast’s current economic situation is dire. Despite impressive national economic growth in recent years, poverty and unemployment rates remain significantly high, while infrastructural development remains minimal. About 42.5 percent of Nicaraguans live in poverty, while over 75 percent of *costeños* live in poverty.<sup>97</sup> The national unemployment rate is just 7.2 percent, but underemployment, often a more telling measurement of welfare, is over 46 percent. According to surveys by a local NGO, El Centro de Derechos Humanos, Ciudadanos y Autónomicos, the underemployment rate on the Caribbean Coast is a staggering 90 percent—two times the national level.<sup>98</sup> Meanwhile, about seven out of ten jobs are in the informal sector, making Nicaraguans among the least formally employed populations in Latin America.

The canal is touted as Nicaragua’s key to rising out of these conditions. “It’s the dream of Nicaragua people to eradicate poverty and build a bright future. The Grand Canal will make this dream come true,” HKND’s CEO told a group of Nicaraguan engineering students the day the canal route was approved.<sup>99</sup> Likewise, after approving Law 840 President Ortega declared the canal would yield “greater possibilities to completely eradicate poverty” in Nicaragua:

We know that sovereignty is a tangible element. If there is poverty, if there is extreme poverty, we have economic dependency and lack sovereignty. We have achieved great conquests in the fight for sovereignty, but we have much more to go...It is through the economy, society, production, employment, education, health, and welfare for the Nicaraguan family that we will achieve real sovereignty and independence.<sup>100</sup>

With a projected total price tag of \$40 billion, the planned canal would cost four times Nicaragua’s 2011 gross domestic product (GDP). The president’s economic advisors claim that through the canal’s construction and the capital it will bring to the country, the project would double formal employment in the country, lift 400,000 people out of poverty by 2018, and boost annual economic growth from 4.5 percent in 2013 to 14.6 percent in 2016. An estimated 50,000 jobs will be needed for the canal’s construction. Of those, 25,000 will reportedly go to Nicaraguans, 12,500 to Chinese workers, and 12,500 to different nationalities. Once completed, operation of the canal will require an estimated 200,000 workers.<sup>101</sup> Yet, Nicaraguan economists are skeptical of the scope of the canal’s impact on the national economy. An article in the daily national newspaper *La Prensa* states that the employment generated from the canal will only be

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97 :valntswww.mous Regions of Nicaragua,t Fundación para la Autonomía y el Desarrollo de la Costa Atlántica de Nicaragua, [www.fadcanic.org.ni/?q=node/17](http://www.fadcanic.org.ni/?q=node/17).

98 Miriam Hooker, “Implementación de la Convención Internacional para la Eliminación de la Discriminación Racial (CEDR), Regiones Autónomas de la Costa Caribe de Nicaragua,» Centro de Derechos Humanos, Ciudadanos y Autónomicos, February 2008, [https://www.academia.edu/4224596/COSTA\\_CARIBE\\_DE\\_NICARAGUA](https://www.academia.edu/4224596/COSTA_CARIBE_DE_NICARAGUA)

99 “Chairman Wang Jing Visited Nicaragua,” HKND group, company news, video, July 16, 2014, <http://hknd-group.com/portal.php?mod=view&aid=85>.

100 Carlos Espinoza Flores, “Presidente Daniel y el señor Wang Jing firman convenio marco para la construcción del Gran Canal Interoceánico,» *Canal 19*, June 14, 2013, <http://www.el19digital.com/articulos/ver/titulo:10466-presidente-daniel-y-el-senor-wang-jing-firman-convenio-marco-para-la-construccion-del-gran-canal-interoceanico>

101 Lucydalia Baca, “Una gota en el mar del desempleo,” *La Prensa*, January 9, 2015, accessed January 9, 2015, <http://www.laprensa.com.ni/2015/01/09/economia/1694544-una-gota-en-el-mar-del-desempleo>.

“*una gota en el mar del desempleo*” (a drop in a the ocean of unemployment).<sup>102</sup> Based on the statistics HKND group and the government have provided, national economists unassociated with the state estimate that the jobs created by the canal over the next six years will only cover seven percent of the national demand for employment. Neither the government nor HKND group have yet to respond to these criticisms.<sup>103</sup>

Beyond alleviating poverty by creating employment opportunities, canal promoters also advertise the project’s broader impact on the nation’s infrastructural development—of particular importance in the autonomous regions, where infrastructural development is in a dire state. For example, despite composing 46 percent of Nicaragua’s national territory, the Caribbean Coast contains just eight percent of the nation’s roads.<sup>104</sup> Thus, in order to cross the country one must travel through the Escondido River, usually a two-hour trip in a *lancha*, or motorboat, because there is not a completed road connecting the two coasts. One must also take a *lancha* to visit each of the Rama-Kriol governments’ communities. The region’s poor infrastructure not only makes it expensive to hold routine territorial assembly meetings, at times poor weather conditions render such meetings entirely impossible. For example, at certain times of the year, the ocean is too rocky to travel via *lancha*, thus stalling a territorial meeting. This is precisely what occurred for most of January 2015, when such territorial assemblies were especially needed to discuss the canal and IACHR petition.

Lastly, and perhaps most obviously, Nicaraguan officials see the canal as an opportunity to mimic Panama’s post-canal economic development. After constructing the Panamanian Canal, some international economists and policymakers saw the southernmost country in Central America as the “Singapore of Latin America” for its fast growth.<sup>105</sup> According to *The Economist*, the Panama Canal produces revenues of \$2 billion with about around \$760 million of that going to Panama’s treasury.<sup>106</sup> Due to the surplus demand for transportation through the Americas and the Panamanian canal’s limited capacity to meet those demands, HKND group believes that building a canal in Nicaragua will help the country mimic such growth.

In many ways, herein lies a long held debate on the goals, meanings, and tradeoffs of economic development. Given the conditions described above, economic growth seems an unquestionable priority and necessity for the Caribbean Coast. Poverty subjects the poor to human rights abuses that in many ways equate, if not override, the human rights abuses cited in complaints against the canal. It would seem insensitive to ask indigenous peoples, who lack funds or resources to educate or feed their children, to engage in political action against a canal that violates abstract, political struggles for autonomy. And yet, many indigenous people in such conditions *are* in fact engaging in opposition movements for the sake of cultural survival.

Meanwhile, others argue that debates surrounding the canal by no means need to prompt pro-culture/anti-development vs. anti-culture/pro-development divide. That is, the economic gains accrued through the project’s construction and productivity can be enjoyed, *and* communities can protect their culture. According to Danilo Chang, one of the delegated spokespersons for the canal in Bluefields, indigenous peoples are not against the canal project,

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102 Ibid.

103 Ibid.

104 Kate Kilpatrick, “Canal ‘will destroy we’”, *Al Jazeera America*, April 9, 2015, accessed April 10, 2015, <http://projects.aljazeera.com/2015/04/nicaragua-canal/displaced.html>.

105 Renwick, “Nicaragua’s Grand Canal,” *Council on Foreign Relations*.

106 “A man, a plan—and little else,” *The Economist*, October 5, 2013, accessed August 25, 2014, <http://www.economist.com/news/americas/21587218-yet-again-nicaraguans-are-letting-their-longing-trans-oceanic-canal-get-better>.

they are merely against the expropriation of their land.

They don't say they don't agree with the canal, they just say that the need to be consulted, which means how they will respect their territories. There are other territories that are not indigenous that have their other differences about the land, but the indigenous communities agree with the project, and just are saying that they need to be consulted.<sup>107</sup>

Now that the British consulting firm Environmental Resources Management (ERM), commissioned by HKND Group, has completed their preliminary environmental studies and identified the most logical canal location, the consultation is expected to begin, stated Chang. Yet, this interview was conducted in January. To date, the government has yet to consult impacted communities.

The “environmental disaster” expected from the canal poses another high priority concern for Nicaragua’s civil society organizers. As early as February 2014, Jorge A. Huete-Pérez, president of the Nicaraguan Academy of Sciences and Axel Meyer and professor of biology at the University of Konstanz, wrote in the international scientific journal *Nature*: “The excavation of hundreds of kilometers from coast to coast, traversing Lake Nicaragua, the largest drinking-water reservoir in the region, will destroy around 400,000 hectares of rainforests and wetlands.”<sup>108</sup> Huete-Pérez, Meyer, and other members of the international scientific community have asked that the government solicit its own environmental impact assessment, rather than rely on the study commissioned by HKND group.

Environmental concerns surrounding the canal project are vast. The planned route would cross protected areas of biodiversity-rich rainforests, wetlands, and reserves. These include the Cerro Silva Natural Reserve, the Río San Juan Biosphere Reserve, the Indo Maíz Biological Reserve, the Solentiname Archipelago, and the Mesoamerican Biological Corridor.<sup>109</sup> There is also serious concern over potential collateral damage from damming rivers, flooding the inland community of Atlanta to create an artificial lake. Lastly, “the biggest, and most dangerous of all these threats, is that of the Lake Nicaragua, the biggest fresh water lake in Central America.”<sup>110</sup> Over 200,000 people are dependent on the lake for drinking water and a large fishing community resides around the lake. In addition, the lake has grown to become the center of national tourism, with the popular colonial town of Granada on one end, and the tropical Island of Ometepe at the lake’s center. With few indicators concerning how the government will replace this vital resource, members of those communities that have grown dependent on the lake—as well as the tourism it’s attracted—report fear and bitterness over their now ambiguous future.<sup>111</sup>

HKND group is reportedly aware of the environmental dangers of the planned canal. Since July, HKND group representatives and analysts from their environmental and social impact advisor, Environmental Resources Management (ERM), have conducted several impact

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107 Danilo Chang (spokesperson for the canal) in discussion with the author, January 5, 2015.

108 Axel Meyers and Jorge G. Huesta Perez, *l.php?mod=view&aid=85up*, company news, video Nicaraguaand-tribal*Nature*, February 19, 2014, <http://www.nature.com/news/conservation-nicaragua-canal-could-wreak-environmental-ruin-1.14721>.

109 Kate Kilpatrick, “Bracing for a Sea of Change,” *Al Jazeera America*, April 8, 2015, <http://projects.aljazeera.com/2015/04/nicaragua-canal/environment.html>.

110 “Periodo de Sesiones CIDH 154, Audiencias Publicas,” March 16, 2015, video clip, accessed March 16, 2015. <<https://www.youtube.com/watch?v=oOxVVwrKnBc>>

111 Galo, “Nicaragua y el Canal,” *La Prensa*.

studies and claim to publish their results before construction begins. The planned starting date for construction was December 2014, and the studies have yet to be published. Yet, as members of the international scientific community made clear during an event hosted by Nicaraguan Academy of Sciences in Managua November 2014, under Law 840, HKND group is not required to make any environmental impact studies public. Thus, their promises of such have done little to quell these worries. Barry Chernoff, Schumann professor of environmental studies at Wesleyan University in the United States, stated at the meeting: “The canal would be a disaster for biological diversity and ecology. It could undo millions of years of evolution in Central American freshwater and marine [animals].”<sup>112</sup>

Additionally, countering the international community’s claims, some argue that the canal would in fact be the most important solution to the region’s degrading environment. This argument claims that deforestation and pollution are worse *due to* poverty, and that, therefore, the most important factor for environmental protection is, in fact, economic development. This assumption that poverty is a leading cause of environmental degradation, first launched in the late 1980s at the World Commission on Environment and Development, has since been widely cited by proponents of various development projects, especially those that pose potential danger to the environment. “I think the country’s poverty is a bigger problem than the environmental concerns,” stated former Nicaraguan ambassador to the United States, Arturo Cruz, in an interview with the Washington Post. “If we don’t achieve a more prosperous country in the next five to 10 years — with or without the canal — we will see severe damage to the environment.”<sup>113</sup> Yet, more recent studies have left this causal link defunct. Recent studies on this hypothesis in Nicaragua instead reveal that in relative terms, wealthier groups cause *greater* environmental degradation than their poorer counterparts, and that, furthermore, “the often strategic reference to poverty as the major cause of environmental degradation made by nonpoor and poor farmers may lead to negative environmental impacts.”<sup>114</sup>

This paper, alongside several academics in the region, assert that the last and most dangerous consequence of Law 840 is its impact on regional autonomy and Nicaragua’s fragile and continuous multiethnic nation-building process.<sup>115</sup> The canal concessions mark another chapter in indigenous people’s long struggle for autonomy on the Caribbean Coast, and for many, Law 840 has already become a “critical juncture” for determining the future of autonomy. If activists take advantage of the opportunity window the canal controversy provides, indigenous rights may be further strengthened, as was the case with *Awas Tingni v. Nicaragua*. Yet on the other hand, if Law 840 remains in its current state and the canal is constructed without consulting affected communities, the Caribbean Coast’s autonomous process may be severely threatened for years to come.

Nicaraguan sociologist and expert on Caribbean Coast affairs Manuel Ortega Hegg has been especially vocal on the relation between *el Gran Canal* and the failed legislative process that accompanied its approval.<sup>116</sup> In an article published shortly after Law 840’s passage in 2013, Hegg

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112 Meyers and Huesta Perez, “Conservation: Nicaragua Canal could wreak environmental ruin,” *Nature*.

113 Joshua Partlow, “Can a Chinese billionaire build a canal across Nicaragua?” *NPR*, February 4, 2015, accessed February 10, 2015, [http://www.washingtonpost.com/world/the\\_americas/can-a-chinese-billionaire-build-a-canal-across-nicaragua/2015/02/03/e9cf3482-9aa5-11e4-86a3-1b56f64925f6\\_story.html](http://www.washingtonpost.com/world/the_americas/can-a-chinese-billionaire-build-a-canal-across-nicaragua/2015/02/03/e9cf3482-9aa5-11e4-86a3-1b56f64925f6_story.html).

114 Helle Munk Ravnborg, “Poverty and Environmental Degradation in the Nicaraguan Hillside,” *World Development* 31 (2003): 1933-1946.

115 Referring to Manuel Ortega Hegg (see footnote below) and Francisco Sequeira (see footnote 119).

116 Hegg’s was the former Executive Secretary of the South Caribbean Autonomous Region, appointed by the FSLN after the creation of the Autonomy Statue and was responsible with turning the government over to the region’s first elected autonomous government in May 1991. Hegg is vice president of Nicaragua’s Academy of Sciences.

explains the long-term consequences the canal concessions will have on autonomy, stating:

Ignoring the foundations on which the State has been building the Nicaraguan nation in consensus since the eighties, the risk becomes enormous...the Autonomy Statute was one of the most consulted laws in the history of this country, similar to the 1987 Constitution, which was historic. It was consulted neighborhood by neighborhood, community by community, office by office and sector by sector. Even those who had taken up arms were consulted. Turning one's back on a law like that, which affects fundamental aspects of the autonomy agreement, such as the dominion over the territory of the communities, is very, very serious.<sup>117</sup>

The most direct consequence of Law 840 on the autonomous process is its violations of national law. The state has yet to consult communities, receive the Territorial Assembly's approval, or provide the estimated 20,000 citizens to be displaced any substantial information on reparations or resettlement plans. By expropriating indigenous land without prior consultation, Law 840 violates international and national agreements, including Articles 5, 89, and 180 of Nicaragua's 1987 Constitution, as well as the Autonomy Statute and Law 445. These violations, along with the Supreme Court's failure in recognizing them as such, undermine autonomy's legitimacy and more generally, "weakens the rule of law in Nicaragua at the detriment of all Nicaraguans,"<sup>118</sup> as the IACHR hearing concluded.

Another primary issue is the challenge the canal poses for the central state's long struggle to win the trust of *costeños*. Dating back to the abuses from Zelaya's "reincorporation" of the Coast, *costeños* have long been distrustful of the backhand dealings, corruption, and profit-based motives of the "Spaniards," as *costeños* still call Pacific Coast *mestizos*. The government's failure to consult communities, and the growing presence of foreigners accompanied by the national military along the canal route, has only deepened such distrust. "Canal people are liars you know," stated a woman from Bangkukuk Taik, one of the Rama communities that will be displaced by the project. "Canal people only eating people's brains." Another woman added: "We Indian no want a canal... When Daniel [Ortega, Nicaragua's president] take we and throw we out, where we going? ... Daniel take the money and pocket it and run. And then we stay and suffer."<sup>119</sup> Without trust in government institutions and the political process, citizens are less likely to actively participate in community and regional decision making, thus rendering the state's democracy and the goals of autonomy—self-determination and self-governance—obsolete.

Already, the majority of *costeños* lack trust in their local, regional, and national governments, with the persistence of a corrupt legal culture is illustrated on nearly a daily basis.<sup>120</sup> The nationally circulated newspaper, *La Prensa* regularly cites Daniel Ortega as "*el presidente inconstitucional*"; police regularly engage with bribery and discrimination; and for as long as most indigenous leaders can remember, the state has permitted (at times passively, other times actively) illegal land grabs from corporations and private individuals.<sup>121</sup> As activists against

117 Hegg, "Will the canal help build the nation or only further fracture it?" *Envio*.

118 "Periodo de Sesiones CIDH 154, Audiencias Publicas," March 16, 2015, video clip, accessed March 16, 2015. <<https://www.youtube.com/watch?v=oOxVVwrKnBc>>

119 Kilpatrick, "Canal 'Will Destroy We,'" *Al Jazeera America*.

120 Sequeira, Francisco, "Juventud y régimen autonómico: Conocimientos, percepciones y formas de participación de las juventudes en la costa caribe de Nicaragua," Editorial Académica Española (2012).

121 "Ortega rechaza sanciones contra funcionarios venezolanos," *La Prensa*, March 10, 2015, accessed April 25, 2015, <http://www.laprensa.com.ni/2015/03/10/politica/1796451-ortega-rechaza-sanciones-de-ee-uu-contra->

the canal make clear, Law 840's questionable constitutionality and speedy passage through the Sandinista-stacked Supreme Court is a horrific example of the state's culture of illegality, but it is by no means exceptional.<sup>122</sup> For example, Nora Newball, Coordinator of the Black Creole Bluefields Indigenous Communal government, accredited *costeño* opposition to the canal as indicative of the region's more general opposition to the country's culture of impunity and exploitation.

We are not criticizing any certain government, we are talking about the state of Nicaragua. Exploitation of the Coast's laws has continued since before Aleman's time, with the Sandinistas there has been more resistance because people are more aware.<sup>123</sup>

Yet, the canal also poses a potential turning point for Nicaragua to move towards a more democratic and inclusive development path. Since the passage of Law 445, indigenous leaders on the Coast have repeatedly petitioned against illegal land grabs and the government's failure to provide land titles. The majority of these petitions have had little success in the national courts. Yet, given the international importance of an interoceanic canal, international media and international activists have become involved with local's struggles for land rights. Due to the canal's national importance, it has created a degree of solidarity between Pacific Coast *campesinos* and *costeños*, both of which are having their lands expropriated without consent. Thus, as was the case with the concessions that prompted the Awas Tingni court case, plans for *el Gran Canal* have opened up an opportunity window for activists to strengthen indigenous rights.

On the other hand, if the international courts choose instead *not* to take action in holding the Nicaraguan government accountable for their legal violations or if activists opposing the canal demobilize in the coming years, this window of opportunity may transform into further leverage for the state to expand their culture of impunity regarding indigenous people's autonomy and land rights.

Lastly, the canal also provides an important lesson for the Coast: autonomy will never be fulfilled as long as autonomous rights are dependent on the state. As will be discussed more in depth in a later section, such a change in perspective is vital for progressing autonomous rights movements in Nicaragua and elsewhere.

## V. A Window of Opportunity? Political Participation and Decentralization

Law 445's central objective is to strengthen the autonomous process on the Caribbean Coast by returning to *costeños* the use and ownership rights of their ancestral territories. More broadly speaking, the law seeks to return to these communities the right to participate in decision-making regarding community and regional development. With this democratic aim, Law 445 decentralized decision-making powers.<sup>124</sup> This decentralization has increased political participation in multiple forms on the Caribbean Coast, representing a significant advance for the indigenous movement's claims for autonomy and self-determination.

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funcionarios-venezolanos. Diego Aquilar (Communal leader of Rama Cay) in discussion with author, January 9, 2015. Allen Claire Duncan (President of Monkey Point) in discussion with author, December 31, 2014,

122 Baltodano, "Truths about the canal concession all Nicaraguans should know," *Envio*.

123 Nora Newball (Coordinator of the Black Creole Bluefields Indigenous Communal government) in discussion with author, January 9, 2015

124 Nicaraguan National Assembly. *Ley No. 445*.

Over the years decentralization has grown to be a term like “sustainable development”—popular, yet rendered useless by a vague definition that shifts by speaker.<sup>125</sup> This paper seeks to avoid such pitfalls. Law 445 outlined a process of *democratic decentralization*, which includes redistributing political, administrative, and/or fiscal powers to lower levels of government; and opening “spaces for participation from below.” Decentralization deepens democracy by “bringing the state closer to the people,” which increases access to participate in local politics and strengthens social networks. Democratic decentralization’s influence on citizen participation is seen as critical for autonomy, democracy, and regional development. Beyond optimizing policy effectiveness, democratic decentralization is an important tool for empowerment and self-determination, as citizens have a greater sense of ownership when they participate in public projects.<sup>126</sup> Additionally, through Law 445, participation is also valued as a *right*. As such, participation is seen as both a means to an ends (increasing policy effectiveness) and an ends in and of itself (as a basic human right).<sup>127</sup>

These consequences of decentralizing decision-making power are present in today’s *costeño* society and provide a marked difference between opposition to the state’s concessions in *Awás Tingni v. Nicaragua* and the opposition movements surrounding *el Gran Canal*. Since passing Law 445, indigenous leaders and communities have become more cognizant of their rights; active in ensuring their protection; and engaged in local, regional, and national affairs. Below are some of the main spaces and opportunities for participation opened up by Law 445’s decentralization of decision-making regarding resource management and development planning. Through analyses of each, this section illustrates that despite Law 445’s structural limitations and the lack of political will supporting any fundamental change in the distribution of rights and resources, Law 445 has been an important milestone for indigenous rights and has offered *costeños* new important windows of opportunity for advancing autonomy. It is through this growth in participation that we see how the autonomy regime has significantly advanced indigenous peoples’ political agenda on the Caribbean Coast.

### A. *Administering Autonomy*

Following *Awás Tingni v. Nicaragua* and the court’s recommendation for new legislation protecting land rights, the Nicaraguan National Assembly and Regional Autonomous Councils called upon *costeño* communities to participate in the structuring of Law 445. Each community formed a directive board that took part in regional and national conferences that discussed what the terms of Law 445 should look like and explored which communities would make claims for communal territory.<sup>128</sup> In doing so, the consultation process to design Law 445 transformed indigenous community members into engaged political actors and created a new space for their perspectives on autonomy to be heard. The directive boards created for the consultation process remained afterwards, continuing to serve as representatives for communities in their respective territorial assemblies.

For some of the current authorities on the Caribbean Coast, the consultation process

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125 Larson and Soto, “Decentralization of Natural Resource Governance Regimes.”

126 Rebecca Abers, “Overcoming the Dilemmas of Participatory Democracy: The Participatory Budget Policy in Porto Alegre, Brazil,” *Universiade de Brasília*, March 2000.

127 John Gaventa and Camilo Valderrama, “Participation, Citizenship and Local Governance,” Note prepared for workshop on ‘Strengthening participation in local governance,’ Institute of Development Studies, 1999.

128 Nora Newball (Coordinator of the Black Creole Bluefields Indigenous Communal government) in discussion with author, January 9, 2015

also marked the start of their involvement with indigenous rights and government affairs. For example, previous to these conferences, Rupert Allen Clair Duncan, now the second vocal for the Rama-Kriol government, was planning on returning to Costa Rica before the formation of Law 445. Duncan had migrated across the border to find employment during the Contra War. While returning home to Monkey Point to visit his family, he became engaged with community affairs and an advocate—or as he says, a “hero”—for indigenous rights. The community was facing the dual terror of *mestizos*’ unlawful invasion of their territory, as well as police brutality. As he tells the story, *mestizos* were regularly stealing land plots, invading homes, and threatening community members with guns. The Rama-Kriol community lacked personal weapons or any form of government protection against such invasions. Additionally, the police—employees of the central state rather than the regional governments—were also invading the community and stealing from community members. In a personal interview, Duncan described the event as such:

The community was scared so they denounce [the police] to no one. But I said no, this is wrong and not supposed to happen. They try to intimidate me, but I say you have to stop scaring the people them. Your job is to look for drugs on the ocean, not to take everyone here to jail. They say they can put me in jail, and I said sure, try, but you can’t put me there forever. And I sure sure that when I get to Bluefields I going to denounce this. I will go to the human rights and the government and the media. They say, go where you want, we the government, we can do what we want and no one need to tell us nothing. I say good, but I going to be here. Over time you come and I going to make sure the community don’t keep running from you.<sup>129</sup>

After making the invasions known to the local media, regional authorities, and human rights lawyers, the police eventually stopped such invasions. However, Duncan recognizes that the threats persist, as *mestizos* continue to migrate to the Caribbean Coast and claim what they view as unused indigenous land and fail to recognize communities’ cultural rather than productive value of their territory. So although Duncan had planned on returning to Costa Rica for work, when the directive boards were requested for the creation of Law 445 he chose to stay and take on a new leadership position in the community’s council. As such, according to Duncan, with Law 445 there developed a new role for him in his community.<sup>130</sup> Today, Duncan remains one of the most active authorities against the canal project, as well as one of the most commonly cited Caribbean Coast indigenous activists in mainstream media’s coverage of the canal project.

### B. *Demarcation and Community Participation*

The first stage of the demarcation process requires that communities present a diagnostic that defines the boundaries of their territory and provides sufficient evidence to defend their ancestral territorial claims. In order to create this diagnostic, indigenous peoples had to “get organized,” stated an advisor for the Black Creole Indigenous Communal Government of Bluefields. “We had to learn our history and organize towards our rights.”<sup>131</sup> The interviews, workshops, historical investigations, and technical land surveys needed for a successful diagnostic required

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129 Allen Claire Duncan (President of Monkey Point) in discussion with author, December 31, 2014,

130 Ibid.

131 Doleen Miller (Advisor to the Black Creole Bluefields Indigenous Communal government) in discussion with the author, January 9, 2015.

community members' engagement and also prompted new connections with individuals and the community's history. For many, the diagnostic process was the first time that community leaders had the opportunity to learn about the Coast's history of laws that, dating back to the colonial era, had protected their autonomy, as well as many different attempts by state authorities and foreigners—including both foreign governments and private corporations—to abuse those rights and exploit their resource rich region.

Specifically, members in the Black Creole Indigenous Communal Government discovered that Law 445 and Law 28 were based on the 1860 Treaty of Managua. As discussed earlier, the newly sovereign Nicaraguan state and Britain signed the treaty in 1860 in order to ensure that the Mosquito Kingdom retained the relative autonomy it held while a British protectorate. About 130 years later, the Treaty's language reappeared in Law 28. Many indigenous peoples seem to have understood that the central state was responsible for their exploitation. However, for many, it was not until the diagnostic process of Law 445 that they realized the extent of their ancestral land claims and *legal* rights to autonomy:

That Law 445 and Law 28 were based on treaties from 1860 was a surprise to us, we don't know our history because it was hidden from school time and controlled by political sectors... We were surprised to find that there were so many parts of the agreement that we were lacking. The demarcation law put that history into perspective with so much more force than the autonomy law because the politicians had kidnapped the autonomy process ... Law 445 gave us an idea of how to figure out what had been going on the Caribbean Coast during all this time and to ask, how come we haven't had the opportunity for real development?<sup>132</sup>

Multiple other indigenous leaders from different communities shared similar sentiments. Although these history lessons were not explicit objectives in Law 445, the process of "re-learning" one's history and legal rights prompted by the diagnostic process has been key for galvanizing leaders and mobilizing communities towards protecting their legal rights.

### C. *Spaces for Participation*

Although the autonomous region's decentralized governance system was first introduced in the Autonomy Statute in 1987, Law 445 provides the specific organizational features of how autonomy functions on the Coast. Specifically, it details the creation of decentralized communal and territorial governance systems with the aim of including all communities in decisions regarding the region, including those culturally and geographically isolated from the urban centers where government decision are made.<sup>133</sup>

As discussed earlier, each territory is composed by multiple communal governments elected by community leaders according to each one's customs; a territorial assembly, composed of leaders from each of the communities; and a territorial authority, a smaller body, made up of leaders elected from the communal governments. The territorial authority serves as the functioning government, endowed with the responsibility of carrying out necessary administrative

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<sup>132</sup> Doleen Miller (Advisor to the Black Creole Bluefields Indigenous Communal government) in discussion with the author, January 9, 2015.

<sup>133</sup> Ervin Hodgson (Indigenous Rights Professor University of the Autonomous Regions of the Caribbean Coast of Nicaragua) interview with author January 10, 2015.

functions, facilitating the Regional Council's and central state's consultations with communities, and creating development plans for the territory. All decisions impacting the communities must first pass through the territorial assembly.<sup>134</sup>

Through such a "bottom-up" structure of governance, community members' rights are articulated and defended at higher government levels. For example, once it became known that the central government neglected constitutional requirements by failing to consult communities before approving the land concessions for the canal project, the territorial authority promptly contacted communities and their communal governments about these violations. Once communities were informed, indigenous leaders held a territorial assembly to discuss the matter further, create a plan of action, and write up a petition against the constitutionality of Law 840 to circulate throughout the region.<sup>135</sup>

Through these various functions and requirements of Law 445, indigenous peoples on the Caribbean Coast are protecting their rights more actively than ever before, as perhaps best illustrated in comparing narratives of indigenous rights activism during *Awas Tingni v. Nicaragua*, (which consistently report very low levels of participation) with narratives of indigenous communities' political activity today (those narratives being, although still in development, much more illustrative of an educated, dedicated, and active indigenous population). This greater consciousness and political participation has had a significant impact on the trajectory and nature of the ongoing international case against the state. Comparing the current situation to the *Awas Tingni v. Nicaragua* court case, Acosta stated:

It's a lot easier now to fight this case because there is much more consciousness of what indigenous land rights are than before. People know about Law 445...when there are more people that are conscious, it is easier. I don't have to tell them. They are empowered, they know they have a right. But 20 years ago, we had to tell the people they had a right. They understood the state's land grabs were politically wrong, but not legally wrong. Now they see that it is both, you don't have to convince your own client. They *want* to fight, but you have to continue educating them on their rights.<sup>136</sup>

During *Awas Tingni v. Nicaragua*, Acosta spent the majority of her time on the Caribbean Coast, residing in the southern capital, Bluefields, with her family and regularly visiting the community of Awas Tingni in the northern region. Today, however, she works on the Pacific Coast, serving as a legal representative of the communities from afar. She works at her clothing store, convincing local authorities of the importance of defending their territory against illegal land grabs via the internet and phone calls, rather than "on the ground" as was the case before. Acosta shared that while her move was in part prompted by her husband's assassination during a legal land dispute case she was defending in 2002,<sup>137</sup> she is grateful that the leaders on the Caribbean Coast are now willing to take the reins on the land disputes. Such partnerships and

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<sup>134</sup> Hector Thomas (Rama-Kriol Government President) in discussion with author, January 13, 2015. Allen Claire Duncan (President of Monkey Point) in discussion with author, December 31, 2014. Freddy Alfaro Morales, (Rama-Kriol Government Project Coordinator) in discussion with author, January 7, 2015.

<sup>135</sup> Ibid.

<sup>136</sup> Maria Acosta (Coordinator of Centro de Asistencia Legal a Pueblos Indígenas) in discussion with the author, January 16, 2015.

<sup>137</sup> Brittany West, Whitney-Ann Mulhauser, and Jason Cowin, "Selected Coverage of the 149th Session of the Inter-American Commission on Human Rights," *Human Rights Brief* 21 (2014): 37-39.

grassroots activism, as Acosta's story shows, are key for overcoming an oppressive state.<sup>138</sup>

#### D. "Making Incidence"<sup>139</sup>

Once community leaders were educated on their rights, they were quick to disseminate the new information to educate their communities. This has been accomplished through both governmental and non-governmental efforts. For example, in 2008 a group of students in Bluefields worked with the Black Creole Indigenous Communal Government to found the Bluefields Sound System. This radio station has been key for the community to disseminate information about their rights to autonomy and, more recently, about the canal project. The station encourages its audience to participate in town meetings and rallies concerning the project's violations of their rights as indigenous peoples and Nicaraguan citizens.<sup>140</sup>

It has been said that the degree of resistance a social movement faces is a testament of its strength. If so, the Bluefields Sound System is a strong force for indigenous movements in Bluefields. Since 2010, the station has faced multiple forms of persecution from state officials. Regional council authorities and police have repeatedly blocked the station's owners from entering the private property in which the station resides and forced the station on multiple occasions to change locations. "We find the need to educate our people for their rights. We made a new station about this, but then they closed our gates. They said the new director wants us to pay, so we asked how much and they wouldn't say," said Ms. Nora Newball. She continues:

It was the only program in Creole carrying out an education program that was teaching our people that we have rights. But the regional government got orders from the central government to take us out. So we protested in front of the radio, and the police came, and we gave them a law to read. We told them before they touch us, read our laws.<sup>141</sup>

Although the radio station continues to face persecution and has moved to multiple locations over the years, their programs continue. Mirroring sentiments made by authorities from other communal governments in the region as well, "making incidence" and demonstrating for their rights to educate their people, is part of being a citizen of Nicaragua.<sup>142</sup> "We have we rights," stated a communal leader of Rama Cay. "We make incidence, manifestation, we defend them rights, we defend we land."<sup>143</sup>

Law 445's influence on the Caribbean Coast has been far-reaching. The evidence above

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138 Maria Acosta (Coordinator of Centro de Asistencia Legal a Pueblos Indígenas) in discussion with the author, January 16, 2015.

139 Incidence is Creole for making an impact. It is a mix of the Spanish word for *incidencia*, which means impact, and the English word incidence.

140 Nora Newball (Coordinator of the Black Creole Bluefields Indigenous Communal government) in discussion with author, January 9, 2015

Doleen Miller (Advisor to the Black Creole Bluefields Indigenous Communal communal government) in discussion with the author, January 9, 2015.

141 Ibid.

142 Allen Claire Duncan (President of Monkey Point) in discussion with author, December 31, 2014, Doleen Miller (Advisor to the Black Creole Bluefields Indigenous Communal communal government) in discussion with the author, January 9, 2015.

Nora Newball (Coordinator of the Black Creole Bluefields Indigenous Communal government) in discussion with author, January 9, 2015

143 Diego Aquilar (Communal leader of Rama Cay) in discussion with author, January 9, 2015.

indicates that by decentralizing decision-making powers on the Coast, Law 445 has led to greater political participation. These new spaces for political participation have, furthermore, created new windows of opportunity for transformative social and political change. Yet, what is most important for fulfilling the promises of autonomy is that such activism remains autonomous of the central state. As the more pessimistic literature on decentralization and discussion of Caribbean Coast politics in the following section illustrate, conditions of inequality, lack of state capacity, and lack of political will, among other factors, will continue to limit autonomy's real impact on *costeño* lives as long as the process remains dependent on the central state.

## VI. Institutionalized Autonomy and Its Discontents: Clientelism and Co-optation

Clientelism here is defined as a relationship of exchange between unequals: a patron (the state) and a client (the public).<sup>144</sup> In a clientelistic relationship, the state gifts citizens “continuing access to employment, goods, and services”<sup>145</sup> in return for loyalty, support and usually a vote (or at least the promise to not vote for the opposition).<sup>146</sup> In the case of Nicaragua's indigenous communities' relationship with the central state, patronage is evident in the distribution of state jobs, the state's emphasis on selling the canal as the secret to alleviating Nicaragua's poverty and unemployment, and reports of bribing community members to sign off on consultation documents. As declared at a recent hearing in front of the Inter-American Commission on Human Rights, indigenous authorities and a multitude of human rights groups have accused the state not only of violating indigenous rights to a consultation before continuing with the canal project, but also for bribing community members to sign documents claiming that such consultations already occurred.<sup>147</sup> These clientelist exchanges are more than a mere political tool for attaining the support of the masses; they are blatant violations of the law.

Indigenous rights activists are especially vulnerable to clientelist offerings if they are in a condition, as common to many on the Caribbean Coast, in which daily survival must be prioritized over political activism or fights for cultural survival. In a family that is struggling to provide sufficient nutrients to their family, what might be more tempting: to support the state's decision to bring in foreign investors and *potentially* create new jobs, or engaging in protests to make your opposition to the government—one of the largest job providers in the region—visible for all? For many, the answer is simple: stay quiet.<sup>148</sup> In this way, clientelist offerings, such as jobs to state supporters, can serve as a significant demobilizer of what *may* have otherwise been politically active community members. Such demobilization is concerning for a multitude of reasons, including the weakening of pressure on the central state to abide by Law 445.

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144 Christopher Clapham, *Private Patronage and Public Power: Political Clientelism in the Modern State*, (London: Pinter, 1982), 4.

145 Herbert Kitschelt and Steven I. Wilkinson, *Patrons, Clients and Policies: Patterns of Democratic Accountability and Political Competition*, (Cambridge: Cambridge University Press, 2007).

Hilgers, Tina, ed. *Clientelism in Everyday Latin American Politics*. (Basingstoke: Palgrave Macmillan, 2012), 166.

146 Ibid.

147 “Periodo de Sesiones CIDH 154, Audiencias Publicas,” March 16, 2015, video clip, accessed March 16, 2015. <<https://www.youtube.com/watch?v=oOxVVwrKnBc>>

148 Steven Levitsky “From populism to clientelism? The transformation of labor-based party linkages in Latin America,” from *Patrons, Clients and Policies: Patterns of Democratic Accountability and Political Competition*, (Cambridge: Cambridge University Press, 2007).

Examples of clientelism on the Caribbean Coast are particularly evident when addressing the issue of unemployment. As discussed earlier, the unemployment and underemployment situation is in a dire state on the Caribbean Coast. Even indigenous leaders opposing the canal addressed the difficult situation faced by *costeños* seeking jobs, including those who already have state jobs. It is difficult for those with state jobs to oppose *el Gran Canal*, Ms. Nora explained, because opposition to the government could threaten their employment. “It is hard to us,” she stated, in reference to the letter signed by the Regional Council supporting Law, serving as a prime example of how some members of the Creole community who currently work in the government at times have gone against the interests of their community, choosing to support their political party instead. “Sometimes we would want to accuse them, but then it’s not easy either. It is hard because they have their jobs, we know they need to keep them, because in Nicaragua a job is very difficult to get. The situation here of poverty is extreme, especially for the ethnic minorities.”

The dangers that decentralization pose to clientelist linkages may also negatively impact the state’s political will to support reforms towards autonomy. This phenomenon is particularly well documented in Latin America, where clientelism has long been seen as a more effective strategy for electoral success in poor communities. Empirical research has found that “in the face of precarious income flows and unreliable access to state legal and social protection, the urban poor frequently discount the future in favor of short-term material benefits, and opt for concrete individual solutions over collective ones.”<sup>149</sup> Among impoverished communities, a politician’s ideology “tends to be less attractive than particularistic exchanges rooted in direct, face-to-face appeals.”<sup>150</sup> As such, decentralization in Latin America has often been seen as a threat to the state and a challenge to the hegemonic power of authorities using clientelism. As one analysis of clientelist linkages states in Latin America during the 1980s and 1990s wrote on the subject:

Many governing officials in both democratic and nondemocratic systems are in their positions precisely because they have mastered the art of clientelist exchange... by relocating decisions about revenue distribution and public expenditures, decentralization can directly challenge established clientelist patterns...national politicians have cause to worry that they will lose the ability to claim credit for the benefits they deliver.<sup>151</sup>

This, it would seem, would lead one to conclude that the decentralization from Law 445 can in fact have a positive influence in challenging clientelist linkages and preventing the state’s democracy from producing nothing more than short term material benefits for the populous. As discussed earlier, decentralization’s broadening of democracy in Nicaragua has in fact led to wider advocacy against the state’s violation of indigenous rights. Yet, this paper argues that while decentralization *can* limit clientelism, long entrenched clientelist linkages due to persisting inequality, as seems to be the case on the Caribbean Coast at the moment, have limited Law 445’s efforts to promote democracy, stretch participation rights, and improve the efficiency of resource management.

#### A. *Co-opting Indigenous Leaders*

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149 Levitsky, “From populism to clientelism? The transformation of labor-based party linkages in Latin America.”

150 Ibid.

151 Kent Eaton, Kai Kaiser, and Paul Smoke, “Understanding Political Incentives and Behavior“ in *The Political Economy of Decentralization Reforms: Implications for Aid Effectiveness*, The World Bank, 2010.

Another severe limitation to autonomy on the Caribbean Coast is the central state's co-optation of indigenous leaders. Co-optation is most often referred to as a strategy of the elite—including international and local governments, business leaders, and elected officials—to maintain power via alliance-building and institutionalization, rather than violent repression.<sup>152</sup> Through co-optation, governments are able to “limit opposition challenges without provoking massive protest or international repudiation.”<sup>153</sup> It has been seen as an especially strong tool for authoritarian control in the post-Cold War era of international human rights accords and accountability mechanisms, and particularly prevalent in the alliance-building politics that have defined the FSLN since losing the presidency to Chamorro in 1990.<sup>154</sup>

Yet despite its common use, it is troubling how rarely co-optation is *defined* when used in social science literature. The definition used in this paper is “the capacity to tie strategically relevant actors (or a group of actors) to the regime elite” via the *institutionalization* of a movement.<sup>155</sup> The passage of the Autonomy Statute in 1987 can be seen as effectively institutionalizing autonomy. Such institutionalization often comes with important gains and can be seen as a mark of success for a social movement: Law 28, Law 445, and the decentralization's opening up of spaces for political participation are clear, important gains for the indigenous movement. With that said, institutionalization is also noted as a strong and common fear for social movements due to the compromises that institutionalization requires. The institutionalization of indigenous movements is especially dangerous in a corrupt state, because the compromise required for institutionalization may easily lead to manipulation.<sup>156</sup>

Through institutionalization, social movements run the risk of having their interests influenced by “corporate intermediators that serve political parties or the state,<sup>157</sup> as well as the risk of being serve political parties or the f h<sup>158</sup> By becoming a part of the state apparatus, movements have been seen by academics and activists alike as being rendered vulnerable to the state's manipulation, or limited in pursuing what may have been a more radical agenda due to programmatic politics and/or bureaucratic logistics. The result can lead to what has been called the “iron law of oligarchy” when institutionalization “saps civil society of autonomy and social and political power. That is, once assimilated, activists are co-opted, protest goals are preempted, and civil society atrophies.”<sup>159</sup> The danger is clear: through co-optation, movements and interest groups are likely demobilize, and thus their ability to achieve their originally stated goals is perhaps weakened.

*Perhaps* is used here because what makes co-optation such a difficult concept to use in the social sciences is that, despite a risk of demobilization, a movement's potential to attain its originally stated goals might also be *strengthened* by institutionalization. Many scholars have made a similar note: one must be careful in assuming co-optation to be a form of *repression* rather than a common and *necessary* political strategy. This line is quite thin and easy to cross;

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152 Johannes Gerschewski, “The three pillars of stability: legitimation, repression, and co-optation in autocratic regims,” *Democratization* 10 (2013): 13-38.

153 Steven Levitsky and Lucan A. Way, “Elections Without Democracy: The rise of competitive authoritarianism,” *Journal of Democracy* 13, (2002): 51-65.

154 Gerschewski, “The three pillars of stability: legitimation, repression, and co-optation in autocratic regime.”

155 Ibid.

156 Jackson and Warren, “Indigenous Movements in Latin America.”

157 Suh Doowon, “Civil Society in Political Democratization: Social Movement Impacts and Institutional Politics,” *Development and Society* 35 (2006): 176.

158 Ibid.

159 Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy*. (New York: Free Press, 1962).

forming alliances is by no means uncommon for attaining political goals. As a recent literature review of indigenous movements notes, “several authors interpret examples of indigenous movements’ appropriation of occidental notions of authentic tradition to be moves toward safeguarding tradition and resisting hegemony and not examples of co-optation and consequent ‘inauthenticity.’”<sup>160</sup> However, as used here, co-optation means more than mere alliance-building or institutionalization. By co-optation, this paper means having a movement’s interests and goals significantly adapted due to pressures from the state apparatus that the movement now belongs to, or when the movement becomes demobilized as they become disarmed by the view that institutionalization was a success for their movement.

Despite having the goal of establishing indigenous peoples’ autonomy from the state, by formalizing communal indigenous practices and creating new state bureaucracies to maintain autonomy, the law effectively institutionalized the indigenous movement. For example, while indigenous community leaders were once only accountable to their community, now they must also work closely with state bureaucrats and are susceptible to party politics. For some, as will be discussed below, this has led to a shift away from the political agenda of indigenous peoples, and closer towards those of the dominant political party, the FSLN. The fact that various indigenous rights leaders have shifted their platforms to value Sandinista’s success over the rights of their communities illustrates the dangers of institutionalizing autonomy.

Take Danilo Chang for example. Multiple indigenous leaders expressed frustration with Chang, a current spokesperson for the canal. Chang self-identifies as a member of the Creole community. He rose to power on the Coast largely by advocating for youth participation in the autonomous process and helping to found non-profit, *Jóvenes Estableciendo Nuevos Horizontes* (Youth Movement Establishing New Horizons). The group works on issues such as identity, development, leadership, young people’s role in autonomy and the importance of *land rights*. Talking of such issues in an interview last year, Chang stated: “If you don’t have your land, you don’t have identity, culture. Without land, you do not develop. Without the land, there’s nothing.”

Yet, as members of the Black Creole Indigenous Communal Government are quick to point out, now Chang leads the FSLN’s campaign to convince *costeños* that the canal is worth sacrificing such land rights. If Chang were to repeat the above statement today, it would be in direct contrast with his recent claims of the importance of the canal. As Doleen Miller of the Black Creole community asked:

So my question then, to these authorities of us black people: what else do you want? What else do they need to open their eyes and see that God is blessing your people and they should stop doing this against their own people, harassing, destroy, betraying your own people, just for their own political party. And we always say, if you like your political party, fine, back off. Give us a choice here, give us a little moment today to let us do our own thing according to our own laws — that’s what the autonomy law means. That we can do things in our own tradition, not to have the Managua Sandinistas telling us what to do.<sup>161</sup>

To prove that Chang has been co-opted is beyond the scope of this paper. An individual’s incentives are complex; it would be near impossible to claim decisively that Chang has chosen

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160 Jackson and Warren, “Indigenous Movements in Latin America”.

161 Doleen Miller (Advisor to the Black Creole Bluefields Indigenous Communal government) in discussion with the author, January 9, 2015.

to prioritize the FSLN's success over indigenous land rights. Nonetheless, his shift in rhetoric within less than a year represents the influence that the broadening of the central state's influence on the Caribbean Coast has had for self-identified leaders of the region's indigenous movement.

### B. *The Motives of the State*

Lastly, a return to the historical literature illustrates the concluding argument of this thesis: that the FSLN's policies towards the autonomous regions illustrates their primary goal in the region, that being to broaden control over it. Now that the FSLN has attained a majority in the Regional Council, despite the formal existence of autonomy via Law 445, the FSLN has effective control over the region. The broadening of their power is indicative of how the central state has been able to progress this far into plans to build an interoceanic canal. Furthermore, this history illustrates the need to look towards autonomous grassroots movements for attaining autonomy, rather than merely depending on state institutions or party politics.

Since the days of Augusto Sandino, the early 20th century national hero and inspiration of the Sandinistas, the largely *mestizo* party has marginalized and discriminated against *costeños*. Although rhetoric would have it that this behavior has changed with the years, since the party's rise to power in the 1979 revolution, the Sandinistas have had a primarily political, rather than ideological, stance on indigenous rights.<sup>162</sup> From granting autonomy in 1986, to supporting land titling initiatives in the early 2000s, the Sandinistas' support for indigenous land rights on the Coast have seemed to be primarily a strategy for attaining greater control over the region.

By the mid-1980s, the new revolutionary government was crumbling, confronted with harsh trade sanctions by the US while also facing and an increasingly violent civil conflict throughout the Caribbean Coast region, which was funded and actively provoked by the United States. Support for the new state was being undermined by news of young volunteers being put in danger in their attempts to teach Spanish on the Caribbean Coast as part of the state's national literacy and health campaigns.<sup>163</sup> It quickly became clear that the Sandinistas would lose power if violence on the Caribbean Coast and the Contra War continued. In order to seek out peace and stability for the new state—or, as stated in the Autonomy Statute, to fulfill “the revolutionary struggle of the Nicaraguan people”—the Sandinistas needed indigenous peoples' support.<sup>164</sup> This, scholars and indigenous leaders claim, was what prompted the introduction and passage of the Autonomy Statute of 1987.<sup>165</sup>

Yet, even this effort seemed to be “too little too late,” as the Sandinistas failed to attain the support and stability needed to stay in power.<sup>166</sup> In the 1990 elections, Ortega lost the presidency to the National Opposition Union (UNO). In the years that followed, three different governments promoted a neoliberal development platform. Economic policies during the 1990s included IMF-backed structural adjustment initiatives, privatization of communal forests, and increased foreign

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162 Carlos María Vilas, *State, Class, and Ethnicity in Nicaragua: Capitalist Modernization and Revolutionary Change on the Caribbean Coast* (Boulder: Lynne Rienner Publishers, 1989).

163 Sandra Brunnegger, “From Conflict to Autonomy in Nicaragua: Lessons Learnt,” Minority Rights Group International, April 2007, <http://www.minorityrights.org/download.php?id=105>. Anne Larson, “Making the ‘rules of the game’: Constituting territory and authority in Nicaragua's indigenous communities,” *Land Use Policy* 27 (2010): 1143-1152.

164 Nicaraguan National Assembly, Ley No. 28.

165 Brunnegger, “From Conflict to Autonomy in Nicaragua: Lessons Learnt.”

166 Maria Acosta (Coordinator of Centro de Asistencia Legal a Pueblos Indígenas) in discussion with the author, January 16, 2015.

investment. Most importantly for indigenous communities, these reforms also severely reduced state institutions. This meant the reduction of resources to support the new autonomous process by titling indigenous lands as promised in the Autonomy Statute and creating accountability mechanisms to protect indigenous communities from the foreign and local investors claiming indigenous communities' land. During this period, the nation's export market grew, but so did poverty, inequality, and the displacement of indigenous peoples.<sup>167</sup>

According to territorial authorities, the Sandinistas used Law 445 and the *Awás Tingni v. Nicaragua* conflict to garner greater opposition to these liberal governments. Along with making an alliance with the indigenous political party Yapti Tasba Masraka Nanih Aslatakanka (YATAMA, meaning "Sons of Mother Earth"), the Sandinistas made their support of Law 445 and opposition to the wrongdoing of the liberal government's concessions to MADENSA and SOLCARSA especially visible to voters on the Coast. For example, the party reportedly prioritized these issues in their new door-to-door campaign strategy throughout the Caribbean Coast for that election cycle. As one local stated, "the prevailing feeling among members of the community of Awás Tingni is that the arrival of Daniel Ortega and his government, supported by YATAMA has been instrumental in advancing its territorial claims factor." Or, as Duncan stated:

The Sandinista government was not in power and they want to see the liberal party go bankrupt and out of power, so they do what they can to make the law built and get professional people to work with the community and they were supporting them, give them financing, human aid, resources. When they present Law 445 to the communities, the Sandinistas be pushing them rights in to the communities. They help them to get back in power.<sup>168</sup>

These efforts paid off, for in the 2007 elections Ortega successfully reclaimed the presidency. With visible support for indigenous rights throughout the first several years of Ortega's second chance at the presidency, the Sandinistas eventually won over the autonomous region too. After years of stalled titling applications under the preceding liberal governments, since 2007 the central and RAAS governments together demarcated 22 of the 23 communal territories in the region. Additionally, in 2010 Ortega ratified ILO No. 169, the only legally binding international instrument that specifically addresses indigenous peoples' rights.<sup>169</sup> Sandinista grassroots movements throughout Caribbean Coast communities also grew during this time, boasting a strong platform of poverty alleviation and pro-poor social programs.<sup>170</sup>

What is dangerous for the autonomous process, however, is that recent advances for the Caribbean Coast are often claimed as *products* of the central state, and products from Ortega specifically. For example, Chang reported that since Ortega's presidency the Caribbean Coast has risen to unprecedented heights:

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167 Ken Henriksen, "Ethnic self-regulation and democratic instability on Nicaragua's Caribbean Coast: the case of Ratisuna," *Revista Europea de Estudios Latinoamericanos y del Caribe/European Review of Latin American and Caribbean Studies* (2008): 23-40.

168 Allen Claire Duncan (President of Monkey Point) in discussion with author, December 31, 2014,

169 "Nicaragua Ratifies ILO Indigenous and Tribal Peoples Convention No. 169", *Cultural Survival*, August 2010, <http://www.culturalsurvival.org/news/nicaragua/nicaragua-ratifies-ilo-indigenous-and-tribal-peoples-convention-no-169>.

170 Leonor Álvarez and Jose Garth Campañas, "Al cierre en la costa Caribe," *La Prensa*, February 25, 2014, [www.laprensa.com.ni/2014/02/25/politica/184127-campanas-al-cierre-en-la-costa-caribe](http://www.laprensa.com.ni/2014/02/25/politica/184127-campanas-al-cierre-en-la-costa-caribe).

Since 2007 we believe things have been changing on the Caribbean Coast, we don't just believe it, it be coming true. That is because the government of Daniel Ortega has created... a strategy to develop the coast, I can say that this is the first time in history that the government is visibilizing the Caribbean Coast as one of the main components of the development of the whole country. We are not seen anymore as a way to develop the Pacific, we are seen as a whole of Nicaragua and an important territory to develop the whole country.<sup>171</sup>

In the 2014 elections, the Sandinistas enjoyed a “historic, landslide victory” on the Caribbean Coast. For the first time, the party won the majority of votes in both the RAAN and the RAAS, with 28 seats in the northern region, and 30 in the south.<sup>172</sup> “This is a very important win,” stated Johnny Hodgson, political secretary of the FSLN in the RAAS, following the elections. “But now comes the part where we must administer this victory, it is time to make the dreams and aspirations a reality with the new Sandinista leadership of the regional councils.”<sup>173</sup>

Some have speculated that this victory in the RAAS was a determining factor for the FSLN to push the canal project. With the majority of the Regional Council now being FSLN members, the National Assembly was able to attain the necessary letter of support. Clearly, as this report explored, this letter of approval did not abide by the national or international guidelines meant to protect indigenous rights. Yet, it seems enough to subdue *costeños* and continue on with the project—at least until further notification from the IACHR, which expects to provide a response to the March hearing May 2015.

As such, indigenous leaders must contend with a new political context in the RAAS. Indigenous people's response to the FSLN's rise in power varies in each community. In the Rama-Kriol government, the most endangered region by the planned inter-oceanic canal, some indigenous leaders believe working *closer* to the government will be key to their communities' development and fulfillment of autonomy. Hector Thomas, president of the Rama-Kriol government and an active member of the FLSN party, discussed in what ways he has learned to make alliances with the government and seek out compromises—“always with the community's best interest in mid,” he states.<sup>174</sup> Thomas, like Chang, is a prime example of how leadership opportunities with the FSLN may lead to forms of co-optation. He states:

Before the [Rama-Kriol government] was very far from the government. But since I came in, my way of seeing is if someone be looking how to help us, I'm not going to say no to that. So my idea is to get closer to the government and see what their concern is about for our territory. I think of it this way: if we be looking to be separate from them, we won't get no information from them. I have a saying: Keep your friends close, your enemies closer. So you can know what they doing. So I look to be closer to them so I have more information and to know what is good for us and what is not.<sup>175</sup>

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171 Danilo Chang (spokesperson for the canal) in discussion with the author, January 5, 2015.

172 “Costa Caribe: elecciones entre la conspiración y las responsabilidades,” *Envio (Managua: University of Central America, 2014)* [www.envio.org.ni/articulo/4843](http://www.envio.org.ni/articulo/4843).

173 “FSLN lleva mayor desarrollo a familias de la Costa Caribe tras contundente e histórica victoria electoral,” *Canal19 Digital*, March 10, 2014, [www.el19digital.com/articulos/ver/titulo:16973-fsln-lleva-mayor-desarrollo-a-familias-de-la-costa-caribe-tras-contundente-e-historica-victoria-electoral](http://www.el19digital.com/articulos/ver/titulo:16973-fsln-lleva-mayor-desarrollo-a-familias-de-la-costa-caribe-tras-contundente-e-historica-victoria-electoral).

174 Hector Thomas (Rama-Kriol Government President) in discussion with author, January 13, 2015.

175 Ibid.

As discussed earlier, Thomas may well be right: such an alliance can provide important, and badly needed resources for the Rama-Kriol government. Yet, as the literature cited earlier in this chapter illustrates, such compromises may lead to the manipulation of one's political agenda. Moving closer to the state, on both an individual and regional level, provides a difficult array of benefits and dangers. The line between compromise and co-optation is remarkably thin, yet the consequences of crossing this line are often quite vast.

Between the Sandinistas unprecedented rise to political power on the Caribbean Coast and the legalization of indigenous land rights and governance systems, the party has slowly co-opted the indigenous movement, attaining new political clients despite contrasting ideologies regarding self-determination and autonomy. Their rise to power on the Caribbean Coast under the banner of supporting indigenous rights and autonomy, and their recent failure to fulfill such promises, reveals that the state's incentives for decentralizing land rights was less of a means to support autonomy and more of a means to broaden their control over the region. Through clientelism, co-optation, and the extension of the FSLN's control over the autonomous region, they have been able to de-mobilize former leaders of the indigenous movement, who, it might be imagined, would have otherwise been more active in supporting indigenous communities opposition to the canal concessions. Danilo Chang, for one, illustrates an important example of this.

What becomes particularly evident is that the region's goals of autonomy and self-determination will never be completely fulfilled if they remain dependent on the state. The state in general, and the FSLN in particular, seek to extend their power and control. As such, there lacks the sufficient political will to see the autonomous process fulfilled—which at the very least would mean providing the region with their required 25 percent taxes from production on the Coast (currently the number stands at about four percent),<sup>176</sup> providing a title to the last communities with pending requests, such as the Black Creole Indigenous Communal Government,<sup>177</sup> or having an effective police force that defends land rights, rather than promote continued conflict between *mestizos* and *costeños*.<sup>178</sup>

Rather than depending on the state, this paper argues that autonomous, grassroots organizing is critical for the real fulfillment of autonomy's goals. The spaces where self-determination were most realized through this research project were those spaces of organic organizing: the Bluefields Radio Station's demands for a space to educate their fellow *costeños*; the Moravian community that gathered on New Years Eve to seek God's support for the Creole community; Allen Claire Duncan's desire to stay in his home town to defend his people; and the solidarity between the Rama-Kriol government, the Black Creole Indigenous Communal Government, and Maria Acosta, an indigenous rights lawyer. These spaces of mobilization were at times related to the state and some actors mentioned above were in clearly part of the state apparatus. But, these examples of social organizing occurred outside of their government offices and were in direct conflict with the central state and Ortega's FSLN party. Such organizing has largely been made possible by the growth in indigenous people's identification with their land rights, and ethnic empowerment. In order to continue contesting the state and seeking out regional autonomy as *autonomous individuals*, free of the state's coercion, indigenous leaders must continue these organic practices of mobilization. It is only through such that indigenous

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176 Michael Campbell (Director of Centro de Derechos Humanos Ciudadanos y Autonómicos) in discussion with author, January 13, 2015.

177 Doleen Miller (Advisor to the Black Creole Bluefields Indigenous Communal government) in discussion with the author, January 9, 2015.

178 Allen Claire Duncan (President of Monkey Point) in discussion with author, December 31, 2014.

rights and the struggle for autonomy will survive on the ever-contested Caribbean Coast.

## VII. Conclusion

In seeking to provide an alternative analysis to understanding why indigenous rights continue to face abuse, this paper explored the following research question: How has the decentralization of indigenous land rights via Law 445 advanced the indigenous rights agenda? And, in what ways has it actually *limited* the advance of this agenda? Through a historical review of indigenous land rights on the Caribbean Coast, an in-depth investigation of the ongoing inter-oceanic canal project, and a review of the specific implications of Law 445, this paper reached a few conclusions that build upon previous research concerning Nicaragua's indigenous peoples, land rights and decentralization, as well as posed new questions important for these fields of study, among others.

This research project illustrated how the unconstitutional expropriation of lands for *el Gran Canal* is merely another chapter in the centuries-long history of indigenous people's struggle for land rights on the Caribbean Coast. Furthermore, the difference between indigenous communities' awareness of their rights and independent activism to protect those rights since *Awas Tingni v. Nicaragua* illustrates that the Caribbean Coast's indigenous rights movement and the autonomous process at large have made significant advances in recent years, particularly due to the passage of Law 445 following *Awas Tingni v. Nicaragua*. Through Law 445, *costeños* have enjoyed new spaces for political participation. Decentralized decision-making powers have brought new leaders into the public scene, as seen with Allen Claire Duncan's story. Law 445 has also resulted in indigenous leader's re-educating their communities about their legally protected ancestral land rights, and it has allowed for the mobilization of indigenous communities that, as Maria Acosta noted, would have been incapable of prompting an opposition of the size being witnessed today. The very fact that Acosta does not need to physically visit the communities, educate members on their rights, and explain the need for an international hearing at the IACHR, points to the significant progress of the Caribbean Coast's indigenous rights movement.

This paper also illustrated the more pessimistic side of Law 445's decentralization: that the passage of Law 445 has further institutionalized the indigenous movement. Due to the lack of efficient accountability mechanisms in "*el estado inconstitucional*," as *La Prensa* writes, the state's desire for broader influence in the autonomous regions has gone unchecked. Autonomy goes against the goals of the state—that being to broaden its power and influence. Because of this inherent incentive to expand state power, autonomy as a state-administered governance regime is fundamentally contradictory, and thus significantly limited in attaining its stated goals. With the lack of state capacity to administer autonomy and promote regional development *independent* of the central state, the new spaces for political participation that Law 445 opened have become vulnerable to the state's coercion—specifically via clientelism and co-optation. These de-mobilizing forces are the greatest threat to indigenous rights on the Caribbean Coast today. Given these limitations, among the most important means to advance the indigenous rights agenda and confront the state's abuse of marginalized communities, this paper argues, is to advocate for indigenous rights via organic, grassroots movements that more fully represent the ideal of indigenous peoples being *autonomous* from the central state government. Separated from the state, these movements are key for promoting political participation as well as holding the state accountable to respecting autonomous rights on the Caribbean Coast of Nicaragua.

### A. *Questions for Further Research*

Throughout this research project, proposals for new research endeavors were abound. Building from this paper's findings, there are a few areas that would be both interesting and important for future research concerning autonomy and the sociology of indigenous peoples in the region:

**i. Inequalities between indigenous communities.** Academia and activists alike have the unfortunate tendency of romanticizing indigenous peoples. Yet, indigenous peoples are not homogenous groups, nor are they immune to the hierarchal systems by which we often characterize non-indigenous communities. My own research encountered many inequalities between different indigenous communities. Our understandings of autonomy and the general pursuit for improved mechanisms to promote indigenous rights would benefit from greater understandings of these inequalities and the politics of indigenous communities within particular regions. That is, an analysis of indigenous politics within a smaller and better-defined grouping. For example, a mapping of the politics and inequalities between the Rama-Kriol territorial government's communities, or specifically between the various Rama communities, might be one way to advance such a study.

**ii. Indigenous peoples and political parties.** Another area of research that this project only just skimmed was the relationships between political parties and indigenous peoples. Some indigenous leaders reported that it is against the culture of indigenous peoples to engage in political parties. However, in order to balance the growing power of the Sandinistas in the RAAS, it seems unquestionable that indigenous peoples may need to form their own political organizations. YATAMA was one example of such a political party, yet its representation of indigenous issues remains contentious and YATAMA currently has limited political influence in the RAAS. Thus, further research to advance the indigenous rights agenda would do well to ask: What are the factors limiting indigenous political parties? What might the agenda of a new indigenous party look like? When indigenous peoples have engaged in political parties, how does their participation differ from non-indigenous? Or rather, how does the participation of indigenous communities differ from one another?

**iii. The youth perspective on land and resource management.** Lastly, one of the most disappointing limitations of this research project was my failure to meet with many young people in the more rural indigenous communities. This, as previous research as well as my own findings indicates, is one of the most important fields of research for the future of autonomy and the protection of indigenous rights on the Caribbean Coast of Nicaragua, as elsewhere. Specifically, it would be interesting for future research to explore the validity of Rama-Kriol authority Diego Aguilar's claims that young people would rather leave their communities and migrate to the urban centers, rather than remain in their rural communities to defend their ancestral land rights. This is by no means a unique analysis. Globalization, unemployment, and general curiosity have long motivated young people to leave rural communities if given the chance. Yet, is this as true as Aguilar claims? If so, how have such incentives to emigrate changed with recent debates around the canal? More

generally, what are indigenous youth saying about the project? And lastly, what are the motivating factors for those young people who choose to stay in their rural communities?

### B. *Looking Forward*

There remains one more lasting question needing attention in this paper: what now? Given this paper's findings, what might we expect for indigenous peoples in the Caribbean Coast of Nicaragua and *el Gran Canal*? An interpretation of this paper's findings could go in two very divergent directions.

From a more pessimistic perspective, we might conclude that autonomy is a hopeless endeavor on the Caribbean Coast. As long as the state continues to lack the political will to enforce autonomy, the autonomous process will continue to lack sufficient support to fulfill its promises of providing indigenous people's the right to self-determination. Furthermore, the persistence of poverty, inequality, clientelism, and the lack of accountability mechanisms will allow the corrupt central state to only deepen its power, ensuring that the very utopian concept of autonomy remains nothing but a lofty goal.

Yet, a more optimistic approach might take these findings in another direction. As a self-proclaimed idealist, this is the interpretation I choose. My findings indicate that *despite* the state's incentives and abilities to broaden its powers, as well as the incentives of the public to succumb to the material offerings of the state, indigenous and non-indigenous peoples' opposition to corruption persists. The openings for political participation created from Law 445 are by no means politically or socially *transformative*. They lack the teeth for such. But nonetheless, these openings for political participation are in fact having very real political and social effects. Albeit slowly, the decentralization of land rights, education campaigns to increase public consciousness of their rights, and the ongoing court proceedings against the canal project, indicate that there is a new degree of autonomy being engaged on the Caribbean Coast—and one that the central state has been forced to take note of.

In this paper, I proposed that *el Gran Canal's* significance for autonomy is that it may serve as a "critical juncture" for the state. I stand by this claim. For, if the IACHR mandates the state to consult community members before expropriating their land, as is required by law, then I am confident that community members will not approve of the project—or at least not its current blueprints. The opening up of new spaces for indigenous voices through such a consultation, should they happen, should be expected to further mobilize community members. Additionally, even if the IACHR does *not* take any actions to hold the central state accountable for their violation of land rights, it seems that the "ball is already rolling." Protests against the canal should be expected to heighten, and international media's coverage of the region—which has grown immensely in the last few months—is likely to spur further pressure from transnational activists. Thus, I predict that this "critical juncture" will provide a step forward towards a more inclusive society in Nicaragua—although perhaps at first, also more conflictive—whether or not the IACHR gets further involved in the case.

The struggle for autonomy persists on the Caribbean Coast, but so do its mounting achievements. *El Gran Canal* very likely might be the catalyzing event the region needed to take its historical achievements to a new level.

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