

Nicaragua

Self-rule

INSTITUTIONAL DEPTH AND POLICY SCOPE

Intermediate governance consists of the *Distrito Nacional* (National District of Managua), fifteen *departamentos* (departments), and the two *regiones autónomas de la Costa Caribe* (Autonomous Regions of the North and South Caribbean, RACCN and RACCS), which are primarily indigenous areas. The *departamentos* are deconcentrated.

There have been three constitutions during the 1950–2010 period: 1950, 1974, and 1987, with several reforms through 2014. The population of Nicaragua was about 6.4 million in 2017, with the city of Managua having just over a million inhabitants and the metro area with over 2.5 million¹. *Departamentos* are not mentioned in the 1950 or 1974 constitutions except indirectly by saying that the president names a departmental *jefe político* (political chief). The chiefs are appointed and directed by the national assembly and the president. *Departamentos* score 1 (depth) and 0 (scope) throughout the period.

Nicaragua was ruled by the Somoza family until 1979. Elections were fraudulent, political repression and political violence common, and elected opposition leaders replaced with regularity. After the Sandinista revolution of 1979, a new constitution was written, but since the country was in civil war, the new provisions were mostly not implemented. Legislation passed in 1984 created the means for electing a constitutional congress which wrote the 1987 constitution. With reforms in 1995, 2000, and 2014 this is the constitution in effect today. In the years after the return to power of the FSLN in 2007, erosion of democratic institutions and the consolidation of power in the party at all territorial levels has been observed and condemned by international organizations. However, the scope of this shift has so far not extended into the formal territorial distribution of authority in such a manner that institutional depth of the capital city or autonomous regions would be downgraded.

From 1990 efforts to decentralize authority began in earnest, but the target was the municipal level and not the departments (Peterson 1997). By the mid- 2000s decentralization of policy responsibilities to *municipios* (municipalities) was progressing rapidly (World Bank 2004: 1).² Nicaragua has two autonomous regions located at the eastern Caribbean coast—known originally as *La Moskitia*. The area was a British protectorate for three centuries and is indigenous territory (González 2008). The 1860 treaty of Managua granted far-reaching autonomy to the coastal region (Hooker, Campbell, and Narvaez 2008; González 2008). The territories practiced extensive self-government, which included issuing their own currency and promulgating their own constitution in 1861. However, this autonomy ceased abruptly in 1894 when Nicaraguan and US forces invaded

¹ The Región Metropolitana de Managua is not a formal statistical unit and there has been no official national census taken since 2005.

² Since the 2006 Sandinista return to power there has been intergovernmental conflict over how to implement decentralizing reforms, with *municipios* complaining that their independent policy efforts are being hampered by the center (Eaton, Kaiser, and Smoke 2010: 54).

the territory. During US occupation and then Somoza rule, the coastal region was absorbed as a conventional department, named the *departamento de Zelaya*.

When the Sandinistas came to power, they sought to open up the coastal region to economic development, but met resistance from indigenous communities who demanded autonomy and respect for indigenous language and culture. The conflict escalated into violence. In the mid-1980s the Sandinistas became supportive of decentralization in the region, and in 1984, they, along with indigenous leaders and organizations and international experts, formed the *comisiones nacionales de autonomía* (national autonomy commissions), tasked with writing an autonomy statute for the area.

In 1987 a constituent assembly made up of 220 elected delegates from the *regiones autónomas* drafted and passed the statute of autonomy, based on the model of the Spanish *comunidades autónomas* (autonomous communities). It was incorporated into the 1987 Nicaraguan constitution. The statute of autonomy (Law 28) and the constitution of 1987 created two separate autonomous regions out of the original *departamento de Zelaya* (Law 28, Art. 6). Armed conflict over indigenous autonomy continued throughout the eighties until the broader peace accords were signed with the first elected national government in 1990.

The first elections in the autonomous regions took place in 1990, but enabling legislation on autonomy was not passed until 2003 (*Reglamento a la Ley 28, Regulation of Law 28*).^α Law 28 provides far-reaching home rule. The regions can organize municipal governance (Art. 7; C 1987, Art. 89); they have concurrent competences in health, education, culture, and development (Art. 8.2); they can co-decide on the implementation of national development policy in the region (Regulation of Law 28, Art. 28; Law 28, Arts. 5 and 8). The elected *consejo regional autónomo* (autonomous regional council) can also initiate development and economic policies (Law 28, Arts. 5 and 8.3), create new taxes within the confines of national law (Art. 8.9), and develop economic and cultural relationships with other countries of the Caribbean (Art. 8.7–8). *Consejos* are responsible for legislating on the competences granted to the *regiones autónomas*, resolving boundary disputes between localities in the region, acting as the interlocutor with the central government on all policies that impact the region, drawing up the budget and deciding on taxation, and electing a *coordinador regional* (regional coordinator) from within their ranks (Art. 23).

The exploitation of natural resources abides by traditional land holding and communal ownership traditions (Art. 8.10; Law 445 *de demarcación y titulación de la propiedad comunal*). The judicial system follows indigenous traditions (Law 28, Art. 18). Moreover, the statute guarantees cultural rights such as religious freedom and the right of inhabitants to be educated in their own language.

The *regiones autónomas* therefore score 2 on institutional depth, and 1 on policy scope for 1987–2002 and 2, 3 for 2003–18 when extended policy competence is mostly implemented. After the national constitution was reformed in 2014, Law 28 was updated in 2016 (Ley 926). The names of the regions were modified and the terms of the autonomous representatives increased by one year.³

³ An International Court of Justice ruling in 2012 modified Nicaragua's territorial waters, restoring control over its Caribbean borders after a long dispute with Colombia. The names of the autonomous regions reflect this change.

The third special region, the *Distrito Nacional*, is of longer standing (since 1950). Managua is a *municipio* but has special status because its governance was reserved to the national executive. The 1950 constitution gives the *Distrito Nacional* of Managua (and other *municipios*) limited autonomy to levy fees and create laws. Institutional depth expanded when the legal autonomy of *municipios* was enshrined in the 1988 *Ley de Municipios* (Municipal Law 40). Policy responsibilities now included basic sanitation, infrastructure, parks and recreation, civil registry management, etc. (Art. 7), and *municipios* could enact supplementary policies in health, education, and culture (Art. 10).

A municipal reform in 1997 lifted some of the more restrictive clauses undercutting authoritative policy scope (such as *ex ante* approval for spending) (Larson 2003). Reforms in 2013 increased the number of municipal councilors and mandated gender parity. The *Distrito Nacional* of Managua scores 1 and 0 until 1987, 2 and 1 for 1988–96, and 2 and 2 from 1997.

The *Región Metropolitana de Managua* (RMM) is a voluntary association of 30 municipalities across four departments, which work together to coordinate approaches to public services like solid waste management. Smaller such voluntary associations have also formed for tackling particular challenges, such as AMUSCLAM, the *Asociación de Municipios de la Sub Cuenca III del Lago de Managua*, which includes municipalities and districts of Managua surrounding Lake Managua, and deals with issues of water management and other environmental challenges. Authority comes from mayors, based in municipal autonomy, and there is no formal institutional nor legal basis (Augustin, et al 2018).

FISCAL AUTONOMY

Departamentos have no fiscal autonomy.

Since 1987 the *regiones autónomas* have general authority to create taxes but within vague parameters (Law 28, Art. 32) (Hooker, Campbell, and Narvaez 2008: 8.1.1). The autonomy statute and Law 445 passed in 2003 provide for indigenous control over natural resources, resource extraction, and land. Law 445 states that benefits from natural resource exploitation in the *regiones autónomas* are to be partitioned four ways between indigenous landowners, *consejos regionales*, *municipios*, and the central government. The practice is not transparent and allegations of unfair distribution have been common (Brunnegger 2007: 7). The 2014 constitutional reform created new options for land expropriation to accommodate the canal, which is reflected in the reform of the autonomy statute and potentially erodes regional autonomy at the margins, though not enough for a change in scoring, to date. Still, because the *regiones autónomas* are protagonists in decision making about natural resource extraction, their formal authority goes beyond traditional revenue sharing. *Regiones autónomas* score 1 for 1987–2002 and 2 for 2003–18.

The *Distrito Nacional* has no tax autonomy. In the post-Somoza period Managua has greater access to fiscal resources than *departamentos* because *municipios* receive a share of the local sales tax, property tax (transferred from the center in 1992), some minor local taxes, and fees. Yet they do not control the base or rate of these taxes (UCLG 2008; USAID 2004).^β

BORROWING AUTONOMY

Departamentos do not have borrowing autonomy. The *regiones autónomas* also do not have borrowing autonomy.

In 1987 *municipios* were given a limited capacity for taking on debt (Wilson and Pendall 1987), and there are fairly intrusive administrative controls on foreign and domestic borrowing, as well as a golden rule (Prud'homme and Shah 2002). Prior central approval is required for external debt, and debt is only permitted for investment purposes (Burki et al. 2000: 380). In all, restrictions amount to *ex ante* control.^β

REPRESENTATION

Under the 1950 constitution, *departamentos* were led by a presidentially appointed *jefe político* (political leader) and *juez de policía* (police judge) (Art. 276). *Departamentos* continue to have centrally appointed leadership and score 0 on executive and assembly throughout the period.

The constitution of 1987 and statute of autonomy for the *regiones autónomas* created *consejos regionales*, which are comprised of forty-five directly elected members (Law 28, Arts. 19 and 25). National deputies from the two regions have seats on the *consejos* (Art. 20). The *consejos* choose the *coordinador regional*, who serves as the executive of the region, names functionaries, represents the region to the national executive, and controls regional development funds (Art. 30). The first elections took place in 1990. *Regiones autónomas* score 0 (assembly) and 0 (executive) for 1987–89, and 2, 2 for 1990–2010.

The *Distrito Nacional* remained under the direct control of the national government until 1990 (C 1974, Art. 245).^α In 1977 an organic law created a provisional revolutionary government, which in 1985 was replaced by an appointed *alcaldía* (mayorship) with the status of national minister. In 1990 the *consejo municipal* became directly elected and the *alcalde* (mayor) was now chosen by the *consejo*. In 1995 the *alcalde* became directly elected (C 1995, Art. 178). The *Distrito Nacional* scores 0, 0 for 1950–89 and 2, 2 for 1990–2010.

Shared rule

LAW MAKING

Under the 1950 constitution neither chamber of the bicameral parliament was conceived as a territorial body. The sixteen senators were elected in a single national district (Art. 127). This principle also informed the composition of the senate in the 1974 constitution. The 1987 constitution eliminated the senate.

The *Distrito Nacional* is not a unit of representation. The *regiones autónomas* constitute separate units of representation in a chamber with significant legislative authority (*LI*). There appear to be no special arrangements for ensuring that regional representatives are consulted on national legislation affecting the region.^α

EXECUTIVE CONTROL

The *departamentos* and the *Distrito Nacional* are not regularly consulted on national executive policy making.

The statute for the *regiones autónomas* (Law 28, Art. 8) and the 1987 constitution (Ch. 6 and Art. 180–1) make explicit that *regiones autónomas* are partners in developing policies affecting their territory across a wide array of matters including education, culture, and natural resources. These provisions spurred regular, non-binding consultation and collaboration. Since 2003, enabling legislation (Regulation Law, Art. 28) has created regular consultation with the capacity to make binding decisions on natural resources and communal land. *Regiones autónomas* score 1 from 1987–2002, and 2 from 2003.

FISCAL CONTROL

The *departamentos* and the *Distrito Nacional* are not regularly consulted on fiscal policy.

The *regiones autónomas* have acquired considerable influence on fiscal resources since 2003. Law 445 enshrines the rights of the indigenous inhabitants of communal land to an equitable share of resources. Binding agreements between regional and central governments specify how the benefits of exploitation will be distributed. *Regiones autónomas* score 0 for 1987–2002 and 2 from 2003.

BORROWING CONTROL

Subnational governments in Nicaragua do not have borrowing control.

CONSTITUTIONAL REFORM

The legislature is not a body of territorial representation, and there are no alternative channels (e.g. territorially organized referenda) that provide *departamentos* or the *Distrito Nacional* with control over constitutional reform.

The statute of the *regiones autónomas* is passed by the national legislature. Article 38 gives two-thirds of the members of the *consejos regionales* in joint session the right to initiate reform, but they cannot veto reform.

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		Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self- rule
						Assembly	Executive	
Departamentos	1950–2018	1	0	0	0	0	0	1
RAAS and	1987–1989	2	1	1	0	0	0	4
RAAN	1990–2002	2	1	1	0	2	2	8
	2003–2018	2	3	2	0	2	2	11
Distrito	1950–1986	1	0	0	0	0	0	1
Nacional	1987	1	0	0	1	0	0	2
	1988–1989	2	1	0	1	0	0	4
	1990–1996	2	1	0	1	2	2	8
	1997–2018	2	2	0	1	2	2	9

Shared rule in Nicaragua

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule	
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B		
Departamentos	1950–2010	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RAAS and RAAN	1987–2002	0.5	0	0	0	0	0	0	1	0	0	0	0	0	0	2	3.5
	2003–2010	0.5	0	0	0	0	0	0	2	0	2	0	0	0	2	2	6.5
Distrito Nacional	1950–2010	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

National legislature has: L1=regional representation; L2=regional government representation; L3=majority regional representation; L4=extensive authority; L5=bilateral regional consultation; L6=veto for individual region. Total for shared rule is either multilateral (M) or bilateral (B).