

Buying Time: The Nicaraguan Negotiations as of May 2019



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It's hard to imagine a peaceful, democratic resolution to Nicaragua's political crisis without negotiations. In this sense, however, it is important to ensure that negotiations are carried out in seriousness and in good faith, and that agreements that are reached at the negotiating table are subsequently honored.

As of May 10th, 2019, two hundred hours of negotiations have been completed and two formal agreements have been reached. However, implementation of negotiated agreements by the Ortega regime has been minimal, leaving many to question whether negotiations are merely a stall tactic.

The Context for the Negotiated Agreements

A first round of dialogue, the so-called National Dialogue, began on May 16th, 2018, immediately following the start of the massive street protests in Nicaragua. The contentious dialogue was broadcast on television for all to see. In the face of ongoing repression and violence by the government against protestors, human rights leaders, and the media, negotiations quickly stalled.

On February 21, 2019, almost a year later, Nicaraguan President Daniel Ortega indicated a willingness to re-engage in negotiations. This time, the negotiations would be held behind closed doors. When the Civic Alliance for Justice and Democracy, represented by six negotiators, sat down with the Ortega government on February 27th they laid out an agenda with three main demands: 1) liberation of political prisoners and restoration of the liberties, rights and guarantees established by the Constitution; 2) electoral reforms guaranteeing free, fair and transparent elections with international observers; and 3) justice for victims of violence and repression. They also sought to ensure mechanisms to ensure that agreements be implemented quickly and in full, as well as assurances that the Ortega Regime would fully implement the recommendations of the Inter-American Commission on Human Rights (IAHCR).

From February 27 to March 4, negotiators from the Civic Alliance and the government worked jointly to define a Road Map, which essentially laid out a plan for the negotiation process and a methodology for implementation of agreements. The Road Map would provide mechanisms for compliance, with "clear, defined, and mutually agreed upon rules."

On March 29, 2019, the negotiators announced that two key agreements had been reached and signed by Civic Alliance and Government representatives. The first agreement stipulated that the Ortega regime would release hundreds of political prisoners and drop arrest warrants for many others, including some who had fled the country. In the second agreement, the government agreed to respect civil and political rights of Nicaraguan citizens, such as the right to protest. In exchange for these actions, the opposition would request that the International Community step back sanctions against key people in the Ortega Regime.

However, a few hours later, after apparently consulting with Ortega, the government negotiators backtracked. According to Jose Pallais, a Civil Alliance representative, “the government broke the consensus reached at the last minute,” by claiming that the release of prisoners could only be decided unilaterally and could not be included as part of the negotiated agreement.

Release of Political Prisoners

It is easy to understand why the release of prisoners was a top demand at the negotiating table, but unfortunately, it was also a demand that presented a number of challenges, both legal and logistical. One of the first issues encountered were differences among the lists of political prisoners. At the time, there were an estimated 767 political prisoners in Nicaragua, according to the Committee for the Release of Political Prisoners. However, the government claimed that there were only 340 political prisoners at that time. At the same time, some family members of the political prisoners opposed the negotiations, expressing concern that they would put their loved ones at further risk in terms of their physical safety. Then there was the issue of the mechanism for their release, whether it would be through an international organization such as the Red Cross, as the Civic Alliance wanted, or via the Nicaraguan judicial system, as the Ortega negotiators wanted.

Despite these considerable challenges, the release of political prisoners “without any delay” was crucial for the Civil Alliance, something that they viewed as “decisive for making progress in the negotiation process.”

Initially in the negotiation process, it seemed as though progress was being made. Signs looked positive when on February 27th, 112 prisoners were released under house arrest, and then on March 15th another 50 prisoners. By March 21st, the government had agreed to release “all the people detained in the context of the protests,” according to a statement Luis Angel Rosadilla, a special envoy from the Organization of American States (OAS) who was observing the negotiations. Azahalea Solis, a participant at the negotiating table, explained that “this is a total liberation. It’s not simply that they let them out of jail while the court cases continue, or that they’ll end up being found guilty and sentenced. It’s absolute liberation. There’s a protocol that will be release which explains the process of security and the guarantees.”

However, just days after signing the March 29th agreement, the government made an abrupt about-face. Government negotiator Francisco Rosales explained that they could not liberate political prisoners as part of the negotiation process because of supposed legal technicalities. He argued that any liberation must comply with legal procedures, “to liberate them, we require special judicial measures and a procedure under the rules of due process for each person.... We cannot deviate from the Constitution,” he claimed. In a press release, the Unidad Nacional Azul y Blanco (UNAB) responded that “given the stalemate in the negotiating table due to the failure of Ortega Murillo regime agreements, UNAB makes it known to the people of Nicaragua and the international community that the only way to give confidence and that negotiations can continue is with the immediate, full and guaranteed release of all and all political prisoners. The Civic Alliance should not return to the negotiating table without that condition being fulfilled,” argued, concluding that additional protests were needed.

Electoral Reforms for Free, Fair and Transparent Elections with International Observers

Another crucial negotiating point has been electoral reforms to ensure fair elections. A key demand by opposition negotiators was to move the elections earlier and bring in international experts to support electoral reforms. As part of the March 29th agreement, the Civil Alliance urged the Ortega regime to

present a plan for electoral reforms before the OAS Mission, which was scheduled to visit the country during the month of April.

On April 23rd, 2019 negotiators from both sides met with the Department of Electoral Cooperation and Observation (DECO) of the OAS, which presented proposals for electoral reforms that would help find a way forward for the country. During the discussions, the DECO representatives also explained that these reforms could be implemented in approximately six months.

However, it is not clear that government negotiators took these discussions surrounding electoral reforms very seriously. In statements, they noted that the OAS was an outside observer and that “the relationship with the OAS is purely in terms of compliance of agreements...internal politics of the country is decided by us, by Nicaraguans.” Foreign Minister Moncada, from the Ortega negotiating team, has stated on various occasions that they would “definitely not” move the presidential elections earlier, arguing that this would “violate the constitution of our country, which clearly establishes presidential terms.”

Sanctions

During the negotiations, the government called for the removal of all sanctions against Nicaragua, including the Nica Act. According to a statement by Nicaraguan Foreign Minister Moncada, lifting sanctions is “an essential and fundamental point that we must agree upon before beginning to address and debate other points and other topics ”

The demand was a difficult one for several reasons. To start with, the Nicaraguan Civic Alliance negotiators at the table have limited control over US Policy, especially when a law has already been signed into place. The interests of the United States and of the Nicaraguan opposition are not one in the same, and even if the Civic Alliance were to request a change in US Policy, it is unclear whether it would be considered. At the same time, there are indications that US Policymakers are pursuing stronger sanctions against Nicaragua due connections to Russia. Moreover, the NICA Act does not call for blanket sanctions against Nicaragua; rather, it allows the US Treasury to sanction specific persons involved in human rights abuses and corruption in Nicaragua, including freezing assets held in the US, forbidding entry to the US, and revoking US visas. In this sense, sanctions are triggered by specific behaviors committed by certain individuals.

Despite these challenges, by March 29th, 2019 the Civil Alliance expressed a willingness to meet with international stakeholders to discuss rolling back sanctions. However, by May, with the general deterioration in negotiations surrounding the political prisoners, the Civic Alliance announced that they would no longer move forward. The problem, they explained, was that they could not proceed to make this concession to Ortega given that previous commitments, such as the release of prisoners and the electoral reforms, had not been honored.

Denial and Noncompliance

Following a series of failed agreements and unfruitful discussions, the negotiations reached a new nadir in early May, when an official statement by Foreign Minister Moncada accused the opposition negotiators of being “responsible and guilty of crimes and destructive actions.”

Within this context of distrust and stalemate, Nicaraguan President Daniel Ortega has claimed that the problem is merely one of timing. “Some agreements have been reached and negotiation is always complex. It’s a short time to reach agreements,” he said in a statement.

However, in light of his unwillingness to implement agreements or act in good faith, it seems that time is not the barrier. Moving forward, the challenge is to find effective ways to strengthen the position of those at the negotiating table and provide tools for them to push for full implementation of any agreements that are reached. To put it simply, negotiators at the table don’t need more time, they need better leverage.