

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
The Evolving Human Rights Crisis in Nicaragua

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STATEMENT SUBMITTED FOR THE RECORD
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Introduction

Dear members of Congress, House Foreign Affairs Committee Tom Lantos Human Rights Commission. I hereby submit my written testimony pertaining to the political situation in Nicaragua. As a troubled nation for decades, its transition toward a democracy is an urgent necessity and international obligation.

An authoritarian regime

Nicaragua today is a dictatorship run by Daniel Ortega. Mr. Ortega belongs to a generation of revolutionaries turned dictators. Like Robert Mugabe, Daniel Ortega is a former guerrilla leader. He participated in the overthrow of Nicaraguan dictator Anastasio Somoza in 1979. Since then, he has been at the center of the country's political history. He ruled during the Sandinista Revolution confiscating property, jailing, torturing, fighting counter-revolutionaries and provoking an exodus of more than two hundred thousand Nicaraguans. After he was ousted in 1990 he promised to rule from below and continued the trade of political control and the obsession to stay in power, engineering alliances, intimidating and blackmailing people, manipulated the laws to turn the entire institutions of the state on his side.

In 2016, President Ortega won his second re-election without facing legitimate opposition and despite widespread calls of election fraud. Since then, the Frente Sandinista de Liberación Nacional (FSLN)-led government has held a monopoly in parliament (71 out of 92 legislators), the justice system (11 out of 16 magistrates), and the electoral system (7 out of 10 commission members), while also controlling the national army and police. He also sustains a mechanism of social control using street mobs, which he directs through the organized membership of the

Sandinista Youth. They are individuals [now militarily] trained to intimidate and crush civil disobedience using any means.

These mobs have been responsible, through tacit police support, for many of the deaths in the past three months, following clashes over the newly proposed pension reform.

The nationwide protests that started in April 2018 reflect the anger of the Nicaraguan people towards an environment of systematic corruption and abuse of authority that has spanned almost 30 years. As tensions between the government and protestors persist, the pro-Ortega justice system is enabling the use of repressive force causing the deaths of more than 500 people since April 19, 2018.

From Political Turmoil to State-Sponsored Repression

After courts passed a law on terrorism in July, they left unprotected the constitutional right to freedom of expression for all Nicaraguans. In fact, pro-government judges have been put in charge of prosecuting demonstrators, while doctors, nurses and educators have been fired from their positions for tending to wounded demonstrators.

Nicaraguans are now facing a new type of regime, a criminal and repressive state. It is no longer “merely” anti-democratic and corrupt, but has actually become a government whose political capital comes from state terrorism.

It operates through the systematic use of state and non-state paramilitary forces and the law to conduct targeted assassinations, arbitrary killings, detentions, torture and arrests. It also conducts attacks on religious and press freedom, and has criminalized constitutionally-protected rights to protest.

People have also fled Nicaragua in the thousands. Migration of Nicaraguans to Costa Rica has increased dramatically. Official figures from the Costa Rican government show that between April and August more than 27,000 have moved to the country, and at least 200 people are entering every day since July 2018. Meanwhile, the government has received more than 25,000 applications for refugee status.

The Ortega Regime’s Survival Plan

The rationale behind Ortega’s state sponsored terrorism is informed by at least two factors, first, he does not see an exit strategy, where his clientelist and ideological rhetoric is still supported by some groups who depend on his loyalty to them. Second, his calculation of economic weakening is supported by his assumption that by twisting the arm of the private sector a prolonged recession may not turn into a larger economic crisis.

Daniel Ortega’s calculation is that he is better off protected by his circle of influence than giving up power. On one hand, the loss of the circle of power that Ortega amassed over the past 15

years, since crafting his strategy to return to power, represents his disappearance from the political and even physical map. Ortega does not see himself alive in any sense outside of that clientelist network he built through the circumvention of the political system since the late 90s and the loyalties he designed to retain his grip on power.

At the same time, the clientelist network is afraid of losing the political and economic favors they have become used to, and as such, they continue to remain loyal to Ortega and approve the use of pressure and repression. This network is composed of a small circle of power that has built a mafia-state with its own government-enforced, preferential rules and has secured its own permanence through the bureaucracy and security force on their side.

In this sense, they represent a parallel elite who do not belong to the large business conglomerates or even the core of the FSLN, with a social capital based on their own mechanisms of vote-buying and sustained by the state bureaucracy, to which many in the network belong to. This network includes mid-level officers working in government and responding to their political bosses (ministers, directors, legislators, magistrates, administrators, security forces, youth for hire), who maintain a direct connection to a minimum critical mass of citizens under their control, and whose material and economic existence depends on Ortega staying in power.

Finding or attacking the network of favors that sustain the members of the mafia-state will weaken their loyalty to the regime. This latter point is central before they turn into transnational organized criminal activities, from money laundering, drug trafficking and arms trafficking.

Finally, the regime's calculation is that they can maintain political control over the economy. The Nicaraguan economy is facing a dire crisis. First, there is a loss of more than 100,000 jobs, declining consumption, taxes and investment. Second, investment in the economy has slowed down or declined in many fronts, both for domestic and external activities. Economic reserves from the Central Bank are also declining as the crisis hovers over the entire country. However, the government believes they can make it through 2021.

Their calculation of the breaking point (the moment when inflation, scarcity, deficit and debt become too high to control) is not 2019 and therefore are counting on a recessionary stage to guarantee their survival. They believe that by intimidating and regulating the private sector they can delay that breaking point as long as they can. Ortega has threatened the private sector to force them to open their businesses if they go on national strike.

However, the economic situation so far is not entirely to the benefit of Ortega, despite their calculations: the Nicaraguan government lacks economic autonomy because it does not have many sources of wealth generation, except taxation, external debt, and few services, Bancorp among others. The deterioration of the economy continues to be Ortega's worst enemy.

Building a way forward: resistance, pressure and negotiating alternatives

The priority for Nicaragua is to create a positive environment to achieve a negotiated outcome in order to ensure at least three goals, a democratic transition, justice, and reconciliation in a troubled nation.

Given the lack of political will on Ortega to return to the table, a negotiated outcome will only depend on the way the costs of staying in power are higher than negotiating.

A stronger opposition, international pressure in various fronts, and presenting options for negotiation to the regime are critical elements.

International Pressure: Going Beyond Dialogue

Since April 18th, the international community has clearly been supporting a dialogue toward political change. However, with the expulsion of the UN Human Rights commission, the denial of the Nicaraguan government of any recognition of human rights violations, and the deepening of state repression, international players have stepped up their pressure.

At this point, international actors must exert pressure beyond a national dialogue.

This change of approach is critically important because one consequence of international pressure is not to only isolate and delegitimize the regime's abuses, but to push Ortega to negotiate some form of transition.

Because Daniel Ortega is not an ideologue but a transactional leader, he exchanges power for other forms of power and status quo, and currently he does not see anything valuable to exchange. With the support of the security forces, the paramilitary, and his media operation, Ortega feels he is in control.

In turn, he underestimates the resistance and nationwide opposition. When the national demonstrations overwhelmed the regime, Ortega was reluctant to act, and even privately considered forwarding elections. However, once the Army provided its indirect support in exchange for not getting directly involved, Ortega changed his posture, arguing he wouldn't step down.

The international community need to move beyond denunciations, to demand **a stop to the repression, justice for crimes against humanity and a speedy political transition.**

Strategically, it is important to exert pressure on three mechanisms that are currently the only options Ortega has for transaction:

- economic and legal sanctions to his family and close network,
- justice for crimes against humanity and
- pressure on the military.

In the first case, international sanctions are pivotal because Ortega illicitly enriched and shielded his children, providing them with economic and social favors that made them part of a new economic circle that includes managers, lawyers, businesses, that have taken advantage of the favors. The government has purposely and unaccountably shuffled government funds and revenues into activities that the average citizen is unaware of and has no access to public information. Regarded by Transparency International as among the most corrupt countries in the Americas, the government has used state institutions, such as the Airport Administration Agency to handle third party funds to anonymous businesses.

Ortega appointed his son, Laureano Ortega, to head the ProNicaragua an investment promotion agency and manage the construction of a Canal that will not be built. As a tenor he has brought state funding to finance lavish cultural events. His other son Rafael, handles with his wife oil distribution through gas stations (Distribuidora Nicaragüense de Petróleos) that comes from the Venezuelan government. Ortega's family is now among the economic elite. Their wealth has grown in the past 15 years through government financial and contracting favors.

Sanctioning their family members will increase Ortega's costs of staying in power because his ability to protect them outside continued state repression will be limited. His family is already feeling the pressure to reconsider their loyalty to power.

Second, it is now politically and morally indefensible to not search for a fair determination of the various crimes committed in Nicaragua by security forces. For one, the demonstrations were legitimate exercise of civil disobedience, with a major particularity that for the most part were led in a non-violent way. Still as of the course of events, the political resistance is employing non-violent methods to confront the regime. However, the knowledge of the methods of intimidation, assassination, jailing, torturing by the government are supported by accounts from witnesses, victims and even tacit recognition by police forces that their use of force against students and youth is valid.

International players must demand an independent human rights body that investigates the recent abuses perpetrated by the government including political and economic terrorism (as illustrated in the creation of a Financial Unit aimed at controlling individual's private assets and by threats of Mr. Ortega to force entrepreneurs to operate their business were they to support a national strike) and the use of repression and violence. Findings of those who have participated in the deaths of protestors since the beginning of 2018 should be prosecuted without the possibility of amnesty. The political value of amnesties for Nicaragua is substantively limited when this instrument has been used and abused in the past to satisfy impunity.

Third, international actors, particularly those who have worked in regional security efforts must reach the leadership of the Nicaraguan National Army in an effort to call on affirming their independence and their institutional responsibility to prevent any members of any rank to participate in paramilitary activities. The Army has been silent and perhaps complicit in so far as

it has witnessed the rights violations and made no clear position as to the extent to which paramilitary violence represents a threat to national security.

A way forward to a negotiated solution

Nicaraguan political reforms, as well as the de-escalation of the current political conflict are now two sides of the same problem. The deterioration of the economy, but also the growing angst and resentment among the majority of Nicaraguans that their lives are now shaped by terror is an unhealthy and indefensible fact. The Nicaraguan government must hear, tend and be part of a negotiated solution for an end of the crisis. Along those lines is important that different venues for mediation be open, as well as incentives to negotiated by presented to all.

International mediation can be a way to mitigate the government's mistrust of the Civic Alliance's political resistance or calculated risk of its weakness. It can build confidence among all parties that establishing a venue of communication will also open spaces for joint solutions.

The Organization of American States has issued three resolutions, one which calls for the creation of a Working Group on Nicaragua aimed at assessing the situation and offering its good offices to help solve the crisis. The Working Group can serve as a vehicle to accompany and observe jointly with other countries like Spain, Canada or Germany, and organizations like the U.N., to testify for a national engagement for political reforms. The Group can also be a direct mediator between the Nicaraguan government and a now enlarged Civic Alliance. It can work with external observers as a means to ensure there is congruence in the discussion as well as compliance to an agenda.

Both the Nicaraguan opposition and the international players need to have incentives to the government in order to arrive at a negotiated solution. The most basic incentive is not issue international sanctions in exchange to commit to deescalate any form of violence, and that includes dismantling or suspending the anti-terrorism law. The Civic Alliance has refrained from setting barricades to block the streets, and the government should ban paramilitary forces at this point.

Moreover, offering a minimum agenda for mediation is an incentive to advance toward political reforms. The mediation efforts of the international community are critical and urgently needed because the violence and terror is unbearable among Nicaraguans, and it exacerbates resentment and polarization.

Ending or halting violence, will only contribute to consider options for political reform. The country needs to focus on a minimum agenda for discussion including ensuring fairness in the election process and independence of political institutions. Along those lines, it is to the benefit of the Ortega circle of power to spot the benefits of a negotiated solution through political

reforms, specifically, ensuring that they can be part of political changes as well as of any competitive electoral process moving forward.

Do not Forget Justice for Nicaragua

Nicaragua deserves a political transition, one that must include the re-establishment of democratic rule through free and fair elections, accompanied by a comprehensive effort to ensure the independence of political institutions. In order to achieve this, it is crucial to create transparent and democratic procedures in all branches of government with the help of an independent international committee. This could be supplemented by establishing an oversight committee to supervise all administrative and political decisions.

Once this occurs, a transitional justice mechanism should be established to create an accurate historical record of events dating back to the 1980s. As a result of the civil war, more than 500,000 Nicaraguans were internally and externally displaced and more than 45,000 people lost their lives. When a peace settlement was negotiated, the two main goals were establishing free and fair elections and disarming the Contras while reducing the size of the Sandinista army. Although those steps were imperative, there were no investigations of abuses perpetrated by both sides and no mechanisms put in place to address redress for victims. This was most evident during the transition period under the administration of President Violeta Chamorro (1990-1995), when a number of investigations into political assassinations led by Sandinista courts did not yield any verdicts, despite evidence of Sandinista security forces involvement.

The neglect to attend to past and continued abuses has created resentment among Nicaraguans across generations and fueled political mobilization against the Sandinistas and Ortega to this day. The civil war was fought with a deep sense of division and hatred and many returned to their homes after the war sharing their day-to-day lives with adversaries without the opportunity to heal wounds, achieve justice, and bridge the divide.

Addressing this resentment by establishing the truth and acknowledging the pain of victims and their families, although difficult, would be a key step in achieving justice and reconciliation, something many Nicaraguans have been denied for decades.

Thank you.