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NEXT STEPS FOR HONDURAS

HEARING

BEFORE THE

SUBCOMMITTEE ON
THE WESTERN HEMISPHERE

OF THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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NEXT STEPS FOR HONDURAS

THURSDAY, MARCH 18, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE WESTERN HEMISPHERE,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:56 p.m. in room 2172, Rayburn House Office Building, Hon. Eliot L. Engel (chairman of the subcommittee) presiding.

Mr. ENGEL. A quorum being present, the Subcommittee on the Western Hemisphere will come to order.

Last year, hemispheric affairs were dominated by the political crisis in Honduras. With today's hearing, I encourage my colleagues and our witnesses to be forward-looking in our discussion of Honduras.

While I am certainly not asking anyone to forget the events that took place last year, this hearing is not intended to be a review of 2009. Suffice to say, and I have said this many times, that I believe that President Obama and Secretary Clinton's management of U.S. policy toward Honduras last year was excellent. The United States stuck to core democratic principles, while at the same time, looking forward to a post-Micheletti Honduras.

As we look ahead and focus on next steps for Honduras, I am pleased to see efforts by the Obama administration and several countries in the Americas to reach out to Honduran President Pepe Lobo. Working closely with President Lobo is crucial. At the same time, the inter-American community must ensure that steps are taken to implement key pieces of the Tegucigalpa-San Jose accord.

I would like to briefly mention efforts that I believe should be taken both by the Honduran Government and the inter-American community in the coming months.

First and foremost, a robust Truth Commission must be established to investigate events from last year. I was pleased by the selection of my friend, former Guatemalan Vice President Eduardo Stein, to head the Truth Commission. The Commission's work must be done transparently, and it must ensure complete accountability.

Secondly, we must continue to closely monitor the increasingly worrisome human rights situation in Honduras. Recent murders of Hondurans who were active in their resistance to the coup or related to activists must not go unnoticed.

I am particularly troubled by the murders of three Honduran journalists this month. This past Sunday, Nahun Palacios, a journalist who covered demonstrations organized by the resistance of the coup and expressed his rejection of the removal of President

Zelaya, was gunned down. I appreciate the strong statement of the Inter-American Commission on Human Rights, and believe that those responsible for these heinous crimes must be held accountable.

Last year was especially brutal for Honduras' lesbian, gay, bisexual and transgender community. Attacks on that community escalated substantially, starting in June with 19 known murders of prominent members of the LGBT community. In addition, non-lethal attacks and other violent acts against LGBT individuals were reported on an alarming scale, and additional murders have gone unreported.

The human rights defenders who have documented these abuses have been threatened, and the atmosphere of intimidation for members of the LGBT community remains high.

Yesterday, I sent a letter with Foreign Affairs Committee Ranking Member Ileana Ros-Lehtinen to U.S. Ambassador to Honduras Hugo Llorens, urging him to work with President Lobo to curb violence against the country's LGBT community. I was delighted to do it jointly with Ileana Ros-Lehtinen, and she and I have done many, many things jointly over the past many years.

Ambassador Llorens responded to our letter this morning, stating his commitment to raise these issues with the Lobo administration. I am inserting a copy of this letter and Ambassador Llorens' response into the hearing record.

Thirdly, I hope that we will act swiftly to re-admit Honduras to the Organization of American States. And I certainly believe that this must be done prior to the OAS General Assembly that will take place in Lima, Peru in June.

Fourth, I have become increasingly concerned about the rule of law and the protection of the property rights of U.S. investors in Honduras.

At the hearing we had last week, a number of us mentioned this. Mr. Burton was especially vocal, and I mentioned it, as well. We feel very strongly about this on both sides of the aisle.

Several cases have been brought to my attention which paint a picture of an investment climate where assets of investors are not protected. In several cases, companies have been expropriated or driven out of business and U.S. owners never compensated.

I present three examples. Firstly, I cite the case of the CEMAR cement company. In this instance, the Honduran military and Honduran cement manufacturers allegedly conspired to drive an American cement company out of business. The U.S. investor, Oscar Cerna, has ever since sought redress of this very legitimate claim. It is something that we cannot sweep under the rug. This is an American citizen, and we cannot allow our citizens to be treated this way.

Secondly, I have learned about the case of Andreas Kafati, an American businessman whose partial ownership of a coffee business was taken through alleged manipulation of shares and the workings of a now-convicted Honduran judge.

Also, there is the case of Cortez Byrd, an American citizen who won a $188 million judgment in a U.S. Federal court against a company which is 98 percent owned by the Government of Honduras. Honduras has not yet paid the legal judgment.

If I were an American citizen or company looking at these and other cases, I would think twice before investing in Honduras. Honduras is a poor country which needs international investment if it is going to grow its economy and create jobs. But unless the assets of the United States and other international investors will be protected, scarce capital will go elsewhere.

It is my hope that the new Government of Honduras will take a fresh look at these and other cases, and act without delay to make the investors whole while seeking to improve the investment climate for the future.

Finally, these cases leave me with two open questions. First, while the State Department asserts that it assists American business, investors are reporting to me that advocacy by our embassy has been less than vigorous; and that is putting it generously.

Secondly, resuming our foreign assistance to Honduras is important. But at the same time, the Honduran Government needs to respond to these serious cases of American citizens who are still seeking redress for their legitimate claims. I want to repeat that. Resuming our foreign assistance to Honduras is important. But at the same time, the Honduras Government needs to respond to these serious cases of American citizens who are still seeking redress for their legitimate claims. I will be asking Ambassador Kelly to address these points today.

So in conclusion, I hope today's hearing will help us to create a framework to move forward our relationship with Honduras in the coming year. We all look forward to hearing the testimony of our excellent Principal Deputy Assistant Secretary of State for Western Hemisphere Affairs, Craig Kelly; as well as our private witnesses.

I had the good fortune to visit Secretary Kelly at the State Department just a few days ago. We can rest comfortably knowing that his stewardship is at the helm, and I am delighted that he is here for us.

I am now pleased to call on the ranking member for his opening statement.

[The prepared statement of Mr. Engel follows:]

Opening Statement
Chairman Eliot L. Engel

House Foreign Affairs Subcommittee on the Western Hemisphere

Next Steps for Honduras

Thursday, March 18, 2010

Last year, hemispheric affairs were dominated by the political crisis in Honduras. With today's hearing, I encourage my colleagues and our witnesses to be forward looking in our discussion of Honduras. While I am certainly not asking anyone to forget the events that took place last year, this hearing is not intended to be a review of 2009. Suffice it to say that I believe that President Obama and Secretary Clinton's management of U.S. policy toward Honduras last year was excellent. The United States stuck to core, democratic principles, while at the same time looking forward to a post-Micheletti Honduras.

As we look ahead and focus on next steps for Honduras. I am pleased to see efforts by the Obama administration and several countries in the Americas to reach out to Honduran President Pepe Lobo. Working closely with President Lobo is crucial. At the same time, the inter-American community must ensure that steps are taken to implement key pieces of the Tegucigalpa/San Jose accord.

I would like to briefly mention efforts that I believe should be taken both by the Honduran government and the inter-American community in the coming months:

First and foremost, a robust Truth Commission must be established to investigate events from last year. I was pleased by the selection of my friend, former Guatemalan Vice President Eduardo Stein, to head the Truth Commission. The Commission's work must be done transparently and it must ensure complete accountability.

Second, we must continue to closely monitor the increasingly worrisome human rights situation in Honduras. Recent murders of Hondurans who were active in their resistance to the coup or related to activists must not go unnoticed. I am particularly troubled by the murders of three Honduran journalists this month. This past Sunday, Nahún Palacios – a journalist who covered demonstrations organized by the resistance of the coup and expressed his rejection of the removal of President Zelaya – was gunned down. Those responsible for these heinous crimes must be held accountable.

Last year was especially brutal for Honduras's lesbian, gay, bisexual and transgender (LGBT) community. Attacks on the LGBT community escalated substantially starting in June with 19 known murders of prominent members of the LGBT community. In addition, non-lethal attacks and other violent acts against LGBT individuals were reported on an alarming scale, and additional murders have gone

unreported. The human rights defenders who have documented these abuses have been threatened and the atmosphere of intimidation for members of the LGBT community remains high. Yesterday, I sent a letter with Foreign Affairs Committee Ranking Member Ileana Ros-Lehtinen to U.S. Ambassador to Honduras Hugo Llorens urging him to work with President Lobo to curb violence against the country's LGBT community. Ambassador Llorens responded to our letter this morning stating his commitment to raise these issues with the Lobo administration. I am inserting a copy of this letter and Ambassador Llorens's response into the hearing record.

Third, I hope that we will act swiftly to readmit Honduras to the Organization of American States (OAS). And, I certainly believe this must be done prior to the OAS General Assembly that will take place in Lima, Peru in June.

Fourth, I have become increasingly concerned about the rule of law and the protection of the property rights of U.S. investors in Honduras. Several cases have been brought to my attention which paint a picture of an investment climate where assets of investors are not protected. In several cases, companies have been expropriated or driven out of business and U.S. owners never compensated. I present three examples. First, I cite the case of the CEMAR cement company. In this instance, the Honduran military and Honduran cement manufacturers allegedly conspired to drive an American cement company out of business. The U.S. investor, Oscar Cerna, has ever since sought redress of this very legitimate claim. Second, I have learned about the case of Andreas Kafati, an American businessman whose partial ownership of a coffee business was taken through alleged manipulation of shares and the workings of a now-convicted Honduran judge. Finally, there is the case of Cortez Byrd, an American citizen who won a $188 million judgment in a U.S. federal court against a company 98% owned by the government of Honduras. Honduras has not yet paid the legal judgment.

If I were an American citizen or company looking at these and other cases, I would think twice before investing in Honduras. Honduras is a poor country which needs international investment if it is going to grow its economy and create jobs, but unless the assets of U.S. and other international investors will be protected, scarce capital will be placed elsewhere. It is my hope that the new government of Honduras will take a fresh look at these and other cases and act without delay to make the investors whole while seeking to improve the investment climate for the future.

Finally, these cases leave me with two open questions. First, while the State Department asserts that it assists American business, investors are reporting to me that advocacy by our embassy has been less than vigorous – and that's putting it generously. Second, resuming our foreign assistance to Honduras is important, but at the same time, the Honduran government needs to respond to these serious cases of American citizens who are still seeking redress for their legitimate claims. I would like Ambassador Kelly to address these points today.

I hope today's hearing will help us to create a framework to move forward our relationship with Honduras in the coming year.

Mr. MACK. Thank you, Mr. Chairman, and thank you for holding this important hearing today. Before I begin, I would like to recognize the former chair of the committee, Ben Gilman, for being here and for all your work you have done.

I would also like to, before I begin my opening statement, take a moment to thank our witnesses who are here today, and also to inform the subcommittee that the Minority's witness, Mr. Lanny Davis, was called out of town at the last minute, and is unavailable to be here with us today. I have a copy of testimony, and I ask unanimous consent to submit his testimony for the record.

Mr. ENGEL. Without objection, so ordered.

Mr. MACK. Thank you, Mr. Chairman. A lot has changed in the past year in Honduras. We saw a Chavez croney and fellow thugacrat, Manuel Zelaya, try to change the Honduran Constitution to rule for life. We saw the Honduran Supreme Court and the Honduran Congress follow their Constitution in the rule of law by removing Zelaya from power.

We saw the OAS, the U.N., and even the Obama administration come out on the wrong side of history and call Zelaya a coup. And to top it off, we saw our own State Department threaten Honduras to reinstate by withholding vital aid and revoking visas of Honduran officials.

At this subcommittee last week, the Assistant Secretary referred to the situation in Honduras as a coup. His reasoning, President Zelaya was not given "the most elementary due process of law." Nothing could be further from the truth.

It is important to note that the Honduran military never took control over any of the levers of power. The Honduran Government institutions worked; and just so we have a clear understanding, in May 2009, President Zelaya worked with his friend, Hugo Chavez, and ordered a referendum to take place on November 29th, 2009 that would remove Presidential term limits. The Honduran Constitution specifically prohibits this; and thus, Zelaya violated Article 239 of the Honduran Constitution.

On May 29th, 2009, the Attorney General recommended that the Honduran courts hold that Zelaya's referendum was illegal and unconstitutional. In late June, the Supreme Court ordered the Honduran forces not to provide support for the referendum. On June 27th, in opposition to the Supreme Court order, Zelaya led a violent mob to seize and distribute the ballots for the referendum. On June 28th, the Supreme Court issued an arrest order for Zelaya and removed him from the presidency. On June 28th, the Honduran military acted on a warrant from the Honduran Supreme Court and removed Zelaya from power. He was later put on a plane out of the country for his own protection, as well as other security reasons.

Later, the Honduran Congress, pursuant to the Honduran Constitution voted Micheletti as the President. Micheletti was constitutionally next in line for succession, and assumed the presidency on an interim basis. The military was never in control of Honduras. President Micheletti never interfered with the ongoing Presidential campaign, nor interfered with the previously planned November 29th Presidential election.

On November 29th, 2009, Hondurans voted in the Presidential election for Mr. Lobo, who won with 56 percent of the vote. On December 2nd, the Honduran Congress voted again, 111 to 14, to not reinstate ousted President Zelaya. The Supreme Court and the Attorney General also recommended this outcome. I think these are important facts that, as we talk about Honduras, that we keep in mind.

And while some have criticized the Honduran military for ushering Zelaya out of the country, his removal saved lives and prevented dangerous riots and violence in the streets. What happened in Honduras was not a coup, and the administration needs to stop calling it that.

Honduras did all we could ever ask of a country faced with assault on its democracy. I am very proud of the Honduras people for standing up to the thugacrats of the region; and I want to take a moment to thank President Micheletti for his commitment to freedom.

When I traveled to Honduras last July, I had a chance to meet with President Micheletti. I have also spoken to him on the phone a number of times since my trip. I was struck by his dedication to the ideals of freedom and his commitment to the Honduran people. He was a proven leader in the face of great adversity, and he should be applauded for his leadership during this crisis.

The people of Honduran did their part, and now we must do ours. I am encouraged by the actions taken thus far by Secretary Clinton and the State Department. We have restored much of the military, humanitarian and anti-drug tracking assistance to Honduras.

The administration has also recognized the legitimacy of the November elections and President Lobo's administration; but we must do more. Secretary Clinton has said earlier this month that the United States will be restoring aid to Honduras. This is welcome news. But it is my understanding that this aid will be restored incrementally.

Any remaining withheld aid must be restored at once. The revoked visas of several Honduran officials, Supreme Court justices must be reinstated immediately by our State Department. And although I believe the OAS is dysfunctional, what message does it send to our allies in Latin America, if we will not even support normalizing relations with Honduras in the international community?

It is no secret that some Latin American nations prefer to see Zelaya's return to power, and they still wrongly believe that recognizing the new government will endorse the great work of President Micheletti.

The United States must now stand with these thugocrats. Instead, we should help our ally in Central America. We must support their continued struggle for democracy and freedom. We must support the democratic institutions. We must support the American business men and women in Honduras, and ensure they have a free environment to conduct their business.

Honduras is a strong partner and friend of the United States; and for the freedom, security and prosperity of the hemisphere, we must be a strong partner and friend to them. Thank you, and I

look forward to hearing from our witnesses today. Thank you, Mr. Chairman.

[The prepared statement of Mr. Mack follows:]

The Honorable Connie Mack
Ranking Member
Western Hemisphere Subcommittee
Thursday, March 18, 2010
Opening Statement

Thank you, Mr. Chairman, and thank you for holding this important hearing today.

Mr. Chairman, before I begin my opening statement, I want to take a moment to thank our witnesses here today, and also inform the Subcommittee that the minority's witness, Mr. Lanny Davis, was called out of town at the last minute and is unable to be with us today.

I have a copy of his testimony, and I ask unanimous consent to submit his testimony for the record.

Thank you, Mr. Chairman.

A lot has changed in the past year in Honduras.

We saw a Chavez crony and fellow *thugocrat*, Manuel Zelaya, try to change the Honduran Constitution to rule for life.

We saw the Honduran Supreme Court and the Honduran Congress follow their constitution and the rule of law by removing Zelaya from power.

We saw the OAS, the UN, and *even the Obama Administration* come out on the wrong side of history and call Zelaya's removal a coup.

And to top it off, we saw our own State Department threaten Honduras to reinstate Zelaya by withholding vital aid and revoking visas of Honduran officials.

At this Subcommittee's hearing last week, Assistant Secretary Valenzuela referred to the situation in Honduras as a coup.

His reasoning: President Zelaya was not given "the most elementary due process of law."

Nothing could be further from the truth.

It is important to note that the Honduran military never took control over any of the levers of power.

The Honduran government institutions worked.

Honduras Timeline

- May 2009: President Zelaya, working with his friend Hugo Chavez, ordered a referendum to take place on November 29, 2009, that would have removed presidential term limits. The Honduran Constitution specifically prohibits this, and thus Zelaya violated Article 239 of the Honduran Constitution.

- On May 29, 2009, the Attorney General recommended that the Honduran courts hold that Zelaya's referendum was illegal and unconstitutional.

- In late June, the Supreme Court ordered the Honduran forces not to provide support for the referendum.

- On June 27, in opposition to the Supreme Court order, Zelaya led a violent mob to seize and distribute the ballots for the referendum.

- On June 28, the Supreme Court issued an arrest order for Zelaya and removed him as president.

- On June 28, the Honduran Military, acting on a warrant from the Honduran Supreme Court, removed Zelaya from power. He was later put on a plane out of the country for his own protection, as well as other security reasons.

- Later, the Honduran Congress, pursuant to the Honduran Constitution, voted Roberto Micheletti in as president. (Micheletti was constitutionally next in line for succession and assumed the presidency on an interim basis.)

- *The Military was never in control of Honduras!*

- President Micheletti never interfered with the ongoing presidential campaign nor interfered with the previously planned November 29th presidential election.

- November 29, 2009: Hondurans voted in the presidential election. Porfirio "Pepe" Lobo won with 56 percent of the vote.

- On December 2, in accordance with the San Jose/Tegucigalpa Accord, the Honduran Congress voted 111-14 to not reinstate ousted President Zelaya. The Supreme Court and Attorney General also recommended this outcome.

- On January 27, President Micheletti stepped down from power, in accordance with the Constitution, and handed over power peacefully to democratically-elected President-elect Pepe Lobo.

President Micheletti did not for a moment consider postponing the November elections.

And while some have criticized the Honduran military for ushering Zelaya out of the country, his removal saved lives and prevented dangerous riots and violence in the streets.

What happened in Honduras was not a coup, and the Administration needs to stop calling it one.

Honduras did all we could ever ask of a country faced with an assault on its democracy.

I am very proud of the Honduran people for standing up to the *thugocrats* of the region.

And I want to take a moment to thank former President Micheletti for his commitment to freedom.

When I traveled to Honduras last July, I had a chance to meet with President Micheletti.

I have also spoken to him on the phone a number of times since my trip.

I was struck by his dedication to the ideals of freedom and his commitment to the Honduran people.

He was a proven leader in the face of great adversity, and he should be applauded for his leadership during the crisis.

The people of Honduras did their part, and now we must do ours.

I'm encouraged by the actions taken thus far by Secretary Clinton and the State Department.

We have restored much of the military, humanitarian, and anti-drug trafficking assistance to Honduras.

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But we must do more.

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It's no secret that some Latin American nations preferred to see Zelaya restored to power, and they still wrongly believe that recognizing the new government will endorse the great work of President Micheletti.

The United States must not stand with these *thugocrats*.

Instead, we should help our ally in Central America.

We must support their continued struggle for democracy and freedom.

We must support their democratic institutions.

We must support the American businessmen and women in Honduras and ensure that they have a free environment to conduct their business.

Honduras is a strong partner and a friend of the United States.

And for the freedom, security and prosperity of the hemisphere, we must be a strong partner and friend to them.

Thank you and I look forward to hearing from our witnesses today.

-- 30 --

Mr. ENGEL. Thank you, Mr. Mack; and I, too, would like to extend a warm welcome to our former chairman of this committee, Ben Gilman, who sat in this seat many, many times. His portrait is—where is it, to the right. But he looks much better in person, actually. So thank you, Mr. Chairman, for gracing us with your presence; Mr. Sires?

Mr. SIRES. Thank you, Mr. Chairman, for holding today's hearing. The international recognition of Porfirio Lobo as President of Honduras offers a welcome contrast to the political distress and disorganization of Honduras last year. The political unrest illustrated how fragile democracy can be. In the aftermath of President Zelaya's presidency, his ousting, and the political climate that existed under Micheletti, Honduran must recommit itself to demonstrating solid democracy practices in upholding human rights.

But internal steps by President Lobo and the Honduran Government may not be enough. The Western Hemisphere community needs to work to support countries that are making positive steps toward democratic practices, and speak up when countries drift from these principles.

Unfortunately, the hemisphere's standards for human rights practices and democracy have been inconsistent. Honduras, with a newly recognized democratically elected President was excluded from the February of the Rio Group in Cancun; while the Cuban Regime was allowed to attend. Honduran continued to be isolated from the OAS, while Cuba is welcome.

These signals are troubling and inconsistent with the OAS. It is clear that Western Hemisphere needs strong leadership and strong standards. I look forward to hearing from the witnesses about how the United States and the international community can help Honduras to build its human rights and democracy record; thank you.

Mr. SMITH. Thank you very much, Mr. Chairman. I would ask unanimous consent that my full statement be made a part of the record.

Mr. ENGEL. Without objection, so ordered.

Mr. SMITH. First, I want to associate myself strongly with the comments made by our ranking member, Mr. Mack, and your comments, as well. But I want to thank him for being so very clear about what happened last year.

Many of us, and I remember when we held the hearing last year here, we heard from Members of the Supreme Court, Lanny Davis, and many others. It could not have been more clear that President Zelaya's illegal moves to subvert the Constitution was selfish, petty, and was for his own personal advancement. It was to consolidate power in a Hugo Chavez style, which would have meant dictatorship, especially over time, for the people of Honduras.

You know, the people rose up. The Congress, in an overwhelming vote, votes on all sides of the aisle; the Supreme Court, the Attorney General; and above all, the people, recognized that the real coup was coming from President Zelaya. And I want to commend Honduran people for demanding that human rights and especially democracy, and the rules of democracy and the rule of law be followed, and to be followed so very carefully.

That said, I think we are also very happy that the crisis has transitioned, and the people have elected a new President and for

the most part have accepted his leadership. Hopefully, Honduras is on a path now where the gains that have been gleaned the hard way can be consolidated so that country can take off economically, as well as every other way.

I want to, like my colleagues before me, recognize the great work of Congressman Ben Gilman, our former chairman, who looks down upon us every day from that portrait. He was an outstanding chairman. I remember traveling with him to a number of trouble spots over the course of many years; having watched him shepherd one bill after another through in some very difficult times.

I want to commend him for his outstanding leadership, especially in the realm of human rights and humanitarian law. Georgia, his wife, who is an ever present friend and advocate; thank you for gracing us with your presence today.

Finally, I do want to raise the issue, like many of my colleagues are concerned, of an American property issue and appropriation issue in Honduras. The issue, many of us have raised it.

I have sent letters over the course of many years. One of them that I sent, of all people, was to President Zelaya on July 17th, 2008, which was not adequately or in any way really responded to. But it has to do with the discriminatory treatment of the U.S.-owned Cementa America, or CEMAR, forcing it out of the Honduran cement market and causing the indirect ex-appropriation of CEMAR's cement plant.

The principal shareholder, Mr. Oscar Cerna, asserts—and he has many of us on both sides of the aisle look into this; and we joined with him because we think this is an illegality, as well as a close unfairness—that he has been subjected to illegal prosecution, improper confiscation of CEMAR's assets without a warrant or court order. And I do hope that at long last, now that the issues in Honduras appear to be on the mend, that the State Department and all parties, especially the Government of Honduras, will look for—speedy is not the right word, because it has certainly been many years in the making—but at this time forward, a very expeditious resolution of this ex-appropriation of those properties.

And I thank you, Mr. Chairman, and yield back.

Mr. ENGEL. Thank you, Mr. Smith; Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman; and I want to certainly commend you for your leadership and initiative in again holding this important hearing concerning Honduras.

And I, too, would like to echo the sentiments of our colleagues, as well as you, Mr. Chairman, in personally welcoming a former chairman of this important committee, my good friend, Ben Gilman, and his better half, Mrs. Gilman, for being with us this afternoon. Thank you so much, and we deeply appreciate your presence.

Mr. Chairman, if I may, I would like to submit this for the record, a copy of the letter addressed to Secretary Clinton from Chairman John Conyers of the Judiciary Committee. I, along with 90 other Members of Congress, submitted this letter to Secretary Clinton concerning this U.S. citizen, Mr. Oscar Cerna, who is an owner of a cement company, I believe, along with 14 other companies, Mr. Secretary.

We really are very serious about the fact that our newly elected President of Honduran really needs to look at this. The rights of

U.S. citizens and their investments that are made in Honduras should be taken seriously; and I sincerely hope, Mr. Secretary, that you will take that message.

Mr. ENGEL. Mr. Faleomavaega, without objection, so ordered.

Mr. FALEOMAVAEGA. Thank you; and I just want to say, I was going to ask the question about the history of Mr. Zelaya. I deeply appreciated the gentleman from Florida, our ranking member, for his eloquent and most precise recount of the history of what happened to this question of whether or not Mr. Zelaya followed the spirit as well as the letter of the Constitution of the laws of Honduras.

I will be asking some more questions concerning this, Secretary Kelly, and one other issue that I notice you may have not touched upon. I am sure it was probably just a little oversight, and that is the rights and the welfare of the indigenous people that make up Honduras.

I say this, Mr. Secretary, not just in passing in terms of Honduras; but the absolute failure of Latin American countries in dealing with right, political and economic, as well as the social needs of the indigenous Indian populations in those countries. And I will be asking you more questions concerning that issue.

With that, Mr. Chairman, thank you for allowing me the time; and I yield back.

Mr. ENGEL. Thank you very much, Mr. Faleomavaega; Mr. Burton?

Mr. BURTON. Thank you, Mr. Chairman. First of all, I want to congratulate Mr. Lobo for being elected President. I do not know if anybody is here from the Honduran Embassy, but if they are, I would like for them, as well as our Ambassador, to take a message back to President Lobo.

That is that you just heard unanimously that the members of this subcommittee, and I believe most Members of Congress, believe that the previous administration should have taken positive action to deal with confiscated property and ex-appropriation of property by the government or other companies down there that were working with the Government of Honduras.

One of those, I think, that the chairman mentioned, Mr. Cortez Byrd versus the Republic of Honduras, was a settlement that was reached in a court. It was not a settlement. It was a judgment reached in a court, which has never been honored.

I realize Honduras is in a very difficult situation economically; and I recognize that President Lobo has serious problems that he is facing. I believe he is an honorable man, as do my colleagues, and we believe that he is going to do a good job.

But I think one of the first things that he should do in his administration, and I hope you will convey this, Mr. Ambassador, as well as anyone else who might be here from the Honduran Embassy, that I think that these issues ought to be addressed. Obviously, they may not be able to come up with all the money that would be required immediately. But there ought to be some kind of a approach between the companies and the government.

For them to continue to ignore these obligations only causes a boil to fester. More and more Members of Congress realize that this is something that is not going to go away. And since they now have

what the people of Honduras believe is a truly fair and freely elected President and government that they have great respect for—I mean, he won overwhelmingly, 56 percent to 38 percent—the people are finally believing and feel that they have a very highly regarded government, and the United States should feel the same way.

We are one of the major contributors to the economic problems that Honduras faces, and we understand that. But to leave these companies that have been mistreated hanging out to dry, Mr. Ambassador, just ain't going to fly. Pardon my English. And so I really hope that the message goes back loud and clear that every member who has testified here today, Democrat and Republican, feel extremely strongly that the Government of Honduras needs to sit down with these people and work out some kind of a solution to the problems.

You know, I understand the financial problems that they face. Even the former Attorney General of Honduras has said very clearly that CEMAR should be compensated. And the other case we talked about, Cortez Byrd versus Honduras, that was cited in a court of law. So both of these cases, by officials and by courts, have said very clearly that there ought to be a solution found, and there ought to be compensation paid.

So I would urge you, Mr. Ambassador, to convey this message to the government. And like I said, if any other Honduran officials are here, I hope you will convey it, as well. Because we want this government to succeed. We want to work with the government to make sure it succeeds. But in order for that to happen and for us all to be on the same page, we need to confront these issues and get them solved.

With that, Mr. Chairman, thank you very much; and I appreciate the chairman and the ranking member for their comments. You guys are right on point. Ben, you never get any older, buddy. You look just as young as ever; and I think it is because of that good looking woman you married.

Mr. ENGEL. Well, he is smiling, so that must mean it is true. Thank you very much, Mr. Burton; Ms. Lee.

Ms. LEE. Thank you very much, Mr. Chairman. Let me, too, welcome Chairman Gilman. I served on this committee with Chairman Gilman as chair. I just want to say how much I enjoyed serving with you, and that you were a very fair chair. It is good to see you again and congratulations.

I want to welcome Deputy Assistant Secretary Kelly, as well as all of our panelists who will be joining us later. I want to draw your attention to, again, the troubling human rights situation in Honduras.

According to the respected Committee for the Defense of Human Rights in Honduras, at least political activists and opponents have been murdered since the coup of June 28th of last year which, of course, included multiple assassinations since the inauguration of Mr. Lobo.

I have a document here that sort of details the circumstances under which each person was killed. Also, according to a release from, I think it is a March 8 document the Inter-American Commission on Human Rights, and let me just quote from that. It says,

> "Observes with dismay that it appears that sons and daughters of leaders of the resistance front are being killed, kidnapped, attacked, and threatened as a strategy to silence to silence the activists."

As an example, they cite Claudia Brizuela, who is 36 years old. She was killed in her home; daughter of a union and community leader, who participates actively in the political opposition movement. Two unknown individuals came to her door; and when she opened it, she was shot and killed in front of her children, ages two and eight.

There are many examples. According to Human Rights Watch, these cases are not investigated and those responsible brought to justice. It could generate really a chilling effect that would limit the basic exercise of basic political rights in Honduras.

Also in your testimony, I hope you talk about the Truth Commission, and where the government is and where President Lobo is on that, and where these charges of human rights violations are going to be investigated within the context of this commission.

I do not understand how such a body could carry on an internationally respected mandated when opposition leaders and family members continued to be targeted for harassment and violence. So I have these documents, Mr. Chairman. I would like to ask unanimous consent to place them in the record.

Mr. ENGEL. Without objection, so ordered.

Ms. LEE. Thank you very much.

Mr. ENGEL. Thank you, Ms. Lee; Mr. Rohrabacher?

Mr. ROHRABACHER. Well, thank you very much, Mr. Chairman.

I should start off with the important business, which is, of course, welcoming Chairman Ben Gilman back, which I join with my colleagues in offering accolades to a man who has done so much, not only for this committee, but for our country and for the cause of human freedom.

It was an honor serving with him; and actually it was really a benefit to receive his leadership, and we are very happy he has still got his finger in things here. So welcome, Ben, and we are very, very happy to see you here. Ben, I think you are handsome as you ever were, and there you are right there, up there. Thank you, Ben, for all you did.

Last year, there was a crisis in Honduras. A would be caudillo was thwarted by courageous, principled, and legal actions taken by a broad coalition of Hondurans. Unfortunately, our government sided with the would-be caudillo, and undercut those who were trying to thwart this power grab.

We do not need to see this incident ever repeated again. We do not have to dwell on it; but that is what it comes down to. We expect the United States Government, no matter who is President, to be siding with those who believe in the rule of law and believe in democratic government; not on the side of people who worship at the feet of Fidel Castro and Chavez and all these other would-be dictators.

This chapter, however, is over. And as I recently said upon a visit that I took to Honduras, it is time to close the book on what happened last year. So that would mean—and we will talk about that today or I hope we hear about this today—any policies that

were put in place as part of the mistaken stand against those who were thwarting this power grab by would be caudillo Zelaya, I guess his name is, any of those policies in place should be immediately de-activated, if not totally rescinded. So we can just leave that behind us; a sign for the United States and Honduras to look together to the future, rather than be caught up in anything in the past. That is what I said when I visited down there, and that is something we need to do.

We can leave this chapter. It would be a benefit to our country and to the people there. One thing the Government of Honduras can do to help shut the book and move forward is to deal with the property claims that have been talked about on both sides of the aisle today, which I think were very justified, that there are claims by U.S. citizens, like Oscar Cerna, who have claims that need to be dealt with.

So we would send the message to our Government, let us put last year's actions behind us. The message to the current government, President Lobo in Honduras is, let us deal with these property issues and get them out of the way.

My colleagues expressed deep concern about this lack of progress on these claims. And while Honduras is a recipient of U.S. foreign aid, it has got to expect that we cannot just say, oh, well, you are going to get foreign aid. But you are not going to deal with legitimate claims of U.S. citizens, like those of Oscar Cerna.

So, Mr. Chairman, thank you very much for your leadership in this hemisphere and the activities, and also as a great friend of freedom; and I would say one of the best chairman of subcommittees that we have had in this Congress for the responsibility. And actually, your activism is so appreciated, Mr. Chairman. So thank you for calling this hearing today.

Mr. ENGEL. Thank you, Mr. Rohrabacher; I appreciate your kind words. Everybody sitting out there, the truth is that Mr. Rohrabacher and I are classmates. We came to Congress together in 1988, so we have had a deal since then. He says nice things about me, and I say nice things about him; but thank you, thank you very much.

It is now my pleasure to introduce our distinguished Principal Deputy Assistant Secretary of State for Western Hemisphere Affairs, Craig Kelly. Craig also served as Ambassador to Chile in 2007 before starting his current post. That is why his sign says, Ambassador Kelly.

Ambassador Kelly, as I have told you before and as I have mentioned, I was extremely impressed by your excellent work in helping to guide U.S. policy toward Honduras last year; and I have been very impressed by your excellent work generally.

It is people like you who really make us feel proud. The work that you do at the State Department, the dedication, it really makes us feel proud that we can work together and that the United States has such dedicated public servants as yourself.

As you know, we both participated in an inter-American dialogue dinner on the Honduras crisis in the fall. And as I told you a few days ago, I saw you put your excellent diplomatic skills to work there, and I was very impressed and let everybody know it. So we look forward to having you with us today, and the floor is yours.

STATEMENT OF THE HONORABLE CRAIG A. KELLY, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE (FORMER U.S. AMBASSADOR TO CHILE)

Ambassador KELLY. Thank you very much, Mr. Chairman and members of the committee. Mr. Chairman, I thank you for your very generous words. I recall very fondly, not only that event hosted by the Inter-American Dialogue in October, but also our conversation at the State Department earlier this week. Thank you very much for that. And again, I join others in welcoming Chairman and Mrs. Gilman, as well.

I appreciate this opportunity to discuss the recent political crisis in Honduras, the U.S. response and next steps. I might add, Congressman Mack and others who have expressed opinions about the events of the 28th, that in my statement I will talk about why we attributed it a coup. But I will be happy in questions to get more into that about, you know, why we reached that conclusion.

Honduras has come a long way since the coup that ousted the democratically elected government of former President Zelaya last June. We can be proud of the role that the United States played under the leadership of President Obama and Secretary Clinton in helping to restore constitutional and democratic governance in a country with which we have enjoyed strong, historic ties.

From the beginning of the crisis, we underscored the important principles of democracy and due process that were at stake in the Honduran crisis. At the same time, we rolled up our sleeves and worked with the Honduran people and the international community to help find a way forward.

Mr. Chairman, even before June 28th, the United States was concerned about he increasing polarization in Honduran politics. Our Ambassador, Hugo Llorens, spared no effort in urging all parties to resolve their conflicts through dialogue and respect for democratic processes.

After June 28th, the United States pursued a principle policy, consistent with our unwavering support for democratic governance, the rule of law, and human rights, and was among the first in the international community to condemn the coup. We formed part of the unanimous suspension of Honduras from the OAS for its violation of the Inter-American Democratic Charter. I might add that not one country in the world recognized the de facto government.

I would just like to emphasize, in light of today's comments, that this is not about who President Zelaya was or what he had done before June 28th, which we are very much aware of. This is about the manner of his removal, and that is why we reached the conclusion that we did.

Our implementation of this policy included termination of approximately $37 million in U.S. foreign assistance, and suspension of visas for senior de facto officials and supporters. At the same time, our policy also involved intense engagement with key elements in Honduran society of all sectors to promise dialogue and peaceful resolution.

Discussions facilitated by Costa Rican President Arias during the summer led first to the San Jose Accord, and then to a national dialogue inside Honduras, which the OAS facilitated. This so-called

Guaymuras dialogue gave the Hondurans more ownership of the problem, which was a good thing, and produced progress on several issues, until the talks reached an impasse in October.

At that point, Secretary Clinton decided to send a team to help finalize the Tegucigalpa-San Jose Accord, leading to an agreement on October 30th. Once the Accord was signed, we determined that the November 29 elections, in preparation long before the coup, were a vital part of a solution in Honduras.

In short, the Tegucigalpa-San Jose Accord and the November 29 elections, which were considered free and fair by local and international observers, together formed the basis for the return of Honduras to constitutional and democratic order.

Since assuming office on January 27, President Lobo has taken important additional steps to bring about national reconciliation: Installing a national unity government; working to establish a Truth Commission; replacing senior military leadership that had been involved in the coup; and pledging to investigate fully all alleged human rights violations.

Now that democratic governance has been restored in Honduras, the United States is resuming assistance that will promote economic and social development, strengthen democratic institutions and respect for human rights, and enhance Honduras' capacity to combat crime and drug trafficking.

Re-engagement with the Honduran military will be conducted in a deliberate and focused manner that will advance our common aim of developing a professional and non-political military.

We are not the only ones who believe it is time to move forward in Honduras. The International Monetary Fund, the World Bank, and the Inter-American Development Bank have re-engaged with Honduras; and many, many countries have sent back ambassadors to resume productive ties.

Secretary Clinton, stopping in Guatemala 2 weeks ago, welcomed the leadership of the Central American Presidents in promoting the re-incorporation of Honduras in regional bodies, including the Organization of American States.

Mr. Chairman, we will continue to support the new Honduran Government as it fulfills its commitment to transparent, inclusive, and accountable institutions. The United States has deep and abiding interest in Honduras, and will continue to work closely with the government and people there, as they strive to build a better future.

As our hemisphere thrives increasingly on integration on integration based on democratic principles and open economies, having Honduras regain its seat at the table is in the interest of all of us.

In closing, I might add, Mr. Chairman, that in reference to that session we had on October 21st here in the Congress, that as you gathered people from all sides of the debate—from the United States, from Honduras, and from the region—and we had a very spirited discussion about Honduras, I remember thinking as I left the room, what a great country we are in, that we can have this debate in a civil and spirited fashion, looking for a way forward.

And if I heard correctly the comments that you all made today, while there are differences over what happened leading up to and during the night of June 28th, there is a great sense that it is time

to move forward and that we have a lot at stake in helping Honduras as it addresses several of the challenges, but also opportunities in the future. With that, I welcome questions.

There are several questions that you raise that I will be happy to address. I could start in with that, or I can wait for follow-up questions from you, Mr. Chairman, as you wish.

[The prepared statement of Ambassador Kelly follows:]

TESTIMONY OF
CRAIG A. KELLY
PRINCIPAL DEPUTY ASSISTANT SECRETARY OF STATE
BUREAU OF WESTERN HEMISPHERE AFFAIRS
DEPARTMENT OF STATE
BEFORE
SUBCOMMITTEE ON THE WESTERN HEMISPHERE
COMMITTEE ON FOREIGN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 18, 2010

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before this Committee today to discuss developments in Honduras and the U.S. response. Honduras has come a long way since a coup ousted the democratically elected government of former President Jose Manuel Zelaya last June, and the United States can be proud of the leading role it played, under the leadership of President Obama and Secretary Clinton, in helping to restore constitutional and democratic governance there. In Honduras, we helped to strengthen the "collective defense of democracy" as a cornerstone of the Inter-American system. My remarks will focus on U.S. policy in Honduras, Honduran President Lobo's accomplishments since taking office six weeks ago, our plans to resume U.S. assistance to the Government of Honduras, next steps to reintegrate Honduras into the Inter-American community, and the challenges ahead for Honduras.

U.S. policy on Honduras

Even before the June 28 coup, the United States was concerned about the increasing polarization in Honduran politics that diverted attention and resources away from efforts to deal with widespread poverty and crime in the country. We consistently urged former President Zelaya and his opponents to resolve their differences peacefully in accordance with the constitution. In fact, at their invitation, Ambassador Llorens facilitated dialogue among the various leaders and institutions that helped defuse several potential political crises. At the OAS, we supported a resolution passed on June 26 calling for all parties to respect democratic institutions in Honduras and restating our support for Honduran democracy. The resolution tasked the Secretary General with leading a team to Honduras to help resolve the growing crisis. Unfortunately, a series of events

surrounding President Zelaya's attempt to hold a poll on whether to consider amending the Honduran Constitution led to his forcible removal on June 28, an act that fundamentally disrupted democratic order in Honduras. Following the coup, the United States pursued a principled policy, consistent with our unwavering support for democracy, the rule of law, and respect for human rights, and was among the first in the international community to condemn the coup. The United States supported UN and Organization of American States (OAS) resolutions adopted shortly after the coup that called for the reinstatement of President Zelaya. We supported the July 4 OAS resolution backed by the Zelaya government suspending Honduras' membership in the OAS. Secretary Clinton publicly welcomed the willingness of President Arias of Costa Rica to work with President Zelaya and the de facto regime to find a peaceful resolution that would restore democratic, constitutional order. Our careful implementation of this policy included targeted sanctions against the de facto government, including termination of approximately USD 37 million in U.S. foreign assistance and suspension of visas for de facto officials and their key supporters, as well as engagement with key elements in Honduran society to promote dialogue and a peaceful resolution. Although we did not recognize the de facto regime, we maintained a dialogue with political actors in Honduras and in the region—including key representatives of the de facto regime—in the effort to help the Hondurans resolve the crisis. Despite some public complaints from both sides, the United States was generally acknowledged by all involved to have been an honest broker with a good understanding of the crisis.

The discussions facilitated by President Arias led to a national dialogue in Honduras last fall known as the Guaymuras Dialogue, which the OAS facilitated. This positive development gave the Hondurans more ownership of the problem and led to progress in reaching a solution. At a critical point in the negotiations between representatives of President Zelaya and the de facto regime, Secretary Clinton sent a team from the United States to help finalize the Tegucigalpa-San Jose Accord, a commitment signed by both sides that established a framework for Honduras' return to democracy. A year-long electoral process begun prior to the coup culminated on November 29 when the Honduran people voted in an election considered by Hondurans and international observers as generally free and fair. The Honduran election marked an important milestone in the process to restore democratic and constitutional order, but not the end of that process. Following his victory, then President-elect Lobo expressed his intention to promote national reconciliation, fulfill the remaining elements of the Tegucigalpa/San Jose Accord, and tackle Honduras' economic and social problems.

President Lobo's Actions in Office

Since President Lobo took office on January 27, he has taken important steps to promote a national unity government and to establish a truth commission, as set forth in the Tegucigalpa/San Jose Accord. His government includes a broad spectrum of Hondurans, including cabinet-level representation of all five established political parties. To foster national reconciliation and solidify democratic processes, President Lobo has taken the following actions:

- Signed legislation on his first day in office granting amnesty for certain crimes committed between January 1, 2008 and January 27, 2010.
- Resolved the impasse created by former President Manuel Zelaya's presence in the Brazilian embassy by granting him safe passage to the Dominican Republic.
- Took steps to establish the truth commission by appointing former Guatemalan Vice President Eduardo Stein as its coordinator and one of its three international members. The truth commission is expected to launch at the end of this month and take about six months to complete its fact-finding responsibilities, which will include documenting alleged human rights violations related to the coup and its aftermath.
- Appointed a new civilian defense minister, Marlon Pascua, a new chief of the joint staff, General Carlos Cuellar, and replaced the top military commanders associated with the coup and the de facto regime. By establishing a break from Honduras' immediate past, these appointments were a critical step toward strengthening democracy in Honduras.
- Signed the Chapultepec Declaration, which commits state signatories to respect freedom of press and expression and to defend human rights.
- Pledged his government would fully investigate all alleged human rights violations committed during the period of the de facto regime, as well as more recently.

U.S. Assistance

The United States strongly supports President Lobo's actions to promote national reconciliation, implement the Tegucigalpa-San Jose Accord, and tackle Honduras' serious political, economic, and social challenges. As Secretary Clinton has stated, a democratically elected government headed by President Lobo has taken office in Honduras and democratic, constitutional governance has been restored. These conditions, including President Lobo's actions since taking office—most notably the significant progress he has made in establishing the truth commission, as set forth in the Tegucigalpa-San Jose Accord, and in fostering national reconciliation—met the United States' requirements for restoring foreign assistance to the Government of Honduras, terminated in September 2009.

Accordingly, the United States is resuming assistance to the Government of Honduras. We expect this assistance will promote economic and social development, strengthen democratic institutions and respect for human rights, and enhance Honduras' capacity to combat crime and drug trafficking. We anticipate restoring most of the assistance terminated last September.

Our traditionally robust engagement with the military forces of Honduras was put on hold following the coup. Reengagement with the Honduran military is an important element in our strategy to work again with the Honduran government, and will be conducted in a deliberate and focused manner. While we will need to cooperate in key areas such as combating narcotics trafficking, we will continue to signal our strong disapproval of the military's role in the removal of President Zelaya. It is imperative that our military cooperation programs advance our aim of developing a professional and non-political military in Honduras.

Reintegration of Honduras into the Inter-American Community

Honduras already has been reintegrated into the International Monetary Fund, the World Bank, and the Central American Bank of Economic Integration. The next major step is to build support among the OAS membership to lift Honduras' suspension, as well as reintegrate the country into the Inter-American Development Bank, and we are fully supportive of these efforts. Lifting the suspension in the OAS requires a two-thirds vote of the Member States in the General Assembly (GA). The Central American leaders who met with Secretary Clinton in Guatemala last week (Nicaragua was not present) agreed to work together to schedule a special session of the OAS GA for that purpose. The OAS membership will likely look to Honduras' Central American neighbors for leadership on this matter.

Beyond the Crisis

As Secretary Clinton stated on March 4 in Costa Rica, we believe President Lobo has taken the necessary steps to restore democracy. We share the condemnation of the coup that occurred, but we are proud to have worked with the Hondurans and regional actors to resolve the crisis. Now, it is time to move forward and help Honduras face other daunting challenges. These challenges include improving the human-rights climate; combating high levels of corruption, crime, and drug trafficking; and promoting and implementing social and economic reforms to reduce poverty and inequality levels that are among the highest in the hemisphere. In addition, Honduras faces a severe economic crisis, which could further destabilize the country, if foreign assistance by the United States, other nations, and international institutions is not restarted.

We are working closely with President Lobo regarding allegations of serious human-rights abuses and reports that persons have been targeted for their political views. On March 4, the Honduran Secretary of State for Security publicly expressed his commitment to the full investigation, including through the establishment of a special investigative team, of recent cases of alleged politically motivated crimes. The United States, through our embassy in Tegucigalpa, will continue to monitor closely the human-rights situation in Honduras and will work with President Lobo's government to ensure strengthened respect for human rights and accountability with respect to those who committed abuses during the period of the de facto regime and afterwards.

Now that a democratically elected president is in office, the United States will intensify its cooperation with the government of Honduras in the areas of counternarcotics and law enforcement. The collaborative efforts and coordination begun under the auspices of the Central American Regional Security Initiative (formerly the Merida initiative – Central America) will enhance the effectiveness of the police through capacity-building and encourage reforms in the security sector, with an emphasis on modernizing prisons, engaging civil society in economic and social programming, working to prevent gang activity, and rehabilitating and reinserting former gang members into society.

We plan to engage closely with the Lobo Administration to raise the living standards of Honduras' poor. The Honduran government plans to implement a new conditional cash transfer program for families, improve the educational system, and improve the poor citizen-security climate. Also, the Honduran government would like to channel some remittances toward investment rather than consumption.

Mr. Chairman, we are not going back to business as usual in Honduras. However, it is time to move forward and assist the new government in making a more concerted effort toward establishing honest, transparent, inclusive, and accountable governance institutions, and to ensure that another break in the country's democratic order never happens again. The United States has deep and abiding interests in Honduras, and we will continue to work closely with the government and people there as they strive to build a better future.

Let me close with an example of how Honduras can help achieve the goals all of us seek in the region. I accompanied Secretary Clinton to the March 4 Ministerial of the Pathways to Prosperity Initiative held in Costa Rica. Honduras participated actively in that Ministerial and in fact leads one of the four groups that

work to fulfill the Pathways goals of ensuring that increased trade leads to more opportunity for all inhabitants in the Americas, particularly those who have been marginalized. Given the key role that Honduras' ports and roads play in facilitating commerce in Central America, Honduras' participation in broader regional initiatives like Pathways demonstrates the important contribution it can and should be allowed to make to promoting inclusive and sustainable economic growth throughout the region.

Mr. ENGEL. Well, thank you, Secretary Kelly. I will ask a few; and then I will have Mr. Mack and then the rest of us will ask a few.

I just want to first state what I actually told you in your office the other day; that I think that the State Department's handling of what happened in Honduras was really excellent. I think you struck the right balance. I think you took a position in the middle of the road; and I think it helped move things along in Honduras.

Mr. Mack and I may disagree over whether it is called a coup or not, but we do not disagree over the fact that former President Zelaya tried to usurp power, and tried to violate his country's Constitution.

The problem that I have with it is the way it was done; you know, whisking him in his pajamas at 2 o'clock in the morning under gun point out of the country—I think that that strikes a very bad memory for too many people in that region of the world who do remember coups like that. It was not a military coup in the purest sense of the word, because the military did not take over, but the removal was done that way.

But as I said in my opening statement, I think we need to look forward. I was very happy—even though I was not pleased with the way Zelaya was removed—I was very happy to support elections in that country. And I was very happy, as you know, to issue a statement saying that if there are international observers, and the elections are held freely and fairly, then we and the international community need to recognize those elections.

So Mr. Mack and I really do not disagree on where we, I think, go from here; and really on what should have happened in Honduras. So I just wanted to state that. I think that elections were our way out, and now we have to look.

As you can tell, practically everybody who spoke on both sides of the aisle mentioned those cases of American citizens who have claims against the Government of Honduras. I am wondering if you can comment on it.

You know, one of the persons, Mr. Cerna from CEMAR, his company, he is actually in the room here today; and I know he has obviously an interest in it. But above and beyond his interest, you know, we all have an interest. Because if Americans are treated that way, you know, it does not really bode well, as I said, for investment in the country.

But it does not make us want to help. You know, if our people are treated so poorly with such disrespect and disregard then, you know, you just kind of feel, well, why are we knocking ourselves out to help Honduras, when Hondurans do not treat Americans fairly?

So I wish you can comment on some of those; and what are we doing, what will we do, what can we do, to make these people whole?

Ambassador KELLY. Thank you, Mr. Chairman. Having had, as you noted, the privilege of being U.S. Ambassador in Chile, I can state very directly that one of the key elements of Chile's success has been the environment it created for foreign investors—the transparency, the rule of law, the sense of consistency and so forth that investors look for when they invest in foreign countries. And

this is something that we talk to many countries about in the region, the need for creating an investment climate that is good for everybody concerned.

I had the pleasure of meeting Mr. Cerna before the opening of the hearing, and I said I would be delighted to have him come by the office so we can talk specifically about his case. I know we have had a lot of contact with him through the years, and we have a strong commitment to working with him to see, you know, what is the best way forward.

I have talked repeatedly with Ambassador Llorens about this, with whom Mr. Cerna has met. We agree completely that it is essential to pursue these cases in a way that seeks transparency and protects interests of investors.

We have communicated to Mr. Cerna, and I will look forward to a direct conversation soon, that we believe the best channel right now for his case is the mechanism provided in the bilateral investment treaty. I understand he has concerns about that mechanism, and I will be delighted to talk to him directly about those concerns.

But we happen to think that that offers the best way forward. That has been used many, many times in investment disputes around the world, and has been used successfully. So that is the path that we encourage. I will be, as I said, happy to talk with him further about that.

The other cases, as well, the Embassy has stayed in very close touch with Mr. Kafati, and also the case of Cortez Byrd. The Embassy has followed those very closely, and we will continue to do so. We completely agree with all of you on the principle of creating an investment climate that is favorable.

Mr. ENGEL. Well, let me thank you. But let me just say that we have done some looking into the Bilateral Investment Treaty (BIT). And the problem, as I see it, the international arbitration under the BIT is very expensive and time consuming. You know, a large multi-national corporation can certainly set aside the millions of dollars it needs to keep challenging this, with multiple years, you know, to pursue these cases in an arbitral panel.

A small investor does not have the time or resources to follow such a course. And that is a very real problem; not only for Mr. Cerna, and it is a problem for him, but others, as well.

So I would hope that the State Department, you know, would consider or change its position, and consider the difficulty that a small investor has to move forward under the BIT.

Considering that, I think that the U.S. Embassy and the State Department should make extra effort to advocate on behalf of such an investor. Because I think the BIT does not adequately address the needs. So I believe changes are needed, and I hope that you will come to the conclusion, as well.

Ambassador KELLY. Thank you, Mr. Chairman. I certainly will take all that on board. Our embassy has spoken to the government, and the previous government, as well, already with President Lobo and his administration about these cases. And I assure you, when I go back, I will relay to Ambassador Llorens our conversation and the committee's concern.

Mr. ENGEL. Thank you; let me ask you one other question, and then I will turn it over Mr. Mack. As I mentioned in my opening

statement, there have been a number of recent murders of Hondurans who were active in the resistance to what was happening.

Three journalists were murdered this month alone. I mentioned Nahun Palacios. He was a supporter. He expressed his rejection of the removal of President Zelaya. He was gunned down. I do not really think it is important as to what his beliefs were. I think we need to have the rule of law.

And so what I wanted to ask you is, is the Lobo administration doing enough to respond to recent politically motivated violence? The murder of these three journalists, what does it say about freedom of expression in Honduras; and what is the Obama administration doing to bring attention to these human rights problems?

Ambassador KELLY. Thank you. The terms bring attention. I think are very important. You may have seen yesterday our representative in the Organization of American States referred to the latest killing in Honduras, and urged the authorities to investigate to help to create the climate which, you know, does not condone this sort of activity.

I agree with you completely that it does not matter what people's beliefs are. If they are being targeted because of their beliefs, it is unacceptable.

We believe that President Lobo is very committed to making headway on human rights. It is a country which has a history of violence, one of the highest murder rates in the world, unfortunately. But when people are targeted for their beliefs, this is a particularly serious sort of abuse, and one that we are very serious about.

In our human rights report which was just issued a few days ago, which of course covers last year, it relates several incidents of a similar nature that we are concerned about. President Lobo has appointed a sort of minister level advisor named Miguel Bonilla, whose full-time job will be to address human rights issues. I think that high profile is welcome.

After the very first of these cases since January 27, Ambassador Llorens and his embassy issued a statement calling for prompt and thorough investigation of these cases.

So this is something that is very much at the top of our agenda, Mr. Chairman, and I assure you that it will continue to be so.

Mr. ENGEL. Thank you, and I want to say that I think everyone at this table, on both sides of the aisle, wish Mr. Lobo the best. I think that the steps he has initially taken, in terms of reaching across to all political persuasions in trying to have a coalition—I think the way he handled the Zelaya incident, being holed up in the Brazilian Embassy, was very positive.

I think all those things are very positive; and I would hope that in the countries that are still skittish about recognizing him and helping him, including the OAS, would understand that, you know, help is in the best interests of the people of Honduras; Mr. Mack?

Okay, Mr. Smith, Mr. Mack is going to pass for now; Mr. Smith?

Mr. SMITH. Thank you; I thank my ranking member. There are a number of state legislators in my office that have been there since 3:30. So I thank him for his courtesy; and I will just bring it down to one question, although I have several.

Like my colleagues, we are all very, very supportive of Mr. Lobo. We hope that the President can really being about true, lasting and positive change; and he is showing every indication that he is going to do it. But I would like to ask again, because this is a festering sore, on these property seizures that occurred.

Are you aware, and if not, could you get back to us on this, whether or not any of the new government officials, senior officials, senior military officials, include anyone who may have been involved in the abuse of Mr. Cerna and his rights; and can you tell us what the State Department has done to assist him in securing his rights in Honduras?

You know, the arbitration is out there. I know you are exhausting all your remedies. I have read all the letters that have been sent back. But at some point, you know, when you are looking at a process that will go on in perpetuity; that is what his belief is, and that I think it is what is the belief of many members of this committee.

It seems that this could be a time when we say, let us resolve this. I had a case out of Saudi Arabia once that went on forever. It was in arbitration. We talked to the Ambassador here in Washington. I talked to people in Saudi Arabia and ongoing, our Ambassador; and it never went anywhere, and I ended up losing, you know, a New Jersey company. So arbitration sounds good; but in practice, it is usually a dead end.

Ambassador KELLY. Thank you, Congressman; on the factual question, we will be happy to get back to you on the fact of whether there are current members of the government who have had involvement in the case.

[The information referred to follows:]

WRITTEN RESPONSE RECEIVED FROM THE HONORABLE CRAIG A. KELLY TO QUESTION ASKED DURING THE HEARING BY THE HONORABLE CHRISTOPHER H. SMITH

An external tax audit, commissioned by the Honduran tax authority, Direccion Ejecutiva de Ingresos (DEI), and carried out in 2004 by Palao William y Asociados, determined that CEMAR had underpaid on its taxes. Based on the audit, DEI found CEMAR liable for non-payment of taxes. One of the partners at Palao William was William Chong Wong, who was also a Sub-Secretary in the Ministry of Finance from 2002–2004 and Minister of Finance from 2004–2006. DEI is part of the Ministry of Finance. Chong Wong is currently Minister of Finance. We are not aware of any other current government officials or senior members of the military who were involved in this case.

Ambassador KELLY. And on the second one, as I indicated, as I said, we will look forward to speaking soon to Mr. Cerna, and to go over the pros and cons of also other methods of going through the Department of Justice route and all that. I know that has been in the correspondence, as well. So I do not need to belabor it here. But we will be very happy to discuss that directly with him, and I understand that time and money are a concern.

[The information referred to follows:]

WRITTEN RESPONSE RECEIVED FROM THE HONORABLE CRAIG A. KELLY TO QUESTION ASKED DURING THE HEARING BY THE HONORABLE CHRISTOPHER H. SMITH

While the United States government is not in a position to take sides on the merits of Mr. Cerna's investment claim against the Government of Honduras, the State Department has been very active over the last several years in trying to help him resolve it. The U.S. Ambassador to Honduras, Hugo Llorens, has personally raised this issue at the highest level of government, including with President of Honduras

Porfirio Lobo and Minister of Industry and Commerce Oscar Escalante in February of 2010, as well as with former President of Honduras Ricardo Maduro in March of 2010. Previous U.S. Ambassadors to Honduras Larry Palmer and Charles Ford also raised the case at the highest levels of the Honduran government on several occasions. We will continue to do everything we can to encourage the prompt resolution of this dispute. At the same time, we have on several occasions encouraged Mr. Cerna to take steps to exercise all available rights he may have in the Honduran courts or under the U.S.-Honduras Bilateral Investment Treaty.

Mr. SIRES [presiding]. Welcome Ambassador, and I will recognize myself, since I was next.

The situation in Honduras, can you tell me how fragile is it right now? Is it fragile; is it solid? How do you see it? Because I still see that there were three deaths last month. So how fragile is the democratic situation in Honduras?

Ambassador KELLY. I believe that there is a sense in the country that the country is moving forward. There is strong support for President Lobo, and there is strong support for the type of government he has set up, which includes three of the four people he ran against in the election.

So this very sincere effort to create a government of national unity and reconciliation has been welcomed. Yet, it is a society which still has a certain level of polarization; and I think that is at the root of some of the violence. So that has to be a concern.

I do think that the best way for us to address that is to stand with him, not just the United States—but other countries in the region—which is why it was very impressive to hear. Two weeks ago, I was with the Secretary in Guatemala, when the Presidents in the room spoke up of the need for all of them in the region to stand with the current Honduran Government and with the Honduran people as they address these challenges.

I think that the country has gone through a traumatic political experience. It lasted 7 months, and that has left some wounds. So, yes, there are concerns out there. There are sensitivities and a certain polarization, and I think the best thing we can do is to stand with them.

That is why we welcomed the re-integration that is occurring with the international financial institutions, and with the many, many countries around the world that have sent ambassadors back. We think this is very important, and we think that it is growing, and that is a trend that will continue.

Mr. SIRES. Mr. Ambassador, one of the things that led to the Zelaya removal was the influence of Chavez, supposedly. We had, in Spain, the judge's stated decision that Chavez supposedly was involved with the terrorists, the FARC.

I was just wondering if the State Department has changed its approach to Honduras, in terms of calling a coup; realizing that Chavez is interfering in Colombia. He is interfering in Honduras. He is interfering in all the other countries in South America. Has the administration re-thought the approach?

Ambassador KELLY. Thank you, Mr. Chairman. As I indicated in my opening statement, our position on what happened on June 28th had nothing to do with the ideas that Mr. Zelaya represented in the run-up to the 28th. It had everything to do with how his removal took place, and the fact that there was no due process.

You know, the Honduran Constitution has three different Articles that guarantee right of self-defense, due process, and so forth. And what happened during the night of the 28th did not allow for any of those steps.

So while we have studied all of the arguments in favor of the removal, we found that none of them allowed for due process. And due process being such a fundamental element of democracy, that is why we called what happened a coup. But this had nothing to do with the issues you are citing: The influence of Chavez in the region and so forth.

I would note in Honduras, that is a complicated issue, as well. I mean, the entry of Honduras into ALBA, the sort of Chavez affiliated alliance in the region, was actually supported by Mr. Micheletti when he was head of the Congress. So, you know, that part has a complicated history in Honduras, which is why we focused entirely on the process and what took place in the run-up to the 28th.

As for, you know, Mr. Chavez's influence in the region, we have a vision about how we think the majority of countries in the region feel they can best move ahead to secure a more inclusive prosperity and greater and stronger democracy for their citizens, and we have a positive message to work with the majority of countries that share that vision.

We are convinced that it is the overwhelming majority of people in the region who believe in strong democratic institutions and open economies that want to integrate with the rest of the world and underscore human rights and programs that help people achieve greater social cohesion and greater social mobility.

You know, we sometimes cite the example of Chile, which between 1990 and 2006 lowered its poverty rate from 40 percent to 14 percent. It did so with strong democratic institutions, negotiating free trade agreements with the whole world, but also implementing social safety net programs to give people a chance at social mobility. And I think this is the vision that most people in the region embrace.

Mr. SIRES. Mr. Ambassador, how stern has been your comments to the Honduras Government in terms of confiscating American properties?

I mean, have you pointed out that even in some countries, 50 years later, it is still an issue when they confiscate American properties? I mean, we really frown upon the fact that our business people go and invest, go and help those countries. And yet, it seems like in a blink of an eye, they just confiscate the properties.

So, I mean, for us, it is very difficult to accept that and provide assistance and all the other things that we provide to those countries. So how stern have you been with the government?

Ambassador KELLY. Well, as I mentioned, Ambassador Llorens has already raised this issue with President Lobo, indicating that the creation of this climate of protection of investors is very important. We obviously have to look at each case individually.

You know, whether a particular problem that a company has—is it expropriation; is it a confiscation; you know, what kind of a dispute is it? That, again, is why we tend to favor the mechanisms that are provided under the bilateral investment treaties, because

we do think they are the clearest way forward; again, fully understanding the concern that has been expressed by some members and by Mr. Cerna and others about the cost and so forth involved in that. But when we are looking at what else is available to address those, we still find that that is the best path.

Mr. SIRES. Thank you very much. I would like to recognize Congressman Mack from Florida.

Mr. MACK. Thank you, Mr. Chairman. Well, I guess we need to talk a little bit more about this. Because it is an offense to me and to a lot of people in some way the re-writing of history in Honduras.

It was not until the administration called it a coup were there concerns with the democracy in Honduras. And it was precisely the actions of the United States by the Obama administration that created the conditions to create the crisis.

And what do I mean by that? Up until the administration called it a coup, all of the different government institutions were working as they were supposed to. You have the Attorney General. You have the Congress. You have the Supreme Court; all acting within the Constitution and the rule of law.

And so to now say that we are happy that we helped restore democracy, it is a bit offensive. Because democracy was not in question until the administration labeled it a coup. And frankly, I think once that happened, it took a lot of work to try to find a way to save face.

So what we saw down the road and what we still continue to see today is an attempt by, I believe, the administration to try to save face on the debacle it created by calling it a coup.

And what do I mean by that? Well, now we are hearing about all of the restoring of aid and other things; that it is going to be incremental. That somehow Honduras and the government has to do something to earn back the right to get some of this back; when in fact, they did everything as to their Constitution and the rule of law.

I believe yourself and the witness last week, the Under Secretary talked about due process. Well, Zelaya was free to come back to Honduras and face charges. Instead, he played a game, trying to insight violence at the border and other things.

But he was more than welcome to come back to Honduras and face the charges that were brought against him; and he chose not to. Instead, he tried to do an international media game to try to get support to get back in power.

Throughout your testimony, both orally and what you have written and submitted to the committee, we continue to talk about or you continue to talk about, and the administration continues to talk about a coup; and I am going to give you an opportunity to answer this.

So I would like to know, how do you define a coup? That is one. Then I would like to know, when are we going to restore aid, to the full extent, and not continue this little game of, well, they have not done enough to make us look like we have saved face, yet.

Then does that also include restoring visas? Because frankly, I think President Micheletti and others, it might be a good idea for them to come to the United States and share with us what hap-

pened. Since it appears that some are trying to re-write history, maybe it would be good that they should be able to travel to the United States.

So those are the three questions. How do you define a coup; when are we going restore aid; and does that include the visas, as well?

Ambassador KELLY. Thank you, Congressman. With respect to the coup, you cited the events that occurred after the 28th. And I think it is certainly true that what happened in Honduras was not your sort of classic military coup, where the military took over the government. I think everybody recognizes that.

And just as I said that the determination in our decision about the nature of the events of the 28th was not determined by President Zelaya's policies before the 28th; nor was it determined by the way Mr. Micheletti conducted himself after the 28th, it really focused on the manner of the removal of the elected President of Honduras. This has nothing to do with the ideology of either person involved.

I made six trips to Honduras during this crisis. I met for hours with both President Zelaya, Mr. Micheletti, and then later with President Lobo, and with many, many representatives in Honduran society. Our aim was to help work with the country, with the precepts that were negotiated in the San Jose Accord and in the Tegucigalpa-San Jose Accord, which both sides agreed to, that also referred to restoration.

The fact is, many people who supported Mr. Micheletti acknowledged privately that what happened on the night of the 28th was a mistake; that this was not the way they should have done this.

What is difficult in Honduras is that the Honduran Constitution lays out no specific path for an impeachment procedure. They used to have one. It was taken. It was removed from their Constitution. It is, I suspect, something that the Truth Commission may take up. It is up to them. But I suspect they will look at this; that, you know, why was there no mechanism to address this crisis.

In a sense, they were sort of playing it by ear. Because there was no set procedure in the Honduran Constitution.

Mr. MACK. Can I suggest that instead of playing it by ear, maybe they were acting in a way that they thought was constitutional, the rule of law, and that would ensure that there was not violence.

I mean, you have been there. If you talk to those in the military; both the United States military and the Honduran military, they will tell you that there was great concern about the actions of Zelaya and what to do. And it was Zelaya's friend in the military that made the decision to try to make sure that there was not going to be any violence.

You know, it is one thing for us now to say that, well, we did not like the way it happened. Well, then we should have addressed that; but not to come out, call it a coup, take aid away, and create this issue. It had a severe impact on the Honduran people, and is what created the crisis in the first place.

If we had not, the elections would have happened, just as they did. Basically, I think what happened is, you had to have a negotiation, again, to make it look like we did something. And now you

want to re-write history and say that we have helped restore democracy; when, in fact, our actions were irresponsible.

Ambassador KELLY. Again, I might add that both parties, as we approached the Tegucigalpa-San Jose Accord, did talk about restoration. I mean, there was acknowledgement that something had gone wrong and something needed to be fixed, even on the part of those who supported the de factos. But we created that.

Well, I think that if we had not called the events of the 28th a coup, we likely would have been the only country in the world that did not. I think it is important to keep in mind that not one country in the world recognized the Micheletti government.

Now I want to add at the same time that one reason I think that we were recognized as an honest broker in this dispute is that we did not question the motives of people on either side. Our view was, there has been an interruption. Even according to the Honduran Constitution, there has been an interruption in democratic governance. We want to help work with the country to find a way forward.

But we also felt it was important to declare what we saw, which was that a democratically elected President was removed without due process.

Mr. SIRES. Mr. Ambassador, I have to cut you off, because I have some of the other members, and Congressman Mack, I am sorry; Congressman Faleomavaega?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman; and thank you, again, Secretary Kelly, for being here this afternoon.

Before proceeding, I would like to submit this to you; a copy of the letter that was written by Chairman Conyers of the Judiciary Committee 2 months ago, reminding again Secretary Clinton that 1 year ago, some 90 Members of Congress submitted this letter on behalf of Mr. Cerna, that we have all discussed earlier today; and still, there has been no acknowledgment from the State Department of this letter. I would like to have staff give this to you personally, to give to Secretary Clinton's staff person, to find out why there has not even been any acknowledgment of this.

But I think all my colleagues have already given you the picture in terms of why the rights of U.S. citizens under the U.S. Honduras bilateral investment treaty has not been honored. And I would think that U.S. investors who invest in Honduras, they should be honored; and certainly, the rule of law, we hope, is being followed truthfully. Go ahead and give that to him.

But Mr. Secretary, I was listening with interest to my good friend from Florida's line of questions, which I think has very, very far reaching implications. The reason for my saying this is, when we talk about coups, things automatically come up.

For example, we have a Federal law in place. Whenever there is a military coup, automatically we put sanctions. The Congress puts sanctions or the President puts sanctions on that country that committed a military coup. The question that comes to mind, and as stated earlier by the chairman, is the manner in which President Zelaya was removed.

Now correct me if I am right in recalling what happened. Basically, the military physically went to the President's residence at gun point; took President Zelaya and members of his family phys-

ically, put them in the airplane and took them to Costa Rica with the mandate never to come back to Honduras.

And I think this is where we are getting a little fuzzy here as to exactly what is our position. Because I can tell you, we also had a military coup in Pakistan by a General by the name of Musharraf. And because of our national security interests, we waived that coup against Musharraf for some 8 years and paid them billions of dollars; and where did we end up with that, as a result of that coup?

We also had another example of Fuji. There were four military coups and one civilian coup, all within 20 years that took place. Here, again, we put sanctions on Fuji. We put sanctions on Thailand when there was a coup that was committed there, with no real reason at least I could feel justified the way that was implemented.

So there is a serious question in there and I was wondering, did the military act according to authority, or did the General just act on his own to physically get rid of Zelaya at that point in time?

Ambassador KELLY. The question of who gave the order to the military is, I think, one of the issues that the Truth Commission will actually investigate. Because it is not entirely clear how they acted.

Mr. FALEOMAVAEGA. I am sorry; my time is up. But let us wait for the Truth Commission on that, then. I think maybe that will explain it better.

I have another serious question I wanted to share with you. I am told that the population of Honduras is about 7.8 million. Out of that population, some 546,000 are indigenous Indians or Amerindians. I want to know what educational, what social, what economic assistance our Government gives specifically to the needs of indigenous Indians.

You know, we have some 565 tribes in our own country. Five million indigenous Native Americans live in our country. And I want to know if the Honduran Government, if the State Department is doing anything seriously to meet the economic and social needs of the 546,000 indigenous Indians that we have living in Honduras; and are they given the same civil rights, economic opportunities as others?

I believe in the population breakdown I have here, there are some 7 million who are mixed European/Amerindians. Is that the new term they use now for mixed Indians? I know there is a subtly going on in Latin America that some people do not even want to classify themselves as having indigenous Indian blood.

Evo Morales is the first indigenous Indian elected in Bolivia. Mr. Alejandra Toledo is the first Inca individual indigenous Indian elected in Peru. There are a lot of issues pertaining to this. So I would gather there are some 200–300 million Indians; and I am very, very serious in wanting to ask you, Mr. Secretary. I would like to know exactly what our country is doing to give assistance to the indigenous populations of this country.

I know my time is up, Mr. Chairman; thank you and I yield back.

Ambassador KELLY. Congressman, I would be happy to give you a detailed follow-up in writing. But let me just say very briefly that

this is one of our major priorities in the region. Actually, the Western Hemisphere is far more ethnically diverse than people realize. And we have a lot of programs, both in our public diplomacy and in our economic assistance, including in our initiative called, Pathways to Prosperity in the Americas, which is an effort to create greater social mobility through the countries with which we have free trade agreements in the region.

All these things have as one of their key focuses populations which have marginalized from the economic integration, which is going on in the region. I would be delighted to give you more detailed information. But it is a very important priority of ours.

[The information referred to follows:]

WRITTEN RESPONSE RECEIVED FROM THE HONORABLE CRAIG A. KELLY TO QUESTION ASKED DURING THE HEARING BY THE HONORABLE ENI F.H. FALEOMAVAEGA

Consistent with its desire to promote inclusive economic development that meets the needs of traditionally marginalized ethnic groups, the United States has targeted some of its assistance to Honduras to benefit the country's indigenous people. Over the past several years, the United States Embassy in Tegucigalpa has worked closely with the indigenous communities on several projects that respond to their needs. Ongoing projects and the amount of funding for each are described below:

1) Currently, our USAID mission in Tegucigalpa has provided aid in the form of decentralized technical assistance and teacher training, standards, curriculum calendars and monthly standardized formative tests for all Honduran children in primary school, including indigenous and Garifuna (Afro-Hondurans). Indigenous and Garifuna youth and adults also benefit from the USAID supported EDUCATODOS program. The EDUCATODOS program provides an alternative education system for out-of-school youth and adults, who number 7,387 indigenous participants in 640 centers located in ten of Honduras' eighteen departments. ($387,117)
2) Twenty-one Garifuna and indigenous participants were approved to travel to the United States for training in 2009, under USAID's Cooperative Association of States for Scholarships (CASS) Program. An additional thirty Garifuna and indigenous participants have been selected for training in 2010. These participants are expected to travel to the United States for training later in 2010. ($1,303,000)
3) Additionally, the MIRA project in coordination with the USFS has established an alliance with the NGO Green Wood to improve the household incomes of approximately 100 Pech families (some 800 people) by teaching them how to utilize their natural resources more efficiently, linking them to markets, and helping to implement sustainable forest management plans. These communities are located in the municipalities of San Esteban, Olancho and Bonito Oriental, Colon. ($60,000)
4) USAID's Rural Enterprise Development Project has assisted approximately 1,150 indigenous people per year in strengthening and diversifying their agricultural production. This agricultural diversification program focuses on the production of high-value crops and value-added products for export and regional markets. ($1,250,000)
5) USAID's health program provides assistance to the Government of Honduras at the central, departmental, and local levels to improve family planning and maternal and child services in rural areas of Honduras where most indigenous communities are located (Intibuca, Copan, La Paz, and Lempira).µ Through the USAID-supported decentralization of health services, about 20,000 indigenous people (Lencas and Chortis) have access to a defined basic package of services. ($176,000)
6) Through the USAID Title II Food for Peace program, over 120,000 indigenous people received $1.07 million in food commodities to address the multiple causes and effects of food insecurity by focusing on maternal and child health, agricultural productivity, and local capacities development and strengthening.

Mr. FALEOMAVAEGA. If I could have just 5 seconds, Mr. Chairman. I just wanted to note an interesting fact. The population of the Hispanic population here in America—out of some 310 million, it is 45.5 million Hispanics. And out of that, 58 percent are Mexican Americans.

Now it seems to be the trend that everybody who is Mexican America can claim their ancestry to some Aztec prince or princess or some tribe in Mexico with tremendous pride as a descendent of many of the tribes that come out of Mexico. I think it is something that we ought to take notice for. Thank you, Mr. Chairman; thank you.

Mr. SIRES. Thank you, Congressman. I recognize Congressman Rohrabacher.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. Just right off the bat, just to make sure that you understand the importance of the three journalists who were murdered, that is not something that is just on their side of the aisle.

We are very concerned about any journalists or human rights crimes such as that. If there is evidence somebody in the government was responsible, we do know that Honduras has a very high murder rate; and that in other countries where you have high murder rates and high crime, that sometimes journalists are murdered by other than the government.

But if there is any indication that the government was involved in this, we would like you to let us know immediately; notify the embassy. Because that, of course, is something that we cannot in any way compromise that standard. That is unacceptable, and we will follow through on that to make sure that we get information about that.

By the way, in terms of the debate back and forth about the removal of this would-be caudillo, let us just note that due process was followed. The military did not just proceed with guns. They had an order from the Supreme Court of that country, which was a legal order saying that the President was violating the law in a power grab that would have basically abrogated their Constitution.

That seems to me to be fine due process. And to call that a coup, like in other areas, is something that I believe, and I agree with Mr. Mack, brought on this whole crisis.

So with that said, we need to shut the book and move forward. Let me ask you this. Is Honduras right now permitted to participate in the Organization of American States meetings?

Ambassador KELLY. They are not now. The re-entry into the Organization of American States requires a two-thirds vote of its members.

Mr. ROHRABACHER. All right.

Ambassador KELLY. We strongly support their re-entry; and as I noted, at the meeting with Secretary Clinton in Guatemala with the Central American Presidents, she noted with great satisfaction that the Presidents spoke up in favor of this.

Mr. ROHRABACHER. Okay, I have only got a couple of minutes, sir. So your answer is no, they are not participating; but yes, we are backing their request to continue to participate. What are we doing to ensure that, besides just mouthing off a couple of words?

Are we suggesting the United States might not sit in on meetings, if Honduras' democracy is not able to sit in?

Ambassador KELLY. Well, Congressman, actually, we see a trend of countries that are moving toward normalizing their relations with Honduras; and in our view, that is going to lead us to the result we want to see. We are talking with all the countries in the region with that end in mind.

Mr. ROHRABACHER. I would suggest that our commitment to democracy in the Organization of American States, at a time when you have countries like Cuba and other dictatorships permitted to participate, we should stand firm and make sure there is a penalty to pay for organizations that discriminate against democratic governments; while permitting dictatorships like Cuba to be involved.

In terms of these still pending cases, like we have heard about today with Oscar Cerna, let me just note that we need to close the book on what happened last year. We need to close the book on these cases. And the government in Honduras needs to understand that, again, there is a penalty to pay if they are making the wrong decision.

Just for the record, I have a piece of legislation that we will be submitting for myself, asking for us to make sure that we, you know, leave the past behind and get on with the good relationship with Honduras. Mr. Mack, Mr. Burton, and Ileana Ros-Lehtinen are all co-sponsors of the bill.

But in the bill, it does suggest that those property claims be acted on. And if not, there will be another piece of legislation that cuts off our aid to Honduras 1 year from now, if it is not acted upon; and it is not acceptable simply to say, well, this guy has got to go through and all these other people who have been waiting—not just this one—but they have to go through some bureaucratic process that they have already been through.

These are not claims that were made last year. These are claims have been going on and on and on. They have already been through the process; and just us pointing them, they will now go through the process some more, this is actually draining the wealth and rights of these people. Some of them are U.S. citizens.

So let us get those property claims dealt with; and as I submit this, getting back to normal with the Honduras bill. Next year, there will be another bill that indicates that there will be a penalty to pay, unless we see that case and other cases like it dealt with by the Honduran Government.

And if you would indulge me just one more question, Mr. Chairman, after this whole fiasco last year, there was a policy by our Government of revoking the visas of those people who were engaged in this conflict, okay—this controversy that was going on. Well, we want to put the controversy behind us and move forward.

Are those government officials, whose passports were revoked—are they going to either be issued new passports or have those passports renewed, or visas I should say? What is our policy on that? Have we now been able to shut that book and move forward; or are we so stuck in trying to punish these guys for something that we now consider to be old news?

Ambassador KELLY. Thank you, Congressman; a couple of good things, on the property cases—absolutely, I have heard this mes-

sage loud and clear today. It is one we do take seriously. But hearing again from you is very helpful, and we will take that as we move forward; thank you.

Mr. ROHRABACHER. Okay.

Ambassador KELLY. On Cuba and the OAS, Cuba is not in the OAS. The suspension on Cuba was lifted. But what was said in Honduras actually in early June, largely at our working, was that this had to be accordance with the principles, purposes, and procedures of the OAS, including human rights and democracy.

Mr. ROHRABACHER. Good; thank you.

Ambassador KELLY. And on your final point about visas, visas were never meant to punish people. Visas were a policy tool to make a point about the effort to work toward a restoration of constitutional and democratic order. We are looking at those, and we will be moving on those.

But we will look at them in terms of, you know, they are not one group. They are individual human beings we will be looking at.

Mr. ROHRABACHER. But the constitutional government has been restored; and so there is no excuse any more to keep that issue alive. So I would hope that that is acted upon quickly, because it is a stumbling block. These people are influential people in Honduras. Why are we kicking them around, when we have already said that that is old news and we want to move beyond it? Thank you very much.

Ambassador KELLY. Thank you.

Mr. SIRES. Thank you, Congressman. I just have one short question. How concerned was the administration that although Honduras had said that they were going to hold elections in November, that they were not going to hold elections in November, after they removed Zelaya.

Ambassador KELLY. I am sorry. I did not quite catch that.

Mr. SIRES. During the events, I always understood that Honduras always had the intention of having an election in November.

Ambassador KELLY. Yes.

Mr. SIRES. How concerned was the administration that Honduras was not going to keep their word?

Ambassador KELLY. The de facto government said right from the beginning that they intended to hold elections.

Mr. SIRES. Right.

Ambassador KELLY. As I mentioned in my statement, we believe that the combination of a movement toward some sort of an internal agreement and the elections was the basis for the way forward.

Mr. SIRES. So you never had any doubt that they were going to hold elections in November?

Ambassador KELLY. I am not aware of any threat on the part of the authorities after June 28th to say that elections would not be held. I could be mistaken on the facts.

But we assumed all along; I know there were statements on the part of Mr. Micheletti, that elections would be held. Our position, as you know, is that the elections were planned. The candidates were chosen in primaries 1 year before the election, long before June 28th, and so we supported that process.

Mr. SIRES. Well, Mr. Ambassador, I want to thank you for coming. I am sure the chairman, had he been here, would thank you

for coming and answering your questions. I appreciated them; thank you very much.

Ambassador KELLY. Thank you very much.

Mr. SIRES. We will now hear from our second panel. Thank you for your patience. I am now pleased to introduce our distinguished private witnesses.

Cris Arcos is a former U.S. Ambassador to Honduras. He also served as Assistant Secretary of Homeland Security for International Affairs during the George W. Bush administration; Mr. Arcos, welcome.

Vicki Gass is a Senior Associate for Rights and Development at the Washington Office on Latin America (WOLA). And last, but certainly not least, Kevin Casas-Zamora is a Senior Fellow for Foreign Policy and Latin American Initiative at The Brookings Institution. He is also a former Costa Rican Second Vice President and Minister of National Planning and Economic Policies; welcome. We will start with you, Ms. Gass.

STATEMENT OF MS. VICKI GASS, SENIOR ASSOCIATE FOR RIGHTS AND DEVELOPMENT, WASHINGTON OFFICE ON LATIN AMERICA (WOLA)

Ms. GASS. Thank you very much for this opportunity. Let me begin with saying that Honduras is in crisis. Let me also be very clear that this is not a crisis that originated in June of last year or ended with the inauguration of President Lobo in January.

The new government faces a crisis of credibility, long in the making, because 30 years of democracy has done little to reduce poverty and inequality in Honduras, which makes it one of the poorest countries in the Hemisphere; nor has it curtailed the seemingly entrenched culture of corruption and impunity.

Citizen belief in the democratic system is at an all time low. A recent poll conducted by FOPRIDEH revealed that 60 percent of Hondurans no longer believe in democracy.

Compounding this crisis, violations of human rights have escalated since the coup, and have continued since President Lobo's inauguration. We have heard about some of those today.

The State Department also released just last week its human rights report, which indicates the following types of human rights violations: Unlawful killing by current and former government security forces—at least 50, according to COFADEH; arbitrary detentions, attacks against the press, and disproportionate use of force. These attacks were directed against citizens actively opposed to the coup and/or their family members.

Let me share with you some concrete examples. In august 2009, Irma Villanueva was arbitrarily detailed by Honduran Policy after participating in a peaceful demonstration. While detained, she was raped by four police officers, who later inserted their batons into her vagina. Sadly, that was not the only case that was reported.

On December 4th, lesbian, gay, bisexual, and transgendered Walter Trochez was kidnapped and physically assaulted by unknown people. Nine days later, he was assassinated.

And as we have heard today, three reporters in the last 2 weeks have been assassinated; reporters who were outspoken against the

coup. The last one, Nahun Palacios, was shot to death in broad daylight last Sunday.

These last attacks are just a sampling of reported associations, kidnapping, and beating that have occurred since the inauguration. In Honduras, there is widespread concern that the military has emerged stronger from this crisis, and that death squads are once again on the prowl.

The popular reaction against the coup has to be understood in the context of the ongoing poverty and inequality in Honduras, and the pervasive corruption and impunity. Honduras is rich in natural resources. Yet, the majority of the people are poor. The poorest 10 percent account for only 1 percent of the county's income; while the richest 10 percent account for 42 percent.

Hondurans are tired of this, and as tired of the corruption and impunity. According to the Honduran Anti-National Anti-Corruption Commission in its December 2009 report, corruption pervades every level of the state, and particularly in bidding for public state contracts, especially in the last 6 months under the Micheletti government.

This is not a new phenomenon in Honduras. It has happened with debt relief funds, and reconstruction funds have been diverted to fulfill campaign promises. The National Congress awards contracts to its members or members of their family to build roads or bus stations that are never built; and international loans are brokered and debt assumed for projects that are never completed, even though the creditors must still be paid.

The level of corruption has an enormous social cost; roughly $500 million are lost every year due to corruption. This is not a new phenomenon, but one that has been going on for decades.

Unfortunately, prosecutions and convictions of those who participate in corruption are extremely rare. If Americans are unable to get their problems resolved in Honduras, even less so Honduran people. Only 2.2 percent of the 2,000 corruption cases that reached the court between 2002 and 2006 resulted in an actual conviction. Corruption and impunity are also problem within the armed forces.

What could be done to reconcile a deeply divided country whose government institutions do not work and lack credibility? There are three immediate things that President Lobo must do. He must make clear, publicly and privately, that violations of human rights are unacceptable and will be punished, whatever the rank or position of those involved. He must guarantee that the Truth Commission has complete and independent power to thoroughly investigate and charge those responsible for coup and for human rights abuses.

Finally, he must carry out a meaningful national dialogue across Honduras, drawing on the extensive experience of organizations that have worked on local development and civil society participation. I would refer members to my written testimony, which has more detailed, concrete suggestions for these three areas.

President Lobo's ability to do this will depend in many ways on the support of the international community. As is often said out of any crisis, there is opportunity. This is a critical moment for Honduras. The United States and other donors must play a key role to press President Lobo to carry out these steps and offer him assistance to do so.

Secretary Clinton recently announced her intentions to restore aid to Honduras. But WOLA urges the Secretary to not release all the aid at once, but gradually based on significant progress in the three areas mentioned in my testimony.

In addition, WOLA recommends that all aid to Honduras be subject to Congressional notification, so that the committees can conduct oversight, as needed. In particular, the subcommittee and the appropriators should ask the administration to report to them on progress in the areas outlined above.

The Hondurans I work with are a hard working and noble people. They deserve no less; thank you.

[The prepared statement of Ms. Gass follows:]

Testimony of Vicki Gass
Senior Associate for Rights and Development
Washington Office on Latin America (WOLA)

March 18, 2010

"Next Steps for Honduras"
House Committee on Foreign Affairs
Subcommittee on the Western Hemisphere

My name is Vicki Gass and I am the Senior Associate for Rights and Development at WOLA, the Washington Office on Latin America. I have two Masters from the University of New Mexico, one in Latin American Studies, and the second in Community and Regional Planning. I have over 25 years experience working in Central America on human rights and economic justice issues, and I lived in Honduras for two years from 1999 to 2001 working on civil society and reconstruction issues following Hurricane Mitch. After the painful events of June 28, I have had permanent contact with numerous Honduran development and human rights organizations. In addition, I spent two years in Iraq, from 2004 to 2006, working for the National Democratic Institute for International Affairs on women and constitutional rights. In this hearing, you have asked me to describe the steps that Honduran President Pepe Lobo and others should take to emerge from the political crisis; to discuss what role the international community should play; and, finally, to evaluate President Lobo's first six weeks in office.

Honduras is in crisis. It is not a crisis that originated in June of last year or ended with the election of President Lobo in January of this year. The new government faces a crisis of credibility which has been long in the making. Thirty years of democracy – or at least of a two-party electoral system -- has done too little to reduce the poverty and inequality that make Honduras one of the two poorest countries in the Western Hemisphere, or to curtail a seemingly entrenched culture of corruption and impunity. The Honduran Constitution has been reformed 28 times in the last 30 years by successive national congresses yet the public perception is that the reforms have only benefitted powerful economic interests and the political elite.[1] As a consequence, citizen belief in the democratic system has eroded. A recent poll conducted by the Federation of Development Organizations of Honduras (FOPRIDEH) revealed that 59.9 percent of

[1] To review quantity and quality of constitutional reforms, see http://pdba.georgetown.edu/Constitutions/Honduras/hond05.html

Hondurans no longer believe in democracy.[2] Compounding the crisis caused by poverty, corruption, and the failures of the political system, the violation of human rights has escalated dramatically since the June coup d'état.

The new Honduran administration, with support of the international community, must take bold action to end human rights violations, reduce poverty and inequality, and put an end to corruption and impunity. Only by doing so can it restore faith in democracy. In this testimony, I offer concrete suggestions for both the Honduran and US governments to help this Central American nation emerge from this crisis.

Human Rights Violations

Respect for human rights in Honduras has sharply deteriorated. The 2009 Department of State Human Rights Report for Honduras, released just last week, details the human rights violations following the June 2009 coup d'état. Violations noted by the report, as well as by the Inter-American Commission on Human Rights (IAHCR) and other independent human rights organizations, include unlawful killings by current and former government security forces, arbitrary detentions, violence perpetrated against people detained, restrictions of freedom of the press, and disproportionate use of force by security forces.[3] These attacks were directed against citizens actively opposed to the coup d'état and/or their family members. The following are a few examples of human rights violations that occurred in the months following the political upheaval of June 2009:

- In August 2009, Irma Villanueva was arbitrarily detained by Honduran Police after participating in a peaceful demonstration in Choloma, outside of San Pedro Sula, the second largest city in Honduras. While detained she was raped by four Honduran police officers who later inserted their batons into her vagina. The IACHR has repeatedly held that rape of detainees by State agents is an act of torture. Sadly, the case of Irma Villanueva was only one of numerous cases the Commission learned of in a site visit from August 17 to August 21.[4]
- During its on-site visit to Honduras, the Commission also learned of "severe and arbitrary restrictions on the freedom of expression."[5] The State Department's recent report mirrors these concerns, reporting that the de facto regime of President Michiletti restricted the freedom of expression, most notably on July 1, September 26 and October 5 when the de facto government issued decrees (such as decree 016-2009) curtailing freedom of expression. There were also direct attacks against media outlets, according to the State Department's report. For example, on June 28, the military prevented transmissions by several media outlets, including Cable Color, Channel 8, Channel 11, and Channel 36, and radio stations Radio Progreso and Radio Globo.[6]

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[2] January 2010 – find exact quote.
[3] http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136117.htm
[4] http://www.cidh.oas.org/pdf%20files/HONDURAS2009ENG.pdf
[5] Ibid.
[6] Ibid, op cit.

- On December 4, Lesbian, Gay, Bisexual and Transgendered activist Walter Trochez was kidnapped and physically assaulted by unknown people. In reporting the crime to human rights organizations, Mr. Trochez stated that his kidnappers questioned him about his activities in anti-coup activities. Nine days later, he was shot dead by unknown assailants in Tegucigalpa. He was 25 years old. Since the coup, 18 gay and transgendered men have been killed nation-wide, as many as killed in the five years prior to the coup.[7]
- COFADEH, the Committee of Relatives of the Disappeared in Honduras,[8] reports that a total of 28 members of the opposition movement were victims of politically-motivated assassinations between June 30 and December 31, 2009.

Unfortunately, the violations of human rights have not stopped with the inauguration of President Lobo on January 27. The IACHR issued a report on March 8, 2010 condemning the murders of at least three Hondurans active in the opposition to the coup d'état or family members of activists.[9] It further deplored the continuation of kidnappings, arbitrary detention, torture, and sexual violence perpetrated against other Hondurans actively opposed to the coup, many members of the resistance. WOLA condemned these abuses in a public statement which was distributed to Congress in late February. Concrete examples of the violence since the Lobo inauguration include:

- On February 24, Claudia Larissa Brizuela, a member of the opposition movement and mother of two, was murdered inside of her home by unidentified intruders. Her father, Pedro Brizuela, is a prominent opposition politician and journalist.
- On February 15, Julio Benitez, a trade union activist, was murdered outside of his home in a drive-by shooting in Colonia Brisas de Olancho.
- On February 12, Hermes Reyes, a member of an opposition group, was kidnapped and beaten by three paramilitaries. That same day, men who identified themselves as police looted the home of Porfirio Ponce, a union organizer and opposition activist.
- On February 10, a family of five in San Pedro Sula was abducted for five days. Two of the women were raped and all five were tortured. All are active members of the political opposition movement.
- In early February, two reporters were kidnapped by paramilitaries in Tegucigalpa. The paramilitaries physically abused the reporters and demanded that they divulge information about the opposition movement.

Continued human rights violations will undermine the new government's stated goal of rebuilding trust in democratic institutions and the pervasive impunity embolden perpetrators of political violence. In Honduras, there is widespread concern that the military has emerged stronger from this crisis and that the country will return to the repressive practices of the 1980s. If President Lobo wants international recognition and aid reinstated after his country was shunned by governments following last year's coup,

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[7] http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136117.htm and http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136117.htm

[8] *Comité de Familiares de Detenidos Desaparecidos en Honduras* in Spanish

[9] GET CITATION

then he needs to get the military back in the barracks, rein in the police forces, and bring justice to those responsible for these abuses.

Poverty and Inequality

The popular reaction against the coup has to be understood, not only in terms of the disruption to constitutional order, but also in the context of the ongoing poverty and inequality in Honduras. After 30 years of electoral democracy in Honduras, people expected improvements in their standard of living and their quality of life. Distressingly, these expectations have not been met.

Honduras has a population of 7 million people. It is rich in natural resources timber, gold, silver, copper, lead, zinc, iron ore, antimony, coal, fish, and hydropower.[10] Yet Honduras continues to be the second poorest country in the region. According to the CIA Factbook and the 2007/2008 UNDP Human Development report, 50.7 percent of Hondurans live below the poverty line. In the rural sector, 66.4% of the population lives on 20 lempiras a day ($1.06) and an estimated 62 households out of 100 nation-wide do not have sufficient income to cover the cost of basic food necessities.

As with many of its neighbors, Honduras suffers from high levels of economic inequality. The poorest 10 percent of the population account for only 1.2 percent of the country's income, while the richest 10 percent account for 42.4 percent.[11] The CIA Factbook states that, out of 134 countries, Honduras is the 16th most unequal country in terms of income distribution.[12] The benefits of the modest economic growth that Honduras has experienced in the last thirty years have not gone to poor people; they have not seen positive outcomes from the political process

Pervasive Corruption in Government Institutions

There are many studies that analyze why poverty and inequality continue to be persistent problems in Honduras but one of the leading causes is the deeply rooted corruption that, according the official National Anti-Corruption Commission, pervades every level of the state. In December, the Commission issued its 2009 annual report on transparency. It found that despite the fact that public contracting represents 50 percent of the gross national product, there are no mechanisms for transparency and accountability. There is no public competitive process for bidding on public contracts. More often than not, the public is notified only when a contract award is announced in the official federal register, *La Gaceta*. But even official publication is not a guarantee.

The latest corruption scandal to rock Honduras, commonly referred to as the "gacetazo" (gazette-gate), deals with the publication of two different versions of *La Gaceta* with the

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[10] CIA World Factbook https://www.cia.gov/library/publications/the-world-factbook/
[11] [11] *UNDP Human Development Report 2007/2008*, "Fighting Climate Change: Human Solidarity in a Divided World," http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf
[12] CIA World Factbook https://www.cia.gov/library/publications/the-world-factbook/

same edition number and the same date. It was published on January 22, 2010, in the final days of the de facto president, Roberto Micheletti. Just before leaving office, Micheletti and the Congress rapidly approved a $160 million contract to a Honduran-Italian consortium to manage and improve the Jose Cecilio del Valle Dam (also know as the Nacaome Dam). The contract was signed into law in Roberto Micheletti's last cabinet meeting. One version of the official newspaper had sixteen pages with no mention of the dam contract; the other was 32 pages and included the awarding of the dam contract. Only 20 copies of the second version were published. Atypically, this particular case is under investigation by the Public Ministry.

Corruption is a problem that has infected every government. Under the constitutionally elected government of Manuel Zelaya, the Poverty Reduction Strategy program was reduced to a minimum. An estimated $37 million in debt relief funds were redirected to fulfill campaign promises, and to increase the salaries of government officials, the police and armed forces. The Advisory Council of the Poverty Reduction Fund, the highest decision making body for the allocation and use of poverty reduction funds was weakened in favor of a public charity program run by the former president's wife.[13] It is no wonder that, according to Rolando Bú, executive director of FOPRIDEH, reported two months ago that the government of Honduras has spent $6.3 billion dollars since 2001 to alleviate poverty in the country with no success.[14]

There are also many examples of corruption where money was designated to government representatives and/or their family members by the National Congress for local infrastructure projects that were never built. For example, in 2006, the Honduran Congress designated 20 million lempiras (1 million dollars) to then Congressional representative, José Alfredo Saavedra, to pave a 12 kilometer road in Nacaome, Honduras. Mr. Saavedra later served as President of the Congress from July to December 2009. The road was never built and the money has disappeared.[15] Similarly, Congressman Mario Seguro and his mayoral brother were awarded $158,000 to build a bus station in El Paraiso that was never constructed.[16] In neither of these cases has someone been accused of corruption or held accountable for the loss of funds. This is not unusual. The level of corruption was so high that Honduras failed to pass the corruption indicator required for continued funding in 2008 from the U.S. Millennium Challenge Account. What is surprising and disappointing, however, is that this aid continued to flow. It was not until the June coup that aid was stopped, although most of the funds were reportedly committed prior the coup.

The level of corruption has an enormous social cost. Not only is it robbing from a population two-thirds of whom are poor, it contributes to eroding public trust in government institutions. Two years ago, the then-head of the National Anti-Corruption

[13] http://www.aci-erp.hn/doct/2006_ISS_informe_pais.pdf
[14] http://hondurasweekly.com/national/2117-civil-society-rates-honduras-poverty-reduction-strategy-a-failure
[15] http://www.ajshonduras.org/revistazo_highway_investigation.htm
[16] http://asjhonduras.com/cms/index.php?option=com_content&view=article&id=107:la-investigacion-especial-de-revistazo-revela-irregularidades-en-el-uso-de-los-subsidios-otorgados-por-el-congreso&catid=44:revistazocom&Itemid=78

Commission publically stated that as much as $526.3 million dollars per year is lost due to corruption. [17] In a country of 7 million people with high indices of poverty and unemployment, this is an astonishing figure.

Unfortunately, prosecutions and convictions of those who participate in corruption are extremely rare. Only 2.2 percent of the 1,925 corruption cases that reached the court between 2002 and 2006 resulted in an actual conviction.[18] The State Department's 2009 Human Rights Report states clearly that there is a "widespread perception that the country's anti-corruption institutions had not taken the steps necessary to combat corruption and were unwilling or lacked the professional capacity to investigate, arrest, and prosecute those involved in high-level corruption."[19] Its 2008 Human Rights Report more explicitly implicated a judicial system that was "subject to patronage, corruption and political influence" which allowed "powerful" special interests to influence the decisions in court proceedings.

The 2009 report also noted that corruption and impunity are also serious problems within the different branches of the security forces. Members of the security forces who violate human rights are rarely investigated or brought to justice. Per the report, investigations were still pending in all of the cases of human rights violations mentioned at the beginning of this testimony. WOLA, along with other human rights organizations, is concerned that a blanket amnesty signed by President Lobo on the day of his inauguration, the stay of proceedings granted to military officers that participated in the forced exile of the former president, and the appointment of military officers involved in the coup to high civilian government offices will only serve to strengthen the impunity of armed forces. We are also concerned that those responsible for human rights will not be investigated or brought to justice.

Next Steps for the Lobo Government

What has President Lobo done well in the first days of his presidency? He has taken several positive steps. One of the first things he did -- even before the inauguration -- was to decentralize the offices of his political party, the National Party, in order to guarantee citizens access to elected officials or representatives of the party at the local level.. This may not appear to be a very novel idea in this country, but many Hondurans never even see their elected representatives, even during the electoral campaign. Secondly, he has also promoted a plan for a national dialogue and published a vision plan for the country, which I will discuss in further detail. Finally, like many of his predecessors, he officially declared 2010 as the year of "transparency."

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[17] See Raf Flores' quote in http://asjhonduras.com/cms/index.php?view=article&catid=57%3Apobreza&id=108%3Ah...

[18] Sanchez, Marcela. "Honduras Losing Steam on Corruption Fight." Washington Post, July 27, 2007. http://www.washingtonpost.com/wp-dyn/content/article/2007/07/26/AR2007072601615_p....

[19] Ibid, op cit.

What else will he need to do to reconcile a deeply divided country whose government institutions lack credibility, where human rights violations are escalating and where poverty and inequality and corruption and impunity are endemic?

WOLA strongly recommends the following:

Take strong steps to end human rights violations. The Lobo government must make clear, publicly and privately, that human rights violations of opposition leaders and their family members, and harassment of critical media outlets, are unacceptable and will be punished. The President should direct police and military officials to make clear that abusive practices by officers under their command will not be tolerated. The Lobo government must also initiate investigations into human rights violations that have already taken place and bring the perpetrators to justice. Investigating and prosecuting cases of human rights abuses will be key steps towards restoring respect for the rule of law and send a zero-tolerance message regarding human rights violations. Finally, demilitarizing Honduran society – returning the military to their barracks – will be critical to re-asserting civilian leadership in the political system.

Establish a Honduran Truth Commission in Conformity to International Standards. President Lobo has named Eduardo Stein, former vice-president of Guatemala, to coordinate the Truth Commission along with two national figures. The Truth Commission is mandated with investigating the events surrounding the coup. Based on the best practices of previous truth commissions, President Lobo should guarantee the following:

- The Commission's mandate must be clearly defined, sufficiently broad and have the authority to determine the facts and assign individual or institutional responsibility for human rights violations and the structural weaknesses that allowed the coup to take place.
- The Commission must have the investigative and subpoena power to gain access to all testimonies, documents and other relevant evidence that can contribute to establishing the facts.
- The Commission should be fully staffed with expert investigators with the technical expertise and the adequate resources and time-line to carry out its mandate. Commission members should have the autonomy to employ their own staff.
- The work of the Commission should be transparent and widely publicized with public hearings. At the same time, in the investigation of specific case of human rights violations, conditions must be created to guarantee victims' and witnesses' safety and when necessary, allow the Commission to take confidential testimony from witnesses and victims.
- The findings of the Truth Commission must not be a substitute for judicial action but as a process to aid judicial proceedings.

In Honduras, there is already the perception that the Truth Commission will whitewash the events surrounding the coup and that none of the actors involved will be held accountable. Taking these steps will go a long way in challenging that perception and demonstrating the impunity that has traditionally been enjoyed will no longer be tolerated.

A Meaningful National Dialogue That Yields Results. Hondurans have gone through 18 "national dialogue" processes in the last thirty years in order to design national development plans and strategies. This has often been a formality required by international donors but has had very limited results. There is no doubt that corruption has been a factor in the failure to implement many of these plans, but other factors include how the processes were carried out. Too often plans are designed in top-down fashion by technocrats in Tegucigalpa who then divulge the plans in half day meetings in a few cities throughout the country. They receive little public support from communities and feedback from citizens is rarely incorporated.

In January 2010 President-elect Lobo presented his administration's country plan for the next 28 years and held several national meetings to discuss its contents. While promising, he should see this as the beginning of a process and not the conclusion. President Lobo and his planning ministry should use the plan as a point of departure, and develop an adequate timeline to thoroughly discuss and debate the plan in communities, towns and cities in each of Honduras' 18 departments. Decentralizing the consultation plan and taking the time to do it well, will distinguish this dialogue process from previous ones. President Lobo should also draw on the experience of long-established non-governmental development organizations in Honduras that have extensive experience in local development and promoting participation. Key themes should be poverty reduction and employment creation, strengthening and reforming government institutions, electoral and educational reforms, and increasing the efficient and transparent use of national and international funds.

The International Community

The government's ability to end human rights abuse, facilitate the work of a Truth Commission that will bring real reconciliation, and implement a meaningful process of national dialogue, will depend in many ways on the support of the international community. The U.S. and other donors need to both press the government to carry out these steps and offer them support and assistance to do so.

Secretary Clinton recently announced her intentions to restore aid to Honduras. WOLA urges the Secretary to not release all the aid at once but gradually. In this testimony, WOLA has outlined three key areas that need to see significant progress before aid is fully restored. All aid to Honduras should be subject to congressional notification so that committees can conduct oversight as needed. In particular, the sub-committee and the appropriators should ask the Administration to report to them on progress in the areas outlined above.

In June, the Organization of American States (OAS) will likely vote to reinstate Honduras's membership to the regional body. OAS members, including the United States, should base this decision of fulfillment of the San José Accords and advances in the areas mentioned in this testimony.

Mr. SIRES. Thank you, Ms. Gass; Ambassador Arcos?

STATEMENT OF THE HONORABLE CRESENCIO "CRIS" ARCOS (FORMER ASSISTANT SECRETARY OF HOMELAND SECURITY FOR INTERNATIONAL AFFAIRS) (FORMER U.S. AMBASSADOR TO HONDURAS)

Ambassador ARCOS. Thank you, Mr. Chairman. Mr. Chairman, members, and ranking member, I have had a few years experience with Honduras, having served there from 1980 to 1985 and then again in 1989 to 1993. I have watched Honduras as it started its path to democracy and development.

Honduras has had an exceptional history during the Cold War. It had a key role in the 1980s Central American Crisis, which was one of the last two flash points of the Cold War. Afghanistan was the other area. United States policy went beyond containment in its successful roll back efforts to drive the Soviets from these two regions.

Honduras' unique history explains why it was not engulfed by civil war or insurrection. Henry Kissinger, as head of the U.S. Commission on Central America, asked, "Why was Honduras able to avoid the acute instability of its three neighbors?" The answer was simple. Honduras' history and topography precluded the development of a traditional repressive oligarchy.

Honduras escaped civil upheaval. Its democratic process, however, was less than transparent. The rule of law remains a misunderstood concept. Recently elected Porfirio Lobo as President faces a similar challenge. The region's movers and shakers continue to seek too often impunity. Unfortunately, in Honduras, a culture of impunity continues alongside the equally undesired practice of conflict of interest.

President Lobo faces several other hurdles. Income inequity, as we mentioned, is creating unsettling new political challenges. Increased dependence on foreign remittances is being driven by uncontrolled Hondurans migrating to the United States.

Additionally, unenforced foreign investment guarantees remain problematic. In Honduras, egregious U.S. investor claims remain unsolved or unsettled by the Honduran Government or its justice system, as noted in the CEMAR case being expropriated.

The Bilateral Reinvestment Treaty does not appear to be a practical solution for these neglected cases. This requires a response from the Department of State in demanding resolution and a more cooperative Honduran Government.

Another impediment that President Lobo faces is a poorly funded and administrated educational system, originally designed to lift the county's poor out of extreme poverty. This educational crisis contributes to unsettling social conditions and dwindling opportunities for a better future.

Criminal gang activity has created widespread fear. This criminal activity includes homicide, kidnapping, rape, narcotics trafficking, and too often, public corruption. Together with narcotics trafficking, youth gang warfare has become a national security threat to Honduras.

Lastly, institutional weakness is common in Honduras. Governmental institutions invariable are ineffective or inefficient. Corruption is often cited as the cause.

Honduras has nonetheless come a long way. However, the recent political crisis was a shattering and surprisingly polarizing event. This involved the removal of President Zelaya. He recklessly ignited severe censure among the Hondurans with his so-called unconstitutional behavior.

The episode was complicated by the blurred role of the Hondurans Supreme Court and its National Congress. This provoked basic constitutional questions. The role of the military became controversial to the democratic process. Re-introducing the military into a political role is most disquieting.

Additionally, the subsequent widespread human rights violations that included loss of life, violence against journalists, critics, and other dissidents, the closing down of mass media outlets; the ongoing Bajo Aguan peasant land dispute crisis has spiraled into daily violence that is symptomatic of the recent political crisis.

Clearly, President Lobo faces his first real challenge. The sum of this recent democratic disruption has unleased challenges for Honduras and specifically for the new President. These include, as I mentioned, increased human rights violations as reported by media sources and documented by the human rights community. The concentration of power in a plainly victorious political party may tempt perpetuation in power.

Removal of a President by the Army without the presence of civilian authorities presents a dangerous precedent, and wrongfully signals the acceptance of the military/civilian role.

Mr. SIRES. Mr. Ambassador, we are going to have to cut you short. Because we have votes, and I want to hear from Dr. Casas-Zamora.

Ambassador ARCOS. Okay.

Mr. SIRES. Thank you; my apologies.

Ambassador ARCOS. Okay, let me just finish it up then. Frankly and finally, President Lobo must demonstrate political will to address these challenges. It is premature to make a judgment.

The new President appears to have a good sense of his people's right. The establishment of the Truth Commission is imperative to help to identify what ails Honduras and offers a roadmap toward a way forward. Thank you very much, Mr. Chairman.

[The prepared statement of Ambassador Arcos follows:]

Ambassador Cresencio S. Arcos
Former US Ambassador to Honduras (1989-1993)
Former Assistant Secretary of Homeland Security for International Affairs
March 18, 2010
House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere

Mr. Chairman and Members of the Committee:

Honduras had a singularly exceptional history during the Cold War. At the beginning of the 1980's when I arrived in Honduras, after a stint in the Soviet Union, the country had just held constituent assembly elections. These elections slowly moved Honduras toward a democratic process after 17 years of intermittent military rule. The 1980 Central American Crisis was also the beginning of one of the last two flash points of the forty seven year Cold War Period: Afghanistan was the other area. US policy during the 1980s went beyond 'containment', in its 'roll back' efforts to drive the Soviets from these two parts of the world. In Central America, Nicaragua was the primary focus of 'roll back'; while El Salvador was a more traditional effort of containing Cuban ambitions to support the FMLN insurgency.

Honduras in becoming a key partner of the US in the 'roll back' policy understood the need to move toward democracy as quickly as possible. The 1980s Constituent Assembly electoral process signaled the beginning of nine election cycles, continuing through 2009. This almost thirty year democratic electoral process was the result of Honduras' willingness to work toward US policy goals. This included: 1) returning the military to the barracks 2) adopting a representative democratic process with elections that would result in a system of checks and balances and transparent governance 3) a need for the rule of law with widespread commitment for human rights and respect for property and contractual rights. This enabled Honduras to preserve its peace and security which distinguished it from its neighbors 5) lastly, creating a more open economy by liberalizing competition and market access; promoting an open trade regime and increasing privatization.

As noted above Honduras unique history has been remarkable for keeping it from being engulfed in the maelstrom of civil war, insurrection and class struggle. Henry Kissinger, during his visit to Honduras as head of the US Commission on Central America, asked: "Why was Honduras able to avoid the acute instability of its three neighbors." The answer was simple. Honduras' rugged mountainous topography and historically scant communications and road networks precluded the development of a traditional dominant oligarchy. The Honduran military establishment also developed differently than that of its neighbors. The challenging terrain made it difficult for the Army to effectively control the entire national territory. This geographic condition forced Honduras to develop the first national Air Force in Central America.

In the 1980s after choosing to return to democracy and defend its territorial sovereignty, Honduras willingly cooperated with the United States in arms interdiction efforts. This was carried out to keep El Salvador from falling to Cuba supported insurgent groups. More importantly, Honduras was willing to allow the Nicaraguan Resistance (Contras) to operate in the country in order to create a critical pressure point on the Soviet supported Sandinista regime.

At times, unfortunately, Honduran Security Forces engaged in human rights violations. Yet, by comparison to El Salvador, Guatemala and Nicaragua it was not systematic and not of the same magnitude.

By the end of the Cold War, in the early 1990s, while Honduras had clearly escaped civil upheaval and internal strife its democratic process, brittle and fragile, was characterized by a less than transparent justice system. The 'rule of law' remained a misunderstood concept. As US Ambassador in 1991 I publicly conveyed to the Hondurans that no real democracy allows its justice system to become "...like a serpent that bites only the barefoot (the dispossessed) and not those with boots (the powerful)". Today, newly elected President Porfirio Lobo Soza faces similar challenges. The Latin-American power elite which include the military, the wealthy, industrialists and landowners and political governing circles continue to seek 'impunity'. Too often in Honduras, and elsewhere in the region, the culture of impunity prevails alongside the equally undesired practice of 'conflict of interest'. One still hears in the region sayings such as: " behave yourself or the law will be applied to you" (*Pórtate bien o te aplico la ley*). This is a monstrous distortion of the rule of law as is the practice of "a deal for my friend and the law for my enemy" (*Favores para mis amigos y la ley para mis enemigos*). This ill-conceived notion or misapplication of the law remains a major hurdle as documented by State Department Human Rights annual reports, and several international human rights organizations, including Amnesty International and America's Watch.

Besides neglecting the rule of law, the country faces several other serious issues.
Income inequity has become more acute, creating class polarization and unsettling new political challenges. Increase dependence on foreign remittances (more than $ 2.5 billion dollars annually from the USA to Honduras) driven by Honduran citizens migrating to the US, legally or illegally. The dramatic rise of remittances in recent years has spurred a tenuous consumerism. This is not a prescription for economic development; it temporarily eases the dire poverty afflicting many marginalized populations.

Additionally, unenforced foreign investment guarantees remain a negative economic factor. In Honduras, more than a dozen egregious US investor claims remain unresolved or unsettled by the Honduran Government or its justice system. The Bilateral Investment Treaty does not appear to help alleviate the resolution of these neglected cases. This requires a more responsive Department of State in demanding resolution.

Another socio-economic challenge Honduras faces is an almost pandemic HIV-AIDS problem, among the highest in the world. The US must seek to partner with Honduras to jointly address this horrific health problem. Additionally, Honduras' environmental conundrum continues to grow and threaten the wellbeing of its people. The destruction of vital woodlands by peasants' slash and burn practices has taken its toll. The country's forest cover is now less than 30% of what it was in the 1950's. Moreover, the illegal logging of vanishing precious hard wood timber is caused by irresponsible and unethical individuals in collusion with corrupt government officials. Due to these practices, agricultural development is plagued by scant rainfall and soil erosion which has rendered an increasingly fallow farmland. Potable and irrigation water have become scarce, as well. Exacerbating the country's ecological fragility, the delicate Caribbean

natural barrier reef off the coast of Honduras' Bay Islands, considered one of the last great live reefs on the planet, is being rapidly destroyed by careless practices.

Another major economic growth impediment President Lobo faces is the poorly funded and administered education system originally designed to lift the country's poor population out of extreme poverty. Today, the poor who attempt to obtain an education invariably experience a notoriously inadequate public school system; while the wealthy, as well as, the middle class are able to avoid the public school system choosing expensive private education. This educational inequity contributes to unsettling social conditions and dwindling opportunities to craft a better future for the majority of the population.

The rise in criminal gang activity has created an atmosphere of fear and threatening crimes like homicide, kidnapping, rape, rampant hold ups, narcotics trafficking and the corruption often displayed by public security forces. Youth gang members returned or repatriated by US Immigration agencies are contributing to this menacing crisis. A better method of repatriation is required to minimize unleashing hardened criminal gang members into Honduras' fragile society. Together with the rise of narcotics trafficking or transiting, gang warfare has become a serious national security threat to Honduras. Moreover, besides the known criminal activity, both gang organizations and drug traffickers have been able to infiltrate and corrupt the country's security forces and the justice system.

Lastly, institutional weakness or dysfunction is widespread in Honduras, as it is in much of Latin America. Attesting to this is the old adage "there exists a President and Ministers, but rarely a Presidency or a Ministry". The latter is often merely a payroll list. The weakest institutions are found in the Executive Branch of government, dealing with Health, Social Welfare, Education, Economic Industrial Development, Trade, Labor, Agriculture, and Security. These are invariably ineffective and inefficient. Corruption again is too often the cause. Under the eight democratically elected presidents good effective government has infrequently emerged with minimum corruption.

Honduras has overall come a long way in its general political and macroeconomic efforts, although it has been often an undefined 'stop and go' phenomena. However, the most recent political crisis was indeed a shattering and surprisingly polarizing event. This centered on the removal of President Manuel Zelaya, who had plainly ignited severe censure among the Honduran elite with several government initiatives such as a substantial increase of the minimum wage. The episode was further complicated by the blurred role of Honduras' Supreme Court and its National Congress. This episode has given rise to basic constitutional questions. But the role of the military in ousting Zelaya became controversial and a looming threat to the democratic process. It could be generally observed that in a democracy the removal of the Head of State or Chief Executive is usually carried out in an open political process based on legal constitutional strictures. For example, the impeachment of the US President is a clear political process provided in the Constitution. The 'indictment' by the House of Representatives is by its nature political as is the 'trial' conducted by the US Senate.

The controversial removal of President Zelaya, suggests that the Supreme Court determination 'based on evidence gathered' along with congressional acquiescence, apparently post facto, was

deemed sufficient to remove him without a formal trial or due process as established by the Constitution. The military's role exacerbated the situation by carrying out the actual ousting of the President without a civilian prosecutor or civilian law enforcement officer present. Unfortunately, the toppling of President Zelaya was portrayed in the world media as an almost tragic-comical event. The images suggested an early dawn raid on the President's residence whisking him out of bed and subsequently dropping him off on the tarmac at the San Jose, Costa Rica airport wearing pajamas and a cowboy hat. More seriously, the use of the military in this case aroused much international concern and commentary on the prudence of using the military to remove a Head of State for alleged egregious misconduct. Certainly Zelaya sidling up to President Hugo Chavez of Venezuela, a controversial and much reviled and feared figure on today's Latin America political stage, provided his opponents with a credible scenario. Chavez' 'Bolivarian' pretentions, often coarse and perhaps nonsensical, as well as his constant thundering condemnation of the US and its allies do incite much negative reaction. His often crude and tasteless remarks have earned him the scorn of world public opinion. Additionally, his controversial Iranian ties have made him that much more of an anathema. In linking Zelaya to Chavez many have attempted to demonize this hapless relationship and fuel anti- Zelaya sentiment. Consequently it allowed his opponents to easily tie him to a more sinister threat. But, the process or lack of due process at his removal caused sweeping international condemnation. Again, re-introducing the Honduran military into a political tangle is most disquieting. Admittedly, the Zelaya toppling and his internal detention might have caused violence and instability but, nonetheless if President Zelaya had been allowed his right to stay in Honduras to face a judicial process for his alleged crimes it would have bolstered democracy. The Honduran military establishment did not do the institution any favors in placing itself in a law enforcement role. The subsequent widespread human rights violations included loss of life, violence against selective journalists, critics and other dissidents and closing down critical mass media outlet. In fact this recent crisis resulted in more flagrant violations than at the high point of the Central American Crisis in the 1980's. The ongoing Bajo Aguan peasant land dispute crisis which has spiraled into daily violence is symptomatic of the aftermath of last summer's political crisis. In confronting this upheaval President Lobo faces his first real challenge.

The sum of this recent democratic disruption has unleashed a new set of challenges for Honduras and specifically for newly elected President Porfirio Lobo Soza.
These include:
-institutional instability due to the inappropriate role of the military in political affairs,
-increased human rights violations reported by domestic and international media sources, and documented by the international human rights community
-the concentration of political power in one of the two dominant political parties as a result of Zelaya's Liberal Party fracturing and weakening itself during the crisis. The danger being that the winning National Party may be tempted to perpetuate itself in power.
-the removing and expelling of the President by the Armed Forces establishes a dangerous precedent and wrongfully signals the military institution on its acceptability in a civilian role.
-although the US labeled the removal of Zelaya a coup, its subsequent confusing and maladroit handling of the crisis was perceived by many to be less than helpful and may have inadvertently signaled the region that coups may be ultimately inevitable.
-even though Honduras is small, poor and an institutionally weak country it defied the US. In fact, the conservative Latin American political sector eagerly applauds what they perceived as

the Honduran halting of Chavismo with scant regard to process. Whereas the Latin American left condemns the action but remains mute on the caudillo penchant for continuismo or reelection for political perpetuation in power.

The lack of rule of law reared its ugly head in this political crisis. The Honduras judicial process was at best unclear, if not absent. The de-facto government did fulfill its commitment to see through the ongoing scheduled elections, but provided the international community with fodder to criticize their less than transparent actions. Now President Lobo having inherited this situation must find a way to restore Honduras to a truly functioning democracy.

The way forward for the US in the aftermath of the Honduran crisis is replete with challenges and hurdles. Honduras like many other Latin-American countries has distanced itself from the US. The removal of President Zelaya caused a reassessment of the US-Honduran relationship. The US should now understand that the Honduran crisis was a wakeup call for the US to seek a, mutually acceptable, clear policy of engagement. Today's Latin American reality, as many observers have noted, is that" the Latin left has lost its fear of the US and the Latin right has lost its respect of the US". This may be an overstatement, but recent efforts to create a new regional organization without the participation of the US and Canada suggests that Latin American leaders would consider replacing the OAS and certainly signals that all is not well in the Inter-American region. In fact, even close allies like El Salvador, Mexico and Colombia joined this new effort.

Honduras remains deeply dependent on US trade and remittances originated in the US, but increasingly it is reluctant to readily embrace US policy as it did before. Honduras has learned several lessons during this recent crisis, but perhaps more importantly the US should have learned that it must be more thoughtful, consistent and have clarity of purpose in reacting to crisis. Indeed the US must attempt to avoid foreign policy by sloganeering and then reacting as if its national interest is served by high minded responses instead of adhering to the facts. The dynamics of the coup should have required better and more focused analysis. This included the unsettling role of the Honduran military and the Chavez dimension of the crisis, its links to Iran and other mischief should have been apparent. The US unexpectedly found itself between a rock and a hard place: the questionable removal of a democratically elected President (safeguarding democracy), and the Chavez-Iran part of the equation. In the end, the US appears to have fumbled the ball but recovered with an onside kick, when in fact they found a way out not a solution to the problem. It should be mentioned that Honduras' power elite which was vociferous in supporting the coup were surprised to learn that due process is sacred to democracy. Zelaya learned that his hubris kept him from recognizing the power elite's determination to neutralize him. The end result was a harsh class and political polarization never experienced before in the country. Some knowledgeable observers claim that for the first time Honduras is maybe in a "have against the have nots" class struggle. This polarization could easily become the driving force in the out years. The Lobo Administration together with the Honduran political and economic leadership must address this immediately.

In sum, President Lobo faces numerous challenges as noted above. Yet, the most important factor in his Presidency will be the political will to adequately and forcefully address these challenges in a timely way. Although at this time it is premature to make any definitive

assessment of President Lobo's record, he does appear to have a distinct sense of the plight of his people. It remains to be seen whether his apparent ability to reach across to all sectors of Honduran society will yield a more promising future for all Hondurans.

Mr. Chairman and members of the Committee, thank you for the opportunity you have given me to review the current challenges facing Honduras.

AMBASSADOR CRESENCIO S. ARCOS TESTIMONY- SUMITTED MARCH 17, 2010

Mr. SIRES. Thank you, Mr. Ambassador.

Dr. Casa-Zamora, you are on.

STATEMENT OF HIS EXCELLENCY KEVIN CASAS–ZAMORA, SENIOR FELLOW, FOREIGN POLICY AND LATIN AMERICA INITIATIVE, THE BROOKINGS INSTITUTION (FORMER MINISTER OF NATIONAL PLANNING AND ECONOMIC POLICY AND SECOND VICE PRESIDENT OF COSTA RICA)

Mr. CASAS-ZAMORA. Thank you, Mr. Chairman. Mr. Chairman and Members of Congress, ladies and gentlemen, the crisis in Honduras is the most important incident in inter-American relations of the past year. The interpretation of the events that led to former President Manuel Zelaya's ousting from power remains contentious to this day. I will avoid re-revisiting that discussion here.

Indeed, the debate about the constitutional nuances surrounding what happened on June 28 of 2009 was of limited value when the crisis was raging, and is of even less value now. For what was missing though was some reflection about how Honduras got to that point, and what should be done to present a similar episode in the future.

The election of Porfirio Lobo as President in a free and fair contest was an important part of the solution to the immediate crisis in this small nation. The deeper causes of the meltdown remain, however, untouched to this day.

To his credit, President Lobo has given hints that he understands the complexity of the situation. He grasps that political actors in Honduras have two crucial endeavors in their hands. The first is giving the country a sense of political normalcy. The second is dealing with the underlying causes of the crisis.

If Honduras is to return to normalcy, nothing is more urgent than fostering reconciliation. A significant part of the road map to do this is laid out in the San Jose and Tegucigalpa Accords. President Lobo's record of implementing this accord is mixed. He made a commendable effort to integrate a national unity government and played a decisive role in pressing for a controversial, but necessary amnesty for political offenses.

Another key clause of the agreements, i.e., installing a truth commission to inquire into the events before and after June 28th has proved problematic. The concern here is the Honduran Government's ambivalence toward allowing the Commission to investigate the human rights abuses that took place after June 28. These abuses have been denounced, among others, by the Inter-American Commission of Human Rights. There is no justification whatsoever for leaving these transgressions outside of the Truth Commission's purview.

The second endeavor for the country's political elite is dealing with three issues that lie beneath the 2009 debacle; namely social exclusion, deep distrust in political institutions and a problematic constitutional design. Seventy percent of the Honduran population lives in poverty. Moreover, the wealthiest 10 percent of the population concentrates six times more income than the bottom 40 percent. This is bad, even for Latin American standards.

These figures can hardly be dented if the fiscal base of the state is precarious. Honduras' current tax burden stands at 14.8 percent

of GBP; below the average for Latin America and less than half the median for industrialized countries.

Two things are known to happen when a society harbors such levels of social exclusion. First, it becomes a violent society. Second, it nurtures a political style in which populism becomes a permanent temptation.

Honduras needs a serious effort to negotiate a fiscal pact that allows for an increasing taxation and a fair distribution of the tax burden.

Equally dismal is the distrust in political institutions. Surveys show that trust in Congress, the Judiciary in partisan Honduras is below the already low figures for Latin America. This is related to pervasive corruption. Honduras stands at the bottom of Central America in the Corruption Perception Index elaborated by Transparency International.

President Lobo should make an effort to de-politicize the institutions charged with controlling the exercise of power, including the Supreme Court, the General Comptroller, the National Ombudsman, and the Supreme Electoral Tribunal.

The third issue is constitutional design. The days leading up to June 28th provided ample evidence that some aspects of Honduras' 1982 Constitution are problematic. One such aspect is the lack of an impeachment process against the President, which introduces an element of rigidity in a regime that already lacks flexibility to deal with political upheavals.

Re-tooling these norms is, of course, a task for the Honduran people alone. Yet, the reluctance to engage in a conversation about the country's constitutional architecture is an odd reaction to an episode in which the shortcomings of that design were rendered all too evident.

All these issues require broad based agreements. Honduras needs a process of national dialogue in which sectors that supports Zelaya ought to participate. While President Lobo should take the lead in convening this process, international organizations could play a role in facilitating the discussion.

What are the next steps for the international community? First, it should end Honduras' diplomatic isolation. It is hard to see any justification in prolonging this isolation, particularly from the OAS. Regardless of what may have happened on June 28th, the current government is a result of an election that while not devoid of problems was widely considered free and fair.

Moreover, there is no evidence that Lobo's government is exercising powers in ways incompatible with democracy. Chastising Honduras after a new government is in place is not the way to protect democracy, if that co-exists with Latin America's deafening silence regarding serious threats to democracy in countries such as Venezuela or Nicaragua, or with the region's apparent eagerness for revoking Cuba's suspension from the OAS with very few questions asked. This kind of hypocrisy undermines the legitimacy of any international forum.

Normalizing diplomatic relations with Honduras and admitting the country back into the OAS' fold as soon as possible is a contribution that the international community could certainly make.

The second task is nudging Honduras political actors toward dealing with some of the tasks outlined before. There are a few levers that could be used. The agreement between the IMF and Honduras that is currently under negotiation presents an interesting opportunity.

It is desirable that the United States and the European Union member states use their leverage in the IMF to postpone the normalization of economic relations with Honduras until the Truth Commission is guaranteed an untrammeled mandate to inquire on the events leading up and following June 28th, including the human rights abuses perpetrated after that date.

The road to democratic health in Honduran is long and steep. President Lobo should be commended for making gestures toward reconciliation; but a lot remains to be done. Proclaiming that the crisis is over is simply a poor service to the Honduran people and an invitation for future democratic breakdowns. Thank you very much.

[The prepared statement of Mr. Casas-Zamora follows:]

Dr. Kevin Casas-Zamora
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Brookings Institution

March 18, 2010
House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere

Next steps for Honduras

I. A democratic triumph?

The political crisis in Honduras in the second half of 2009 is, almost certainly, the most important event in inter-American relations of the past year. A complex set of circumstances and characters turned a rather typical power struggle in a small Central American country into a full-blown political and diplomatic crisis with hemisphere-wide implications. In different ways, this episode threw into the open very significant questions about the geopolitical disputes that are raging in Latin America, the United States' continued influence in the region, the soundness of the Obama administration's approach towards its southern neighbors, the effectiveness of the Organization of American States as the guarantor of choice of the Inter-American Democratic Charter, the limits of the international community's ability to reverse a perceived democratic breakdown, and the roots of populist authoritarianism in the region.

The interpretation of the events that led to former President Manuel Zelaya's ousting from power, arrest by the Honduran military and forced exile on June 28, 2009, remains highly contentious to this day. What for a large part of the Honduran society –and of the Honduran elite, in particular— was a legal intervention to save democracy from an imminent authoritarian danger, was perceived by other sectors within Honduras as well as by nearly the whole of the international community as a crass deposition of a legitimate President and a throwback to a dark age in Latin American political history. The starkly different lenses of the main actors both inside and outside Honduras were a major factor in the escalation of the crisis, and in the difficulties faced in all the efforts to reach a negotiated settlement. I will pointedly avoid the temptation of revisiting that discussion in this statement. Indeed, the debate about the legal and constitutional nuances surrounding the events of June 28, 2009, in Tegucigalpa, which often reached a baffling level of detail, was of very limited value when the crisis was raging, and is of even less value now. For what was missing throughout, was some reflection as to how the Honduran political system had got to that point, and what could and should be done to prevent a similar crisis in the future. This much is indisputable: the events of June 28 and the following months were *not* inevitable. That they happened at all is suggestive of deep rifts within the Honduran society, of the poor leadership abilities of much of the country's political elite, and of very serious flaws in the country's constitutional architecture.

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We may wax lyrical –and a lot of people have—about the supposedly happy ending to the crisis provided by the November 29, 2009, election. The truth is that the election was, at most, a moment of collective sanity that prevented the country's democratic institutions from totally collapsing due to the failings of its political elite. Neither former President Zelaya's unabashed populism, erratic governing style and repeated disregard of the law; nor the increasingly strident rhetoric used by his opponents and most of the Honduran press, reminiscent of the worst of the Cold War; nor the open courtship of the military by both Zelaya and his adversaries; nor the sight of a president held at gunpoint by soldiers and put on a plane to a foreign country; nor the serious –if not widespread— repression of journalists and activists sympathetic to Zelaya by his replacement, Roberto Micheletti; nor the exceptionally high levels of political polarization that preceded and followed Zelaya's removal from power were anything other than symptoms of grave political pathologies. They are failings of a kind that cannot be corrected by one barely adequate election. Recognizing the results of the November 29, 2009, election in Honduras was, no doubt, the right thing to do. Had the United States and part of the international community not done so, this sorry and damaging political episode would have lingered on *sine die*. But let us be clear: the decision to accept the election ought to be taken as recognition of a state of necessity, not as a ringing endorsement of the virtues of the Honduran political system.

All this points to a simple implication, which is the starting point of this analysis. The election of Porfirio Lobo as President of Honduras in a reasonably free and fair contest was, at most, an important part of the solution to the *immediate* political crisis in this small nation. The deeper social and political causes of the crisis remain, however, untouched to this day. When talking about next steps in Honduras, the crucial task for both the country's political actors and the international community is how to prevent a similar crisis from erupting in the future. This calls for more than simply returning to the status quo prior to the crisis. It requires addressing underlying factors such as the low levels of trust in political institutions, the astonishing level of social exclusion that pervades Honduras, and the serious rigidities of the country's constitutional design.

In saying this, I am disputing a specific interpretation of the crisis according to which at the root of it were *solely* the perversity and irresponsibility of Manuel Zelaya, and the devious machinations of Venezuelan President Hugo Chavez, and that once both factors were removed Honduras is once again safe ground for democracy. I do not share this optimism. While both factors certainly merit attention, the story of what happened and what might be done in Honduras is far more complex and calls for more subtlety.

In the following pages I will examine, first, the main short- and long-term tasks in the hands of Honduras' political actors and, second, those that the international community should undertake to help nudge the processes of national reconciliation and social and political reform in Honduras in the right direction.

II. President Lobo's burden

To his credit, ever since the night of his election, President Lobo has given hints that he understands the complexity of Honduras' situation. He appears to grasp that the main political actors in Honduras have two crucial endeavors in their hands: the first is giving the country a sense of political and economic normalcy; the second is preventing a similar future crisis.

Returning to normalcy

The election of November 29, 2009, and the subsequent recognition of its results by a critical mass of countries, particularly the United States, were decisive steps in pulling Honduras from the brink. But a return to normalcy takes far more than this. Three tasks ought to be taken care of swiftly and decisively: reconciliation, normalization of foreign relations, and economic recovery.

Reconciliation. No undertaking is more urgent in Honduras than a genuine effort –led by President Lobo—to decrease the intensity of political polarization and foster national reconciliation after the trauma of 2009. A significant part of the road map to do this is laid out in the texts of the San Jose and Tegucigalpa Accords of July and October of 2009, signed by negotiators appointed by former President Zelaya and Roberto Micheletti. While neither of these agreements managed to solve the intractable (and now no longer relevant) issue of Zelaya's reinstatement, they embody a remarkable consensus as to how to deal effectively with the political and legal consequences stemming from the crisis. Implementing in good faith the text and spirit of these agreements is key not just to bringing back into the political system the groups that felt aggrieved by the interruption of Zelaya's term, but to normalizing Honduras' relations with the international community.

While it is still early days in his administration, President Lobo's record of implementing the San Jose/Tegucigalpa agreements is mixed so far. Three clauses of the agreements deserve close attention:

- The first one is the integration of a national unity government. President Lobo has appointed as members of his cabinet persons related to political parties other than his own. This is a valuable gesture, but it does not amount to forming a national unity government. The appointed members are there in their *personal* capacity, not because they hold a formal representation of any political sector. Moreover, no member closely associated to former President Zelaya's political movement has been appointed in Lobo's government. Nonetheless, the new President's decision is a courageous one and should be commended.

- The second one is the implementation of a blanket amnesty for political offenses. The Honduran Congress did this on January 26, 2010, largely at the

insistence of Lobo (who was President elect at the time), and against the opposition of a significant part of the political elite, including the Liberal Party, which rejected the amnesty. Building upon a clause originally approved as part of the San Jose Accord, this decree covers offenses such as disobedience, abuse of authority or dereliction of duties. While turning a blind eye to egregious legal violations is not an edifying principle in any democracy, in this case it avoids an endless cycle of recrimination and counter-recrimination that could paralyze the political system for years, as well as the obvious danger of the political manipulation of justice. Appropriately, this amnesty does not apply to corruption-related offenses or, crucially, to human right abuses.

- The third one is the installation of a Truth Commission, which according to the agreements is in charge of "clarifying the events that took place before and after the 28th of June of 2009." Originally scheduled for the 25th of February, 2010, the launch of the Commission had to be postponed due to delays in appointing its three international members (in addition to two national members). This is not necessarily a problem, considering that the agreements give the Honduran government until the end of July to appoint and install the Commission. The real problem here is the Honduran government's ambivalence towards allowing the investigation of the human rights abuses that followed the events of June 28, 2009, as part of the Truth Commission's mandate. The Inter-American Commission of Human Rights and many other human rights organizations have documented and denounced these abuses. As of February of 2010, the Inter-American Commission identified at least 50 cases of illegal detention, 8 cases of torture, 2 kidnappings and 2 rapes perpetrated against journalists, trade union leaders and members of groups supportive of former President Zelaya. There is no justification for leaving these cases outside the Truth Commission's purview. It is serious enough that some of these abuses may well go unpunished by cloaking them under the figure of "abuse of authority" covered by the amnesty voted by Honduras's Congress. But at the very least these violations must not be hidden behind a wall of secrecy. A wide body of international experience, ranging from Argentina to South Africa, demonstrates that even when Human Rights violators are left off the hook, there is a strong case for bringing these abuses to light and shaming their perpetrators in the strongest possible terms. Hopefully, in this case, they will also have their visas to the United States permanently revoked. The current reluctance to accept the natural mandate of the Truth Commission is simply a deviation from the spirit and the letter of the San Jose/Tegucigalpa agreements, and, as such, must be rebuked by the international community in very strong terms, as I will argue below.

Ultimately, the truthful implementation of these clauses and the task of reconciling Honduras demand that political actors across the board perform a deep introspection and admit that no party or politician is exclusively responsible for what happened in 2009. While there is no point in denying the very special responsibility that accrues to former

President Zelaya for leading the country down a legally dubious and politically suicidal road, there is hardly any doubt that both sides played fast and loose with the Constitution in the days leading to and following June 28, 2009. The sorry sight of a president hell bent on carrying out a popular consultation against the orders of the Supreme Court, more than met its match by the sorry sight of his opponents in Congress anointing the Armed Forces as the ultimate guarantors of the Constitution, or by the sight of the military expelling Zelaya from Honduras without even a hint of a due process, or by the sight of critical media outlets being harassed and silenced by the Micheletti government. Let us be clear: there are no clean slates here. When it comes to last year's events in Honduras, the moral high ground is a missing place. It was the Honduran political elite that collectively pushed the country to the brink.

That President Lobo clearly grasps the importance of this point is shown by his decision to treat former President Zelaya in a dignified manner in allowing him to leave Honduras on the same day the new government was sworn in. Like the political amnesty, this decision was bitterly criticized by a significant part of the Honduran political class. This points to an obvious danger. Honduras will not be governable if the events of 2009 are simply seen by part of the elite as the unconditional victory of the forces of democracy over a perceived totalitarian menace, and not as the collective democratic failure they so clearly were. Honduras will not be reconciled if a winner-takes-all mentality is allowed to take hold of the political system.

Normalization of foreign relations. Patching up the country's relations with the international community, on the diplomatic as well as the economic front, is nearly as urgent as achieving national reconciliation. Over the past three months, and particularly since being sworn in, Lobo has given priority to this task, with the support, it must be said, of leaders across the political spectrum. At this point, bilateral relations between Honduras and some of its crucial partners, such as the United States and the Central American countries (except for Nicaragua), are almost back to normal. The United States, in particular, has already resumed its bilateral aid, including $30 million to be disbursed in the short run. In the meantime, multi-lateral institutions such as the World Bank, the International Monetary Fund, and the Central American Bank of Economic Integration, which severed links with the country after June 28, 2009, have resumed their working relationship with the new Honduran authorities. The main problems continues to be Honduras's isolation from the Organization of American States (and, by implication, from the Inter-American Development Bank), its continuing suspension from the Central American Integration System, and the refusal of several Latin American countries (9 at last count) to grant diplomatic recognition to the new government. While some of these countries, including Brazil, are of marginal economic importance for Honduras, their refusal to normalize their diplomatic links continues to generate headaches to the Central American country. Most recently, Honduras was pointedly excluded from the Cancun Summit of the Rio Group and CARICOM, an event that Cuba, remarkably, could freely attend. While it is very clear that some of this diplomatic resistance will ease in due course, the perception that the new Honduran government is taking genuine and significant steps towards political reconciliation on the domestic front would certainly accelerate the process.

Economic reactivation. Normalizing relations with the international community is essential for the success of President Lobo's third urgent imperative: reactivating a frail economy that suffered a massive blow as a result of the political crisis. While the costs derived from the political conflict are difficult to extricate from those stemming from the global economic crisis it is safe to say that political uncertainty in the second half of 2009 harmed the Honduran economy to the tune of 2-3% of GDP. Last year saw a fall of more than 20% in exports and 40% in Foreign Direct Investment into Honduras, enough to make the contraction of the Honduran economy (-3% of GDP) more serious than any other in Central America. In the process, the country's unemployment rate doubled to approximately 7%, with a devastating effect on poverty levels. Given the dire context, it is easy to understand President Lobo's urgent pleads to unlock the disbursement of more than $700 million in loans from multi-lateral sources that were retained after June 28, 2009. Amongst other things, these resources are critical to set in motion an ambitious program of public investment that could help to accelerate economic activity and tame unemployment. All this gives inordinate relevance to the IMF mission to Honduras of March 15-25, 2010. If as a result of this mission a one year agreement between Honduras and the IMF is approved by the latter's Board of Directors this would almost certainly ease Honduras's access to external credit and its path to economic recovery. The critical importance of this agreement for the Honduran government and economy is a point to which I will return below.

All this is the urgent part of President Lobo's job. The other part is probably less urgent but more important and far more complex.

Preventing future political crises

The second major task is for the long run, but its implementation must start as soon as possible. The Honduran political elite –and not just the elite, rather the society as a whole— ought to take a close look in the mirror and deal, for once, with the very thorny issues that lie beneath the near-political breakdown of 2009. Three issues are particularly crucial: social exclusion, low levels of trust in political institutions, and a problematic constitutional design.

Social exclusion. The extent to which social exclusion pervades Honduras is astonishing. Seventy percent of the Honduran population lives below the poverty line. Just as egregious is the fact that the wealthiest 10% of the population concentrates six times more income than the bottom 40%. This makes for a Gini coefficient (a widely used indicator of income inequality, ranging from 0 – absolute equality, to 1 – absolute inequality) of 0.580 in 2007, which is bad for Latin American standards, a dismal benchmark if there was ever one when it comes to inequality.

These figures can hardly be dented if the fiscal base of the state is precarious and basic public goods –like education, healthcare and security—are grossly under-provided. Honduras' current tax burden stands at 14.8% of GDP, below the average for Latin America (once again a poor benchmark), and considerably less than half the median for

the industrialized OECD countries. Worse still, nearly two third of that revenue is collected by means of indirect taxes, i.e. taxes not sensitive to the income of the tax payer. At 5.1% of GDP direct taxation in Honduras stands at less than a third the average figure for developed countries.

One could make a very compelling normative argument as to why all those figures are incompatible with democracy. But for the time being a couple of rather practical arguments are more useful. Indeed, two things are known to happen when a society has to contend with such levels of social exclusion. The first is that it becomes a violent society. A very clear correlation between murder rates and income inequality has repeatedly emerged for empirical studies done all over the world, including inside the United States. Inequality is one the factors that goes a long way towards explaining why at 61 homicides per 100,000 people, Honduras had the world's highest murder rate in 2008. Let us put these figures in perspective: Honduras murder rate is more than ten times as high as that of the United States; at 119 murders per 100,000 people, living is San Pedro Sula is more than twice as risky an experience as living in Baghdad. The second thing that follows widespread social exclusion as day follows night is a political style in which political populism –the *us*, the poor, versus *them*, the rich—becomes a permanent temptation. Neither phenomenon –violence or populism—is good news for democratic stability. Let us put it this way: Manuel Zelaya is, most likely, gone from Honduras' politics for good; but with these levels of social exclusion, we can be sure that *zelayismo* or a similar brand of brash populism will return. Good or bad, the events of June 28, 2009, got rid of *this* Zelaya. That's all.

At the very least, Honduras needs a serious effort to negotiate a "fiscal pact," that allows for a significant increase in taxation and a fairer distribution of the tax burden. Historically, fiscal pacts have always been politically toxic, even deadly, in Latin America. Moreover, in the light of the fierce reaction of Honduras's business lobbies against the hike of the minimum wage in late 2008, the odds of a serious fiscal reform happening in the country are particularly low. That is the case despite the fact that both Lobo and his main rival, Elvin Santos, committed themselves to this goal during the previous presidential campaign. If he really wants to transform his country for the better, Lobo must try his hand at fiscal reform. In his case, no one will be able to accuse him of being Hugo Chavez's puppet for doing so.

Low trust in institutions. The second major issue is the very low level of trust in political institutions exhibited by Honduras. According to 2008 figures from *Latinobarometro*, a regional survey, trust in Congress (26%), the Judiciary (28%) and political parties (20%) in Honduras was below the already low averages for Latin America, significantly so in the case of Congress. And all this was *before* the rather unedifying political fracas of 2009. While the factors underlying these figures are always complex, it is hard to avoid the conclusion that these levels of trust are heavily determined by the pervasive corruption in the country. Alongside Nicaragua, Honduras stands at the bottom of Central America in the Corruption Perception Index elaborated by Transparency International with a score of 2.5 points out of a possible 10. Moreover, while 38% of Latin Americans,

on average, believe that there has been recent progress in fighting corruption in their countries, the figure is 28% in Honduras.

The implications of these figures are multi-fold, but one consequence is peculiarly important. These figures make very attractive for any president the exercise of bashing political parties and the other branches of the state as foci of corruption and dispensable obstacles to social progress. The authoritarian tendencies that lurk in most strands of populism are seeds that fall on very fertile ground in the Honduran case. At this point, Manuel Zelaya starts to appear less as a loose political cannon bent on destroying his country, than a rational politician tapping into a vast reserve of social disaffection. He grossly overplayed his hand and failed to understand the political constraints he was operating under. But he was not crazy.

While Porfirio Lobo is not the first Honduran president to promise a tough stand against corruption, it would be wonderful if he were the first that takes to heart issues of transparency and accountability. At a minimum he should make a real effort to depoliticize some of the institutions charged with controlling the exercise of power –from the Supreme Court, to the Republic's General Comptroller, the National Ombudsman, and the Supreme Electoral Tribunal—that in Honduras have very little autonomy from political parties and routinely do their bidding.

Poor constitutional design. The third issue is Honduras' constitutional design. This is a thorny issue, for it was precisely Manuel Zelaya's avowed intention of calling a Constituent Assembly by means of a referendum that unleashed the 2009 political crisis. Unsurprisingly, the San Jose/Tegucigalpa agreements included a specific clause to forestall any future discussion about convening such an assembly or reforming presidential term limits.

Still, the days that preceded the events of June 28, 2009, provided ample evidence that some aspects of Honduras' 1982 Constitution are problematic. One such aspect is the lack of an explicit process of political impeachment against the President, which introduces a dangerous element of rigidity in a presidential regime that already lacks flexibility to deal with grave political upheavals. An even more troubling source of rigidity is the peculiar way in which certain constitutional norms –including, remarkably, presidential term limits—have been rendered unchangeable by any means and *ad infinitum*. In other cases, constitutional norms leave crucial questions unanswered. A case in point is the notorious article 239, which decrees that any person that so much as suggests the reform of presidential term limits, as well as anyone that directly or indirectly supports such an idea, shall cease immediately in the exercise of any public function. The Constitution, however, does not clarify which authority holds the power to enforce this exceptionally drastic principle. Finally, there is the rather confusing way in which the Constitution soundly establishes the subordination of the Chief of the Armed Forces to the President, while giving to Congress alone the power to discharge the top military officer. The myriad confusions created by these rules and the wildly contradictory interpretations they allowed played a decisive role in pushing the country to the brink last June.

It is obvious that, to the extent that it is legally possible, retooling some of these norms is a task for the Honduran people alone. Yet, the reluctance of the Honduran political actors to engage in a meaningful conversation about the country's constitutional architecture is an odd reaction to a major political crisis in which the shortcomings of that design were rendered all too apparent. This is not an argument for constitutional iconoclasm. Rather is a gentle reminder that some of these clauses introduce dangerous elements that make the Honduran democracy prone to conflicts between branches of power and, eventually, political breakdowns. It may well be that the country prefers to live with such a risk, but it should be aware of it and of the options to manage it.

All these pending issues are fairly substantive and require broad-based social agreements. Hence, they also have a methodological implication. More than most countries, Honduras needs a comprehensive, sincere and inclusive process of national dialogue, where the main political parties and social groups share their expectations and visions about the future. This process must include the sectors that supported former President Zelaya. What is more, to the extent that his legal situation allows it, even Zelaya himself ought to be involved in this dynamic. While it is clear that President Lobo should take the lead in convening this process, the facilitation of the discussion and the crafting of the eventual agreements is something in which international organizations, such as the United Nations, could potentially play a valuable role.

The latter point naturally leads to the next question: What are the next steps for the international community with regard to Honduras?

III. What role for the international community?

The most significant steps to overcome the legacy of the political crisis in Honduras are for the Hondurans to take. In the wake of the November 29, 2009, election and the swearing in of the new government, by and large the international community can play a limited role in helping this process. This role is two-fold. On the one hand, it should end Honduras' diplomatic isolation as soon as possible; on the other hand it should nudge political actors in Honduras towards dealing effectively with both the short-term task of reconciliation and the long-term assignments outlined above. In some cases this may well require using financial tools to exert pressure.

Ending diplomatic isolation

It is hard to see any justification in prolonging Honduras' diplomatic isolation, particularly from the Central American Integration System and the OAS. Regardless of what may have happened on June 28th of 2009, the current government is the result of an election that, while not devoid of problems, was widely considered free and fair. Moreover, as implied by the analysis of the previous pages there is no evidence that Porfirio Lobo's government is exercising power in ways other than fully compatible with democratic principles.

Aside from normative considerations, it is difficult to see any practical value in Honduras's diplomatic isolation, either for Honduras or for the Hemisphere as a whole. To begin with, with the exception of Nicaragua, all the other Central American countries are strongly urging the international community to normalize its relations with Honduras. In many ways, the unfortunate diplomatic legacy of the Honduran crisis has harmed the whole of Central America. For one, it threw a spanner in the engine of the negotiation of a bi-regional trade and co-operation agreement with the European Union, a process that got off to a promising start only to stall after June 2009. More broadly, the events in Honduras have confirmed the political prejudices that prevail in many international financial circles that continue to see Central America as a chronically unstable region that investors ought to steer clear of. This is very unfortunate for a region that has made enormous political strides since the dark days of the Civil Wars in the 1970s and 1980s. Normalizing Honduras's relations with the world will not erase the past, but will help to contain the damage to the region as a whole.

If there is no value whatsoever for Central America in Honduras' diplomatic isolation, there is even less value for the rest of the Hemisphere. It is a useless, even counter-productive way of protecting democracy, one that damages Honduras but also the credibility of countries and organizations in our region. Chastising Honduras after a new democratically elected government is in place is no way to create a precedent, if such a measure coexists with Latin America's deafening silence regarding the very serious threats to democracy in countries such as Venezuela or Nicaragua, or with the region's apparent enthusiasm for revoking Cuba's suspension from the OAS with very few questions asked.

The latter, in particular, is a sign of crass hypocrisy, of the kind that fatally undermines the legitimacy of any international forum. Such is the hypocrisy that it is inevitable to conclude that the only countries that are bent on prolonging Honduras's diplomatic isolation are those that want to use a small country to score cheap geopolitical points against the United States or to turn attention away from their own slide towards authoritarianism.

Last but not least, punishing Honduras in order to defend the integrity of the Inter-American Democratic Charter helps to create the dangerous fiction that the system to uphold the Charter is effective and adequate. Just as the Honduran crisis laid bare the limits of the country's constitutional design, it also revealed the serious shortcomings in the diplomatic tools available to prevent and address a breach of the Charter. These weaknesses range from the OAS Secretary General's limited power to intervene to prevent the escalation of a national political crisis, to the fact that only the countries' executive authorities have the power to activate the protective measures foreseen by the Charter. Rather than creating a mirage of effectiveness, what should be encouraged is a serious effort to rethink the tools available to the OAS as the guarantor of choice of the Inter-American Democratic Charter. Neither Honduras nor any other country should be treated as a fig's leave to hide the systemic failures that have impeded an effective defense of the Charter.

In sum, normalizing diplomatic relations with Honduras and, in particular, admitting the country back into the OAS' fold as soon as possible is a major contribution that the international community could make in this situation. Not just for the sake of Honduras, but also for the sake of the OAS' future credibility and effectiveness.

Nudging Honduras towards the future

One of the unfortunate facts about this crisis is that the international community failed to seize the best moment to influence the processes of reconciliation and long-term reform in Honduras. When the United States, in particular, for all practical purposes announced *in advance* that it would recognize the results of the election of November 29, 2009, it forewent the possibility of exacting some conditions from the Micheletti government, desperate at the time to secure the mantle of international legitimacy for the poll. No demands were formulated, for instance, to accelerate the process of reconciliation by forming a veritable government of national unity, or to convene a process of national dialogue, or to commit the political system to approving desperately needed social and political reforms. In the end, despite legitimate doubts as to the way they acquired and exerted power, the post-June 28 Honduran authorities paid no price whatsoever in return for the election's recognition by an important group of countries. This was a pity. As argued above, a significant part of the Honduran political elite simply interpreted this result as a vindication of all their actions before and after June 28, 2009, and, essentially, as a license to go back to business as usual. The critical moment of the crisis was wasted as an opportunity to foster the reform of a sub-optimal social and political status quo. It must be said again, recognizing the election was the right to do; recognizing it unconditionally was not.

Once this pivotal instant was allowed to pass, the leverage of the international community, and especially of the United States, was severely constrained. It is true that Honduras' exclusion from the OAS and the Inter-American Development Bank preserves some of the remaining leverage. However, as argued in the previous section, the counter-productive nature of this exclusion for Central America and the Hemisphere as a whole make it advisable to reverse it in the short run.

Other limited mechanisms to exert influence remain, however. Many Latin American countries, as well as the United States and the European Union, could play a valuable role in supporting President Lobo's efforts to reconcile the nation, craft a fiscal pact, depoliticize controlling institutions, and convene a serious conversation about possible constitutional amendments in Honduras. This is good and useful. Yet, in other cases the only way to *nudge* Honduran political actors towards dealing with the underlying causes of the crisis will be by means of delaying the normalization of economic relations.

In this sense, the eventual agreement between the IMF and the government of Honduras presents an interesting opportunity. As seen above, this negotiation holds the key to unlocking Honduras' access to the external credit it urgently needs to reactivate its economy. This is a valuable lever that the international community should not give away

just yet. Certainly not when the critical discussion about the mandate of the Truth Commission created by the San Jose/Tegucigalpa agreements is yet to be defined.

It is thus desirable that the United States and the European Union member states use their leverage in the IMF and other multilateral financial institutions to postpone the normalization of economic relations with Honduras until the Truth Commission is guaranteed a full and untrammeled mandate to inquire on the events leading up and following the June 28, 2009, deposition of former President Zelaya, including the human right abuses perpetrated after that date. No normalization of economic links should take place until the Honduran authorities explicitly guarantee the full cooperation of the Honduran state with the Commission's work. Making sure that this indeed happens would be a major contribution to Honduras' political health by the United States and the rest of the international community.

IV. A final word

The previous analysis is infused with a very cautious optimism about Honduras. The country went through a deeply traumatic episode in 2009, and it is unreasonable to expect quick fixes to the very basic problems that the political conflict evinced. It is clear that the good election of November 2009 and the swearing in of a new government were essential steps in pulling the country back from the abyss. But there is no point in denying that the road to democratic health in Honduras is long, winding and steep. In a way, this calls for accepting that the status quo in Honduras prior to June 28, 2009, and even before former President Zelaya ever took the stage, was riddled with all sorts of political pathologies, ranging from pervasive inequality to endemic corruption.

As acknowledged by U.S. Assistant Secretary of State for Western Hemisphere Affairs, Arturo Valenzuela, and OAS Secretary General Jose Miguel Insulza, among many others, President Porfirio Lobo should be commended for understanding the complexity of the crisis' legacy and making valuable gestures towards national reconciliation. But a lot remains to be done. The international community should support as well as follow closely the actions of the new government. And it certainly should use the significant influence it still commands over Honduras to gently push the country towards confronting collectively some of its most difficult development challenges. Proclaiming under a banner of "mission accomplished" that Honduras's political crisis is over is simply a poor service to the Honduran people and an invitation for future debacles. Unrewarding as it may seem, the exercise of gauging the significant obstacles that lie in the road ahead for this small Central American nation is a much more useful, realistic and worthy endeavor.

Mr. ENGEL [presiding]. Thank you very much. I am going to defer for the first question to Mr. Sires.

Mr. SIRES. Thank you, Mr. Chairman, and this is for anyone that wants to take a crack at this. Over the past couple of years, we have seen a closing of democratic space in the Americas. For example, the deteriorating human rights situation in Venezuela, and the Supreme Court decision in Nicaragua to lift the Constitution ban on re-election.

I was just wondering, in your opinion, is the administration effectively dealing with the closing of democratic space in the Americas—this administration?

Ms. GASS. Thank you; I would add from WOLA's perspective that there is actually more of a tendency for countries to move toward referendums, which is a demonstration for people's wish to participate in democracy as a result of their disappointment in the democratic process thus far to end issues of poverty and equality.

Mr. SIRES. So you are telling me that there is no closing of democratic space; that the referendum is the vehicle?

Ms. GASS. No, I did not say that there was not any closure. I said I think there is a greater tendency toward pushing for referendums, because people want to participate in politics. They want to participate in democracy.

Mr. SIRES. Does anyone else want to comment; Mr. Arcos?

Ambassador ARCOS. Clearly there are examples; most recently 1 year ago in Nicaragua. It was alleged in pretty much a consensus that the Sandinistas stole the local elections. Clearly that tells us that there is something wrong there.

Mr. SIRES. But how are we handling this, Mr. Ambassador?

Ambassador ARCOS. Well, I am not in the administration any longer, in this administration.

Mr. SIRES. Well, you have an opinion.

Ambassador ARCOS. But I would say that what we need to understand is, first of all, I think there was a consensus on this particular case. We need to make sure that the Nicaraguan Government knows our concern; not only ours, but the OAS or anybody else, of what is going on there. Because basically, what they are doing is basically setting it up for a perpetuation of power. That is my opinion; thank you.

Mr. ENGEL. Thank you, Mr. Sires; Mr. Mack?

Mr. MACK. Thank you, Mr. Chairman. You know, I listened with great interest from all of your testimony. Well, let me just find a point that I would like to probe a little bit more.

Moving forward, what type of activities do you think that the United States should engage in on issues of poverty, human rights? What types of things, looking forward is it that you think that the United States can do to help show that we support the people of Latin America; and that we might not necessarily support some of the governments in Latin American; but that we support the people of Latin America.

So if you want to just go down the line and each of you give me a quick thought on that, I would appreciate it.

Ms. GASS. Well, I think there are several things that the administration can do. First is, if military and police aid are restored, they can use that to strengthen the institution perhaps by inves-

tigating the human rights violations that have taken place since the coup in June; and use that to strengthen an institution that is incredibly weak.

And then secondly, I would say that they really need to work hand in hand in pushing a meaningful dialogue over a longer period of time—not a consultation of 2 or 3 days; but do something that is de-centralized in the regions, and supporting that financially, because that is a cost.

Mr. MACK. Mr. Ambassador?

Ambassador ARCOS. Frankly, Mr. Congressman, let me say this. I think having been a Cold Warrior in the foreign service, this is dear to my heart—your question about what do we do in Latin America. I started off as a Sovietologist, and I wound up in Central America. So that taught me something.

But let me say this. I think that after the Cold War ended, quite frankly favoring us, we tended to forget about Latin America. We had other concerns, and then ultimately we had 9/11, and then we were even more distant, in a way, from Latin America. I think the Latin Americans really feel that we should be closer—not necessarily run their lives or tell them what to do; but basically be more supportive.

I think that the perception in Latin America right now is sort of distorted about the United States in many ways. Most recently, when you see this new organization that will exclude Canada and Mexico; where you will see Colombia and Mexico and El Salvador, traditional friends of the United States, joining this.

It tells me this, and I was quoted some time ago on this, where what has happened, it seems like the left has lost its fear of the United States; and the right, its respect. Because I think both thought we were going to react and squash the left, quite frankly. I think they see that as the explanation for Chavez.

I am not advocating here any violence or anything against anybody or any country. But I think we have to understand how we are seen in the wake of the end of the Cold War, which has now been 20 years; and that we have been somewhat negligent in coming up with a solid, continuous, clear policy toward the region.

Mr. MACK. Doctor?

Mr. CASAS-ZAMORA. Thank you, Congressman; that is a really important question. The first part of my answer would be that perhaps the United States should qualify the message that for a long time became standard; that lifting Latin America's poor was just about trade and investment. It is a much more complicated story.

I would say that the agenda that Secretary Clinton took to Latin America in her last trip was a very good one. By the way, you could definitely see the hand of Assistant Secretary Venezuela in crafting that agenda. Because he is someone that understands profoundly the really deep development issues that are at stake in Latin America.

And when we talk about social inclusion, it is inevitable to think of some issues in which the United States could certainly do a lot in the region. Tax reform—I mean, you certainly know how to charge taxes and to collect taxes in this country. That is something that we are not very good at in Latin America.

The other issue is about supporting small and medium enterprises. I mean, there are wonderful things that the United States could do to support small and medium enterprises in the region. And the other part of my answer would be about having perhaps a more subtle understanding of the nature of the political changes that are taking place in some countries in the region.

I am pretty convinced that some of the things that are happening in some countries regarding the way some governments are exercising power are not acceptable. But somebody mentioned here the issue of indigenous people.

Well, I mean, the one country in which I can think that something significant has been done about indigenous people is Bolivia. I mean, I happen not to like the regime of Evo Morales. But there is an issue there; and that tells you that there is a problem of political inclusion that is trying to be sold in some of the countries. And oftentimes the process whereby populations that have not been included in the political system, it is not pretty.

So a more subtle understanding about what underlies beneath some of the political change that is taking place in some countries would certainly help; thank you.

Mr. MACK. Thank you very much.

Mr. ENGEL. Thank you; as you can hear, we have votes just starting, so I am going to try to speed this up. Let me first ask a general question, and anyone who would care to answer it, I would be delighted to hear what you have to say.

Pepe Lobo, when he became President, pledged to implement the two remaining pieces of the Tegucigalpa-San Jose Accord; and that is the formation of a national unity government and the creation of a Truth Commission to investigate the events before, during, and after the ouster of President Zelaya.

What to an extent, in your opinion, have these pieces of this accord been implemented. The Lobo administration, would you describe them as a national unity government; why or why not? And how would you assess the Lobo administration's efforts to foster political reconciliation in Honduras; what more would need to be done? Does anybody want to try it? It is a big question. But essentially, how do you think Lobo has been doing in all those things?

Mr. CASAS-ZAMORA. As I said in my statement, I think the record is mixed. I think he did great when it came to putting a lot of pressure to have an amnesty voted by the Honduran Congress. The amnesty is not pretty; but it is necessary. It was, you know, the right thing to do. And amnesty for political offenses—I mean, of course there is a discussion on all this.

I think he did well and should be commended for trying to integrate a national unity government. My only issue with that is that some of the people that he called on to serve in his administration, people from other parties, are there on a personal capacity. They are not there because they represent political sectors. Some people might say that that is not a national unity government. All the same, I think he should be commended. I think it is a courageous thing to do.

And the third point, which is the one that concerns me the most is the ambivalence with regards to the mandate of the Truth Commission. I think that is a burdening issue, quite frankly.

And I think the attempts to live outside of the Commission's purview, the human rights abuses that have been documented to have occurred after June 28th, is unacceptable; and the international community and hopefully the U.S. Government should rebuke that attempt to life those abuses outside of the workings of the Commission.

Mr. ENGEL. What more would need to be done, in your opinion, for the Truth Commission to get started with its work?

Mr. CASAS-ZAMORA. Well, they need to appoint the members, and I think they are making some progress in that regard. And I think the crucial discussion here is about the mandate of the Commission, and the Commission's ability to make proper recommendations about what they find as a result of their investigation.

It is my impression that the agreement between the IMF and the Government of Honduras that is currently under negotiation offers a very interesting lever to nudge the Honduran Government toward complying with a mandate for the Truth Commission that includes the investigation of human rights abuse.

Because I do not think the normalization of economic relations with Honduras should take place until there is an explicit commitment by the Honduran Government to cooperate fully with the Truth Commission in whatever direction their investigation takes them.

Mr. ENGEL. Thank you; Ambassador, did I see your hand up?

Ambassador ARCOS. Yes, Mr. Chairman; I would just like to add to what Dr. Casas said. Personally knowing Pepe Lobo, I think that he has the best of intentions and great political instincts in the sense of his people.

I think the Truth Commission is certainly the first vehicle he will use. I think my guess is that he will keep it from becoming a sort of Sectarian, let us get one side or another. I think he is going to try to keep it away from becoming that politicized. Because there is a tendency, and I think the debate is the country is, we should go after "x" and not "y" or "y" over "x."

So I think that he will be a moderating factor in that. But I think he has to be very clear of his own expectations publicly, so he can lay the markers out.

Mr. ENGEL. Thank you; let me ask you, Mr. Ambassador, a question on another subject. You heard all of us speak to Ambassador Kelly and talk about these cases that were held out by American citizens. We mentioned, in particular, Mr. Cerna's case, the CEMAR plant case.

Do you know if, in fact, it is true that the military holds a very significant ownership and management stake in the largest cement company currently in Honduras; and is this the same company accused by Honduras' own Attorney General of, and I am quoting him, "eliminating and bankrupting the CEMAR plant"?

Ambassador ARCOS. What I know, Mr. Chairman, is the following. When I was there, they had what they called an institute. But the military had a pension fund, quite frankly, which was the largest owner of one of the cement companies which grew to be one of two major cement companies. When Mr. Cerna entered the market, he competed with them.

So they did have that, and I think they had it up until recently. I am not aware of whether they have it yet; still have it or not have it. But certainly at the time of what happened to Mr. Cerna, they did have an interest in it, as far as I understand.

I think that this has been a problem. But you know, quite frankly, there is a distance between the actually military general or colonel running the company. It is when it is the pension fund that has a tremendous influence; but it represents the military.

So there would be a discussion here that would not be very clear. Because the implication is that the military sort of runs it like it runs a unit. It does not do that. But there is interest there. There is clearly interest, and that needs to be clarified.

Mr. ENGEL. Thank you; and let me ask a final question, based on something that I mentioned in my opening statement. That is the attacks on the LGBT community in Honduras.

In June, I am told that the attacks on that community escalated substantially in June with 19 murders of prominent members of that community. What can the Obama administration do to encourage the Honduran Government to help prevent future violence against this community; and are there activities we could financially support in Honduras to strengthen these groups operating in the country? I do not know, Ms. Gass, would you want to try that one?

Ms. GASS. I think that is a complicated question, Mr. Chairman, given the level of impunity and corruption that exists in Honduras.

I think certainly that the Embassy and Tegucigalpa have spoken out very strongly against the murder of Walter Trochez, as well as others, since the June coup.

I think I would encourage them to continue to do that; and again, use aid that is reinstated to strengthen institutions—the judicial system, the investigatory capacity of the police, and others.

Mr. ENGEL. Thank you; I think that will have to be the last word, because Mr. Mack and I have to take a series of three or four votes.

But I want to thank the three of you for excellent testimony. I apologize that I had to leave for a little while; because what I was doing here was trying to juggle five balls in the air at the same time.

But obviously this is something that is of great concern to Mr. Mack and myself and our entire committee. I think that there are, as I said before, not a lot of difference when it comes to Honduras between the two parties.

I know that the United States wants to help that country get back on its feet, and I think that this subcommittee will continue to monitor that progress, with consideration of all the important issues that we raised today. So I thank the three of you for excellent testimony, and the hearing is now adjourned.

[Whereupon, at 5:01 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

SUBCOMMITTEE ON THE WESTERN HEMISPHERE
Eliot L. Engel (D-NY), Chairman

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Subcommittee on the Western Hemisphere, to be held in **Room 2172 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at http://www.hcfa.house.gov)**:

DATE: Thursday, March 18, 2010

TIME: 2:00 p.m.

SUBJECT: Next Steps for Honduras

WITNESSES: **Panel I**
The Honorable Craig A. Kelly
Principal Deputy Assistant Secretary
Bureau of Western Hemisphere Affairs
U.S. Department of State
(Former U.S. Ambassador to Chile)

Panel II
The Honorable Cresencio "Cris" Arcos
(Former Assistant Secretary of Homeland Security for International Affairs)
(Former U.S. Ambassador to Honduras)

Ms. Vicki Gass
Senior Associate for Rights and Development
Washington Office on Latin America (WOLA)

His Excellency Kevin Casas-Zamora
Senior Fellow, Foreign Policy and Latin America Initiative
The Brookings Institution
(Former Minister of National Planning and Economic Policy and Second Vice President of Costa Rica)

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *WHEM* MEETING

Day *Thursday* Date *3/18/10* Room *2172 RHOB*

Starting Time *2:56 p.m.* Ending Time *5:01 p.m.*

Recesses *n/a* (_____ to _____)

Presiding Member(s) *Engel, Sires*

CHECK ALL OF THE FOLLOWING THAT APPLY:

Open Session ☑
Executive (closed) Session ☐
Televised ☐

Electronically Recorded (taped) ☑
Stenographic Record ☑

TITLE OF HEARING or BILLS FOR MARKUP: *(Include bill number(s) and title(s) of legislation.)*

"Next Steps for Honduras"

SUBCOMMITTEE MEMBERS PRESENT:

Engel, Mack, Sires, Smith (NJ), Faleomavaega, Burton, Lee

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not Members of HFAC.)*

Rohrabacher

HEARING WITNESSES: Same as meeting notice attached? Yes ☑ No ☐
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Statements: Engel , Mack; QFR: Smith, Faleomavaega; Extraneous Materials: Engel, Mack, Lee, Burton

ACTIONS TAKEN DURING THE MARKUP: *(Attach copies of legislation and amendments.)*

n/a

RECORDED VOTES TAKEN (FOR MARKUP): *(Attach final vote tally sheet listing each member.)*

Subject	Yeas	Nays	Present	Not Voting

TIME SCHEDULED TO RECONVENE *n/a*
or
TIME ADJOURNED *5:01 p.m.*

Subcommittee Staff Director

SUBMITTED FOR THE RECORD BY THE HONORABLE CONNIE MACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Statement of Lanny J. Davis
House Subcommittee on the Western Hemisphere
House Committee on Foreign Affairs
Thursday, March 18, 2010

My name is Lanny J. Davis.

Beginning in July and through December 2009, I represented the Latin American Business Council of Honduras (called CEAL) as an attorney and public affairs advisor. My testimony represents the views of my client, CEAL, although I no longer represent CEAL as of January of this year.

First, CEAL regarded the events of June 28, 2009, in which the former President of Honduras, Mr. Zelaya, was forcibly deported out of the country without due process or an adjudicatory finding as unfortunate and wrong.

Second, CEAL stood for the rule of law and upholding the constitution of Honduras then and now – and most especially, respecting the separation of powers among the three branches of government as provided by that constitution. Thus, when the Supreme Court of Honduras unanimously agreed that then President Zelaya had acted contrary to the constitution and then defied an order of the Supreme Court, he was rendered disqualified from the office of the president. Ratifying that decision was an overwhelming vote of the Honduran Congress to remove Mr. Zelaya from the office of president for his unconstitutional conduct. It should be noted that a majority of the Supreme Court and a majority of Congress comprised members of Mr. Zelaya's own Liberal Party.

Third, it is an irrefutable fact that virtually every significant leader of Honduran civil society supported the removal of Mr. Zelaya and the decisions of the Supreme Court and the Honduran Congress. These included the Cardinal of Tegulcigalpa, Mr. Zelaya's own Attorney General, the Human Rights Commissioner, all four of the major presidential candidates, including the nominee of Mr. Zelaya's own Liberal Party, and major leaders of the business, civic, and religious communities of Honduras.

In short, those who criticize Mr. Zelaya's removal from office cannot dispute that judicial and legislative branches of government and the leaders of civil society supported his removal because he violated the constitution. Whether certain supporters of Mr. Zelaya in the United States and in certain Latin American countries agreed or disagreed with the Supreme Court, the congress and these leaders is irrelevant. Indeed, the democratic institutions of Honduras, complying with their constitutionally-empowered judicial and legislative branches of government, must be respected.

It is the ultimate arrogance for citizens of one nation to attempt to dictate to a democratically elected government, following the rule of law and its constitution, that it should ignore those decisions. It was especially unfortunate that leaders of other Latin American nations who would

ask for respect for their own constitutional and legal institutions saw fit to pass judgment and indeed to attempt to override the decisions of the Honduran Supreme Court and the Congress.

Finally, despite the many dire predictions that Mr. Zelaya's removal would lead to chaos and violence by the Honduran people and a boycott of the presidential elections of 2009 to replace Mr. Zelaya, the Honduran people went to the polls in substantial number – in poor neighborhoods as well as more prosperous ones – with the percentage turnout of the 2009 presidential elections actually exceeding the turnout four years before when Mr. Zelaya was elected. This belies any charge, made by certain leaders of Latin American nations who anoint themselves as speaking for the quote "people" of Honduras in urging the re-institution of Mr. Zelaya as president prior to those elections, that the "people" supported such re-institution and would boycott the election in protest.

CEAL expressed its gratitude to the United States government, especially Secretary of State Clinton, for a policy that attempted to achieve a peaceful resolution of this controversy. CEAL believes that the interim government in good faith agreed to the "Tegulcigalpa Accord," as did Mr. Zelaya, in the fall of 2009, that provided for a peaceful transition reconciliation government. Yet while the interim government proceeded to comply with the first steps required by the Accord – the appointment of ministers of that reconciliation government – Mr. Zelaya immediately refused to comply, refused to name such ministers, and attempted to rewrite the Accord even before the ink was dry on his signature. That was most unfortunate.

The election and inauguration of the new president of Honduras on January 27, 2010, should reestablish close relations between Honduras and the United States as well as other democratic governments in Latin America. After all, Honduras has survived its crisis with the best of all remedies – a democratic election and upholding the rule of law.

The U.S. and other Latin American countries should look at what happened in Honduras not as a bad precedent but a good one. Yes, a serious mistake was made on the evening of June 28, 2009, in the way Mr. Zelaya was shipped out of the country. But the model for all of Latin America and the rest of the world when such a mistake is made should be what was subsequently done in Honduras – upholding the constitution, the rule of law, and the election of a new president under the constitution through democratic elections that were unquestionably fair and free, as certified by the independent Honduran Electoral Commission and many independent observers.

Through reestablishment of good relations with the United States and other members of the OAS, CEAL continues to hope that the forces of freedom and democracy and economic development will benefit all Hondurans as well as the peoples of Latin America.

Thank you for inviting me, Chairman Engel and Ranking Member Mack.

# # # #

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

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DOUGLAS C. ANDERSON
REPUBLICAN CHIEF COUNSEL

March 17, 2010

The Honorable Hugo Llorens
U.S. Ambassador to Honduras
Embassy of the United States
Tegucigalpa, Honduras

Dear Mr. Ambassador:

We write to urge you to work with the government of recently inaugurated Honduran President Pepe Lobo to curb violence against the country's lesbian, gay, bisexual and transgender (LGBT) community. With a new government in place in Honduras, we believe there is an important opportunity to bring this issue front and center.

As you know, last year was brutal for the LGBT community in Honduras. In its December 2009 report, the Inter-American Commission on Human Rights (IACHR) wrote that the situation for members of the country's gay community "has become noticeably worse."

The year began with the killing of Cynthia Nicole, 32, a leading Honduran transgender rights defender on January 9, 2009. Unknown assailants murdered Cynthia in a drive-by shooting. The year ended with the killing of Walter Tróchez, a 27-year-old gay rights and HIV/AIDS activist, in another drive-by shooting by unknown assailants on December 13, 2009.

Last year's attacks on the LGBT community escalated substantially starting in June. National and international human rights organizations recorded at least 19 known murders of prominent members of the LGBT community by year's end. In addition, non-lethal attacks and other violent acts against LGBT individuals were reported on an alarming scale, and additional murders have likely gone unreported. The human rights defenders who have documented these abuses have reportedly been threatened and the atmosphere of intimidation for members of the LGBT community remains high.

As U.S. Ambassador to Honduras, we urge you to work with the Lobo government to respond to this violence and to encourage government efforts to prevent further violence against the LGBT community. This could, for example, include police sensitization training. In addition, we ask that you urge the Honduran government to investigate any unsolved murders of LGBT individuals.

Thank you for your attention to this matter. We look forward to hearing about your efforts to address this critical issue.

Sincerely,

Eliot L. Engel
Chairman
Subcommittee on the
Western Hemisphere

Ileana Ros-Lehtinen
Ranking Member
Committee on Foreign Affairs

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

EMBASSY OF THE UNITED STATES OF AMERICA
TEGUCIGALPA, HONDURAS

OFFICE OF THE AMBASSADOR

March 18, 2010

Honorable Eliot L. Engel
Honorable Ileana Ros-Lehtinen
Congress of the United States
U.S. House of Representatives
Committee on Foreign Affairs

Dear Representatives Engel and Ros-Lehtinen:

Thank you for your letter dated March 17 regarding your concern about violence against the lesbian, gay, bisexual, and transgender (LGBT) community in Honduras. The LGBT community has been targeted for some time in Honduras, and it is an issue we have followed closely and worked for years and documented in our annual Report on Human Rights Practices to the U.S. Congress. Honduras is sadly also a country with a high crime rate where police are inadequately equipped to carry out thorough investigations.

Since the June 28, 2009 coup d'état, we have observed a significant deterioration in the protection of rights for the LGBT community and a spike in violence against its members. There are allegations that in some cases members of the LGBT community were specifically targeted due to their anti-coup political activism and in other cases it is possible that police targeted members of these vulnerable groups simply because there was an increase in impunity following the rupture of the constitutional order.

During the period that the de facto regime was in power, we raised our concern about what appeared to be an increase in the vulnerability of the LGBT community with various Honduran authorities, including to the Honduran Office of the Attorney General,

the Human Rights Ombudsman, and other individuals. We demanded that these officials fully investigate all allegations against the LGBT community and prosecute those responsible. We made these concerns public, including on our Embassy website's "Human Rights Corner." We maintain constant contact with the main LGBT rights organizations in Honduras, and we commend the work they have done to protect and advance the rights of the LGBT community in what is a very difficult situation.

Since the January inauguration of President Porfirio "Pepe" Lobo, I have personally raised our concern about human rights violations, including specific cases regarding the LGBT community, with President Lobo himself and with several members of his cabinet. We are encouraged that Secretary of State for Security Oscar Alvarez on March 4 publicly expressed his commitment to fully investigate all crimes that appear to be politically motivated and that President Lobo on March 12 appointed Miguel Angel Bonilla Gonzalez to a newly created position as a minister-level advisor on human rights issues. We plan to meet with Mr. Bonilla in the very near future and will be sure to express our concern regarding respect for the human rights of the LGBT community.

Please accept my appreciation for your letter and concern and please be assured that the Administration considers human rights one of our top priorities, including the rights of the LGBT community.

Sincerely,

Hugo Llorens

SUBMITTED FOR THE RECORD BY THE HONORABLE BARBARA LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

REGISTER OF POLITICALLY MOTIVATED VIOLENT DEATHS OF INDIVIDUALS JUNE 2009 TO FEBRUARY 2010

#	DATE	NAME	AGE	PLACE	CIRCUMSTANCES
1	07/03/2009	GABRIEL FINO NORIEGA	51	San Juan Pueblo, Tela, Atlántida	Journalist Gabriel Fino Noriega was murdered by men in a black vehicle who fired seven shots at him on the afternoon of July 3rd as he left a news program at Radio Estelar in San Juan Pueblo. At the time, he was reporting on the popular referendum promoted by the Office of the President, protests against the coup d'état and denunciations of those supporting the coup.
2	07/05/2009	ISIS OBED MURILLO MENCIAS	19	Toncontín Airport, Comayagüela, Francisco Morazán	A young man from Santa Cruz de Guayape, Olancho, was murdered on Sunday, June 5th at a protest against the coup d'état at the Toncontín airport which he attended with his family. Army officers opened machine gun fire against thousands of people who were concentrated on the tarmac. Isis Obed was shot in the head and died immediately.
3	07/05/2009	ANASTASIO BARRERA	55	Jardín Clonal of San Juan Pueblo, Tela, Atlántida	Peasant member of the Good Samaritan Cooperatives of Jardín Clonal of San Juan Pueblo was kidnapped on July 5th by hooded men who broke into his home at 9 pm. Six days later his decomposed body was found in a place called the Molera in the municipality of Tela. Anastasio had participated in protests against the coup in San Juan Pueblo.
4	7/11/2009	ROGER BADOS		Colonia 6 de mayo, Rivera Hernández sector, San Pedro Sula, Cortés	Member of the Bloque Popular, collaborator with the School for Methodology of the National Resistance Front, and former SITRATEXHONSA union leader, was assassinated on July 11 by an unknown person riding a bicycle who came to his house in the May 6 neighborhood, Rivera Hernández sector in San Pedro Sula, claiming to be looking for one of his nephews. When Roger turned to enter his home, the unknown person shot him three times in the back and side. His sister and the wife of the nephew were also injured in the incident.
5	7/25/2009	PEDRO MAGDIEL SALVADOR MUÑOZ	24	Afauca, El Paraíso	Member of the resistance movement against the coup was found dead at 6:30 am near the Beneficio Agrícola at the turn-off from Paraíso to Afauca. Forensics said that his body showed signs of torture and had 42 bullet wounds.
6	7/12/2009	MOISES GARCÍA GÓMEZ	40	Callejones, Santa Bárbara	Was forced to get out of the collective transport vehicle in which he was traveling in the Callejones sector of the western department of Santa Bárbara. The information was confirmed by UD leader, Renán Valdés, who says that "he was forced off of the bus by unknown individuals".
7	7/30/2009	ROGER ABRAHAM VALLEJO SORIANO	38	Zona Belén, Comayagüela, Francisco Morazán	Secondary school teacher, member of Copemh, was shot in the face when he attempted to escape brutal repression that occurred in Durazno. He was transferred to the Hospital Escuela, and died on August 1st from the injury. Professor Vallejo worked at the San Martín Institute in Tegucigalpa. An eyewitness observed that an agent in the back of a preventative police, pick-up patrol truck fired in the direction of protestors as the driver made a u-turn at high velocity in front of the Belén market. At this very moment, Vallejo was mortally wounded.
8	08/02/2009	PEDRO PABLO HERNANDEZ	54	Jutiapa, Jamastrán, El Paraíso	A worker died at 5:30 p.m. in the bypass to Jutiapa in the Jamastrán valley, when an Army officer known as First Sergeant Fredy Flores, assigned to the Ninth Infantry Battalion, fired on the vehicle in which he was traveling as it crossed a military checkpoint.
9	08/09/2009	JUAN GABRIEL FIGUEROA TOME	30	La Platanera, Choloma, Cortés	Member of the resistance from the López Arellano neighborhood of Choloma Cortes, was found dead in the sector known as La Platanera, with typical signs of summary execution on August 9, 2009. He had been shot in the neck and thorax.

10	08/22/2009	JONATAN OSORIO	16	Colonia Oscar A. Flores, Comayagüela, Francisco Morazán	Member of the Democratic Unification Party youth organization, secondary school student and member of the resistance against the coup, was killed on the evening of August 22, 2009, when two subjects approached him in front of his home in the Oscar A. Flores neighborhood, fired shots into his head and fled into the darkness of night.
11	09/17/2009	FELIX ORLANDO MURILLO LOPEZ	37	Boulevard frente a Colonia San Ángel, Tegucigalpa, Francisco Morazán	Profesor de Educación Media, murió la noche del 17 de septiembre de 2009, cuando regresaba a su residencia, en la Colonia Guaymuras. Fue embestido por una camioneta no identificada. Su cuerpo aun con vida fue trasladado al Hospital Escuela en donde falleció a las 3:00 a.m. del 18 de septiembre, su esposa y hermanos encontraron su cuerpo en la Morgue de Medicina Forense del Ministerio Publico, el día 19.
12	09/18/2009	Rubén Estrada		Comayagüela, Francisco Morazán	Secondary school teacher at the Saúl Jiménez and San Martín Institute was killed in a bar in Comayagüela. He lived in the La Cañada neighborhood.
13	09/22/2009	ELVIS JACOBO PERDOMO EUCEDA	18	Las Colinas, aldea El Carmen, San Pedro Sula, Cortés	Worked selling firewood in his community. On the afternoon of Sept. 22, he was riding his bicycle on his way to play soccer when according to eyewitnesses; he passed the parked police patrol M110- 6. As he passed the vehicle, the boy yelled "Golpista" at them. In response, a police officer got out of the patrol car with his official firearm, and fired two shots into the boy's back and head. The youth was 70 meters from the patrol car and died immediately.
14	09/22/2009	FRANCISCO ALVARADO	65	Colonia Flor del Campo, Comayagüela, Francisco Morazán	Died from a bullet wound inflicted by police agents. At 7 p.m., he was on his way to a nearby store. Police and military were controlling the neighborhood after residents had protested, repressing people who were still in the streets. Police shot at him without warning. Police tried to impede his wake on September 23, at the Capilla Ardiente, arguing that there was a state of siege and threatening the of his brothers.
15	09/22/2009	WENDY ELIZABETH AVILA	23	In front of the Embassy of Brasil, Tegucigalpa, Francisco Morazán	Died as a result of bronchial spasms in the Hospital Escuela in Tegucigalpa, on Sept. 26th after inhaling chemicals from tear gas bombs that were thrown in front of the Embassy of Brazil to disperse the crowd that had come to support the return of President Zelaya. Wendy was a member of the resistance – as is her husband.
16	09/23/2009	JAIRO SANCHEZ		Colonia Vista Hermosa, Comayagüela, Francisco Morazán	Presidente of SITRAINFOP, coordinator of the Resistencia in the San Francisco neighborhood. At approximately 11.30 a.m. two police officers on motorcycle patrol opened fire without any reason on a group of protestors who had taken the main street connecting several neighborhoods in the north of Comayagüela at the intersection of the Vista Hermosa Centro neighborhood. He was shot in the face.
17	September	Hombre		Sitio, Colón	
18	30/09/2009	OLGA OSIRIS UCLES	35	Boulevard Morazán, Tegucigalpa, Francisco Morazán	Member of the Resistance against the coup died three days after inhaling tear gas during the police and military repression in front of Radio Globo. She died at 6:15 pm on October 3rd from pulmonary congestion. She had been in respiratory crisis since Sept. 30.
19	10/02/2009	MARIO FIDEL CONTRERAS MONCADA	50	Colonia San Ángel, Tegucigalpa, Francisco Morazán	Professor Contreras was an active member of the Honduran College of Secondary School Teachers and energetic member of the Resistance Front against the coup. He participated in protests organized by FOMH. On October 2, he was the victim of an attempt on his life and did not survive. At 8:30 a.m. a young, thin subject followed him for several meters and then fired on him. The assailant then ran towards the Boulevard of the Armed Forces where he was picked up by a second subject on a motorcycle
20	10/02/2009	MATEO ANTONIO LEIVA	50	Aldea Los Conculuncos, Zacapa, Santa Bárbara	Member of the Resistance against the coup in the western part of the country. He was murdered on October 2, by three masked men, dressed in black who fired on him 16 times. He was with his wife, Basilia Álvarez, in the villaje of Conculuncos, municipality of de Zacapa, Santa Bárbara at the time of the killing.
21	10/19/2009	Marco Antonio Martínez Lezama	47	La Libertad Park, Comayagüela, Francisco Morazán	Coordinator for the Resistencia in the Divanna neighborhood of Comayagüela, was found dead on a bench in the La Libertad Park.

22	10/19/2009	SERGIO ELISEO JUAREZ HERNANDEZ	44	Between Sabanetas and Macuelizo, Santa Bárbara	Elementary School teacher and environmental advocate in the western part of the country was assassinated on Monday, October 19th at 7 a.m. when he was driving between Sabanetas and Macuelizo, Santa Bárbara. Unknown subject fired seven shots into his face and skull. Shells from 40mm and 9mm weapons were found at the murder site.
23	11/18/2009	Félix Noel Hernández	30	Juticalpa, Olancho	Was killed in an attempt on the life of the coordinator of the Resistance movement, Ulises Sarmiento Galindo, in Juticalpa, Olancho
24	11/18/2009	José Elías Romero Caballero	25	Juticalpa, Olancho	Was killed in an attempt on the life of the coordinator de la Resistance movement, Ulises Sarmiento Galindo, in Juticalpa, Olancho
25	11/23/2009	Gradis Espinal	56	Aldea La Felicidad, Tegucigalpa, Francisco Morazán	Was kidnapped from the beltway and murdered, execution style, the same day in the village La Felicidad, inTegucigalpa.
26	11/28/2009	Ángel Salgado	32	El Obelisco Park, Comayagüela, Francisco Morazán	Killed by soldiers assigned to the Joint High Command in the Obelisco Park of Comayagüela.
27	12/06/2009	Isaac Coello (24), Roger Reyes (22), Kenneth Rosa (23), Gabriel Parrales y Marcos Vinicio Matute (38)		Colonia Villanueva, Tegucigalpa, Francisco Morazán	Member of the Resistance was assassinated in Colonia Villanueva from a vehicle, as he gathered with other young people in front of a local food stand.
28	12/06/2009	Isaac Coello (24), Roger Reyes (22), Kenneth Rosa (23), Gabriel Parrales y Marcos Vinicio Matute (38)		Colonia Villanueva, Tegucigalpa, Francisco Morazán	Member of the Resistance was assassinated in Colonia Villanueva from a vehicle, as he gathered with other young people in front of a local food stand.
29	12/11/2009	Santos Corrales García		Lepaterique, Francisco Morazán	Active member of the Resistance against the coup who coordinated the food storage warehouse was kidnapped on Dec. 5, 2009 from his home by five armed men in National Criminal Investigation Unit uniforms. The subjects were driving a blue Tacoma vehicle. Six days later his disappeared body appeared 50 kilometers outside of Tegucigalpa
30	12/13/2009	Walter Orlando Tróchez	27	Center of Tegucigalpa, Francisco Morazán	Was killed in the center of Tegucigalpa near the Larach and Cía from a bullet wound to the thorax fired by unidentified individuals from a vehicle.
31	12/14/2009	Carlos Alberto Valenzuela		Comayagua, Comayagua	Was found hung and strangled in his home in Comayagua
32	12/15/2009	Carlos Roberto Turcios Maldonado. Dissappeared	26	Colonia López Arellano, Choloma, Cortés	Was kidnapped from López Orellana neighborhood at 2:20 p.m. by hooded men in a vehicle who took him in an unknown direction. On Dec. 18th a body was found without head or hands, which is presumed to be Carlos. DNA testing is being done to confirm his identify.
33	12/17/2009	Karen Yessenia Hernández Mondragón	29	Colonia Arturo Quezada, Comayagüela, Francisco Morazán	Was wounded by a firearm as she was taking her children to school in the Colonia San Francisco. She died on Dec. 18, 2009 in the Hospital Escuela of Tegucigalpa.
34	12/22/2009	Edwin Renán Fajardo Argueta	22	Barrio San Rafael, Tegucigalpa, Francisco Morazán	Active member of the Artists in Resistance to the coup was found strangled in the closet of the apartment where he lived in the San Rafael neighborhood of Tegucigalpa
35	01/10/2009	JANETH LOURDES MARROQUÍN		Comayagua, Comayagua	Medical Doctor and active member of the Resistance, and her husband were assassinated in their home by hooded men who entered by force.

36	01/10/2009	HUGO NOÉ CONTRERAS		Comayagua, Comayagua	Pharmacy owner and active member of the Resistance was assassinated with his wife by hooded men who forced entry into their home.
37	01/30/2009	Blas López		Aldea El Carbonal, Olancho	Secondary School Teacher, leader of the Pech ethnic group and active member of the Resistance was found dead from multiple gunshot wounds.
38	02/02/2010	Vanessa Zepeda	29	Tegucigalpa, Francisco Morazán	Active member of the Resistance against the coup, unión leader in the Social Security Workers Union. Her body was thrown out of a moving vehicle in the Loarque neighborhood in the south of Tegucigalpa.
39	02/15/2010	Julio Fúnez Benítez		Colonia Brisas de Olancho, Comayagüela	Leader in the SANAA Union and member of the Resistance movement was gunned down by men wearing caps on a motorcycle at 6 p.m. He was shot three times. Previously he had recevied death threats.
40	02/24/2010	Claudia Larisa Brizuela Rodríguez	36	Colonia Céleo González, San Pedro Sula	Daughter of a prominent Radio journalist and outspoken member of the Resistance was shot in the face and killed when she opened the door to her home. Her two young children witnessed their mothers murder.

Translated by Quixote Center

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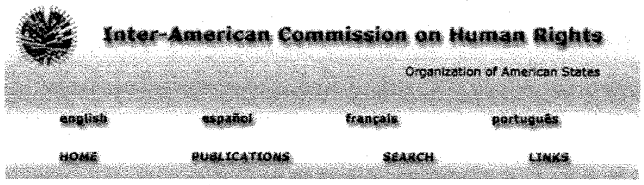

PRESS RELEASE

N° 26/10

IACHR DEPLORES MURDERS, KIDNAPPINGS, AND ATTACKS IN HONDURAS

Washington, D.C., March 8, 2010—The Inter-American Commission on Human Rights (IACHR) condemns and laments the murders last month of three persons in Honduras who were active in the resistance to the coup d'état or related to activists. It also deplores the kidnappings, arbitrary detentions, acts of torture, sexual violations, and illegal raids to which other members of the resistance have been victims. The IACHR also expresses its deep concern over information it has received indicating that sons and daughters of activists are being threatened and harassed, and that in two cases they have been killed.

According to the information received, on February 3, 2010, 29-year-old Vanessa Zepeda Alonzo, who was active in the Resistance Front and was affiliated with the Social Security Employees Union, was found dead in Tegucigalpa. According to eyewitnesses, her body was thrown out of a car. Likewise, on February 15, 2010, Julio Funez Benitez, an active member of the resistance who belonged to the SANAA Workers Union, was holding a conversation on the sidewalk outside his residence in the Colonia Brisas neighborhood of Olancho when he was killed with two shots fired by unknown gunmen traveling on a motorcycle. Finally, on February 24, 2010, Claudia Maritza Brizuela, 36 years old, was killed in her home. She was the daughter of union and community leader Pedro Brizuela, who participates actively in the resistance. Two unknown individuals came to her door, and when she opened it, Claudia Brisuelas was shot and killed in front of her children, ages 2 and 8.

The Commission observes with dismay that it appears that sons and daughters of leaders of the Resistance Front are being killed, kidnapped, attacked, and threatened as a strategy to silence the activists. Along these lines, on February 17, 2010, Dara Gudiel, who was 17, was found hanged in the city of Danlí, in the department of Paraíso. Dara Gudiel was the daughter of journalist Enrique Gudiel, who runs a radio program called "Siempre al Frente con el Frente" ("Always Upfront with the Front"), which broadcasts information about the resistance. Days before she was found hanged, Dara Gudiel had been released after having been kidnapped and held for two days, during which time she was alleged to have been physically mistreated.

Separately, on February 9, 2010, five members of a family that is active in the resistance were kidnapped by seven heavily armed men who were dressed in military uniforms and wore ski masks over their faces. One of those kidnapped was a young woman who in August 2009 reported having been raped by four police officers after they had detained her in connection with a demonstration against the coup d'état perpetrated on June 29. In the February 9 attack, the armed men intercepted the vehicle in which the young woman was traveling with her brother, her sister, and two other individuals; when they offered to turn over the keys to the car, the men responded that what they wanted was the young woman, "to see if she would report them this time." The five were forced at gunpoint to walk into the mountains, where two of the women were sexually violated; the third was the victim of robbery and death threats, and the two men were subjected to physical torture. They were released hours later.

These events take place in a context of grave harassment directed against active members of the resistance in Honduras; during the last month, there have been more than fifty detentions, eight cases of torture, two kidnappings, two rapes, and one raid on a residence. These attacks have been made against members of the resistance, unionists, and journalists, as well as their sons and daughters.

Honduras must adopt urgent measures to guarantee the rights to life, humane treatment, and personal liberty. All persons, without distinction, must be equally protected in the exercise of their rights to freedom of expression, assembly, and political participation.

The IACHR finds it necessary to reiterate that political and social participation through public demonstration is essential in the democratic life of societies, and that it is imbued with an imperative social interest. People from all political sectors have the right to fully and freely exercise their right to freedom of expression and their right to assembly, without violence and in accordance with the law and with Inter-American standards for the protection of human rights. As the Commission and the Inter-American Court of Human Rights have indicated, the

States not only must not interfere with the exercise of these rights, but they must also adopt measures to ensure that these rights can be exercised effectively.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Commission is composed of seven independent members who act in a personal capacity, without representing a particular country, and who are elected by the OAS General Assembly.

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HUMAN RIGHTS WATCH

http://www.hrw.org

Letter to the Attorney General of Honduras Urging Investigation into Attacks on Coup Opponents

March 3, 2010

Related Materials:
Honduras: Reject Amnesty for Abuses During Coup
Honduras: Investigate Murders of LGBT People
Honduras: Stop Blocking Human Rights Inquiries

Luis Alberto Rubí
Attorney General of Honduras

Dear Mr. Rubí,

I am writing to express my concern regarding recent attacks on members of the National Popular Resistance Front (Frente Nacional de Resistencia Popular), including killings, rape, torture, kidnapping, and assault. The fact that these attacks targeted members of this political group, which opposed the 2009 coup and advocated for the reinstatement of ousted president Manuel Zelaya -- as well as previous threats received by victims or comments allegedly made by the assailants -- raise the possibility that these abuses may have been politically motivated.

Without a thorough investigation to identify who committed the crimes, to establish motive, and to hold those responsible to account, these events could generate a chilling effect that would limit the exercise of basic political rights in Honduras, including the rights of freedom of association and freedom of expression. I therefore urge you to ensure that these crimes are investigated in a prompt, thorough and impartial manner.

All of the following attacks were reported in February 2010:

Julio Benítez, a member of the National Popular Resistance Front and the Union of Workers of the National Service of Aqueduct and Sewer Systems (Sindicato de Trabajadores del Servicio Nacional de Acueductos y Alcantarillados, SANAA), was shot by men on a motorcycle as he left his home on February 15. He died in the hospital shortly afterwards. Benítez's wife said he had received numerous threatening phone calls warning him to abandon his participation in opposition groups.[1]

Hermes Reyes, a member of the "Movement of Artists in Resistance" and the "Broad Movement for Divinity and Justice," told Human Rights Watch he was leaving a meeting of the National Resistance Front on February 12 when a car drove towards him. A passenger emerged from the car and whipped him across the face with a wire cable. Reyes fell to the ground and his attacker said, "now we know where you are, you sons of whores."[2]

The body of Vanesa Yánez, a member of the Union of Social Security Workers (Sindicato de Trabajadores del Seguro Social) and the National Popular Resistance Front, was reportedly dumped from a car on the night of February 3. According to witnesses interviewed by CODEH, her body had signs of torture.[3] Yánez's mother told HRW that her daughter had left the home the day before to buy some notebooks, and never returned.[4]

Edgar Martínez, Carol Rivera, Johan Martínez, Meliza Rivera, and one other woman-all five of whom are active members of the National Popular Resistance Front-were abducted on February 10 and taken to an undisclosed location, according to testimony collected by a nongovernmental human rights organization, Committee for the Defense of Human Rights in Honduras (Comité para la Defensa de los Derechos Humanos en Honduras, CODEH). There, they reportedly were subjected to torture and two of the women were raped. According to victims' testimony, when they were set free, one of their captors said, "Pepe says hi," using the nickname of President Porfirio Lobo. The victims have since moved locations out of fear for their safety.[5]

Claudia Larissa Brizuela was murdered in her home on February 24. Her father, Pedro Brizuela, is a prominent leader of the National Popular Resistance Front, of which she was also a member.[6]

In addition to the attacks on members of the National Popular Resistance Front, we have also received a report of a politically-motivated attack on two journalists:

Manuel de Jesus Murillo from Globo TV and Ricardo Antonio Rodriguez from Noticiero Mi Nacion were reportedly detained on February 2 by plain-clothes men who identified themselves with police badges and told them to get into a car. According to testimony collected by CODEH, the men were then taken to a house where they were tortured and interrogated about arms possessed by the resistance. The journalists said they were told their families would be killed if they denounced their abuse.[7]

We understand the human rights unit of your office is investigating five of these cases.[8] Given the fact that such a unit has faced several obstacles in the past to investigate cases of alleged human rights abuses, we respectfully urge you to actively support the investigations into the crimes mentioned in this letter.[9]

Thank you in advance for taking into consideration this urgent matter.

Best regards,

José Miguel Vivanco
Americas Director
Human Rights Watch

[1] Human Rights Watch telephone interview with Lidia Yánez, February 19, 2010.

[2] Human Rights Watch telephone interview with Hermes Reyes, February 19, 2010.

[3] Human Rights Watch telephone interview with Andres Pavon, Comité para la Defensa de los Derechos Humanos en Honduras (CODEH), February 18, 2010.

[4] Human Rights Watch telephone interview with Vanesa Yáñez's mother, February 19, 2010.

[5] Human Rights Watch telephone interview with Andres Pavon, CODEH, February 18, 2010.

[6] AFP, "Activist of Front against the Coup in Honduras is murdered [Asesinan a activista del Frente contra el Golpe de Estado en Honduras]," February 25, 2010. La Tribuna, "Search for gang member who killed daughter of popular leader continues [Buscan "marero" que mató a hija del dirigente popular]," February 27, 2010.

[7] Human Rights Watch telephone interview with Andres Pavon, CODEH, February 18, 2010.

[8] Human Rights Watch telephone interview with Sandra Ponce, head of the human rights unit of the Honduras Attorney General's Office, March 2, 2010.

[9] Human Rights Watch representatives visited Honduras in October 2009 and documented the serious obstacles human rights unit prosecutors faced in carrying out their investigations. For additional information, see Human Rights Watch, "Honduras: Stop Blocking Human Rights Inquiries," press release, October 16, 2009.

Also available in:

Español

http://www.hrw.org/es/news/2010/03/03/letter-attorney-general-honduras-urging-investigations-attacks-coup-opponents

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February 21, 2008
LL File No. 2008-00643

TO: The Honorable Ileana Ros-Lehtinen
United States House of Representatives

Attention: Sara Gamino

FROM: Norma C. Gutiérrez
Senior Foreign Law Specialist

SUBJECT: Laws of Honduras

This is in response to your February 13, 2008, request for information on the legal framework of anti-competitive and anti-commercial practices in Honduras, particularly from 2001 to 2004.

During that period, the applicable laws were:

Constitution of the Republic of Honduras. Originally published officially as Decreto No. 131 del 11 de Enero de 1982, Constitución de la República de Honduras, (LA GACETA, Jan. 20, 1982.

- Article 16, para. 2 states that international treaties entered into by Honduras with other states are part of the domestic law as soon as they enter into force.
- Article 18 states that in case of conflict between a treaty or convention and the law, the former shall prevail.
- Article 331 provides that the State guarantees and promotes freedom of various activities, including those connected with commerce and industry.
- Article 335 mandates that the State respect the treaties and agreements it signs.
- Articles 336 authorizes foreign investment and mandates its regulation.
- Article 339 prohibits monopolies, monopsonies, oligopolies, hoarding, and similar practices in the industry and commerce.

Código de Comercio (Commercial Code), Book II, Title II (Editorial Casablanca, Tegucigalpa, 2001). Note that no amendments applicable in the years 2001 to 2004 were located.

- Articles 422-429 are on unfair competition. Of special relevance is article 425, which includes a long list of types of conduct that constitute unfair competition.

Articles 422-424 and 425-III(a) of the Commercial Code are applicable only in situations that occurred before February 4, 2006, because these provisions were repealed as of that date by the Law for the Defense and Promotion of Competence, which is listed below.

Ley de Propiedad Industrial (Industrial Property Law), Editorial OIM, Tegucigalpa, 2006; originally published officially in LA GACETA on January 29, 2000).

- Articles 170-173: Unfair competition. Please note that Article 173 regarding the application of fines as penalties was amended in 2006.

Ley de Protección al Consumidor (Consumer Protection Law), LA GACETA, April 29, 1989 (available in the Global Legal Information Network (GLIN), http://www.glin.gov, as item no. 141100).

- Article 6 prohibits hoarding (*acaparamiento*);
- Article 29 (b) covers the Executive Branch's duty to prevent and combat several types of unfair commercial practices.
- Article 29 (c) charges the executive authority with the responsibility of exercising control of quality, quantity, weight, and measurement of the goods and services offered in the country.
- Article 32 (d) discusses the duty of the Secretariat of Economy and Commerce (hereafter, the Secretariat) to investigate any kind of illicit speculation or monopolization;
- Article 32 (e) provides the Secretariat with the responsibility to seize goods offered to the consumer whose quality and characteristics do not correspond to their price and also to seize those goods that are the objects of hoarding (*acaparamiento*) or unlawful speculation.
- Article 32 (h) charges the Secretariat with the responsibility of verifying compliance with the official standards of quality, quantity, measurement, price, or any other characteristic regarding the trade of goods and services.
- Article 32 (j) mandates the Secretariat to denounce before the appropriate tribunals actions that are to the detriment of consumers and that constitute crimes under the Penal Code
- Chapter VIII provides sanctions.

Código Penal (Penal Code), Editorial Casablanca, Tegucigalpa, 2005.

- Title X, Crimes against the Economy: Articles 297 and 299 penalize acts against commerce.

Decreto No. 226-2001, de 29 Diciembre 2001, Ley de Policía y de Convivencia Social (Decree 226-2001 of Dec. 29, 2001, Law on Police and Social Co-existence), LA GACETA, March 7, 2002 (available in GLIN, as item no. 89222).

- Article 1 specifies such general and specific duties of the police forces as law enforcement, including the police role in freedom of commerce and industry and its role of protecting the society from commercial abuses;
- Articles 64 and 65 cover preventing and combating monopolies, oligopolies, monopsonies, and other unfair commercial practices;
- Articles 128-141 provide the regimen of sanctions.

Código Civil (Civil Code), Edición Centenarioa, Editorial Oim, Tegucigalpa, 2006.

- Articles 1346, 1349, 1350, 1365, 2236 and 2237 refer to liability derived from torts involving acts or omissions causing damages through fault or negligence.

Ley de Inversiones (Law on Investments), LA GACETA, June 20, 1992 (available in GLIN, as item no. 137929).

- Article 4, sect. 7 provides that the guarantees granted to foreign investments are to be supported by the bilateral and multilateral treaties to which Honduras is a party.
- Article 4, sect. 13 mandates that foreign investors resolve their disputes according to the treaties signed by Honduras.

Treaty between Honduras and the United States on Encouragement and Reciprocal Protection of Investment, dated July 1, 1995, approved by the Honduras Congress in Decree 207-98, August 11, 1998, and effective July 11, 2001, *available at* http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005347.asp.

- Article II (1, 3, a, b) provides the Treaty's major obligations with respect to treatment of investments, ensuring most-favored-nation (MFN) treatment; obligating Honduras to accord "fair and equitable treatment" and "full protection and security"; and imposing the obligation not to impair, through unreasonable and discriminatory means, the management, conduct, operation, and sale or other disposition of covered investments.
- Article II (4) requires the parties to provide effective means of asserting claims and enforcing rights with respect to covered investments.
- Article III (1) prohibits not only expropriation or nationalization of covered investments, but also measures that are tantamount to indirect expropriation or nationalization.
- Article IX sets forth several means by which disputes may be resolved.
- The Annex provides exceptions to national and MFN treatment, which may or may not apply to the case under consideration.

Please note that in light of Articles 16 and 18 of the Constitution that make international treaties ratified by Honduras part of the country's laws and place them over domestic law when there is a conflict between them and in light of the fact that Honduras ratified the Vienna Convention on the Law of Treaties, without reservations, the U.S.-Honduras Treaty on Encouragement and Reciprocal Protection of Investment became part of the binding laws of Honduras once it was ratified, and it prevails over all domestic legislation when there is a conflict between them.

Reglamento Centroamericano sobre Prácticas Desleales de Comercio (Central American Regulation on Unfair Commercial Practices), LA GACETA, September 18, 1999 (available in GLIN as item no. 69076).

Title II deals extensively with procedures and measures in cases regarding unfair commercial practices.

General Inter-American Convention for Trademark and Commercial Protection (46 Stat. 2907). Honduras signed this Treaty on February 20, 1929, having acceded to it on October 19, 1935, and ratified it on November 29, 1935. The list of the contracting parties and the text of the Convention are *available at* the Web site of the Organization of American States, http://www.oas.org/juridico/english/sigs/b-7.html.

- Article 1 states that the States parties to the Convention bind themselves to grant to the nationals of the other States parties and to domiciled foreigners who own a business in any of the States parties the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trademarks, trade names, the repression of unfair competition, and false indications of geographical origin or source.

Chapter IV is on Repression of Unfair Competition (Articles 20-22):

- Article 20 mandates that every act or deed contrary to commercial good faith or to the normal and honorable development of industry or business activities must be considered as unfair competition and therefore is unjust and prohibited.
- Article 21 lists the acts that are declared to be acts of unfair competition.
- Article 22 mandates that the State parties which may not yet have promulgated legislation repressing the acts of unfair competition listed in Chapter IV must apply to such acts the penalties contained in their legislation on trademarks or in any other statutes and must grant relief by way of injunction against the continuance of said acts at the request of any party injured; those causing such injury must be answerable in damages to the injured party.

Chapter VI is on Remedies:

- Article 30 mandates that any act prohibited by the Convention will be repressed by the appropriate administrative or judicial authorities of the State where the offense occurred, by the legal methods and procedures of the State, either *sua sponte* or at the request of an interested party. The merchandise or their marks, which are the instrumentality of the acts of unfair competition, must either be seized or destroyed, or in some cases the offending markings may be obliterated.

Paris Convention of March 20, 1883 for the Protection of Industrial Property, as revised, (21 UST 1583). Entered into force for Honduras, on February 4, 1994. The list of the Contracting parties is *available at* http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=2. The Convention as amended on September 28, 1979, is *available at* http://wipo.int/treaties/en/ip/paris/trtdocs_wo020.html.

- Article 10bis ¶ 1 ¶ 2 ¶ 3 [Unfair Competition], by this provision, the countries that are parties to the Convention bound themselves to assure to their nationals protection against unfair competition. In addition, the provision states that any act contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. Moreover, the provision lists three categories of acts that in particular must be prohibited.
- Article 10ter states that the countries that are parties to the Convention undertake to assure nationals of the other party countries appropriate legal remedies to effectively repress all the acts referred to in Articles 9, 10, and 10bis (this last one includes the acts of unfair competition).

Vienna Convention on the Law of Treaties (1155 U.N.T.S. 331). It was signed by Honduras on May 23, 1969, and ratified on September 20, 1979 (Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2002, vol. II, Part I, Chapters XII to XXIX, and Part II, United Nations).

- Article 26, the *pacta sunt servanda* provision states that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."
- Article 27 states that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty ..."

Ratifying the Convention binds Honduras to Articles 26 and 27.

2007 National Trade Estimate Report on Foreign Trade Barriers (NTE), U.S. Trade Representative,

The NTE report is issued yearly by the U.S. Trade Representative. It surveys fifty-eight nations, including Honduras, regarding significant foreign barriers affecting U.S. export of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights. The 2007 survey on Honduras includes sub-heading such as "Other Barriers," and "Anti-Competitive Practices," which may be of interest to you; the last one covers anti-competitive, predatory pricing practices that occurred between 2003 and 2004. It is *available at* http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_NTE_Report/Section_Index.html?ht.)

The NTE Reports issued in 2005 and 2006 also include the same information that may be of interest to you. They are *available at* http://search.crownpeak.com/cpt_search/result_1?account=1003&q=2007+National+Trade+Estimate+Report+&submit.x=12&submit.y=14.

Legal Instruments Issued After 2004

Decreto 357-2005 de 16 de Diciembre, 2005 Ley para la Defensa y Promoción de la Competencia (Decree 357-2005 of Dec. 16. 2005, Law for the Defense and Promotion of Competition), LA GACETA, February 4, 2006 (available in GLIN as item no. 176503).

According to Article 65, this statute came into force the day of its publication in LA GACETA, on February 4, 2006, and it may or may not apply to the case under consideration. Of special note are articles 5, 7, 11, and 12, prohibiting monopolies and other unfair commercial practices. Sanctions can be found in Title VI. Article 60 repeals Articles 422-424 and 425-III (a) of the Commercial Code. However, the provisions of this statute are applicable only to situations that occurred after February 4, 2006.

The U.S.-Central America Free Trade Agreement (CAFTA-DR).

This Treaty, to which Honduras is a party, has an investment chapter and other chapters that may be useful to you. The short deadline has precluded a review of this very extensive document, but it is available at the Web site of the U.S. Trade Representative, http://www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/Section_Index.html (last visited July 13, 2007).

Finally, the legislation listed in this memorandum does not reflect the full spectrum of the applicable laws, but merely what was found in available sources within the constraints of the deadline. Furthermore, the provisions specifically pointed out in this memorandum are only those applicable to the specific subject matter of the legal framework of anti-competitive and anti-commercial practices in Honduras during the 2001-2004 period. There may or may not be many other provisions in each of the authorities cited and in other bodies of law that may be applicable to the full aspects and facts of the case you are considering.

If you need copies of any of the items listed above, please feel free to request them.

If you have any questions concerning the above information, please call me at (202) 707-4314 or email me at ngut@loc.gov. It has been my pleasure to assist you, and I hope that this information will be helpful.

The Law Library of Congress is the legal research arm of the U.S. Congress. We invite you to visit the Law Library website at http://www.loc.gov/law, which details all of our services and provides access to the Global Legal Information Network, a cooperative international database of official texts of laws, regulations, and other complementary legal sources of many foreign jurisdictions. Should you need further assistance with any other matter pertaining to foreign, comparative, or international law, please contact the Director of Legal Research by email at law@loc.gov or by fax at (202) 609-9264. Research requests may also be directed to the Law Library's Congress-only Hotline at 7-2700, which is staffed whenever either Chamber is in session.

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

USTR ANNUAL NTE REPORT 2006 – HONDURAS

OTHER BARRIERS

Historically, U.S. firms and private citizens have found corruption to be a problem which has seriously complicated doing business in Honduras. Corruption has appeared to be most prevalent in the areas of government procurement, the buying and selling of real estate (particularly land title transfers), performance requirements, and the regulatory system. Honduras' judicial system is subject to influence, and the resolution of investment and business disputes involving foreigners is largely non-transparent. Currently, with considerable U.S. help, the Honduran government is reforming the judicial system and fighting corruption; however, progress has been very slow and serious problems remain. In April 2004, Honduras was chosen as eligible to apply for Millennium Challenge Account (MCA) assistance. In June 2005, the Government of Honduras and the Millennium Challenge Corporation signed a program compact for $215 million. MCA countries are deemed to have shown a commitment to ruling justly (including by tackling corruption), investing in their people, and encouraging economic freedom.

The anti-corruption provisions in the CAFTA-DR require each government to ensure that bribery in matters affecting trade and investment is treated as a criminal offense, or is subject to comparable penalties, under its law.

Anti-Competitive Practices

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to forms of competition that, in the United States, would be considered anticompetitive. For example, in 2003, a U.S.-Japanese joint venture established a cement company in Honduras, challenging the duopoly enjoyed by the two Honduran companies in the market. The new joint venture investment accused the two established companies of predatory pricing that brought local cement prices below the cost of production. After the U.S.-Japanese venture dropped out of the market, prices leapt up to well above their previous level, until they were subsequently regulated by GOH action. Steel prices are also fixed in Honduras, and on a regional basis there are reports of price collusion by the major steel producers. In fall of this year, the Competition Law was passed which regulates against predatory pricing and other monopolistic practices in Honduras, but it will take some time for this law (and the GOH institutions that support it) to come fully into effect.

Source: Office of the United States Trade Representative. National Trade Estimate Report on Foreign Trade Barriers, 2006; March 30, 2006, pp. 294-295.

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

USTR ANNUAL NTE REPORT 2007 – HONDURAS

OTHER BARRIERS

Historically, U.S. firms and private citizens have found corruption to be a serious problem, which complicates doing business in Honduras. Corruption appears to be most prevalent in the areas of government procurement, the buying and selling of real estate (particularly land title transfers), performance requirements, and the regulatory system. Honduras' judicial system is subject to influence, and the resolution of investment and business disputes involving foreigners is largely non-transparent. The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in trade-related matters is treated as a criminal offense, or is subject to comparable penalties.

Anti-Competitive Practices

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to practices that, in the United States, might be considered anticompetitive. For example, in 2003, a U.S.-Japanese joint venture established a cement company in Honduras, challenging the duopoly enjoyed by the two Honduran companies in the market. In 2004, the investor complained that the existing duopoly in the sector was engaging in anti-competitive predatory pricing practices. Despite the conclusions of an investigation by the Ministry of Commerce and the Attorney General's office that the duopoly "seeing the reduction in its market share, began to apply predatory pricing with the intention of eliminating [the U.S. firm - CEMAR] from the market," no subsequent prosecution was ever brought and the U.S. firm was forced to leave the Honduran market. After the firm left the market, prices increased dramatically to well above their previous level, until they were subsequently regulated by Honduran government action. There have also been allegations that steel prices are also fixed in Honduras, and on a regional basis there are reports of price collusion by the major steel producers. In 2006, the Honduran government passed a Competition law, establishing an anti-trust enforcement commission to combat such abuses. However, the government delayed for more than six months in naming the commissioners. As of March 2007, the Commission has received some funding, begun hiring staff and secured permanent office space.

Source: Office of the United States Trade Representative. National Trade Estimate Report on Foreign Trade Barriers, 2007; April 2, 2007, p. 265.

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

English Translation

[Official letterhead]

SECRETARY OF INDUSTRY AND COMMERCE
Republic of Honduras
General Directorate for Production and Consumption

Tegucigalpa, M.D.C.
September 23, 2004

Official Letter No. 162-04

[Ms.]
Miriam E. Garcia Perez, Esq.
Lead Prosecutor for the Protection of the
Consumer and the Elderly
Her Office

Regarding Official Letter No. 361-04 dated September 9 of this year and received at this Directorate on Tuesday, September 21, **I am enclosing herewith the Cement [Investigation] Report** prepared by the Commission integrated by the Office of the General Directorate for Production and Consumption and the Office of the Prosecutor for Protection of the Consumer and the Elderly.

Sincerely,

[Signed and sealed]
NELSON PARKS
Deputy Director for Production and Consumption

Cc: File

RECEIVED
Reception Section

Date: 27/09/04.

Time: 9:37
Fatima Acosta

English Translation

[Official letterhead]

SECRETARY OF INDUSTRY AND COMMERCE
Republic of Honduras
General Directorate for Production and Consumption

CEMENT INVESTIGATION REPORT

Introduction

Currently, there are three cement plants in Honduras: Compañia Cementera Hondureña, S.A. (INCEHSA) [Lafarge-INCEHSA], located in Comayagua; Cementos del Norte, S.A. (CENOSA), located in Bijao, Cortes; and Cementos América, S.A. (CEMAR), located in San Lorenzo, Valle; the latter having commenced operations in October, 2003.

Prior to CEMAR's entry into the market, the two existing companies had split the domestic market geographically (INCEHSA, the central, southern and eastern regions; CENOSA, the northern and western regions), and did not compete by price in the market; on the contrary, when one increased prices, the other automatically adopted the same measure.

In the case at hand, according to information compiled by personnel of the General Directorate for Production and Consumption of the Secretary of Industry and Commerce, the average national daily production of cement is 82,000 (42.5 Kg) bags, with this [market] participation by company: CENOSA 50.2%, INCEHSA 37.3% and CEMAR 12.5%; for purposes of this report bulk cement sales are not taken into account.

Since its entry into the national market in Choluteca and San Lorenzo (October 2003), CEMAR, due to its location, rapidly gained market share in the south, an area historically dominated by INCEHSA [Lafarge-INCEHSA] – who, seeing its market share declining, began to apply predatory prices with the intention of eliminating CEMAR from the market. This situation deteriorated into a price competition between the two companies, with prices falling from Lps. 80.25 per bag (sales tax included) quoted to the end consumer in November, 2003, to Lps. 49.28 in February, 2004. It is important to clarify that the companies always invoiced at US $3.75, then gave discounts up to Lps. 28.06, which were gradually reduced and eventually eliminated after August 16 of this year.

At the request of the Special Prosecutor's Office for Protection of the Consumer and the Elderly, a Commission was formed to investigate the causes of the shortage of cement in the market. The Commission consisted of the following members:

NAME	INSTITUTUION
Miriam e. Garcia Perez	Prosecutor's Office for Protection of the Consumer and the Elderly
Nelson O. Parks	Secretary of Industry and Commerce
Justo Rufino Sorto	Secretary of Industry and Commerce

The investigation was conducted on site, at the three cement plants, in May, 2004. The results were as follows:

English Translation

[Official letterhead]

SECRETARY OF INDUSTRY AND COMMERCE
Republic of Honduras
General Directorate for Production and Consumption

INDUSTRIA CEMENTERA HONDUREÑA, S.A. (INCEHSA); May 10-13, 2004

According to the investigation carried out at INCEHSA from May 10-13, the following was established:

Average daily cement production was 30,600 42.5 Kg bags; the company also sells bulk cement to construction companies.

On Wednesday, May 12, due to overheating from running at maximum installed capacity (1,650 MT per day), it was necessary to shut down the kiln for six days. This situation did not cause any disruption in the market, as the company already had sufficient product in its silos to meet demand during this period.

INCEHSA has its own limestone quarries for production of clinker, the principal raw material of cement; however it also buys clinker from CENOSA when its own production is insufficient.

In relation to the foregoing, they stated the following:

- They were handling all orders in regular fashion
- They did not maintain inventories
- Regarding the supposed shortage of product in the market, they expressed that it was due to being in a season of high demand, peaking in April of this year, at 7% of the forecast sales.

Calculation of Sales Price FOB

Components	**US$**	**Lps.**
Base Price FOB	3.75	
Exchange rate (Lps 18.0928)		67.85
(Discount by region)		(26.00)
FOB before sales tax		41.85
Sales tax		5.02
New Price FOB		**46.87**

The progression of the discounts granted by INCEHSA based on the region, were as follows: on May 30 between Lps. 26.00 and Lps. 28.50 (per 42.5 Kg bag); on June 1, 2004, reduced to Lps. 15.00, on June 16, 2004 to Lps. 6.00 and finally after August 16, 2004, discounts were eliminated.

English Translation

[Official letterhead]

SECRETARY OF INDUSTRY AND COMMERCE
Republic of Honduras
General Directorate for Production and Consumption

CEMENTOS AMERICA S.A. DE C.V. (CEMAR); May 17-19, 2004

CEMAR commenced operations in October, 2003, by supplying the Choluteca and San Lorenzo markets only, and later expanding its coverage to the eastern and central parts of the country; the average daily production of the company was 9,000 42.5 Kg bags.

Calculation of Sales Price FOB

Components	US $	Lps
Base Price FOB		70.00
Exchange rate (Lps 18.0928)		67.85
(Discount by region)		(23.35)
FOB before sales tax		46.65
Sales tax		5.60
New Price FOB		**52.25**

On the date the investigation was conducted, CEMAR, depending on the region and the conditions of sale (credit or cash) was granting discounts between Lps. 13.81 and Lps. 25.89 per 42.5 Kg bag; after June 1, 2004, it implemented a redistribution of its discounts, increasing them in certain areas and reducing them in others, in a range between Lps. 15.07 and Lps. 21.87. For example, in Tegucigalpa on May 17, 2004 it gave a discount of Lps. 22.35 and on June 1, 2004 it reduced the discount to Lps. 15.52. On the contrary, in Yuscaran, on May 17, 2004, it granted a discount of Lps. 13.86 and on June 1, 2004, it increased it to Lps. 17.57.

Unlike the other cement companies in the country, CEMAR imports its clinker from Japan, which takes 23 days to arrive at San Lorenzo in shipments of approximately 33,000 MT. According to company executives, it is not currently producing cement due to a lack of clinker and because of negotiations to sell the company to INCEHSA.

CEMENTOS DEL NORTE (CENOSA); May 25-27, 2004

CENOSA was not affected by the competition from CEMAR and did not participate in the price war unleashed in the central and southern regions, and like INCEHSA, has its own limestone quarries to produce clinker.

Average daily production was 42,000 42.5 Kg bags; the company also sells bulk cement to construction companies.

Calculation of Sales Price FOB

Components	US$	Lps.
Base Price FOB	3.75	

English Translation

[Official letterhead]

SECRETARY OF INDUSTRY AND COMMERCE
Republic of Honduras
General Directorate for Production and Consumption

Exchange rate (Lps 18.0928)	67.95
(Discount by region)	(15.50)
FOB before sales tax	52.45
Sales tax	6.29
New Price FOB	**58.74**

On the date the investigation was conducted, CENOSA, depending on the region, was granting discounts between Lps. 8.00 and Lps. 15.50 per bag (42.5 Kg) and on June 1, 2004, it reduced the discount to Lps. 5.00.

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Price Movements per Bag (42.5 Kg = 94 lbs.) of Portland Gray Cement
Tegucigalpa and Comayaguela
January 2002- August 2004

Dates	**Price (Lempiras)**	
	Minimum	**Maximum**
January 2002 – April 2003	71.50	71.50
May – December 2003	80.25	80.25
January 2004	63.00	70.00
February 2004	49.60	56.00
March 2004	50.95	67.32
April 2004	53.90	62.00
May 2004	55.35	70.00
June 2004	60.48	76.00
July 2004	70.00	78.00
August 5, 2004	77.95	78.85
August 18, 2004	85.00	85.50
August 24	58.00	85.50

[Signed and sealed]
Miriam E. Garcia Perez
Special Attorney's Office for Protection to the Consumer and the Elderly

[Signed]
Justo Rufino Sorto
Ministry of Industry and Commerce

[Signed and sealed]
Nelson O. Parks

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

English Translation
Honduras Department Commerce email

INTER-AGENCY MEMO REGARDING ILLEGAL PRACTICES AGAINST CEMAR[1]

When CEMAR [*Cemento América*] entered the cement market, its influence was probably felt in the south-central region [*of Honduras*], because the freight cost structure determines a cement company's area of influence based on the distance from its client's location. It is understood that the cost of transportation one bag of cement using 525-bag, flat-bed tractor trailers is Lps. 0.07 per kilometer.

Because CEMAR is located in Choluteca, it generated competition in the south-central market, which includes Tegucigalpa. This situation prompted INCEHSA [Lafarge-INCEHSA] [*part-military-owned cement company*] to act immediately because INCEHSA is located in Comayagua, less than 100 kilometers from Tegucigalpa. In the meantime, CENOSA [*Cementos del Norte*], which is located more than 250 kilometers from Tegucigalpa, was not threatened by CEMAR. It is important to acknowledge that the cost of freight from CENOSA to Tegucigalpa is Lps. 9.10 per bag, whereas the cost of freight from INCEHSA to Tegucigalpa is Lps 4.60 per bag. This is the reason why INCEHSA has a natural price advantage over CENOSA in the south-central market. Therefore, CENOSA has a greater advantage in the northern market and INCEHSA has a greater advantage in the south-central market.

There are two specific actions that INCEHSA [Lafarge-INCEHSA] implemented to defend itself from CEMAR incursion in the south-central market, and both fall within the concept stated in article 339 of the Constitution which prohibits "monopolies, monopsonies, oligopolies, hoarding and similar practices in industrial and commercial activities."

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[1]Memorandum from Honduras Deputy Minister of Commerce, Irving Guerrero to Honduras Attorney General Counselor, Conrado Zavala, regarding Lafarge-INCEHSA lawsuit against the Government of Honduras, File Number 222-04 (translated text of e-mail received on October 13, 2004)

English Translation
Honduras Department Commerce email

The first refers to the actual practice by INCEHSA [Lafarge-INCEHSA] of lowering prices in the Tegucigalpa market. In November 2003, the price [of cement] to the public was Lps. 80.25 and was reduced to Lps. 49.69 (per 42.5 kilogram bag). This is fierce reduction structure, has very little chance of withstanding. This is the reason why they could be considered predatory pricing methods. There is no evidence that the primary objective was to help the end consumer) as happens under normal competitive situations); however, when CEMAR went bankrupt and withdrew from the market, INCEHSA once again raised prices to levels similar or higher than those prevailing before CEMAR came into the market. The effect of these actions was to completely eliminate a competitor and allow INCEHSA to consolidate its privileged position in the south-central market.

The second is the fact that once CEMAR was driven into bankruptcy, its shares were sold to the very same company, INCEHSA [Lafarge-INCEHSA]. This action made it possible for INCEHSA to own a clinker grinding structure in the central and southern regions of the country. This situation allowed it to consolidate its dominant position and reduced the effect of market competition on regulating [product] quality and prices. This consolidated INCEHSA's privileged position in the south-central market.

Furthermore, there is another [act] that could be emphasized in this case, and it has to do with **Unfair Competition**. This concept can be described as the [act of] selling of a product at below cost in order to damage a competitor in the market. According to data provided by the SIC [Honduras *Ministry of Industry and Commerce*], CEMAR was importing clinker (the raw material that is ground and to which up to 5% of lime is added) from TAIHEYO CEMENT of Japan [CEMAR joint venture partner], at a cost of US$ 57.07, CIF San Lorenzo (invoice dated March 2003). If we add a 5% import duty to this cost, we can infer that the CIF cost, without taking into account other costs such as internal freight, processing, packaging, and overhead or depreciation, is Lps. 45.79. This makes it impossible for this cement to be sold to the public as Lps. 47.70 (price as of February 10) and for CEMAR to make a profit on it. Thus, it is understood that the price levels it [cement] reached were lower than the CEMAR costs, a situation that drove this company into bankruptcy.

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

English Translation

Criminal Complaint brought before the Special Prosecutor Against Corruption by Congresswoman Doris Gutierrez (Democratic Unification Party)

Criminal Complaint against Acts of Corruption

To the Honorable Special Prosecutor against Corruption

I, **Doris Alejandrina Gutierrez,** of legal age, unmarried, a schoolteacher, Honduran, of this domicile, and currently a Member of Congress, respectfully hereby appear before the Office of the Special Prosecutor against Corruption lodging a formal complaint and petitioning for the investigation and verification of certain criminal acts committed by government officials during President Ricardo Maduro Administration (2002-2006), and by other private individuals, all in connection with the elimination of the company Cemento America, S.A. de C.V. (CEMAR), the producer of CEMENTO UNO. I hereby make reference to the following facts and circumstances:

First: CEMENTO UNO [CEMAR] was launched in the national market in October 2003. Immediately, high executives of the Honduran cement oligopoly, mainly Lafarge-INCEHSA (a partially state-owned company, 42%-controlled by the Honduras Military through its Institute of Military Prevision-IMP), planned the destruction of CEMENTO UNO [CEMAR]. For that purpose, they forged an alliance with the Palao William Auditing Firm [founding partners Finance Minister William Wong and David Palao, Shareholder's Representative of Lafarge-INCEHSA], who in turn colluded with high officials of the Government of Honduras at the Ministry of Finance [under Minister William Wong], as well as with certain directors and auditors of the Honduras Internal Revenue (DEI, or Honduras IRS).

Attached you will find a chronology detailing the collusion among the Honduras IRS [former Palao William employees], the IMP, Lafarge-INCEHSA, and the Palao William Auditing Firm to destroy CEMAR and to eliminate CEMENTO UNO [CEMAR] from the market, all to the detriment of the consumer, the construction industry, the national economy, and foreign investors.

Simultaneously, the very same Palao William Auditing Firm was involved in another scandal action whereby the Government of Honduras lost the amount of One hundred twenty five million three hundred sixty one thousand five hundred ninety seven lempiras (L.125,361,597.00), as a result of an audit that Honduras IRS auditors had previously performed on Lafarge-INCEHSA over a three-year fiscal period. After completing their review, the auditors found that this company owed the government One hundred thirty four million eight hundred ninety seven thousand nine hundred three lempiras with and nine cents (L.134,897,903.39); however, as a result of certain "negotiations" carried out by

English Translation

Lafarge-INCEHSA with Honduras IRS officials, the company allegedly paid the government only Nine million five hundred thirty six thousand three hundred five lempiras and fifty one cents (L.9,536,305.51.) As a result of this act, your office has filed a summons against two former officials of the Honduras IRS accusing them of influence trafficking. The case is currently under consideration by the courts.

Second: I hereby attach a recording, on a compact disc and its transcription, which constitutes clear evidence of the scheme to illegally close the cement company [CEMAR], all to the detriment of the Government and the consumer. The recording contains a conversation held between a high executive of Lafarge-INCEHSA [partially military owned] and a cement salesman; more specifically, it deals with the (telephone) conversation between Dario Mencia, Sales Manager of Lafarge-INCEHSA, and Julio Lopez, owner of El Campeon Hardware Store.

The Special Prosecutor's office is asked to pay special attention to the part of the conversation where the high executive of Lafarge-INCEHSA plainly threatens in a premeditate way to reduce the price of cement with the purpose of eliminating the incipient competition brought about by CEMENT UNO [CEMAR], thus promoting and executing a malicious act.

In order to authenticate the validity and originality of this conversation, I hereby request that a qualified expert be appointed. For such endeavor, collaboration from friendly countries could be requested, in particular from specialized agencies that the United States of America has, all with the purpose of identify the material authors and the individuals behind the malicious acts, which are considered as criminal in nature, anywhere in the world.

Third: Attached to this complaint are reference materials about the Lafarge Group which confirm its recidivist antitrust, price fixing, and anticompetitive practices in more than a dozen countries, and for which they have been fined and sanctioned multi-millions of dollars.

Tegucigalpa, M.D.C., February 16, 2009.

[COPY]

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

English Translation
File Number: 222-04

Honduras Attorney General Position on CEMAR Bankruptcy[1]

REFUTATION OF THE AMOUNT CLAIMED IN AN INADMISSIBLE AND ILLEGAL LAWSUIT. A SPECIAL POWER OF ATTORNEY WITH LIMITATIONS AND PROHIBITIONS IS HEREBY GRANTED FOR A JUDICIAL MANDATE. DOCUMENTATION IS HEREBY ATTACHED.

Honorable Judge of Letters for Administrative Disputes:

I, **SERGIO ZAVALA LEIVA**, of legal age, married, Attorney at Law, Honduran, and from this domicile, with Identification Card number **0638** issued by the Honduran Bar Association, acting in my capacity as **Attorney General of the Republic** and consequently true and lawful attorney of the **GOVERNMENT OF HONDURAS;** appointed through Legislative Decree number **03-2002** dated January 26, 2002, as I certify it with a duly authenticated copy that I am attaching hereto; with the utmost respect, I hereby appear before you refuting in time and form the "Sum" formulated in an unsustainable way in the illegal action initiated against my Principal by Attorneys **MAURICIO VILLEDA BERMUDEZ and ENRIQUE FLORES LANZA,** acting in their capacity as Legal Representatives of **LAFARGE INCEHSA, S.A. DE C. V.,** in the ILLEGAL lawsuit lodged against my Principal, the **GOVERNMENT OF HONDURAS,** through the **Ministry of Industry and Commerce,** requesting **THE PURPORTED ANNULMENT OF A SPECIFIC ADMINISTRATIVE ACT OF GOVERNMENT THAT THEY HAVE IMPROPERLY REGARDED AS "GENERAL" IN NATURE, SO AS TO AVOID COMPLIANCE OF**

[1] This is a Petition filed by the Honduras Attorney General in a case brought against the Government by Lafarge-INCEHSA [part-military-owned cement company] and CENOSA[the cement cartel] after CEMAR had been eliminated from the market and bankrupted. CEMAR is not a party in this case; however, this pleading contains several factual and legal statements of the Attorney General directly relating to CEMAR.

English Translation
File Number: 222-04

THE REQUIREMENTS PRIOR TO THE FILING OF SUCH AN IMPROPERLY INITIATED ACTION, BY ALLEGING THAT IT IS NOT ACCORDING TO THE LAW; THE RECOGNITION OF AN ONEIRIC AND INDIVIDUALIZED LEGAL SITUATION, and to LEAVE WITHOUT EFFECT AND VALIDITY THE CHALLENGED EXECUTIVE DECREE; I hereby present my arguments based on the following facts and legal considerations:

FACTS:

FIRST: The aforementioned legal representatives allege without basis, when specifying the "Claimed Amount of the Lawsuit" and mending the complaint as a result of an order by your Court, that the damages caused as a result of the illegally challenged Executive Order are equal to Lps. 6.30 per bag of cement sold "EX PLANT," and that based on such fact, they have arrived at the "current" and oneiric sum for caused "losses and damages" of SIX MILLION SIXTY-EIGHT THOUSAND TWO HUNDRED SEVENTY-THREE LEMPIRAS (Lps. 6,068,273.00), **WHEN IT IS OBVIOUS THAT THE EXECUTIVE ORDER HAS NOT CAUSED THEM ANY DAMAGES AT ALL WITH RESPECT TO THE MENTIONED PRICE STRUCTURES,** insomuch as THE ESTABLISHED EX PLANT PRICE OF SEVENTY LEMPIRAS PER BAG, 12% SALES TAX INCLUDED, **CAUSES THE FINAL PRICE TO THE CONSUMER TO GO UP BY MORE THAN THE SIX LEMPIRAS AND THIRTY CENTS (Lps. 6.30) that the illegal plaintiff mentions, as a result of the addition of freight costs and the distributor's profit; THEREFORE THE FINAL PRICE TO THE CONSUMER, FREIGHT COSTS AND DISTRIBUTOR'S PROFIT INCLUDED, HAS REACHED THE SAME LEVELS AS IN MAY 2003 THAT THE AFOREMENTIONED LEGAL REPRESENTATIVES INVOKE**. Your Honor: THE ONLY PURPOSE OF THE EXECUTIVE ORDER IS TO STOP, TO HOLD, TO DETER THE LIMITLESS AND UNSCRUPULOUS

ABUSE OF THE TWO CEMENT COMPANIES BY RESTRICTING THEM FROM PUNISHING THE CONSUMERS BEYOND THE LEVELS WHICH THE IMPOSED EXACTIONS [An official wrongfully demanding payment of a fee for official services when no payment is due] HAVE REACHED IN HONDURAN SOCIETY TO THE PRESENT DATE.

And these considerations are made, Your Honor, **WITHOUT TAKING INTO ACCOUNT THE IRREFUTABLE FACT STEMMING FROM THE LOOSE, INTERVENTIONIST AND MANIPULATIVE FREE WILL OF THE TWO CEMENT COMPANIES [LAFARGE-INCEHSA and CEMENTOS DEL NORTE] REGARDING THE ANTI-COMPETITIVE PRACTICES THAT THEY USED AGAINST "CEMENTO UNO" TO BREAK THE EPHEMERAL COMPETITION WITH WHICH IT MADE INROADS INTO THE MARKET; a stage during which THEY THEMSELVES LOWERED THE PRICE TO THE FINAL CONSUMER TO THE LEVEL OF Lps. 49.69 [US$ 2.75[1]] per bag in February of this year, BY SELLING THE PRODUCT AT BELOW COST BY USING PREDATORY PRICES IN ORDER TO STRIKE DOWN, JUST AS THEY DID, THE ADVANTAGEOUS COMPETITION THAT AROSE TO THE BENEFIT OF THE CONSUMER.** Therefore THERE ARE ABSOLUTELY NO PRETENDED DIFFERENTIAL "DAMAGES" against the illegitimate plaintiff, and the only thing evident from their actions and claims IS THEIR VORACIOUS AND LIMITLESS APPETITE IN THEIR ATTEMPTS AGAINST THE NATIONAL CONGLOMERATE THAT IS SO WORTHY OF HONEST ENTREPRENEURS WITH INTENTIONS OF RATIONAL, MODERATE AND RESTRAINED PROFIT.

For the reasons previously stated, I hereby CHALLENGE the idealized amount claimed.

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SECOND.- Your Honor: So chaotic is the situation in an industry that is so essential to our national economy that WHEN THE TWO CEMENT COMPANIES IN OUR COUNTRY WERE PRIVATIZED, **THE PRICE OF A BAG OF CEMENT WAS ABOUT FOUR LEMPIRAS, FINAL PRICE TO THE CONSUMER.** Therefore, it is quite evident, no matter how you look at it, that these processes only served TO PAUPERIZE SOCIETY, TO IMPOVERISH THE POOR AND TO MAKE THEM MISERABLE as a result of the levies brought about by the high prices at which the products manufactured by the privatized companies are now sold. On the contrary, back then it was assumed that there was going to be greater "EFFICIENCY" in their management and that, consequently, they would "CONTRIBUTE TO THE IMPROVEMENT OF THE ECONOMY". This was not more than a deceitful, specious and ingenuous argument that was then translated into cruel realities, such as the one that the cement producers want to impose on us, that is, that **WHEN THEY WERE ECONOMICALLY ASPHYXIATING THE ONLY COMPETITION THAT DARED TO EMERGE, "CEMENTO UNO", THEY LOWERED THE FINAL SALES PRICE TO THE CONSUMER to about FORTY NINE LEMPIRAS AND SIXTY NINE CENTS (L49.69) [$2.75[1]] PER BAG, placed at the hardware store, with the cost of freight and sales tax included, being obvious that the going price at the factory WOULD HARDLY REACH THIRTY LEMPIRAS [$39.09 per metric ton[2]]**. Under these circumstances, everything was "BUSINESS AS USUAL" IN THEIR COMMERCIAL OPERATIONS. Once they finished, liquidated or killed the small competition that entered "the free forces of supply and demand of the market", which barely captured a 12.5% share of that market, "THE OMINOUS FORCES OF SUPPLY AND DEMAND", AND CONSOLIDATED THE EXISTING MONOPOLY OF THE INDUSTRY IN THE COUNTRY, **SURE AS THEY WERE OF THEIR VICTORY OVER THE ENEMY, PRICES UNSCRUPULOUSLY SKYROCKETED AND LAST AUGUST REACHED EIGHTY EIGHT LEMPIRAS [$4.75[3]] PER BAG [$111.68 per metric ton[2]] TO**

THE CONSUMER IN SAN PEDRO SULA. By doing so, they flagrantly distorted the economic indexes and irremediably affected THE CONSTRUCTION INDUSTRY, a basic activity in the economic reactivation of one THE STRATEGIC SECTORS THAT THE GOVERNMENT OF HONDURAS, IN SPITE OF THE NON-INTERVENTIONIST PROVISIONS CONTAINED IN THE CONSTITUTION, HAS RESERVED TO ITSELF UNDER EXTRAORDINARY CIRCUMSTANCES SUCH AS THE ONES BROUGHT ABOUT BY THE UNSCRUPULOUS PROFITEERING OF THE ONLY TWO CEMENT PLANTS IN THE COUNTRY.

Therefore, Your Honor, if events unfolded in that manner during the period when they [Lafarge-INCEHSA and CENOSA] applied PREDATORY PRICES against **"CEMENTO UNO"** AND AGAINST SOCIETY AS A WHOLE **THROUGH ANTI-COMPETITIVE PRACTICES, THEY SOLD THEIR PRODUCTS AT BELOW COST WITH THE SOLE PURPOSE OF "BANKRUPTING THE COMPETITION"**. These practices are **REPULSIVE, IMMORAL, ILLEGITIMATE AND ILLEGAL since in no way were they aimed AT "FAVORING THE CONSUMER", but precisely on the contrary, TO ATTEMPT AGAINST THE CONSUMER'S BEST INTERESTS, AS THEY DID ONCE THEY BURIED THE COMPETITION, WHICH THEY ACHIEVED IN THE END.**

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I hereby refute the amount claimed based on the following articles of law: 1, 80, 82, 228, 245, numerals 1), 2), 11), 20); 331, 332, 333 and 339 of the Constitution of the Republic; 1 and 40, numeral 1 of the Law concerning the Organization and Authority of the Courts; 19, function 1 of the Organic Law of the Office of the Attorney General of the Republic; 1, 39 and 40 of the Law concerning the Jurisdiction of Administrative Procedures.

PETITION:

Your Honor, with the utmost respect **I HEREBY REQUEST:** to have as refuted in time and form the amount claimed in the lawsuit; to process this refutation collaterally and transfer it to the opposing party so that it may express its opinion about this refutation within three days; with its plea or without it, to open the motion to evidence over a period of ten calendar days to make motions and produce evidence; and to continue the due process until delivering the interlocutory judgment DISMISSING the oneiric amount claimed in the lawsuit **AND DECLARING THE PLAINTIFF GUILTY OF LITIGATING UNDER FLAWED LEGAL ARGUMENTS AND IN BAD PROCEDURAL FAITH, ALL IN AN ATTEMPT AGAINST THE BEST INTERESTS OF HONDURAN SOCIETY.**

SPECIAL POWER OF ATTORNEY IS HEREBY CONFERRED FOR PURPOSES OF LITIGATION. RESTRICTIONS TO REPLACE IT.

To continue with these proceedings, I hereby grant Special Power of Attorney for a Legal Mandate, with restrictions to replace it, to **GREGORIO ADRIAN ROSALES,** of legal age, married, Honduran, of this domicile, Attorney at Law, registered with the Honduran Bar Association under Number 02287, with address to receive notices at the offices of the Legal Services Unit of the **Ministry of Industry and**

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File Number: 222-04

Commerce located in the third floor of the former FEADUANAH building, Boulevard Kuwait, in this capital city; telephone 235-3081; to whom I hereby grant the general powers of attorney for a legal mandate, with RESTRICTIONS TO REPLACE THIS ATTORNEY AND USE IT TO THE DETRIMENT OF THE REPUBLIC OF HONDURAS, OF THE POWERS EXPRESSLY MENTIONED, MORE SPECIFICALLY OF WAIVING THE RIGHTS TO APPEAL AND THE LEGAL JURISDICTIONS, OF COMMITTING TO AND SETTLING WITHOUT PREVIOUS EXECUTIVE ORDER PURSUANT TO ARTICLE 19, FIRST ATTRIBUTION OF THE ORGANIC LAW OF THE OFFICE ATTORNEY GENERAL OF THE REPUBLIC; **THEREFORE, THE COURTS MUST REFRAIN FROM ACKNOWLEDGING ALL ACTS OR OMISSIONS THAT VIOLATE OR TRANSGRESS THIS PUBLIC NORM IF THE EXECUTIVE ORDER REQUIRED FOR SUCH PURPOSE IS NOT IN THE RECORDS.**

Tegucigalpa, M. D. C., October 13, 2004.

Dr. SERGIO ZAVALA LEIVA
ATTORNEY GENERAL OF THE REPUBLIC

[1]Based on the average official exchange rate published by the Central Bank of Honduras for the month of February, 2004: 18.06 lempiras per dollar.

[2] One metric ton equals 23.529412 bags of cement.

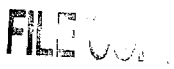
[3]Based on the average official exchange rate published by the Central Bank of Honduras for the month of August, 2004: 18.54 lempiras per dollar.

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Ambassador Larry L. Palmer

July 14, 2008

The Honorable Eliot Engel
U.S. House of Representatives
Washington, D.C. 20515



Dear Mr. Chairman:

As U.S. Ambassador to Honduras during 2002-2005, I became very familiar with the case of Oscar Cerna, a U.S. citizen, and his company CEMAR. Mr. Cerna claims that the cement plant he constructed in San Lorenzo, Honduras was indirectly expropriated, in a scheme involving senior government officials and an entrenched cement duopoly in which the Honduras military holds a substantial interest. I met with Mr. Cerna numerous times at the Embassy and at the plant. In response to inquiries from Members of Congress, I met with senior Honduras officials, to address Mr. Cerna's allegations of a government-led effort to drive him from the market, through malicious prosecution, harassment, temporarily confiscation of his plant without due process and other abuses of power.

I have reviewed Mr. Cerna's legal analysis prepared by the Greenberg Traurig firm in Washington, D.C., and can attest from my personal knowledge to the accuracy of the facts stated therein regarding Mr. Cerna's claim of indirect expropriation including violations of the U.S.-Honduras Bilateral Investment Treaty (BIT 2001). I am also familiar with letters from several past and present Honduras governors and mayors supporting Mr. Cerna's allegations, and citing the jobs, economic benefits and overall stimulus to their regions that have all been lost since CEMAR was forced out of the market.

The Honduras government has ignored this case for three long years. Mr. Cerna has no realistic remedy within Honduras, as the judicial system there is subject to influence from the same powers responsible for the improper acts in question.

I understand the State Department has verified a part of Mr. Cerna's claim (predatory pricing), but is not willing to recognize his more serious allegations of government abuses, including human rights violations. As the State Department will not certify any violations of BIT, Mr. Cerna is now asking the Congress to issue Report Language withholding any aid that would otherwise benefit the cement interests held by the Honduras military, until this case has been addressed in a satisfactory manner.

901 North Stuart Street, 10th Floor, Arlington, Virginia 22203
Tel (703)-306-4301, Fax (703)-306-4363

Ambassador Larry L. Palmer

COPY

Needless to say, I am prepared to provide any information known to me in support of Mr. Cerna. I am very concerned that the State Department during its investigation of the case, never once contacted me for verification of any facts. I am also aware of at least 25 other pending cases by U.S. investors against the Honduras government.

I was once quoted in the local press to the effect that CEMAR was a model for U.S. investment that would come to Honduras with the passage of CAFTA. Mr. Cerna invested $27 million, created thousands of jobs and paid millions of dollars in taxes in Honduras. He invested considerable energies and resources in that country, in the spirit of our international treaties including BIT and now CAFTA.

While the State Department has now turned its back on Mr. Cerna, I am confident that the Congress, with its broader vision and in its oversight capacity, will insist through appropriate legislation that our treaties with Honduras are not so easily ignored and disrespected. Such action by Congress is not without precedent, in cases where U.S. taxpayers have been victimized by a foreign government's illegal acts and blatant disregard of our international treaties.

Finally, the CEMAR case should be viewed as establishing a precedent, towards our long-term policy goals of free trade and growth in Honduras and the region. Failure to enforce the law will only encourage certain elite groups in Honduras to continue their corrupt practices with impunity, and have a continued chilling effect on foreign investment in Honduras and the region.

Thank you for your attention to this matter.

Sincerely,

Ambassador Larry L. Palmer

901 North Stuart Street, 10th Floor, Arlington, Virginia 22203
Tel (703)-306-4301, Fax (703)-306-4363

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

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SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

January 6, 2009

Via Electronic Mail (valenzuelaaa@state.gov)

The Honorable Arturo A. Valenzuela
Assistant Secretary of State for Western Hemisphere Affairs
United States Department of State
Washington, D.C. 20520

Re: ***Elimination and Bankruptcy of CEMAR from the Honduras Cement Market***

Dear Secretary Valenzuela:

As discussed with you recently in our telephone call, I represent Oscar M. Cerna, an individual with information that is directly relevant to the Department, its efforts to promote investment abroad by U.S. companies, and the United States' bilateral relations with Honduras. Mr. Cerna, a U.S. citizen and resident of Florida, was President and principal owner of Cemento America, S.A. de C.V. ("CEMAR"), a cement company incorporated in Honduras in 2000. Mr. Cerna has information that CEMAR was driven from the market by an illicit cartel and conspiracy involving the dominant Honduran cement manufacturers and senior officials of the Honduran government and military. I believe that the actions of the Government of Honduras violate Article III of the U.S.-Honduras Bilateral Investment Treaty, which prohibits expropriation of investments "either directly or indirectly through measures tantamount to expropriation." They also call into question whether Honduras is in violation of the First Hickenlooper Amendment, which requires the President to suspend assistance to any country that has expropriated property of a United States citizen.[1]

I am writing to request that you engage bilaterally with senior officials of the Honduran government, immediately following the restitution of a proper government in Honduras, to support a fair and equitable resolution to Mr. Cerna's claim against the Government of Honduras. Mr. Cerna and I have met with other State Department officials, and the U.S. Ambassador to Honduras has raised Mr. Cerna's case with officials in the Honduras government over the past years. Bilateral engagement by senior State Department officials in the context of

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[1] *See* 22 U.S.C. § 2370(e)(1)(A). The United States has currently suspended aid to Honduras as a result of the removal of President Zelaya.

reestablishing relations with Honduras would complement and expand these efforts. I would welcome the opportunity to meet with you and introduce you to Mr. Cerna so that you can hear his story directly. This letter and the enclosed materials provide details on Mr. Cerna's case.

I. Mr. Cerna's Entry into the Honduras Cement Market

In early 2000, Mr. Cerna saw an opportunity to establish a cement plant on the Gulf of Fonseca, where Honduras, El Salvador, and Nicaragua meet. From that location, Mr. Cerna believed he could serve the cement market in southern Honduras, as well as export cement products to neighboring countries. In June 2000, Mr. Cerna incorporated CEMAR as a joint venture with Japan's largest cement company, Taiheyo Cement Corp. ("TCC").

Between 2001 and 2004, Mr. Cerna and TCC invested some $27 million in the creation of a new cement plant in San Lorenzo, Honduras. The investment included approximately $18.8 million in U.S.-origin technology, materials and equipment. The factory became operational in October 2003, with an initial production capacity of 371,500 metric tonnes per year. CEMAR's principal product, the Cemento Uno brand, exceeded market standards by 50%, as certified by a subsidiary of the U.S. Portland Cement Association.

Within five months of commencing production, CEMAR had acquired a 20% share of the Honduras market. By then, CEMAR was also poised to begin exporting cement products to El Salvador and Nicaragua.

II. The Cement Cartel in Honduras

The cement industry in Honduras was, and remains, dominated by two entities: Cementos del Norte, S.A. ("CENOSA"), which operates in the north and central regions of the country, and Lafarge-INCEHSA, which operates in the south and central regions of the country.

CENOSA is a former government agency that was privatized in transactions that provoked controversy. It is now owned and controlled by influential Honduran businessmen who have also held senior political positions over the years, including during the privatization process. At the time of CEMAR's entry into the market, CENOSA's president was Yani Rosenthal, whose father had served several terms in the Honduran Congress and had been his party's nominee for the Honduras presidency; Yani Rosenthal later would become Minister of the Presidency in the Zelaya administration (a position comparable to White House Chief of Staff).

Lafarge-INCEHSA also began as a government agency (INCEHSA) which was privatized under controversial circumstances. It is now a joint venture between the Honduran military pension fund, an entity controlled by senior military officials, and the French multinational corporation, Lafarge Group. The Presidency of Lafarge-INCEHSA is held by the

President of Lafarge Latin America, while the Vice Presidency is held by the chief of the Honduran military.

CEMAR's entry into the Honduras cement market was a direct threat to the market positions of CENOSA and Lafarge-INCEHSA. In 2003, shortly before CEMAR's plant went on-line, the then-President of Lafarge Latin America, Miguel Del Campo, solicited meetings with Mr. Cerna in Honduras and in Miami, and made clear that CEMAR was not welcome in Honduras. Del Campo offered to buy out Mr. Cerna and threatened to eliminate CEMAR from the market through a price war if Mr. Cerna did not comply, reminding Mr. Cerna that Lafarge-INCEHSA would have the full support of its partners in the Honduran military in doing so.

III. The Response to CEMAR's Entry into the Market

Mr. Cerna has information that CENOSA, Lafarge-INCEHSA, and senior government officials conspired to drive CEMAR from the Honduras cement market through a variety of anticompetitive activities.

A principal response to CEMAR's entry was an apparently concerted campaign of predatory pricing by CENOSA and Lafarge-INCEHSA to drive down the price of cement in Honduras. At the time that CEMAR started commercial operations in Honduras in October 2003, the price of a metric tonne of cement was approximately $88.24 at the factory gate. By February 2004, the price of cement in Honduras had fallen to its lowest point, $30.00 per metric tonne, amid overt threats by Lafarge-INCEHSA to drive the price as low as necessary to bankrupt CEMAR.

During this same period, Mr. Cerna became aware of other improper activities, including (1) that CEMAR's distributors, suppliers, and employees were being harassed and intimidated by Lafarge-INCEHSA and government officials; (2) that the Honduran government appeared to be manipulating the trademark process in an attempt to deprive CEMAR of the use of its trade name, Cemento America; and (3) that the conspirators successfully pressured CEMAR's principal lender in Honduras to renege on a critical $10 million financing commitment.

Mr. Cerna also has information that the conspirators arranged for the delay of the release of CEMAR's tax audit by the Honduran government, and obtained an inaccurate audit, prepared by Lafarge-INCEHSA's own outside auditing firm. The Lafarge-generated audit showed unpaid taxes of $5.13 million owed by CEMAR, instead of the accurate $59,200 figure released by the government immediately following Mr. Cerna's exit. Those inflated audit numbers put increasing financial and legal pressure on Mr. Cerna, who reasonably feared a malicious prosecution based on the alleged tax fraud, to cede to Lafarge-INCEHSA's demands to exit the

market immediately.[2] Mr. Cerna was also threatened with tax prosecution and a six-to-eight year term of imprisonment if convicted. In April 2002, the court ruled in his favor and dismissed the charges as groundless.[3]

As a result of these concerted actions of the conspirators and the government, Mr. Cerna was forced to sell CEMAR's assets to Lafarge-INCEHSA under duress and on extremely unfavorable terms. Mr. Cerna states that CENOSA's principals are believed to have acquired an (undisclosed) interest in these assets as *quid pro quo* for their role in the conspiracy.

With the exit of Mr. Cerna from the market, CENOSA and Lafarge-INCEHSA were able to raise prices for cement significantly in excess of pre-entry levels. Honduras's Attorney General and Commerce Department would later issue separate reports finding that CEMAR was the victim of a predatory pricing campaign.[4] However, the Honduran government took no action against CENOSA or Lafarge-INCEHSA, notwithstanding legitimate grounds for such action.

In 2006 and 2007, the National Trade Estimate Report on Foreign Trade Barriers issued by the Office of the United States Trade Representative noted Mr. Cerna's case. The 2007 report stated as follows:

> [I]n 2003, a U.S.-Japanese joint venture established a cement company in Honduras, challenging the duopoly enjoyed by the two Honduran companies in the market. In 2004, the investor complained that the existing duopoly in the sector was engaging in anti-competitive predatory pricing practices. Despite the conclusions of an investigation by the Ministry of Commerce and the Attorney General's office that the duopoly "seeing the reduction in its market share, began to apply predatory pricing with the intention of eliminating [the U.S. firm] from

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[2] Lafarge-INCEHSA's auditing firm also represented CENOSA and the Honduran military, and the head of the Honduran Ministry of Finance in charge of the taxing authorities at the time of the CEMAR sale was one of the firm's senior partners. An expert report commissioned by Mr. Cerna demonstrated the existence of a fraudulent scheme, perpetrated by Lafarge-INCEHSA with the participation of the Honduran government, with respect to the tax audit. *See* Report of Silvio Ivan Bendana and Manuel Gutierrez Hurtado (dated April 30, 2009) ("Bendana and Hurtado Report") (attached as Exhibit A, with English translation); Legal Analysis Summary of Bendana and Hurtado Report (dated August 24, 2009) (attached as Exhibit B).

[3] *See* Report of Silvio Ivan Bendana and Manuel Gutierrez Hurtado.

[4] *See* Report of the Honduras Ministry of Industry and Commerce (dated September 23, 2004) (attached as Exhibit C, with English translation); Petition of the Honduras Attorney General (dated October 13, 2004) (attached as Exhibit D, with English translation).

> the market," no subsequent prosecution was ever brought and the U.S. firm was forced to leave the Honduran market. After the firm left the market, prices increased dramatically to well above their previous level, until they were subsequently regulated by Honduran government action.[5]

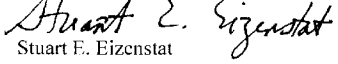
* * *

Mr. Cerna's information describes a disturbing pattern of anticompetitive and illegal conduct by CENOSA, Lafarge-INCEHSA, and senior government officials to drive CEMAR from the cement market in Honduras and Central America, and an unacceptable lack of response by the Honduran authorities. As a consequence, an American citizen saw his investment eliminated and the interests of the United States were harmed as a result. The Honduras ombudsman reported, in his 2009 report to the Honduras Congress, that the elimination of competition in the cement industry harmed the Honduran people approximately $1 billion.

Significantly, Mr. Cerna's dispute is not simply a commercial matter between his company and competitors in Honduras. Rather, the Government of Honduras used uniquely governmental authorities – such as tax assessments and criminal prosecutions – to coerce Mr. Cerna into selling his plant under duress, below its market value, and at an extreme loss. These actions are "tantamount to expropriation" under the U.S.-Honduras Bilateral Investment Treaty, and the uncompensated expropriation is a violation of his human rights. I encourage you therefore to seek a just and equitable resolution of Mr. Cerna's claim against the government of Honduras.

We appreciate your consideration of this matter, and I hope that I will have the opportunity to discuss this matter with you personally. If you have any questions, please let me know.

Sincerely,



Stuart E. Eizenstat

Enclosures

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[5] USTR, 2007 National Trade Estimate Report on Foreign Trade Barriers 265.

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

OSCAR M. CERNA

April 29, 2009

Honorable Eliot Engel
U.S. House of Representatives
Washington, D.C.

Re: State Department Response (11/1/08) to Congressional Letter

Dear Chairman Engel,

This latest letter regrettably continues to omit any mention of, or to even acknowledges my most serious allegations - that Honduras government officials, through their powerful agencies (IRS, Judicial System, Para-Military Police and Intellectual Property Registry), were directly involved in the elimination of CEMAR, in a manner rising to expropriation. The Department has intentionally mischaracterized my case, and in its responses to letters from Chairman Rangel, Burton and Senator Cornyn, has stated:

> ***Mr. Cerna asserts that the Government of Honduras participated in predatory pricing by a cement duopoly that attacked his company by dropping prices until he was forced out of business, then raising prices above original levels. Mr. Cerna contends that this predatory pricing was tantamount to expropriation.***

In other words, the Department has once again misquoted me and distorted my words, to make it appear "on the record" that my claims are based solely on a commercial dispute involving predatory pricing among private competitors. (The letter is inaccurate and misleading in other ways, which are outlined in the next page).

For the record, again, we are alleging direct Honduras government involvement, by senior civilian and military officials acting in a premeditated manner against CEMAR, to protect a company owned almost 50% by the Honduras military, and using government powers to eliminate CEMAR from the market, in violation of U.S. laws and treaties, including BIT, the Patriot Act and the Foreign Corrupt Practices Act.

Our claims have now been corroborated in a "Criminal Complaint against Acts of Corruption", brought by Rep. Doris Gutierrez before a Special Prosecutor in Honduras, relating to: a) a conspiracy by the Honduras government including its IRS, in collusion with the part-military cement company and its external auditors to eliminate my company CEMAR from the Honduras market; and b) a separate scheme among those same parties to defraud the government of more than $15 million in taxes.

Between this criminal filing, and related Honduras government investigation reports, the parties responsible for the elimination of CEMAR have been officially identified. There is certainly no need to duplicate these findings in an unnecessary, lengthy and costly arbitration, or in litigation in Honduras courts, which are known to be subject to corruption and influence.

Mr. Chairman, the State Department's conduct has been extremely prejudicial and costly to me and my family, expanding over four years. This is a time of great change in our country, led by the new Obama-Biden Administration. In this era of transformation, and in light of the enormous economic hardship we Americans are experiencing, I request your intervention to cause the Department to acknowledge the truth, to certify expropriation, and/or refer my case to the Justice Department.

I thank you again for your interest in my case.

848 Brickell Ave, Suite 1215 Miami, Florida 33131; Tel: (786) 316-0933; Fax: (786) 316-0981; et@cermarusa.com

April 29, 2009

Inaccurate and Misleading Statements in State Department Letter

1. The letter discusses at length the "exhaustion requirement" (in excerpts copy-pasted from David Nelson's Testimony to the House Foreign Affairs on "State Department Assistance in Foreign Commercial and Investment Disputes, July 17, 2008) but omits key language: "if an investor can demonstrate that pursuit of a remedy to a national court system would be ineffective or futile, he may be excused from the requirement to exhaust local remedies", based on convincing evidence of systematic corruption. The State Department and other U.S. agencies have issued numerous reports documenting systematic corruption in Honduras; essentially proving the "futility" requirement themselves.
2. The chronology (attached to the Department's letter) is incorrect as follows: a) Ambassador Charles Ford (U.S. Ambassador to Honduras 2005-2008) replied to Rep. Burton that no laws on anti-competitive practices existed in Honduras in 2001-04, contrary to a Library of Congress Report requested by Rep. Ros-Lehtinen; b) The reference to "fines" is another distortion, as rather than fines, I was subjected to illegal prosecution and an arrest warrant issued against me personally, and confiscation of CEMAR assets by Para-Military Police; c) the chronology omits that at his meeting with the French Ambassador, Ambassador Larry Palmer (U.S. Ambassador to Honduras 2002-2005) was informed that the Honduras military was behind the scheme. Mr. Palmer was the U.S. Ambassador when the Honduras government conspiracy took place.
3. The State Department is mistaken with regard to the jurisdiction of the Justice Department (FCSC). The Commission is fully authorized to adjudicate an individual claim.
4. The letter neglects to address any of the official reports on the illegal Honduras government acts involved in the elimination of CEMAR, and implicating the part-military cement company.
5. The letter neglects to address Ambassador Larry Palmer's testimonial letter to Congress confirming the involvement of the Honduras government in the expropriation of CEMAR, and the corrupt Honduras justice system.
6. The Department fails to even acknowledge the detailed legal analysis prepared by the Greenberg Traurig law firm, documenting the direct and wrongful involvement of the Honduras government, its agencies and military.
7. The letter omits: Honduras failed MCC corruption indicators; MCC funding benefits the same part-military owned cement company responsible for eliminating CEMAR; and present and former Ministers of the Presidency and MCC representatives are closely affiliated with the cement cartel and the Military and control MCC funds received in Honduras.
8. The State Department letter again, refuses to acknowledge that "tax matters" are also an issue in Cerna's expropriation case (as referenced in BIT 2001, Article XIII, which allows for relief prior to any arbitration), due to the role of the Honduras IRS in collusion with the part-military cement company and its auditing firm. This Article calls for the transfer of the case to the competent authorities of both countries (Honduras and the U.S). The "competent tax authority" of the United States is the Assistant Secretary of the Treasury for Tax Policy, who will make such a determination only after consultation with the Inter-Agency Staff Coordinating Group on Expropriations.

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

Congress of the United States
Washington, DC 20515

June 19, 2009

The Honorable Hillary Clinton
Department of State
2201 C Street, NW
Washington, DC 20515

Dear Secretary Clinton:

We are writing to you on behalf of Oscar Cerna, a U.S. citizen, and his company Cemento America, S.A. (CEMAR). Mr. Cerna's investment in Honduras was allegedly expropriated by the Honduran government in 2004 to protect the government's commercial interest in a partially state-owned cement company substantially controlled by the Honduran military. We respectfully request that you refer this case to the Department of Justice's Foreign Claims Settlement Commission (FCSC).

Mr. Cerna has presented substantial evidence to us that his $27 million cement plant was intentionally driven into bankruptcy by and expropriated through actions of the government of Honduras. Among the evidence Mr. Cerna cites are pleadings later filed by the Attorney General of Honduras largely admitting to the scheme. In furthering this complex plan, the government of Honduras apparently acted not only through the military, but also through its judicial system and agencies, including the Honduran tax authority and its intellectual property registry. In the process, not only was equipment of CEMAR seized, but the Honduran government pursued a dubious criminal prosecution of Mr. Cerna which was later thrown out by the courts. This evidence, including a legal analysis prepared by the law firm of Greenberg Traurig supporting Mr. Cerna's claim and many other key documents, is contained in a dossier accompanying this letter.

Last year, many of us wrote a similar bipartisan letter to your predecessor (dossier, section. 3). While the State Department declined our previous request, we believe that decision was based on a misreading of the case and Mr. Cerna's ability to exercise his rights under the Bilateral Investment Treaty.

Madame Secretary, while the State Department previously recommended that this case be dispatched to international arbitration under the BIT, Mr. Cerna is not a multi-national company with the resources needed to engage in such a costly four-to-eight year

PRINTED ON RECYCLED PAPER

The Honorable Hillary Clinton
June 19, 2009
Page two

litigation. Many, if not most, of the key facts in this case have already been established in various Honduran official findings and statements. These facts do not need to be proven again in a fruitless, expensive, dilatory, and endless arbitration.

Accordingly, we respectfully request your intervention in referring this case to the Foreign Claims Settlement Commission, as this is, in reality, Mr. Cerna's only available remedy.

We thank you for your kind interest in this most important case, involving a U.S. investor in a foreign country.

Sincerely,

Eliot L. Engel

Connie Mack

Charles B. Rangel

Henry A. Waxman

Norm Dicks

Alcee L. Hastings

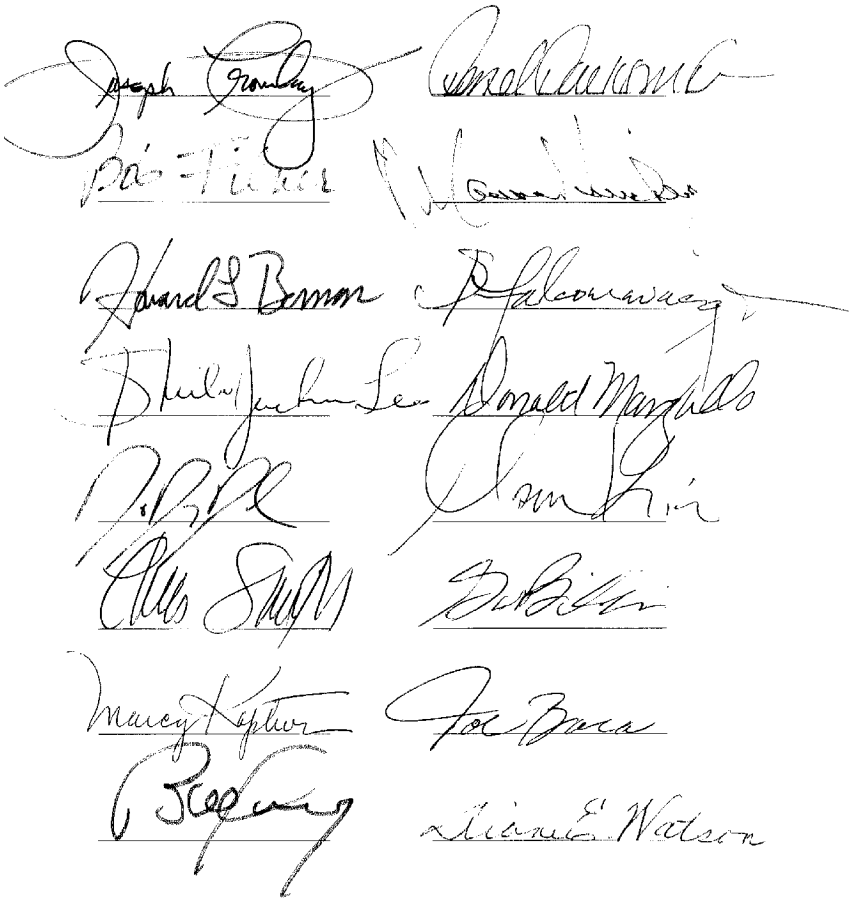
Ralph M. Hall

Howard Coble

Carolyn McCarthy

Dana Rohrabacher

The Honorable Hillary Clinton
June 19, 2009
Page three



The Honorable Hillary Clinton
June 19, 2009
Page four

Cory Booker

Glenn Nye

Sam Graves

Sanford D. Bishop, Jr.

[illegible]

Corrine Brown

[illegible]

Donald M. Payne

John Hall

Ann Kirkpatrick

Pete Sessions

[illegible]

[illegible]

Bruce L. Braley

Mark Souder

Danny K. Davis

The Honorable Hillary Clinton
June 19, 2009
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Gary L. Ackerman

Robert Wexler

Ellen Tauscher

Ed Whitfield

Rosa L. DeLauro

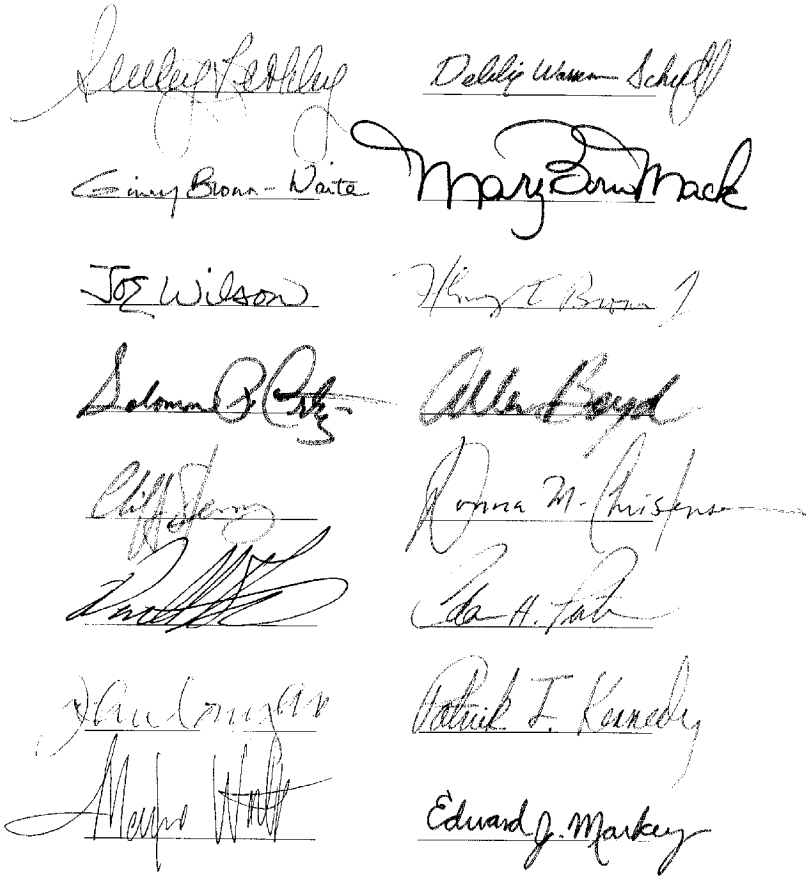
Jim Moran

Jack Kingston

John Lewis

Dan Burton

The Honorable Hillary Clinton
June 19, 2009
Page six



The Honorable Hillary Clinton
June 19, 2009
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Elijah E. Cummings

Gene Green

Ron Kind

Alcee L. Hastings

Neil Abercrombie

Charles B. Rangel

Phil Gingrey

Sam Johnson

Bill Posey

Vern Buchanan

Billy Tauzin

Jeff Miller

Jim Moran

Jack Kingston GA-1

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

United States Department of State

Washington, D.C. 20520

OCT 15 2009

Dear Mr. Engel:

Thank you for your letter of June 19 on behalf of Mr. Oscar Cerna, who reported that his investment was expropriated by the Government of Honduras. We sincerely regret the delay in responding to your inquiry, but are pleased that in the interim Mr. Cerna and his counsel were able to meet with the State Department's Legal Adviser and his staff of lawyers.

As you are aware, the Department has been very active over the last several years in trying to help Mr. Cerna resolve his investment claim against the Government of Honduras. Previous U.S. Ambassadors to Honduras, Larry Palmer and Charles Ford, personally raised Mr. Cerna's case at the highest levels of the Honduran government on several occasions, and urged the Honduran government to work directly with Mr. Cerna in resolving his claim. The current Ambassador to Honduras, Hugo Llorens, has also raised this issue with senior Honduran government officials, urging that it be resolved fairly and expeditiously. We will continue to encourage the Honduran government to settle its dispute with Mr. Cerna.

In response to your request that the Department refer Mr. Cerna's claim to the Foreign Claims Settlement Commission (FCSC), we must respectfully decline to do so. We believe the FCSC is not the appropriate venue for Mr. Cerna's claim. The FCSC may adjudicate categories of claims of U.S. nationals against foreign countries when directed by the Congress or at the request of the Secretary of State, usually in anticipation of the negotiation of a claims settlement agreement. However, there is no precedent for the FCSC to adjudicate a single claim against a foreign government in the absence of a claims settlement agreement. Moreover, unlike arbitration under a Bilateral Investment Treaty ("BIT"), decisions by the FCSC are not binding on foreign governments. Thus, a decision by the FCSC could further delay the resolution of Mr. Cerna's claim under existing legal procedures, including those procedures possibly available to Mr. Cerna under the U.S.-Honduras BIT.

The Honorable
Eliot Engel,
House of Representatives.

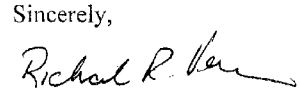
We note that on several occasions, the Department has urged Mr. Cerna to exhaust all legal remedies that may be available to him through the Honduran court system or under the U.S.-Honduran BIT. Mr. Cerna has not yet done so, thereby limiting the Department's ability to advocate on his behalf. As we have explained, the exhaustion requirement and futility exception are rooted in international law.

By negotiating international investment agreements such as BITs, the United States provides U.S. investors the option to have their investment claims adjudicated in a forum for independent and impartial arbitration. We have repeatedly encouraged Mr. Cerna to consult with legal counsel to determine whether he has a remedy under the U.S.-Honduras BIT. Included in the information forwarded to you from Mr. Cerna was a legal opinion from private counsel that determined that his claim is covered by the U.S.-Honduras BIT. We recommend that Mr. Cerna consult with counsel about the process for initiating such a proceeding. International arbitration under the BIT, if available, would provide Mr. Cerna with a forum for dispute resolution that is independent of the Honduran legal system, an advantage that is typically welcomed by U.S. investors around the world.

We understand Mr. Cerna's frustration with regard to the potential costs associated with local proceedings or an international arbitration under a BIT. These considerations are not sufficient under international law to excuse an investor from first seeking the relief available to him in local courts or under the BIT.

We hope that this information is helpful to you in discussions with Mr. Cerna. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,



Richard R. Verma
Assistant Secretary
Legislative Affairs

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States
House of Representatives

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THOMAS ROONEY, Florida
GREGG HARPER, Mississippi

January 11, 2010

The Honorable Hillary Rodham Clinton
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Madam Secretary:

On June 19, 2009, I joined 90 Members of Congress to write to you concerning the case of Oscar Cerna. As you know, Mr. Cerna is a U.S. citizen and resident of Florida. He was the principal owner of Cemento America, S.A. de C.V., a cement company that was allegedly driven from the market by an illicit cartel and conspiracy involving the dominant Honduran cement manufacturers and senior officials of the Honduran government and military.

I am concerned that in this case the actions of the Honduras government may have violated Article III of the U.S.-Honduras Bilateral Investment Treaty, which prohibits expropriation of investments "either directly or indirectly through measures tantamount to expropriation." I am also concerned that Mr. Cerna's case does not appear to be an isolated example. I understand the State Department is aware of approximately 14 other outstanding claims for expropriation made by U.S. persons against the government of Honduras.

As you know, Honduras recently held presidential elections, which hold the promise of enabling the United States to resume normal relations with the country after the turmoil resulting from the removal of President José Manuel Zelaya. The organization of the new government of Honduras provides a unique opportunity for the United States to pursue resolution of Americans' long-standing expropriation claims against Honduras. Resolving these claims would provide demonstrable evidence of the new government's commitment to democracy and the rule of law.

I respectfully request that you communicate these points to the new government of Honduras at an appropriate time, including during the expected consultations with the new cabinet in early 2010. In reestablishing its relations with the United States, Honduras must demonstrate its commitment to the rule of law, including by promptly addressing the claims of Mr. Cerna and other Americans whose property appears to have been expropriated.

The Honorable Hillary Rodham Clinton
January 11, 2010
Page Two

We should not let the opportunity of the organization of a new government in Honduras to pass without taking action in support of the rule of law in Honduras. Please contact me if you have any questions.

Sincerely,

John Conyers, Jr.
Chairman

cc: The Honorable Lamar Smith
The Honorable Howard L. Berman
The Honorable Ileana Ros-Lehtinen
Office of Legislative Affairs, Department of State

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

CHARLES B. RANGEL
15TH CONGRESSIONAL DISTRICT
NEW YORK

COMMITTEE:
WAYS AND MEANS
JOINT COMMITTEE
ON TAXATION

GEORGE A. DALLEY
CHIEF OF STAFF

JAMES E. CAPEL
DISTRICT DIRECTOR

Congress of the United States
House of Representatives

March 17, 2010

The Honorable Hillary Rodham Clinton
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Madam Secretary:

Since 2007, I have been joined by more than 150 Members of Congress in writing to you and your predecessor regarding the Cerna family expropriation case. As you know, it appears that their cement plant was eliminated from the market and bankrupted by an illicit cartel, partly owned by the Honduras military, all as documented by the Honduras Attorney General and other agencies in 2004.

My continuing concerns about this case are shared and were well expressed by Chairman Conyers, who, in a separate letter to you recently stated that the actions of the government of Honduras may have violated the U.S.-Honduras Treaty (BIT), which prohibits expropriation of investments "either directly or indirectly through measures tantamount to expropriation." This case does not stand alone; I understand there are many unresolved claims of U.S. citizens whose properties and businesses in Honduras were allegedly confiscated.

Fortunately, Honduras' new government has promised to abide by democratic principles and the rule of law, which commitment is a condition to the United States' resuming bilateral relations, including restoration of aid. This is indeed a unique opportunity to obtain justice on behalf of these, our fellow Americans, and it is our duty to do exactly that.

☐ WASHINGTON OFFICE
2354 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3215
TELEPHONE: (202) 225-4365
FAX: (202) 225-0816

PLEASE RESPOND TO OFFICE CHECKED

☐ DISTRICT OFFICE
163 WEST 125TH STREET
NEW YORK, NY 10027
TELEPHONE: (212) 663-3900
FAX: (212) 663-4277

Secretary Hillary Rodham Clinton
March 17, 2010
Page 2

I respectfully request that you convey to the new government these views of the Congress - that its commitment to the rule of law must include promptly addressing all expropriation claims of our citizens, including the Cerna family.

Sincerely,

Charles B. Rangel
Member of Congress

CBR/JEK

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

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Republican Chief Counsel

ONE HUNDRED ELEVENTH CONGRESS
CONGRESS OF THE UNITED STATES
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

TELEPHONE: (202) 225-5021
HTTP://WWW.FOREIGNAFFAIRS.HOUSE.GOV/

January 21, 2010

The Honorable Hugo Llorens
Ambassador Extraordinary & Plenipotentiary
United States Embassy
Tegucigalpa, Honduras

Dear Ambassador Llorens:

I write regarding the case of Andres Kafati, a U.S. citizen, who is involved in a property dispute in Honduras and to call this matter to your personal attention.

As you may be aware, Andres Kafati is the son of Oscar Kafati, a coffee businessman and former Secretary of Industry and Commerce. Oscar Kafati and his brother, Jesus, are co-owners of the major Honduran coffee companies, including Alimentos S.A. It is my understanding that a dispute arose when, without Oscar and Andres Kafati's knowledge, Jesus Kafati and his allies took control of Alimentos S.A. from Oscar through alleged manipulation of shares, facilitated by a judge who has been removed from office and has been found guilty for abuse of power in this case.

When Oscar and Andres Kafati tried to re-enter their company's premises after this, they were blocked from the facility by members of the military -- which reportedly became involved because Jesus Kafati's daughter is married to a son of President Zelaya.

Today, Oscar and Andres Kafati's complaint about their removal from the company's leadership is pending in court, and they believe strongly that the role of the military in the dispute constitutes a human rights violation.

It is my further understanding that Jesus Kafati was convicted of defamation on September 28, 2009 for statements he made about Andres Kafati. This case is now on appeal. There is also a legal action pending at the Inter-American Commission on Human Rights filed by Andres Kafati concerning the misuse of the Honduran military

The Honorable Hugo Llorens
January 21, 2010
Page Two

and police in this matter. Finally, I am aware that officials of the United States Embassy in Honduras have written two letters to the Supreme Court President about this case as an expression of your continuing interest in the matter.

As a member of Congress and the Chairman of the Subcommittee on the Western Hemisphere, I am always concerned when American citizens are mistreated, especially by foreign governments. As such, I urge you to consider various additional actions, including examining the immigration status of those individuals involved in illegal action against Andres Kafati and other American citizens in this case. If a Honduran citizen is found guilty of crimes against a U.S. citizen, then it may be appropriate to consider denying a visa to the people involved.

I would greatly appreciate an update from you as soon as possible about the Embassy's view of this matter and any actions you have taken or plan to take in the future.

Thank you for your consideration of this issue. I look forward to working with you and the Embassy staff on this important matter.

Sincerely,

Eliot L. Engel

ELIOT L. ENGEL
Chairman
Subcommittee on the Western Hemisphere

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

United States Department of State

Washington, D.C. 20520

MAR 11 2010

Dear Mr. Chairman:

Thank you for your letter of January 21 regarding the case of U.S. citizen Andres Kafati in Honduras.

The U.S. Embassy in Tegucigalpa continues to follow Mr. Kafati's case in the Honduran courts closely. The Embassy is available to speak to Mr. Kafati at any time, particularly if there are new developments that he would like to bring to the Embassy's attention.

Moreover, the Embassy will ensure that any information regarding criminal convictions related to this case is entered into the consular databases so that it can be taken into consideration when determining visa eligibility.

We hope this information is useful to you. Please do not hesitate to contact us again if we can be of further assistance.

Sincerely,

Richard R. Verma

Richard R. Verma
Assistant Secretary
Legislative Affairs

The Honorable
Eliot L. Engel, Chairman,
Subcommittee on the Western Hemisphere,
Committee on Foreign Affairs,
House of Representatives.

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Chronological Sequence of Events
In
Mr. Cortez Byrd vs. The Republic of Honduras

The following communication provides an overview of the sequence of events which led to a judgment of $188,301,528.87 in favor of Cortez Byrd in the United States District Court, Southern Mississippi, Jackson Division on February 24, 2003. Mr. Byrd has received none of this judgment to date.

January 1, 1996
Mr. Cortez Byrd entered into a Memorandum of Understanding with, among others, William Simmons III, Simmons Lumber Company, S.A., Great Southern Lumber Company, LLC (GSLC), and Corporacion Forestal y Industrial de Orlancho, S.A. (CORFINO). This Memorandum of Understanding provided that Mr. Byrd was employed as the President and Chief Executive Officer for Simmons Lumber and Great Southern Lumber Company (GSLC).

CORFINO is a private corporation in Honduras; approximately 98% of its stock is owned by the Republic of Honduras through a government entity. CORFINO's sole asset is the sawmill at issue in this matter.

June, 1996
Israel Pacheco, Executive Vice President of CORFINO made an agreement to buy edges sawn from timber at the sawmill to be used to process broomsticks.

September, 1996 to April, 1997
Mr. Cortez Byrd was forced from the company and was physically barred from having access to the property in Honduras causing Byrd significant monetary damages.

September, 1996
Mr. Pacheco failed to pay and owed $22,000 at the time Byrd cut off any further credit to him.

September, 1996
John Pearson, President of Guthrie Corporation began colluding with the defendants, William Simmons III and Carl W. Swan, to oust Byrd from management and illegally takeover the sawmill project.

September, 1996
Pearson traveled to Honduras and conspired with the defendants to illegally takeover the sawmill.

October, 1996
Secret meetings were held where defendants/co-conspirators colluded to oust Byrd from his position and wrest control of GSLC and Simmons Lumber, interfering with the Memorandum of Understanding.

November 8, 1996
Pearson hand delivered a letter to the Boards of Directors of Simmons Lumber and GSLC proposing to buy part of the business and replace Byrd.

January 28, 1997
Without the knowledge of Byrd, Simmons III and Swan held an illegal managers' meeting terminating his services.

March 6 or 7, 1997 (approximately)
Simmons III received a 60 day notice from CORFINO stating a list of deficiencies they wanted cured. Simmons and CORFINO purposefully withheld this from Byrd and Simmons Lumber for an additional seven days, thereby depriving them the opportunity to address the deficiencies. Simmons III actually signed off on the 60 day notice prior to sending.

March 7, 1997
Mr. Glenn Taylor, an attorney representing Simmons III, Pearson, and Swan sent illegal minutes and other fraudulent representations to the State Bank and Trust in Brookhaven, Mississippi and to Mr. Bob Riley of the U.S. Embassy in Tegucigalpa, Honduras.

March 15, 1997
MADEXPO, a Honduran corporation, was illegally formed by the defendants and is invalid under Honduran law.

March 16, 1997
Simmons III, purporting to act as President of the Board of Directors of Simmons Lumber, assigned the CORFINO lease to MADEXPO. This action was unauthorized under provisions of the CORFINO lease, without any corporate resolution of Simmons Lumber, and was performed in the absence of prior CORFINO approval.

March 16, 1997
Simmons III instituted an armed takeover of the sawmill complex.

April 24, 1997
Byrd, Mr. Gary Stewart and Honduran attorney Mara Diago were assaulted and denied access to the sawmill by armed guards.

April 30, 1997
Mr. Yuri Melara Berlioz, authorized by CORFINO, attempted to cash in on a Bank guarantee of approximately $55,000 at the State Bank and Trust Company in Brookhaven, Mississippi.

May 14, 1997
Byrd filed suit in United States Federal Court.

February 24, 2003
Judgment was granted to Byrd under the provisions of the Racketeering Influenced and Corrupt Organization Act for $187,848,008.31 and attorneys' fees in the amount of $453,520.56 with a total reward of $188,301,528.87.

Cortez Byrd has for the past five years done everything he can to pursue redress through the U.S. and Honduran court systems. Mario Boquin Hernandez, a lawyer in Honduras, filed the enforcement of the judgment in the Honduran courts. The Honduran courts ruled that since no treaty existed between the United States and Honduras, it could not be enforced within the court system. Given the absence of a treaty between the U.S. and Honduras, the only avenue left to Mr. Byrd is through the congressional legislative forum.

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Cortez Byrd
PO Box 547
Brookhaven, Ms 39602
Ph. 601-835-0333
Fax 601-835-4429

September 18, 2008

To Whom It May Concern:

This document gives Mike Parker the authorization to make any and all decisions on my behalf concerning:

Civil Action No. 3:97CV415WS
Civil Action No. 3:97CV730WS

Cortez Byrd

Kathy S. Wallace notary public

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: Apr 24, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS

KATHY S. WALLACE NOTARY PUBLIC LINCOLN COUNTY, MS

SUBMITTED FOR THE RECORD BY THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

CORTEZ BYRD CHIPS, INC.
P.O. BOX 547
BROOKHAVEN, MS 39602
PHONE 601-835-0333 / FAX 601-835-4429

May 13, 2009

Congressman Gregg Harper
307 Cannon House Office Building
Washington, D.C. 205615

Re: Civil Action No. 3:97CV415WS
Civil Action No. 3:97CV730WS

Dear Congressman Harper:

I own several businesses in southwest Mississippi dealing with the timber industry. In 1996, I entered into a business arrangement in Honduras with a Honduran corporation which was ninety-eight percent owned by the Honduran government. Many problems developed and I was forced to file suit in the United States District Court, Southern District of Mississippi, Jackson Division. We received a $188,301,528.87 judgment against the defendants with the country of Honduras being the primary defendant

Former Congressman Mike Parker has been assisting me because the judgment has not been satisfied as of this date. He has been given full authority by me to act in my behalf in this matter. Mike informed me that he has talked with you concerning this matter and has given you a copy of the judgment entered by the court. I would greatly appreciate any assistance in bringing this to resolution.

I am asking that you, as my elected representative, help me be made whole in this situation. To me, it makes no sense that we, as a nation, can give American tax dollars to the country of Honduras when they refuse to honor our laws and ignore a lawful judgment entered against them in a U.S. Federal Court. It seems that we, as a government, would have a law which would prevent a country from receiving U.S. funds in the form of foreign aid if a legitimate U.S. Federal Court judgment was not being satisfied by them.

As an employer in your district, your constituent, and an American taxpayer, I am asking that you exert all of your political power you hold to help me resolve this resolution.

My representative, former Congressman Mike Parker, has made clear to the Honduran authorities that we do not want to be punitive and will settle for less than the U.S. Federal Court judgment; however, I feel that it is imperative that I be made whole in this situation.

I am asking that this matter be brought to the attention of the leaders of both the U.S. House of Representatives and the U.S. Senate; and the President of Honduras and representatives of the Honduran government, when traveling to the Untied States to meet with our leaders, be put in a position where they must answer for their non-responsiveness to this matter.

Thank you for reading this letter and it is my prayer that you will help me find a resolution that is fair to all sides.

Sincerely yours,

Cortez Byrd

SUBMITTED FOR THE RECORD BY THE HONORABLE ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

Consulado General de la República de Honduras

La Infrascrita **CONSUL GENERAL DE LA REPUBLICA DE HONDURAS en Nueva Orleans, Estado de Louisiana.**

CERTIFICA:

Que la firma que aparece en el documento adjunto y dice:

GORDON S. PATTON

es auténtica, por ser la que acostumbra usar en los documentos que autoriza, en NOTARIO PUBLICO DEL ESTADO DE LOUISIANA ESTADOS UNIDOS DE NORTE AMERICA

SERVICIO CONSULAR

Derechos Cancelados

Timbres Consulares

En fe de lo cual firmo y sello la presente en esta ciudad de Nueva Orleans, Estado de Louisiana.

El día 09 de OCTUBRE del año 2003

(Este Funcionario Consular no asume responsabilidad por el contenido del documento adjunto)

Auténtica No. 652/03

MARIA EUGENIA LOBO G.
Consul General

Recibí conforme

ABOGADO Y NOTARIO

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 24 2003
J. T. NORTON, JR.
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CORTEZ BYRD and SIMMONS LUMBER COMPANY, S.A. PLAINTIFFS

vs. CIVIL ACTION NO. 3:97CV415WS

CORPORACION FORESTAL y INDUSTRIAL de OLANCHO, S.A (CORFINO), WILLIAM E. SIMMONS, III, CARL SWAN, ISRAEL PACHECO, ALBERTO FIGUEROA, JOHN PEARSON, MYRA BERLIOZ, OSCAR ALVARENGA, and MADERAS de EXPORTACION, S.A. DEFENDANTS

CONSOLIDATED WITH

GREAT SOUTHERN LUMBER COMPANY, LLC, L. CORTEZ BYRD, DOUG GRISSOM, JOHN S. ROBERTS, SR., and JOHN S. ROBERTS, JR. PLAINTIFFS

vs. CIVIL ACTION NO. 3:97CV750WS

WILLIAM E. SIMMONS, III DEFENDANT

FINAL JUDGMENT

After granting a default judgment *ore tenus* on December 20, 2002, as to the claims of tortious interference with contract, conversion, breach of contract, tortious breach of contract, breach of the duty of good faith and fair dealing, and violations of 18 U.S.C. §§ 1962(a), 1962(c), 1962(d) and as to breach of fiduciary duty, the Court finds:

After considering the testimony of witnesses on January 27, 2003, and the documentary evidence, the Court hereby enters this its Final Judgment against Defendants Corporacion Forestal y Industrial De Olancho, S.A (Corfino), William E. Simmons, III, Carl Swan, Israel

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Pacheco, Alberto Figueroa, John Pearson, Myra Berlioz, Oscar Alvarenga, and Maderas De Exportacion, S.A. and in favor of Plaintiffs Simmons Lumber Company, and L. Cortez Byrd, Jr., jointly and severally, in the amount of $62,616,002.77 for the claims of tortious interference with contract, conversion, breach of contract, tortious breach of contract, breach of the duty of good faith and fair dealing, and violations of 18 U.S.C. §§ 1962(a), 1962(c), 1962(d) and breach of fiduciary duty.

Under the provisions of the Racketeering Influenced and Corrupt Organization Act, 18 U.S.C. § 1961, *et seq.*, the Plaintiffs are to be awarded treble damages in the amount of $187,848,008.31 and attorneys' fees in the amount of $453,520.56. The total award therefore is $188,301,528.87.

ORDERED AND ADJUDGED this the 24th day of February, 2003.

U.S. DISTRICT COURT JUDGE

TRUE COPY
GORDON S. PATTON
NOTARY PUBLIC

I HEREBY CERTIFY, THE COPY
CLERK
Deputy Clerk

TRADUCCION

"CORTE DEL DISTRITO DE LOS E.E.U.U.

DISTRITO DEL SUR DE MISSISSIPPI

DIVISION DE JACKSON

CORTEZ BYRD and SIMMONS LUMBER COMPANY, S.A.

vs CIVIL ACTION NO. 3:97 CV 415 WS

CORPORACION FORESTAL y INDUSTRIAL de OLANCHO, S.A. (CORFINA), WILLIAM E. SIMMONS, III, CAR SWAN, ISRAEL PACHCO, ALBERTO FIGUEROA, JOHN PERSON, MYRA BERLIOZ, OSCAR ALVARENGA, And MADERAS de EXPORTACION, S.A. DEFENDANTS

CONSOLIDATED WITH

GREAT SOUTHERN LUBMER COMPANY, LLC, L. CORTEZ BYRD, DOUG GRISSON, JOHN S. ROBERTS, SR., and JOHN S. ROBERTS, JR. PLAINTIFFS

Vs. CIVIL ACTION NO. 3:97 CV 730 WS

WILLIAM E. SIMMONS, III DEFENDANT"

FALLO FINAL

Despues de otorgando un fallo por falta de comparecencia *ore tenus* el 20 de Diciembre, 2002, perteneciente a las demandas de interferencia torticera con contrato, conversion, violacion de contrato, violacion torticera de contrato, violacion del deber de buena fe and relacion honesta, y violaciones de 18 U.S.C. 1962 (a), 1962(c), 1962(d) y con relacion a la violacion del deber fiduciario, el Corte decide:

Al respeto del testimonio de los testigos el 27 de enero, 2003, y las pruebas documentarias, el Corte registra esta sentencia final contra los demandados, la Corporacion Forestal y Insustrial De Olanco, S.A. (Corfina), William E. Simmons, III, Carl Swan, Israel Pacheco, Albert Figueroa, John Pearson,, Myra Berlioz, Oscar Alvarenga, and Maderas De

Exportaction, S.A. y en favor de los demandantes, Simmons Lumber Company, y L. Cortez Byrd, Jr., mancomunada y solidariamente, en la suma de $62,616,002.77 (dolares estadounidenses) para las demandas de interferencia torticera con contrato, conversion, violacion de contrato, violacion torticera de contrato, violacion del deber de buena fe and relacion honesta, y violaciones de 18 U.S.C. 1962 (a), 1962(c), 1962(d) y con relacion a la violacion del deber fiduciario.d

De acuerdo con las proviciones del acto de influencia de latrocinio y organizacion corrompida, 18 U.S.C. 1961, *et seq*, los demandantes tiene el derecho a danos y perjuicios por lo triple, en la suma de $187,848.008.31 (dolares estadounidenses) y honorarios del abogado en la suma de $453,520.56 (dolares estadounidenses). El fallo total es $188,301,528.87 (dolares estadounidenses).

BAJO DECRETO Y JUZGADO el 24 de febrero, 2003.

(Firma
JUEZ del CORTE DEL DISTRITO DE LOS E.E.U.U.

Copia fiel, Secretario del tribunal, J.T. Noblin

(Firma)
Delegado del secretario

CERTIFICADO DEL TRADUCTOR

Certifico que esta es una traduccion correcta del original en ingles del Fallo de la Corte del Distrito de los E.E.U.U. del Distrito del Sur de Mississippi, Division de Jackson

Gordon S. Patton
Abogado y Notario

[NOTE: A submission for the record by the Honorable Eliot L. Engel consisting of court papers from the United States District Court, Southern District of Mississippi, Jackson Division, of *Byrd* vs. *Forestal*, filed February 24, 2003, is not reprinted here but is available in committee records.]

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