

Report of the National Lawyers Guild Delegation to the November 2013 Election in Honduras

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**National Lawyers Guild
132 Nassau Street, Room 922
New York, NY 10038
Tel: 212-679-5100
Fax: 212-679-2811
www.nlg.com**

Introduction

A 17-member delegation from the National Lawyers Guild went to Honduras in November 2013 to observe that country's presidential, congressional, and municipal elections and meet with human rights defenders, political activists and government officials. We are issuing this report to document our findings: that both on election day and beforehand, there were serious problems that significantly undermine conclusions of the US State Department and certain others that the election was "free and fair" and "transparent."

The events leading up to this election – and the NLG's involvement with Honduras – began with the June 2009 coup d'état. At that time, human rights activists and other Hondurans asked the NLG to investigate problems with the rule of law, lack of respect for international law, the abrogation of human rights, attacks on the judiciary, and the circumstances that had given rise to the coup. In response, the NLG, the American Association of Jurists (AAJ), the International Association of Democratic Lawyers (IADL), and the International Association Against Torture sent a joint delegation to Honduras whose preliminary report in English is [here](#). The final report, in Spanish, is [here](#).

Since then Honduran lawyers, judges, human rights organizations, environmental rights organizations, and others whom we met there have asked for our support when they have come under attack. We have written letters, lobbied our senators and representatives, and educated our own members about the situation in Honduras. In early 2013, our Honduran colleagues and allies asked us to witness their election and document our findings. We organized a delegation and applied for and received credentials to serve as "International Accompaniers" under Honduran electoral law.

Founded in 1937 as an association of progressive lawyers and jurists, the NLG promotes human rights over property rights and has always been engaged in international affairs. The NLG was one of the nongovernmental organizations selected by the US government to represent the American people at the founding of the United Nations in 1945. Members helped draft the Universal Declaration of Human Rights and in 1948 founded the IADL, one of the first UN-accredited human rights NGOs.

As a US-based organization, the NLG examines the historic and current role the US government and corporations play throughout the world. We document that role, criticize it where appropriate, and ally with individuals and social movements that are struggling against US domination in their countries. In Latin America, our criticism of US government policies and abuses led to delegations in the 1980s to El Salvador to support human rights activists there and to Nicaragua to support the then-democratic Sandinista government under attack by the Contras. Hundreds of thousands of refugees were fleeing to the United States as a result of these events, and NLG lawyers were deeply involved in representing refugees and defending the movement to give them sanctuary. In recent years, we have sent delegations to Cuba and Haiti, Venezuela, Bolivia and Colombia to support progressive social movements and to criticize misguided US policies. Some of our delegations focused specifically on human rights abuses, some studied social movements, and some observed elections.

The current report is the newest in a series of NLG reports from its delegations to Latin America and elsewhere.

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THE HONDURAN ELECTORAL SYSTEM

The Supreme Electoral Tribunal (TSE)

The institution charged with administering the electoral process in Honduras is the *Tribunal Supremo Electoral* (Supreme Electoral Tribunal, or TSE). The TSE is composed of three magistrates and one alternate who serve a term of five years. These magistrates are selected by a two-thirds majority vote of the National Congress. The magistrates in turn select a president among themselves, who serves a term of one year. Article 51 of the Constitution requires that the TSE be autonomous and independent, and to that end prohibits the participation by the Magistrates, directly or indirectly, in any partisan activities. The Constitution also forbids the appointment to the TSE of popularly-elected officials or political party officials.

On May 14 2009, the National Congress appointed the current Magistrates of the TSE, violating the prohibitions noted above.¹ Two of the appointees held the position of Congressional Deputy when nominated by their parties: David Andres Matamoros, a member of the National Party, and Denis Fernando Gomez of the *Partido Inovacion y Unidad* (PINU). Both men resigned from the Congress on the day they were appointed.

Another appointee, Enrique Ortez Sequeira, held the position of general secretary of the Liberal Party's executive council between 2008 and 2009, and was an alderman in the Central District Municipal Government until 2009.² The Christian Democratic Party ratified Jose Saul Escobar Andrade as current President of the TSE. The appointment of these four candidates was approved by members of all parties in the National Congress, except for the *Unificacion Democratica* (PUD), which, through its Deputy, Silvia Ayala, voted against the nominations on constitutional grounds.³

As currently constituted, the TSE fails to meet the requirement that it be a nonpartisan body. Moreover, the only oversight of the TSE is performed by the Supreme Court of Honduras, which has been under control by the National Party since the 2012 judicial coup.⁴ The domination of all organs of the national government by the political parties extends to the TSE, the institution charged with administering the electoral process in Honduras.

Electoral Tables (MERs)

Citizens cast their votes at the *Mesas Electorales Receptoras* (Electoral Tables or MERs). On Election Day, 16,094 MERs were set up at over 5,000 voting sites throughout the country. Approximately 300 voters were assigned to each MER. The responsibilities of the MERs included receiving and counting votes, ensuring that only eligible voters cast ballots, resolving disputes concerning the validity of ballots, and transmitting the results to the TSE. Before results

¹ <http://archivo.laprensa.hn/Ediciones/2009/05/15/Noticias/Congreso-elige-a-magistrados-del-TSE>

² http://www.tse.hn/web/institucion/m_ortez.html

³ archivo.laprensa.hn/Ediciones/2009/05/15/Noticias/Congreso-elige-a-magistrados-del-TSE

⁴ A discussion of the 2012 judicial coup can be found in the Background and Electoral Context section of this report.

were transmitted to the TSE, MER officials reviewed each ballot cast during an open review process called the *escrutinio*, (“scrutiny”) that took place after the polls were closed. The *escrutinio* was to be a publicly viewable event where any citizen could easily observe it. Since the TSE was not required to review the MER’s actions unless there are extraordinary circumstances, the decisions of the individuals at the MER were typically nonreviewable. When there was disagreement among the MER members regarding mismatched and/or disputed ballots, the matter was settled by a majority vote of the MER members.

Approximately 300,000 citizens were designated to serve as MER members during the elections of November 24.⁵ The political parties selected the MER members. Each MER was supposed to include one member and one alternate selected by each political party, alliance, or independent candidate⁶. Nine parties were registered in this election, plus a smattering of independent candidates.

The TSE was required to authorize the candidates and distribute credentials to the parties 25 days prior to the election.⁷ The positions of president and secretary and the total number of members at each MER, were required to be distributed equally among the parties by the TSE. Each MER member was supposed to show identification that indicated their party affiliation while they were at the table. Alternate members were selected to take over a member’s responsibilities if the primary member needed to step away from the table.

The Voting Rolls: The RNP and the National Census

Under Article 55 of the Electoral Law, The National Registry of Persons (“RNP”) was the government organ charged with maintaining the civil registry, providing National Identity Cards to all Honduran citizens, and updating the National Electoral Census in time for the Election. Every Honduran Citizen is required to carry a National Identity Card, and is to be inscribed in the Census upon turning 18. Under the law, the TSE must provide the National Electoral Census to all political parties 75 days prior to the election. The National Electoral Census forms the basis of the List of Voters eligible to vote at each individual MER. Every citizen who wished to vote in the November 2013 election was required to present his or her National Identity Card to the MER before voting.

In past elections, distribution of National Identity Cards was handled by the parties, which led to inefficiency and corruption.⁸ For this election, the RNP, with technical and financial assistance from the US government, directly distributed the cards to the populace⁹. This was an enormous undertaking. Of the 5.3 Million people registered to vote for the 2013 elections, approximately 800,000 were new voters.¹⁰ In addition, 1.2 million registered voters, or 22.4% of the electorate, were between the ages of 18 and 25. The government stated that voters had to register with the RNP before August 12, 2013 in order to be able to vote, however many frustrated voters reported not being told of this date.

⁵ http://www.tse.hn/web/sala_prensa/09112013_conozca_las_elecciones_generales_2013_en_cifras.pdf

⁶ Honduras Electoral and Political Organizations Law, art. 24

⁷ Id., art. 27

⁸ Statement of American Ambassador to Honduras Lisa Kubiske to NLG delegation, November 21, 2013.

⁹ Id.

¹⁰ http://www.tse.hn/web/sala_prensa/09112013_conozca_las_elecciones_generales_2013_en_cifras.pdf

Role of the Armed Forces

The Honduran Armed forces are deeply involved in the electoral process. The Constitution confers upon the Armed Forces the role of “guaranteeing the free exercise of suffrage,” and accordingly authorizes the President of the Republic to place the Armed Forces at the disposal of the TSE for a period from one month prior to the elections until the moment a winner is announced.¹¹ The Armed Forces are in charge of the custody and transportation of electoral materials as well as the security aspects of the electoral process.

Transmission of Results to the TSE

In the 2009 elections, the MER’s vote tally results were transmitted to the TSE via cell phone, and entered into the computerized system in Tegucigalpa based on these phoned-in counts.¹² According to the Christian Science Monitor, this method produced “incredibly inaccurate” results.¹³ For the 2013 elections, the TSE instituted a new mechanism known as the Integrated System of Scrutiny and Electoral Information (SIEDE). A digitized scanning system was used for the transmission of the *Actas* (vote tallies) completed by each Electoral Table to the TSE Central Command. The company contracted to design the software for data transmission and vote counting was *MAPA Soluciones*, the same company that had designed the TREP, the previously troubled telephonic transmission system used during the 2012 primary elections

Challenges to Election Results

Honduran law permits any citizen to challenge election results by filing an action of nullification with the TSE. A nullification action can be directed towards a particular MER, voting center, department, or the entire election. The filing must set forth the violations of election law that are cause for nullification, and must include proof (leading to criticisms that the petitioner must prove their case before filing). A nullification action must be filed within ten business days of the occurrence of the electoral violation, or, if challenging the entire election, within five business days of official publication of the results. The TSE must respond to a nullification action within ten business days after it is filed.¹⁴ If the TSE denies a nullification action, petitioners can then request review by the Honduran Supreme Court by filing an appeal within 10 days of the TSE’s decision.¹⁵

¹¹ Honduras Electoral Law and Political Organizations Constitutional Annex, art. 272

¹² <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2013/1121/Honduras-election-How-votes-are-counted-counts>

¹³ *Id.*

¹⁴ Honduras Electoral and Political Organizations Law, art. 204

¹⁵ *Id.*, art. 205

ELECTION DAY OBSERVATIONS

Introduction

Early in the morning of November 24th, five teams of NLG delegation members departed for voting centers throughout Tegucigalpa in order to monitor preparation by the poll workers in advance of the opening of voting centers. Each team was assigned to cover two voting centers throughout the day and to observe the vote count at one of those centers. The voting centers observed by NLG members included the *Simon Bolivar* School that was the largest voting center in the country with 36 MERs. In addition delegate members observed at the *Escuela Cerro Grande*, *Centro Educativo Basico Manuel Bonilla*, *Instituto Aguilar Paz*, *CEB Ramon Montoya*, *Escuela Republica de Chile*, and *Instituto 15 de Septiembre*.

Voting Facility Observations

The delegation noted disparate conditions at the voting sites. In lower class neighborhoods, which tended to be LIBRE strongholds, there were instances where three MERs with up to 19 members each, were placed in small classrooms. In some instances within these crowded rooms, the ballot boxes from the different MERs were set up in close proximity, with no clear indication which set of boxes the voters were to use. In upper middle class neighborhoods where the National Party had stronger support, the MERs were provided with more space and better separation and, as a result, these locations were more efficiently run and orderly.

The differences between these voting centers in terms of crowding and organization were stark. Voting facilities in some places were inadequate. For example, *Escuela Simon Bolivar*, a school serving 12,000 voters was dimly lit, and chairs were used as voting tables. The center had one scanner to transmit all of its voting results to the TSE. Additionally, the scanner was far away from some of the mesas and the voting tally sheets had to be walked in the dark and rain, then passed over people's heads to the scanner.

The *Escuela Republica de Chile* voting center had three stories with no accommodations for elderly or disabled voters. The *Escuela 15 de Septiembre* center also had several MERs on upper stories that were accessible only via narrow stairs that were crowded with voters and poll workers. Elderly and disabled voters were observed being carried up these stairs to the MERs. In other cases ballot boxes were brought down multiple flights to accommodate disabled voters, which could have compromised the security of the ballots.

Despite such problematic physical conditions, most voters were able to find their polling stations albeit with some difficulty, thanks to the cooperative efforts of citizens and poll workers who offered assistance.

Observations about Voting Center Administration

Opening of Voting Centers

Preparation by the poll workers was generally unremarkable, though NLG observers at several voting centers noted confusion and disorganization by poll workers as they attempted to set up the mesas (voting tables). At the largest voting center in Honduras, Escuela Simon Bolivar in Tegucigalpa, the 36 voting tables that were supposed to be arranged in alphabetical order by voter surnames, were in disarray making it difficult for voters to find their voting stations. At the Escuela Republica de Chile, the third largest voting center in Honduras, NLG observers noted that poll workers were still attempting to enter the center at 6:45 AM, only fifteen minutes prior to the opening. The center only had one entrance. Workers were admitted only after all the poll workers for each voting table managed to locate one another in the crowd and demonstrate to officials guarding the entrance that they had a complete contingent. Voting equipment was still being unpacked at the center after it had officially opened for voting.

The Francisco Montoya voting center in Tegucigalpa did not open until 7:43 AM. Some of the voting tables were not yet operational, contributing to long lines of voters waiting for their turn to vote. Similarly, at Escuela La Paz, two of the mesas opened approximately 45 minutes late. Delegates spoke with multiple individuals who were unable to vote because they had to report to work and could not wait through the delays.

Closing of voting centers

Pre-election predictions of heavy voting were accurate. Voting was brisk and many voting centers were kept open an additional hour because of long lines or because they opened late. NLG observers witnessed an incident in which a *mesa* at *Escuela 15 de Septiembre* attempted to close its doors roughly 45 minutes before the polls closed. However, a concerned citizen saw this and refused to allow the closing. An argument ensued and military officers were summoned. As a result of the citizen's objection, the *mesa* stayed open until the official closing time. Post-election results by the TSE showed that sixty-one percent of eligible voters cast ballots.¹⁶

Observations during voting day

On the whole, voting was conducted in an orderly and peaceful manner and poll workers from the various political parties collaborated with one another without incident. However, delegation members observed several problems with the operation of the MERs on the day of the election. For example, NLG observers noted that at the vast majority of *mesas*, poll workers did not wear or display their party identification credentials.

On the other hand, the electoral custodians, wearing TSE vests and identification, were readily identifiable. They were generally polite and professional, and appeared to resolve questions from voters and poll workers throughout the day and through the counting process. However, at the *Francisco Montoya* voting center, the TSE custodian confessed to not understanding all the election rules and relied on an NLG delegate to explain procedures and resolve potential disputes.

¹⁶ http://siede.tse.hn/app_dev.php/divulgacionmonitoreo/reporte-presidente

Sale of Party Credentials

The TSE issued credentials that the parties were then supposed to allocate among their MER representatives. As noted in the previous section of this report, each of the nine parties received an equal number of credentials. Each party should have received 16,135 credentials for its members officiating at polls.

However, in practice, the smaller parties did not have enough members to staff every MER throughout the country. Five of the nine parties involved in the election were minor parties that received, in the aggregate, less than one 1% of the presidential vote and a total of 3 Congressional seats. According to TSE data, at 68% of the voting tables there were no votes cast by members of those parties.

Numerous observer delegations, including the OAS mission and Carter Center representatives, have reported the practice of smaller parties selling their credentials to enable the larger parties (principally the National Party) to consolidate control over the voting tables. As a result of this widespread activity, the larger parties (principally the National Party) were able to control how the MER operates—for example, by refusing to allow eligible voters to vote, tampering with ballots, tabulating ballots incorrectly, and interfering with the transmission of results.

Multiple MER members told NLG delegates that they were seated at the MER using credentials belonging to a party that they did not support. For example, at the *Francisco Montoya* school, voters told an NLG observer that credentials for officials who presided over voting tables had been sold there. Moreover, NLG delegates observed numerous vote tallies where none of the minor parties received any votes, even though credentialed representatives of those parties were supposedly present, and voted, at the table.

When questioned by NLG about the sale of party credentials, a TSE official acknowledged that the practice exists. However, he indicated that the TSE does not have the authority to impede such trafficking activities, because “our job is only to ensure that the credentials are distributed to the parties.”

NLG delegates observed the impact of this trafficking in party credentials in at least one notable instance. The table had voted by a majority to nullify two ballots for the LIBRE presidential candidate that had been marked on the candidate’s face, rather than in the white space below. The final tally ended with the LIBRE candidate losing to the National Party candidate by one vote. When questioned, the President of the MER acknowledged that the training material for the MERs had stated that presidential ballots marked on the candidate’s face were valid, but cited the rule that any disputes would be decided by simple majority, which the MER had done.

Problems with the Voting Rolls

NLG observers witnessed at least two incidents at different voting centers (*Francisco Montoya* and *Escuela La Paz*) where the voter logs were incorrect. In each case, a female voter’s picture and number displayed on the poster outside the *mesa* were correct, but on the voter log inside the *mesa*, the picture by her voter number was that of a man. At *Francisco Montoya*, the woman was allowed to vote after consultation with international observers. At *Escuela La Paz*,

the voter was turned away three times, but ultimately was allowed to vote after several domestic and international observers arrived to watch the incident.

The delegation received reports that some new voters who had recently turned 18 and registered with the RNP several months prior to the election had not been inscribed into the Electoral Census in time for the election, had not received their National Identity Cards, and were therefore unable to vote. These frustrated voters reported contacting the RNP repeatedly concerning the status of their Identity Cards, but they were told that they were still being processed.

Other voting roll irregularities included reports of voters being told at the MERs that they were listed as dead in the National Electoral Census.¹⁷ Leo Gabriel of the European Union International Observation delegation stated, “There were people who could not vote because they showed up as being dead, and there were dead people who voted.”¹⁸ Further, some voters reported being told at the MERs that they had been registered to vote at other voting sites with which they had never had any association, despite the fact that they had voted at the same site in the previous election.¹⁹

Improper Conduct by MER Officials

The process for resolving disputes about the count process did not appear to be uniform throughout the voting centers observed by NLG. In some instances, *mesa* members made ad hoc decisions by majority vote, instead of according to the terms of the election manual or by consulting a custodian. A key example of how this improper conduct may have affected voting outcomes concerns the case of voided ballots. NLG observers saw many ballots voided due to alleged improper markings, usually based on the consensus of the table officials, instead of following the process outlined by the TSE in the materials given to every MER member. However, this “consensus” was, in reality, one-sided given that many parties had sold their credentials, as previously reported.

NLG delegates also witnessed at least one incident where a voter was actually given a pre-marked ballot. In another observed instance, a voter who claimed that he had received a pre-marked ballot was refused permission to return it, forcing the voter to void his ballot (rather than vote for the candidate already marked). Delegates also observed ballots displayed during the *escrutino* where it appeared that the voter had tried to cross out a mark.

At several polling stations, NLG delegates observed that some MER members had abandoned their tables early, even though TSE rules require them to remain at the table throughout the voting and vote-counting process. This was especially problematic after the counting for the presidential candidates had concluded and the count for the congressional deputies began.

¹⁷ http://www.huffingtonpost.com/lisa-haugaard/honduran-elections-no-cause-for-celebration_b_4384713.html.

¹⁸ <http://upside-downworld.org/main/honduras-archives-46/4584-the-results-of-the-elections-in-honduras-were-changed-says-european-union-observer->

¹⁹ http://www.huffingtonpost.com/lisa-haugaard/honduran-elections-no-cause-for-celebration_b_4384713.html

Improper Influence by Parties

The delegation observed and received reports of National Party members providing discount cards to voters from booths or posts set up near voting centers. The cards provided discounts for telephone, food, medical care and pharmacy products. This practice was widespread and open, with the National Party running ads promoting the cards. The running of these ads was a violation of Article 149 of the Honduras Electoral and Political Organizations Law, which restricts political propaganda within five days of the general elections. The International Federation of Human Rights (FIDH) noted that the discount card scheme also violates campaign financing laws, for businesses (such as cellphone companies) that have contracts with the government.²⁰

The Electoral Law also prohibits public demonstrations within five days of the elections. Nevertheless, National Party and LIBRE supporters were observed holding rallies in two separate voting centers lasting several minutes each. In both instances, the party-supporters chanted slogans, directing them towards the voters lined up to vote outside their assigned rooms.

NLG observers witnessed disruptive activity in the form of chanting by National Party partisans standing outside of voting rooms while ballots were still being counted at different voting centers. Neither the National Police nor military police interceded. Other international observers also reported violence and disruption was during the vote count process. At the *Tomas Alvarez Dolmo* School in Tegucigalpa, National Party activists and members of the police assaulted a voter when he requested that the ballots be shown and votes announced at one MER.²¹

Inadequate Preparation of Custodians

NLG delegates observed a lack of uniformity across voting centers regarding the role of Electoral Custodians trained by the TSE. In voting centers with five or fewer electoral tables, the TSE was authorized to assign a single individual to act as both electoral custodian and operator of the scanners. In larger voting centers, these roles were supposed to be filled by two different people. In practice, this separation was not uniformly observed. At some centers, custodians indicated they were responsible only for technical issues, while at others they appeared to resolve substantive issues related to procedure and interpretation of the TSE manuals as well. Additionally, there were too few custodians to effectively handle all the incidents in the larger MERs. For example, there were only two custodians at *Escuela 15 de Septiembre*, which had *mesas* on 4 floors of the building. One custodian was forced to remain at a single *mesa* throughout the entire presidential count, to resolve numerous arguments between the table workers and citizen observers.

Militarization

Under the Honduran Constitution, the military are charged with safeguarding the vote and the ballot boxes. Members of our delegation and other international observers were struck by the pervasive presence of military police in combat fatigues and carrying automatic weapons both inside and outside of voting centers. The military added to presence of the National Police who appeared to have the same security function and were less heavily armed. As other observer

²⁰ http://www.izquierda-unida.es/sites/default/files/doc/Informe_de_la_FIDH_Honduras.pdf

²¹ <http://www.soaw.org/about-us/equipo-sur/263-stories-from-honduras/4164-votecounting>

delegations have noted, the presence of armed forces at the voting centers tended to create an atmosphere of intimidation, especially since the military was instrumental in the 2009 coup.²²

At one voting center, NLG observers witnessed armed military wearing black ski masks rush inside, only to leave carrying boxes of food. At another center, the military entered a voting room during an argument between National Party and LIBRE Party officials over a marked ballot. At the largest voting center in Tegucigalpa, *Escuela Simon Bolivar*, NLG observers saw military police remove a female from the premises at gunpoint. At the *Escuela Barrio de Chile* a small voting center in a middle class neighborhood of Tegucigalpa, witnesses informed NLG observers that earlier in the day a woman was forcibly removed from that voting center by military police who said that she “did not belong there.”

Voting Transmission Problems and Inconsistencies

While transmission of the Actas appeared to run smoothly at most locations, NLG delegates observed some problems with the transmission of voting tallies. At the largest voting center (*Escuela Simon Bolivar*), delegates observed some *Actas* being scanned twice. After transmission to the TSE, the scanned Actas were manually entered by TSE employees for the preliminary vote count. These entries were then available on the TSE’s public website. Once the electronic TSE vote counts were available for public scrutiny, we found that tallies from some of the voting tables monitored by NLG observers did not correspond with the official TSE results.

POST ELECTION DEVELOPMENTS

Election Results

According to TSE’s official results, Juan Orlando Hernández of the National Party won the presidency with a total of 36.89% of all valid votes casted. Xiomara Castro of LIBRE placed second with 28.78% of all valid votes casted. The Liberal party finished in third place, with 20.3% of the vote. PAC, according to TSE, received 13.42%.

While the National Party maintained its hold on the presidency, it lost 23 congressional seats, and the majority in Congress. The new congress is the most politically diverse in Honduran history. Indicative of the possible dawning of a new political era in Honduras, LIBRE and PAC captured 37 and 13 seats respectively in Congress. Neither of these two parties existed in prior elections. No one party holds a majority in the new Congress. Thus party coalitions will be required to pass legislation, and the 2/3 majority required for constitutional changes will likely be much more difficult to achieve.

Legal Challenges to the Election Results

While acknowledging that isolated irregularities occurred during the election, the Honduran government has insisted that the limited scope of these problems did not affect the electoral

²² *International Mission of FIDH with the Support of CIPRODEH on the Honduras Elections*, December 20, 2013.

outcome. Many Hondurans disagree with this analysis, including LIBRE, PAC, and a growing student movement.

LIBRE petitioned the TSE to nullify the elections due to the massive fraud and irregularities documented, in part, in this Report. The TSE agreed to a partial recount involving 20% of the tally sheets (contrasting the original, scanned, and LIBRE party versions of the Actas), but denied LIBRE's petition to recount the actual votes in contested locations. It is unclear if a recount ever took place. On December 11th, Manuel Zelaya, on behalf of LIBRE, appealed the TSE's decision to the Honduran Supreme Court, which subsequently denied the appeal.

Political Actions Challenging the Electoral Results

Legal challenges were not the only manner in which Hondurans expressed dissatisfaction with electoral results. Protests, rallies, and demonstrations, have been organized across the country among all sectors of society.

Las Camisas Negras and Honduras Anonymous

For the first time in this election, Honduran college students served as Electoral Custodians on behalf of the TSE. Church groups and other members of civil society occupied these roles previously. As noted above, each voting center had at least one custodian who was responsible for scanning the tally sheets at the end of the day. Custodians also spent much of the day troubleshooting a wide range of problems. As a result, thousands of students witnessed firsthand the irregularities described in this Report.

In response, students have organized. *Las Camisas Negras* ("The Black Shirts"), Anti-JOH, and Honduras Anonymous are nonpartisan groups of students dedicated to speaking out against electoral fraud. Each maintains active Facebook pages and Twitter accounts, and has been actively involved in organizing mobilization campaigns throughout Honduras.

NLG delegation members had an opportunity to witness the birth of this movement. On November 27, delegates visited the Autonomous University in Tegucigalpa in the wake of a brutal police repression against a peaceful student protest. Earlier that day, groups of students had been peacefully demonstrating outside the campus when municipal police were called to intervene. Armed in full riot gear and accompanied by a military-grade tank, the police sprayed teargas and pushed the students back onto campus grounds. They then locked the entrance gate and continued to saturate the campus with teargas for more than one hour. Everyone was trapped inside, including bystanders, while the police shot US-made teargas canisters over the locked gate at the students.

A professor told a NLG delegate that his regular class was suddenly interrupted when gas canisters came through the windows. He also explained that the rector of the university, Julieta Castellanos, had been appointed to a second term earlier that year, only after the National Party-controlled Congress changed Honduran law to allow second terms (one month prior to the end of her tenure).

Indebted to then-President of Congress Hernández, Castellanos responded to the protests by closing the university for several days, an action viewed by many as an attempt to suppress the

student demonstrations. Nonetheless, the student movement has continued to mobilize. Despite extreme state retaliation, they are currently one of the most vocal and organized constituencies engaged in opposition to the election results.

There have been many assassinations and disappearances since the organized resistance to the elections. On the eve of the first organized protests against the election results, LIBRE activist and resistance organizer Jose Antonio Ardon was murdered, sending a chilling message.²³ On December 12, 2013, Carlos Fernando Posadas Soto, a 19 year-old university student in industrial engineering disappeared, after leaving a protest at TSE headquarters. He was later found injured and semi-conscious in an abandoned lot.²⁴ On December 12, 2014, a young member of *Camisas Negras* and Anti-JOH was assassinated.

Response to Honduran Elections

For the most part, the US government and official international bodies have largely ignored the evidence of irregularities, violence and intimidation documented in this Report (and in the reports of other human rights and solidarity organizations), choosing instead to legitimize the election as a victory for the Honduran people. On December 12, 2013, Secretary of State John Kerry said: “The Honduran people turned out in record numbers to vote on November 24, and we commend the Honduran Government for ensuring that the election process was generally transparent, peaceful, and reflected the will of the Honduran people.”²⁵

The OAS and EU have drawn similar conclusions—even though their own delegations’ reports confirm many of the irregularities witnessed by NLG observers. The Carter Center issued a weak statement December 9, characteristic of the complicit reaction of most governments and international bodies. “The Carter Center and the Friends of the Inter-American Democratic Charter, following up on the 2013 electoral process in Honduras, recognize the willingness and openness shown by the Supreme Electoral Tribunal (TSE) to address the concerns, questions, and complaints posed by various political actors and parties.”²⁶ The Carter Center statement then implores the TSE to resolve the post-election disputes in a timely manner in order to strengthen the electoral process and the democratic institutions.

REPORT CONCLUSION

Since the 2009 coup, conditions in Honduras have raised international alarm. Widespread and systematic human rights violations have targeted members of the resistance movement, LIBRE supporters, indigenous, labor and land rights activists, journalists, lawyers, judges, and members of the LGBTI community. The escalating repression and impunity that preceded the election created an atmosphere of fear and intimidation that many viewed as posing an insurmountable obstacle to free and fair elections.

This climate of pre-election violence was compounded by numerous instances of fraud and

²³ <http://www.soaw.org/about-us/equipo-sur/263-stories-from-honduras/4168-electionphotos>

²⁴ http://www.resistenciahonduras.net/index.php?option=com_content&view=article&id=5981%3Aadesaparecido&catid=60%3Aderechos-humanos&Itemid=244

²⁵ <http://www.state.gov/secretary/remarks/2013/12/218646.htm>

²⁶ <https://www.cartercenter.org/news/pr/honduras-120913.html>

irregularities on Election Day itself, as documented by NLG observers. These included the purchase of MER credentials by the National Party, irregularities in the recording and transmission of *actas*, the distribution of discount cards to National Party voters, and irregularities with voting registration rolls which resulted in the inclusion of ineligible voters and the exclusion of eligible voters. Delegation members further observed that the heavy military involvement in the election, from the presence of armed soldiers at polling sites to their role in transporting ballots to TSE headquarters, created a climate that may have intimidated voters. Other concerns included the targeted repression of journalists and media outlets whose reporting has been critical of the government. Given the National Party's consolidation of control over all institutions of political power, it was predictable that subsequent challenges to the legitimacy of the election would be unsuccessful.

The US government's refusal to acknowledge the climate of intimidation and irregularities surrounding the election, and its quick actions to legitimize the electoral results, are also not surprising. Honduras has long occupied a position of geopolitical importance to the United States, providing support for US counter-insurgency efforts against popular uprisings throughout the region. In promoting its own interests, the United States has consistently supported anti-democratic forces in Honduras. Despite substantiated claims by human rights defenders, activists and members of the US Congress that Honduran military and police have participated in the repression, the United States has continued to provide Honduran security forces with logistical and financial assistance and "boots on the ground," actively contributing to the militarization that is exacerbating the country's human rights crisis.

Despite significant questions about the legitimacy of its outcome, the electoral process did herald some positive developments for democracy in Honduras. The massive social movement formed in the aftermath of the 2009 coup coalesced into LIBRE, which has emerged as a viable opposition party. Along with the Anti-Corruption party (PAC), LIBRE has captured a significant number of seats in the Congress, breaking the historical two-party lock on political power that has consistently advanced the interests of Honduras's ruling elite rather than its impoverished masses.

At the same time, subsequent developments--including persistent repression and the hasty passage of numerous laws bolstering conservative interests that have received little public debate--are cause for concern. As the election fades from the headlines and targeted violence and anti-democratic initiatives continue unabated, the international community must continue to stand in solidarity with and advocate on behalf of Hondurans peacefully organizing to ensure a more just, equitable and democratic country.

DELEGATION MEMBERS

Emily Achtenberg is an urban planner, affordable housing consultant, and independent researcher on Latin American social movements. She is the author of NACLA's Rebel Currents blog and a contributing writer to NACLA's Report on the Americas. She has served as an election observer in El Salvador and has participated in solidarity delegations to Chile, Bolivia, Oaxaca, Venezuela, and Cuba, among others.

Phil Althouse is a veteran political and human rights activist who has served as an election observer in El Salvador. He was recognized by the Biblioteca Nacional Francisco Gavidia for helping to launch El Salvador's first children's poetry festival. He is a member of the NLG International Committee and Task Force on the Americas and a consumer rights litigator at the Legal Aid Society in Cleveland.

Jessica Arena is a third-year law student at King Hall, University of California at Davis. She plans to practice law abroad supporting activists fighting for their rights. Last summer she worked in Sri Lanka supporting workers in their efforts to form unions. After finishing law school and taking the California bar exam, she plans on working in Latin America with a legal-focused NGO.

Lauren Carasik is a Clinical Professor of Law and the Director of the International Human Rights Clinic at Western New England University School of Law. The clinic focuses on transitional justice and human rights and development. She has written opinion pieces for Al Jazeera, Boston Review, the Jurist, Common Dreams, and Truthout.

Jorge Cisneros is a labor and employment lawyer with Levy Ratner PC in New York City, representing unions and individuals in arbitration, litigation, and proceedings before the National Labor Relations Board. He serves as a National Lawyers Guild legal observer monitoring police actions, violations of rights, and arrests at protests and demonstrations.

Kerry McLean is a human rights lawyer. She has worked for and with NGOs in Africa, Europe, Latin America, and Asia. She is the chair of the NLG Africa Subcommittee, the chair of the NLG Anti-Sexism Committee, and a member of the National Executive Board of the NLG. She has served as an official election observer in Cambodia, Abkhazia, Venezuela, and the U.S.

Jacques Morial is a Louisiana-based public policy specialist, research strategist, and civil and human rights advocate. His recent work has focused on voting rights, health care access, and environmental justice. He has served as an election observer in Africa, Latin America, the Caribbean, and Asia.

Stephanie Morse is an attorney at the Florida legislature. She previously served an Assistant Attorney General for the State of Florida, where she prosecuted civil fraud and asset forfeiture cases. She has served as an election monitor in the U.S.

Christina Powers practices immigration law in Pittsburgh, Pennsylvania. Before moving to Pittsburgh, she was a staff attorney at the Florence Immigrant and Refugee Rights Project (FIRRP) (in Arizona), where she provided legal services to hundreds of individuals detained by Immigration and Customs Enforcement. In July 2013 she visited Honduras while serving as an interpreter for Operation Walk Pittsburgh.

Laura Raymond is Advocacy Program Manager at the Center for Constitutional Rights in New York City, where she works on a range of international human rights issues. She has been closely monitoring and reporting on the human rights situation in Honduras since June 2009. She is the co-editor of *The Global Activist's Manual: Local Ways to Change the World* (Nation Books, 2002).

Susan Scott served as co-chair of the NLG International Committee and started the NLG Task Force on the Americas. Her main focus has been on US foreign policy relating to Venezuela and Central America, electoral systems in Latin America, and the use of the international human rights framework to promote economic and social rights in the U.S. She works on housing and labor issues in her coastal and agricultural community north of San Francisco.

Azadeh Shahshahani is the President of the National Lawyers Guild. She directs the National Security/Immigrants' Rights Project at the American Civil Liberties Union of Georgia. She has edited several human rights reports and is the author of numerous book chapters and legal articles on immigration and racial profiling. Her opinion pieces have appeared in publications such as the Atlanta Journal-Constitution, Al Jazeera, and the Huffington Post.

Judy Somberg is Chair of the NLG Task Force on the Americas. She has previously served as a National and Executive Vice President of the NLG and has been an electoral observer in Nicaragua, El Salvador, Venezuela, and the U.S. She practices family and estate law in Massachusetts.

Michael Sorgen has had a long career as an attorney: teaching law, litigating in California, and fighting for peace and human rights. He has brought a number of Alien Torts Statute cases, including ones involving Nigeria, China, Somalia, Ethiopia, Chile, Ecuador, and Argentina, and has also participated in numerous international delegations.

Erik Sperling is a third-year law student at Georgetown University Law Center and social justice activist. He has worked in various capacities over the last decade advocating for a more just U.S. foreign policy, with a particular focus on Latin America. He was the lead organizer for the Sister City Agreement that was signed between Milwaukee and Carora, Venezuela and was an election observer for the 2012 presidential election in Venezuela.

Mark Sullivan is an environmental attorney and adjunct professor from Santa Cruz, California working on promoting a greater understanding of human rights, environmental justice, and international policy in Central America. Mark has been an active participant on several recent delegations to Guatemala, Honduras and El Salvador.

Lori J. Williams is an attorney in Charlotte, North Carolina, currently pursuing a license to teach English as a Second Language and Spanish. She will resume the practice of law next year and focus on immigration, fair trade, and human rights law. She is a former private practitioner in North Carolina and South Carolina as well as a former prosecuting attorney in Chicago, Illinois and the U.S. Virgin Islands. She previously served as Acting Attorney General for the Federated States of Micronesia.

APPENDIX A

Background and Electoral Context

Honduras, a country of just over eight million people, shares a colonial legacy with the rest of Central America. After a military coup in 1963, Honduras was governed by a succession of military regimes until elections in 1981. Honduras is notorious for its fragile institutions, pervasive corruption and endemic economic deprivation. Honduras is the second poorest country in Latin America after Haiti and the most unequal in income distribution; a majority of the population lives in poverty.

2009 Military Coup

In the early morning hours of June 28, 2009, the Honduran military -- with the backing of the National Congress and Supreme Court -- stormed the Presidential Palace in Tegucigalpa and deposed democratically-elected President Manuel Zelaya in a coup d'état that drastically changed the face of politics in Honduras. Zelaya was a member of the Liberal Party, one of the parties in Honduras that had exchanged executive and congressional powers with the National Party on a regular basis for over one hundred years. Zelaya was formerly associated with the conservative ruling elite that has controlled the political, economic and social structures in Honduras for decades. However, he broke with his party -- and his class -- during his presidency by raising the minimum wage, proposing a land reform program, imposing a moratorium on mining and implementing other popular reforms.

In 2008, Zelaya also aligned Honduras with ALBA, the Bolivarian Alliance for the Peoples of Our Americas, an organization founded by Hugo Chavez based on the on the integration of social, political and economic policies in Latin America and the Caribbean.²⁷ Critics within Honduras and internationally feared that Zelaya's new alliance endangered the Central American Free Trade Agreement whose primary beneficiary was business interests. His final affront to the ruling elite was his promotion of the *cuarta urna*, a non-binding referendum to be held in June 2009 that proposed a second, binding referendum for the November 2009 elections to convoke a constitutional assembly. Critics characterized the June referendum as an attempt to circumvent the existing one-term limit for presidents, in violation of certain unalterable provisions of the Constitution. In fact, the non-binding referendum would have been voted on in the November election that selected Zelaya's successor, making it impossible for Zelaya to benefit. Coup defenders, however, claimed *ex post facto* that Zelaya's alleged Constitutional violations automatically ended his presidency, a stance not supported by Honduran law.

Even if Zelaya's reform proposal and other actions had been illegal, the Supreme Court acted outside the law in authorizing his removal. The Honduran Constitution only authorizes the removal of a President on the basis of death, resignation or incapacitation. Zelaya's removal also violated prohibitions on forcible expatriation²⁸ due process rights²⁹ and the presumption of innocence. Any legal process to remove Zelaya would have required an open and transparent

²⁷ <http://alba-tcp.org/en/contenido/statement-1st-meeting-alba-tcp-political-parties-progressive-and-revolutionary-movements>

²⁸ *Constitución Política de la República de Honduras* arts. 81 and 102.

²⁹ *Id.*, art. 94.

judicial process. The military exceeded even the illegal warrant, which only required Zelaya to be brought before a competent judicial authority and did not authorize his removal from the country. Yet the military stormed Zelaya's residence, entered by force, unceremoniously arrested him and transported him to the Soto Cano Military Base (a joint US-Honduran installation) before flying him against his will to Costa Rica.

Members of the National Congress, the majority of whom belonged to Zelaya's own Liberal party, named Roberto Micheletti, then President of the Congress, to complete the remaining months of the presidential term, although they lacked legal authority to do so.³⁰ The extra-legal actions of the Honduran Supreme Court, National Congress and Military conspired against Zelaya in a widely condemned coup. After his ascent as *de facto* president, Micheletti immediately instituted emergency measures that exacerbated the constitutional emergency and instigated a human rights crisis that continues to reverberate throughout Honduras to this day.

In August 2009, the National Lawyers Guild, the Association of American Jurists and the International Association of Democratic Lawyers sent joint a delegation to Honduras to investigate the constitutional issues raised by the Supreme Court's ruling that Zelaya's actions precipitated the automatic termination of his presidency. The report concluded that the "constitutional basis" for Zelaya's removal was merely a pretext fabricated by the perpetrators of the coup to depose their democratically-elected leader:³¹

The mission confirmed that on June 28, 2009 a military coup d'état began in Honduras, causing a rupture of institutional order and the rule of law, through the unconstitutional removal, kidnapping and forced expatriation of elected President Manuel Zelaya Rosales. The Constitution of Honduras does not provide for this manner of removal of the president. Fundamental precepts of constitutional law, as well as charters and international treaties ratified by the Honduran state, guarantee the right to a legal defense and the applicable substantive and procedural due process of the law. In short, the coup was an extra-legal solution that powerful sectors used to end their conflict with President Zelaya, who favored legal and democratic measures advancing social progress.

There is no legal basis whatsoever for ousting President Zelaya, despite documents and decrees issued to confuse the public. The real motivations for the removal of President Zelaya by the coup leaders were the objections by the influential economic and political sectors to Executive decisions, including the social advancements such as the increased minimum wage, proposals for meaningful civil society participation, the contract with PetroCaribe and agreeing to join ALBA.

News that Honduran President Manuel Zelaya had been deposed drew immediate and strong condemnation from within Latin America and from abroad. Rebukes by the international community included a resolution of the United Nations General Assembly stating that Zelaya's removal "interrupted the democratic and constitutional order and the legitimate exercise of power in Honduras."³² Then Secretary of State Hillary Clinton³² stated "The action taken against Honduran President Manuel Zelaya violates the precepts of the Inter-American Democratic

³⁰ http://www.thestar.com/news/world/2009/06/28/honduran_military_sends_president_into_exile.html

³¹ http://www.nlginternational.org/report/HONDURAS_FINAL_Prelim_Report_Eng_.pdf

³² <http://www.un.org/apps/news/story.asp?realfile/story.asp?NewsID=31314&Cr=honduras&Cr1=#.Urci8qWYTwl>

Charter and thus should be condemned by all.”³³ On July 5, 2009 the Organization of American States (OAS) unanimously voted to suspend Honduras.³⁴ The United States, the EU and the multilateral financial institutions all suspended aid to Honduras.³⁵

2009 Presidential Elections

International rebuke of the Micheletti government notwithstanding, the perpetrators of the coup moved to hold the regularly scheduled elections in November 2009 with the hopes that legitimacy would ensue. Zelaya had called for a boycott stating, "As president of Honduras I declare this process illegitimate." Many voters did boycott the election, as did all major international observer groups, noting that any election held under the *de facto* regime of Micheletti could not be deemed legitimate.³⁶ The United States had initially helped broker an agreement between Micheletti and Zelaya that would allow the Congress to vote on whether Zelaya could be reinstated to power, in consultation with the Supreme Court.³⁷ The Supreme Court held, however, that Zelaya's action in holding the non-binding referendum was illegal and that he must face charges before any reinstatement.³⁸

Despite concerns, the presidential, congressional and mayoral elections were held in a highly disputed contest on November 29, 2009. Some countries, such as Argentina, Brazil, Ecuador and Venezuela, refused to recognize the vote, branding the election a farce which could embolden coup-minded conservative forces across the region.³⁹ Other countries, including the US, Colombia, Peru, Panama and Costa Rica recognized the election results almost immediately.⁴⁰

Five candidates ran for president, including frontrunners Porfirio Lobo of the National Party and Elvin Santos, former Vice President of the Liberal Party. Lobo easily won the presidential race by a margin of over 18 points. Significantly, the makeup of the National Congress tilted heavily in favor of the National Party as well, taking 71 of 128 total seats.⁴¹ This consolidation of power in favor of the National Party created the setting for the direction of politics in Honduras for the next four years.

Civil Society After the Coup

In the aftermath of the coup, a wide variety of grassroots groups that had been separately organizing and advocating for their causes coalesced into a broad-based, non-violent resistance movement, the National Popular Resistance Front (FNRP).⁴² The FNRP denounced the erosion of democratic principles and the escalating human rights abuses committed against members of

³³ <http://news.bbc.co.uk/2/hi/8123434.stm>

³⁴ http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-219/09

³⁵ <http://www.nytimes.com/2009/11/29/world/americas/29honduras.html>

³⁶ <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/29/AR2009112900989.html>

³⁷ <http://www.cnn.com/2009/WORLD/americas/11/30/honduras.elections/>

³⁸ <http://www.cnn.com/2009/WORLD/americas/11/30/honduras.elections/>

³⁹ <http://www.theguardian.com/world/2009/nov/30/honduras-lobo-president>

⁴⁰ <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/29/AR2009112900989.html>

⁴¹ <http://archivo.elheraldo.hn/Ediciones/2009/12/22/Noticias/TSE-oficializa-abrumador-triunfo-de-Lobo-Sosa>

⁴² <http://nacla.org/news/out-past-new-honduran-culture-resistance>

the resistance, as well as impunity for those who perpetrated the coup.⁴³ In a massive display of resistance and civil disobedience, thousands took to the streets daily to protest.⁴⁴ The FNRP named Zelaya as the Coordinator General of the Executive Committee in July, 2010.⁴⁵

Shortly after Zelaya's removal, Costa Rican President Oscar Arias tried to negotiate conditions for his return. While Zelaya accepted all of the proposed terms, *de facto* president Micheletti summarily rejected them, insisting that Zelaya must face imprisonment.⁴⁶ Zelaya first attempted to return to Honduras on July 4th, 2009, but his plane was rebuffed by military vehicles blocking the runway.⁴⁷ Shortly thereafter, he made a symbolic crossing via the Nicaraguan border and then retreated, to keep pressure on the *de facto* government.⁴⁸

To the surprise of many, on September 21, 2009, Zelaya entered the country in secret and found refuge in the Brazilian Embassy after a trip about which he declined to disclose details.⁴⁹ In response to Zelaya's return, Micheletti imposed a curfew and cracked down on demonstrators.⁵⁰ Zelaya remained in the embassy until January 27, 2010, when he had his family were guaranteed safe passage to refuge in the Dominican Republic,⁵¹ where he remained until May, 2011.⁵²

On February 27 and 28, 2011, the FNRP convened its first National Assembly, where 1,500 representatives from a range of municipalities and over 300 organizations gathered to demand and plan for a National Constituent Assembly.⁵³ The National Constitutional Assembly was conceived of as an organized way to promote participatory democracy by engaging civil society in the reformation of the Honduran Constitution into a foundational document that represents the interests of all Hondurans.⁵⁴ The FNRP called for solidarity and unity among members of its constituent communities: LGBT, indigenous peoples, the Afro-indigenous Garifunas, campesinos, labor leaders, workers, students, human rights defenders and women's groups. One key issue debated at the assembly was whether the FNRP should participate in the 2013 elections or focus instead of mobilizing and organizing civil society, with the majority of attendees voting against a focus on electoral politics, fearing it would detract from the energy to form and consolidate a grassroots and widespread opposition movement.⁵⁵ There was a split among the movement participants, with some choosing to focus on electoral politics and others to focus on "refounding" the country.⁵⁶

⁴³ Id.

⁴⁴ <http://articles.latimes.com/2009/jun/30/world/fg-honduras-coup30>

⁴⁵ http://www.resistenciahonduras.net/index.php?option=com_content&view=article&id=2223:honduras-fnrp-comes-out-stronger-from-national-assembly-&catid=101:news&Itemid=349

⁴⁶ http://www.democracynow.org/2009/7/24/defying_coup_regime_zelaya_attempts_return

⁴⁷ <http://www.theguardian.com/world/2009/jul/06/zelaya-plane-honduras-coup>

⁴⁸ <http://news.bbc.co.uk/2/hi/8168556.stm>

⁴⁹ <http://www.reuters.com/article/2009/09/21/us-honduras-zelaya-idUSTRE58K3JY20090921>

⁵⁰ <http://www.cnn.com/2009/WORLD/americas/09/22/honduras.embassy/>

⁵¹ <http://www.cnn.com/2010/WORLD/americas/01/27/honduras.zelaya/index.html>

⁵² <http://www.bbc.co.uk/news/world-latin-america-13586991>

⁵³ http://www.resistenciahonduras.net/index.php?option=com_content&view=article&id=2223:honduras-fnrp-comes-out-stronger-from-national-assembly-&catid=101:news&Itemid=349

⁵⁴ http://www.rightsaction.org/articles/Hondurans_demand_Democracy_091410.html

⁵⁵ <http://nacla.org/news/2011/8/24/honduran-resistance-crossroads-interview-carlos-amaya>

⁵⁶ <http://upside-down-world.org/main/honduras-archives-46/4580-the-different-souls-of-the-libre-party-and-repression-against-honduran-students>

As the Honduran resistance continued to organize, ongoing efforts focused on returning Zelaya to the country. Venezuelan President Chavez and Colombian President Santos joined forces to mediate talks in Colombia between Lobo and Zelaya, which culminated in the signing of the Cartagena Accord on May 22, 2011.⁵⁷ The talks were unanimously endorsed by the Latin American community through the Community of Latin American and Caribbean States (CELAC), formed in February, 2010 partially in response to opposition to the US government's control of the OAS reaction to the coup.⁵⁸ Secretary of State Hillary Clinton remained silent on the process until after the agreement was finalized.⁵⁹

The Accord paved the way for Zelaya and over 200 other exiles to return to Honduras without fear of persecution, ensured the right of the FNRP to form a political party and participate in the electoral process, and established that the Honduran Constitution ensures the right of the people to reform fundamental laws through a national plebiscite.⁶⁰ Corruption charges against Zelaya were dropped.⁶¹ The Accord also provided non-binding human rights protections, and it opened the door for Honduras to petition to rejoin the Organization of American States, from which it had been excluded since the coup.⁶²

After Zelaya's return on June 26, 2011, despite an ongoing split in its ranks, the FNRP voted to form a new political party to participate in the 2013 elections.⁶³ In October 2011, Mel Zelaya filed over 80,000 signatures with the TSE, far in excess of the required number to form the LIBRE (Liberty and Refoundation) party. The party announced its platform as firmly rejecting neoliberal and neocolonial principles, calling for the eradication of discrimination, unity among social groups, and solidarity among Latin American countries.⁶⁴ Espousing popular sovereignty as a core principle, it contested provisions of the Honduran Constitution that were deemed inalterable, and asserted that the Constitution derives its legitimacy from the will and consent of the people it governs.

LIBRE also publicly filed its charter, political organization and plans.⁶⁵ Xiomara Castro de Zelaya, wife of Mel Zelaya, was named LIBRE's presidential candidate. She led in the polls for most of the year leading up to the election.⁶⁶

December 2012 Judicial Coup

In a complicated maneuver underscoring the absence of a true system of checks and balances, the Honduran Congress—led by Congressional President Juan Orlando Hernández--voted on December 12, 2012 to remove four of the five members of the Constitutional Branch of the

⁵⁷ <http://www.theguardian.com/world/2011/may/23/ousted-manuel-zelaya-return-honduras>

⁵⁸ <http://www.cepr.net/index.php/op-eds-&-columns/op-eds-&-columns/zelayas-return-to-honduras-a-step-forward-but-will-political-repression-continue>

⁵⁹ Id.

⁶⁰ <http://www.cepr.net/index.php/blogs/cepr-blog/cartagena-mediation>

⁶¹ Id.

⁶² Id.

⁶³ <http://nacla.org/news/2011/8/24/honduran-resistance-crossroads-interview-carlos-amaya>

⁶⁴ <http://hondurasculturepolitics.blogspot.com/2011/11/fnrp-new-political-party-libre.html>

⁶⁵ Id.

⁶⁶ <http://www.cepr.net/index.php/blogs/the-americas-blog/honduras-elections-violent-attacks-against-opposition-candidates-provoke-increasing-concern>

Supreme Court. As they deliberated until 4 AM, military and national police surrounded the Congressional building.⁶⁷ The removal, deemed by many a “technical coup” for violating the prohibition against summary dismissal of judges by the legislature, was premised on a claim of administrative error related to the invalidation of the police cleansing law.⁶⁸ A Honduran judges group, the Association of Judges for Democracy (AJPD), characterized the dismissal as “a flagrant attack on the principle of separation of powers and judicial independence.”⁶⁹

Observers believe that the charges were manufactured to justify the removal of justices who had demonstrated independence from the dictates of the ruling National Party and threatened its ability to exercise control over the three branches of government generally, and specific control over the electoral process.⁷⁰ Sources cite a number of other specific motivations for the removal of the justices, including the cumulative impact of their invalidation of a number of laws supported by the ruling party, and a dispute headed to the court as to the legitimacy of the primary victory of National party candidate Juan Orlando Hernández.⁷¹

Some reports attribute the removal to the justices’ decision finding the “model cities” law passed by the legislature unconstitutional,⁷² a move that prompted Lobo to disparage the rogue justices as traitors.⁷³ The legislation was presented as an opportunity to promote economic development, but was widely opposed by Afro-indigenous and other groups refusing to cede sovereignty over their ancestral territories.⁷⁴ Under the plan, land would be available to international investors to develop enclaves as they see fit, free from regulations imposed under Honduran law. The development zones would be subject to their own legal systems, tax and labor codes, and independent security forces whose actions would not be subject to review.⁷⁵ Shortly after the law’s invalidation by the court, the legislature reauthorized the law, which the newly constituted court is expected to uphold.⁷⁶

The congress also passed a minerals and mines law⁷⁷ granting unprecedented concessions to international companies and private investors, despite massive public opposition, that is expected to meet the same constitutional challenges that faced the “model cities” law.⁷⁸ The Constitutional Branch also thwarted Lobo’s “purification law” intended to clean up the notoriously corrupt national police, by holding the law unconstitutional in a four to one vote. The

⁶⁷ <http://news.yahoo.com/flailing-honduras-yet-another-political-crisis-082422678.html>

⁶⁸ <http://hondurasculturepolitics.blogspot.com/2012/12/congress-votes-to-dismiss-four-justices.html> and <http://www.elheraldo.hn/Secciones-Principales/Al-Frente/Informe-presentado-por-la-comision-al-pleno-del-Congreso-Nacional>

⁶⁹ <http://www.rightsaction.org/action-content/december-12-2012-coup-honduras-constitutional-court-dismissed-primary-elections-are>

⁷⁰ Id.

⁷¹ <http://proceso.hn/2013/01/09/Econom%C3%ADa/Honduras.enfrenta.agresiva/62538.html>

⁷² <http://www.cepr.net/index.php/blogs/the-america-blog/media-reports-on-charter-cities-ignore-the-larger-context> and <http://bigstory.ap.org/article/honduras-once-again-passes-model-cities-law>

⁷³ http://www.presidencia.gob.hn/index.php?option=com_content&view=article&id=986:presidente-lobo-sosa-cataloga-de-traicion-al-pueblo-oponerse-a-ciudades-modelo&catid=34:asia-a-pacific&Itemid=54#.UqNBV6WYTWI

⁷⁴ <http://truth-out.org/opinion/item/11272-not-on-our-land-land-recovery-kicks-off-in-honduras>

⁷⁵ <https://nacla.org/news/2013/2/19/reporting-romer's-charter-cities-how-media-sanitize-honduras's-brutal-regime>

⁷⁶ <http://www.elheraldo.hn/Secciones-Principales/Pais/Vuelven-las-ciudades-modelo-a-Honduras>

⁷⁷ <http://www.laprensa.hn/csp/mediapool/sites/LaPrensa/Honduras/Tegucigalpa/story.csp?cid=331330&sid=275&fid=98>

⁷⁸ <http://hondurasculturepolitics.blogspot.com/2013/02/honduran-congress-consolidates-more.html>

law required officers to submit to “confidence checks,” including interviews, psychological exams, lie detector tests and reviews of financial documents, and failure of any element of the examination justified immediate dismissal.⁷⁹ Opponents claimed the law violated the officers’ rights to due process and the presumption of innocence.

Irrespective of the motivation, the removal of the judges and their immediate replacement with four justices sympathetic to the National Party consolidated the ruling party’s power in the run-up to the election.

Post-Coup Human Rights Crisis

Since the 2009 coup, Honduran civil society, particularly those affiliated with the resistance movement, have faced brutal repression. Various international bodies, two Honduran-led truth commissions, and a multitude of domestic and international human rights organizations have documented the widespread political persecution of the opposition movement.

Truth Commissions’ findings

Six Honduran human rights organizations, under the umbrella coalition the Human Rights Platform of Honduras, formed the *Comisión de Verdad* (or the True Commission) to investigate human rights violations in the aftermath of the coup, including violations that took place after the 2009 election of Porfirio Lobo. Their extensive findings were released in November 2012. The Commission found that crimes against humanity have taken place in post-coup Honduras and that illegal groups operating as death squads with the acquiescence of the state have been responsible for summary executions of key members of the resistance and human rights community in Honduras.⁸⁰

The Truth and Reconciliation Commission (TRC) established by the *de facto* post-coup government, which has been widely criticized by Honduran and international human rights groups for its lack of compliance with international standards for truth commissions of this nature, released a report in July 2011. As noted by the Center for Constitutional Rights and the International Federation for Human Rights in their submission to the International Criminal Court,

It is significant that even the *de facto* government's own commission was unequivocal in concluding that the coup was illegal and that Micheletti was among those who bore the greatest responsibility for it. The TRC also concluded based on its investigations that the Micheletti regime had undertaken political persecution, a crime against humanity, and that it was responsible for a number of killings committed by state agents and those acting at their behest, in addition to the widespread and violent repression of rights to speech, assembly, association, and to be free from arbitrary arrest and cruel, inhuman and degrading treatment.⁸¹

⁷⁹ <http://www.argentinaindependent.com/currentaffairs/newsfromlatinamerica/honduras-four-judges-dismissed-in-technical-coup/>

⁸⁰ http://friendshipamericas.org/sites/default/files/report_cdv_honduras_english.pdf

⁸¹ <http://ccrjustice.org/files/Honduras%20ICC%20Submission.pdf>

International Human Rights Bodies

The Inter-American Commission on Human Rights has reported receiving hundreds of complaints regarding serious violations of human rights since the coup, and has thus granted precautionary measures to hundreds of persons at risk.⁸²

The International Criminal Court opened up a preliminary investigation into whether the crimes alleged post-coup amount to crimes against humanity; the Court reports receiving 22 complaints under Article 15 of the Rome Statute since the coup.⁸³

Independent experts working with the United Nations have also studied the post-coup situation in Honduras. For example, in February 2012, United Nations Special Rapporteur on the situation of human rights defenders Margaret Sekaggya, upon conclusion of a mission to Honduras, reported, “The pervasive impunity and absence of effective investigations of human rights violations undermine the administration of justice and damages the public’s trust in authorities. The 2009 coup d’état aggravated institutional weaknesses, increased the vulnerability of human rights defenders and provoked a major polarisation in society. Due to the exposed nature of their activities, human rights defenders continue to suffer extrajudicial executions, enforced disappearances, torture and ill-treatment, death threats, attacks, harassment and stigmatisation.”⁸⁴ And in April 2012, Gabriela Knuul, Special Rapporteur on the Independence of Magistrates and Attorneys, and Christof Heyns, Special Rapporteur on Arbitrary Executions, jointly stated, “In addition to the frequency of the killings and the death threats against lawyers, we are worried about the impunity of these crimes in Honduras.”⁸⁵

Indeed, the targeting of the legal profession has been startling; at least 67 lawyers have been killed. The assassination of judges such as Mireya Efigenia Mendoza Pena, a member of Judges for Democracy, who was gunned down on July 24, 2013 threatens the independence and integrity of the judiciary.⁸⁶

Another professional group targeted is journalists, suppressing freedom of the press. At least 29 journalists have been killed in Honduras since the coup, and Honduras is now considered to be the most dangerous country in Latin America for journalists. Repression is directed at those critical of the government.⁸⁷ As in all other areas, impunity for those targeting journalists and lawyers is pervasive - according to Honduras’ National Commission of Human Rights, only 3% of targeted assassinations of journalists and lawyers killed post-coup have been prosecuted.⁸⁸

Violence based on sexual orientation has also been a hallmark of the repression. From 2008 through February 2013, prominent leaders of the resistance movement such as Walter Trochez

⁸² <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>

⁸³ <http://www.icc->

[cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/honduras/Pages/honduras.aspx](http://www.icc-structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/honduras/Pages/honduras.aspx)

⁸⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11830&LangID=E>

⁸⁵ [http://www.un.org/apps/news/story.asp?NewsID=41745&Cr=latin+america&Cr1=.](http://www.un.org/apps/news/story.asp?NewsID=41745&Cr=latin+america&Cr1=)

⁸⁶ <http://www.freedomhouse.org/article/judges-murder-will-have-chilling-effect-honduras>

⁸⁷ <https://truth-out.org/news/item/19974-where-will-the-children-play-neoliberal-militarization-in-pre-election-honduras>

⁸⁸ <http://www.unesco.org/new/en/media-services/single->

[view/news/unesco_continues_its_work_to_improve_safety_of_journalists_in_honduras/#.UqMs06WYTWI](http://www.unesco.org/new/en/media-services/single-view/news/unesco_continues_its_work_to_improve_safety_of_journalists_in_honduras/#.UqMs06WYTWI)

and Erick Martinez Avila have been among the more than 90 LGBTI persons brutally murdered in Honduras.

Human rights violations are also prevalent in the land rights struggles. More than 100 people have been killed in the past four years, many assassinated by death squads operating with near impunity in the heavily militarized Bajo Aguán region, where US-backed security forces are implicated in the murder, disappearance and intimidation of peasant farmers involved in land disputes with local palm oil magnates.⁸⁹

In another struggle for land rights, the Lenca community of Rio Blanco has been resisting efforts to dispossess them from their land for the construction of the Agua Zarca hydroelectric dam in their ancestral territory. International Labor Organization Convention 169, ratified by Honduras, requires a process to seek the prior and informed consent of indigenous communities, which has not been enforced. The Rio Blanco community has consistently rejected the development, yet the project has proceeded. After the community set up a roadblock to halt the development, repression escalated. In August 2013, Tomas Garcia, an indigenous Lenca leader in the group *Consejo Cívico de Organizaciones Populares e Indígenas de Honduras* (COPINH) was shot and murdered by a member of the Honduran military while peacefully protesting against the dam project, a joint venture between the Honduran company DESA and Chinese Sinohidro. In addition to violent attacks, resistance members have been criminalized, including high profile charges levied against three members of the leadership of COPINH.

Widespread and systematic human rights violations created an atmosphere of fear and intimidation in the lead-up to the November 2013 elections and have continued to this day. A report by the human rights organization Rights Action documented the deaths of 18 LIBRE activists and armed attacks against 15 more between May 2012 and October 2013.⁹⁰ At the time of writing in December 2013, since November 23, 2013 six candidates or activists affiliated with the LIBRE party had been killed, including two the night before the election.⁹¹ A prominent journalist and recently-elected LIBRE representative, Edgardo Castro, fled Honduras following a series of death threats. Violent attacks have been perpetrated against other parties as well, but at a significantly lower rate.

According to the International Federation for Human Rights, in the days before the election, a list of prominent activists presumably targeted for persecution began circulating, a haunting throwback to the hit lists circulated by the death squads during the violent 1980s.⁹²

Some observers, including US Ambassador to Honduras Lisa Kubiske, question the extent to which the spate of killings are politically motivated crime. But members of the US Congress have repeatedly expressed concern about the repression in Honduras, including a letter from 27 members of the House of Representatives on June 24, 2010,⁹³ a letter from 21 Senators on June

⁸⁹ <http://www.theguardian.com/global/2014/jan/07/honduras-dirty-war-clean-energy-palm-oil-biofuels>

⁹⁰ <http://rightsaction.org/sites/default/files/Honduras-Violence-Political-Campaign.pdf>

⁹¹ <http://www.hondurassolidarity.org/2013/11/25/more-details-on-election-related-violence-in-cantarranas/>

⁹² <http://www.fidh.org/en/americas/honduras/14429-international-mission-of-fidh-with-the-support-of-ciprodeh-on-the-honduran>

⁹³ <https://docs.google.com/file/d/0B3bN1YOzeinOMTQ0YjE1NzItZDIiOS00NTVmLTkzMjMtMzY2MzVkZGRhZTgz/edit?authkey=CJGKrusL&pli=1&hl=en>

18, 2013,⁹⁴ a letter from three Congressmen on October 15, 2013,⁹⁵ and a letter from 13 Senators on November 13, 2013.⁹⁶

Impunity

There has been no meaningful effort by the Honduran government to investigate and hold accountable those responsible for the 2009 coup d'état or the wave of violence that has followed. As stated by the True Commission, there has been an “almost total absence of state action to meet its obligation to accept responsibility for the violations and to prosecute and punish those responsible for them.”⁹⁷

Honduras has the highest per capita homicide rate in the world. Many experts note that impunity for crimes is driving the violence: only two percent of crimes are solved in Honduras.⁹⁸ Honduras' Attorney General has appointed several prosecutors nominally tasked with upholding the rule of law, including a Special Prosecutor for Human Rights and a Special Prosecutor for Ethnic Groups. Through a combination of underfunding, political appointments, and a notoriously corrupt and ineffective judicial system, none of these efforts has made progress toward reducing the widespread impunity that exists within the country.

Post-Coup Militarization

After the violence of the 1980's there was a concerted effort in Honduras to decrease the role and power of the Honduran military in domestic affairs. In the years since the coup, this trend has been reversed with increased roles and responsibilities for internal affairs being delegated to the Honduran military. A new law pushed forward by head of Congress and National Party president-elect Juan Orlando Hernández and passed in November 2011 sidestepped the constitutional separation of the armed forces and civilian policing. The law gave the Honduran Armed Forces the ability to take part in domestic policing in emergency situations. It reads,

“In exceptional circumstances the armed forces may carry out police functions for a limited period, in situations of emergency that affect people and property; may participate permanently in the fight against drug trafficking; also cooperate in the fighting of terrorism, arms trafficking, and organized crime; at the request of the Secretary of State for Security they may carry out limited policing functions if the Executive Branch issues the corresponding decree of emergency, establishing in it the duration of the decree and any other scope.”⁹⁹

⁹⁴ <http://www.cardin.senate.gov/newsroom/press/release/cardin-leads-senate-call-for-accountability-in-honduras-for-human-rights-violations>

⁹⁵ <http://grijalva.house.gov/news-and-press-releases/rep-grijalva-honda-hank-johnson-urge-secretary-kerry-to-speak-against-militarization-of-civil-society-ahead-of-honduran-election/>

⁹⁶ <http://www.kaine.senate.gov/press-releases/in-letter-to-secretary-kerry-kaine-calls-for-free-and-fair-elections-in-honduras>

⁹⁷ http://friendshipamericas.org/sites/default/files/report_cdv_honduras_english.pdf pg. 270

⁹⁸ http://tlhrc.house.gov/docs/transcripts/2013_07_25_Honduras/Human%20Rights%20in%20Honduras%20Transcript_Revised.pdf

⁹⁹ http://hondurasculturepolitics.blogspot.com/2011_11_01_archive.html

Furthermore, the Ministry of Defense, which is responsible for the military and the Ministry of Security, which is responsible for the Police, were merged in 2013.¹⁰⁰

Far from being held accountable for carrying out an illegal coup d'état, the military personnel involved in the 2009 have been appointed to positions that bring them more into the fold of civilian affairs. For example, Romeo Vásquez Velásquez who led the 2009 coup was appointed by Porfirio Lobo to head the state-owned telephone company Hondutel in 2010.

As President of the National Congress, Juan Orlando Hernández played a key role in establishing the *policía militar*, or military police, in 2013. The military police are a new militarized police force that was deployed onto the streets in October 2013, whose troop numbers are expected to reach 5,000. Disturbingly, in their first month of operation they were denounced for harassing members of the resistance, including breaking into and ransacking the house of Edwin Espinal in Tegucigalpa on October 23, 2013.¹⁰¹ Espinal is a prominent activist in the resistance who has previously been tortured by the Honduran police. According to independent journalists covering the elections, on November 22, the eve of the election, four truckloads of masked military police parked outside a popular LIBRE party headquarters in the Kennedy neighborhood of Tegucigalpa, intimidating LIBRE members who were attempting to prepare for Election Day.¹⁰²

The United States has significantly supported the Honduran military since the coup, training Honduran troops and officers and sending millions of dollars in military funding. The US military itself maintains a visible presence in the country. The US maintains a permanent base, shared with the Honduran military, at Soto Cano base near Tegucigalpa. It also has built three new forward operating bases in Honduras - patterned off the US military's model in Iraq and Afghanistan of building outposts - in the name of fighting drug smuggling.¹⁰³ These bases are guarded by the Honduran military. US Special Operations forces are active in certain regions of Honduras, such as the Aguán valley, where the repression of land rights activists has been marked.¹⁰⁴ The US is also funding three new naval bases that are currently being constructed on the northern coast of Honduras.

¹⁰⁰ <http://archivo.elheraldo.hn/Ediciones/2010/06/09/Noticias/Policia-y-FF-AA-reforzaran-operaciones>

¹⁰¹ <http://upsidedownworld.org/main/honduras-archives-46/4542-where-will-the-children-play-neoliberal-militarization-in-pre-election-honduras>

¹⁰² <http://rebelreporting.com/2013/11/breaking-libre-campaign-office-targeted-by-military-police/>

¹⁰³ http://www.nytimes.com/2012/05/06/world/americas/us-turns-its-focus-on-drug-smuggling-in-honduras.html?_r=0

¹⁰⁴ <http://www.thenation.com/article/177549/honduras-election-peoples-will-hushed-not-silenced>

APPENDIX B

Delegation Meetings in Honduras

1. Rolando Argueta Perez, newly appointed Director of Deputy Attorney Generals (Director de Fiscales del Ministerio Público)
2. René Mauricio Aceituno, newly appointed Special Prosecutor of Electoral Crimes (Fiscal de Delitos Electorales)
3. Jany Del Cid Martinez, Special Prosecutor for Indigenous Groups (Fiscal Especial de las Etnias)
4. Soraya Morales Romero, Special Prosecutor for Human Rights (Fiscal Especial de Derechos Humanos)
5. US Ambassador Lisa Kubiske and members of her staff representing the Consular Section, Human Rights Section, the American Citizens Services Unit, and USAID Mission Director James Watson
6. Berta Cáceres, General Coordinator of the Civil Council of Popular and Indigenous Organizations of Honduras, COPINH (Consejo Cívico de Organizaciones Populares y Indígenas de Honduras)
7. Bertha Oliva, General Coordinator, the Committee of Relatives of Detainees and the Disappeared in Honduras, COFADEH (Comité de Familiares de Detenidos - Desaparecidos en Honduras)
8. Wilfredo Mendez, Director of the Center for Investigation and Promotion of Human Right, CIPRODEH (Centro de Investigaciones y Promocion de Derechos Humanos)
9. Brigitte Gynther, human rights activist, School of the Americas Watch, Washington, D.C.
10. Karen Spring, activist, and Annie Bird, co-director of Rights Action, USA and Canada
11. Representatives of major human rights groups in Honduras in a “round table” coordinated by the Center for Investigation and Promotion of Human Right, CIPRODEH (Centro de Investigaciones y Promocion de Derechos Humanos) in conjunction with the International Federation of Human Rights, FIDH
12. Leo Valladares Lanza, former National Commissioner for Human Rights, and Hedme Castro from ACI-PARTICIPA (La Asociación para una Ciudadanía Participativa)
13. Judge Mario Roland Diaz, Association of Judges for Democracy, AJD (Asociación de Jueces por la Democracia)
14. Jennifer McCoy, Director of the America’s Program of the Carter Center, and other Carter Center staff
15. Pedro Landa, Center for Research and the Promotion of Community Development, CIPRODEC (Centro de Investigación y Promoción al Desarrollo Comunitario) and Emilio D’Cuire of the Environmental Law Institute of Honduras, IDAMHO (Instituto de Derecho Ambiental de Honduras)
16. Ana Rivera, activist with the Libre Party
17. Electoral observation training and tour of special counting facility at INFOP (Digitación, Verificación y Soluciones Inconsistencias) by Supreme Electoral Tribunal (TSE) personnel