



## Human Rights Foundation

Empire State Building, Suite 4515 • New York, NY 10118

Ph: (212) 246-8486 • Fax: (212) 643-4278

[www.humanrightsfoundation.org](http://www.humanrightsfoundation.org) • [info@humanrightsfoundation.org](mailto:info@humanrightsfoundation.org)

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March 8, 2010

Eduardo Stein

Coordinator of the Truth Commission of Honduras

Dear Mr. Stein:

The Human Rights Foundation (HRF) wishes to present you its legal report “The Facts and the Law behind the Democratic Crisis of Honduras, 2009.” We hope that the Truth Commission will consider its findings while carrying out the investigative task entrusted under your supervision. HRF’s legal report is a 300-page research paper comprising all events that took place in Honduras between March 23, 2009 and January 27, 2010 with regards to the crisis. The report was published today both in English and Spanish.

HRF’s legal report finds that three anti-democratic events took place in Honduras throughout the crisis: (1) the *erosion* of democracy carried out by President Zelaya from March 23 to June 28; (2) the *coup d’état* carried out by the armed forces on the morning of June 28; and (3) the unconstitutional removal of President Zelaya effected by Congress, which took place later that same day. According to international democracy law, each one of these anti-democratic events should have triggered the application of the democracy clause by OAS organs against the State of Honduras. However, the report finds that, throughout the democratic crisis in Honduras, the OAS acted as an international agent of the executive power, even at the expense of democracy in that country. This biased approach by the OAS, undermined its credibility as an independent, international guardian of democracy and exacerbated the consequences of President Zelaya’s previous actions. Thanks, in great part to the actions of the OAS, Honduras’s institutions became further entrenched in and its Supreme Court validated the *coup* and the unconstitutional removal of President Zelaya.

Among the main findings you will encounter in this report, we point to you the following:

- *Erosion of democracy.* The report finds that:
  - (1) The erosion of democracy in Honduras was caused by a series of anti-democratic actions carried out by President Zelaya, who sought to reform the constitution through unconstitutional means. President Zelaya wanted to conduct a referendum on June 28 with the aim of having a Constituent Assembly elected on November 29, 2009, in order to draft a new constitution.

(2) Over three months, the anti-democratic actions by President Zelaya violated the Constitution of Honduras and the integrity of the judicial and legislative branches. These acts finally led to a crisis between the three branches of government and the manipulation of the armed forces by them.

(3) The anti-democratic actions by President Zelaya were endorsed by the OAS Secretary General, who decided to send an unprecedented “Mission of Accompaniment” to legitimize the “opinion poll,” despite knowing that the “poll” had been declared “illegal,” and had caused a serious internal crisis, posing the threat of a *coup d'état*. The OAS sent a mission to Honduras despite the “profound outrage” and a formal request by the Congress of Honduras that the mission be “immediately withdrawn.”

- *Coup d'état*. The report finds that:

(1) The arbitrary expatriation of President Zelaya to Costa Rica is an unconstitutional act, according to Honduran law, and is a “*coup d'état*” according to international democracy law.

(2) Initially the armed forces said that the decision to expatriate President Zelaya was a result of an “inter-institutional consensus.” However, during the short criminal proceedings in January 2010, the armed forces changed their position and “admitted” that they, alone, had decided to expatriate President Zelaya.

(3) On June 28 at around noon, the OAS Secretary General spoke on the phone with the president of the Supreme Court of Honduras who said he was with the president of the Supreme Electoral Tribunal, and, presumably, the president of Congress, “examining” the way to “restore the constitutional order,” which in his view, had been “broken” by President Zelaya.

- *Unconstitutional removal* of President Zelaya. The report finds that:

(1) Honduras’s Congress removed President Zelaya without authority to do so. According to the Honduran constitutional tradition that began with the first Constitution of 1825, Congress has never had the power to remove President Zelaya. The only exceptions to this tradition are the Honduran constitutions of 1848 and 1880.

(2) The “immediate cessation” of the presidential term for violating Article 239 of the Constitution can only be declared by the Supreme Court after a criminal trial against the president arising for the commission of treason and crimes against the form of government (Arts. 4 & 239 Constitution, Art 330 Criminal Code). As part of this criminal process, Congress has no power to determine whether the president or any other official has violated Article 239 of the Constitution.

- *Validation of unconstitutional acts by the Supreme Court*. The report finds that:

(1) Unlike Congress, the Supreme Court does have the constitutional authority to try the president of Honduras for the commission of any common crime, to suspend him from office during the trial, and to disqualify him from office as a result of a conviction sentence; (Art. 313(2)(c) Constitution, 414-417 Criminal Procedure Code).

(2) According to a series of documents that were made public on June 30, the Supreme Court sat through two secret criminal proceedings against President Zelaya starting June 25, 2009. However, the court never, not even in these secret proceedings ruled to suspend President Zelaya as a precautionary measure, nor did it hand down a criminal conviction against him.

(3) Furthermore, the Supreme Court took a series of decisions that neglected its constitutional duties and violated the Honduran code of criminal procedure to the detriment of the defendant, President Zelaya. If the Attorney General and the

Supreme Court had acted in accordance with the Constitution and the Criminal Procedure Code, it would have been possible to prosecute, suspend and remove President Zelaya successfully for the crime of abuse of authority.

- *Biased Intervention* by the OAS and the inability to reverse the anti-democratic events:

(1) The report finds that, confronted with the erosion of democracy in Honduras at the hands of President Zelaya, the OAS did not act in accordance with international democracy law because, instead of activating the democracy clause against President Zelaya, it decided to send an unprecedented “Mission of Accompaniment” that escalated the crisis in Honduras. Secondly, confronted with the coup d’état carried out by the armed forces, the OAS acted in accordance with international democracy law by activating the democracy clause and condemning this action, but did not act accordingly in its diplomatic initiatives when trying to revert the situation. Finally, faced with President Zelaya’s unconstitutional removal by Congress, the OAS did not act correctly because it failed both to condemn this action and to take appropriate diplomatic initiatives to revert it. The report concludes that, facing the great difficulty of reverting each of the anti-democratic events that took place in Honduras, the OAS should have decidedly promoted and monitored the elections of November 29 in order to foster the restoration of democracy in that country.

(2) According to Honduran law, nothing, not even a president’s unconstitutional actions, can justify his kidnapping and expatriation without a previous trial. According to international democracy law, nothing, not even a president’s anti-democratic actions can justify the international community condoning a coup d’état. This is especially true in President Zelaya’s particular case, where an independent Supreme Court could have criminally tried him, and, as part of this trial, suspend or remove him.

(3) Nevertheless, in cases of erosion of democracy, it is imperative that the action by the OAS be swift in response to the antidemocratic actions of a president that threaten the democratic order of a member state. During his telephone conversation with the president of the Supreme Court of Justice on June 28, the Secretary General acted in a dishonest and evasive manner. He was inconsistent with the information he was privy to and his previous actions. Upon hearing the Supreme Court was “examining” the best way to restore the democratic order, the Secretary General—without justifying or condoning the coup—should have recognized President Zelaya’s repeated anti-democratic actions and offered his good offices in order to: (1) gain as much support from the international community for the Supreme Court, so that they could duly declare the coup d’état void and unconstitutional; and (2) gain support from the international community for the Supreme Court, so that any criminal proceedings against President Zelaya, and his eventual suspension or removal from office as a result of a presidential trial, would be carried out according to the Honduran constitution and with full international support.

(4) If the Secretary General and the Permanent Council had acted in adherence to their obligations while the erosion of democracy was occurring, it is reasonable to assume that the OAS intervention would have had a deterrent effect, and that the erosion of democracy, the coup d’état, and the unconstitutional removal of June 28, as well as the Supreme Court validation of these anti-democratic events later, would have been avoided. Sadly, however, throughout the Honduran crisis the OAS acted as an international agent of President Zelaya, rather than an international organization called to promote and protect democracy in its member states.

HRF's legal report is the culmination of a careful investigation carried out by the Human Rights Foundation's legal department over the last eight months. This report is the product of thousands of hours of research with a variety of sources including news reports, official documents, Honduran statutes and international legal provisions. We believe this report is a valuable testimony about the facts and the law behind this serious crisis, and we hope it can facilitate your work as the definitive arbiter of what really happened, so that all American States can learn from this, and so that a lamentable set of events like this do not occur again.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thor Halvorssen', written in a cursive style.

Thor Halvorssen  
President  
Human Rights Foundation

P.S. The report can be downloaded from the Human Rights Foundation's website:  
[www.thehrf.org/HRF\\_TheFactsAndTheLaw\\_Honduras2009.pdf](http://www.thehrf.org/HRF_TheFactsAndTheLaw_Honduras2009.pdf)