



## **Are Free and Fair Elections in Honduras Possible under Martial Law Regime?**

On June 28, Honduran President Manuel “Mel” Zelaya was overthrown, in what is widely understood as an illegal and unconstitutional coup. In a fashion reminiscent of military coups of the 1950s and 60s, soldiers violently broke into the President’s house, put a gun to his head, handcuffed him and flew him out of the country in his pajamas. There was no due process and neither justice nor democracy was served. Simply put, this was an old-fashioned, Latin American coup d’état.

In the face of evidence, the de facto regime and the lobbyists they have hired in Washington are trying to convince the U.S. public and lawmakers that what took place was not a coup, but a legal transition of power. They are defending the de facto government, and arguing that the elections planned for late November, which will be carried out under what is essentially a martial law regime, will restore democratic legitimacy. But while they make their arguments, civil liberties in Honduras continue to erode.

***A negotiated return to constitutional order, and respect for civil liberties and human rights are necessary requirements for free and fair elections.***

### **Chronology of Honduran Coup and Imposition of Martial Law:**

- In the evening of June 26 p.m., thirty-six hours before the coup, the Supreme Court secretly authorized the Honduran military to forcibly enter President Zelaya’s house, and to place him under judicial authority to face charges of treason, abuse of authority and usurpation of power. They authorized the military to carry out these orders between the hours of 6 a.m. and 6 p.m.
- At approximately 5:15 a.m. on June 28<sup>th</sup>, Honduran soldiers violently broke into President Zelaya’s house, put guns to his head, forced him from his residence and flew him out of the country. No arrest warrant was served.
- On the afternoon of June 28<sup>th</sup>, the National Congress, in a session boycotted by some legislators, voted to accept a resignation letter falsely attributed to President Zelaya, then issued a decree deposing him on other grounds and replacing him with the President of the Congress, Roberto Micheletti.
- On June 30, 2 days after his ouster, Supreme Court officials publicly announced that the Court had authorized the charges against Zelaya for alleged treason and abuse of authority during the secret proceedings of June 26 and issued a secret warrant for his arrest.

## **Allegations and Suppositions: The Absence of Facts and Due Process**

There is no question that President Zelaya was a controversial and sometimes polarizing figure in Honduras. But allegations by coup defenders that Manuel Zelaya violated the Honduran Constitution have no legal foundation. President Zelaya had proposed a non-binding opinion poll, to take place on June 28<sup>th</sup> that asked whether or not the citizens of Honduras wanted a ballot question, in the November 29<sup>th</sup> national elections, on the need for a national assembly to revise the country's constitution. The June 28<sup>th</sup> ballot did not propose a constituent assembly but simply asked whether citizens wanted an opportunity to vote on that question.

Zelaya's opponents assumed that he sought to reform an article of the constitution prohibiting presidential succession, and argued that the constitution itself enshrined this article as unchangeable. But Zelaya never actually proposed that specific reform. In fact, Zelaya had proposed that there be a non-binding opinion poll to test popular support for a ballot question on the need for a constituent assembly. Zelaya never proposed specific reforms that should be considered in a constitutional convention. While Zelaya's opponents speculated about what a constituent assembly might do, if one were called, there is no evidence that Zelaya violated the constitution by seeking to reform the article on presidential succession. Honduran law explicitly protects people from being judged on assumptions about what they might do.

In addition to the argument that President Zelaya did not violate the constitution and was not seeking authorization to renew his term in office, there are other legal problems with the deposal of President Zelaya. According to the Honduran Constitution, it is the Judiciary, not the Congress that has the power to remove a president. It was the Congress that violated the constitution by issuing a decree that deposed, post facto, Manuel Zelaya on the afternoon of June 28<sup>th</sup>. Only two days later was it announced that the Supreme Court had issued a secret arrest warrant for Zelaya.

The Constitution empowers the police, not the military, to exercise warrants and arrests. Article 272 states that the Honduran Armed Forces is constituted to defend the territorial integrity and sovereignty of the Republic; to maintain the peace, the public order and the principles of free suffrage and the dominion of the Constitution. But it was the military that conducted the raid and forcibly removed the president before 6 a.m. He was not arrested and he was not served a warrant because the military does not have the constitutional authority to execute judicial orders.

In a further violation of the Constitution, President Zelaya was illegally expatriated in violation of Article 102; Article 81 also states that all Hondurans have the right to remain in the national territory. The illegality of the armed forces actions was publically acknowledged by Colonel Herberth Bayardo Inestroza in a press interview published in the Honduran press on July 5.

Finally, Manuel Zelaya was denied due process guaranteed to high officials before being removed from office. Honduras is party to the American Convention on Human Rights that states high level officials are entitled to due process before being deposed.

*President Zelaya was not legally removed from office because he was never tried, convicted or sentenced for alleged crimes. The Honduran de facto government and its Washington lobbyists argue that there was a constitutional transition of order but the facts prove otherwise. It is an open and shut case.*

### **Martial Law Regime: The Erosion of Civil Liberties and Violations of Human Rights**

Since the coup d'état on June 28<sup>th</sup>, national and international organizations have documented a steady erosion of civil liberties and human rights violations in Honduras. The most serious is the deaths of at least 14 people according to the Honduran human rights group COFADEH. On September 26, the martial law regime passed executive decree PCM-M-016-2009 suspending constitutional guarantees such as freedom of association, freedom of movement and freedom of expression. Under heavy pressure from the international community, the controversial decree was rescinded just this week. Finally, human rights organizations have detailed the excessive use of force, illegal searches, arbitrary detentions, and physical abuse while detained of peaceful demonstrators and human rights defenders.

Perhaps one of the greatest casualties of the martial law regime is freedom of the press. Since June 28<sup>th</sup>, journalists have been beaten, staff evicted from stations and equipment confiscated. In a move more reminiscent of Venezuela's Hugo Chavez, the regime also issued executive decree 124-2009 on October 5 which allows the Honduran telecommunications company to revoke licenses to transmit over the airwaves if deemed to foment "social anarchy."

Democracy has faced a serious set back in Honduras. Since the coup, the martial law regime of Roberto Micheletti has cracked down on human rights and civil liberties while touting elections as the way out of this crisis. Under the current condition, elections will neither be free nor fair. Minimally, what is required is a negotiated return to constitutional order, and respect for civil liberties and human rights.

**Written by: Vicki Gass, Senior Associate on Rights and Development, Washington Office on Latin America**