

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID MURILLO and SILVIA
MENCAS on behalf of themselves
and as Personal Representatives of
their deceased son, ISIS OBED
MURILLO, and his next of kin,
including his SIBLINGS.

Case No. 4:11-CV-2373

v.

ROBERTO MICHELETTI BAIN

DECLARATION OF TAMARA TARACIUK BRONER

1. I, TAMARA TARACIUK BRONER, make this declaration based on my knowledge and experience in investigating and analyzing the human rights situation in Honduras subsequent to the coup d'etat of June 28, 2009.¹

2. I attach as an appendix to this declaration a summary of my credentials, which provides evidence of my work and expertise in this field.

¹This expert declaration is based on research, interviews and documentation conducted for a report published by Human Rights Watch in December 2010. I have updated the information contained herein for the purposes of this declaration where appropriate and to the extent possible. *See* Human Rights Watch, "After the Coup: Ongoing Violence, Intimidation, and Impunity in Honduras," December 2010. *Available at:* <http://www.hrw.org/en/reports/2010/12/21/after-coup>.

3. I have been asked to provide an opinion as to the general climate of impunity for post-coup abuses and violations of human rights and obstacles to justice and accountability in the post-coup context in Honduras.

I. Background and Summary

4. The military coup d'état that ousted President Manuel Zelaya on June 28, 2009—and the attacks on journalists, human rights defenders, and political activists in the coup's aftermath—represent the most serious setbacks for human rights and the rule of law in Honduras since the height of political violence in the 1980s.

5. After the coup, security forces committed serious human rights violations, killing some protesters, repeatedly using excessive force against demonstrators, and arbitrarily detaining thousands of coup opponents. The de facto government installed after the coup also adopted executive decrees that imposed unreasonable and illegitimate restrictions on the rights to freedom of expression and assembly.

6. Since the inauguration of President Porfirio Lobo in January 2010, there have been new acts of violence and intimidation against journalists, human rights defenders, and political activists.

7. Impunity for violations has been the norm. No one has been held criminally responsible for any of the human rights violations committed under the de facto government in 2009. And available information indicates that there has been little or no progress in investigating the attacks and threats that have occurred since January 2010. Such attacks have had a chilling effect on the media and political opposition. Lack of

witness protection and lack of cooperation by military and police are among the key obstacles to justice and accountability in the wake of the coup.

A. Impunity for Post-Coup Abuses

8. As of December 2010, the Human Rights Unit of the Attorney General's Office—responsible for investigating allegations of human rights violations committed by police or military personnel—had filed charges in 20 cases of alleged violations committed under the de facto government. Judges acquitted the defendants in eight of these cases and the rest were still pending before the courts, some of them stalled because the accused are at large.

9. This lack of progress in prosecuting perpetrators of human rights crimes has not been due to a lack of effort by the Human Rights Unit. Rather, it is primarily the result of the lack of cooperation with, and support for, the unit from other state institutions, particularly during the early stages of the investigations in 2009. In particular, prosecutors in the unit have faced threats and obstruction of their efforts to investigate allegations of abuse by military and police.

10. The Human Rights Unit has faced several obstacles that undermine its ability to adequately investigate and prosecute these cases, including:

- a. Lack of independent investigators: The unit's prosecutors rely on investigative police who lack the independence necessary to conduct impartial investigations into violations committed by security forces. These investigators are members of the national police force. Like other police, their careers—including promotions, benefits, and disciplinary matters—are determined by the Ministry of Security, which is also responsible for placing them with the Attorney General's Office.

Even while working with the Attorney General's Office, they maintain a strong institutional loyalty to the police force. Consequently, prosecutors do not feel they can rely on the police to investigate cases involving other police officers.

b. Lack of cooperation by security forces: Under the de facto government, there was an "absolute" lack of cooperation with investigations by military and police personnel, according to members of the Human Rights Unit. Military or police officers refused to turn over firearms for ballistics tests, provide information on police officers accused of committing violations, or grant access to military installations.

c. Lack of implementation of a Witness Protection Program: Honduras's Witness Protection Program has been rendered largely inoperative due to the state authorities' failure to allocate funds to it. Consequently, prosecutors are unable to guarantee even minimal protection for witnesses who may be at risk of reprisal.

d. Limited resources: Although the volume of human rights cases increased dramatically after the coup, the unit's staff and budget were not expanded to meet the heavier caseload. As of December 2010, the unit consisted of 15 prosecutors. Each has had to handle approximately 400 cases. The unit possessed only two cars, one in Tegucigalpa and another in San Pedro Sula, which had severely limited prosecutors' ability to carry out travel necessary for their investigations. According to the unit's director, these conditions have left the prosecutors "overwhelmed." A one-year budget increase approved by Congress in October 2010 for 2011 has yet to be fully assigned to the unit.

e. Lack of judicial independence: Actions by the Honduran Supreme Court immediately after the coup created a climate in which lower court judges were discouraged from ruling against de facto authorities and in favor of coup opponents, independent of the facts of the case at hand. The Supreme Court

issued public statements immediately after the coup declaring that the military's actions on June 28 had been legal without mentioning that the military physically removed former President Zelaya from the country and forced him into exile. The broad and unqualified endorsement of the military's actions sent a clear message that the Supreme Court did not object to them. The Court then disregarded constitutional appeals challenging the legality of policies by the de facto government. While Honduran law establishes the principle that lower courts should be independent of undue influence from higher courts, until February 2011 it also granted the Supreme Court administrative and disciplinary powers over lower court judges. The Supreme Court exercised this authority in an arbitrary and seemingly political fashion in May 2010 when it fired four judges who publicly questioned the legality of the coup. A law implementing a constitutional reform adopted in February 2011 to grant disciplinary powers to a new Council of the Judiciary is still being debated.

B. Ongoing Attacks Against Journalists, Human Rights Defenders, and Political Activists

11. Since President Lobo was inaugurated in January 2010, there have been at least 18 killings of journalists, human rights defenders, and political activists, several in circumstances that suggest the crimes were politically motivated.

12. For example, on February 15, 2010 gunmen shot and killed Julio Benitez, an opponent of the coup who had previously received numerous threatening phone calls warning him to abandon his participation in opposition groups. On March 14, 2010 gunmen shot and killed Nahúm Palacios, who directed TV Channel 5 of Aguán and had covered several politically sensitive issues, including anti-coup demonstrations, corruption, drug trafficking, and agrarian conflicts.

13. Human Rights Watch has also received credible reports of dozens of cases involving threats or attacks against journalists, human rights defenders, and political activists in 2010 and 2011. For instance, on April 8, 2010, Father Ismael Moreno—a Jesuit priest and human rights advocate—received a text message threatening to kill the family of a female coup opponent who had been raped by police officers. Father Moreno had been helping the woman and her family to leave Honduras. On September 15, 2010, police and military members attacked the offices of Radio Uno, a station that has been critical of the coup. They launched tear gas into the radio station’s offices, broke windows in the building, damaged equipment, and seriously injured one person. In early 2011, Leo Valladares Lanza, a prominent human rights defender who previously served as Honduras’ ombudsman and president of the Inter-American Commission of Human Rights, received intimidating phone calls, and noticed people monitoring his home and following him after he publicly questioned the increasing power of the Honduran military since the coup.

14. The ongoing political polarization in Honduras and circumstantial evidence in the majority of the 2010 cases documented by Human Rights Watch—including explicit statements by perpetrators in some instances—indicate that many victims have been targeted because of their political views, fueling a climate of fear that has undermined the exercise of basic freedoms in Honduras.

15. This situation has generated serious concerns in the international community. In October 2010, 30 members of the US Congress urged the US Secretary of State to suspend military and police aid to Honduras until the Lobo administration distances itself

from individuals involved in the coup and adequately addresses the ongoing violations. International human rights bodies, including the Inter-American Commission on Human Rights (IACHR) and the Office of the High Commissioner for Human Rights (OHCHR), have called on Honduras to hold perpetrators accountable. Several countries expressed concern regarding the human rights situation in the country during the Universal Periodic Review of Honduras in November 2010.

II. Impunity for Post-Coup Abuses

16. At the time of this writing, no one has been held criminally responsible for the human rights violations and abuses of power committed after the coup.² In the vast majority of the abuse cases documented by international human rights bodies, prosecutors have not brought charges against anyone. As of December 2010, the Human Rights Unit of the Attorney General's Office was working on approximately 200 cases of alleged human rights violations committed by police or military personnel since the coup, but had filed charges in only 20 arising during the de facto government's tenure.³

² Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 26, 2011.

³ Each case may involve several victims. The vast majority of the abuses under investigation—approximately 90 percent—had occurred during the de facto government of Roberto Micheletti. Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010; Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit, Tegucigalpa, October 28, 2010; Human Rights Unit of the Attorney General's Office, "Report" (Informe), November 1, 2010. Information provided to Human Rights Watch by Jaime Ramos, prosecutor in the Human Rights Unit, November 1, 2010.

17. Human Rights Watch obtained documentation on 17 of these cases. In eight of them, the defendants were acquitted. As of December 2010, the rest were still pending before the courts, some of them stalled because the defendants were at large.

A. Obstacles to Accountability

Lack of Independent Investigative Police

18. A major obstacle to advancing these cases has been the lack of independent investigators to support the work of the Human Rights Unit. Prosecutors rely on an investigative police force that is part of the Ministry of Security: such investigators face an inherent conflict of interest when called on to investigate alleged violations committed by other police officers, who belong to the same ministry.

19. A 1998 reform removed the investigative police force from the Attorney General's Office and placed it under the jurisdiction of the Ministry of Security.⁴ As of September 2010, the National Directorate of Criminal Investigations (*Dirección Nacional de Investigación Criminal*), one of six offices within the Ministry of Security, had 2000 police investigators. This included approximately 100 in Tegucigalpa, 100 in San Pedro Sula, and the remainder in rural and municipal areas throughout the country.⁵

20. Under Honduran law, police investigators work under the direct supervision of prosecutors.⁶ The director of the National Directorate of Criminal Investigations told

⁴The 1998 Organic Law of the Police establishes that the General Directorate of Criminal Investigation (*Dirección General de Investigación Criminal*) reports directly to the Ministry of Security. Organic Law of the Police (*Ley Orgánica de Policía*), art. 30.

⁵ Human Rights Watch telephone interview with General Commissioner Marco Tulio Palma Rivera, director of the National Directorate of Criminal Investigations, Tegucigalpa, September 10, 2010.

⁶ Code of Criminal Procedures, art. 279.

Human Rights Watch that police investigators face no difficulties when they investigate other police officers because they always work with “objectivity.”⁷

21. But a conflict of interest is built-in to the system. As with all other police, the careers of these investigators—including promotions, benefits, and disciplinary matters—are determined by the Ministry of Security, which is also responsible for placing them with the Attorney General’s Office.⁸ Furthermore, they partake of an institutional culture that emphasizes loyalty, one that undoubtedly yields influences even while working with the Attorney General’s Office.

22. Prosecutors do not trust the investigative police force to carry out thorough and independent investigations in cases in which other police officers are suspects.

Danelia Ferrera, the general director of prosecutors (*Directora General de Fiscalías*) at the Attorney General’s Office, told Human Rights Watch that this creates enormous difficulties for investigations, particularly those carried out by the Human Rights Unit, as members of the investigative police “are investigating their fellow officers.”⁹

23. Consequently, instead of relying on investigators, prosecutors prefer to investigate the cases themselves.¹⁰ As a result, prosecutors can only focus on a limited

⁷ Human Rights Watch telephone interview with General Commissioner Marco Tulio Palma Rivera, director of the National Directorate of Criminal Investigations, Tegucigalpa, September 10, 2010.

⁸ Ibid; Human Rights Watch telephone interview with General Commissioner Marco Tulio Palma Rivera, director of the National Directorate of Criminal Investigations, Tegucigalpa, November 1, 2010.

⁹ Human Rights Watch telephone interview with Danelia Ferrera, general director of prosecutors (directora general de fiscalías) at the Attorney General’s Office, Tegucigalpa, September 7, 2010.

¹⁰ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General’s Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General’s Office, San Pedro Sula, August 27, 2010.

number of cases because their workload is much heavier than it would be if they could rely on independent investigators.

24. As discussed further below, a budget increase for 2011 was supposed to have enabled the Human Rights Unit to hire 20 independent investigators to cooperate directly with prosecutors, but the funding has yet to be fully assigned to the unit, and so only 2 independent investigators – 10% of the original request – have been hired.¹¹

Obstruction of Investigations by Military and Police Personnel

25. Military and police personnel have failed to cooperate with investigations into human rights violations. This obstruction violates the obligation that all civilian and military authorities have under Honduran law to cooperate with prosecutors.¹²

26. During the de facto government of Roberto Micheletti, the lack of cooperation of military and police personnel was “absolute” and “a common practice,” according to prosecutors in the Human Rights Unit.¹³ Despite the fact that since President Lobo took office law enforcement officers gradually have begun cooperating with prosecutors,

¹¹ Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General’s Office, Tegucigalpa, October 28, 2010.

¹² Law of Public Prosecutors (Ley del Ministerio Público), <http://www.mp.hn/Biblioteca/Ley%20del%20Ministerio%20Publico.htm> (accessed November 1, 2011), art. 3: “... all civilian and military authorities of the Republic are obliged to provide cooperation and support required by public prosecutors to ensure the best performance of their functions. Those public officials and employees who fail to cooperate without justification will be sanctioned for having violated their duties and for disobeying authority”; Criminal Procedures Code of the Republic of Honduras (Código Procesal Penal de la República de Honduras), http://www.oas.org/juridico/mla/sp/hnd/sp_hnd-int-text-cpp.pdf (accessed September 1, 2010), art. 237: “Government authorities and public officials will cooperate with judges, prosecutors and the national police in the fulfillment of their obligations, for which they must respond without delay to the requests that they make.”

¹³ Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010.

prosecutors from the Human Rights Unit told Human Rights Watch that they still face some resistance. And, in certain instances, the lack of cooperation during the initial months of the investigations had a serious, and possibly irreversible, impact on the investigations.¹⁴

Failing to Turn over Firearms for Ballistics Tests

27. To identify the military officers who killed Isis Obed Murillo during a pro-Zelaya demonstration near the Tegucigalpa airport on July 5, 2009, the Human Rights Unit requested that the military turn over firearms used that day to analyze if they matched the bullets they found at the crime scene.¹⁵ The military refused.

28. The Human Rights Unit then asked the courts to order the military to cooperate with the investigation, but the courts rejected the request. In October 2009, a lower court judge held that because the Armed Forces needs its weapons to provide security to the nation, the request must “be more specific” and “individualize the weapon or weapons that were supposedly used the day of the events.”¹⁶ The prosecutor turned to

¹⁴ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General’s Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General’s Office, San Pedro Sula, August 27, 2010.

¹⁵ Ibid; Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010.

¹⁶ Request by Carlos Roberto Flores, prosecutor in the Human Rights Unit, to the Judge of the Judicial Section of the Department Francisco Morazán (juez de letras de la Sección Judicial del Departamento Francisco Morazán), October 9, 2009. Decision by Judge Nelly Lizbeth Martínez, Criminal Court of the Judicial Section of Tegucigalpa, Department Francisco Morazán, on File 42,334-09, October 15, 2009. On appeal the same judge upheld her previous decision. The judge argued that if the military had stated they would turn over the guns, they “intended to collaborate” with prosecutors (even if they had not actually cooperated). And she reiterated the argument that the military needs its guns, despite the fact that prosecutors had requested that the military turn over 50 firearms at a time, which would have a minimal

an appeals court, which responded that prosecutors could not challenge a lower court judge's decision regarding specific evidence.¹⁷

29. The military only began turning over the firearms in early August 2010, approximately one year after the initial request. At this point, according to the prosecutors in charge of the investigation, there is no guarantee that the ballistics tests will shed any light as to which gun was used in the shooting of Isis Obed Murillo, given that the military has had more than enough time to alter the firearms in a way that could modify the test results.¹⁸

Failing to Respond to Requests to Identify Police Officers

30. Prosecutors have repeatedly asked police authorities for the names of officers involved in human rights violations, without obtaining an adequate response.¹⁹

31. For example, in June 2010 a prosecutor in Tegucigalpa requested that the director of the national police identify four officers who are seen in a video beating protesters.²⁰ The Human Rights Unit twice asked for the complete names of the officers,

impact on national security. Decision by Judge Nelly Lizbeth Martínez, Criminal Court of the Judicial Section of Tegucigalpa, Department Francisco Morazán, on File 42,334-09, October 20, 2009.

¹⁷ First Appeals Court of the Department Francisco Morazán (Corte Primera de Apelaciones del departamento de Francisco Morazán), Notice (cédula de notificación) on File 508-09, December 10, 2009. After a final appeal by the prosecutor (recurso de reposición), the court upheld its decision in January 2010. First Appeals Court of the Department Francisco Morazán (Corte Primera de Apelaciones del departamento de Francisco Morazán), Notice (cédula de notificación) on File 508-09 R, January 14, 2010. At the time of this writing, an appeal is pending before the Supreme Court of Justice. Constitutional appeal (acción constitucional de amparo) presented by Carlos Roberto Flores Chávez, prosecutor in the Human Rights Unit, before the Supreme Court of Justice of the Republic of Honduras, March 15, 2010.

¹⁸ Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010.

¹⁹ Ibid.

²⁰ Ibid.

the place where they were assigned, and the number of years they had worked in the force, arguing that the information was “urgently needed” for a criminal investigation.²¹ According to the prosecutor in charge of the case, several police officers unofficially identified all the officers involved. But it took the human resources office of the Ministry of Security a month and a half to identify anyone, and even then it named only two of the four people in the video.²²

32. Another incident involves police officers accused of violently dispersing a demonstration in the central park of San Pedro Sula on November 29, 2009. A prosecutor requested several times that police authorities provide information on the officers sent to the park, as well as those in charge of the operation, including their names and ranks, the type of weapons they carried, and the numbers on their helmets and jackets. The legal advisor of the national police and a police commissioner responded to the first requests stating they were not the competent authority to provide the information.²³ As of August 2010, prosecutors had still not received the requested information.²⁴

²¹ Human Rights Unit of the Attorney General’s Office, Document FEDH 496-2010 (Oficio FEDH 496-2010), June 2, 2010; Human Rights Unit of the Attorney General’s Office, Document FEDH 698-2010 (Oficio FEDH 698-2010), July 29, 2010.

²² Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010.

²³ Letter from Danelia Ferrera Turcios, general director of prosecutors (directora general de fiscalías) at the Attorney General’s Office, to Commissioner Manuel Fuentes Aguilar, national director of the preventive police force, August 19, 2010. The letter mentions five previous information requests sent by prosecutors of the Human Rights Unit requesting the same information.

²⁴ Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General’s Office, San Pedro Sula, August 27, 2010.

Denying Access to Military Installations

33. On September 30, 2009, Captain Carlos Roberto Rivera Cardona denied prosecutors access to the Communications Battalion in Las Mesas, municipality of San Antonio. Prosecutors intended to verify if the broadcasting equipment of Radio Globo and Channel Cholutec Sur, which had been confiscated two days earlier by military and police officers, was being kept at the battalion. Captain Rivera told prosecutors that the equipment was not there, and that they required authorization from high level military officials (*Estado Mayor Conjunto*) to enter the military installation. According to prosecutors of the Human Rights Unit, such authorization is not required. As of December 2010, Captain Rivera was under criminal investigation for not cooperating with prosecutors.²⁵

Threatening Prosecutors

34. Immediately after the coup, in at least two instances military officers threatened human rights prosecutors who were doing their job. On June 29, 2009, a prosecutor who was monitoring developments outside the Presidential Palace noticed that military officers were beating an elderly woman. He immediately requested that the men stop. A captain who was nearby walked up to the prosecutor and threatened to beat him.²⁶

35. Another example occurred in early July 2009 when prosecutors investigating the closure of Radio El Progreso sought to enter a military battalion to review records

²⁵ Human Rights Unit of the Attorney General's Office, Charges filed on Case 0801-2010-21216 (Requerimiento Fiscal en Expediente 0801-2010-21216), June 30, 2010. Judge 19 of the Criminal Court of Tegucigalpa (Juzgado de Letras Penal de la Sección Judicial de Tegucigalpa, departamento de Francisco Morazán) is in charge of the case.

²⁶ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010.

that would have the names of the military officers who closed the radio station. At that time, an army officer told a prosecutor of the Human Rights Unit, “I wish I were in the Cold War, the days of Pinochet, the days when you could just disappear (someone).” The prosecutor interpreted this as a direct threat.²⁷

Lack of Sufficient Resources

36. The Human Rights Unit’s ability to investigate the post-coup cases has been severely hampered by lack of resources, a problem that has plagued the unit since its creation in 1994. With little funding for personnel, vehicles, and expenses, prosecutors have been “totally overwhelmed,” according to Sandra Ponce, the head of the unit.²⁸

37. The 2010 annual budget for the Human Rights Unit was US\$500,000. According to Ponce, most of the budget is spent on salaries. As of December 2010, the unit staff consisted of 15 prosecutors, 10 based in Tegucigalpa and five in San Pedro Sula.²⁹

38. In 2010, all of the prosecutors in the Human Rights Unit shared two cars (one in each city) to work on all cases.³⁰ In August 2010, the Ministry of Security offered the unit a second car to be used in Tegucigalpa—but prosecutors had to rent it and only had

²⁷ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General’s Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010. The officer said: “Ojala que estuviera en la guerra fria, los dias de Pinochet, los dias cuando podrias desaparecer (a alguien)”.

²⁸ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General’s Office, and with Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010.

²⁹ Ibid. The director of the San Pedro Sula office told Human Rights Watch that there were seven prosecutors in his office. Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General’s Office, San Pedro Sula, August 27, 2010.

³⁰ Ibid.

access to it for a month.³¹ Prosecutors say they need the cars to get to crime scenes promptly, provide transportation to witnesses or victims who would otherwise be unable to cooperate with them, and transport forensic experts to analyze evidence.³²

39. Another major problem is that the Human Rights Unit lacks sufficient investigators to support the work of prosecutors. The Ministry of Security told Human Rights Watch that there were 40 investigative police officers assisting human rights prosecutors.³³ However, according to the Human Rights Unit, the ministry provided the unit with only eight investigators (six based in Tegucigalpa and two in San Pedro Sula).³⁴ Even if the ministry figure were correct, investigative police officers lack the independence necessary to conduct rigorous investigations into police and military misconduct, a subject addressed above.

40. Other specialized units do not face such limitations. The unit in charge of investigating crimes against women, for example, had a budget in 2010 of \$1.35 million. In 2010, it had 46 prosecutors, who work with 15 independent investigators and several

³¹ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 28, 2010.

³² Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit, Tegucigalpa, October 28, 2010; Human Rights Watch telephone interview with Jaime Ramos, prosecutor in the Human Rights Unit, Tegucigalpa, October 27, 2010.

³³ Human Rights Watch telephone interview with General Commissioner Marco Tulio Palma Rivera, director of the National Directorate of Criminal Investigations, Tegucigalpa, September 10, 2010.

³⁴ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010. The director of the San Pedro Sula office told Human Rights Watch that they had only one investigator working with them. Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

psychologists. Prosecutors in this unit had nine cars at their disposal in different locations throughout the country.³⁵

41. The lack of resources in the Human Rights Unit has become more urgent since the coup, given the substantial increase in the unit's workload. According to Ponce, the unit received approximately 250 more cases in the second half of 2009 than in the first half of the year. As of December 2010, each human rights prosecutor handled an average of 400 cases, including many dating from before the coup.³⁶

42. In October 2010, the Honduran Congress approved a three-fold increase in the Human Rights Unit's budget, which was supposed to be effective in April 2011, raising it to 31 million lempiras (\$ 1.63 million). According to the spending plan presented by the Human Rights Unit to President Lobo, who submitted it to Congress, once the funds were available, the Human Rights Unit should be able to hire approximately 20 independent investigators to work with prosecutors, eight additional prosecutors, three psychologists, three doctors, and three social workers; open an office in La Ceiba; buy 10 additional vehicles; and purchase a camera to take pictures and film to produce evidence.³⁷

43. As of October 2011, according to Ponce, the Unit had yet to receive the totality of the funds approved for 2011. The Attorney General's Office had only

³⁵ The 2009 budget of the women's rights unit was 9,575,000 lempiras from the regular budget and 16,000,000 from a special fund to investigate murders of women. Human Rights Watch email correspondence with Ela Paredes and Danelia Ferreira, general director of prosecutors (directora general de fiscalías) at the Attorney General's Office, September 17 and 22, 2010.

³⁶ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010.

³⁷ Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 28, 2010; Human Rights Watch email correspondence with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, October 29, 2010.

authorized the unit to hire two independent investigators, and it had offered to rent six additional vehicles for human rights prosecutors to use.³⁸

Inadequate Implementation of a Witness Protection Program

44. In 2007, the Honduran Congress passed a law creating a Witness Protection Program to increase the likelihood that eyewitnesses would be willing to give testimony in criminal cases.³⁹ But the office in charge of implementing the Witness Protection Program still has no resources specifically assigned to it.

45. The 2007 law establishes, among other measures, that individuals who participate in the Witness Protection Program may be relocated, offered a new identity, or assigned police protection; in some circumstances, cases are to be heard on an expedited basis to minimize the threats they face.⁴⁰ The program would be implemented by a director, regional units, and an advisory council (composed of the attorney general, the general director of prosecutors, and the director of the Witness Protection Program).

46. In December 2010—three years after the law was passed—the program staff consisted of only two people (a director and a driver). The Attorney General’s Office had

38 Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General’s Office, October 26, 2011.

39 Law to Protect Witnesses in Criminal Procedures (Ley de Protección a Testigos en el Proceso Penal), July 18, 2007,

<http://www.poderjudicial.gob.hn/NR/rdonlyres/E3AA256D-FC8A-4397-91FB->

8F41558A1581/1129/LeydeProteccionaTestigosenelProcesoPenal.pdf (accessed November 1, 2011).

40 Law to Protect Witnesses in Criminal Procedures, arts. 11 and 12.

been using limited funds that were intended to cover other costs to implement the program.⁴¹

47. Due to this lack of resources, the Witness Protection Program has failed to provide adequate protection to witnesses in human rights cases. For example, the director of the Human Rights Unit in San Pedro Sula told Human Rights Watch that they had requested protection in two serious cases in 2009, but both requests were denied because the Witness Protection Program lacked sufficient resources.⁴² According to the prosecutor, both women who were denied protection were “indispensable” to build the cases and faced “a high risk for [their] life and physical integrity.”⁴³

48. In one case, a prosecutor sought protection for a woman who claimed she had been raped in her home by a police officer on August 31, 2009. The prosecutor had been able to identify three suspects, all of whom were active members of the police and constantly threatened the woman.⁴⁴ In the other case, a prosecutor requested protection for a woman who was detained by police officers while she was participating in a

⁴¹ Human Rights Watch telephone interview with Yuri Manuel Moreno Gallegos, director of the Witness Protection Program, Tegucigalpa, October 6, 2010; Human Rights Watch telephone interview with Danelia Ferrera, general director of prosecutors (directora general de fiscalías) at the Attorney General’s Office, Tegucigalpa, September 7, 2010.

⁴² Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General’s Office, San Pedro Sula, August 27, 2010.

⁴³ Memorandum “FERDH-355-09” from Johnny Bladimir Dubon, prosecutor in the Human Rights Unit, to Yuri Manuel Moreno, director of the Witness Protection Program, November 18, 2009; Memorandum “FERDH-354-09” from Johnny Bladimir Dubon, prosecutor in the Human Rights Unit, to Yuri Manuel Moreno, director of the Witness Protection Program, November 18, 2009.

⁴⁴ Memorandum “FERDH-355-09” from Johnny Bladimir Dubon, prosecutor in the Human Rights Unit, to Yuri Manuel Moreno, director of the Witness Protection Program, November 18, 2009.

demonstration on August 14, 2009, driven to an undisclosed location, and raped. The prosecutor had identified four suspects, all of whom were active members of the police.⁴⁵

49. According to prosecutors in the Human Rights Unit, witnesses are generally afraid of suffering reprisals if they testify against the police or the military.⁴⁶ Ponce, the head of the Human Rights Unit, stated that an adequate Witness Protection Program would be a very useful tool to help convince witnesses to testify in cases that the unit is currently investigating.⁴⁷ As of October 2011, according to Ponce, the situation had not changed.⁴⁸

B. Independence of the Judiciary Compromised

The Supreme Court's Support of the Coup

50. In the wake of the 2009 coup, the Honduran Supreme Court issued strong public statements declaring that the military's actions on June 28 had been legal.⁴⁹ These

⁴⁵ Memorandum "FERDH-354-09" from Johnny Bladimir Dubon, prosecutor of the Human Rights Unit, to Yuri Manuel Moreno, director of the Witness Protection Program, November 18, 2009.

⁴⁶ Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

⁴⁷ Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 28, 2010.

⁴⁸ Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 26, 2011.

⁴⁹ The day of the coup, the Supreme Court issued a press release stating that, given that a court had ordered the military to stop the executive's attempt to carry out a national poll that day, "the Armed Forces, defending the Constitution, have acted in defense of the rule of law, forcing the fulfillment of the law by those who have publicly stated and acted against ... the Constitution." In addition, the press release states that, "if the origin of the acts that occurred today is a judicial order issued by a competent judge, carrying out [these measures is the consequence of] ... existing legal norms." Judicial Branch of the Nation (Poder Judicial de la Nación), Press Release, June 28, 2009. On June 30, the Court issued another press release explaining the judicial process that led to the events of June 28. The Court argued that on June 26, a lower court had ordered the Armed Forces to "suspend all activities related to a consultation that would take place on June 28, and to proceed to seize all materials to be used in the previously declared illegal consultation."

statements avoided any specific reference to the fact that the military forcibly flew President Zelaya out of Honduras, forcing him into exile, which was the reason military leaders could claim that there was a power vacuum that they had a duty to fill.

51. The Supreme Court's statements justified the creation of the de facto government, arguing that the appointment of Roberto Micheletti constituted a "constitutional succession of power." In a meeting with Human Rights Watch in August 2010, members of the Supreme Court claimed that those statements had merely recognized the fact that "the president was out of the country, for whatever reason" and that under those circumstances, according to the Constitution, the appointment of the president of Congress as the president of the Republic was "a constitutional succession of power."⁵⁰

52. In September 2009 the Supreme Court failed to resolve in a timely manner appeals challenging the constitutionality of an executive decree of the de facto government that limited basic rights. On September 28, two days after the decree was issued, several people presented an appeal challenging its constitutionality, arguing that it limited freedom of expression by broadly and unjustifiably prohibiting all public statements that offend human dignity, public officials, or "run counter the law or government decisions." Over ten additional appeals were subsequently presented before

It also stated that on June 26, the Court had ordered the military to detain Zelaya, who had been accused by the attorney general of committing several crimes, including treason and abuse of authority. Supreme Court of Justice of the Republic of Honduras, Special Press Release, June 30, 2009. See also Supreme Court of Justice of the Republic of Honduras, Press Release, July 20, 2009.

⁵⁰ Human Rights Watch interview with Justice Jorge Rivera Aviles, president of the Supreme Court of Justice of the Republic of Honduras, Justice Rosa de Lourdes Paz Haslam, Justice José Tomás Arita Valle, and Justice José Antonio Gutiérrez Navas, Tegucigalpa, August 25, 2010.

the court. According to Honduran law, courts must resolve constitutional appeals that deal with purely legal issues within three days.⁵¹ But the Supreme Court waited more than three weeks—and only after the executive branch itself revoked the decree—to resolve the appeals, ruling that they lacked merit precisely because the decree was no longer in force.⁵²

Abusing Disciplinary Powers

53. After the coup, the Supreme Court applied a double standard when it used its disciplinary powers. It fired four judges who opposed the coup, arguing that judges may not get involved in politics. But it failed to sanction judges who supported the appointment of Roberto Micheletti as the de facto president of Honduras, despite the fact that those statements were as “political” as statements questioning the coup.

54. During the de facto government, the Supreme Court opened administrative investigations into the statements and actions of four judges who opposed the coup.⁵³ It investigated:

Tirza del Carmen Flores Lanza, magistrate of the San Pedro Sula Court of Appeals, for presenting a constitutional appeal challenging the ouster of former

⁵¹ Law on Constitutional Appeals (Ley de Amparo), art. 29.

⁵² Supreme Court of Justice of the Republic of Honduras, Report by Daniel Arturo Sibrian Bueso, secretary of the Constitutional Chamber, to Justice Jose Antonio Gutiérrez Nava, president of the Constitutional Chamber, August 26, 2010; Information provided to Human Rights Watch by Justice Gutiérrez Nava, September 20, 2010.

⁵³ The four judges are members of the Association of Judges in favor of Democracy (Asociación de Jueces por la Democracia), a nongovernmental organization that openly criticized the coup.

President Zelaya, and for formally requesting that the Attorney General's Office investigate government authorities involved in the coup.⁵⁴

Ramón Enrique Barrios, lower court judge in San Pedro Sula and constitutional law professor at the University of San Pedro Sula, for stating in an academic conference that what happened on June 28 had been a coup d'état.⁵⁵ The investigation began after a newspaper reproduced his statements in its print edition.⁵⁶

Luis Alonso Chévez de la Rocha, judge in the Special Tribunal against Domestic Violence in the Department of Cortes, for participating in a demonstration on August 12, 2009, in which he asked police officers to stop beating protesters.⁵⁷

⁵⁴ Human Rights Watch interview with Tirza del Carmen Flores Lanza, San Pedro Sula, August 26, 2010; Deputy Directorate of Personnel, Judicial Career, "Notice" (Cedula de Citacion), November 20, 2009. The constitutional appeal, presented by seven individuals, argued that the events of June 28 had violated several constitutional guarantees, including the right of all Hondurans not to be extradited out of the country (provided for in article 102 of the Honduran Constitution). Constitutional Appeal (Recurso de Amparo), June 30, 2009. The request to investigate government officials was presented by 14 people. Request for investigation (Denuncia), June 30, 2009. Judge Guillermo López Lone also signed both documents, but was not investigated for having done so. Copy on file at Human Rights Watch. The Court held that Flores was out the office that day without permission; litigated a case, which judges are not allowed to do; gave the court's address to receive notifications about the case; presented a complaint before the Attorney General's Office; and commented on decisions adopted by other judicial bodies and the Supreme Court. Supreme Court of Justice of the Republic of Honduras, Document No. 1181-SCSJ-2010 (Oficio No. 1181-SCSJ-2010), June 4, 2010. Flores appealed the Supreme Court's decision before the Council on Judicial Careers on June 30, 2010.

⁵⁵ Human Rights Watch telephone interview with Ramón Enrique Barrios, San Pedro Sula, May 12, 2010; Human Rights Watch interview with Ramón Enrique Barrios, San Pedro Sula, August 26, 2010; Deputy Directorate of Personnel, Judicial Career, "Notice" (Cedula de Citacion), October 27, 2009. The Court held that judges may only discuss current events with their students from a legal point of view, but this right "does not extend to audiences other than duly registered students." According to the Court, his decision to accept an invitation to participate in "events that could lead to altering public order" and to authorize a newspaper to reproduce his statements were incompatible with the honor of being a judge. Supreme Court of Justice of the Republic of Honduras, Oficio No. 1291-SCSJ-2010, June 16, 2010. Barrios appealed the Supreme Court's decision before the Council on Judicial Careers on June 30, 2010.

⁵⁶ Opinion of Ramón Enrique Barrios (Opinion de Ramón Enrique Barrios), "There was no constitutional succession" (No hubo sucesión constitucional), *Tiempo*, August 28, 2009.

⁵⁷ Human Rights Watch telephone interview with Luis Chévez, San Pedro Sula, May 12, 2010; Human Rights Watch interview with Luis Chévez, San Pedro Sula, August 26, 2010; Deputy Directorate of Personnel, Judicial Career, "Notice" (Cedula de Citacion), October 27, 2009.

Chávez was detained for six hours for his behavior during the demonstration, until a judge ordered his release, stating that his detention had been arbitrary.⁵⁸

Guillermo López Lone, lower court judge in San Pedro Sula, for participating in a demonstration against the coup near the Tegucigalpa airport on July 5, 2009, the day President Zelaya was supposed to return to Honduras.⁵⁹

55. The Supreme Court fired the four judges in May 2010 (10 justices voted in favor of firing them, and 5 voted against),⁶⁰ and notified the judges of the decision the following month.⁶¹ The judges filed appeals with the Council of the Judicial Careers,

The Court held that Chávez had not fulfilled his obligations as a judge when he participated in “acts that alter public order” and for having “provoked discussions with fellow judicial officials... for his political position regarding the facts that occurred in the country.” Supreme Court of Justice of the Republic of Honduras, Document No. 1183-SCSJ-2010 (Oficio No. 1183-SCSJ-2010), June 4, 2010. Chávez appealed the Supreme Court’s decision before the Council on Judicial Careers on June 30, 2010.

⁵⁸ Decision adopted by Judge Katya Sánchez Martínez (Juez ejecutor), San Pedro Sula, Cortes, August 12, 2009.

⁵⁹ Human Rights Watch telephone interview with Guillermo López Lone, San Pedro Sula, May 12, 2010; Human Rights Watch interview with Guillermo López Lone, San Pedro Sula, August 26, 2010; Deputy Directorate of Personnel, Judicial Career, “Notice” (Cedula de Citacion), November 24, 2009. The Court held that a statement López made during the administrative hearing differed from the information he had included in an insurance document, which violated his obligation to act independent and impartially. Supreme Court of Justice of the Republic of Honduras, Document No. 1290-SCSJ (Oficio No. 1290-SCSJ), June 16, 2010. According to information reviewed by Human Rights Watch, there was no such discrepancy. During the administrative hearing, López said he had broken his leg when demonstrators started to run after the military opened fire to disperse the demonstration. And in the insurance document, López had one line to explain the facts and said that he “was walking, fell, injured [his] knee and could no longer walk.” López appealed the Supreme Court’s decision before the Council on Judicial Careers on June 30, 2010.

⁶⁰ Secretariat of the Supreme Court of Justice of the Republic of Honduras, Certified Copy of Document 24 (describing the court’s deliberations on May 5-7, 2010), June 25, 2010.

⁶¹ Supreme Court of Justice of the Republic of Honduras, Document No. 1181-SCSJ-2010 (Oficio No. 1181-SCSJ-2010), June 4, 2010; Supreme Court of Justice of the Republic of Honduras, Document 1290-SCSJ (Oficio No. 1290-SCSJ-2010), June 16, 2010; Supreme Court of Justice of the Republic of Honduras, Document 1291-SCSJ-2010 (Oficio No. 1291-SCSJ-2010), June 16, 2010; Supreme Court of Justice of the Republic of Honduras, Document 1183-SCSJ-2010 (Oficio No. 1183-SCSJ-2010), June 4, 2010; Human Rights Watch interview with Justice Jorge Rivera Aviles, president of the Supreme Court of Justice of the Republic of Honduras, Justice Rosa de Lourdes Paz Haslam, Justice José Tomás Arita Valle, and Justice José Antonio Gutiérrez Navas, Tegucigalpa, August 25, 2010. In addition to the appeals before the Council

which upheld the dismissals of Flores Lanza and López Lone but decided that Chévez de la Rocha was improperly fired. However, the Council did not order that he be reinstated to his position.⁶²

56. Three United Nations human rights experts issued a joint statement criticizing the Court's decision.⁶³ The joint statement notes that, "none of the resolutions [firing the judges] ... includes legal arguments that explain why the conduct under investigation was serious" and that the removal of the judges, "appears to be related to their public opposition to the events that occurred during the political crisis of June 2009."⁶⁴

57. The president of the Supreme Court and four other justices told Human Rights Watch that the four judges were not fired for opposing the coup, but rather for

on Judicial Careers, the four judges took their case to the Inter American Commission on Human Rights in July. Letter signed by the four judges and representatives of the non governmental organization CEJIL to Santiago Canton, executive director of the Inter American Commission on Human Rights, July 5, 2010.

⁶² In August 2011, the Council of the Judicial Career rejected the appeals by Judges Flores Lanza and López Lone, and although it decided that Justice Chévez de la Rocha was improperly fired and was entitled to be paid the salary he would have earned had he not been fired, it did not order his reinstatement. As Justice Barrios Maldonado, did not personally appear before the Council, a copy of the resolution in his case was not made available the same day as the decisions in relation to the other judges, and Human Rights Watch does not know the Council's decision in his case. Human Rights Watch email communication with Tirza Flores Lanza, October 18, 2011.

⁶³ The Special Rapporteur on the Independence of Judges and Lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the Situation of Human Rights Defenders issued a joint statement on July 29, 2010.

⁶⁴ According to the experts, "this would represent an inadmissible attack against the independence of Honduran judges and magistrates, as well as to the freedoms of opinion, expression, assembly, and association..." Joint press release by the Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers; Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders, "Firing of Judges in Honduras sends an intimidating message to the Judiciary, warn UN experts" (Despido de jueces en Honduras envía mensaje intimidatorio al Poder Judicial, advierten expertos de la ONU), July 29, 2010, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10235&LangID=S> (accessed November 1, 2011).

participating in politics, which is prohibited by Honduran law.⁶⁵ The Constitution states that judges “may not participate for any reason in any type of partisan activities.”⁶⁶ And the Law on the Organization and Attributions of Courts states that judicial authorities may not participate “in meetings, demonstrations, or other political acts, even if other citizens are allowed to do so.”⁶⁷

58. According to the four judges, their criticism of the coup was not a “partisan” or “political” act because they were advocating for the return of the rule of law.⁶⁸ When judges are sworn in, they promise “to be faithful to the Republic, [and] to comply with and to enforce the Constitution and the laws.”⁶⁹ The judges told Human Rights Watch that they opposed the coup as citizens who wanted to restore the country’s constitutional order.⁷⁰

59. In any case, if the Court was in fact attempting to sanction judges who, in broad terms, participated in politics, it should have also sanctioned all the judges who openly supported the coup. For example, on July 6, 2009, Judge Norma Iris Coto, head of

⁶⁵ Human Rights Watch interview with Justice Jorge Rivera Aviles, president of the Supreme Court of Justice of the Republic of Honduras, Justice Rosa de Lourdes Paz Haslam, Justice José Tomás Arita Valle, and Justice José Antonio Gutiérrez Navas, Tegucigalpa, August 25, 2010.

⁶⁶ Constitution of the Republic of Honduras, art. 319.

⁶⁷ Law on the Organization and Attributions of Courts (Ley de Organización y Atribuciones de los Tribunales), art. 3 (6).

⁶⁸ Human Rights Watch interview with Guillermo López Lone, Tirza Flores, Luis Chévez, and Ramón Barrios, San Pedro Sula, August 26, 2010.

⁶⁹ Constitution of the Republic of Honduras, art. 322.

⁷⁰ Constitution of the Republic of Honduras, art. 2: “supplanting popular sovereignty and usurping constituted powers constitutes treason. The responsibility in these cases is not subject to statutes of limitation and may be deduced ab officio or per request of any citizen.” Constitution of the Republic of Honduras, art. 3: “No one must obey an usurping government, nor those who assume functions or public positions by force or using medium or procedures that violate... this Constitution and the laws... The people have a right to recur to insurrection to defend the constitutional order.”

the Association of Judges and Magistrates of Honduras (*Asociación de Jueces y Magistrados de Honduras*, ASOJMAH), told the newspaper *La Prensa* that, “in the end the world will understand that what happened in Honduras [on June 28] was, strangely, the restoration of constitutional order.”⁷¹ ASOJMAH, which has approximately 500 members, also issued a press release stating that the acts carried out by the Armed Forces and the police on June 28 “were based on judicial orders from competent authorities” and their purpose was to uphold judicial rulings that the executive had ignored.⁷²

60. But the Court did not sanction Judge Coto or other coup supporters. According to the Court itself, of the 25 judges dismissed in 2009 and 2010, only Flores Lanza, López Lone, Barrios, and Chévez de la Rocha were sanctioned for statements or actions related to the events of June 28, 2009.⁷³ The Inter-American Commission on Human Rights found that several judges and magistrates who publicly supported the coup were not subject to similar investigations.⁷⁴

⁷¹ “Le salió mejor no estar acá” (It was better for him not to be here), *La Prensa*, July 6, 2009. “Ya no era presidente cuando fue detenido” (He was no longer president when he was detained), *La Prensa*, July 7, 2009.

⁷² Statement by the ASOJMAH, undated; Documentation in Human Rights Watch’s offices; The current president of ASOJMAH denied they had issued a statement on the events of June 28, 2009. Human Rights Watch telephone interview with Teodoro Bonilla, president of ASOJMAH, Tegucigalpa, September 30, 2010.

⁷³ Supreme Court of Justice of the Republic of Honduras, “List of documents-decisions of removal of magistrates of appeals courts and judges, 2009-2010” (Relación de oficios-acuerdos de cancelación de Magistrados-Magistradas de Cortes de Apelaciones, Jueces y Juezas, Años 2009-2010), undated; Information sent to Human Rights Watch via international courier, received on September 20, 2010.

⁷⁴ Inter-American Commission on Human Rights (IACHR), “Preliminary Observations of the Inter-American Commission on Human Rights about its visit to Honduras on May 15-18, 2010,” June 3, 2010, <http://cidh.org/pdf%20files/HondurasObservacionesVisitaCIDH2010.pdf> (accessed November 1, 2011), para. 84.

61. The Court also appeared to issue an open invitation to participate in demonstrations supporting the coup. On June 30, 2009, Sandra Lizeth Rivera Gallo, head of human resources of the Supreme Court distributed via email an invitation to all judges and employees of the judiciary to participate in a pro-coup march in Honduras.⁷⁵ Rivera Gallo claimed she had received orders from the secretary of the Supreme Court president to distribute the email.⁷⁶ Supreme Court justices told Human Rights Watch, however, that the decision to distribute the invitation did not come from the Court and that they had initiated an administrative investigation into Rivera Gallo's responsibility for sending out the invitation.⁷⁷

III. Ongoing Attacks

62. For a report published in December 2010, Human Rights Watch documented 18 cases in which journalists, human rights defenders, and political activists were killed since President Lobo took office in January 2010. The report also describes credible reports we received in 29 cases in which journalists, human rights defenders, and political

⁷⁵ The invitation reads: "Based on instructions from above, public officials and employees of the judicial branch are invited to participate in the "March for the Peace in Honduras" that will take place in the central park of Tegucigalpa, today, Tuesday, June 30, 2009, between 9:30 a.m. and 1 p.m." IACHR, "Preliminary Observations of the Inter-American Commission on Human Rights about its visit to Honduras on May 15-18, 2010," para. 83.

⁷⁶ Judicial Branch, Directorate of Personnel (Dirección de Administración de Personal), "Statement" (Manifestación), April 12, 2010.

⁷⁷ Human Rights Watch interview with Justice Jorge Rivera Aviles, president of the Supreme Court of Justice of the Republic of Honduras, Justice Rosa de Lourdes Paz Haslam, Justice José Tomás Arita Valle, and Justice José Antonio Gutiérrez Navas, Tegucigalpa, August 25, 2010.

activists had been threatened or attacked.⁷⁸ Information collected by local human rights organizations suggests the number of attacks could be significantly higher.⁷⁹

63. Despite repeated requests, Human Rights Watch was unable to obtain complete information directly from Honduran authorities as to the status of the investigations in the majority of these cases. However, available information suggests that little or no progress has been made; thus, in most of the cases, it was not possible to determine whether the attacks or threats were politically motivated or whether there was any official involvement.

64. In the majority of the cases, there is circumstantial evidence—including explicit statements by the perpetrators in some instances—that suggests that the victims

⁷⁸ See Human Rights Watch, “After the Coup: Ongoing Violence, Intimidation, and Impunity in Honduras,” December 2010.

⁷⁹ According to the Committee of Family Members of the Disappeared in Honduras (Comité de Familiares Detenidos-Desaparecidos de Honduras, COFADEH), between January 30 and July 31, 2010, there were 23 politically motivated killings, 8 journalists killed, 92 death threats, including 59 against human rights defenders, and 76 instances of intimidation or persecution. COFADEH, “Human rights violations in Honduras not only continue in the aftermath of the coup... they are too many” (Violaciones a DDHH en Honduras no solo continúan en la continuidad del golpe... son demasiado), August 30, 2010, p. 13. See also Human Rights Platform (Plataforma de Derechos Humanos), “Press Release,” August 26, 2010, http://www.defensoresenlinea.com/cms/documentos/Plataforma_DDHH_Comunicado_26_agosto_2010.pdf (accessed November 1, 2011). The members of the Human Rights Platform are leading human rights non governmental organizations in Honduras: Center for the Rights of Women (Centro de Derechos de Mujeres, CDM), Center to Investigate and Promote Human Rights (Centro de Investigación y Promoción de los Derechos Humanos, CIPRODEH), Committee for the Defense of Human Rights in Honduras (Comité para la Defensa de los Derechos Humanos en Honduras, CODEH), COFADEH, Center for the Prevention, Treatment, and Rehabilitation of Torture Victims and their Families (Centro de Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares, CPTRT), and Food First Information & Action Network (FIAN) – Honduras. COFADEH, “There is a systematic state policy of violating human rights” (Existe una política de Estado de violación sistemática a los derechos humanos), August 6, 2010. Defensoresenlinea.com, “Criminalization and Lack of Protection surrounds the lives of human rights defenders” (Criminalización e indefensión rodean la vida de los defensores y defensoras de ddhh), April 13, 2010, http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=696:criminalizacion-e-indefension-rodean-la-vida-de-los-defensores-y-defensoras-de-ddhh&catid=71:def&Itemid=166.

have been targeted because of their political views. Whatever the motive of the attacks and threats, the cumulative effect has been to generate a climate of fear that has had a chilling effect on the exercise of basic rights in Honduras.

Lack of Adequate Protection

65. Since the coup, the IACHR has issued “precautionary measures” (*medidas cautelares*) ordering the government of Honduras to provide protection to over 150 journalists, human rights defenders, coup opponents, and their families. This includes at least 14 cases arising since President Lobo took office.⁸⁰

66. In June 2010, the commission emphasized that efforts by Honduras to comply with these measures have been “few, late in coming, and in some cases nonexistent.”⁸¹ As evidence of the government’s ineffective compliance, the commission cited the case of Nahúm Palacios, a journalist who was killed after the commission had requested that the Honduran government protect him.

67. In August 2010, Ana Pineda, the human rights advisor to President Lobo at the time, told Human Rights Watch that the major difficulties in implementing protective measures were identifying the victim, determining where he or she lives, and establishing what sort of protection the person needs. According to Pineda, after the government issued a public invitation in three major newspapers asking individuals who had been granted precautionary measures to present themselves to obtain protection, officials were

⁸⁰ IACHR, “Precautionary Measures granted in Honduras. June 28, 2009 to date” (*Medidas Cautelares otorgadas en Honduras. 28 de junio de 2009 hasta la fecha*), <http://www.cidh.org/medidas/2010Hond.sp.htm> (accessed November 1, 2011).

⁸¹ IACHR, “Preliminary Observations of the Inter-American Commission on Human Rights about its visit to Honduras on May 15-18, 2010,” para. 71.

able to reach agreement with 217 such individuals as to what sort of protection the government would provide. At the time, she said that the government still had not provided protection to another 96 people who had been granted precautionary measures by the IACHR but with whom the government had yet to reach an agreement.⁸²

68. In October 2010, however, four NGOs representing almost 200 people granted precautionary measures by the IACHR reported that two people who should have received protection had been killed, 35 had received death threats, and nine had fled Honduras with their families.⁸³

69. Representatives from Honduran human rights organizations that brought the cases to the IACHR also told Human Rights Watch in 2010 that the protection provided by the government had been inadequate, and that many victims said they did not trust the police to protect them. In one case, a victim was given a phone number to call in case it was necessary to contact the police, but when he called, no one answered the phone.⁸⁴ In another instance, a person who was supposed to receive police protection had to wait for an hour at the police station for the officer who was to provide a police escort. When the officer arrived and the victim offered him water, the officer responded he did not want anything “from coup-plotters.”⁸⁵

⁸² Human Rights Watch interview with Ana Pineda, human rights advisor to President Porfirio Lobo, Tegucigalpa, August 25, 2010.

⁸³ “CEJIL: The government of Honduras does not respect the IACHR” (CEJIL: El Estado de Honduras irrespeto la CIDH), Radio El Progreso, October 29, 2010.

⁸⁴ Human Rights Watch interview with Bertha Oliva, president of COFADEH, Tegucigalpa, August 24, 2010.

⁸⁵ Human Rights Watch interview with Andrés Pavón, president of CODEH, Tegucigalpa, August 24, 2010.

Chilling Effect

70. The Human Rights Watch report published in December 2010 documented that the ongoing killings, threats, and attacks had generated a climate of fear and intimidation that undermined the exercise of basic rights in Honduras.

71. According to Leo Valladares, a human rights defender and formerly the national ombudsman of Honduras, these cases reflected a broader chilling effect on Honduran society. Even though there was still active civil society participation in political affairs, the threats and attacks generated fear, which inhibited journalists and defenders from doing their work.⁸⁶ Similarly, Father Ismael Moreno told Human Rights Watch that the killings of journalists had led to self-censorship.⁸⁷ According to Osman López, president of C-Libre, an NGO that monitors freedom of expression in Honduras, this was particularly evident in rural areas, where most of the killings of journalists took place.⁸⁸

IV. Honduras's Obligations under International Law

A. Obligation to Deter, Prevent, and Investigate Abuses

72. Honduras is party to several international treaties that impose an obligation to respect, protect, and fulfill human rights listed in the treaties.⁸⁹ Those same treaties also

⁸⁶ Human Rights Watch telephone interview with Leo Valladares, director of the Association to Promote Participatory Citizenship (Asociación para una Ciudadanía Participativa), Tegucigalpa, October 27, 2010.

⁸⁷ Human Rights Watch email correspondence with Father Ismael Moreno, October 28, 2010.

⁸⁸ Human Rights Watch email correspondence with Osman López, president of C-Libre, October 30, 2010.

⁸⁹ Parts of this section were previously published in Human Rights Watch, *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations*, April 2009.

impose on the Honduran state the obligation to deter and prevent violations of those rights, to investigate and prosecute offenders, and to provide remedies to victims.⁹⁰

73. The obligation to deter and prevent is, in part, a corollary to the obligation to respect, protect, and fulfill the human rights, reflecting the view that effective protection and prevention require investigation and punishment. The IACHR, for example, has held that “the State has the obligation to use all the legal means at its disposal to combat [impunity], since impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives.”⁹¹

74. The duty to investigate and punish also derives from the right to a legal remedy that these treaties extend to victims of human rights violations. Under international law, governments have an obligation to provide victims of human rights abuses with an effective remedy, including justice, truth, and adequate reparations. Under the International Covenant on Civil and Political Rights (ICCPR), governments have an obligation “to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.”⁹² The ICCPR imposes on states the duty to

⁹⁰ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Honduras on August 25, 1977. American Convention on Human Rights (ACHR) (“Pact of San Jose, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), ratified by Honduras on October 5, 1977; UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Honduras on April 16, 1996, arts. 2(1), 11, 16.

⁹¹ Inter-American Court of Human Rights, Paniagua Morales et al., Judgment of March 8, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 37 (1998), para. 173.

⁹² ICCPR, art. 2(3)(a).

ensure that any person shall have their right to an effective remedy “determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”⁹³

75. At the regional level, the American Convention on Human Rights (ACHR) states that every individual has “the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”⁹⁴ The IACHR has held that this right imposes an obligation upon states to provide victims with effective judicial remedies.⁹⁵

⁹³ ICCPR, art. 2 (3)(b). Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, principle II.3.(d): “The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (d) Provide effective remedies to victims, including reparation, as described below.”

⁹⁴ ACHR, art. 25. Similarly, the Inter-American Convention to Prevent and Punish Torture requires states to “take effective measures to prevent and punish torture” and “other cruel, inhuman, or degrading treatment or punishment within their jurisdiction” (Article 6). It also requires states parties to guarantee that “any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case,” and that “their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process” (Article 8).

⁹⁵ Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4 (1988), paras. 166, 174, 176; Inter-American Court of Human Rights, Loayza Tamayo Case, Judgment of November 27, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 33 (1998), para. 169.

76. States also have specific obligations to prevent and punish torture and to ensure that whenever torture occurs there is effective investigation and prosecution and a proper remedy for the victim.⁹⁶

B. International Standards on Judicial Independence and Impartiality

77. Several international treaties, including the ICCPR and the ACHR, require that individuals be tried by “independent and impartial tribunals.”⁹⁷ A series of authoritative international documents set forth criteria to determine whether a justice system is in fact independent and impartial:

- a. Judges should be free from constraints, pressures, or orders imposed by the other branches of government. According to the UN Basic Principles on the Independence of the Judiciary (UN Basic Principles), “[i]t is the duty of all governmental and other institutions to respect and observe the independence of the judiciary,” and the judiciary “shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions,

⁹⁶ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 4-6, 12-14.

⁹⁷ ICCPR, art. 14(1): “Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”; ACHR, art. 8(1): “[E]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law”; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 18(1); art. 18 states that migrant workers and their families “shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively.,art. 6(1): “Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”; African Charter on Human and Peoples’ Rights, adopted 27 June 1981 , OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986 , art. 7(1) (b, d), art. 7 states that everyone shall have the “right to be presumed innocent until proved guilty by a competent court or tribunal” and the “right to be tried within a reasonable time by an impartial court or tribunal.”

improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”⁹⁸

b. Proper training and qualifications should be the basis of the appointments of judges. The Universal Charter of the Judge points out that “[t]he selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification.”⁹⁹ The UN Basic Principles, similarly, state that “[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives.”¹⁰⁰

c. Judges should have security of tenure to avoid fear of being removed from their posts for the decisions they adopt. The UN Basic Principles state that “[t]he term of office of judges, their independence, security, adequate remuneration,

⁹⁸ Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), <http://www2.ohchr.org/english/law/indjudiciary.htm> (accessed November 1, 2011), arts. 1 and 2. The Bangalore Principles of Judicial Conduct (Bangalore Principles) further add that “[a] judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason” and that “[a] judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free there from.” The Bangalore Principles of Judicial Conduct, revised at the Hague, November 25-26, 2002, arts. 1(1) and 1(3), http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf (accessed November 1, 2011).

The Council of Europe has stated that “[i]n the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason” and that “[j]udges should not be obliged to report on the merits of their cases to anyone outside the judiciary”; Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, adopted on October 13, 1994, [http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/cj_s_just/recR\(94\)12e.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/cj_s_just/recR(94)12e.pdf) (accessed September 29, 2010).

⁹⁹ The Universal Charter of the Judge, <http://www.hjpc.ba/dc/pdf/THE%20UNIVERSAL%20CHARTER%20OF%20THE%20JUDGE.pdf> (accessed November 1, 2011), art. 9. The Council of Europe has also noted that “[a]ll decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency.” Council of Europe, principle I, art. 2 (c).

¹⁰⁰ UN Basic Principles, art. 10.

conditions of service, pensions and the age of retirement shall be adequately secured by law” and that “[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.”¹⁰¹

d. Judges may only be suspended or removed from their jobs “for reasons of incapacity or behaviour that renders them unfit to discharge their duties” and they have the right to a fair hearing.¹⁰² According to the Statute of the Iberoamerican Judge, “the disciplinary responsibility of judges will be determined by the judicial bodies established by law, through processes that guarantee the respect of due process and, in particular, the right to a hearing, to defense, to contest [evidence], and to applicable legal recourses.”¹⁰³

V. Conclusion

78. As set out above, Honduras has failed to bring to justice those responsible for the coup of June 28, 2009, as well as for the human rights violations committed in the aftermath. This lack of accountability is due, in large part, to the obstacles faced by human rights prosecutors, charged with investigating alleged abuses committed by members of the police and the Armed Forces. The obstacles include lack of cooperation by military and police, and obstruction and harassment by those entities they are to investigate and prosecute. Moreover, the government has failed to provide adequate

¹⁰¹ UN Basic Principles, arts. 11 and 12. Similarly, the Council of Europe says that “[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office.” Council of Europe, principle I, art. 3.

¹⁰² UN Basic Principles, arts. 17 and 18.

¹⁰³ Statute of the Iberoamerican Judge (Estatuto del Juez Iberoamericano), adopted by the VI Iberoamerican Meeting of Supreme Court Presidents (VI Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia) on May 23-25, 2001, <http://www2.scjn.gob.mx/investigacionesjurisprudenciales/codigos/ibero/estatuto-del-juez-iberoamericano.pdf> (accessed November 1, 2011), art. 20.

security to victims and witnesses and, prosecutors say, witnesses are afraid of suffering reprisals if they testify against the police or military.

79. In addition to the problems faced by the prosecutors in their efforts to ensure accountability, the independence of the judiciary in Honduras has been severely compromised, thereby contributing to an existing climate of impunity for post-coup abuses in the country.

80. In light of these conditions and those set out in more detail above, victims of human rights abuses committed after the coup have been unable to find adequate redress in the judicial system of Honduras.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: November 2, 2011



TAMARA TARACIUК BRONER

APPENDIX

Tamara Taraciuk Broner joined Human Rights Watch's Americas Division as a fellow in September 2005, and covered Mexico for Human Rights Watch until 2009. Since then, she works as Americas researcher for Human Rights Watch, researching and documenting human rights developments in South America and Honduras. She was previously a junior scholar at the Latin American Program of the Woodrow Wilson International Center for Scholars, where she coordinated a project on citizen security in Latin America. Prior to that, she worked at the Inter-American Commission on Human Rights of the Organization of American States (OAS). Tamara was born in Venezuela, and grew up in Argentina, where she studied law. She holds a post-graduate diploma on human rights and transitional justice from the University of Chile, and a Master of Laws degree (LLM) from Columbia Law School.