

Honduras: Honduran Constitutional Crisis: Applicable Authorities

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HONDURAS

Honduran Constitutional Crisis: Applicable Authorities

The following is a list of authorities that the staff of the Law Library of Congress considers relevant to the events of the summer of 2009, which resulted in the removal of a sitting President.¹

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¹ The English translations set forth herein were provided by staff members of the Law Library of Congress.

1. *Artículos Pétreos* (Unamendable Provisions of the Honduran Constitution)

- Constitution of 1982, article 373, sets forth the general procedures for amending the Constitution.
- Constitution of 1982, article 374, lists the *artículos pétreos*, that is, the articles of the Constitution that may not be amended, which include the following provisions:
 - Procedures for amending the Constitution (article 373).
 - This article (article 374).
 - Form of government (article 4).
 - Borders of the country (article 9).
 - Presidential term of four years (article 237).
 - Prohibition on Presidential reelection (article 239).
 - Disqualifications for running for the office of President (article 240).

2. Role of the *Fiscal General de la República* (Chief Prosecutor) as a Guarantor of the Constitution

- The powers and responsibilities of the *Fiscal General de la República* (Chief Prosecutor) concerning the Constitution are delineated in the Ley del Ministerio Público, Decree 228-93 (Law of the Public Prosecutor), La Gaceta (L.G., the official gazette of Honduras) Jan. 6, 1994:
 - Article 17 provides that the Chief Prosecutor is the head of the *Ministerio Público* (Public Prosecutor's Office).
 - Article 1 sets forth the goals and objectives of the *Ministerio Público*, which include: “1–To represent, defend and protect the general interests of society[;]” and “3–To safeguard the respect for and compliance with constitutional rights and guarantees, and the primacy of the Constitution and the laws.”
 - Article 16 includes among the powers of the *Ministerio Público*: “1–To safeguard the respect for and compliance with the Constitution and the laws[;]” and “6–To file those lawsuits that are appropriate to enforce the civil, criminal, administrative, or disciplinary responsibilities for which civil or military officers and public employees have become liable by reason of or on occasion of the exercise of their public duties and functions, with the exception of those [lawsuits] under the competence of the *Procuraduría General de la República* (Attorney General's Office) in accordance with the Constitution.”
 - Article 24 details the powers of the Chief Prosecutor, including, “2–To file legal actions and appeals, and to promote all incidental proceedings, to file

defenses, and to promote the acts and procedures with which the law charges the *Ministerio Público*.”

3. Jurisdiction of the Court of Administrative Litigation (*Juzgado de Letras de lo Contencioso-Administrativo*) in Proceedings Against Public Administration Officials

- The powers and responsibilities of the Chief Prosecutor concerning the Constitution are stated under Part 2, above.
- The Law on Administrative Litigation (*Ley de lo Contencioso-Administrativo*), Decree 189-87 (L.G. Dec. 31, 1987), contains the following provisions:
 - Article 1 (causes of action): “The present law regulates the Jurisdiction of Administrative Litigation (*Jurisdicción de lo Contencioso-Administrativo*) in charge of hearing causes of action submitted in relation to acts of the Public Administration with a general or particular character subject to Administrative Law.”
 - Article 2 (scope of application): “For purposes of the previous Article, it is understood that Public Administration [means]: a) The Executive Branch....”
 - Article 7 (jurisdiction of the Court of Administrative Litigation):

The Jurisdiction of the Court of Administrative Litigation shall be exercised by the following entities:

 - a) Courts of Administrative Litigation, that shall hear cases as either trial courts or courts of final decision created by the Supreme Court of Justice, which shall [also] determine their location and jurisdiction;
 - b) Courts of Appeal for Administrative Disputes, that shall hear cases as appellate courts, created by the Supreme Court of Justice, which shall [also] determine their location and jurisdiction; and
 - c) The Supreme Court of Justice, as a court of *casación* [not an appeals court, but a court that quashes the rulings of appeals courts for errors of law].
 - Article 13(b) (standing):

The following [persons and entities] may request the declaration of the illegality and the annulment of acts of a general or particular character of the Public Administration:

a) Those with a legitimate and direct interest;

b) State entities, public law entities, and any legal entities having the representation and defense of general or corporate interests, when the purpose of the complaint is to challenge directly acts of a general character of the Public Administration, provided that the challenged act affects them directly....

- Article 101 (penalties for contempt of court):

Those who violate the provisions contained in the present Chapter [referring to the enforcement of the decisions of the Courts of Administrative Litigation], shall be punished in accordance with Article 349 of the Criminal Code, without prejudice to the civil liability incurred by the harm or damages caused to the interested parties....

- Article 120 (suspension of the challenged act): “The filing of the complaint shall not prevent the Administration from executing the [challenged] act itself, unless the Court or Tribunal approves the suspension [of the challenged act] when petitioned by the complainant.”
- Article 121 (grounds for the suspension of the challenge act): “The suspension [of the challenged act] shall proceed when the execution of the [challenged] act would cause harm or damages, the reparation of which would be impossible or difficult.”
- Article 122 (timing of the suspension): “The suspension [of the challenged act] may be requested in any stage of the proceedings, both at the trial or the appellate levels, and shall be reviewed separately....”

4. Procedures for the Review of the Conduct of High Officers of the State and Deputies

4.1 Criminal Procedure

Code of Criminal Procedure

- Code of Criminal Procedure, articles 414-417, set forth the procedures for the review of the conduct of high officers of the state and deputies.

Removal of Immunity Provisions from the Honduran Constitution

- The Constitution of 1982, article 200 (original text) gave immunity to members of Congress. However, Chapter VI (“On the Executive Branch”), articles 235-245 did not grant immunity to the President of the Republic.
- The Constitution of 1982, article 205, § 15 (original text) granted Congress the power to approve the *formación de causa* [removal of immunity for purposes of civil actions or criminal prosecution] against the President, his *Designados* (Designates, consolidated into the position of Vice-President in 2003),² members of Congress, Justices of the Supreme Court of Justice, members of the National Electoral Tribunal, the Chief of the Armed Forces, Secretaries and Under-Secretaries of the Cabinet, Chiefs of Diplomatic Missions, the Comptroller and Deputy Comptroller, the General Attorney and Deputy General Attorney, and the Director and Deputy Director for Administrative Integrity. It did not, however, set forth the procedure to follow in such cases.
- Legislative Decree 31-2000 (L.G. May 29, 2000), which ratified Legislative Decree 92-99, amended article 200 of the Constitution of 1982 granting immunity to members of Congress, by adding immunity for the high officers mentioned in article 205, § 15 of the Constitution.
- Legislative Decree 31-2000 also granted Congress the power to approve the *formación de causa* against members of Congress and the high officers mentioned in article 205, § 15 of the Constitution, but modified the list of officials subject to that provision.
- Legislative Decree 154-2003 (L.G. Dec. 1, 2003), which ratified Legislative Decree 412-2002 of November 13, 2002, added certain high officers to the list contained in article 205, § 15 of the Constitution of 1982.
- Legislative Decree 105-2004 (L.G. Sept. 11, 2004), which ratified Legislative Decree 175-2003 of October 28, 2003:
 - Repealed article 200 of the Constitution of 1982, thus removing immunity for members of Congress and the high officers mentioned in article 205, § 15.
 - Repealed article 205, § 15, of the Constitution of 1982, thus removing the need for the *formación de causa* from the Constitution.
 - Left intact article 205, § 20, of the Constitution of 1982, on the congressional power to approve (“*aprobar*”) or disapprove (“*improbar*”) the administrative conduct of the President.

² Legislative Decree 153-2003 (L.G. Nov. 29, 2003) amended the original text of article 239 of the Constitution of 1982 to substitute “Vice-President” for “Designate.”

- Constitution of 1982, article 319, § 2 (original text) granted the Supreme Court of Justice the power to hear cases against high officers after the *formación de causa* was approved by Congress.
- Legislative Decree 105-2004 removed the last part of article 313, § 2 (designated article 319, § 2 in the original text of the Constitution of 1982) referring to the approval of *formación de causa* against high officers by Congress.

The Deliberative Process of the Supreme Court

- The Internal Regulations of the Supreme Court of Justice of Honduras (*Reglamento Interior de la Corte Suprema de Justicia*, Accord No. 04-2002, dated June 20, 2002) do not contain any specific provisions related to the days, times, or places for the deliberations of such Court.
- The following provisions of the Internal Regulations of the Supreme Court of Justice of Honduras indirectly relate to the topic:
 - Article 12:

Calls for en banc meetings shall be made by means of a written notice sent by the President of the Court to the Justices composing the Court within at least 48 hours, except in cases of emergency as defined by the President. The minutes [of the meeting] must contain a reference to the call for the meeting, and of the documents supporting the matters to be dealt with, when applicable.
 - Article 13: “The Court shall hold its meetings on the days that are necessary for the expedient review of the matters subject to its review.”
 - Article 17: “The Chambers shall hold their meetings during the days that are necessary for the ordinary review of the matters subject to their decision.”

The Meaning of “*Fuerza Pública*” in the Honduran Constitution

- The Constitution of 1982, article 306 (current text) states that “Jurisdictional organs may request, when necessary, the assistance of the *Fuerza Pública* for the enforcement of their resolutions....” The 1982 Constitution does not define *fuerza pública*.
- The Constitution of 1865, article 63 contained the first definition of *fuerza pública* as “composed of the national militia and the army of land and sea.”

- The Constitution of 1873, article 65 reiterated the definition of the Constitution of 1865, article 63.
- The Constitution of the United States of Central America of 1898, article 119 made a distinction between the *fuera pública* and the *policía civil* (civil police).³
- The Constitution of 1982, article 313 (before the 1996 amendment) established that “The Courts of Justice shall require the help of the *Fuerza Pública* for the enforcement of their resolutions; if this [assistance] is denied to them, or is not available, [these courts] shall demand such assistance from the citizens.”
- Legislative Decree 229-96 (L.G. Jan. 28, 1997) established the current text of article 293 of the Constitution of 1982.
- Current article 293 of the Constitution of Honduras of 1982 defines the term “*policía nacional*.” Article 293 is located within Chapter X (“National Defense”) and refers to the enforcement of resolutions by public authorities and officials in general.
- Current article 306 of the Constitution of 1982, located within Chapter XII (“The Judicial Branch”), refers to the *fuera pública* in connection with the enforcement of judicial decisions. Article 306 (article 313 in the original text of the Constitution of 1982) was not amended or repealed by Legislative Decree 229-96 and its text remains unchanged.

The Use of Force in the Execution of Arrest Warrants

- The Constitution of 1982, Chapter II (on individual rights), articles 65-110, set forth the rights of the individual versus the state, including those rights connected to criminal law and procedure.
- The Constitution of 1982, article 102 (current text), states “[n]o Honduran may be expatriated or handed over to the authorities of a foreign State.” This provision has not been amended since the promulgation of the Constitution of 1982.
- No regulations were located addressing the use of force during the execution of an arrest warrant.

³ At the time, Honduras was a member of the United States of Central America.

4.2 Congressional Procedure

Congress' Power to Interpret the Constitution

- The Constitution of 1982, article 205, § 10 (current text), explicitly gives Congress the power to interpret the Constitution.
- Legislative Decree 2-99 (L.G. Jan. 26, 1999), which ratified Legislative Decree 245-98 of September 19, 1998, repealed section 10 of article 205.
- The Supreme Court decision of May 7, 2003, consistent with Legislative Decree 2-99, stated that:

We do not find in article 205 and in any other article of the Constitution, the power of Congress to interpret, in general and in the abstract, any provision of the Constitution....

- The Supreme Court decision of May 7, 2003, acknowledged the implicit powers of Congress to interpret the Constitution, stating:

This Supreme Tribunal does not deny that the Legislative Branch may and must interpret the Constitution, given the fact that it is one of the constitutional actors [“operadores”] par excellence, since, as it holds the power to create the law, it must do so in accordance with the guidelines on form and content provided in the Constitution; the same is true when it interprets secondary authorities, a task that it must perform within the context of the Constitution; and for that purpose it must, obviously, interpret the Constitution.... [See page 7, para. 2, of the Supreme Court's decision.]

- Legislative Decree 241-2003 (L.G. Mar. 10, 2004), which ratified Legislative Decree 276-2002 of August 8, 2002, reinstated section 10 of article 205 with the following text:

The National Congress shall have the following powers: ... 10) To interpret the Constitution of the Republic in ordinary sessions, in only one legislature, with two-thirds of the votes of its total members. Constitutional articles 373 and 374 may not be interpreted through this procedure.

The Power of Congress to Approve or Disapprove the Administrative Conduct of the President

- The Supreme Court decision of May 7, 2003, left untouched article 205, § 10, which explicitly gives Congress the power to interpret the Constitution according to the procedure established therein. *See* Constitution of the Republic of Honduras of 1982, article 218, § 9, n. 43 (8th ed., Guaymuras, 2009).
- The Constitution of 1873, article 24, § 19, gave Congress the power to approve the *formación de causa* against the “members of the Supreme Powers.” It did not include a provision addressing congressional power to approve or disapprove the conduct of the Executive Branch.
- The Constitution of 1894, article 90, § 20, and the Constitution of 1906, article 73, § 19, gave Congress the power to “approve [*aprobar*] or disapprove [*improbar*] the conduct of the Executive Branch.”
- The Constitution of the Federal Republic of Central America of 1921, article 86, § 23⁴ gave Congress the power to “approve the acts of the Executive Branch or disapprove them in cases where they are contrary to the law.”
- The Constitution of 1924, article 92, § 19, and the Constitution of 1936, article 101, § 19, referred to the power of the Congress to “approve or disapprove the conduct of the Executive Branch.”
- The Constitution of 1957, article 188, § 18, referred to the power of the Congress to “approve or disapprove the administrative conduct of the Executive Branch.”
- The Constitution of 1965, article 181, § 20, referred to the power of Congress to “approve or disapprove the administrative conduct of the Executive and Judicial Branches, the National Electoral Council, and the Autonomous Institutions.”
- The Constitution of 1982, article 205, § 20 (original text) referred to the power of Congress to approve or disapprove the administrative conduct of the Executive Branch.
- Legislative Decree 2-2002 (L.G. June 6, 2002), which ratified Legislative Decree 268-2002, amended article 205, § 20 of the Constitution to add other governmental entities and authorities to the list of institutions whose administrative conduct the Congress may approve or disapprove.
- The Constitution of 1982, article 205, § 20 (current text) refers to the power of the Congress to “approve or disapprove the administrative conduct of the Executive Branch,” among others.
- Legislative Decree 141-2009, dated June 28, 2009 (L.G. July 1, 2009), cited article 205, § 20 regarding to the power of the Congress to “approve or disapprove the administrative conduct of the Executive Branch.”

⁴ Honduras was a member state of the short-lived Federal Republic of Central America.

Supreme Court Decision of 2003 and the Presidential Veto Power Over Congressional Interpretations of the Constitution

- The Constitution of 1982, article 218 (original text), did not prohibit presidential veto of congressional interpretations of the Constitution.
- Legislative Decree 161-99 (L.G. Nov. 30, 1999), which ratified Legislative Decree 307-98, denied the President veto power over congressional interpretations of the Constitution.
- The Constitution of 1982, article 218, § 3 (current text) prohibits presidential veto power over decrees (legislative) referring to the conduct of the Executive Branch.
- The Supreme Court decision of May 7, 2003,⁵ declared Legislative Decrees 307-98 and 161-99 unconstitutional, and therefore reinstated the presidential veto power over congressional interpretations of the Constitution. *See* Constitution of the Republic of Honduras of 1982, article 218, § 9, n. 43 (8th ed., Guaymuras, 2009).

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⁵ The Supreme Court's decision was neither published by Congress in La Gaceta nor by the Supreme Court in the Gaceta Judicial. Not all Supreme Court decisions are published and publication is not required for validity. The President of the respective chamber of the Supreme Court determines which decisions will be published.