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Tuesday June 14, 2011 "*Holding Honduras Hostage: Revoked Visas and U.S. Policy*"
House Committee on Foreign Affairs

During the last thirty years, I served for eight years as a diplomat in the Republic of Honduras. For nearly four years I was Chief of Mission. After my departure eighteen years ago, I have continued to stay engaged and have kept a close eye on the developments that have taken place. One could say that during this period, with few exceptions, Honduras has taken strides to become a modern democratic society. However, Honduras and its people still face serious challenges in the application of the 'rule of law'.

Nearly twenty years ago, while as US Ambassador, I publicly stated that in Honduras: "*Justice* (system) is like a serpent that only bites the barefoot (the poor) and not those who wear boots (the powerful)". Honduras has struggled constantly with issues such as impunity, corruption and lack of transparency. Unfortunately, since the 2009 crisis Honduras has experienced a resurgence of human rights violations and, generally, a weakening of the rule of law. Today, I would like to comment on the dysfunctionality of the Honduran legal system and its application. I believe that if Honduras could manage to successfully apply its laws, most difficulties encountered would not take place. The enforcement of contractual rights, as well as the protection of human rights, is vital to the true functioning of the rule of law. Honduras continuously manifests a muddled rule of law in both of these arenas. Ultimately, the Honduran justice system is too often found to be a flawed system which conveys the essence of a well known Latin American saying: 'a deal for my friend and the law for my enemy'.

Property and investment disputes, like the CEMAR case, continue to illustrate how the government of Honduras too often lacks the political will to address the many complaints of foreign investors. Lacking trust in the Honduran justice system they turn to international arbitration or similar credible international legal process, in order to attempt to settle their claims. What the Honduran justice system sorely lacks is credibility and trust in the proper application of the law. This is the basic reason why investors do not seek justice through the local judicial system. The Honduran legal system's lack of political will, along with its scant transparency, plainly does not inspire confidence. Unfortunately, the current institutional weakness and insufficiencies, along with the near absence of political will, encourage impunity and protection of the all-powerful. By impunity, I mean the lack of accountability; whether for corruption, human rights abuses or non compliance of contractual agreements. In my opinion, this is the greatest weakness of the Honduran legal system. Yet, there is no consensus on how to put an end to it. The non existence of serious public discussion, the continuing lack of transparency of government contracts, its flawed bidding process, and the implementation of irregular trade practices, seek to destroy or eliminate foreign competition from the domestic market. This has caused an epidemic of major proportions and seriously impacted the investment climate.

The Constitution of the Republic of Honduras and its laws regulate the State's obligations to execute the necessary actions, in order to prevent unfair competition and monopolistic practices. However, for years different Honduran administrations have either found themselves unable or unwilling to apply the law, regardless of the repercussions these abusive practices generate and

the impact they have on the population. This undermines the rule of law. Moreover, it is common place for the powerful to engage in predatory pricing with the specific intent to eliminate foreign investment competition. This scenario has encouraged powerful groups to continue their corrupt practices with impunity. It has also underscored the Honduran government's inability and lack of desire to effectively and fairly handle investment disputes.

In 1992, the Honduran Congress passed The Investment Law, which sought to improve the country's ability to compete in world markets. Its objective was to enact a legal framework for foreign investment with the necessary transparency to implement good practices and allow for due diligence. Yet, though corruption and abuse of power are now typified under Honduran law as criminal offenses, they continue to hobble business in Honduras. Frequent complaints of favoritism, external pressure and charges of bribery, within the Honduran judicial system are common place. While a limited number of U.S. firms have satisfactorily resolved their cases through Honduran courts, the majority have been faced with an ineffective or unresponsive legal system.

Recently, I provided advice to a foreign investment firm which subsequently was awarded an official contract in a climate of transparency. This was welcomed by many in Honduras as a refreshing development. At the same time, in the past I have been involved in guiding other foreign companies, including US enterprises, which after many decades of conducting business in Honduras saw their land-- to which they held legal title and where their facilities were housed-- change hands out from under them through fraudulent transactions carried out in the Honduran judicial system. There are several Americans citizens, who have lost legal title to their land through fraudulent manipulation of land titles. Unfortunately, title insurance is not widely available in Honduras. A significant percent of the privately-held land in the country is either untitled or improperly titled. Complaints of widespread corruption in land sales, deed filing, and dispute resolution are a staple of land ownership in Honduras.

At the same time, there are other factors that cause Honduras' investment climate to be hampered. For example, the Honduran government does not customarily publish regulations before they enter into effect. The country does not count with a formal mechanism to seek public commentary for proposed regulations. To complicate matters, Honduras lacks an indexed legal code. This means that lawyers and judges themselves have to maintain and index the publication of laws. While few U.S. firms have satisfactorily navigated through the Honduran Court System, the majority have experienced serious difficulty. According to the 2011 World Bank's Doing Business Index (DBI), just registering property in Honduras requires seven procedures, takes approximately 23 days, and costs 5.5 percent of the property value.

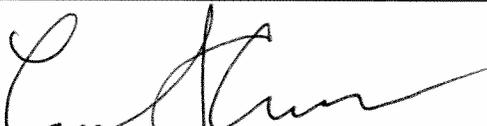
The current levels of criminal activity, coupled with low educational levels of its human resources, poor transportation systems and inadequate infrastructure only serve to exacerbate the investment climate. The high levels of crime and violence experienced in Honduras over the last decade have become a major constraint on foreign investment. A World Bank survey conducted in 2006 of firms doing business in Honduras showed the combined costs of expenses devoted to security, along with loss of annual sales due to security incidents, totaled 4.5 percent of sales. The 2011 World Bank Doing Business Index which ranks countries with most favorable conditions to conduct business ranks Honduras 131st out of 183 countries (#1 being the best)..

The Honduran Court System's lack of transparency and deliberately slow administration have been underscored as the primary obstacles for attracting foreign investment, as well as for the much needed development of the nation. There is a palpable need for stricter vigilance in the lawfulness of rulings that emanate from the Honduran legal system. The US has spent millions of tax payers' dollars training prosecutorial staff in the Honduran Justice System. However, in the last couple of years, most of these US trained prosecutors have found themselves out of a job due to their commitment to fair and equal administration of the law. We must engage the Honduran government and its private sector to ensure that those interested in conducting business in Honduras, including US companies, are able to do so in a transparent environment and given a level playing field when it comes to the application of the rule of law. We must energetically demand fair treatment of U.S. investors.

United States House of Representatives
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1. Name:	2. Organization or organizations you are representing:
Ambassador (Ret.) Cresencio S. Arcos	Center for Hemispheric Defense Studies
3. Date of Committee hearing:	
Tuesday, June 14, 2011	
4. Have <u>you</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the <u>organizations you are representing</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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