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Santos Flores

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Absolute Power in Honduras, does it always corrupt absolutely?

Santos Flores

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Professor Riccio

I. Introduction

It is a common expectation that the acting President of a democratic state will not break the law and act only in the best interests of the country he serves. In case the President does break the law, it is not unfathomable to believe there is a system in place to make sure his conduct warrants removal from power. It is an uncommon expectation that the President of a democratic state who has disobeyed the law will be removed from his home while in his pajamas and exiled to another country without any due process. The 2009 coup d'état of President Manuel Zelaya raises critical constitutional questions about the removal of a disobeying President in Honduras. This paper proposes the introduction of an impeachment system in Honduras to safeguard its Democracy and Constitution when the President participates in misconduct warranting removal.

Manuel Zelaya was elected President of Honduras in 2006. Initially, he governed under a liberal platform as a member of the Partido Liberal. In 2007, President Zelaya declared himself a socialist and aligned himself with President Chavez by joining the Bolivarian Alternative for Latin America and the Caribbean (“ALBA”). Alvaro Vargas Llosa, *Honduras’s Coup is President Zelaya’s Fault*, The Washington Post (July 01, 2009) available at

<http://www.washingtonpost.com/wpdyn/content/article/2009/07/01/AR2009070103210.html> (last visited December 15, 2012). Two years into his term, President Zelaya’s

approval rating drastically plummeted.¹ Despite his dismal popularity, in the last year of

¹ President Zelaya’s approval rate fell from 45% in January 2007 to 7% in February 2008. A CID-Gallup poll attributes this drastic drop in popularity to Zelaya’s failure to address Honduras’ most pressing issues: 1) high crime rate and 2) an ever increasing cost of living. *Honduras politics: President’s standing erodes*, Economist Intelligence Unit (March 24, 2008) 2008 WLNR 25994380.

his term President Zelaya decided to launch a political move that will forever haunt democracy in Honduras.

In the closing months of his Presidential term, President Zelaya began the 4th Urn poll.² The 4th Urn was troublesome and caused controversy as it circumvented the role of the Legislature and Judiciary by seeking to amend the Honduran Constitution solely through Executive Decree PCM-020-2009. The Honduran Supreme Court reacted to the project by issuing an injunction against the poll. Further, Congress enacted a law, which prohibited the administration of a public poll 180 days prior to a Presidential election. The 4th Urn poll fell within the ambit of this law as the election was scheduled for November 29, 2009. David Landau, Noah Feldman, and Brian Sheppard, *Report to the Commission on Truth and Reconciliation of Honduras: Constitutional Issues*, (August 23, 2011) FSU College of Law, Public Law Research Paper No. 536. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1915214. (last visited December 15, 2012)

The Attorney General filed two indictments against President Zelaya for the following crimes: “crimes against the government, treason, and usurpation of functions”. *Two to One The Court of Appeals Resolves Indictment against Manuel Zelaya*, La Tribuna (May 03, 2011) available at <http://old.latribuna.hn/2011/05/03/dos-a-uno-resolvio-la-corte-de-apelaciones-los-requerimientos-contramanuel-zelaya/>. (last visited December 15, 2012). The Honduran Supreme Court found President Zelaya had failed to adhere to earlier requests to comply with injunctions mandating the end of the poll and on

² The 4th Urn was a non-binding public poll, which asked the people of Honduras whether a Constitutional Assembly should be called to amend the current constitution and the current one term limit on presidency. *Honduras president arrested in military coup*, The Guardian (June 28, 2009) available at <http://www.guardian.co.uk/world/2009/jun/28/honduras-coup-president-zelaya>. (last visited December 15, 2012)
This option to amend the Constitution would have been a fourth option on the Presidential ballot.

June 26, 2009 proceeded to issue an arrest warrant. In the wee hours of June 28, 2009, members of the Honduran Armed Forces entered President Zelaya's home and placed him on a plane destined for Costa Rica. In the following days, President of Congress, Roberto Micheletti, was appointed Interim President. Porfirio Lobo won the November 2009 Presidential election and is the current president of Honduras.

Peter Myer, *Honduran-U.S. Relations*, Congressional Research Service (July 25, 2012) available at <http://www.fas.org/sgp/crs/row/RL34027.pdf>. (last visited December 15, 2012).

President Zelaya's conduct surrounding the public poll and the government's consequent removal of Zelaya will forever remain a dark shadow in the history of Honduras. The coup against President Zelaya caused a large controversy and resulted in many negative implications for the state of Honduras. The coup exposed how feeble Democracy in Honduras is. The stability of democracy in Honduras took a blow. By this point in time, one could reasonably expect democracy to be embedded in Honduras's institutions. The coup against President Zelaya was reminiscent of the many ousters of Presidents in Latin America. This was the first coup in Central America in the last sixteen years. Tracy Wilkinson and Alex Renderos, *Honduran army coup sends elected president into exile*, Seattle Times (June 29, 2009) 2009 WLNR 12510225. Also, Honduras' legitimacy as a democratic state was called into question. There was immediate confusion as to who was in control of Honduras. The General Assembly of the United Nations adopted a Resolution recognizing Zelaya as President and demanded restoration of his power. United Nations General Assembly, Resolution adopted by the General Assembly: 63/301. Situation in Honduras: democracy breakdown, 63rd Session

(July 01, 2009) available at <http://www.unhcr.org/refworld/pdfid/4a535f4a2.pdf>. (last visited December 15, 2012). Ultimately, Zelaya would never return to power. He would remain exiled until May 2011 and was allowed to return to Honduras after reaching an agreement with current President, Porfirio Lobo. *Honduras: Ousted President Manuel Zelaya returns*, BBC News (May 28, 2011) available at <http://www.bbc.co.uk/news/world-latin-america-13586991>. (last visited December 15, 2012).

Honduras' economy suffered as a result of the aftermath. In July 2009, the Organization of American States ("OAS") suspended Honduras' membership which caused it to lose funding. The OAS reinstated Honduras' membership into the organization two years later in June 2011. *Ban welcomes decision to reinstate Honduras into Organization of American States*, UN News Centre (June 02, 2011) available at <http://www.un.org/apps/news/story.asp?NewsID=38583&Cr=Honduras&Cr1#.UOJRw4njk2I>. (last visited December 15, 2012). Also, Honduras' economy was hurt by complications with neighboring countries. Venezuela stopped oil shipments and other countries in Central America temporarily ceased overland trade. William Booth and Juan Forero, *New President of Honduras Warns Predecessor of Arrest*, Washington Post (June 30, 2009) 2009 WLNR 12478284.

This paper is divided into three sections. Part Two describes comparative models in which a President is removed by violent means and discusses the consequences the country has faced upon ouster of the President. Part Three describes comparative models in which a President is removed by non-violent means and discusses the consequences the country has faced upon removal of the President. Part Four proposes a

recommendation for Honduras based on assessment of the comparative models. The recommendation seeks to provide Honduras with a constitutionally sound method of assessing the conduct of a disobeying President.

II. Violent means of removing a President that disobeys the law.

a. Libya

In 1969, The Free Officers Movement ousted King Idris in a bloodless coup.³ Subsequently, Libya would remain under Muammar Gaddafi's authoritarian rule for the next forty-two years. Gaddafi's government was based on philosophical notions from a book he wrote called, The Green Book.⁴ His reputation was infamous both domestically and internationally. He faced heavy scrutiny and criticism for Libya's involvement in the 1988 Lockerbie bombing.⁵ International relationships were somewhat restored when the U.N. suspended sanctions after Libya provided custody of the two Lockerbie suspects.⁶ Nevertheless, Gaddafi's governance during the 2011 protests permanently shattered his reputation were the downfall of his regime.

³ King Idris, the ruler of Libya, was of ill health and in Turkey receiving medical treatment when The Free Officers Movement seized power of the Libyan government. The group took control of the government and military headquarters. Members of King Idris' military and government gave up their official duties when taken into custody and later expressed support for the new regime, The Revolutionary Command Council. On September 07, 1969, Captain Gaddafi was promoted to Colonel and was named Commander in Chief of the Libyan Armed Forces. *Gadhafi Coup*, Global Security (last modified Nov. 07, 2011) available at <http://www.globalsecurity.org/military/world/war/libya-coup.htm>. (last visited Nov. 15, 2012)

⁴ He called his government system a Jamahiriya which was a composition of "people's committees" that governed over the country's subdivisions. David Poort, *Libyans turn page on Gaddafi's 'Green Book'*, Al Jazeera (September 14, 2011) available at <http://www.aljazeera.com/news/africa/2011/09/20119141151017195.html>. (last visited Nov. 15, 2012)

⁵ An explosive device aboard Pan-Am flight 103, travelling from Malta to Frankfurt was detonated as the plane flew over Lockerbie, Scotland. 270 fatalities resulted from the bombing. The U.N. placed sanctions on Libya when Gaddafi refused to hand over custody of two Libyan individuals who were suspected of being responsible for the bombings. http://news.bbc.co.uk/onthisday/hi/dates/stories/december/21/newsid_2539000/2539447.stm. (last visited November 15, 2012)

⁶ In April 1999, Libya surrendered Abdel Basset Ali al-Megrahi and Lamen Khalifa Fhimah and they were tried for the Lockerbie bombings in the Netherlands. In January 2001, Al Megrahi was found guilty and sentenced to life imprisonment and Fhimah was acquitted. Dave Gilbert and Nic Robertson, *Lockerbie: Did someone else bomb Pan Am 103?*, CNN (May 22, 2012) available at <http://www.cnn.com/2012/05/22/world/lockerbie-suspects-qa/index.html>. (last visited (November 11, 2012)

Libya provides an example of a ruler being ousted through violence; namely, a civil war. In 2011, Gaddafi was overthrown after a violent coup led by rebel forces. In January 2011, Libyans gathered by the masses in the city of Benghazi to protest Abu Salim negotiations and the arrest of a Libyan lawyer, Fathi Terbil.⁷ As tensions grew Libyan security forces fired live ammunition at protesters and killed 24 civilians. Ian Black and Owen Bowcott, *Libya protests: massacres reported as Gaddafi imposes news blackout*, The Guardian (February 18, 2011) available at <http://www.guardian.co.uk/world/2011/feb/18/libya-protests-massacres-reported>. (last visited November 11, 2012). These protests were the catalyst for the revolution as outrage over the violence led to the organization of the “Day of Rage”.⁸ Widespread protests began throughout various cities in Libya calling for universal rights and political and economic reform. These protests eventually escalated into an all out civil war for the ultimate control of Libya.⁹

On February 26, 2011, the U.N. Security Council adopted Resolution 1973 in efforts to protect the civilian population in Libya.¹⁰ In March 2011, U.S. Coalition forces

⁷ Fathi Terbil represented the relatives of more than one thousand inmates killed by security forces during 1996 riots inside Abu Salim, a Libyan prison. Resolution talks between the families and the Libyan government started, but the families were not satisfied with the Libyan government. *Libya protests: Second city Benghazi hit by violence*, BBC News Africa (February 16, 2011) available at <http://www.bbc.co.uk/news/world-africa-12477275> (last visited November 11, 2012)

⁸ Protestors were inspired by recent rebellions in Tunisia and Egypt that led to the removal of long-term leaders and organized February 17, 2011 to be the “Day of Rage” across Libya. Reuters, *Libyan protesters prepare for 'day of rage'*, The Guardian (February 16, 2011) available at <http://www.guardian.co.uk/world/2011/feb/17/libyan-protesters-prepare-for-day-of-rage>. (last visited November 11, 2012)

⁹ The rebel forces were an aggregate of militias, which were composed of up to 1,700 smaller armed groups. Martyrs of 17 February Brigade, Martyrs of Abu-Salim, Martyr Rafallah Shahati Battalions, and Libya Shield Force were all militia groups from the East of Europe. Al-Zintan Revolutionaries’ Military Council, Sadun al-Suwayil Brigade, Al-Sawaiq Brigade, and the Al-Qaqa Brigade were militias from the West of Libya Brigade, and West Libya. *Disarming Libya’s militias*, BBC News Africa (September 28, 2012) available at <http://www.bbc.co.uk/news/world-middle-east-19744533>. (last visited November 15, 2012)

¹⁰ Resolution 1973 called for a ceasefire and end to violence, established a no-fly zone over Libya, and authorized UN member states “to take all necessary measures to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory”. United Nations Security Council, *Security Council Approves No-fly Zone Over Libya, Authorizing ‘All Necessary Measures’ To Protect Civilians, By Vote of 10 in Favour with 5 Abstentions*, Security Council 6498th Meeting (March 17, 2011) available at

and NATO forces both launched military campaigns in Libya.¹¹ NATO intervention helped the rebel forces surpass periods of deadlock with Gaddafi forces and assisted with the capture of key cities. During the civil war, many of Gaddafi's government officials resigned as they announced their disapproval of firing weapons on civilians. Additionally, some of these officials completely ended their allegiance to Gaddafi and began to support the rebel forces. *Libya protests: Gaddafi regime shaken by unrest*, BBC News Africa (February 21, 2011) <http://www.bbc.co.uk/news/world-middle-east-12523669>. (last visited November 13, 2012). The rebel forces soon created the National Transitional Council.¹² As Gaddafi's power began to topple he offered a ceasefire, which was rejected by rebel forces. Xan Rice, *Libyan rebel forces reject Muammar Gaddafi's ceasefire offer*, The Guardian (April 30, 2011) available at <http://www.guardian.co.uk/world/2011/apr/30/libyan-rebels-reject-gaddafi-offer>. (last visited November 14, 2012).

On June 26, 2011, the International Criminal Court issued arrest warrants for Gaddafi, his son, Saif Al-Islam Gaddafi, and his intelligence officer, Abdulla Al-Senussi.¹³ Gaddafi remained on the loose and the Libyan government claimed that the

<http://www.un.org/News/Press/docs/2011/sc10200.doc.htm>. (last visited November 15, 2012)

¹¹ The U.S. launched operation Odyssey Dawn on March 19, 2011. Both air strikes and Navy vessels were used to weaken Gaddafi's air defense system. The operation protected the imposition of the no-fly zone and attacked Gaddafi forces that were a threat to the civilian population. On March 31, 2011 NATO forces took over the military operations when it began Operation Unified Protector. This operation lasted until October 31, 2011. North Atlantic Treaty Organization, *NATO and Libya*, (last updated March 28, 2012) available at http://www.nato.int/cps/en/natolive/topics_71652.htm. (last visited November 14, 2012)

¹² The Transitional Council was created on February 27, 2011. It was the rebel forces effort to create a political group to represent Libya in the post Gaddafi era. <http://www.aljazeera.com/news/africa/2011/02/2011227175955221853.html>. *Libya opposition launces council*, Al Jazeera (last modified February 27, 2011) available at <http://www.aljazeera.com/news/africa/2011/02/2011227175955221853.html>. (last visited November 16, 2012)

¹³ The arrest warrants were issued on the belief that Gaddafi had committed crimes against humanity; namely, using Libyan policy to instruct security forces to use lethal force upon civilians protesting against the Gaddafi regime, from February 15, 2011 to February 28, 2011. Gaddafi's orders resulted in the murder and persecution of civilians during the protests. International Criminal Court, *Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi I*, (June 27, 2011) available at

ICC had no jurisdiction over Gaddafi. Nasreen Seria, *Qaddafi Lawyer Says ICC Has No Jurisdiction In Libya*, Bloomberg News (June 28, 2011) available at <http://www.businessweek.com/news/2011-06-28/qaddafi-lawyer-says-icc-has-no-jurisdiction-in-libya.html>. (last visited November 16, 2012). In August 2011, after months of fighting, the rebel forces eventually gained control of the Libyan capital, Tripoli. Control of Tripoli was a huge advantage for the rebel forces because it was the center of Gaddafi's compound and command center. Karin Laub and Ben Hubbard, *Libya Rebels Overtake Tripoli As Gaddafi Regime Crumbles*, Huffington Post World (August 22, 2011) available at http://www.huffingtonpost.com/2011/08/22/libya-rebels-tripoli_n_932706.html. (last visited November 15, 2012). A few months later, on October 20, 2011 rebel forces captured and killed Gaddafi in his hometown, Sirte. The National Transitional Council declared the "liberation" of Libya. *NTC declares 'Liberation of Libya'*, Al Jazeera (last modified October 24, 2011) available at <http://www.aljazeera.com/news/africa/2011/10/201110235316778897.html>. (last visited November 15, 2012).

The ouster of Gaddafi and rise to power of the National Transitional Council started a new era for Libya. Libya finally met the long awaited democracy fought for during the civil war. In August 2012, after ten months of serving as the interim government, The National Transitional Council transferred governmental power to Libya's newly elected assembly, the General National Congress. *Libya's NTC hands power to newly elected assembly*, BBC News Africa (August 09, 2012) available at

<http://www.iccpi.int/menus/icc/situations%20and%20cases/situations/icc0111/court%20records/chambers/pretrial%20chamber%20i13?lan=en-GB>. (last visited November 13, 2012)

<http://www.bbc.co.uk/news/world-africa-19183300>. (last visited November 10, 2012).

On Wednesday November 14, 2012, Libya's first elected government was sworn in after The National Assembly approved Prime Minister Ali Zeidan's proposed government plan on October 31, 2012. *Libya swears in new government despite security challenges*, Reuters (November 14, 2012) available at

<http://www.reuters.com/article/2012/11/14/libya-government-swearing-idUSL5E8ME84020121114>. (last visited November 14, 2012).

In Libya's state of transition, security is one of the most pressing issues in the country. It is crucial that Libya address security issues as the civil war has claimed the lives of an estimated 50,000 people in the first 6 months.¹⁴ To address the problem, Libya needs to create a national military group and police force capable of securing the country and enforcing the new government. Recently, an insurgent attack on the U.S. Consulate in Benghazi demonstrates how dire the security situation in Libya is.¹⁵ The security lapse can be attributed to the fact that militias have not been disarmed and the widespread use of weapons in everyday life in Libya. Violence among Gadaffi loyalists and rebel forces still continues, as fighters have not reconciled their differences after the death of Gadaffi.¹⁶ *2012 UNHCR country operations profile – Libya, Working*

¹⁴ In August 2011, the National Transitional Council reported that 15,000 to 17,000 were killed in Misrate and Zlitan alone. *Libya commander says 50,000 dead in uprising*, Reuters (August 30, 2011) available at <http://uk.reuters.com/article/2011/08/30/uk-libya-casualties-idUKTRE77T3L520110830>. (last visited November 15, 2012)

¹⁵ On September 11, 2012, U.S. Ambassador Chris Stevens and three other Americans were killed when a mob opened shot the Americans and then set the consulate building on fire. Max Fisher, *Who's to blame for Benghazi? A layman's guide*, The Washington Post (November 06, 2012) available at <http://www.washingtonpost.com/blogs/worldviews/wp/2012/11/06/whos-to-blame-for-benghazi-a-laymans-guide/>. (last visited November 20, 2012)

¹⁶ In July 2012, Gadaffi loyalists kidnapped and tortured Omran Shaban, one of the rebel forces members who captured Gadaffi. He was freed in September 2012, but died from the injuries sustained during his kidnapping soon after his release. *Libyan behind Gaddafi capture dies in France*, Al Jazeera (last modified September 26, 2012) available at <http://www.aljazeera.com/news/africa/2012/09/201292652225974150.html>. (last visited November 18, 2012)

environment, United Nations High Commissioner for Refugees (2012) available at <http://www.unhcr.org/pages/49e485f36.html>. (last visited November 20, 2012).

Lack of security is resulting in vigilante justice and impunity among actors. There are reports that militias are arbitrarily arresting and then torturing and killing supporters of the Gadaffi regime. *Libya: Rule of Law or Rule of Militias?*, Amnesty International (July 05, 2012) available at <http://www.amnestyusa.org/research/reports/libya-rule-of-law-or-rule-of-militias>. (last visited November 14, 2012). It is estimated that about 8,000 Libyans are being illegally detained. Militias who have no legal authority to make arrests are holding half of these detainees. Individuals are being detained without being formally charged with crimes and are not given access to counsel. To put an end to the detainee crisis, a rule of law and a punitive system are needed to formally charge detainees and provide them due process rights. *Libya: New Government Should End Illegal Detention*, Human Rights Watch (November 16, 2012) available at <http://www.hrw.org/news/2012/11/16/libya-new-government-should-end-illegal-detention>. (last visited November 20, 2012).

Furthermore, humanitarian issues have arisen after the civil war. A refugee crisis has emerged as the civil war has internally displaced 200,000 Libyans and an estimated 900,000 people to flee. Libyans need assistance in securing food and water, school systems, health facilities, and access to housing and land. *2012 UNHCR country operations profile – Libya, Working environment*, United Nations High Commissioner for Refugees (2012) available at <http://www.unhcr.org/pages/49e485f36.html>. (last visited November 20, 2012). Receiving assistance is further complicated by the fact that many Libyans have either lost or had their documents seized during the civil war and are not

able to verify their citizenship. Rebecca Murray, *For refugees in Libya, hard to stay or go*, Al Jazeera (March 12, 2012) available at <http://www.aljazeera.com/indepth/features/2012/03/201231183925246482.html>. (last visited November 18, 2012).

B. Iraq

The Ba'ath party came into power in Iraq July 17, 1968 when it overthrew Iraq's third president, Abdul Rahman Arif, in what has come to be known as the July 17 Revolution.¹⁷ Saddam became Iraq's fifth President on July 16, 1979 when President Bakr resigned. Saddam Hussein would go on to rule Iraq through a dictatorship for the next 24 years. His reputation became infamous because of his nuclear weapon development programs and genocide against civilians in Iraq. *The Long Road to War: 1937-1979: Saddam's Rise to Power*. PBS, Frontline. Available at <http://www.pbs.org/wgbh/pages/frontline/shows/longroad/etc/cron.html>. (last visited Oct. 25, 2012).

Iraq serves as an example of an international force ousting a president who disobeyed the law. On March 20, 2003, a coalition of forces from the United States and 36 other countries launched the invasion of Iraq a.k.a. Operation Iraqi Freedom.¹⁸ In a radio address to the U.S., President Bush announced the mission in Iraq was "to disarm Iraq of weapons of mass destruction, to end Saddam Hussein's support for terrorism, and to free the Iraqi people." *President Discusses Beginning of Operation Iraqi Freedom*,

¹⁷ The July 17 Revolution was a bloodless coup by the Ba'ath party. On July 17, 1968, President AbdelRahman Aref was sleeping in the Presidential Palace when he was told by Defense Minister Hardan al-Tikriti that he was no longer in power. President Aref was then placed on a plane to London and exiled from Iraq for 11 years. The Ba'ath party had taken control of Iraq. Ahmed Hassan al-Bakr became Iraq's fourth President alongside his Vice President Saddam Hussein. Shafika Mattar, *Former Iraqi President Abdel Rahman Aref*, Washington Post (August 25, 2007) also available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/24/AR2007082402232.html>. (last visited October 25, 2012).

President's Radio Address (March 22, 2003) available at <http://georgewbushwhitehouse.archives.gov/news/releases/2003/03/20030322.html>. (last visited Oct. 25, 2012). The military strategy was to topple Saddam's power by disrupting the command and control of Iraqi forces by seizing Iraq's key cities and capturing Iraqi senior leaders. *Saddam is 'deceiving, not disarming'*. The Guardian (January 29, 2003) available at <http://www.guardian.co.uk/world/2003/jan/29/usa.iraq1>. (last visited Oct. 25, 2012). On May 01, 2003, President Bush announced the end of major combat operations in Iraq during a speech on USS Abraham Lincoln. Still, Coalition forces remained in Iraq to restore order and assist with the reconstruction of the Iraqi government.¹⁹ *Commander in Chief lands on USS Lincoln*. CNN Politics (May 02, 2003) available at http://articles.cnn.com/2003-05-01/politics/bush.carrier.landing_1_bush-speech-observation-deck-flight-deck/2?s=PM:ALLPOLITICS. (last visited Oct. 25, 2012)

Saddam Hussein was captured on December 13, 2003 during Operation Red Dawn.²⁰ After being captured, Saddam was charged with crimes against humanity, which were allegedly committed during his reign as Iraq's President. Specifically, the Iraqi Special Tribunal charged him for events arising from what has come to be known as

¹⁹ Operation Desert Scorpion was one of the operations dedicated to help restore Iraq. The operation sought to raid certain areas and detain supporters of Saddam's ex-regime that were resisting to the new government in Iraq. The operation also delivered humanitarian aid to strengthen Iraq's government and infrastructure so that Iraq could reach self-rule and self-sufficiency. *U.S. begins new military operation in Iraq*, CNN World (June 16, 2003) available at http://articles.cnn.com/2003-06-15/world/sprj.irq.main_1_operation-desert-scorpion-iraqi-villagers-new-military-operation?s=PM:WORLD. (last visited October 25, 2012).

²⁰ Operation Red Dawn was carried out after forces received information leading to possible whereabouts of Saddam Hussein. 600 troops then searched an isolated farm in Adwar, Iraq. A trap door covered with dirt and a rug led to an underground hole where Saddam Hussein was hiding. He did not resist and was taken in custody. *Kerry G. Johnson and Shyam Patel, Operation Red Dawn: The capture of Saddam Hussein*, The Baltimore Sun (December 15, 2003) available at http://www.baltimoresun.com/news/bal-husseincapturegraphic121503,0,7923161_graphic. (last visited October 25, 2012).

the Dujail Massacre.²¹ During the Dujail trial, Saddam was also being tried in a separate trial for the 1988 killings of about 100,000 Kurdish residents of Northern Iraq. On November 5, Hussein was found guilty of ordering the deaths of 148 Dujail residents and was sentenced to death by hanging for his role in the Dujail Massacre. The Kurdish genocide trial continued against Saddam's six co-defendants after Saddam was hanged on December 30, 2006. Mariam Karouny and Ibon Villeda, *Iraq court upholds Saddam death sentence*. Washington Post (December 26, 2006) available at <http://www.washingtonpost.com/wpdyn/content/article/2006/12/26/AR2006122600297pf.html>. (last visited Oct. 25, 2012).

After the U.S. invasion removed Saddam Hussein from power, Iraq and its people were in store for a new era of governance that intended to bring its people freedoms and peace through a democratic form of government. Still, the country was forced to face the withdrawal effects following Saddam's twenty-four year reign. One of the main consequences of the war on Iraq was destabilization and violence among the various sects in Iraq. Edward Wong, *The New York Times*, Times Topics. *Overview: The Iraq War*. (Feb. 15, 2008) available at http://www.nytimes.com/ref/timestopics/topics_iraq.html. (last visited Oct. 25, 2012). Under Saddam, the Iraqi government had been under Sunni control. His removal spawned a battle for the throne in Iraq; specifically, sparking instability in Iraq by means of a Shi'ite revival and a responding Sunni insurgency. Turmoil between Sunnis and Shi'ites further intensified during Iraq's first democratic

²¹ Saddam's trial was the first case ever heard by the Iraqi High Tribunal. The court was created to specifically address human rights violations committed in Iraq between 1968 and 2003. The charge against Saddam relates to an incident in 1982 where residents of Dujail had attempted to assassinate Saddam during his visit to the town. In retribution, Saddam ordered the murder, torture, and illegal arrest of 800 Dujail residents. 148 male detainees were executed after having been sentenced to death after having been tried before the Revolutionary Court. *Judging Dujail: The First Trial before the Iraqi High*. Human Rights Watch, (November 20, 2006) available at <http://www.hrw.org/node/11112/section/3>. (last visited October 25, 2012).

elections in 2005 where the Sunni's lost control of the Iraqi government to the Shi'ites.²² As a result, a civil war between the two sects erupted in Iraq. In 2007, President Bush sent an additional 168,000 troops to Iraq in order to deal with the violence between the two sects.²³ In 2008, the new Iraqi Army was formed and began training its troops. One year later, the Iraqi Army grew stronger and was better equipped to stabilize the violence in Iraq. Nevertheless, the U.S. did not officially end its involvement in the Iraq War until December 2011.²⁴ About 100,000 Iraqi civilians were killed during the war.

Documented civilian deaths from violence. Iraq Body Count. Available at <http://www.iraqbodycount.org/database/>. (last visited Oct. 25, 2012)

Furthermore, conflict between Arabs and Kurds has developed in a post-Saddam Iraq. This Kurdish-Arab conflict has deep roots in history and now is close to reaching a breaking point. Kurdish forces, the Peshmerga, took advantage of the collapse of Saddam's army and occupied Arab territory beyond a boundary known as the "Green Line".²⁵ Peace between the two sects is at risk for two main reasons: disputes over

²² Historically, Sunnis make up about 80-90% of the Muslim community. In Iraq, the Sunni's had been in control since the 20th century when British colonists put them into power. Edward Wong, *The New York Times*, Times Topics. *Overview: The Iraq War*. (Feb. 15, 2008) available at http://www.nytimes.com/ref/timestopics/topics_iraq.html. (last visited October 25, 2012). Democratic elections in 2005 disrupted Sunni control when the Shi'ite faction that won the majority of parliamentary elections in 2005. Furthermore, the Iraqi Parliament elected Jalal Talibani, a Kurdish politician, President of Iraq in 2005 and in 2010. *The World Factbook*. CIA. Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/iz.html>. (last visited October 25, 2012).

²³ "The Surge" was General Petraeus' strategy to slow down the violence among the warring factions in Iraq. The additional troops were used to set up small operating bases in the most violent areas in an effort to reduce violence through political solutions. Allan Mallinson. *Patience is the key to General Petraeus's surge*, *The Telegraph*. (September 11, 2007) available at <http://www.telegraph.co.uk/comment/personal-view/3642609/Patience-is-the-key-to-General-Petraeuss-surge.html>. (last visited October 25, 2012).

²⁴ Defense Secretary Leon Panetta declared the war over on December 15, 2011. He deemed the war a success as Iraq transformed into a democratic government and admitted no WMD's were found in Iraq. Tom Vanden Brook, *U.S. formally declares end of Iraq war*, *USA TODAY* (December 15, 2011) available at <http://usatoday30.usatoday.com/news/world/iraq/story/2011-12-15/Iraq-war/51945028/1>. (last visited October 25, 2012).

²⁵ The Green Line was a boundary created after Iraqi forces withdrew from Northern Iraq following the Persian Gulf War in 1991. The boundary line was intended to serve as the border between the Kurdish regional government and the Iraqi government. *Iraq and the Kurds: Trouble Along the Trigger Line*, International Crisis Group (July 08, 2009) available at <http://www.aina.org/reports/iatktatl.pdf>. (last visited October 25, 2012)

territory in northern Iraq and the governmental classification of a group of Kurdish fighters called the Peshmerga. Despite the disputes over territory, the Kurds have signed contracts with companies granting permission to use the land in dispute for oil exploration and extraction. Also, the Kurds want the Peshmerga, a group of Kurdish fighters, to be part of the Iraqi Security Forces, while the Arabs want them to remain independent. The departure of U.S. troops in 2011 has led to a potential clash between the Kurds and Arabs in Iraq. The difficulty in resolving these issues lies in the lack of a constitutional framework to resolve the rightful occupation of the territory in Northern Iraq. To make matters worse the civil war in neighboring Syria poses the danger of spilling over into Iraq and igniting a war among Sunni's, Shi'ite's, Arabs, and Kurds in both Iraq and Syria.²⁶ Irena L. Sargsyan, *A New Arab-Kurdish Conflict?*, The National Interest (August 13, 2012) available at <http://nationalinterest.org/commentary/new-arab-kurdish-conflict-7323>. (last visited Oct. 25, 2012).

In addition, the war in Iraq had the effect of displacing an estimated four million Iraqis.²⁷ Iraqi refugees face devastating conditions inside and outside of Iraq. It is estimated that 500,000 Iraqis live as squatters in the slums of Iraq. Those who fled the country face difficulties sustaining themselves, as they cannot legally work. *Iraq, Refugee International*. Available at <http://www.refugeesinternational.org/where-we-work/middle-east/iraq>. (last visited October 28, 2012). Displaced Iraqis are living in

²⁶ In October 2012, militant Iraqi Sunni's travelled to Syria to fight against Syria's Alawite government, which happens to be an Shi'ite byproduct. Consequently, militant Iraqi Shi'ites are heading over to Syria to fight on behalf of Syria's government along side fellow Shi'ites from Iran and Lebanon. Yasir Ghazi and Tim Arango, *Iraqi Sects Join Battle in Syria on Both Sides*, The New York Times, Middle East. (October 27, 2012) available at <http://www.nytimes.com/2012/10/28/world/middleeast/influx-of-iraqi-shiites-to-syria-widens-wars-scope.html?pagewanted=all>. (last visited October 25, 2012)

²⁷ Two million Iraqis have been internally displaced within Iraq and another two million fled mostly to Syria, but also Jordan, Lebanon, and Egypt. *Iraqi Refugees*, The New York Times, World. (November 13, 2012.) Iraqi Refugees. Available at http://topics.nytimes.com/top/news/international/countriesandterritories/iraq/iraqi_refugees/index.html (last visited October 25, 2012)

poverty and lack basic necessities such as water, food, shelter, and access to medical care.²⁸ “*Rising to the Humanitarian Challenge in Iraq*”. Oxfam International. (July 18, 2007) available at <http://www.oxfam.org/sites/www.oxfam.org/files/Rising%20to%20the%20humanitarian%20challenge%20in%20Iraq.pdf>. (last visited Oct. 25, 2012). To make matters worse, the Iraqi government lacks the ability and resources to provide humanitarian assistance to the refugee population.

C. Ecuador

Rafael Correa is the current president of Ecuador. He first entered office in 2007 after winning the 2006 Presidential election. His longevity and success is startling as Ecuador’s recent history includes the removal of three presidents from office.²⁹ He is arguably the most popular and dominant president since military ruled ended in Ecuador in 1979.³⁰ Conditions in Ecuador have drastically improved under the leadership of President Correa. Most notable is the vast improvement of the country’s economy and the expansion of social services.³¹

²⁸ OXFAM’s 2007 report “Rising to the Humanitarian Challenge in Iraq” provides the following statistics:

Four million Iraqis – 15% - regularly cannot buy enough to eat.
70% are without adequate water supplies, compared to 50% in 2003.
28% of children are malnourished, compared to 19% before the 2003 invasion.
92% of Iraqi children suffer learning problems, mostly due to the climate of fear.

<http://www.oxfam.org/sites/www.oxfam.org/files/Rising%20to%20the%20humanitarian%20challenge%20in%20Iraq.pdf>

²⁹In 1997, Ecuadorian Congress deemed President Abdala Bucaram mentally unfit to exercise power and dismissed him from presidency. In 2000, President Jamil Mahuad was ousted by Ecuadorian indigenous protestors and Col. Lucio Gutierrez. In 2005, Ecuadorian Congress voted to remove Lucio Gutierrez from office for unconstitutionally revoking the Supreme Court of Justice. *Ecuador declares state of emergency amid ‘coup attempt’*, BBC News Latin America and Caribbean (September 30, 2010) available at <http://www.bbc.co.uk/news/world-latin-america-11447519>. (last visited November 10, 2012).

³⁰ He has not lost a re-election since he entered office in 2007. Correa was re-elected in 2009 with 51% of votes while his closest opponent only accumulated 29% of votes. See Simon Romero, *Ecuador Re-elects President, Preliminary Results Show*, The New York Times, Americas, (April 26, 2009) available at http://www.nytimes.com/2009/04/27/world/americas/27ecuador.html?_r=0. (last visited Nov, 10, 2012).

³¹ In July 2012, renegotiation of oil contracts increased the government’s revenue. The new contracts raised Ecuador’s share of gross oil revenues from 13% to 87%. Also, his administration increased the government’s direct tax receipts from 35% to 41%. Portions of this revenue were appropriated to social services in Ecuador such as: public education, healthcare, public housing, and employment

Ecuador presents an example of a failed coup d'état. On September 30, 2011, members of Ecuador's National Police force protested a new law that had not yet been enacted, The Public Service Organic Law.³² The protest took place in various locations throughout Ecuador.³³ President Correa decided to address the protest by going directly to the National Police headquarters in Quito and speaking directly with the National Police. After addressing the police, the President was forced into the street where he was struck with a tear gas canister shot by a protesting police officer. He was taken to the hospital facility inside the Quito National Police headquarters for his injury. President Correa remained trapped inside the hospital surrounded by insurgent police officers that prevented him from leaving by blocking all exits. While trapped inside the facility, President Correa used the radio to declare a State of Emergency and deemed the events to be a coup attempt. *Ecuador declares emergency as police protest, president is attacked*, CNN World (November 30, 2010) available at <http://www.cnn.com/2010/WORLD/americas/09/30/ecuador.violence/index.html>. (last visited November 11, 2012).

benefits. Jayati Ghosh, *Could Ecuador be the most radical and exciting place on Earth?*, The Guardian (January 19, 2012) available at <http://www.guardian.co.uk/commentisfree/cifamerica/2012/jan/19/ecuador-radical-exciting-place>. (last visited November 05, 2012).

³² The new law changed the existing payment structure of for public employees in Ecuador. As a result, the National Police force's promotion and bonus payments were cut. Will Grant, *'No pardon' for Ecuador rebels, says President Correa*, BBC News Latin America (October 01, 2012) available at <http://www.bbc.co.uk/news/world-latin-america-11451470>. (last visited November 07, 2012).

³³ Protesting members used roadblocks to prevent access to certain cities. Others occupied the National Assembly Building and police barracks in various cities. Furthermore, Ecuadorian Air Force personnel closed the airports in Guayaquil and Quito by taking control of the runway platforms, preventing planes from landing or taking off. *Ecuadorian army rescues captive President from his own police protesting about budget cuts*, Daily Mail UK, (October 01, 2012) available at <http://www.dailymail.co.uk/news/article-1316641/Ecuador-President-Rafael-Correa-rescued-army-protesting-police.html>. (last visited November 14, 2012).

Ten hours later, Ecuador's army launched a rescue effort that took place around midnight. Members of Ecuador's army conducted a thirty-five minute operation in which they battled against National Police in order to make their way inside the hospital to rescue President Correa. They attacked police officers guarding the building with rubber bullets and tear gas. After being rescued, President Correa addressed Ecuador from the Presidential palace and declared the events to be a coup attempt organized by rival political party, The Patriotic Society Party, and former-President, Lucio Gutierrez. The Public Service Organic Law was negotiated and amended to please the National Police. Fast forward to 2012, President Correa is as popular as ever and is eyeing a third term in 2013.³⁴ Ben Westwood, *Ecuador unrest: 'kidnapped President Rafael Correa rescued*, The Telegraph (October 01, 2010) available at <http://www.telegraph.co.uk/news/worldnews/southamerica/ecuador/8036056/Ecuador-unrest-kidnapped-President-Rafael-Correa-rescued.html>. (last visited November 10, 2012).

III. Non-violent means of removing a President that disobeys the law.

a. The Philippines

The 1986 People Power Revolution of the Philippines, best known as EDSA, provides an example of the non-violent removal of a president due to unlawful behavior. Ferdinand Marcos won the presidential election in 1965 and was re-elected for a second term in 1969. Under the Philippine Constitution, he was not eligible to run for a third term. Nevertheless, President Marcos assumed authoritarian control of the Philippines by

³⁴ According to Mitofsky, a Mexican polling firm, a recent 2012 poll found that President Correa currently has an 80% approval rate. Further, President Correa recently announced he was running for re-election in 2012 and in October 2012 Cedatos, an Ecuador poll, found that President Correa is projected to win the 2013 election. Jim Wyss, *Ecuador president looks at third term with record-high approval ratings*, The Miami Herald (November 13, 2012) available at <http://www.miamiherald.com/2012/11/13/3095663/ecuador-president-looks-at-third.html#storylink=cpy>. (last visited November 22, 2012)

declaring Martial Law on September 21, 1972. *Declaration of Martial Law*, Official Gazette available at <http://www.gov.ph/featured/declaration-of-martial-law/>. (last visited November 23, 2012). In addition, his government was plagued with corruption and exploitation. It is estimated during his presidency Marcos accrued an estimated five to ten billion dollars through corrupt practices.³⁵ Furthermore, he dishonestly operated the government for his own political benefit.³⁶

Public dismay continued to grow and reached its peak after two major events, which would eventually lead to the EDSA Revolution. The first major event was the assassination of Senator Benigno Aquino, a political opponent of President Marcos who he incarcerated and later exiled to the United States. On August 21, 1983, Aquino returned to the Philippines with intentions of to battle the corruption. However, he was shot and killed while stepping off the plane that had just landed in Manila Airport. *On This Day: August 21*, BBC, *On This Day 1950-2005*, available at http://news.bbc.co.uk/onthisday/hi/dates/stories/august/21/newsid_2534000/2534945.stm. (last visited November 23, 2012). Aquino's assassination sparked rage and brewed further distrust of President Marcos. A commission appointed to by President Marcos concluded the military conspired to assassinate Aquino. Bob Sexter, *U.S. Reacts Strongly Against Aquino Verdict: State Dept. Calls It 'Difficult to Reconcile' With Earlier Inquiry*,

³⁵ The schemes included stealing from the public treasury and foreign id, kickbacks from large businesses, creation of monopolies, and inside deals with family and personal friends. *Ferdinand Marcos*, World Bank, Case Studies, (date not available) available at http://www1.worldbank.org/finance/star_site/documents/Case_Studies_02.pdf. (last visited November 25, 2012).

³⁶ President Marcos cemented political control of the Philippines by arresting political opponents. Most critical, he dissolved the Philippine Congress and abolished the Philippine Constitution, which he replaced with his own Constitution. *Aquino names 45 to write new Constitution*, AP News Archive (May 25, 1986) available at <http://www.apnewsarchive.com/1986/Aquino-Names-45-To-Write-New-Constitution/id-615dd6fe65cb3cdb76e83796e7b757c1>. (last visited November 25, 2012).

Los Angeles Times (December 03, 1985) available at http://articles.latimes.com/1985-12-03/news/mn-12699_1_state-dept-calls. (last visited November 21, 2012).

The second major event that led to the Revolution was the controversial presidential elections in 1986. Intending to restore his image, President Marcos announced the next presidential election would be held one year ahead of schedule. His main opposition was Corazon Aquino, Senator Aquino's widow. She announced her candidacy a day after a Marcos-appointed court acquitted 26 military men accused of being involved in Ninoy's assassination. Vincent McKee and Claire Wallerstein, *Obituary: Corazon Aquino*, The Guardian (July 31, 2009) available at <http://www.guardian.co.uk/world/2009/aug/01/corazon-aquino-obituary>. (last visited November 26, 2012). Instead of restoring his image, the February 07, 1986 elections further harmed his already weak standing with the people. Reports of election rigging by means of voting fraud, vote tampering, and vote selling tipped the breaking point President's Marcos' already waning government. The official election canvasser, Commission on Elections (COMELEC), tallied President Marco as the winner. On the other hand, an unofficial tally of the National Movement for Free Elections (NAMFREL) tallied Aquino as the winner. *Philippines voting fraud downplayed*, Houston Chronicles Archive (February 11, 1986) available at http://www.chron.com/CDA/archives/archive.mpl/1986_218250/philippines-voting-fraud-downplayed.html. (last visited November 19, 2012) This was the last straw as the people did not accept Marcos as being the true winner. The people of the Philippines finally had enough and decided to take action.

The defection of two main loyalists sparked the movement. President Marcos loyalists, Defense Minister Juan Ponce Enrile and the Chief of Staff to the Armed Forces of the Philippines, Fidel V. Ramos, ended their allegiance to President Marcos and called for his resignation. Nicholas Cunniff-Bruce, *The Philippines army revolt against President Marcos*, *The Guardian* (February 24, 1986) available at <http://www.guardian.co.uk/theguardian/1986/feb/24/fromthearchive>. (last visited November 20, 2012). Subsequently, Cardinal Sin, Leader of the Philippines' Roman Catholics, helped mobilize the movement through a radio address alluring Filipinos to aid and morally support rebel forces by travelling to Epifanio de los Santos Avenue ("EDSA"). The nonviolent demonstrations took place on this road located in Manila called the EDSA. On February 22-25, 1986, 3.5 million ordinary people who came on to the streets of Manila with Bibles and rosaries had answered the call of Cardinal Sin on Vatican Radio to confront the military machine peacefully. Vincent McKee and Claire Wallerstein, *Obituary: Corazon Aquino*, *The Guardian* (July 31, 2009) available at <http://www.guardian.co.uk/world/2009/aug/01/corazon-aquino-obituary>. (last visited November 26, 2012).

Non-violent, peaceful demonstrations ultimately led to the removal of President Marcos. On February 25, 1986, Marcos left the Philippines for Hawaii and Corazon Aquino became the 11th President of the Philippines. *On This Day: February 25*, BBC, *On This Day 1950-2005*, (date) available at http://news.bbc.co.uk/onthisday/hi/dates/stories/february/25/newsid_4694000/4694530.stm. (last visited November 28, 2012). Marcos' authoritarian government had been overthrown and democracy was finally restored in the Philippines. Nevertheless,

EDSA's success would be short lived. The Philippines remained systemically plagued with corruption from Marcos' reign and its economy remained in a dismal state. Almost twenty-seven years later, a stable democratic form of government still has not been reached.

Moreover, future EDSA protests would in effect tarnish the democracy fought for throughout the 1986 revolution. In January 2001, EDSA II demonstrations peacefully removed President Estrada from presidential office. The legality of the ouster was questioned because unlike Marcos who had assumed authoritarian control, Estrada had been democratically appointed under the rule of law in the Philippines. On January 17, 2001, President Estrada's impeachment trial commenced.³⁷ However, the trial never officially concluded as Senators and trial prosecutors resigned due to controversy arising from excluded evidence.³⁸ Over one million protestors had gathered at EDSA Avenue to demand Estrada's removal from office. On the fourth day of EDSA II protests, Estrada stepped down from presidential office even though his impeachment trial never ended.

Estrada loses presidency, faces arrest, CNN World (April 03, 2001) available at <http://archives.cnn.com/2001/WORLD/asiapcf/southeast/04/03/philippines.estrada/index.html>. (last visited November 29, 2012).

Four months later, EDSA III would take place. This time demonstrators moved to have President Gloria Macapagal-Arroyo replaced by recently ousted ex-President Estrada. Unlike the two previous protests, EDSA III was a failure. Violence erupted between protestors and police and military officers when protestors attempted to enter the

³⁸ At the center of controversy was an envelope that purported to prove Estrada's corruption. Senators voted 11 to 10 in favor of excluding the envelope from the trial. This result led to the resignation of the trial prosecutors, Senate President, and Senate Secretary. *Prosecutors in Estrada Trial Resign*, CBS News (February 29, 2011) available at http://www.cbsnews.com/2100-202_162-255307.html. (last visited November 29, 2012).

Presidential residence. A State of Rebellion was declared and led to the arrest of leaders and organizers of the protest. In the end, President Gloria Macapagal-Arroyo retained power, but the symbolism of EDSA and democracy were tarnished. Results from a 2006 survey showed that only 36% of Filipinos thought President Marcos should have been removed from office. Maria Ressa, *25 years on, Philippines offers lessons for Egypt*, CNN Opinion (February 25, 2011) available at http://articles.cnn.com/2011-02-25/opinion/maria.ressa.protests.philippines_1_people-power-philippines-social-movement?s=PM:OPINION. (last visited November 30, 2012). Democracy in the Philippines is further shamed by the recent arrest of ex-President Macapagal-Arroyo.³⁹

Although the EDSA revolution successfully brought democracy to the Philippines, the new government failed to fully develop it through a progressive government that would erode the remnants of Marcos' corruption and develop a solid infrastructure for growth. The Philippines' economy is still in a dismal state. The economy was not stimulated through the imposition of agricultural and industrial programs. In addition, the new government failed to dismiss foreign debt accrued during Marcos' presidency. Moreover, the new government failed to gather and allocate resources for education, housing, and health programs.

Sonny Africa, *EDSA and the Economy: 25 years after*, ABS-CBN News (February 24, 2012) available at <http://www.abs-cbnnews.com/insights/02/24/11/edsa-and-economy-25-years-after>. (last visited November 28, 2012). Currently, Filipinos continue to suffer from the feeble economy in the Philippines. Unemployment and gaps in the distribution

³⁹ She has been charged with a violation of Plunder Law based on allegations that she and her co-defendant diverted lottery funds for personal gain. She also faces a Graft charge for abandoning a \$329 million deal with China. She has pled not guilty, has been released on bail, and awaits trial.

Philippines orders arrest of Arroyo on plunder charges, Reuters (October 04, 2012) available at <http://www.reuters.com/article/2012/10/04/us-philippines-politics-arroyo-idUSBRE89308O20121004>. (last visited November 21, 2012).

of wealth continue to be pressing issues in the Philippines.⁴⁰ According to the Philippine government, more than 26% of 95 million Filipinos live in poverty. *Philippines plans 10% budget hike to fight poverty*, The Manila Times (July 10, 2012) available at <http://www.manilatimes.net/index.php/news/breaking-news/26559-philippines-plans-10-budget-hike-to-fight-poverty>. (last visited November 25, 2012).

b. The United States

The United States addresses the issue of a disobeying president through its legal system. The Executive can be sued in court as demonstrated by the steel seizure cases of 1952. On June 30, 1950, the U.S. entered the Korean War to aid South Korea's efforts against North Korea. Six months later President Truman declared a national state of emergency as the U.S. was in Korea fighting communism. On April 08, 1952, President Harry S. Truman ordered the Secretary of Commerce to seize and control the majority of the country's steel mills because a worker's strike had become imminent. President Truman seized the still mills because the raw materials they produced were needed for national defense in the Korean War. Ceasing the production and distribution of materials would in effect put the U.S. in danger. *Dec. 16, 1950: President Truman Proclaims State of Emergency During Korean War*, The New York Times, (December 16, 2011)

available at

<http://learning.blogs.nytimes.com/2011/12/16/dec-16-1950-president-truman-proclaims-state-of-emergency-during-korean-war/>. (last visited December 04, 2012). In response,

owners of the steel mills took legal action and were granted an injunction that nullified

⁴⁰ Compare the 10.6% unemployment rate during the period of 1981-1986, with the 11% unemployment rate in 2005-2010. Sonny Africa, *EDSA and the Economy: 25 years after*, ABS-CBN News (February 24, 2012) available at <http://www.abs-cbnnews.com/insights/02/24/11/edsa-and-economy-25-years-after>. (last visited November 28, 2012).

the seizure of the mills. The injunction was appealed and made its way to the U.S. Supreme Court. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (U.S. 1952) the court rejected President Truman's seizure of the mills under his inherent powers because there was neither explicit nor implicit authority to do so under the war powers clause. Under the Separation of Powers theory, President Truman should have suggested the seizure to Congress and let them effectuate it via legislation.⁴¹

Moreover, Impeachment is the process prompted to remove a President who breaks the law while in office. Article 2, Section 4 of the U.S. Constitution provides: "The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." The U.S. Constitution grants the Legislative Branch the responsibility of implementing the process. Specifically, the House of Representatives have the power to impeach.⁴² The House of Representatives can start an impeachment proceeding three different ways: 1) a Member can declare a charge of impeachment on their own initiative, 2) a Member can bring charges under oath and 3) a Member create the charges and refer them to the appropriate House committee. The Senate has the power to try impeachments.⁴³ The Senate will then conduct a trial to assessing the articles of Impeachment through presentation of evidence and arguments by counsel. Next, the Senate meets as a whole and votes on whether to convict on the articles of

⁴¹ *Id.* at 585.

⁴² U.S. Const. art. I, §2 provides in relevant part, "The House of Representatives...shall have the sole Power of Impeachment.

⁴³ U.S. Const. art. I, §2 provides in relevant part, "The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Impeachment. A conviction requires two-thirds of the votes of Senators present and results in the official being removed from office. Also, the Senate votes as to whether the official should be disqualified from holding an office of public trust in the United States. T.J. Halstead, *CRS Report for Congress, An Overview of the Impeachment Process*, American Law Division (April 20, 2005) available at <http://www.senate.gov/reference/resources/pdf/98-806.pdf> (last visited on December 01, 2012).

As a result of the Watergate Scandal impeachment hearings against President Nixon commenced. Nevertheless, President Nixon resigned prior to the finalization of the proceedings. President Nixon and several of his aids created a plan to burglarize the Democratic National Committee's headquarters, located in a building in the Watergate complex in Washington D.C. The purpose of the break in was to gather information that would help President Nixon win the 1972 election.⁴⁴ On June 16, 1972, five men entered the office while two remained as lookouts. A security guard at the Watergate complex called the police after he found the doors to the office taped to prevent the locks from closing. The mission was foiled as the men were arrested and charged with burglary. *American Original: Nixon*, National Archives and Records Administration (March 1996) available at http://www.archives.gov/exhibits/american_originals/nixon.html. (last visited December 03, 2012). President Nixon's role in planning the burglary and its subsequent cover up would ultimately lead to his impeachment.

⁴⁴ Despite the recent Watergate scandal, President Nixon won the 1972 presidential election by a landslide 520 electoral votes; compare to George McGovern's 17 electoral votes. *Historical Election Results: Electoral College Box Scores 1789-1996*, U.S. Electoral College available at <http://www.archives.gov/federal-register/electoral-college/scores.html#1972>. (last visited December 03, 2012).

On May 17, 1973, the Senate Watergate Committee began. Nixon claimed he had an “executive privilege” and would not testify before the Senate Watergate Committee or provide them with the oval office recordings. President attempted to keep the tapes private by arranging the firing of the Committee’s Special Prosecutor resulted in what has been dubbed the Saturday Night Massacre.⁴⁵ On February 06, 1974, the Judiciary Committee started investigating grounds for impeaching President Nixon. Investigations ultimately revealed President Nixon was involved with the initial planning and cover up of the scandal. On May 09, 1974, the House Judiciary Committee started impeachment hearings. On July 24, 1974, the U.S. Supreme Court rejected President Nixon’s claim of executive privilege and ordered Nixon to hand over tapes and documentation to the Special Prosecutor.⁴⁶ The Supreme Court upheld the Senate’s right to determine its own procedures, including the use of a trial committee. By the end of July, the Committee adopted three articles of impeachment against President Nixon: obstruction of justice⁴⁷, abuse of power⁴⁸, and defiance of subpoenas⁴⁹. On August 09, 1974, in wake of the high

⁴⁵ On October 20, 1973, Attorney General Elliot Richardson and Deputy Attorney General General Ruckelshaus resigned after Nixon ordered them to fire Special Prosecutor Cox. Solicitor General Bork complied with Nixon’s request and fired Special Prosecutor Cox. *Carroll Kilpatrick, Nixon Forces Firing of Cox; Richardson, Ruckelshaus Quit*, The Washington Post (October 21, 1973) available at <http://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/102173-2.htm>. (last visited December 02, 2012)

⁴⁶ In *United States v. Nixon*, 113 S. Ct. 732, (1993) the Supreme Court delivered a unanimous decision the court rejecting President Nixon’s claim of “an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”

⁴⁷ President Nixon allegedly made false or misleading statements to investigative members of the FBI, the Office of Watergate Special Prosecution Force, and Congressional Committees. It is also alleged that he withheld relevant and material information from investigators. Furthermore, President Nixon allegedly encouraged witnesses and suspects of the break in to provide false or misleading testimony in exchange for money or other favorable treatment. *The articles of impeachment against Nixon*, The Associated Press (date not available) available at <http://academic.brooklyn.cuny.edu/history/johnson/rmimparticles.htm>. (last visited December 02, 2012).

⁴⁸ President Nixon allegedly misused his Executive power to: obtain confidential information from the IRS in order to have income tax investigations carried out on certain individuals; order Executive branch personnel to conduct electronic surveillance and investigations for purposes unrelated to national security and to impede the investigation of the Watergate scandal. *The articles of impeachment against Nixon*, The Associated Press (date not available) available at <http://academic.brooklyn.cuny.edu/history/johnson/rmimparticles.htm>. (last visited December 02, 2012).

⁴⁹ President Nixon failed to produce documents and taped recordings as directed by authorized subpoenas issued by the Committee of the Judiciary House of Representatives. *The articles of impeachment against Nixon*, The Associated Press (date not available) available at <http://academic.brooklyn.cuny.edu/history/johnson/rmimparticles.htm>. (last visited December 02, 2012).

likelihood of impeachment President Nixon resigned and Vice President Gerald Ford assumed Presidency. Michael Beschloss, *Presidents: Richard M. Nixon*, White House Historical Association, available at <http://www.whitehouse.gov/about/presidents/richardnixon>. (last visited December 02, 2012)

President Clinton was the second United States president to be impeached. In 1994, Paula Jones sued President Clinton for sexual harassment in the U.S. District Court for the Eastern District of Arkansas. The case would never go to trial as summary judgment was granted in favor of President Clinton. However, Paula Jones appealed the decision and later agreed to drop it for a \$850,000 settlement. Dan Froomkin, *Case Closed*, Washington Post (December 03, 1998) available at <http://www.washingtonpost.com/wp-srv/politics/special/pjones/pjones.htm>. (last visited September 27, 2012). Clinton's impeachment is directly tied to his behavior during the Jones litigation. On December 11, 1997, U.S. District Court Judge Susan Wright ordered President Clinton to give Jones answers to questions pertaining to her lawsuit. President Clinton gave Jones with false written answers. On January 17, 1998, President Clinton provided false testimony regarding an affair with Monica Lewinsky during a deposition. Subsequently, President Clinton falsely testified in front of a Federal grand jury assembled by the U.S. District Court for the District of Columbia. By December 12, 1998, the House Judiciary Committee approved four articles of impeachment against President Clinton: lying to a grand jury, perjury, obstruction of justice, and abuse of power. Impeachment of William Jefferson Clinton, Committee on the Judiciary House of Representatives, Report 105-830, 105th Congress (2nd Session) (December 16, 1998)

available at <http://www.gpo.gov/fdsys/pkg/CRPT-105hrpt830/html/CRPT-105hrpt830.htm>. (last visited September 27, 2012).

On December 19, 1998, President Clinton was impeached by the House of Representatives and sent to trial in front of the Senate. The House of Representatives approved two of the four articles of impeachment by voting 228-206 and 221-212. President Clinton faced charges for perjury⁵⁰ and obstruction of justice⁵¹. Peter Baker and Helen Dewar, *The Senate Acquits President Clinton*, *The Washington Post* (February 13, 1999) available at <http://www.washingtonpost.com/wp-srv/politics/special/clinton/housevote/sc.htm>. (last visited September 30, 2012). The Trial began on January 07, 1999 and ended on February 12, 1999. President Clinton was acquitted of both perjury and obstruction of justice. Alison Mitchell, *The President's Acquittal: The Overview: Clinton Acquitted Decisively: No Majority For Either Charge*, *The New York Times*, Archives (February 13, 1999) available at <http://www.nytimes.com/1999/02/13/us/president-s-acquittal-overview-clinton-acquitted-decisively-no-majority-for.html?pagewanted=all&src=pm>. (last visited September 29, 2012).

During his impeachment, President Clinton had very strong support from the American people and had the highest approval rating for a President ever. A December 1998 Gallup poll revealed a 73% approval rating. 68% of poll participants believed

⁵⁰ Impeachment Article 1 alleged President Clinton provided false and misleading testimony to the grand jury regarding the Paula Jones case and his relationship with Monica Lewinsky. *Impeachment of William Jefferson Clinton, Committee on the Judiciary House of Representatives, Report 105-830, 105th Congress (2nd Session) (December 16, 1998)* available at <http://www.gpo.gov/fdsys/pkg/CRPT-105hrpt830/html/CRPT-105hrpt830.htm>. (last visited September 27, 2012).

⁵¹ Impeachment Article 3 alleged President Clinton encouraged Monica Lewinsky and other witnesses to give false testimony if called to testify. He also encouraged Monica Lewinsky to file a false affidavit. *Impeachment of William Jefferson Clinton, Committee on the Judiciary House of Representatives, Report 105-830, 105th Congress (2nd Session) (December 16, 1998)* available at <http://www.gpo.gov/fdsys/pkg/CRPT-105hrpt830/html/CRPT-105hrpt830.htm>. (last visited September 27, 2012).

Senate should not convict him. Clinton would then go on to finish the remainder of his second term. *Pol: Clinton's approval rating up in wake of impeachment*, CNN (December 20, 1998) available at <http://edition.cnn.com/ALLPOLITICS/stories/1998/12/20/impeachment.poll/>. (last visited September 30, 2012).

IV. Recommendation for Honduras

The Honduran Constitution must be revised to include an impeachment process via its National Congress. The lack of an impeachment provision is what made Honduras so vulnerable in June 2009. An impeachment system will help stabilize Honduras in times when its democracy is threatened by a disobeying president. Honduras must learn to prevent coups similar to those in Libya and Ecuador. Impeachment can shield and protect democracy in Honduras and prevent disruptions, which call into question the legitimacy of the government. It will serve as a legitimate legal mechanism designed to internally protect Honduran rule of law.

Violent means of removing Zelaya would have been a troublesome method of dealing with Zelaya's illegal conduct. Under this scenario, the assassination of Zelaya would have caused violence and raised perpetual security issues similar to those in Iraq and Libya. Political parties surely would have clashed and outrage over Zelaya's assassination would have caused ongoing violence. This hostile climate would have made democratic appointment of a new President a troublesome feat. A stable democracy would be difficult to achieve when perpetual violence is used as the means to solve political and legal issues. Further, had the coup failed, Zelaya's popularity and power over the country would have skyrocketed and reached standing similar to President

Correa in Ecuador. Survival of an attempted coup would have provided Zelaya the political platform and general support needed to call a Constitutional Assembly. This would have made drafting a new constitution a very realistic outcome. Perhaps, Zelaya would have run for President again and even possibly assume authoritarian rule of Honduras.

Non-violent means of removing Zelaya might have proven ineffective. As demonstrated in the Philippines model, a successful peaceful removal of a President requires an overwhelming amount of the general population to support the movement. More important, the military must denounce its allegiance to the President. The situation in Honduras was different. Even with a dismal approval rate, Zelaya had his fair share of political support from the people. Unlike President Marcos, Zelaya was still legally acting as president during his democratically allotted term and had not assumed authoritarian rule. It must also be taken into account that Zelaya was relatively close to ending his term and a new election would take place in the near future. It is very possible peaceful protests would have erupted into violence similar to EDSA III. Thus, a non-violent removal would have been very difficult to achieve.

Impeachment would have been the most resourceful and effective mechanism to address Zelaya's conduct. Most can agree that President Zelaya acted illegally by ignoring injunctions to stop the poll and inappropriately using government resources to conduct the poll. Honduran law is clear on who has the power to start a referendum.⁵² However, observers were split on whether the Honduran Supreme Court and Armed Forces legally acted in removing the President. Under Article 374, certain constitutional

⁵² Const. Hond., art. 5 states only the Supreme Electoral Tribunal can schedule, organize and supervise referendums.

provisions, such as the limit on presidential terms can never be amended.⁵³ Still, those who violate this provision are to be treated with due process as required by Article 94. From this, it is clear that President Zelaya acted illegally in carrying out the 4th Urn project and that his removal from power was illegal as he was not afforded due process. Impeachment would serve as a legal mechanism, prescribing a step-by-step process for the removal of a President. I propose Honduras fill this gap with the introduction of an impeachment system.

Impeachment is not a flawless process, and as a result issues may arise during its implementation. First, there concerns with the congressional body having too much power and discretion in the impeachment process. No other government branch has control or supervision on Congress during the impeachment process. Some feel it is too risky to give one government branch the power to remove the President. Still, the requirement that two-thirds of Congress reach a majority vote provides assurance that the decisions are of merit. Also, the fact there is no supervision on Congress allows the actors to make genuine and unbiased decisions during the impeachment. The investigation and subsequent Senate trial ensure that only impeachable offenses warrant impeachment and removal upon finding of guilt. Michael Gerhardt, *The Constitution Under Clinton: A Critical Assessment: The Special Constitutional Structure of the Federal Impeachment Process*, 63 Law & Contemp. Prob. 245, 245-247.

Moreover, there can be interpretation issues with the language impeachment provisions. For example, the final phrase of the United States Constitution's

⁵³ Const. Hond., art. 239 prohibits the president from attempting to amend restrictions of succession, and states whoever does so will cease "immediately" in his or her functions.

impeachment provision, Article 2, Section 4, “other high Crimes and Misdemeanors”, yields differing interpretations. Some look to original intent and history while others look at pragmatic political concerns and plain language. The former view posits a narrow impeachment power limiting the removal of a President for only extreme abuses of public authority and public trust. Proponents of this narrow view exclude private conduct from impeachable offenses. The latter view presents a broader interpretation, which makes no distinction between private and public conduct. This view reasons that a political actor serving in high office must serve the interests of the people by behaving honestly and honorably in all capacities. Thomas Lee, *Impeachment Panel Transcript: The Clinton Impeachment and the Constitution: Introduction to the Federalist Society Panel*, 1999 B.Y.U.L. Rev. 1079, 1082-1087.

I propose Honduras amend its Constitution to include an the following impeachment provision: “The President, Vice President and all civil officers of Honduras, shall be removed from office on impeachment for, and conviction of, treason, bribery, other high crimes and misdemeanors, *and misconduct threatening democracy in Honduras.*” The provision is based on the U.S. impeachment provision yet includes an additional clause designed to protect Honduras from a President who engages in conduct which jeopardizes democracy in Honduras. The clause is written in a broad manner to provide the National Congress the ability to deem a wide range of behavior impeachable. In addition, the power and procedure to impeach would be vested in the National Congress in the following provision: “The National Congress shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall

preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”

Establishment of an impeachment system could have averted the 2009 crisis and prevented harm to democracy in Honduras. The National Congress in Honduras should have been responsible for carrying out the impeachment process. An investigation would have been conducted as to the allegations that Zelaya acted illegally by using government funding and resources to implement a poll which itself was in violation of a recently passed Congressional bill. In addition, there would have been investigations of Zelaya’s failure to adhere to injunctions ordering him to stop the poll, and his attempt to amend the “unamendable” presidential term limit provision. An investigation would have yielded enough information for the National Congress to create Articles of impeachment against Zelaya. Next, an impeachment trial would have commenced if a majority vote were reached. This would have afforded Zelaya due process and ensured that his removal from office was justifiable. If his conduct warranted so, Zelaya would have been removed from office and the Vice President would have assumed control.