

Special Development Regions in Honduras¹

The Honduran Congress recently defined a new legal entity, the Special Development Region, known locally as la Región Especial de Desarrollo (RED). Honduras will soon use the RED to establish a new city-scale reform zone. Compared to special zones elsewhere in the world, the Honduran zone will be larger in scale, broader in its scope for reform, and most importantly, far more innovative in its approach to governance. The leadership in the RED will work directly with international partners to provide effective governance, establish the rule of law, and ensure equal treatment under the law for all residents.

THE PATH TO RECONCILIATION

Congressional support for the RED legislation was nearly unanimous, spanning the ideologically diverse collection of political parties in Honduras. This consensus reflects the success of the program of political reconciliation led by President Lobo and Congressional President Juan Orlando Hernandez. That program builds on the desire by all Hondurans for fundamental social change.

In recent decades, Hondurans have struggled to escape from a colonial legacy of economic exclusion. As in many other countries in the region, the turmoil from this struggle has left its own legacy of fear and distrust. The damaging political crisis of 2009, which resulted in then President Zelaya's removal from office, sprang from the low level of trust and served to further undermined it.

A Truth and Reconciliation Commission was formed to investigate the crisis and included former Guatemalan Vice-President Eduardo Stein, former Canadian ambassador to the United States Michael Kirgen, Rector of the Universidad Nacional Autonoma de Honduras Julieta Castellanos, Permanent Representative of Peru to the Organization of American States Maria Zavala Valladares, and Honduran Law Professor Jorge Omar Zelaya. The Commission released its findings in July of 2011, concluding that President Zelaya had broken the law by persisting in efforts to hold an illegal referendum, but that the method by which he was removed from power was an illegal coup. The Commission emphasized that the situation was made worse by the lack of a clear legal process, such as impeachment, for removing a Honduran President that violates the law.

In the wake of the crisis, there is a broad consensus about the urgent need for a new path that will lead to such basics as prevention of crime and protection of contracts. Even as they continue work to strengthen existing institutions, the elected leaders in Honduras have decided to create a safe haven where they can make a sharp break from a cycle of insecurity and instability that stokes fear and erodes trust.

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To create this new environment, the members of Congress recognized that they would have to go beyond their existing special zones based around the export-processing “maquila” industry. These smaller zones have expanded employment in such areas as garments and textiles, but have not brought the improved legal protections that are desired for their own sake and needed to attract higher-skilled jobs.

For the Honduran government, a special zone on currently undeveloped land offers a chance to push ahead with reforms that might otherwise stall because of the difficulty of changing entrenched patterns of behavior or because of conflict among different vested interests. Reform in the RED needn’t involve coercion or conflict, as only those people who want to live under the new rules will opt-in. Yet, success in the RED can translate into a stronger appetite for reform in the rest of Honduras by demonstrating what is possible.

The sense of urgency for progress and reconciliation is reflected in the pace at which the Honduran government has moved to establish the first RED. Congress passed a constitutional amendment giving the government the power to create REDs in January 2011, passing the amendment again in a mandatory follow-up vote in February. In July 2011, Congress passed a constitutional statute that broadly defines the governance structure for REDs. Within the next six months, Congress expects to define the boundary for the first RED and the President expects to appoint the people who will be in charge there. In parallel, the government is looking to its allies for partners that can help to bring the rule of law necessary to generate investment, jobs, and safety in the first RED.

RED GOVERNANCE

The constitutional provisions for Honduran REDs provide two anchors for governance: an external court of appeal and a nine member Transparency Commission. Figure 1 gives a schematic representation of these two anchors.

The Transparency Commission is the anchor for the executive and legislative functions in the RED. To get things started, President Lobo recently appointed five initial members of the Transparency Commission who will serve in a *pro tempore* capacity:

1. George Akerlof - Professor of Economics at the University of California at Berkeley, Senior Resident Scholar at the International Monetary Fund, and Nobel Prize Winner
2. Harry Strachan - Former President of INCAE Business School, Director Emeritus at Bain & Co., and Managing Partner at Mesoamerica Partners and Foundation in Costa Rica
3. Ong Boon Hwee - Former Chief Operating Officer of Singapore Power and Former Brigadier General in the Singapore Armed Forces
4. Nancy Birdsall - President and Co-Founder of the Center for Global Development, and former Executive Vice President at the Inter-American Development Bank
5. Paul Romer (Commission Chair) - Professor of Economics at the New York University Stern School of Business

These initial members have agreed to serve in a pro tempore capacity until the President appoints the full nine member Transparency Commission. While some of the initial five members may be asked to remain as permanent members, it is also possible that they will step down upon finding a suitable replacement.

Among their most important near term responsibilities will be to propose to the President the nine member slate of permanent members of the Transparency Commission and to establish a procedure to suggest to Congress the boundaries for the RED. The commissioners will also establish a process for receiving development proposals from would-be investors and ensure that business dealings related to the RED remain transparent, competitive, and free of corruption.

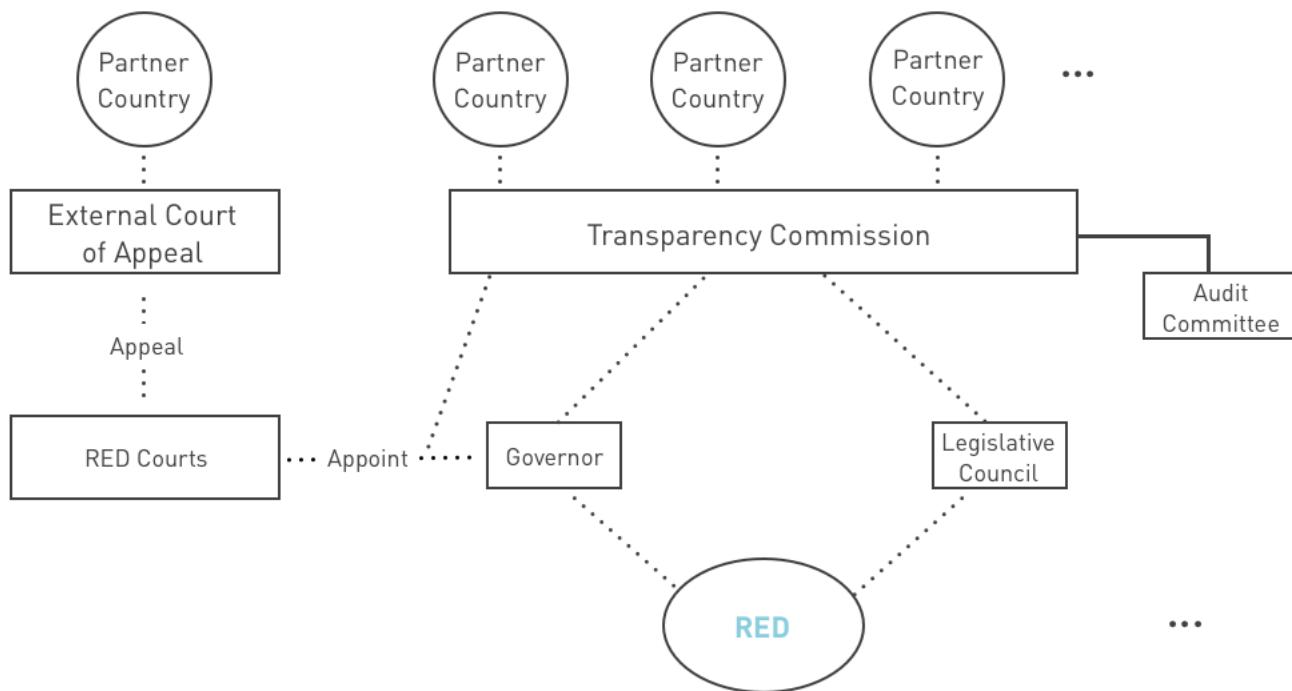


Figure 1: RED Governance Structure

President Lobo will also appoint a Honduran citizen who will serve as the governor of the first RED. After this initial appointment by the President, the responsibility for replacing the RED governor will transition, for a time, to the Transparency Commission. As the population of the RED grows and conditions of safety and trust emerge there, the Commission will recede into the background by managing a transition to local democratic selection of the governor and the local legislature.

The Audit Committee will be one of the key tools that the Transparency Commission can use to monitor the performance of the RED government. This committee will audit not just the finances of the RED government and its officials, but also the performance of key agencies. For example, in

evaluating police performance the audit committee can draw on crucial statistics such as the crime rate, the clearance rate for crimes by the legal system, and the incidence of police misconduct.

Initially, the RED governor will work with the Transparency Commission to nominate judges for the independent court system in the RED. The nominations will be subject to approval of the Honduran Congress, but nominees can be drawn from jurisdictions all over the world, giving the RED access to a relatively deep pool of judicial talent.

The RED governor also has the power to negotiate a cooperative agreement that anchors the RED courts in the successful judicial system of a partner country. President Lobo recently requested that the Supreme Court of the Republic of Mauritius consider acting as a court of appeal for the judicial system that will be established in the new RED. The Chief Justice of the Supreme Court in Mauritius, Y K J Yeung Sik Yuen, in consultation with other members of government, has committed in principle to taking on this role.

As a recent development success story, Mauritius is a natural partner for Honduras. Mauritius transformed itself from a poor, sugar-reliant economy to one of the most successful economies in Africa, in part by using special zones to encourage trade-led growth. Another key aspect of Mauritian success was its cultivation of strong and reliable legal institutions. The Mauritian court system is further backed by its means of appeal to the Privy Council in the United Kingdom.

Just as the strength and integrity of the Mauritian court system has been key to enhancing growth and development in Mauritius, the governments in Honduras and Mauritius believe that this historic agreement will ensure an independent judiciary in the RED and give important assurances to potential residents and investors.

The use of an external court of appeal is just one of many innovative possibilities for cooperative governance. For example, the RED might enlist an organization such as Crown Agents (which was spun-off from the British government as a not-for-profit corporation) to manage customs or tax collection. The RED government could also enlist a reputable policing authority to train police officers and hold the police leadership accountable for fair and effective policing. The Royal Canadian Mounted Police, an organization that already has experience providing policing services to local jurisdictions in Canada, could be a strong candidate for this role. (Please note that these are strictly hypothetical examples, the Honduran government is not in formal discussions with either the RCMP or Crown Agents.)

The Transparency Commission will have a chance to set initial norms and expectations in an area that could grow to be an important hub city for the Americas. Its initial members must embody unquestioned integrity. They must set the highest standards of honesty and excellence. Collectively, the members should have leadership experience holding elected office, fighting crime and corruption, researching and devising sound policy, and responsibly managing large private non-profit and for-profit organizations.

After President Lobo appoints the first nine permanent members of the Transparency Commission, the Commission itself fills its vacancies. This provision is intended to provide investors and new residents of the zone an assurance about the continuity of governance in the RED, even in the unlikely event of a political upheaval in the rest of the country that is comparable to one that Honduras experienced in 2009.

The Transparency Commission will be almost entirely independent of future governments in Honduras. To change the enabling legislation that specifies the powers of the Transparency Commission, the Honduran Congress would need a two-thirds majority vote of approval as well as an approval by referendum among the residents of the RED. This procedure serves two purposes: it provides a domestic check on the conduct of the Transparency Commission, but it also sets a very high hurdle for any future Honduran government that wishes to interfere in the reform zones. Treaties negotiated by the Transparency Commission and approved by the current Honduran Congress can offer additional protections to firms and residents under international law.

The creation of a Transparency Commission lets the Honduran government quickly establish the legal framework for the first RED, but leaves open the option for partner countries to lend their support over time, providing an additional layer of accountability and international credibility. One option is for a partner country to take on some responsibility for filling vacancies on the Transparency Commission. This could emerge through a de facto arrangement like the one that gives the leadership of the IMF to someone from Europe. Under this approach, a specific country might be consulted about a replacement for a specific seat on the Commission. Support could also take the form of a treaty that specifies a fixed term for a seat on the Commission and assigns the partner country the legal responsibility for appointing someone to that seat.

AN ANCHOR IN STRONG INSTITUTIONS

With protections from a modern system of laws, courts, and policing, the Honduran government believes that foreign direct investment in infrastructure can support the growth of a new city in the RED, a city that can eventually become a hub for the Americas. Participation of trusted outsiders in the legal and administrative systems will serve to make the new city an even more attractive place for would-be residents and investors.

It is the approach that China used when it resumed sovereign control of Hong Kong and needed to establish a new Supreme Court for the Hong Kong Special Administrative Region. To guarantee the credibility and independence of this new body, China committed, through a treaty with Britain, that justices for this new court could be recruited from other common law jurisdictions. The Court of Final Appeal in Hong Kong includes judges from New Zealand and South Africa, as well a former Chief Justice of the Supreme Court in Australia.

In establishing their own version of a Special Administrative Region, Hondurans are not seeking official foreign aid or charity. Like the Chinese, the Hondurans are asking instead for something that is

almost costless for other countries to provide — an anchor for legal and administrative systems, systems that, once anchored, can offer everyone equal and effective protection under the law. Hondurans want this legal protection for themselves. Out of enlightened self-interest, they also want it for the investors, employers, and new residents who will join them in building a modern economy in the REDs. Once the protections of the law are established in the zone the precedent for workable reform will improve the chances for progressive changes elsewhere in Honduras.

The goal is to offer people the chance to move to a region in Honduras that offers the protections that many people seek by migrating — often under perilous conditions — to North America. The protections in the RED will in fact be better than those available to the North because all residents in the RED will have legal status as well as the option of moving with their families intact.

By offering an anchor for the new the legal and administrative system in a RED, developed countries can help create a social system that the most ambitious, forward-thinking, and market-oriented Hondurans will be the first to opt into. Once the benefits from such a system are clear, their compatriots will follow by moving into the zone and by adopting its systems and protections throughout Honduras and the other countries in the region.

In this way, developed countries can do what no amount of financial aid has ever accomplished — give the citizens of a developing country the chance to work their way to a better life for themselves and their children. No charity is called for. No coercion is required — all the developed countries have to do is help create a new region that offers residents, employers, and investors a new option when they make a choice about where to live, work, hire, or invest.