

Should the Inter-American Development Bank Fund Honduras to Implement Controversial Special Economic Zones?

The Honduran government promotes itself as a strong friend to corporations. Yet it has been no friend to Honduran communities. Closing space for civil society engagement and repression of peaceful protests have left citizens vulnerable and fearful of their own government. Extrajudicial killings are commonplace; impunity reigns. In early 2017, Global Witness named Honduras the “deadliest place in the world for environmental activists.”¹ At the same time, corruption, which the Carnegie Endowment for International Peace described as the “standard operating procedure” in the country, is widespread.²

Many in the international community are raising alarm bells, recognizing the urgent need to address these and other deeply entrenched and structural problems in Honduras, such as poverty, exclusion, and discrimination. International bodies have urged the creation of more transparent and accountable public institutions, protections for vulnerable communities, and support for the safe and active participation of Honduran citizens in policy-making.³

In striking contrast, the Inter-American Development Bank (IDB) is

currently considering a \$20 million loan to the Honduran government to support the implementation of a controversial law that grants unprecedented powers to private entities, rolls back democratic governance, decreases transparency, and could undermine Hondurans’ most fundamental constitutional rights.

“Honduras is ready for you.”
-Honduran president Juan Orlando Hernandez to international businessmen at gathering in Dallas, Texas

The law (Decree No. 120-2013) creates special Employment and Economic Development Zones, or ZEDEs by the Spanish acronym. The rules that apply in these zones conflict with existing Honduran laws and Honduran obligations under international law. IDB support for the law’s implementation would also irrefutably contradict the Bank’s own principles and policies.

ZEDEs: Legalizing Secretive Corporate Rule

The ZEDE law, passed in 2013, is the first successful effort to create

special economic zones in Honduras – but it wasn’t the first. After the 2009 coup, and the swift election that was widely considered illegitimate, the new government of Porfirio Lobo passed the Special Development Regional Law (RED) in 2012. The law ignited a groundswell of civil society opposition, and it was soon ruled unconstitutional by the Constitutional Chamber. Yet rather than make substantial changes to the law, the Honduran Congress, in an act critics called a “technical coup,” simply dismissed the four judges who voted against the law and replaced them with judges amenable to approving these special zones. The following year, Congress passed the ZEDE law.⁴ As before, a broad cross section of communities, organizations, and lawyers joined together to challenge the constitutionality of the law. But this time, the new, pro-ZEDE judges in the Constitutional Chamber rejected the legal challenge.⁵

While free trade zones exist elsewhere in Latin America, the ZEDE law envisions a more radical model, one that gives broad powers to a small group of unelected officials who run the zones with little public oversight or mechanisms for accountability.

By law, ZEDEs are overseen by a group of individuals appointed by the President and ratified by Congress, who make up the Committee for the Adoption of Best Practices (CABP). The CABP has authority to approve the establishment of a ZEDE and is responsible for its permanent governance. The CABP, akin perhaps to a company's Board of Directors, in turn appoints and oversees a Technical Secretary – the 'CEO' of a ZEDE – who is responsible for "executing the measures and policies the CABP mandates, as well as the provision of all services within the ZEDE."

While ZEDEs have been referred to as "model cities" or "employment zones" in Honduras, the terminology can be misleading. A ZEDE has no size specifications; it could be a single African palm project in rural Honduras, an urban factory or call center, an industrial zone, or a large-scale tourism zone stretching across multiple existing municipalities.

What does make a ZEDE like a "city" – or almost like a miniature nation-state – is that it is financially and administratively autonomous. The Technical Secretary controls not only the business operations of the project, but also supplants the role of the State as a governing body. The Technical Secretary has the legal authority to create and implement local ordinances, control budgets and taxation, and set the rates they will charge for services provided, which include public security and public education.

ZEDEs have a level of judicial autonomy that sets them apart from most of the world's Special Economic Zones. A ZEDE uses an independent court system that operates out-

side the jurisdiction of the country's Supreme Court, operates under a common law system rather than the

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civil law system used in Honduras, and the CABP can opt to appoint foreign judges. While Honduran criminal law may still apply within a ZEDE, the law suggests leeway there as well. Article 41.3 states that the Criminal Code, including laws related to drug trafficking, human trafficking, genocide, and terrorism, will be applied "while [the zones] do not yet have their own [laws] that they consider to be most efficient to meet their objectives."⁶

When first created, the 21-member Committee on Best Practices was made up of a group of national and international businessmen and pro-business intellectuals, including a number of Americans – Grover Norquist, for example, and other conservative figures linked to Ronald Reagan and the Cato Institute. By mid 2017, however, membership had dropped to just twelve. Of those, only five people participate on the standing committee that exerts decision-making power – decisions that are made in secret meetings in Miami.⁷ Additionally, the ZEDE law allows the CABP to fill its own vacancies without congressional ratification, making the CABP a potentially self-selecting body.

To date, no ZEDE has been created, but proposal abound. Honduran officials recently reported that companies from the U.S., China, South Korea, Taiwan, and Europe have already purchased land for ZEDEs.⁸ The government has promoted the development of a "megaport" in Amapala, off the Pacific coast of Honduras, and is considering the creation an energy district in Olancho, a project to harvest wood for fuel through a public-private partnership with Canadian investors. As the *Economist* noted, the initial project proposal for Olancho is small but "could eventually expand to an area covering 8% of Honduras' territory and including 380,000 people."⁹ The government has also proposed a ZEDE at the port of Trujillo that would require the resettlement of 3,500 people from the indigenous Garífuna community of Puerto Castilla. In fact, proposals exist for port expansion and beach resorts all along the north coast of Honduras that could impact 24 Garífuna communities.¹⁰

Notably, ZEDEs can be imposed without prior consultation, particularly in areas identified to have low population density, and seven departments have already been given the green light for ZEDE development.

The law goes so far as to stipulate that "no precautionary measures should be implemented that impede or halt" the process of land expropriation, which can be carried out after approval by the CABP. While the law requires compliance with International Labor Organization Convention 169 on free, prior and informed consent of indigenous communities (FPIC), Garífuna

communities at risk of forced displacement recently denounced the absence of any FPIC process in relation to the Trujillo project. In fact, indigenous communities and human rights groups have denounced a systematic failure by Honduras to ensure FPIC in the context of development projects more generally.¹¹

Information about ZEDEs has been hard to come by, apparently by design. The Honduran government has spurned formal attempts by citizens to gain access, through the country's Access to Information Law, to information about personnel changes within the CABP and about ZEDE development plans. Published information about specific ZEDEs is also sparse. Moreover, while by law a ZEDE must disclose its internal norms, there has been no transparency as to the procedures a ZEDE will use to design and implement policies, what standards will be applied, what environmental protections will exist, how basic social services will be provided and financed, and how the FPIC requirement will be fulfilled.

The lack of precision and clarity of the ZEDE law is one of its defining

features, giving rise to diverse speculation about how it will be implemented. Yet no one disputes the law will have wide-reaching effects.

"The law fundamentally changes the relationship between citizens and the State, especially for indigenous communities," said doctoral candidate Beth Gaglia, who has been researching ZEDEs for years.¹²

Diverse and Widespread Rights Violations in the Name of Job Creation

Given the threats these zones pose to the rights of Honduran citizens, it is no surprise that ZEDEs have engendered opposition. ZEDEs violate fundamental rights such as the right to self-determination and democratic participation. While Hondurans who live within the boundary of a ZEDE can vote in national elections, they have no guaranteed participation in the election of local representatives or in the creation of public policies.

Inherent to the ZEDE law is also a clear and alarming weakening of constitutional protections for Hon-

durans. In Article 8, the ZEDE law defines the normative hierarchy that applies to ZEDEs, mentioning the Honduran Constitution "where it applies." In fact, there are only six Constitutional Articles explicitly required to be fully enforced under the law. It remains unclear how other fundamental constitutional rights will apply to citizens in these special zones, including the right to Habeas Corpus; the inviolability of a right to life; guarantees of human dignity and bodily integrity; the guarantee against the extraction of forced labor; freedom of expression; protections for a free press; freedom of religion; guarantees of assembly and association; freedom of movement; the right to a defense, to court access, and to counsel for indigents; and freedom from non-legal detainment.¹³

ZEDEs should, by law, seek to minimize taxes and maximize profit. It is unclear how benefits will be distributed to the general population, or how health, education, and other public services will be managed. The zones are exempt from general taxes and tariffs, but are required to pay 12 percent of internal tax revenues



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into trust funds that support specific activities within the three branches of the Honduran government; one-fifth of tax revenues are designated for the Honduran armed forces. At the same time, Honduras explicitly exempts itself from responsibility to cover any debts or financial obligations of a ZEDE, raising questions about what happens to a population when a ZEDE is not profitable or goes bankrupt.

Moreover, while ZEDEs are promoted as a way to create jobs and boost the economy, there are no assurances of living wages or proper working conditions. ZEDEs have the potential to nullify existing labor contracts and labor laws in their territory – a concerning prospect in a country already facing systematic labor violations.¹⁴ Threats of forced evictions have alarmed populations whose livelihoods depend on their land and who are already stressed by ongoing land rights disputes that sometimes turn deadly.

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-Beth Gaglia

In a country where access to information and transparency are limited to protect corrupt practices and state-sponsored violence, many are also concerned that the increased secrecy inherent to a ZEDE’s private governance model will effectively do away with what little accountability remains.

These concerns – among many others – have been repeatedly raised

by Honduran organizations and lawyers,¹⁵ and international bodies have expressed concern about lack of compatibility with international obligations.¹⁶ In 2014, the US National Lawyers Guild visited Honduras to investigate the ZEDE law and highlighted a series of concerns, including violations of Honduras’ treaty obligations under the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant of Economic, Social, and Cultural Rights.¹⁷

In August 2017, the Center for International Environmental Law (CIEL) and partners shared these concerns in a memo to the US Treasury Department that reviews multilateral bank projects, calling for the US to vote against any loan or technical assistance to support ZEDEs.

Support for the ZEDE Law Potentially Violates IDB Principles and Policies

Given the ongoing controversy around ZEDEs in Honduras, and the questionable constitutionality of the law, it is disappointing that the IDB announced, in mid-2017, that it was considering a \$20 million loan to “support the Government of Honduras in the conceptualization and preparation of technical studies and designs for the establishment” of ZEDEs. The project aims to foster: “(i) the increase in investment in employment-intensive sectors, (ii) the creation of formal jobs, and (iii) the reduction of unemployment and informal employment.”¹⁸

Although the IDB has not yet made any project documents available,

a simple reading of the ZEDE law demonstrates direct and unavoidable contradictions with IDB policies and principles. CIEL flagged this project for potential violations of Hondurans’ rights as part of ongoing monitoring of bank projects under the Early Warning System. CIEL’s analysis suggests that the ZEDE law itself, and any project stemming from implementation of the law, could result in violation of any or all of the IDB’s Operational Policies and safeguards. Similarly, the law does not support many of the objectives in the IDB’s twenty Sector Framework Documents.

The Bank’s Access to Information policy, for example, is based on a principle of “maximiz[ing] access to information.” The IDB makes a commitment to have “transparency in all aspects of its operations” and to “demonstrate its transparent use of public funds.” Yet by their very nature, ZEDEs are private business ventures and in Honduras may be legally exempt from the transparency laws which apply to municipal governments. Similarly, documents relating to ZEDEs could be exempt from the IDB’s own disclosure policy.¹⁹

In terms of Environmental and Safeguard Compliance, the Bank commits to enhance environmental governance.²⁰ Yet in supporting ZEDEs, the IDB could legitimize weak or non-existent standards of environmental protection.

Because the ZEDE law explicitly exempts low-density areas from consultation and prioritizes land expropriation when needed, it is difficult to see how the proposed loan could comply with the Bank’s policy on Involuntary Resettlement or on

Indigenous Peoples. In fact, support of the implementation of the ZEDE law directly contradicts the Bank's stated principles and objectives in relation to indigenous peoples. The policy states explicitly that it prioritizes "territorial and cultural integrity" and recognizes "the need to consolidate conditions that enable indigenous peoples to exercise the right to participate effectively in determining their own political, economic, social, and cultural future within the framework of participation in democratic systems and of the construction of multicultural states."²¹ This is a striking contrast – and directly oppositional – to the model proposed under the ZEDE law.

While ZEDEs may, strictly speaking, create new jobs, there are no protections in the ZEDE law to ensure a living wage and no clarity on social security, pension funds, unemployment benefits, or worker's compensation. While labor rights and worker protections are notably

absent from IDB operational policies, in its Labor Sector Framework Document, the Bank does commit to ensuring that its activities are consistent with "fundamental labor standards."²² Because job creation is a principle objective of this loan proposal, the IDB would be remiss not to assess the ZEDE law and future ZEDE projects against international labor standards, policies of sister institutions like the International Finance Corporation, and recommendations on best practices by labor groups such as the International Trade Union Confederation.

More generally, it is hard to see how they would align with the IDB mission to reduce poverty and inequality. With no public control over taxation or public spending and no clear avenues for Honduran citizens to protect their rights in Honduran courts, the company will have every incentive to maximize profits at the expense of their workers and the general population in the ZEDE. This structure creates a dramatic

power imbalance between the corporate owner of the ZEDE and the local population and exacerbates the vulnerability of marginalized communities.

What's Next?

Clearly, ZEDEs' lack of standards eliminate public participation in local governance and further erode access to justice. Moreover, as discussed above, the recent push to implement ZEDE projects comes at a time when Honduras faces widespread corruption, fraud, land grabbing, and organized criminal activity.²³

It will likely get worse. During the lead-up to the recent elections, the Honduran government began a public campaign to promote ZEDEs as part of its 'Honduras 2020' development plan and the regional Alliance for Prosperity Plan. While rolling back Hondurans' rights, the government has recently passed laws to ensure increased protections for



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investments, to promote public-private partnerships, and to incentivize tourism. The November elections were fraught with allegations of fraud and manipulation to benefit incumbent President Hernandez, and Hondurans now warn of a complete breakdown of the rule of law.²⁴

Proposed ZEDEs are largely in the country's most marginalized areas that have suffered some of the highest rates of violence. The CABP and private ZEDE leadership will assume extensive responsibilities in relation to violence prevention and criminal investigation, yet do so with minimal enforceable obligations and absent any effective oversight or accountability mechanisms. Furthermore, the strong links between organized criminal groups, drug cartels and the Honduran oligarchy create a scenario in which criminal structures could assume control of a ZEDE. And finally, because targeted assassinations of human rights and land rights leaders often occur precisely in the context of private business ventures,²⁵ the ZEDE legal system will face incentives to silence opposition and quash investigations into corporate malpractice or abus-

es, reinforcing impunity for these crimes.

These circumstances paint a foreboding picture for the groups who should be the ultimate beneficiaries of the IDB's investments – yet these are the very conditions the Honduran President seems to believe will best guarantee corporate profits. As the President's online pressroom recently bragged, there is a very "favorable scenario" and the country is "ready to launch an innovative program of massive investment."²⁶

Meanwhile, Honduran communities, lawyers and civil society organizations continue to express concerns about ZEDEs and their possible impacts. On November 15, the Black Fraternal Organization of Honduras (OFRANEH) wrote an open letter to the IDB, reiterating the lack of prior consultation and saying that ZEDEs have "become a severe threat to the survival of the Garífuna people."²⁷ They and other marginalized groups are hoping that the IDB can see this for what it is: the legalization of corporate profiteering at the expense of Honduras' most vulnerable citizens.

Further Reading:

- Text of Honduran ZEDE Law (Spanish), available at: http://www.ciel.org/wp-content/uploads/2017/11/Ley_zonas_empleo_desarrollo_eco_2013.pdf
- Report of the National Lawyers Guild Delegation Investigation of Zones for Economic Development and Employment in Honduras, available at: http://www.nlginternational.org/report/Final_NLG_ZEDE_Report.pdf
- CIEL & partner memo on possible legal and constitutional violations of ZEDEs, available at: http://www.ciel.org/wp-content/uploads/2017/11/Memo_Concern_IDB_Honduran_ZEDE_Project.pdf
- CIEL analysis of possible violations of IDB operational policies, available at: <http://www.ciel.org/wp-content/uploads/2017/11/EWS-Project-Alert-ZEDEs.pdf>

Endnotes

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2. Carnegie Endowment for International Peace, *When Corruption is the Operating System*. Sarah Chayes, May 30, 2017 (<http://carnegieendowment.org/2017/05/30/when-corruption-is-operating-system-case-of-honduras-pub-69999>)
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4. Arthur Phillips, Charter Cities in Honduras? Open Democracy January 7, 2014, (<https://www.opendemocracy.net/opensecurity/arthur-phillips/charter-cities-in-honduras>)
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6. Decree 120-2013, Article 41.3
7. The Economist, "Charter Cities in Honduras: A Shadowy Experiment." August 12-17, 2017.
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9. *Id.*
10. Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz Addendum: The Situation of the Indigenous Peoples in Honduras. Paragraph 56.
11. Honduras: Indigenous Peoples' Declaration on Convention 169 and prior consultation. March 1, 2017. (<https://movimientos.org/es/content/honduras-declaraci%C3%B3n-de-pueblos-ind%C3%ADgenas-sobre-el-convenio-169-y-la-consulta-previa>)
12. Interview with Beth Geglia. Nov. 21, 2017.
13. Report of the National Lawyers Guild Delegation Investigation of Zones for Economic Development and Employment in Honduras, Sept. 14, 2014 (http://www.nlginternational.org/report/Final_NLG_ZEDE_Report.pdf) Specific Constitutional articles referenced are: right to Habeas Corpus Art. 65); guarantees of human dignity and bodily integrity (Art. 68); the guarantee against the extraction of forced labor (Art. 69); freedom of expression (Art. 72); protections for a free press (Art. 73); freedom of religion (Art. 77); guarantees of assembly and association (Art. 78, 79, 80); freedom of movement (Art. 81); the right to a defense, to court access, and to counsel for indigents (Art. 82, 83); freedom from non-legal detention (Art 84, 85).
14. See, for example, the complaint filed against Honduras under DR-CAFTA (<https://www.dol.gov/ilab/reports/pdf/HondurasSubmission2012.pdf>)
15. See recent blog posts by OFRANEH, for example. (<https://ofraneh.wordpress.com/>)
16. Committee on the Elimination of Racial Discrimination, Concluding observations on the combined initial and second to fifth periodic reports of Honduras. CERD/C/HND/CO/1-5. 13 March 2014. (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fHND%2fCO%2f1-5&Lang=en)
17. Report by the National Lawyers Guild Delegation Investigation of Zones for Economic Development and Employment in Honduras, Sept. 14, 2014 (http://www.nlginternational.org/report/Final_NLG_ZEDE_Report.pdf)
18. <http://www.iadb.org/en/projects/project-description-title,1303.html?id=HO-L1191>
19. Exception 4.1(f) of the Access to Information policy explicitly protects corporate administrative information from public disclosure, including information related to corporate expenses such as real estate.
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21. IDB Operational Policy on Indigenous Peoples and Strategy for Indigenous Development (<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=2032081>)
22. IDB Labor Sector Framework Document. See p.40 and footnote 52. (<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40727242>)
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1101 15th Street NW, #1100
Washington, DC 20005
E: info@ciel.org | P: 202.785.8700
www.ciel.org

This analysis is authored by Kelsey Alford-Jones. It was produced as part of the Early Warning System, a joint project of the Center for International Environmental Law (CIEL) and International Accountability Project. Discover more: www.humanrightsinddevelopment.org/ews

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