

Report of the National Lawyers Guild Delegation Investigation of Zones for Economic Development and Employment in Honduras

September 14, 2014



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Introduction

The NLG has focused attention on Honduras since the June 2009 coup d'état that ousted democratically elected president Manuel Zelaya. At that time, human rights activists and other Hondurans asked the NLG to investigate concerns about the rule of law, the lack of respect for international law, the abrogation of human rights, attacks on the judiciary, and the circumstances that gave rise to the coup. As a result, the American Association of Jurists (AAJ), the International Association of Democratic Lawyers (IADL), and the International Association Against Torture sent a joint delegation to Honduras whose preliminary report in English is [here](#). The final report in Spanish is [here](#).

Since the coup, Honduras has become the murder capital of the world, with widespread repression against Honduran lawyers, judges, human rights organizations, and indigenous groups, who have asked for the NLG's support and solidarity. Socioeconomic conditions have deteriorated: the government has cut spending on social programs. Extreme poverty rose by 26.3 percent, almost two thirds of Hondurans live below the poverty line, and inequality has become more pronounced: The Center for Economic and Policy Research has reported that in the first two years after the coup, the wealthiest 10 percent of Hondurans enjoyed over 100 percent of all real income gains. Despite these conditions, the US has continued to provide military and other economic support to the Honduran government. In response to the human rights crisis, the NLG has written letters, lobbied our senators and representatives, and educated our own members about the situation in Honduras. In early 2013, our Honduran colleagues and allies asked us to witness their election and document our findings. We organized a delegation of credentialed election observers to serve as "International Accompaniers" under Honduran election law. Our delegation concluded that there were serious problems that significantly undermined any assertion that the election was "free and fair" or "transparent." Our final November 2013 election monitoring report is available in English [here](#) and in Spanish [here](#).

As a result of the contested elections, Juan Orlando Hernandez assumed the Presidency. Since then, Hernandez and the Honduran legislature have enacted a number of laws that provide for the concentration of executive and legislative powers at the expense of individual rights and freedoms and they have implemented policies that privatize state resources and functions. In early 2014, our colleagues in Honduras asked us to examine the controversial laws and constitutional amendments that facilitated the establishment of Zones for Economic Development and Employment (ZEDEs), also known as 'charter cities' or 'model cities.' ZEDEs represent a significant expansion of free trade zones in that they facilitate the creation of autonomous privatized city-states designed to exist independently from the legal, administrative and social systems of the Honduran state. They are investor-friendly enclaves governed by their own laws, courts and tax systems. The ZEDEs, proposed to spur economic growth and jobs, provide the legal basis for the corporate takeover of land within Honduras, in many cases without any prior consultation from citizens and communities that currently occupy those lands. Given the contentious

nature of land titling issues in Honduras and the historical abrogation of citizens' land claims, many observers fear that the ZEDEs will further erode the rights of marginalized groups in Honduras and escalate repression against those who resist being dispossessed. By relinquishing control of key state functions to domestic and foreign investors, the arrangement allows corporations to circumvent local laws and business practices.

Founded in 1937 as an association of progressive lawyers and jurists, the National Lawyers Guild (NLG) promotes human rights over property rights and has been engaged in international affairs since its inception. The NLG was one of the nongovernmental organizations (NGOs) selected by the US government to represent the American people at the founding of the United Nations in 1945. Members helped draft the Universal Declaration of Human Rights and in 1948 founded the International Association of Democratic Lawyers (IADL), one of the first UN-accredited human rights NGOs.

As a US-based organization, the NLG examines the historic and current roles the US government and corporations play throughout the world. We document those roles, criticize them where appropriate, and ally with individuals and social movements that are struggling against US influence in their countries. In Latin America, our criticism of US government policies and abuses led to delegations in the 1980s to El Salvador to support human rights activists and to Nicaragua to support the Sandinista government under attack by the Contras at that time. Hundreds of thousands of refugees were fleeing to the United States as a result of these events, and NLG lawyers were deeply involved in representing refugees and defending the movement to give them sanctuary. In recent years, we have sent delegations to Cuba, Haiti, Venezuela, Bolivia, El Salvador, and Colombia to support progressive social movements and to criticize misguided US policies. Some of our delegations focused specifically on human rights abuses, some have studied social movements, and some have observed elections.

A delegation from the International Committee of the NLG traveled to Honduras in June 2014 to investigate the implementation of ZEDEs in Honduras. The current report is the newest in a series of NLG reports from its delegations to Latin America and elsewhere. The report documents our findings about the human rights implications of ZEDEs in the context of the current human rights crisis in Honduras.

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I. THE EVOLUTION OF ZEDES

a. The Special Economic Zone

Modern Special Economic Zones, or SEZs, began appearing during the second half of the 20th century. In general, SEZs rely on business and trade regulations that are independent from those of the country in which they are located, with the goal of encouraging commerce and trade. They may focus on a variety of economic initiatives, including ports, production, exportation, resource extraction, and tourism.¹ The primary SEZ of the last two decades is the Export Production Zone, or EPZ, which is mostly dedicated to export-oriented manufacturing and development. The premise behind the creation of these zones is that developing countries will attract export and production oriented corporations through legal, economic, political, and administrative concessions to businesses.² These areas can be specifically limited to a certain, distinct piece of real property, a set of properties owned by a company with an EPZ-type agreement with the local government, or to land owned by the local government. More expansive SEZs include Shenzhen and Hainan in China and the SEZs in Dubai. Honduran SEZs have historically not extended far beyond the “fenced in” model of an EPZ.

Honduras began to experiment with EPZs in 1976 by creating a free zone at Puerto Cortes.³ The first zone was created under the authority of the government, which then privatized it in 1987. In 1998, following Hurricane Mitch, the Honduran government declared all of Honduras a Free Trade Zone or FTZ. In the FTZ or EPZ’s, which can be located anywhere in the country, companies are not required to pay import duties on goods and capital equipment, surcharges, selective consumption taxes, or sales taxes. Production and sale of goods inside the FTZ are exempt from federal and municipal taxes. Further, companies do not pay Honduran income tax for 20 years and are not required to pay local municipal taxes for 10 years. Finally, there is no restriction on the use of foreign exchange or the repatriation of capital profits.⁴ In 2006, Honduras joined the Central American Free Trade Agreement (CAFTA) that continued the trend towards opening up the Honduran economy to more foreign products. Under CAFTA, Honduras began admitting 80% of US products without tariffs. Within 10 years, nearly all tariffs will be eliminated.⁵ As part of the agreement, 98% of Honduran goods to enter the US

¹ Matthew Amegual and William Milberg, *Economic Development and Working Conditions in Export Processing Zones: A Survey of Trends*, 1-2, International Labour Office, 2008.

² The economic ‘mindset’ of countries that engage in the robust use of EPZs prioritizes export-processing activities as a way to escape the long-term economic subversion of the global south.

³ Jamie K. McCallum, *Export Processing Zones: Comparative data from China, Honduras, Nicaragua, and South Africa*, International Labour Office, 8 (2011), http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_158364.pdf.

⁴ Id. at 1, Free Trade Zone, Green Valley Industrial Park, (July 14, 2014), available at: http://www.greenvalleyindustrialpark.com/free_trade_zone.html.

⁵ Daniel Griswold and Daniel Ikenson. *The Case for CAFTA: Consolidating Central America’s Freedom Revolution*, CATO Institute Center For Trade Policy Studies, 4-5 (2004), <http://www.cato.org/sites/cato.org/files/pubs/pdf/tbp-021.pdf>; *What Is CAFTA?*, The CAFTA Intelligence Center, (July 14, 2014), http://www.caftaintelligencecenter.com/subpages/What_is_CAFTA.asp.

duty-free.⁶

b. The Predecessor to the ZEDEs: Charter Cities and REDs

Paul Romer is a well-known economist who promoted the idea of charter cities as an innovative economic development strategy in his 2009 TED Talk.⁷ Romer explained that a charter city contains three elements: 1) a charter to set out the rules of the city; 2) a substantial area of uninhabited land; and 3) partnerships with other nations, including a designated body to control the administration of the city.⁸ Romer's ideas were met with a period of generally positive press coverage,⁹ and he encouraged Honduras to use charter cities to promote economic growth. The post-coup Honduran government was receptive to this suggestion, and passed Honduras' Special Development Regions law (*Regiones Especiales de Desarrollo* or RED) in 2011.

REDs were to be administered by an oversight board known as the Transparency Commission that would have almost absolute control over the creation, management and policies of autonomous political zones within the country. The REDs were to be funded and managed by investors leveraging foreign capital in order to spur investment, to create development opportunities, to construct the necessary infrastructure, and to streamline the cumbersome process of doing business in Honduras. However, in December 2012, the Constitutional Chamber of the Honduras Supreme Court ruled that the RED law was unconstitutional, a decision that prompted former Honduran President Porfirio Lobo to label the Constitutional Chamber as "traitors."¹⁰

The primary grounds for the successful constitutional challenge,¹¹ on which the Court based its decision,¹² were that the RED law changed "irreformable"¹³ aspects of the Constitution, by 1) creating zones that violated the concept of Honduran sovereignty by denying Hondurans access to certain sovereign lands, thereby violating Article 107 of the

⁶Griswold and Ikenson, 1.. See also: *CAFTA-DR, Final Text*, Office of the United States Trade Representative,, Executive Office of the President of the United States, (July 14, 2014), at: <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text..>

⁷ Paul Romer, *Why the world needs charter cities*, TED, July 2009, http://www.ted.com/talks/paul_romer.

⁸ Id.

⁹ See, e.g., "Hong Kong in Honduras," *The Economist*, December 10, 2011, <http://www.economist.com/node/21541392>; Adam Davidson, *Who Wants to Buy Honduras?*, New York Times Magazine Online, May 8, 2012.

¹⁰ Rosemary Joyce and Russell Sheptak, *Constitutional Death Spiral in Honduras*, UPSIDE DOWN WORLD (Jan. 21, 2013), <http://upsidedownworld.org/main/honduras-archives-46/4085-constitutional-death-spiral-in-honduras>

¹¹ Case No. 769-11, Supreme Court of Justice; Oscar Humberto Cruz, et al, *Interposicion de Inconstitucionalidad de Decretos Legislativos No. 283-2010 Ratificando con el Decreto No. 4-2011*, 10/18/2011.

¹² *Inconstitucional decreto de "ciudades modelo"*, El Heraldo, 10/17/12. Last accessed 8/9/2014 at: <http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/Pais/story.csp?cid=573030&sid=299&fid=214>

¹³ Constitution of the Republic of Honduras 1982, Article 374 William S. Hein & Co., Inc., Buffalo, New York, 2012 (HeinOnline World Constitutions Illustrated Library 2012).

Constitution; 2) removing control of the Honduran sovereign over certain lands and thereby violating Articles 13 and 19 of the Constitution; 3) denying democratic governance of the Honduran people over these zones, thereby violating Article 2 of the constitution; and 4) creating parallel legislative, executive, and judicial branches of government that derive power from RED promoters and investors, as opposed to the Honduran government.

Less than two months after ruling on the RED law, the Honduran Congress voted to dismiss the four justices on the Constitutional Chamber of the Supreme Court who had ruled against the law.¹⁴ The same four justices had also alienated the government with their ruling on a police reform law. Many legal observers, including both Honduras' own Minister of Justice and Human Rights and the UN Special Rapporteur on the independence of judges and lawyers characterized this ouster as a second coup given its failure to comply with procedures set out on the Honduran Constitution.¹⁵ Nonetheless, the Supreme Court upheld the removal of the four judges in a later decision.¹⁶ With the National Party in control of Congress, President Lobo selected the replacements for the four ousted judges based on their adherence to a number of free market and other reforms.¹⁷

Meanwhile, despite the Honduran government's agreement to create a Transparency Commission that included Romer as a member, the government entered into a memorandum of understanding with an investor group without first consulting the Commission. Romer protested, and the government claimed that due to a legal technicality, the Commission was never officially created.¹⁸ As a result, Romer withdrew from the charter cities initiative in Honduras. The current plan for ZEDEs is distinctly different than Romer's vision, excluding several safeguards he deemed critical to their operation.

c. The Emergence of ZEDEs

On September 5th, 2013, the National Congress of Honduras passed Decreto No. 120-

¹⁴ Arthur Phillips, *Charter cities in Honduras?* Open Democracy, January 7, 2014, <https://www.opendemocracy.net/opensecurity/arthur-phillips/charter-cities-in-honduras>

¹⁵ *Se conculcó principio de independencia*, EL HERALDO (Dec. 18, 2012), <http://www.elheraldo.hn/alfrente/565690-209/se-conculco-principio-de-independencia> (last visited Aug. 7, 2014).

¹⁶ *CSJ dijo no al reintegro de cuatro magistrados*, EL HERALDO Feb. 19, 2013), <http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/Pais/story.csp?cid=574915&sid=299&fid=214> (last visited Aug. 7, 2014).

¹⁷ Sandra Cuffe, *Congress' Last Stand: Privatization among New Laws in Honduras*, Upside Down World, January 28, 2014. Last accessed 8/8/2014 at: <http://upside-downworld.org/main/honduras-archives-46/4668-congress-last-stand-privatizations-among-new-laws-in-honduras>

¹⁸ Elizabeth Malkin, *Plan for Charter City to Fight Honduras Poverty Loses Its Initiator*, The New York Times, September 30, 2012.

2013, which created a novel legal structure for Zones for Economic Development and Employment, or ZEDEs. The ZEDE law represents an attempt by nationals and foreigners who support the liberalization of trade and labor rights to introduce an especially aggressive and expansive model of SEZs, even more flexible than those that exist in Shenzhen or Singapore. ZEDES embrace trade liberalization beyond simple tax and infrastructure incentives: they enable the corporate entities, organizations and individuals who will fund and participate in the zones to structure the social organization itself. This process includes the content of laws, the tax structure, educational, labor and health care system, security forces and other basic elements typically managed by the state.¹⁹

Chapter I, Article 1 of the ZEDE law states that Articles 10, 11, 12, 13, 15, and 19 of the Constitution are fully applicable. These provisions define the territorial limits of Honduras, obligate Honduras to international treaties and forbid the ratification of treaties that damage Honduras' territorial integrity or sovereignty. The remaining sections of the Honduran Constitution, a document of 379 articles, will have only the effect that they are given by an agreement between the Committee for the Adoption of Best Practices (CABP), the independent governing board of the ZEDEs and the corporate promoters seeking to develop the land.

Many fundamental rights of Honduran citizens who live within the borders of ZEDEs are not protected under the new ZEDE law. These rights include: the right to Habeas Corpus or Amparo²⁰, Articles 182 and 183; the inviolability of a right to life, 65; guarantees of human dignity and bodily integrity, 68; the guarantee against the extraction of forced labor, 70; freedom of expression, 72; protections for a free press, 73; freedom of religion, 77; guarantees of assembly and association, 78, 79, and 80; freedom of movement, 81; the right to a defense, to court access, and to counsel for indigents, 82 and 83; and freedom from non-legal detainment, 84 and 85.

The 21-member CABP, which was announced in February 2014, includes nine US citizens, three Europeans and only four Hondurans. The CABP is dominated by neoliberal and libertarian activists, several with close connections to former President Ronald Reagan. Numerous questions remain concerning this body. It is unclear, for example, if members of the CABP receive a salary or other compensation for their work. There is no apparent prohibition on CABP members from investing in the ZEDEs themselves or having personal or business relationships with investors, raising conflict-of-interest concerns. The CABP's broad unchecked powers are also cause for concern. Among other duties, the CABP is charged with appointing (and removing) the Technical Secretary (the executive officer of the ZEDE), who wields both executive and legislative power over the zones. The CABP is also charged with ZEDE planning and development,

¹⁹ Decreto Legislativo No. 120-2013, L.G., Sept. 6, 2013, hereinafter ZEDE Statute.

²⁰ Amparo is the right to the restoration of constitutional rights of an individual, a common constitutional provision in Spanish-speaking countries.

approving all internal regulations of the ZEDES, and even filling their own vacancies.²¹ Given the lack of oversight by any branch of the Honduran government, the unrestrained powers granted to ZEDES create a serious barrier to any future challenges.

Another problematic provision of the ZEDE law involves the adjudication of legal disputes. The ZEDES' autonomous courts have the discretion to adopt legal systems from outside Honduras.²² Under the ZEDE legal regime, hired jurists serve at the recommendation of the Judicial Council of Honduras.²³

A further particularly troubling aspect of the ZEDE law relates to the provisions that allow for the placement of ZEDES in areas of “low population density,” and in municipalities in the departments adjoining the Gulf of Fonseca and the Caribbean Sea, without prior consultation with the affected communities.²⁴ The Honduran government's website about ZEDES identifies 14 areas for potential ZEDES: Punta Castilla and Sico Paulaya, Colón; Puerto Cortés and Bajamar, Cortés; Cuyamel, Cortés; La Ceiba, Atlántida; Quimistán, Santa Bárbara; Ocotepeque, Ocotepeque; Gracias, Lempira; Palmerola, Comayagua; Santa María del Real, Olancho; Santos Guardiola, Bay Islands; various municipalities of the Gulf of Fonseca; and El Triunfo and Choluteca, Choluteca. It is not clear whether any proposals for the creation of ZEDES in these zones have been received or accepted.²⁵ The website also contains information related to the natural and human resources of many of the potential zones. Many communities believe they are being targeted for such investment. For example, the historic Garifuna community of Rio Negro of Trujillo was knocked down in 2009 for investment, and the ZEDES have created an increased the fear of such incidents in the future.²⁶ The opacity of the manner in which ZEDES are being promoted does little to diminish fears. President Juan Orlando Hernandez has recently announced plans to create an “industrial mining park” in El Corpus, Honduras.²⁷ While there has been no official announcement that this area is being considered for a ZEDE, the language suggests a special development zone, potentially placing the shelter and livelihoods of residents at risk.

These provisions, discussed in greater detail below, represents a significant departure

²¹ZEDE Statute, Ch.III.

²²ZEDE Statute, Ch. I.

²³ZEDE Statute, Ch. III.

²⁴Id.

²⁵ Honduras, *Mapa Zonas Potenciales*. Last accessed 9/4/2014 at: http://zede.gob.hn/?page_id=108.

²⁶ OFRANEH, Honduras: Ministerio Público respalda “legalidad” de la Ley ZEDE, 4/28/2014. Last accessed 9/5/2014 at: <http://ofraneh.wordpress.com/2014/04/28/honduras-ministerio-publico-respalda-legalidad-de-la-la-ley-zede-ciudades-modelo/>; OFRANEH, A Communication from OFRANEH: Vallecito, the New Invasion and The Alleged "Heir", Resistencia Honduras, 7/15/2013. Last Accessed 9/5/2014 at: http://www.resistenciahonduras.net/index.php?option=com_content&view=article&id=5712:a-communication-from-ofraneh-vallecito-the-new-invasion-and-the-alleged-qheir&catid=101:news&Itemid=349.

²⁷ *Gobierno Creará Parque Industrial Minero*, El Heraldó, 8/9/2014. Last accessed 9/7/2014 at: <http://www.elheraldo.hn/alfrente/727401-209/gobierno-crear%C3%A1-parque-industrial-minerohern>.

from Romer's original charter cities proposal, and violate international law.

d. Comparison of the Legal Structure of REDs and ZEDEs

ZEDEs are no longer being marketed as the embodiment of Romer's charter cities. Rather, Mark Klugmann, a former speechwriter for presidents Ronald Reagan and George H.W. Bush, describes them as "LEAP" zones that provide distinct legal, economic, administrative and political protections for corporations.²⁸ Regardless of the nomenclature, there are at least three areas in which the ZEDE model raises greater concerns than Romer's charter cities model. First, ZEDEs do not present Hondurans with authentic choice because they can be imposed on unwilling communities without any referendum. Second, the ZEDE legal regime does not provide for a transition to democratic governance. Third, the ZEDE legal regime is based on unprecedented lack of transparency.

1. ZEDE can be imposed on unwilling communities

Romer's vision of locating charter cities only in areas free of inhabitants is absent from the ZEDE law.²⁹ Romer has stated that "[i]n a charter city, legitimacy derives from residents' decisions to opt-in to the new rules"³⁰ To achieve this legitimacy, Romer proposed finding about 1,000 square kilometers of "uninhabited land" on which to locate the city.³¹ In his words, "[p]eople can come live under the new charter, but no one is forced to live under it."³²

The ZEDE legal regime, however, expressly contemplates establishing zones in inhabited areas. The law specifies that the designation of a ZEDE requires the approval of two-thirds of the Congress, and is subject to a local referendum of the area's existing inhabitants, except in certain designated areas. If the Honduran National Statistics Institute declares the area to have a lower than average population density for a rural area, Congress may impose a ZEDE on any existing communities in that area without even the basic protection of a referendum.³³ This grants the National Statistics Institute the ability

²⁸ John Fund, *Hondurans Say Yes to LEAP Zones*, July 28, 2014, National Review Online, <http://www.nationalreview.com/article/383899/honduras-says-yes-leap-zones-john-fund>

²⁹ Decreto Legislativo No. 236-2012. Art. 1 (amendments to Art. 329 of the Constitution), hereinafter ZEDE Amendment

³⁰ Brandon Fuller & Paul Romer 6, *Success and the City: How Charter Cities Could Transform the Developing World*, The Macdonald-Laurier Institute, April 2012, <http://www.macdonaldlaurier.ca/files/pdf/How-charter-cities-could-transform-the-developing-world-April-2012.pdf>.

³¹ Paul Romer, "Why the world needs charter cities," TED, July 2009, http://www.ted.com/talks/paul_romer

³² Id.

³³ ZEDE Statute, Ch. III.

to decide when to strip Honduran citizens of their human right to self-determination through democratic governance. Further, even a referendum does nothing to protect the “choice” of those who vote against having a ZEDE imposed on their community, not to mention those convinced to vote in favor of a ZEDE through a campaign of misinformation. In addition to low population density areas, areas contiguous to the Caribbean Sea and the Gulf of Fonseca, including the islands of Zacate Grande and Amapala that are currently undergoing ZEDE feasibility studies are excluded from the referendum process.³⁴ Both islands are the home to significant longstanding communities.

Additionally, the legal structure of the ZEDE allows land with unclear ownership to be seized by the state, which will hold all land in rural ZEDEs, and contemplates the appropriation of land from owners do not want to sell their land.³⁵ In short, ZEDEs can be imposed on inhabited areas, undermining one of the basic principles of Romer’s charter cities: the ideal that everyone who lives and works there has chosen to do so.

2. ZEDEs provide for no transition to democratic governance

The original RED law required the eventual return to democratic governance.³⁶ Romer appeared to justify the period without democracy by advocating a “vote-with-your-feet” concept instead, whereby all residents of the charter city would have chosen to live there, and thereby chosen to sacrifice whatever democracy exists outside the city for the economic development inside it. The ZEDE law goes even further than the RED law in that it does not provide for any return to democratic governance short of abolishing the ZEDE altogether. Rather, the ZEDE will be permanently governed by the CABP, which its residents have no power to elect. Simply put, an unelected committee will govern the daily lives of Hondurans living in ZEDEs, and residents will have no democratic control over local governance.

3. ZEDEs present a near total lack of transparency

A major distinction between Romer’s charter cities model and the ZEDE legal regime is that the latter dispenses with a Transparency Commission. Romer and others stated that such a Commission would exist under the RED law and they were so certain of its existence that they named its members.³⁷ Shortly after Romer left the RED project, Octavio Sanchez Barrientos and Mark Klugmann, current members of the ZEDE CABP, argued that this Transparency Commission never officially existed because the decree naming Romer and four others to the Commission never completed the publishing

³⁴ Id., Art. 39.

³⁵ Id., Art. 25-28.

³⁶ Decreto Numero 123-2011, Arts. 32-39 and 81.

³⁷ Tyler Cowen, *Paul Romer on what happened in Honduras*, Marginal Revolution, September 24, 2012, <http://marginalrevolution.com/marginalrevolution/2012/09/paul-romer-on-what-happened-in-honduras.html>.

process in the Honduran Gazette.³⁸

The RED governance structure was based in significant part on the Transparency Commission. The Economist magazine described this body as “[p]erhaps the most important feature” of the model cities project in Honduras.³⁹ The ZEDE regime replaces this Commission with the CABP.

In addition, decreased transparency has coincided with increased domestic political support for model cities in Honduras. This may be because the lack of transparency has allowed proponents of model cities to shift their messaging regarding the ZEDEs depending on the audience. Any agreements related to the ZEDEs are not public information (an agreement with the South Korean government to undertake a feasibility study was leaked, and was not presented to the public as a matter of right), so the government can represent to Hondurans a message focused on job creation. At the same time, the government can represent to potential foreign investors a message centering more on the stability of the ZEDEs and the relative difficulty to alter or eliminate them once they are in place.

Though Romer now maintains no formal affiliation with the ZEDE initiative, his previous involvement with the model cities project brought it publicity and lent a degree of legitimacy that the Honduran government needed to bring in international investors. Indeed, Klugmann now seems to suggest that Romer’s involvement was merely a strategic choice by the Honduran regime.⁴⁰

Subsequent to passage, a group of more than 50 NGOs challenged the ZEDE law and ZEDE-related constitutional amendments in the Constitutional Chamber of the Honduran Supreme Court.⁴¹ Lawyer Adeline Ávila Sarmiento presented the case for the plaintiffs in early 2014, offering 16 arguments for unconstitutionality. Ávila Sarmiento asserted that the ZEDEs would impact Honduras’ territorial sovereignty and integrity, the nation’s form of government and the public interest. She also contended that only the Honduran Congress has the authority to establish taxes and to create a monetary system.⁴² The challenge was heard by the Constitutional Chamber – the same court that was installed by the conservative National Party as a result of the judicial coup in January 2013 – and not surprisingly, the Chamber unanimously rejected the challenge. Guillermo Peña Panting,

³⁸ Id. See also Elisabeth Malkin, *Plan for Charter City to Fight Honduran Poverty Loses Its Initiator*, The New York Times, September 30, 2010.

³⁹ “Hong Kong in Honduras,” The Economist, December 10, 2011, <http://www.economist.com/node/21541392>

⁴⁰ Mark Klugmann, *LEAP Zones: Faster Growth with Less Conflict*, Cayman Financial Review, July 12, 2013, <http://www.compasscayman.com/cfr/2013/07/12/LEAP-Zones--Faster-growth-with-less-conflict/>.

⁴¹ Adrienne Peralta, *Honduran Supreme Court Rejects Claims of ZEDE Unconstitutionality*, PanAm Post, June 21, 2014, <http://panampost.com/adriana-peralta/2014/06/21/honduran-supreme-court-rejects-claims-of-zede-unconstitutionality/>

⁴² Id.

executive director of the Honduran liberal policy institute, Eleútera stated, “With this decision, the investors, national developers, and interested foreigners...now have the legal backing necessary to proceed forward the project implementation.”⁴³

Many of the communities we met with expressed profound concerns as to how ZEDEs would impact their right to vote and to participate in local governance. Community members reported that a number of local mayors had been taken on an all-expenses-paid trip to South Korea to learn about ZEDEs. Members of these communities have not been informed about important realities ZEDEs present: for example, community members asked us if they would still be able to vote for their mayors under a ZEDE, and if so, what power their mayors would have. The answers to these questions are unclear, though it appears unlikely that the position of mayor – or, indeed, of any local elected official – will exist under a ZEDE. Government functions will likely be performed by administrators appointed by the corporations that control the ZEDE and the corporate interests represented in the CABP, stripping the citizens of these communities of their right to democratic governance. What is very clear is that both Honduran society in general and the communities likely to be affected by an eventual ZEDE have not been given information about how and where the ZEDEs will function, and how their civil and political rights will be affected.

II. HONDURAN PERSPECTIVES ON THE ZEDEs

To better understand the likely effects of the ZEDEs, the delegation met with community groups, human rights organizations, economic experts and legal experts who have studied the ZEDE law and, in some cases, challenged it in court. The delegation also visited communities in the Gulf of Fonseca region because the ZEDE law specifically declares that departments in that region may be part of the ZEDE regime.⁴⁴ These existing communities are likely to be the first to find themselves in ZEDE territory and under the jurisdiction of a ZEDE government. Throughout the meetings, both experts and community members voiced similar concerns about lack of transparency of the ZEDE project, the indefinite effects of the ZEDEs on existing communities’ land and political rights, and hostilities and violence against activists, union members, campesinos, lawyers and journalists who question the implementation of these government policies. This section discusses interviewees’ perspectives on these and several other issues frequently raised over the course of the delegation.

a. Lack of Information and Government Secrecy

⁴³ Id.

⁴⁴ ZEDE Statute, Art. 39.

Virtually everyone in the Gulf of Fonseca region who spoke with the delegation voiced concerns about the government's unwillingness to explain the effects that ZEDEs will have on existing communities within their borders. Members of one community likely to fall within the territory of a ZEDE, Zacate Grande, told the delegation that they knew of the ZEDE statute, but that the government had disseminated virtually no information about how the regime would work or how the statute would affect their property rights and form of government.⁴⁵ The community members operate a radio station called "Voice of Zacate Grande" to report on issues that affect the community but are ignored or are under-reported in other media outlets.⁴⁶

Similarly, despite the ZEDEs' potential to nullify existing labor contracts and labor laws in their territory, members of the union of workers at the port that operates in the Gulf of Fonseca have been told nothing. They fear that the arrival of a ZEDE will spell the end of their jobs when a proposed port at Amapala replaces their livelihood.⁴⁷ A nun who lives in the region and is active in community affairs explained that she and the other sisters are trying to disseminate information about the ZEDEs to people in the affected communities because few know the extent of the changes they will bring. While some community members have voiced hope for the ZEDEs because they are eager to work, there is little understanding that people living within the boundary of the ZEDEs will lose democratic representation, or that increased land values and development projects could make it impossible for them to remain in their communities.⁴⁸

During the one public meeting on ZEDEs that the Zacate Grande residents were aware of, a government official told those present that the government was planning to build a large city in the region, with hospitals and universities "like those in Massachusetts."⁴⁹ The sisters reported that a community member in the audience asked what would happen to land values with the coming development, and the official responded that people could choose to either pay land taxes reflective of the increased value of the land or sell their land.⁵⁰ When one youth from the community stated after the presentation that the people currently living in the community of Amapala should have the right to develop Amapala, the representative dismissively told him that he had a "cave man mentality."⁵¹

Honduran experts on the ZEDE law who spoke with the delegation shared the community members' concerns. The delegation met with Fernando García Rodríguez, the author of a

⁴⁵ Interview with Voice of Zacate Grande radio workers, in Zacate Grande, Honduras (June 24, 2014) ("Voice of Zacate Grande Interview").

⁴⁶ Zacate Grande Interview; For more information on the activities of the Voice of Zacate Grande, see the organization's website here: <http://zacategrande.blogspot.com>.

⁴⁷ Interview with the Union of Workers of the National Port Business (Sindicato de Trabajadores de la Empresa Portuaria, SITRAENP), in San Lorenzo, Honduras (June 25, 2014) ("SITRAENP Interview").

⁴⁸ Interview with Sisters of Santa Rosario of Ampala and Voice of Zacate Grande Members, Ampala, Honduras (June 24, 2014) ("Ampala Interview").

⁴⁹ Ampala Interview.

⁵⁰ Id.

⁵¹ Id.

detailed report on ZEDES published by the Friedrich Ebert Stiftung Foundation, an organization that has worked to promote democracy and sustainable development in Honduras since 1982.⁵² Mr. Garcia explained that the government promotes the ZEDES in a flashy way that dishonestly compares them to Hong Kong and Singapore, but fails to clearly explain how their governments would operate.⁵³

Judge Mario Diaz, Vice President of the Association of Judges for Democracy, a Honduran organization of judges and magistrates dedicated to promoting judicial independence and the rule of law, told the delegation that the secrecy of the ZEDES is part of a broad problem of lack of transparency under Honduran law.⁵⁴ He explained that the State Secrets Law, passed earlier this year, gives government agencies broad new powers of classification and makes it a crime to either be a whistleblower or publish information obtained from a whistleblower.⁵⁵ With this law in effect it is extremely difficult to obtain additional information about the ZEDES or indeed any other government act or program that those in power do not care to discuss.⁵⁶

This combination of lack of transparency, misrepresentation of the true nature of the ZEDES, and the State Secrets Law works to shield virtually all pertinent information about these ZEDES from community groups and those interested in the impacts of these developments on Honduran society.

b. Lack of Land Title

The Zacate Grande community members who met with the NLG delegation estimated that the overwhelming majority of the people living in Zacate Grande do not have legal title to the land where they live and cultivate their crops.⁵⁷ Despite the community's continuous presence on their land for over thirty years, their repeated efforts to obtain title to their land from the government have failed.⁵⁸ Furthermore, even before the Honduran Constitution had been altered and the ZEDE statute was passed, communities in Zacate Grande that had inhabited their land for decades were defending themselves against challenges from large landholders who claimed title to the plots where they live and work.⁵⁹

Voice of Zacate Grande workers investigated these issues and reported on them in great

⁵² Interview with Fernando García Rodríguez, Tegucigalpa, Honduras (June 26, 2014) ("García Rodríguez Interview"); <http://fesamericacentral.org/honduras.html>.

⁵³ García Rodríguez Interview.

⁵⁴ Interview with Mario Diaz, Association of Judges for Democracy, Tegucigalpa, Honduras (June 25, 2014) ("Judge Diaz Interview").

⁵⁵ Judge Diaz Interview.

⁵⁶ Id.

⁵⁷ Zacate Grande Interview.

⁵⁸ Id.

⁵⁹ Id.

detail, which has resulted in one of them being shot, death threats against others, and the Inter-American Commission on Human Rights (IACHR) granting protective measures to many of them.⁶⁰ The most prominent landholder involved in the dispute is agro-industrialist Miguel Facussé Barjum, reportedly the largest landowner in Honduras, whose private security forces have been linked to human rights abuses in the Lower Aguan region of Honduras.⁶¹ Further, Mr. Facussé claims that the Voice of Zacate Grande station itself is located on his private property.⁶²

The Zacate Grande community members believe that the prospect of land values in the region increasing with the creation of a ZEDE would be a curse, not a blessing.⁶³ Though titleholders of land could sell at a substantial profit, the community members told the delegation that they want to maintain their community, not destroy it with the sale of their land.⁶⁴ The community members' efforts to obtain title to their land and safely exercise their political rights of expression have repeatedly been thwarted even before the influx of population, industry, and investment that the ZEDE project aims to bring to the region.⁶⁵ Because the vast majority of people who live on Zacate Grande lack title to their land, even if they did want to sell at a profit, it would be far more likely that they would be forcibly removed from their land by more powerful interests with the ability and connections to secure title to the land in court.⁶⁶

In a separate interview, Judge Diaz explained problems with small communities lacking title to their land are widespread in Honduras, and National Agrarian Institute programs designed to distribute land to organized communities have failed to benefit the small farmers because the process is very slow and circular.⁶⁷ We can only conclude that the problems with land titling faced by the Zacate Grande community are representative, not unique.⁶⁸

c. Lack of Democratic Processes in the ZEDEs

The activists and experts with whom the NLG delegation consulted were universally alarmed by the lack of democratic processes permitted by the ZEDE law. Mr. Garcia is

⁶⁰ Zacate Grande Interview; PM 115/11, Annual Report of the Inter-American Commission on Human Rights, Chapter 3, ¶ 54, available online at <http://www.oas.org/en/iachr/docs/annual/2011/toc.asp> (last visited Aug. 7, 2014).

⁶¹ Dana Frank, *Wikileaks Honduras: US Linked to Brutal Businessman*, The Nation (Oct. 21, 2011), available at <http://www.thenation.com/article/164120/wikileaks-honduras-us-linked-brutal-businessman#> (last visited Aug. 7, 2014).

⁶² Zacate Grande Interview.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Judge Diaz Interview.

⁶⁸ Id.

in favor of developing Honduras, but believes it would be disastrous to do so under the ZEDE's structure of government by the Committee for the Adoption of Best Practices (CABP) and Technical Secretaries.⁶⁹ The undemocratic nature of the Technical Secretary position, with its powers of combined executive and legislative functions, left him especially troubled.⁷⁰ He also noted that, as the CABP will also appoint judges, there is no meaningful separation of any traditional governmental powers within the ZEDE structure. Given that even outside the ZEDE framework the government since the coup has engaged in piecemeal efforts to diminish the rights and protections that citizens can exercise, Mr. Garcia is greatly concerned about the rapid evaporation of citizen rights once ZEDEs exist.⁷¹

Further, Mr. Garcia is troubled by ambiguity in the language of the statute. He notes, for example, that in addition to specifying that ZEDEs can be created with the aim of "international commercial courts," "autonomous cities," "zones subject to a special judicial system," "mining association areas," and a number of other enumerated special zones, they can also be used to create "any other special arrangements not specified in this Article or that include a combination of several of these regimes to ensure the development of investments under inclusive and other models."⁷² This language grants the legislature sweeping power to create almost any imaginable quasi-sovereign entity within its borders and opens the possibility that Honduras will be made up of dozens of different types of entities, all operating outside the reach of all Honduran law other than a few narrow provisions.⁷³

Carlos Padilla of the Honduran Center for the Promotion of Community Development (CEHPRODEC) expressed similar fears, adding that he and his colleagues are alarmed at the lack of democracy under the ZEDE law, and that the members of the CABP are comprised of National Party members, large investors, and former advisors to U.S. President Ronald Reagan.⁷⁴ CEHPRODEC has brought several legal challenges against the ZEDE statute but they have failed in court.⁷⁵ Mr. Padilla believes it likely that the ZEDEs will create more conflict rather than less, as communities lose their municipal structures, the concept of sovereignty is altered, and people lose their political voice.⁷⁶ The CEHPRODEC representatives stressed that they do not want a model city, but rather a model country in the sense that they want to live in a country they can be proud of.⁷⁷

⁶⁹ García Rodríguez Interview

⁷⁰ Id.

⁷¹ Id.

⁷² García Rodríguez Interview; Zede Statute, Art. 2.

⁷³ García Rodríguez Interview.

⁷⁴ Interview with Carlos Padilla and Pedro Landa, Honduran Center for the Promotion of Community Development (CEHPRODEC), in Tegucigalpa, Honduras (June 25, 2014) ("CEHPRODEC Interview").

⁷⁵ CEHPRODEC Interview.

⁷⁶ Id.

⁷⁷ Id.

d. ZEDEs are Consistent with Other Neoliberal Development Policies

Pedro Landa of CEHPRODEC indicated that the ZEDE law is squarely within the neoliberal framework, in which foreign investment—along with deregulation, lower taxes, and diminished environmental protections—is touted as a means to alleviate poverty in Central America.⁷⁸ The ZEDE law allows the government to turn over land to private enterprise that it could not have turned over through existing mining or hydroelectric laws themselves.⁷⁹

The CEHPRODEC representatives believe that the logic of model cities is similar to that of the banana enclaves of the last century: the ability of model cities to have their own laws and economic arrangements with other countries will turn them into fiscal and legal paradises for outside investors at the expense of local communities.⁸⁰ Further, the excesses of the investors will be defended with legitimate violence because they will be operating under their own laws and using their own security forces.⁸¹ CEHPRODEC also perceives a danger that model cities could devalue labor throughout Honduras because they have their own labor laws and the workers in the zones will lack democratic guarantees.⁸²

Mr. Garcia shares many of these concerns about ZEDE project.⁸³ Though he is a proponent of some forms of public-private partnership in Honduras, he has been studying the model cities project in Honduras since 2011 and he, too, has concluded that the ZEDE law is a “continuation of the selling-off of our resources that has taken place over the last 300 years.”⁸⁴ Mr. Garcia argues that the trickle down economic framework employed by the ZEDEs has yet to be proven to benefit the poor of a country.⁸⁵ He acknowledges that infrastructure corridors such as the ZEDEs would create can cause growth and commercial activity, but that it has not been shown that such growth leads to development that benefits the population in general.⁸⁶

e. Congressional Co-optation of the Judiciary

Both Mr. Garcia and the representatives from CEHPRODEC pointed out that the final constitutional challenges to the ZEDE law had recently been ruled on and had failed, but that this was no surprise given the direct control that the legislature has exerted over the

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ García Rodríguez Interview.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

judiciary.⁸⁷ As the legislature itself appointed the replacements for the four judges who had voted against the RED law,⁸⁸ CEHPRODEC and others following the issue believed it to be a foregone conclusion that the Supreme Court would uphold the constitutionality of Congress's second attempt to pass a law creating model cities.⁸⁹ Mr. Landa also asserted that under the directorship of the attorney general—who cast the one vote upholding the RED law in his role as a former Constitutional Chamber Supreme Court justice—the state has ensured that any complaints against foreign companies and investors will not be meaningfully investigated.⁹⁰ As an example, he described the May 3, 2014 killing of Rigoberto Lopez, a leader of a group opposing mining in Santa Barbara: Rigoberto was murdered in a mining extraction zone and the public prosecutor failed to even visit the site to retrieve his body.⁹¹

Regarding judicial independence, Judge Diaz told the NLG delegation that a judge had been killed in Honduras just days before his meeting with us, and that several other judges have been killed in recent years.⁹² He added that in this environment it is clear that the threat of assassination clearly impacts the decisions of judges.⁹³ In addition to the fear of death, judges who oppose the current regime face a process of arbitrary suspensions.⁹⁴ Judge Diaz explained that after Association of Judges for Democracy denounced the 2009 coup, members of the organization have been discriminated against in their careers, threatened, and worse for their stance.⁹⁵ After the sacking of the Supreme Court judges, many other judges are afraid that they will be fired, and worse, if they do not follow the will of Congress and the President.⁹⁶

The overarching sentiment of the groups who spoke to the NLG delegation was one of distrust of the current government, deep skepticism about claims that the ZEDE would benefit them or other members of their communities, and a fear about what the future will bring when ZEDES come into existence. These perspectives are hardly surprising, given the targeted violence and government hostility directed toward community members in Zacate Grande and elsewhere who oppose the policies of the current government.

The community members face the specter of being pushed from their land with no legal

⁸⁷ García Rodríguez Interview; CEHPRODEC Interview.

⁸⁸ Rosemary Joyce and Russell Sheptak, Constitutional Death Spiral in Honduras, UPSIDEDOWNWORLD.ORG, Jan. 21, 2013, at: <http://upsidedownworld.org/main/honduras-archives-46/4085-constitutional-death-spiral-in-honduras> (last visited Aug. 7, 2014).

⁸⁹ CEHPRODEC Interview.

⁹⁰ Id.

⁹¹ CEHPRODEC Interview; *Brutal, Public Murder of Anti-mining, Community and Environmental Defender in Honduras*, RIGHTS ACTION (May 13, 2014), <http://www.rightsaction.org/action-content/brutal-public-murder-anti-mining-community-and-environmental-defender-honduras> (last visited Aug. 7, 2014).

⁹² Judge Diaz Interview.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

recourse and no reasonable options for the future. The union members face the prospect of living in a jurisdiction where the labor rights of the state of Honduras do not apply, and where the laws created by the ZEDE administrator supersede contracts that protect their jobs without any input from them. The proposed territory of the ZEDE in the Gulf of Fonseca region is not empty—tens of thousands of people have lived and worked there for generations. These are the least likely people to benefit from the ZEDE should it come to fruition.

III. VIOLATIONS OF INTERNATIONAL LAW UNDER THE ZEDE STRUCTURE

The ZEDE statute and constitutional amendments violate several binding international law conventions. Even before the ZEDEs come into existence, it is evident that the rules provided for their governance and formation will violate the human rights to self-determination and democratic participation that are protected in several international law instruments. Additionally, the history and current political climate of Honduras strongly indicate that once the ZEDEs come into existence, they will put at risk the human right to the use and enjoyment of one's own property, as well as the rights of indigenous groups concerning: 1) consultation with the government prior to actions that affect them, and 2) their ownership of their traditional lands. The delegation is also concerned that businesses that opt to participate in the ZEDE structure will be complicit in these violations of international law. Each concern is discussed below in turn. In addition to the violations enumerated below, the delegation is concerned that a host of other human rights are at risk, including the right to livelihood, the right to remedy, the right to housing and the right to development.

a. Rights Concerning Self-Determination and Democratic Participation

The American Convention on Human Rights expressly identifies “the right to participate in government” as a human right, stating that:

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.⁹⁷

⁹⁷ American Convention on Human Rights, 1144 U.N.T.S. 123, 9 I.L.M. 673 (entered into force 18 July 1978)

The International Covenant on Civil and Political Rights (ICCPR)—to which Honduras is a party—contains virtually identical language.⁹⁸ In addition, both the ICCPR and the International Covenant of Economic, Social, and Cultural Rights (ICESCR) provide that: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”⁹⁹

But though Honduras is a party to all three of these international agreements, and is therefore bound by their provisions, the ZEDE law passed by the National Congress of Honduras is poised to strip hundreds of thousands of Hondurans of their right to self-determination, as well as their corresponding right to participate in government.

As described above in the Emergence of ZEDEs section, the statute provides that each ZEDE will be governed by a single Technical Secretary who is in turn is appointed by, and accountable to, the unelected 21-member CABP. Though the ZEDE statute specifies that the Technical Secretary shall be “proposed” by the residents of the ZEDE when the ZEDE is an area of high population density, the statute is silent as to what legal effect, if any, this proposal must have on the CABP’s ultimate choice of Technical Secretary.¹⁰⁰ The statute says nothing about what means the residents are required to employ to select a candidate. Nor does the statute contain any democratic guarantees—or indeed, any further details whatsoever—concerning the appointment and removal process for the Technical Secretary of a ZEDE.¹⁰¹ Further, the CABP need not maintain even the pretext of considering ZEDE residents’ “proposed” choice of Technical Secretary in areas deemed to be of “low population density.”¹⁰² In these areas, the only parties permitted to propose a Technical Secretary to the Committee are the “promoters and organizers” of the ZEDE itself.¹⁰³

The Technical Secretary, with the approval of the unelected CABP, wields tremendous executive and legislative power within the ZEDE. The Technical Secretary is tasked with representing the ZEDE, managing the government of the ZEDE, enacting legislation in the ZEDE, implementing the policy measures adopted by the Committee, as well as “any other powers conferred under this Act or delegated by the CABP.”¹⁰⁴ ZEDEs are also

⁹⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976), Art. 25 (ICCPR), Art. 25.

⁹⁹ ICCPR Art. 1 Sect. 1; International Covenant of Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), Art. 1 Sect. 1 (ICESCR).

¹⁰⁰ ZEDE Statute Art. 11. Sect. 3(a)

¹⁰¹ ZEDE Statute Art. 11, Art. 12.

¹⁰² Areas of low population density are those in which the number of permanent inhabitants per square kilometer is less than the average for rural areas, as calculated by the National Institute of Statistics. ZEDE Constitutional Amendment Decreto Legislativo No. 236-2012, L.G., 24 Jan. 24, 2013 (ZEDE Amendment) Art. 1 (amendments to Art. 329).

¹⁰³ (ZEDE Amendment) Art. 1 (amendments to Art. 329 of the Constitution).

¹⁰⁴ ZEDE Statute, Art. 12.

empowered to tax privately-owned land within their jurisdiction, based on the market value of the real estate,¹⁰⁵ and must establish their own internal security organs, including police, intelligence, criminal prosecution, and penitentiary system.¹⁰⁶ Under the statute, a ZEDE's security organs operate with exclusive competence within its territory.¹⁰⁷

Legislation, taxation, law enforcement, criminal prosecution, and executive department decision making are integral "public affairs" by any standard, and yet inhabitants of the ZEDES have no opportunity to participate in these matters either directly or through elected representatives. Indeed, they have no opportunity to elect representatives at all. This is a facial violation of Honduras's treaty obligations under the American Convention, the ICCPR, and the ICESCR. There is no need to wait until ZEDEs come into existence to conclude that their government structure violates international law. The international community should condemn this deliberate decision of the Honduran government to disenfranchise large numbers of its citizens and strip them of the majority of the legal protections provided for them under Honduran law.

Furthermore, the method contemplated for the very creation of ZEDEs violates these same treaty obligations. Though the ZEDE Amendment requires a plebiscite before Congress can create a ZEDE in a given area, the Amendment expressly exempts areas of low population density from this requirement.¹⁰⁸ The Constitution defines areas of low population density as those in which the number of permanent residents per square kilometer is less than the average for rural areas. By this definition, a substantial minority of rural areas in which Hondurans live must necessarily have lower population density than the "average" rural area. Any resident of Honduras living in such an area could find that the government had—without a popular vote—determined that her community was now within the boundaries of a ZEDE, governed in perpetuity by unelected officials, and no longer subject to the vast majority of Honduran law. This unilateral imposition of an antidemocratic regime on rural Hondurans is an additional violation of the rights to self-determination and democratic participation.

b. Property Rights

Though no ZEDE has come into existence yet, the NLG delegation is concerned about these zones' future effect on the property rights of Hondurans that are guaranteed under Honduras's treaty obligations. The right to property is guaranteed under the American Convention on Human Rights:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

¹⁰⁵ ZEDE Statute, Art. 24.

¹⁰⁶ ZEDE Statute, Art. 22.

¹⁰⁷ *Id.*

¹⁰⁸ ZEDE Amendment, Art. 1 (amendments to Art. 329 of the Constitution).

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.¹⁰⁹

Though the ZEDE statute does provide a mechanism for compensating landowners for property seized by the ZEDE,¹¹⁰ there is a clear danger that many people living in Zacate Grande and other areas being contemplated for ZEDES would not be able to take advantage of such procedures. People interviewed by the NLG delegation repeatedly stressed that though many of them had been living on their land for generations, they do not hold legal title to it, and their efforts to obtain title have all come to naught on account of Honduras' arcane, costly, and corrupt land titling system. Owing to their lack of legal title, it is fairly certain that many people living in areas where ZEDES may take hold will be removed from the land that they and their family have been occupying for several generations without the just compensation mandated by the American Convention.

c. The Rights of Indigenous Peoples—the Duty to Consult, and the Right to Traditional Lands

Having ratified the Indigenous and Tribal People's Convention (ILO 169) and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), Honduras is obligated to consult with indigenous groups whenever consideration is being given to legislative or administrative measures that may affect them directly.¹¹¹ Though the ZEDE law will affect indigenous groups directly should ZEDES be created on or adjacent to the land they have traditionally owned, the NLG delegation is not aware of any efforts that the government has made to initiate consultations with affected groups. This is concerning because some areas of Honduras being considered for ZEDES, especially those along the north coast of the country, are in regions largely populated by indigenous people.

Though UNDRIP expressly states that indigenous peoples "have the right to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired"¹¹² and both ILO 169 and the American Convention contain similar

¹⁰⁹ American Convention, Art. 21.

¹¹⁰ ZEDE Statute, Arts. 25, 26, 28.

¹¹¹ UNDRIP Art. 19; Indigenous and Tribal Peoples' Convention C169, International Labor Association, June 27, 1989 (entered into force Sept. 5, 1991), Art. 6, Sect. 1(a) (ILO 169); *see also* Indigenous and Tribal Peoples: Honduras, International Labor Organization, available at <http://www.ilo.org/indigenous/Activitiesbyregion/LatinAmerica/Honduras/lang--en/index.htm> (last visited Aug. 3, 2014).

¹¹² UNDRIP Art. 26.

protections,¹¹³ there are documented recent instances of the Honduran government failing to take action necessary to enforce this requirement.¹¹⁴

A 2013 IACHR referral of a Honduran Garifuna community's case to the Inter-American Court of Human Rights is a stark example of the government's refusal to meet its treaty obligations concerning indigenous people. The Garifuna community's initial IACHR petition against the government included allegations that: 1) public officials had sold the community's properly-titled land to third parties, 2) the government failed to grant the community title to the full extent of its land, and 3) community members who tried to resolve the situation had been threatened and killed.¹¹⁵ The IACHR issued recommendations that the government ensure that the community's land was properly titled, establish procedures to safeguard indigenous peoples' right to consultation, and investigate and punish those who threatened and harmed the community members.¹¹⁶ When the Honduran government took no action, the IACHR submitted the case to the Inter-American Court. The IACHR's letter of submission relayed its findings that the "expansion of the urban area by authorities and the sale of community lands has infringed on the ancestral territory" of the Garifuna community, that this "situation reflects failure to comply with the legal obligations assumed by the State, especially regarding the Community's known territorial claims," and that this has "resulted in harassment, threats, and even the assassination and arrest of male and female leaders and community authorities."¹¹⁷

Honduras' inaction regarding the underlying issues and the IACHR recommendations in the Garifuna Community's case is a strong signal of trouble to come during the implementation of the ZEDE law. A welter of other cases with similar issues are already in play in Honduras, and ZEDE-related forced land transfers stand to make this bad situation far worse. Given the political climate and current state of land documentation in Honduras, it is certain that land belonging to the Garifuna and other indigenous people of Honduras has not been correctly titled, and that even their titled land is at risk of being

¹¹³ ILO 169 Art. 14; American Convention Art. 21; Garifuna Community of "Triunfo de la Cruz" and its Members v. Honduras, Case 12.548, Inter-Am. Comm'n H.R., Report No. 76/12 ¶ 193 (2012) (noting that "[t]he jurisprudence of the inter-American human rights system has repeatedly recognized the right of indigenous peoples to own their ancestral territories and the duty to protect that right arising out of Article 21 of the American Convention").

¹¹⁴ The Spanish-Language website of the Black Fraternal Organization of Honduras (OFRANEH) is a good source for updates on current land struggles concerning the Garifuna community in Honduras. It is accessible at: <http://www.ofraneh.org>.

¹¹⁵ Garifuna Community of "Triunfo de la Cruz" and its Members v. Honduras, Case 12.548, Inter-Am. Comm'n H.R., Report No. 76/12 ¶¶ 3, 22 (2012).

¹¹⁶ Garifuna Community of "Triunfo de la Cruz" and its Members v. Honduras, Case 12.548, Inter-Am. Comm'n H.R., Report No. 76/12 ¶ 295 (2012).

¹¹⁷ Letter from Elizabeth Abi-Mershed, Deputy Executive Secretary of IACHR to Pablo Saavedra Alessandri, Secretary of the IACtHR Re: Case No. 12.548, Garifuna Community of "Triunfo de la Cruz" and its members (Feb. 21, 2013), available online at <http://www.oas.org/en/iachr/decisions/court/12.548NdeREng.pdf> (last viewed Aug. 3, 2014).

forfeited to ZEDEs or other development interests without the legally-required consultation or compensation.

d. Obligations of Business and Human Rights

The NLG delegation is also concerned that businesses that participate in the ZEDE structure will become complicit in the human rights violations committed by the Honduran state, and possibly commit or aid and abet additional human rights violations themselves. In 2011, the UN Human Rights Council clarified the role of businesses in the international human rights regime when it endorsed the *UN Guiding Principles on Business and Human Rights* (Guiding Principles). The Guiding Principles affirm that “the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate.”¹¹⁸ This applies to all “internationally recognized human rights,” which the Guiding Principles define as being “at a minimum” those expressed in the Universal Declaration of Human Rights, the ICCPR, the ICESCR, and the ILO’s Declaration on Fundamental Principles and the Rights at Work.¹¹⁹ In addition, the Guiding Principles dictate that businesses “may need to consider additional standards” pertaining to “specific groups or populations that require particular attention,” including indigenous peoples.¹²⁰ It is the responsibility of business to both “[a]void causing or contributing to adverse human rights impacts through their own activities,” and “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”¹²¹

Because the ZEDE structure necessarily terminates ZEDE residents’ ability to vote and participate in government through representative democracy, a business operating in a ZEDE would be contributing to the Honduran government’s violation of the ICCPR and ICESCR, and would therefore be violating the precepts of the Guiding Principles. Further, given the concerns about property rights and the rights of indigenous people highlighted above, it is likely that a business operating in a ZEDE could soon be either directly violating those rights or contributing to the government’s violation of them as well. Based on the actual and potential violations of human rights involved, the NLG delegation believes that it is therefore appropriate to encourage businesses not to participate in the ZEDEs, and to act in opposition to those that do.

¹¹⁸ U.N. Human Rights Council, *Guiding Principles on Business and Human Rights*, ¶ 11 Commentary, U.N. Doc. A/HRC/17/31 (June 16, 2011).

¹¹⁹ U.N. Human Rights Council, *Guiding Principles on Business and Human Rights*, ¶ 12, U.N. Doc. A/HRC/17/31 (June 16, 2011).

¹²⁰ *Id.*

¹²¹ U.N. Human Rights Council, *Guiding Principles on Business and Human Rights*, ¶ 13, U.N. Doc. A/HRC/17/31 (June 16, 2011).

IV. CONCLUSION

Conditions for ordinary Hondurans have deteriorated precipitously since the 2009 coup. The government and security forces are plagued by corruption, poverty is pervasive, and Honduras sits at the apex of the global per capita murder rate. Drug, domestic and gang-related violence has claimed thousands of lives. At the same time, state-sponsored repression against those organizing in opposition to government policies that contribute to widespread suffering has escalated, creating a climate of fear and impunity. These harrowing conditions are inter-related. Until Honduran citizens can access jobs and a secure livelihood, they will push back against a government that does not democratize economic and social opportunities. In response, the Honduran government will employ lethal tactics to enforce its priorities and suppress dissent.

Honduras is in desperate need of economic development, but development policies cannot replicate decades of neoliberal initiatives that have done nothing to alleviate the suffering of the majority of Hondurans, and served only to enrich the country's economic and political elites. Against this backdrop, the prospect of ZEDEs raises considerable alarm about the future for the hundreds of thousands of Hondurans for whom the government already fails to provide security, stability and basic human needs. The rough contours outlined by the law itself ZEDEs will deprive citizens of rights guaranteed by Honduran and international law, and the implementation of these zones threatens to encroach on an even broader range of internationally protected rights. Instead of fulfilling its obligations to care for its citizens, Honduras is relinquishing those duties to international investors who are focused on increasing profits, not providing for economic and personal security. The international community must monitor for a potential human rights disaster created when the Honduran government privatizes the state functions that serve as its core organizing principles and obligations.

V. DELEGATION PARTICIPANTS

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Steven M. Quesinberry is an attorney who lives in Washington State. He graduated cum laude from the Seattle University School of Law where he was a fellow at the Center on Corporations, Law and Society, was co-president of the school's chapter of the ACLU, and wrote book reviews for the school's newspaper.

Mark Sullivan is an environmental attorney and adjunct professor from Santa Cruz, California working on promoting a greater understanding of human rights, environmental justice, and international policy in Central America. Mark has been an active participant on several recent delegations to Guatemala, Honduras and El Salvador.