

To: Mark Edward Lopes, Executive Director for the United States before the IADB
Alex Severens, Director, Office of Development Results and Accountability, U.S. Treasury

From: Kelsey Alford-Jones, Center for International Environmental Law
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Re: Concerns about HO-L1191: Support to the Creation of Employment and Economic Development Zones (ZEDEs)

We write to express our concerns about the loan the Inter-American Development Bank (IDB) is currently drafting that would provide \$20 million to the Honduran government, HO-L1191: Support to the Creation of Employment and Economic Development Zones (ZEDEs). The project is rated '2017A'.¹

While no project documents are currently available to the public, an analysis of the Honduran ZEDE law provides a clear picture of the legal framework under which the IDB will carry out its "conceptualization and preparation of technical studies and designs for the establishment of ZEDEs."² As discussed below, the law creates an undemocratic and non-transparent governance structure that can be imposed without consultation and that rolls back Hondurans' ability to enjoy basic rights, a clear violation of domestic and international law. Accordingly, any IDB funding to support ZEDEs will violate the Bank's own policies and principles.

Background: The 'charter city' model was first introduced to Honduras through Special Development Regional law (RED) in 2012. The law was soon ruled unconstitutional, though the Honduran Congress quickly dismissed the four judges who voted against the law.³ In 2013, the ZEDE law (Decree No. 120-2013) was passed, which largely mirrored its predecessor. The law was hugely controversial and was almost immediately subject to a legal challenge by over 50 Honduran organizations representing a broad cross section of communities and geographic regions. The Honduran Constitutional Chamber rejected the legal challenge.⁴

Our concerns about IDB funding of ZEDEs include but are not limited to the list enumerated below.

ZEDE Administrative Structure: ZEDEs are governed by unelected individuals and can be imposed on unwilling communities. In Article 11, the law establishes a Committee for the Adoption of Best Practices (CABP), a group of national and international businessmen and intellectuals appointed by the President and ratified by Congress. However, following the ratification of the CABP's original 21 members, the CABP, as per the ZEDE law, has filled vacancies and replaced members without any oversight, meanwhile denying the public access to this information. The ZEDE law lacks any accountability mechanisms for the CABP, which has authority to approve the establishment of a ZEDE and is responsible for its permanent governance.

The CABP appoints and oversees the conduct of a Technical Secretary (Art 12) – the 'CEO' of the ZEDE – who is responsible for "executing the measures and policies the CABP mandates, as well as the provision of all services within the ZEDE" through establishing trusts and passing local ordinances. In areas designated as zones with low population density, Congress may impose a ZEDE on existing communities in that area without a referendum (see Art. 38). At the same time, areas of low population density in all departments adjacent to the Fonseca Gulf in the southern region and the Caribbean Ocean to the north are pre-approved for ZEDE classification, pending approval from the CABP (Art. 39). While a candidate for Secretary can be

¹ <http://www.iadb.org/en/projects/project-description-title,1303.html?id=HO-L1191>

² Id.

³ Arthur Phillips, Charter Cities in Honduras? Open Democracy January 7, 2014, (<https://www.opendemocracy.net/opensecurity/arthur-phillips/charter-cities-in-honduras>)

⁴ PanamPost, Honduras: Corte Suprema rechaza recurso de inconstitucionalidad contra ZEDEs. Adriana Peralta, Jun. 20, 2014. (<https://es.panampost.com/adriana-peralta/2014/06/20/honduras-corte-suprema-rechaza-recurso-de-inconstitucionalidad-contra-zedes/>)

proposed by the public in high-density areas, s/he is ultimately appointed by the CABP. In low-density areas, the Secretary is appointed by the ZEDE 'organizer.' By law, the Technical Secretary is responsible to the directives of the CABP, not the public.

ZEDE Legal and Policy Structure: ZEDES are nontransparent and adversely affect Hondurans' constitutional rights. A ZEDE has no size limit and is financially and administratively autonomous, and operates an independent judicial system that can opt to use foreign judicial traditions and foreign judges (Art. 3). ZEDES also have the legal authority to create their own public policies, utilize a private police force (Art. 22), and create their own educational systems and curriculum (Art. 32). ZEDES have an independent fiscal regime (Art. 23) and are considered extraterritorial fiscal and customs zones (Art. 32); imports are free from all taxes, tariffs, internal taxation and consular rights. The law stipulates that "no precautionary measures should be implemented that impede or halt" the process of land expropriation, which can be carried out by the ZEDE administration as an intermediary to the state, when approved by the CABP (Art. 28). Congress has not yet passed the implementing legislation for the ZEDE law.

- *On governance:* ZEDES relax standards, eliminate independent oversight and obscure accountability in precisely the arenas where Honduras faces the biggest obstacles to address corruption, fraud, land grabbing and organized criminal activity.⁵ This includes illicit cross-border trafficking, widespread tax fraud that impacts the State's ability to function, and one of the highest rates of assassinations of land rights leaders in the world.⁶
- *On transparency:* Agreements related to ZEDES are not public information and there has been no transparency as to the procedures a ZEDE will use to determine and implement policies, including environmental, social and fiscal procedures. Moreover, the current list of active members of the CABP has not been made public, nor has the government released the information in response to access to information requests filed by independent civil society organizations.
- *On labor rights:* The law requires ZEDES to guarantee labor rights as established in international treaties and the International Labor Organization (ILO). However, ZEDES have the potential to nullify existing labor contracts and labor laws in their territory. Moreover, the Honduran government has not shown the capacity or political will to protect labor rights of its citizens,⁷ and it is difficult to believe that an appointed Secretary, who is not beholden to the public, will appropriately implement these obligations.
- *On the environment:* While Art. 37 states that ZEDES should implement policies to protect and preserve the environment, no detail is provided about the standards they should apply. Implicitly, the law allows ZEDES to circumvent existing laws and regulations related to the environment and provide no accountability structure to address environmental harms. A number of proposed ZEDES are in coastal regions that impact international waters.
- *ZEDES also affect numerous other constitutional rights:* The law explicitly states (Art. 1) that the only Constitutional Articles to be fully enforced are 11, 11, 12, 15, 15, 19. In Art. 8, the law stipulates the normative hierarchy that applies to ZEDES, including "The Honduran Constitution *where it applies*" (emphasis added). This language makes it unclear how other constitutional rights will apply to citizens in ZEDES, including the right to Habeas Corpus or *amparo* (Art. 183); the inviolability of a right to life (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.

⁵ 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>)

⁶ Global Witness, *Honduras: The Deadliest Country in the World for Environmental Activists*. Jan. 31, 2017 (<https://www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>)

⁷ See, for example, the complaint filed against Honduras under DR-CAFTA (<https://www.dol.gov/ilab/reports/pdf/HondurasSubmission2012.pdf>)

81); the right to a defense, to court access, and to counsel for indigents (Art. 82, 83); freedom from non-legal detainment (Art 84, 85).⁸

ZEDEs and International Law: The ZEDE law violates rights protected under numerous international laws to which Honduras is a party. This includes:

- *Violation of the human rights to self-determination and democratic participation.* The fact that communities would have no guaranteed opportunity to elect local representatives at all is a violation of Honduras's treaty obligations under the American Convention on Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social, and Cultural Rights.
- *Indigenous rights:* 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. However, even though ILO 169 is to be upheld within the ZEDEs, the Honduran government has not shown the capacity or political will to implement ILO 169 and has not been consulting with indigenous communities concerning ZEDEs.
- *Property rights:* ZEDEs will imperil the human right to the use and enjoyment of one's own property, as well as the rights of indigenous groups, as guaranteed under the American Convention on Human Rights and other international instruments.

ZEDEs and the IDB: Bank Support for ZEDEs is in Conflict with Bank Policies and Principles. By their very nature, ZEDEs are inconsistent with IDB's operational principles and policies. This includes:

- *Access to Information (OP-102):* The Bank expresses its commitment to "transparency in all aspects of its operations" to "demonstrate its transparent use of public funds," and Principle 1 of this policy is to "maximize access to information." ZEDEs involve a comprehensive governance structure that should be transparent and a matter of public record, yet due to their structure as private business ventures, ZEDEs could fall under Exception 4.1(f) which protects corporate administrative information from public disclosure, including information related to corporate expenses such as real estate.
- *Environment and Safeguard Compliance (OP-703):* Policy Directive 4.7 states that the Bank will proactively support operations designed specifically to: (i) enhance environmental governance, policy development and institutional capacity building; (ii) reverse environmental deterioration; and (iii) promote the conservation and sustainable use of natural resources and ecological services. Policy Directive 4.9 adds that the Bank will support regional and transboundary environmental and natural resources management initiatives. ZEDEs weaken environmental governance, privatize policy-making and include no details about the environmental standards that should be implemented.
- *Operational Policy on Involuntary Resettlement (OP-710):* This policy aims to minimize the disruption of the livelihoods of people living in the project's area of influence. In cases where the "universe of physical infrastructure investments is not specifically identified prior to project approval" (as is the case with this technical assistance for the establishment of ZEDEs), Bank policy states that the project must include provisions to "ensure that any resettlement eventually required is carried out in accordance with Bank policies and guidelines." Since the ZEDE law explicitly exempts low-density areas from consultation and prioritizes land expropriation, it is difficult to see how this loan can ever be in compliance with OP-710.

More broadly, the ZEDE project is inconsistent with the IDB country strategy for Honduras (2015-2018), which includes an explicit focus on improving public administration, transparency, education and social protections for those living in extreme poverty.⁹ The ZEDE project is similarly inconsistent with other efforts by the Bank to promote "fiscal sustainability and governance" in the region, including as part of its Emerging and Sustainable Cities program.

⁸ See 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)

⁹ IDB Country Strategy for Honduras (2015-2018) (<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39274119>)

Finally, ZEDEs do not align with the IDB mission to reduce poverty and inequality, as there are no protections in the ZEDE law to ensure a living wage and no protections against forced displacement. At the same time, there are no clear avenues for Honduran citizens to protect their rights in Honduran courts and no public control over taxation or public spending. This structure creates dramatic inequality between the corporate “owner” of the ZEDE and the local population.

The US Should Not Approve any IDB Assistance to ZEDEs

ZEDEs will facilitate the deprivation of rights for the very people IDB loans are intended to benefit. The impacts of this undemocratic and non-transparent model will only be intensified in the current context of widespread violence, pervasive corruption and closing civil society space in Honduras. Given the inherent structural flaws of ZEDEs, the US should not support or approve any loan or other technical assistance for ZEDEs.

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