

Executive Secretary, Tania Reneaum Panszi
Inter-American Commission on Human Rights
1889 F Street NW
Washington, D.C. 20006
United States

CC: Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Javier Palumbo Lante

Subject: Request for a thematic hearing: Special Economic Zones, Secrecy Jurisdictions, and Human Rights in the Caribbean and Latin America

191st Regular Session of the Inter-American Commission on Human Rights

Dear Executive Secretary:

We, the undersigned organizations, are pleased to address you, and the Inter-American Commission on Human Rights, to request a thematic hearing for the 191st Regular Session, in accordance with Articles 61, 62, and 66 of its Rules of Procedure. The requesting organizations include organizations in the United States, Honduras, Colombia, the Dominican Republic, Jamaica, and Haiti.

I. Summary

The objective of the hearing request is to share with the Commission relevant information about the impact of Special Economic Zones and Secrecy Jurisdictions on human rights, tax injustice, and climate change in Latin America and the Caribbean. The proliferation of these jurisdictions in Latin America and the Caribbean is generating a situation of urgent human rights concern that the existing normative framework does not yet fully address. Specifically, the hearing will provide the Commission with new information as to the types of human rights violations that are occurring in Special Economic Zones (SEZs) and Secrecy Jurisdictions throughout the region. Some of these jurisdictions are, on their face, incompatible with States' human rights obligations; most pose the risk of generating human rights violations.

Accordingly, the requesting organizations will provide facts and analysis to demonstrate how these policies, implemented by States to attract Foreign Direct Investment, frequently: (1) violate democratic sovereignty and are structurally incompatible with States' obligations under the Inter-American System; (2) generate and/or facilitate serious human rights violations (3) contribute to tax injustice in the region; (4) contribute to impunity, money laundering, and corruption in the region. Our analysis will include case studies and concrete examples arising from a number of countries in the region, including: Honduras, Colombia, the Dominican Republic, Jamaica, Haiti, Barbuda, Panama, the Cayman Islands, and the United States.

It is urgent that the Commission consider the impact of SEZs and Secrecy Jurisdictions. The number of SEZs in the region has been expanding rapidly and does not show signs of slowing down. SEZs have failed to deliver on their development promises and instead have contributed to deepening structural inequalities. Both SEZs and Secrecy Jurisdictions have facilitated and generated serious violations of fundamental rights in the region. These impacts are poised to become compounded in the context of the climate crisis.

II. Background

This proposed hearing will focus on the impact of policies that States in the Latin American region utilize to attract Foreign Direct Investment on human rights. In particular, the hearing would focus on the impact of (1) Special Economic Zones and (2) Secrecy Jurisdictions on human rights in Latin America and the Caribbean.

- **Special Economic Zones (SEZs)** are zones that are subject to special legal and regulatory regimes that aim to promote economic growth, investment and attract investments.¹ They are often targeted at businesses and developers,² providing a regulatory framework different from that which is applied in the “broader national or subnational economy where they are established.”³ These regulatory frameworks may be characterized by, *inter alia*, relaxed rules around business formation and/or operation, fast-tracked or simplified environmental reviews, exceptions to labor regulations, exemptions from paying customs, reduced taxation, and more. SEZ is an umbrella term that covers several different kinds of legal frameworks, among them: Export Processing Zones (EPZs); Free Trade Zones (FTZs); Freeports; Enterprise Zones; Charter Cities or Autonomous Cities; Industrial Parks, and Specialized Zones.⁴
- **Secrecy Jurisdictions** are jurisdictions that permit or fail to prevent legal and financial secrecy for organizations based outside of the jurisdiction. They are “facilities that enable people or entities to escape or undermine the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool. A Secrecy Jurisdiction can be utilized not just to underpay tax but for other illicit activity like laundering money, evading sanctions and funding terrorist groups.”⁵

¹ “LAND TENURE AND DEV.” TECH. COMM., SPECIAL ECONOMIC ZONES AND LAND TENURE: GLOBAL TRENDS AND LOCAL IMPACTS IN SENEGAL AND MADAGASCAR 12 (2022), (referring to the goals of the SEZs across ten countries in explaining that “all ten promote exports, nine refer to the objective of attracting foreign and/or domestic investment, and eight to job creation, developing urban centres, economic development and industrialization”); *see also* WORLD BANK, SPECIAL ECONOMIC ZONES: AN OPERATIONAL VIEW OF THEIR IMPACTS 24 (2017), (“Because foreign companies are expected to produce significant spillover effects, attracting FDI is one of SEZs’ main policy goals.”); *see also* Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), at 2, <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf> (“Governments often justify this set-up as a policy imperative to promote growth through increased investment and trade.”); *see also* Ninad Jhala & Shaileshkumar, *SEZ - The Fortress of Human Rights Violations*, 1 Nat’l Conf. on SEZ - Issues & Prospects, 2–3 (analyzing India’s 2005 “Special Economic Zones Act” and describing its objectives as including, *inter alia*, the “[g]eneration of additional economic activity[,]” the “[p]romotion of exports of goods and services[,]” and the “[p]romotion of investment...”).

² *See, e.g.*, Douglas Z. Zeng, *The Past, Present, and Future of Special Economic Zones and their Impact*, 24 J. of Int’l Econ. L. 259 (2021).

³ U.N. CONF. ON TRADE AND DEV., *Special Economic Zones*, in WORLD INVESTMENT REPORT 2019 127, 128 (2019).

⁴ *Special Economic Zones*, Governance and Social Development Resource Centre, <https://gsdrc.org/topic-guides/state-business-relations/approaches-to-improving-the-effectiveness-of-state-business-relations/special-economic-zones/> (last visited Dec. 1, 2023); Beth Gaglia & Andrea Nuila, *A Private City in Honduras Moes Forward*, NACLA (Feb. 15, 2021), <https://nacla.org/news/2021/02/12/private-government-honduras-zede-prospera>.

⁵ *What is a Secrecy Jurisdiction?*, Tax Justice Network, <https://taxjustice.net/faq/what-is-a-secrecy-jurisdiction/> (last visited Dec. 2, 2023).

As detailed below in Section IV(A), the number of SEZs in Latin America and the Caribbean has increased dramatically in recent years and shows no signs of slowing. SEZs are being promoted by multilateral institutions as a development tool. However, their actual development impact is at best ambiguous and at worst deepening inequality and contributing to poverty in communities located near SEZs. Additionally, the human rights impacts of SEZs have not been sufficiently analyzed in a systematic way.

SEZs and Secrecy Jurisdictions are targeted at attracting Foreign Direct Investment (FDI). SEZs in particular have been touted as tools for economic development in the region by powerful actors including the World Bank. However, the development outcomes of SEZs can at best be described as “mixed.”⁶ Most of the research and lobbying promoting SEZs as tools for development focuses on the few “successful” cases such as that of Dubai.⁷ But the World Bank describes SEZs as a “high risk” instrument with mixed results.⁸ Often, even in cases where significant investment has been secured, benefits to the broader economy and local communities have been difficult to establish, especially as SEZs often make few links to local businesses, working instead as an island within the broader national economy.⁹

The positive impact of foreign investment in an SEZ on surrounding communities and the broader country is highly context specific, with developed countries experiencing greater benefits from such investment than developing ones.¹⁰ This trend likely reflects the significant power imbalance between developing countries and powerful investors, as well as the heightened vulnerability to corruption and other abuses in this context.¹¹

⁶ U.N. CONF. ON TRADE AND DEV., *Special Economic Zones*, in WORLD INVESTMENT REPORT 2019 127, 128 (2019); *see also* WORLD BANK, SPECIAL ECONOMIC ZONES: AN OPERATIONAL VIEW OF THEIR IMPACTS 1 (2017) (“Special Economic Zones (SEZs) have become an increasingly popular instrument to promote economic development. . . . However, whether SEZs have achieved their objectives is unclear.”); *see also* Lorenzo Cotula & Liliane Mouan, *Briefing: Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf> (citing Douglas Z. Zeng, *Global Experiences with Special Economic Zones: Focus on China and Africa*, WORLD BANK (2015); T. Farole, *Special Economic Zones: Performance, Policy and Practice—with a Focus on Sub-Saharan Africa*, WORLD BANK (2010)) (“There is evidence that SEZs have fostered industrialisation in some East Asian economies, but results elsewhere have been mixed.”); *see also* “LAND TENURE AND DEV.” TECH. COMM., SPECIAL ECONOMIC ZONES AND LAND TENURE: GLOBAL TRENDS AND LOCAL IMPACTS IN SENEGAL AND MADAGASCAR 4 (2022) (“The analyses presented here show that SEZs have had mixed results in terms of economic development, to say the least.”).

⁷ WORLD BANK, SPECIAL ECONOMIC ZONES: AN OPERATIONAL VIEW OF THEIR IMPACTS 1, 115 (2017).

⁸ DOUGLAS Z. ZENG, WORLD BANK, THE DOS AND DON’TS OF SPECIAL ECONOMIC ZONES 1 (2021).

⁹ U.N. CONF. ON TRADE AND DEV., *Special Economic Zones*, in WORLD INVESTMENT REPORT 2019 127, 129 (2019); *see also* Paul Wessendorp, Marco Kamiya, Stephania Bonilla-Feret, & Bananayo Bonera, *Special Economic Zones and Urbanization*, DISCUSSION PAPER (U.N. Conf. on Trade and Dev.), July 1, 2020, at 4.

¹⁰ WORLD BANK, SPECIAL ECONOMIC ZONES: AN OPERATIONAL VIEW OF THEIR IMPACTS 1, 24–25 (2017) (“The empirical literature on developed countries generally shows that FDI contributes positive externalities to local economies. . . .” while “the literature on developing countries (and developed countries below the technological frontier) generally expresses considerable concern about the capacity of these countries to reap spill- over benefits due to their limited local absorptive capacity.”).

¹¹ *See, e.g.*, Natalia Muñoz Cassolis, *Open Secrets: Corruption in Free Trade and Special Economic Zones as an Enabler for Illegal Wildlife Trade*, World Wildlife Fund (2022), <https://www.worldwildlife.org/pages/tnrc-topic-brief-open-secrets-corruption-in-free-trade-and-special-economic-zones-as-an-enabler-for-illegal-wildlife-trade>.

When there are benefits, these are often not felt by local communities; instead, SEZs often increase disparities and entrench structural inequality.¹²

While the development impact of SEZs and Secrecy Jurisdictions is at best unclear, this hearing will demonstrate that the human rights implications of these policies are unambiguous. SEZs and Secrecy Jurisdictions have been a driver of human rights violations and an impediment to efforts at accountability in the region. In this hearing, the requesting organizations propose to present information to the IACHR detailing these human rights impacts.

III. Objective of the Hearing

The objective of the hearing request is to share with the Commission relevant information about the impact of Special Economic Zones (SEZs) and Secrecy Jurisdictions on human rights, tax injustice, and climate change in Latin America and the Caribbean. This hearing will aim to assess both State and corporate human rights legal obligations, and the manner in which SEZs and Secrecy Jurisdictions threaten to undermine them. In particular, the requesting organizations plan to present documentation and analysis on the following topics:

- (1) How SEZs and Secrecy Jurisdictions violate democratic sovereignty and are structurally incompatible with States' obligations under the Inter-American System. In particular, how these structures hamper States' ability to protect against human rights violations committed by third parties such as businesses.
- (2) How SEZs and Secrecy Jurisdictions cause and/or facilitate human rights violations in the region. The hearing will present case studies that demonstrate the impact of SEZs and Secrecy Jurisdictions on rights. The examples provided will include violations that occur in establishing SEZs as well as violations that occur under the operations of active SEZs and secrecy jurisdictions. Some of the rights implicated include the following: the right of access to information, the right to participate in public affairs, the right to non-discrimination; access to justice; labor rights; freedoms of assembly, association, and expression; land rights; the right to a clean, healthy and sustainable environment; the rights of Indigenous and Afro-descendant communities, including the rights to communal territory and consultation; and other social, economic, and cultural rights.
- (3) How SEZs and Secrecy Jurisdictions contribute to tax injustice in the region, and why this is of particular concern in the context of the climate crisis.
- (4) How SEZs and Secrecy Jurisdictions contribute to impunity, money laundering, and corruption in the region, particularly by reducing transparency and access to information.

The hearing will present a variety of case studies from different countries in the region, in order to demonstrate the diverse issues arising from SEZs and Secrecy Jurisdictions. There are a wide range of types of SEZs, ranging from the extreme of autonomous cities or charter cities on one end—where the State cedes a significant portion of its sovereignty—to more common SEZ arrangements like Export Processing Zones (EPZs). Through the concrete examples in this hearing, we will analyze the human rights implications of these different models. The

¹² WORLD BANK, SPECIAL ECONOMIC ZONES: AN OPERATIONAL VIEW OF THEIR IMPACTS 22 (2017).

examples that will be presented demonstrate that there are serious human rights concerns across all types of SEZs. These examples span Latin America and the Caribbean.

In this context, we hope that the hearing will contribute to the Commission's important agenda on business and human rights, as well as on extractivism and human rights, by offering an analysis to bring a focus on topics in investment, trade, and human rights specifically. As demonstrated by the array of stakeholders involved in this request, these are matters of broad scope and significant importance across the region. There is a clear cross-cutting interest in the issue, and these are not topics the IACHR has previously considered in combination.

The primary argument for allowing SEZs and Secrecy Jurisdictions despite these concerns is to promote development. States do also have an obligation to fulfill the right to development.¹³ However, the OAS Charter specifically mandates that States pursue development through just and equitable means.¹⁴ For instance, the Charter contains explicit State commitments to “devote their utmost efforts to accomplishing . . . basic goals” through development initiatives,¹⁵ including fair tax systems,¹⁶ modernized land reforms,¹⁷ strong labor protections,¹⁸ and the “[p]romotion of private initiative and investment in harmony with action in the public sector¹⁹—all of which are potentially undermined by SEZs and Secrecy Jurisdictions. The IACHR has reaffirmed this notion, emphasizing that development “must take place under conditions where the rights of individuals are respected”²⁰ and must be “managed in a sustainable, fair, and equal manner with a view towards economic growth with equality and consolidation of democracy.”²¹ Specifically, the rights to development must “place its central focus on the wellbeing and rights of persons and communities more than on economic

¹³ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 41 - 42 (1 Nov. 2019).

¹⁴ John G. Ruggie, Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) at 3, http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf [hereinafter Guiding Principles]. The Guiding Principles mandate that State governments must take affirmative steps to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” *Id.* Such actions are meant to include preventative measures, investigations into violations, and avenues for remedy, as well as the exercise of “adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises” on matters that could impact human rights. *Id.* at 3, 8.

¹⁵ Org. of Am. States Charter, art. 34.

¹⁶ Org. of Am. States Charter, art. 34.

¹⁷ Org. of Am. States Charter, art. 34 (c).

¹⁸ Org. of Am. States Charter, art. 34 (d).

¹⁹ Org. of Am. States Charter, art. 34 (g).

²⁰ IACHR, Indigenous Peoples, Communities of African Descent and Extractive Industries: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, para. 56.

²¹ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 17-18 (1 Nov. 2019).

statistics and commodities.”²² The right to development requires “empowering individuals and communities as rights holders, placing them at the center of a how development is conceived and implemented.”²³

The hearing will approach this analysis of state and corporate human rights obligations in an intersectional manner, exploring the ways in which the legal issues surrounding SEZs and Secrecy Jurisdictions intersect with other key challenges the IACHR has identified. Notably, this hearing will examine how human rights violations arising from SEZs and Secrecy Jurisdictions overlap and interact with issues including but not limited to: (1) the climate crisis and environmental degradation;²⁴ (2) democratic institution-building and the rule of law;²⁵ the rights of Indigenous, Afro-descendant, and other historically excluded communities;²⁶ and extreme poverty and economic inequality.²⁷

IV. Hearing Justification

A. It is urgent that the Commission consider these issues because of a recent surge in the creation of new SEZs and lack of attention to their human rights implications

The number of SEZs are on a rapid rise across the globe. The number of Foreign Trade Zones (FTZs) worldwide, for instance, increased from approximately 5,5000 in 2019 to over 7000 in 2022.²⁸

Latin America and the Caribbean is no exception to this global trend. On November 8-10, 2023, the *Association of Zonas Francas of the Americas* (AZFA) held its 26th Conference and noted the existence of over 700 Free Trade Zones (*zonas francas*) in the region. AZFA is at the regional forefront of efforts to promote FTZs and other types of SEZs. According to October 2021 data, the Caribbean has at least 150 SEZs, more than half of which are in the Dominican Republic. Central America has a minimum of 107 SEZs, the majority of which are in Nicaragua and Costa Rica.²⁹

Initiatives to create private cities (also known as charter cities), one of the most extreme types of SEZs, are also proliferating rapidly. Organizations like the Free Cities Foundation are promoting the creation of private cities worldwide.³⁰ There are numerous different models of private cities currently being promoted, including Charter

²² IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 42 (1 Nov. 2019), .

²³ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 42 (1 Nov. 2019).

²⁴ Inter-Am. Comm’n H.R., Strategic Plan 2023-2027, Doc. 310, at 42 (2022).

²⁵ Inter-Am. Comm’n H.R., Strategic Plan 2023-2027, Doc. 310, at 44 (2022).

²⁶ Inter-Am. Comm’n H.R., Strategic Plan 2023-2027, Doc. 310, at 30, 36 (2022).

²⁷ Inter-Am. Comm’n H.R., Strategic Plan 2023-2027, Doc. 310, at 42 (2022).

²⁸ *New Global Alliance of Special Economic Zones to Boost Development*, U.N. Conf. on Trade and Dev. (May 17, 2022), <https://unctad.org/news/new-global-alliance-special-economic-zones-boost-development>.

²⁹ Ivette Cano & Katarina Serlet Sizo Hlophe, *Special Economic Zones in the Caribbean*, Adrianople Grp. (Nov. 17, 2021), <https://www.adrianoplegroup.com/post/special-economic-zones-in-caribbean>

³⁰ Free Cities Foundation, <https://free-cities.org/>.

Cities, Network States, Smart Cities, Free Private Cities, Special Administrative Regions, and Start-Up Cities.³¹ One extreme vision for these private cities proposes the creation of “Seasteads”, ““building settlements on the sea, outside of the jurisdictions of existing nation-states.”³²

The World Bank’s framing of SEZs as a productive tool for “industrialization and economic transformation” has led to largely unrestrained support for SEZ expansions across Latin American and the Caribbean.³³ According to the UN Conference on Trade and Development’s (UNCTAD) 2019 World Investment Report, a new wave of industrial policies has caused a “SEZ boom.”³⁴ Since this SEZ-focused report, UNCTAD had been heavily promoting SEZs in Latin America and the Caribbean, even distributing awards to SEZs for investment promotion at its 2023 World Investment Forum.³⁵

The steady increase in the number of SEZs also follows a series of related governmental reforms across Latin America and the Caribbean. In Guatemala, following 2019 reforms to the regulations of the *Law of the Santo Tomás de Castilla Free Trade Zone* (Zolic), 18 new zones have been proposed.³⁶ In February 2020, the Panamanian government approved five new FTZs and supplemented these efforts by later enacting tax reforms that incentivize new projects and extensions of pre-existing projects.³⁷ Executive Decree No. 93 of August 2021 facilitated registration requirements and provided tax incentives including exonerations from annual tax and exemptions from income tax for “entrepreneurship companies.”³⁸ Similarly, in November 2023 Colombia’s Constitutional Court struck down part of a law that prohibited extractive companies from deducting royalties paid to the government from their taxable income; a change actively supported by local SEZs.³⁹ That same

³¹ Free Cities Foundation, <https://free-cities.org/>.

³² Free Cities Foundation, <https://free-cities.org/>.

³³ DOUGLAS Z. ZENG, WORLD BANK, THE DOS AND DON’TS OF SPECIAL ECONOMIC ZONES 5 (2021).

³⁴ U.N. CONF. ON TRADE AND DEV., WORLD INVESTMENT REPORT 2019: KEY MESSAGES AND OVERVIEW xiii (2019).

³⁵ *Agencies Win Awards for Promoting Investment in the Energy Transition*, U.N. Conf. on Trade and Dev. (Oct. 16, 2023) <https://unctad.org/news/agencies-win-awards-promoting-investment-energy-transition>

³⁶ Rosa María Bolaños, *Aumentan a 18 las Zonas de Desarrollo Económico, y Se Diversifica la Demanda de los Usuarios*, PRENSA LIBRE (Aug. 28, 2023), <https://www.prensalibre.com/economia/aumentan-a-18-las-zonas-de-desarrollo-economico-asi-como-la-demanda-de-los-usuarios/>.

³⁷ *Panama Special Economic Zones*, Int’l Trade Admin. (Mar. 23, 2021) <https://www.trade.gov/market-intelligence/panama-special-economic-zones>.

³⁸ Natalie De Obaldia, *Regulation of the Entrepreneurship Companies Law in Panama*, Quijano & Associates <https://quijano.com/regulation-of-the-entrepreneurship-companies-law-in-panama/> (last visited Dec. 2, 2023).

³⁹ *Colombia Court Strikes down Ban on Deducting Royalties from Tax Income*, REUTERS (Nov. 17, 2023) <https://www.reuters.com/markets/colombia-court-strikes-down-ban-deducting-royalties-tax-income-2023-11-17/>

month, the Dominican Republic's *National Council for Zonas Francas* approved installation permits for 14 new free zone companies.⁴⁰

Despite the proliferation of SEZs and Secrecy Jurisdictions, there has been insufficient analysis of the human rights impacts of these jurisdictions; this hearing seeks to help fill that gap. In general, oversight and research on the costs and benefits of SEZs have been overlooked, particularly outside of the economic or technology communities. In addition to a lack of research and analysis about the human rights impacts of SEZs and Secrecy Jurisdictions, there is also a lack of an international legal framework dedicated to the regulation of SEZs.⁴¹ Although international, multilateral, and regional treaties contain relevant provisions for the creation and operation of SEZs, these agreements generally do not mention SEZs explicitly and fail to provide a holistic regulatory scheme that incorporates human rights norms.⁴² Instead, SEZ-specific regulation is governed almost entirely by national-level laws.⁴³

B. Many SEZs and Secrecy Jurisdictions violate democratic sovereignty and are structurally incompatible with States' obligations under the Inter-American System

States have a duty to “organize their entire governmental apparatus and, in general, all the structures that manifest the exercise of public power, in such a way that they are capable of legally ensuring the free and full exercise of human rights.”⁴⁴ They are obligated to protect their citizens against abusive corporate behavior.⁴⁵ Ultimately, the Commission has declared that “States must ensure that business activities are not carried out at the expense of individuals’ or groups of individuals’ fundamental rights and freedoms[.]”⁴⁶ The obligation is comprehensive; as recognized in 1988 by the Inter-American Court of Human Rights, a State’s responsibility “to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts.”⁴⁷

⁴⁰ Press Release, Presidencia de la República Dominicana, CNZFE Aprueba Permisos de Instalación de 14 Nuevas Empresas de Zonas Francas que Crearán 1,479 Empleos Directos en Diferentes Provincias del País (Nov. 22, 2023), <https://presidencia.gob.do/noticias/cnzfe-aprueba-permisos-de-instalacion-de-14-nuevas-empresas-de-zonas-francas-que-crearan>

⁴¹ Manjiao Chi, Regulation of Special Economic Zones through Regional Trade Agreements: Confronting the Synergy Issue, 24 J. OF INT’L ECON. L. 423, 423 (Apr. 20, 2021).

⁴² Manjiao Chi, Regulation of Special Economic Zones through Regional Trade Agreements: Confronting the Synergy Issue, 24 J. OF INT’L ECON. L. 423, 425–26 (Apr. 20, 2021).

⁴³ Manjiao Chi, Regulation of Special Economic Zones through Regional Trade Agreements: Confronting the Synergy Issue, 24 J. OF INT’L ECON. L. 423, 425–26 (Apr. 20, 2021).

⁴⁴ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 61 (1 Nov. 2019).

⁴⁵ IACHR, Business and Human Rights: Inter-American Standards, OEA/Ser. L/V/II, para. 3 (2019), at https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf.

⁴⁶ IACHR, Business and Human Rights: Inter-American Standards, OEA/Ser. L/V/II, para. 3 (2019), at https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf.

⁴⁷ Velásquez-Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶176 (July 29, 1988) (stating that if a “State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention” it has “failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction”).

States are responsible “for the actions of third parties, when they act based on the tolerance, acquiescence, or negligence of the State, or with the support of any state policy or guideline that favors the creation of situations or discrimination.”⁴⁸ They are required to “take affirmative measures to guarantee that the individuals under their jurisdiction are able to exercise and enjoy the rights contained in the American Convention”⁴⁹ These Inter-American standards for affirmative State action to prevent corporate human rights violations mirror international standards, such as those laid out in the UN Guiding Principles on Business and Human Rights.⁵⁰

Given that States can violate these duties through both act and omission,⁵¹ a State’s establishment of SEZs and Secrecy Jurisdictions operates in direct contradiction to States’ obligations in two ways: (1) actively ceding regulatory control and governance responsibilities to private actors, which creates space for corporate exploitation and abuse, and (2) failing to monitor, investigate, and remedy the exploitation and abuse within that space. These gaps in State protection and accountability are incompatible with States’ duties under international and regional human rights law to ensure that the rights of individuals within their jurisdiction are protected.⁵²

The Commission has been clear that even where States do delegate the provision of certain public services to private entities, “the State not only retains regulatory and supervisory authority, but also has an imperative duty to do so” and is directly liable for the actions of that entity.⁵³

One of the most extreme examples of how SEZs can violate sovereignty is the now-derogated ZEDEs law in Honduras, which created “Zones for Employment and Economic Development.” The law was characterized as offering “micronation[s] for sale” due to the high levels of regulatory autonomy it grants⁵⁴ and came into

⁴⁸ IACHR, OEA/Ser.L/V/II, Compendium on Labor and Trade Union Rights: Inter-American Standards, ¶143 (30 Oct. 2020) (citing Report No. 25/18. Case 12,428. Admissibility and merits. Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families. Brazil. OAS/Ser.L/V/II. 167. Doc. 29. March 2, 2018). *See also Id.* at 66.

⁴⁹ IACHR, OEA/Ser.L/V/II, Compendium on Labor and Trade Union Rights: Inter-American Standards, p.66 (30 Oct. 2020).

⁵⁰ Guiding Principles, at 57.

⁵¹ Velásquez-Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶175 (July 29, 1988); *see also* Miskito Divers (Lemoth Morris et al.) v. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 432, ¶48 (Aug. 31, 2021) (emphasizing “that States have a duty to prevent human rights violations by private companies, and therefore must adopt legislative and other measures to prevent such violations, and to investigate, punish and provide reparation when they occur” and affirming that “States must establish regulations requiring companies to implement actions aimed at ensuring respect for the human rights”).

⁵² U.N. Charter art. 55–56; International Covenant on Civil and Political Rights art. 2(1), Dec. 16, 1966, U.N.T.S. 993; International Covenant on Economic, Social and Cultural Rights art. 2(1), Dec. 16, 1966, U.N.T.S. 993; Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, art. 1(1).

⁵³ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 57, 67 (1 Nov. 2019).

⁵⁴ Lizz Gabriela Mejía, *A Micronation for Sale in Roatan*, CONTRACORRIENTE (Sept. 3, 2020), <https://contracorrente.red/en/2020/09/03/a-micronation-for-sale-in-roatan/>.

existence under the anti-democratic regime of Juan Orlando Hernández government.⁵⁵ The ZEDEs law allowed for corporate-run ZEDEs to have their own private judicial system, taxation and environmental and labor laws.⁵⁶

Honduras overturned the ZEDEs law in April 2022, an action that was in line with its obligations under international and regional human rights law. However, Honduras' sovereignty continues to be under threat, as one of the established ZEDEs, known as the Próspera ZEDE, filed a USD \$11 billion arbitration claim—over two-thirds of the overall Honduran annual budget⁵⁷—under the Dominican Republic-Central America FTA (CAFTA-DR) in the International Centre for Settlement of Investment Disputes (ICSID).⁵⁸ The claim is aimed at forcing the Honduran government to allow Próspera to continue operating as it could under the ZEDE law; while the claim remains pending, Próspera has increased construction and sought new developers and investors, threatening the rights of a neighboring Afro-descendant community and the local environment.

This hearing is important because it is urgent that the Commission clarify further that there are certain State duties that cannot be delegated to a private actor such as a SEZ operator. These include the following duties related to regulation of business activities and human rights and environmental protection:

- (1) The duty to regulate and adopt provisions in domestic law;⁵⁹
- (2) The duty to prevent human rights violations in the framework of business activities;⁶⁰
- (3) The duty to supervise business activities;⁶¹
- (4) The duty to investigate, punish, and ensure access to integral reparations for victims in the context of

⁵⁵ Emily Palmer & Kirk Semple, *A Daring Portrait of Presidential Corruption, but Hondurans Sound Resigned*, NEW YORK TIMES (Mar. 23, 2021), <https://www.nytimes.com/2021/03/23/world/americas/honduras-juan-orlando-hernandez-drug-trial.html>; see also Press Release, Off. of Pub. Aff., Dep't of Just., Juan Orlando Hernández, Former President of Honduras, Indicted on Drug-Trafficking and Firearms Charges, Extradited to the United States from Honduras (Apr. 21, 2022), <https://www.justice.gov/opa/pr/juan-orlando-hernandez-former-president-honduras-indicted-drug-trafficking>.

⁵⁶ Decree No. 120-2013, Organic law of the Employment and Economic Development Zones (ZEDE) (Sept. 6, 2013), La Gaceta, [https://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/Ley%20Organica%20de%20Zonas%20de%20Empleo%20y%20Desarrollo%20Economico%20ZEDE%20\(7,1mb\).pdf](https://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/Ley%20Organica%20de%20Zonas%20de%20Empleo%20y%20Desarrollo%20Economico%20ZEDE%20(7,1mb).pdf).

⁵⁷ Soledad Quartucci, *Government of Honduras Approves National Budget for the Fiscal Period 2022-2023*, LATINA REPUBLIC (Sept. 14, 2022), <https://latinarepublic.com/2022/09/14/government-of-honduras-approves-national-budget-for-the-fiscal-period-2022-2023/>.

⁵⁸ Pratap Chatterjee, *Próspera Demands Honduras Pay \$11 Billion for Outlawing Privately Run City*, CORPWATCH (July 25, 2023), <https://www.corpwatch.org/article/prospera-demands-honduras-pay-11-billion-outlawing-privately-run-city>.

⁵⁹ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 63 (1 Nov. 2019).

⁶⁰ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 63 (1 Nov. 2019).

⁶¹ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 63 (1 Nov. 2019).

business activities;⁶²

- (5) The duty to regulate and supervise the activities under its jurisdiction that may cause significant harm to the environment;⁶³
- (6) The duty to undertake an environmental and social impact assessment when there is a risk that may cause significant harm to the environment, establish a contingency plan with security measures and procedures to minimize the possibility of serious environmental accidents; and mitigate the significant environmental damage that has occurred, even if it occurred in spite of the State's preventive actions;⁶⁴
- (7) The duty to guarantee the right to Free, Prior, and Informed Consent;
- (8) The duty to guarantee the sovereignty, territorial integrity, and self-determination of Indigenous and Afro-descendant communities.

C. SEZs and Secrecy Jurisdictions Generate and/or Facilitate Serious Human Rights Violations in the Region

The proliferation of SEZs brought about a sense of optimism and hope for economic and human development, supported by research on the most successful examples.⁶⁵ However, these promises of development often come at a high cost to a variety of human rights. The SEZ framework allows foreign investors to negotiate generous concessions with host governments, without clear limitations on what may not be negotiated away.⁶⁶ High regulatory control by Foreign Direct Investors that undermines national protections under the SEZ framework can easily be used to exploit human capital, diminish land sovereignty, and engage in business practices that degrade the environment or violate labor rights. UN Experts have called for the use of SEZs to be brought into line with international human rights standards, stressed that the need to attract FDI should not undermine human rights and environmental standards, and warned that SEZs have the potential to become “black holes for human rights abuses by businesses.”⁶⁷

⁶² IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 63 (1 Nov. 2019).

⁶³ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 63 (1 Nov. 2019).

⁶⁴ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 63 (1 Nov. 2019).

⁶⁵ COUNTRY OFF. IN VIETNAM, U.N. INDUSTRIAL DEV. ORG., ECONOMIC ZONES IN THE ASEAN: INDUSTRIAL PARKS, SPECIAL ECONOMIC ZONES, ECO INDUSTRIAL PARKS, INNOVATION DISTRICTS AS STRATEGIES FOR INDUSTRIAL COMPETITIVENESS 30 (2015).

⁶⁶ See, e.g., Lizz Gabriela Mejía, *A Micronation for Sale in Roatan*, CONTRACORRIENTE (Sept. 3, 2020), <https://contracorriente.red/en/2020/09/03/a-micronation-for-sale-in-roatan/> (calling SEZs established under the Honduran ZEDs law “micronation[s] for sale” and explaining that under the framework, foreign companies would have control over “providing security, resolving conflicts, and establishing fiscal policy”).

⁶⁷ Press Release, Off. of the High Comm’r of Human Rights, UN Human Rights Experts Raise Alarm about the Situation of Indian Migrant Workers in Gabon Special Economic Zone (Apr. 26, 2019), <https://www.ohchr.org/en/press-releases/2019/04/un-human-rights-experts-raise-alarm-about-situation-indian-migrant-workers>.

In this hearing, the undersigned organizations wish to outline how SEZs expose individuals and communities from across the region to serious human rights violations and entrench existing discrimination. These violations can occur: (1) in the process of establishing the SEZ; (2) in the operations of the SEZ; (3) as potential future harm. In this section, we will provide representative examples some of the most prevalent kinds of violations - land rights violations that occur in the course of establishing SEZs and then continue throughout their operations, labor rights violations that occur during the operations of a SEZ, and future climate harms.

Land and Territorial Rights

Indigenous and Afro-Descendant Communities have collective rights under both the Inter-American System and the International Labor Organization Convention 169, including rights to their ancestral land and a right to be consulted on projects that will impact them.⁶⁸ These rights are intimately linked to Indigenous and Afro-descendant communities' sovereignty and self-determination. The placement of SEZs in or near to communities' ancestral territory puts these rights at risk.

A 2022 report by FIAN International highlights several ways that SEZs can harmfully interact with land rights, including by “increasing land speculation, generating dispossession, and violating forest rights.”⁶⁹

Communities and individuals who are at risk of having their land expropriated by SEZs can face barriers to receiving compensation for the loss of their land, despite the fact that “many national laws entitle landholders to compensation[.]”⁷⁰ In the case of Honduras, for example, the ZEDES law allowed for semi-autonomous city SEZs to request that the government expropriate land on their behalf, as many Afro-Indigenous and Indigenous communities did not have secure title to their land, despite having been on the land for many decades. Even when affected individuals and communities are able to seek compensation for loss of their land, it is likely that the compensation will be insufficient.⁷¹

⁶⁸ CIDH, Derechos Económicos, sociales, culturales y ambientales de pueblos indígenas y afrodescendientes tribales, OEA/Ser.L/V/II, Doc. 52/23 (Mar. 21, 2023), para. XXX https://www.oas.org/es/cidh/informes/pdfs/2023/NorteCentroamerica_DESCA_ES.pdf.

⁶⁹ ANDREA NUILA HERRMANNSDÖRFER, FIAN INT’L, WHAT IS THE RIGHT TO LAND IN THE AGE OF PRIVATE JURISDICTIONS? 2 (2022) (citing Michael Levien, *The Land Question: Special Economic Zones and the Political Economy of Dispossession in India*, 39 J. OF PEASANT STUD. 933, 934, 964, (2012)). This report and the impact of SEZs on land rights in general are discussed in greater detail in a later section of this paper.

⁷⁰ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>; see also Pornpana Kuaycharoen, Luntharima Longcharoen, Phurinat Chotiwan, & Kamol Sukin, *Special Economic Zones and Land Dispossession in the Mekong Region*, LAND WATCH THAI (May 24, 2021), <https://th.boell.org/en/2021/05/24/special-economic-zones-and-land-dispossession-mekong-region>

(“Laws requiring the state and investors to pay compensation for damages are either deficient or not enforced.”).

⁷¹ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development of Sites of Exploitation?*, Int’l Inst. for Envir. and Dev., (Oct. 2018), <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>.

In the face of such effects, communities may exercise their participatory rights⁷² to defend their land rights;⁷³ consequently, land rights are further threatened when SEZs limit public participation.⁷⁴ According to a 2022 report by a technical committee comprised of experts on “Land Tenure and Development” and led by the French Development Agency,⁷⁵ there is a general trend among SEZs toward greater reliance on public-private governance models.⁷⁶ The extent to which communities affected by SEZs can meaningfully participate in or influence their governance may be limited if the SEZ decision-makers are primarily private actors and therefore not democratically accountable to the public.

The *International Institute for Environment and Development* (IIED) has also highlighted the participatory deficit of SEZs in the context of land rights, explaining that “[l]andholders often have limited opportunities to meaningfully inform decisions on overarching development pathways and resulting land acquisitions” in the establishment of SEZs, particularly when a domestic legal regime “automatically considers the creation of an SEZ as a ‘public purpose[.]’” thereby generally permitting expropriation of land for such zones.⁷⁷ According to IIED, such expropriations as well as land speculation associated with SEZs can contribute to the phenomenon of “legalized land grabbing[.]”⁷⁸ resulting in “displacement” and “dispossession” of people from their land in various countries.⁷⁹

⁷² The right to participate in government and “public affairs” is protected under international human rights law. International Covenant on Civil and Political Rights art. 25, Dec. 16, 1966, U.N.T.S. 993. (“Every citizen shall have the right and the opportunity...[t]o take part in the conduct of public affairs, directly or through freely chosen representatives” and “[t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”).

⁷³ ANDREA NUILA HERRMANSDÖRFER, FIAN INT’L, WHAT IS THE RIGHT TO LAND IN THE AGE OF PRIVATE JURISDICTIONS? 10 (2022).

⁷⁴ For example, the FIAN report argues that the lack of “public power contest” in “private jurisdictions” can stymie the ability of affected communities to rely on “[p]olitical participation and representative actions...to increase the protection of their land rights[.]” ANDREA NUILA HERRMANSDÖRFER, FIAN INT’L, WHAT IS THE RIGHT TO LAND IN THE AGE OF PRIVATE JURISDICTIONS? 10 (2022).

⁷⁵ LAND TENURE AND DEVELOPMENT TECHNICAL COMMITTEE, SPECIAL ECONOMIC ZONES AND LAND TENURE: GLOBAL TRENDS AND LOCAL IMPACTS IN SENEGAL AND MADAGASCAR 2 (2022); *see also* Foncier et développement, *Qui sommes-nous?*, <https://www.foncier-developpement.fr/qui-sommes-nous/> (last visited Dec. 2, 2023).

⁷⁶ *See e.g.*, LAND TENURE AND DEVELOPMENT TECHNICAL COMMITTEE, SPECIAL ECONOMIC ZONES AND LAND TENURE: GLOBAL TRENDS AND LOCAL IMPACTS IN SENEGAL AND MADAGASCAR 13 (2022); *see also* Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), at 2, <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf> (“In some countries...budget constraints and policy reforms have increased the role of the private sector in creating and operating SEZs”).

⁷⁷ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>; *see also* LAND TENURE AND DEVELOPMENT TECHNICAL COMMITTEE, SPECIAL ECONOMIC ZONES AND LAND TENURE: GLOBAL TRENDS AND LOCAL IMPACTS IN SENEGAL AND MADAGASCAR 19 (2022).

⁷⁸ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>

⁷⁹ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018) at 2, <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf> (“In Myanmar and Cambodia, SEZs have been associated with land speculation in surrounding areas and reports of human rights

Labor Rights

While one of the reasons cited for the creation of SEZs is often to increase employment opportunities, the employment offered within SEZs is frequently noncompliant with Inter-American standards on fair, equitable, and satisfactory working conditions and Inter-American Standards on Trade Union Rights.⁸⁰ Citing the UN Committee on Economic, Social, and Cultural rights, the Inter-American Court has emphasized that the right to work is a right to “*decent work*.”⁸¹ The Protocol of San Salvador clarifies that States must guarantee “fair, equitable and satisfactory working conditions” in the following areas:

*“a minimum wage that guarantees dignified and decent living; fair and equal wages for equal work; the right of every worker to follow their vocation; the right to promotion; stability of employment; safety and hygiene at work; reasonable limitation of working hours; rest, leisure and paid vacations, as well as remuneration for national holidays; and the prohibition of child labor.”*⁸²

States have to regulate and inspect labor conditions, including by “auditing and punishing any violations by state and private employers” and conducting work inspections;⁸³ This duty cannot be delegated to private actors.

The International Labour Organization (ILO) has also identified eleven fundamental instruments among all of its conventions, protecting against forced labor, child labor, discrimination, among others. ⁸⁴ Many of the labor rights identified by the Commission are also enshrined in ILO instruments as well as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), including: the right to work, fair and equal wages regardless of gender, safe and healthy working conditions, and limitation of working hours to enjoy rest.⁸⁵

abuses linked to displacement, while livelihood disruptions caused by land dispossession have led to protests in India, Madagascar, Vietnam and the Philippines”).

⁸⁰ The Commission summarized these standards in its 2020 Compendium, “Compendium on Labor and Trade Union Rights: Inter-American Standards.” Special Rapporteur for Econ., Soc., Cultural and Env'tl. Rights, Labor and Trade Unions: Inter-American Standards, ¶ 143, OEA/Ser.L/V/II (Oct. 30, 2020).

⁸¹ Special Rapporteur for Econ., Soc., Cultural and Env'tl. Rights, Labor and Trade Unions: Inter-American Standards, ¶ 143, OEA/Ser.L/V/II (Oct. 30, 2020). (citing Report No. 25/18. Case 12,428. Admissibility and merits. Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families. Brazil. OAS/Ser.L/V/II. 167. Doc. 29. March 2, 2018).

⁸² Special Rapporteur for Econ., Soc., Cultural and Env'tl. Rights, Labor and Trade Unions: Inter-American Standards, p. 73, OEA/Ser.L/V/II (Oct. 30, 2020)

⁸³ Special Rapporteur for Econ., Soc., Cultural and Env'tl. Rights, Labor and Trade Unions: Inter-American Standards, p. 74-5, OEA/Ser.L/V/II (Oct. 30, 2020) (citing Merits Report No. 64/18. Opario Lemoth Morris et al. (Miskito Divers). Honduras. May 8, 2018.).

⁸⁴ International Labour Organization, *About the ILO*, <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>, (last visited Dec. 1, 2023).

⁸⁵ International Covenant on Economic, Social and Cultural Rights, Arts. 6, 7, Dec. 16, 1966, U.N.T.S. 993.

While SEZs are advertised as promising hubs for economic development that benefits the population,⁸⁶ labor standards are often reduced in these spaces, jeopardizing local communities' labor rights and rights to development. Workers in some SEZ allege that they sometimes work up to 24-hour shifts and as a result have developed a variety of health problems.⁸⁷

Depending on the degree of freedom that a company enjoys through this regime and the laws of the country receiving foreign investment, workers are subject to violations like restriction on unionization, collective bargaining, freedom of association, and unsafe conditions among others.⁸⁸ These restrictions are in direct violation of Inter-American Standards, which clearly establish that workers have a right freedom of expression and freedom of association in their workplace, and has provided that “the power to establish trade union organizations and to choose their structure, together with activities and action programs, without the intervention of state authorities that limit or hinder the exercise of the above-mentioned rights.”⁸⁹ However, despite these protections afforded by international treaties, often SEZ can escape regulation through generous concessions in the name of development. In Jamaica, for example, rights to unionization are limited within SEZs.⁹⁰

There is evidence that some SEZs have had a differential impact on women,⁹¹ in violation of States' duty to “adopt new and diverse actions for the promotion and protection of equality and ensure that women enjoy and exercise their rights without discrimination.”⁹² For example, this Commission has called attention to labor violations in the textile industry in Central America, an industry that frequently benefits from SEZs; specifically:

“Investigations into this matter indicate a serious violation of the labor rights of these workers, particularly in Nicaragua, Guatemala, El Salvador and Honduras. Given this scenario, the privileges (usually tax benefits) given by States to these companies and their omissions in observing labor standards contrast with the strenuous conditions under which

⁸⁶ UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, WORLD INVESTMENT REPORT 2019 xiv – xvi (2019).

⁸⁷ Brais Benitez, *27 Millones de Personas son Víctimas de Explotación Laboral en las ‘Maquilas’*, L MAREA (Apr. 13, 2015), <https://www.lamarea.com/2015/04/13/27-millones-de-personas-son-victimas-de-explotacion-laboral-en-las-maquilas/#share>.

⁸⁸ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int'l Inst. for Env't and Dev. (Oct. 2018), <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>.

⁸⁹ Special Rapporteur for Econ., Soc., Cultural and Envtl. Rights, Labor and Trade Unions: Inter-American Standards, p. 97, OEA/Ser.L/V/II (Oct. 30, 2020). *See also id.* at 62. As part of freedom of association, workers have the following freedoms that relate to trade unions: “freedom of assembly; freedom of affiliation, non-affiliation, and disaffiliation; freedom of choice of the organization's structure; the centrality of collective bargaining for the defense of workers' interests and against violent actions as a way of discouraging participation in trade unions.” *Id.* at 97.

⁹⁰ U.S. Dep't of State, *2023 Investment Climate Statement: Jamaica*, (May 2023), <https://www.state.gov/reports/2023-investment-climate-statements/jamaica>.

⁹¹ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int'l Inst. for Env't and Dev. (Oct. 2018), <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>.

⁹² Special Rapporteur for Econ., Soc., Cultural and Envtl. Rights, Labor and Trade Unions: Inter-American Standards, ¶ 334, OEA/Ser.L/V/II (Oct. 30, 2020).

*these persons work. There are additional factors that violate their dignity, such as poor hygiene conditions in factories or restricted access to bathrooms.*⁹³

Such practices violate the principles of equality and non-discrimination in the context of labor relations, which “not only prohibit[] deliberately discriminatory policies and practices, but also those whose impact is discriminatory against a certain category of persons, even if discriminatory intent cannot be proven.”⁹⁴

The Commission has also emphasized that “in the field of businesses and human rights, the rights of indigenous peoples and Afro-descendants can be affected, especially due to structural discrimination or widespread poverty, which are deeply rooted in the culture and institutions of societies.”⁹⁵

Environmental and Climate Impacts

SEZs anchor the impact of climate stressors and risks. The Commission has explicitly recognized that climate change impacts the right to a healthy environment, a right recognized by the Inter-American System.⁹⁶ Significantly, in Advisory Opinion 23/17, the IACtHR extended the protection of this right to the protection of nature itself, not just people’s interests in nature.⁹⁷ Nonetheless, climate change exacerbates and entrenches the impact of human rights violations on individuals and groups, impacting different communities in differentiated and pernicious ways.

States have an obligation to ensure consultation with communities who are to be affected by projects resulting in serious environmental damage and to ensure affected communities have access to redress mechanisms.⁹⁸ In the case of Afro-Descendant and Indigenous communities, the State must obtain Free, Prior and Informed Consent (FPIC) and much ensure meaningful participation incorporates an intercultural approach and traditional and local knowledge.⁹⁹ These duties apply to the creation of SEZs that will affect communities. The IACtHR has emphasized that this includes the ability to hold companies to account and be able to determine their criminal, civil or administrative responsibility.¹⁰⁰ For Indigenous and Afro-Descendant communities affected by environmental projects, redress may include measures to repair damage, guarantees of non-

⁹³ Special Rapporteur for Econ., Soc., Cultural and Envtl. Rights, Labor and Trade Unions: Inter-American Standards, ¶ 338, OEA/Ser.L/V/II (Oct. 30, 2020).

⁹⁴ Special Rapporteur for Econ., Soc., Cultural and Envtl. Rights, Labor and Trade Unions: Inter-American Standards, p. 47-8, OEA/Ser.L/V/II (Oct. 30, 2020).

⁹⁵ IACHR, OEA/Ser.L/V/II, Compendium on Labor and Trade Union Rights: Inter-American Standards, ¶339 (30 Oct. 2020). See also *Id.* at p. 53-54, 58-59.

⁹⁶ IACHR Res. 3/2021, at 5 (Dec. 31, 2021).

⁹⁷ IACHR Res. 3/2021, at 5 (Dec. 31, 2021).

⁹⁸ IACHR Res. 3/2021, at 14 (Dec. 31, 2021).

⁹⁹ IACHR Res. 3/2021, at 17 (Dec. 31, 2021).

¹⁰⁰ IACHR Res. 3/2021, at 14 (Dec. 31, 2021).

repetition, and steps to preserve culture.¹⁰¹ Climate change affects the rights to a healthy environment of Indigenous and Afro-descendant in differentiated ways.

For example, in the case of the Próspera ZEDE in Honduras, Próspera has engaged in environmentally destructive development projects without proper permits, community consent, or environmental and social impact assessments. The Próspera project is located next to an Afro-descendant community, the Black English community of Crawfish Rock. The community also has residents from the Mosquita Indigenous community. The community's watershed lies underneath the Próspera property. The community has rights to FPIC, but they were never consulted as to the Próspera ZEDE. As a result of Próspera's activities, there has been deforestation, a reduction in the natural draining area, and buildup in the riverbed, which could change the river's course. Building undertaken on the land has been in violation of local building codes, as the corporation claims that they are permitted to circumvent regulations because of the ZEDEs law. This had led to an increased risk of erosion and damage to one of the largest coral reefs for Roatán.

When Próspera arrived in the area, they offered a community project to provide water and built a water system. Those who wished to participate had to pay for installation and monthly maintenance, while at the same time access was periodically shut off. When faced with challenges from the community about Próspera advancing the project, Próspera shut the water off completely. Community members who attempt to speak out against the ZEDE, Próspera has acted to silence them through stigmatization, threats, and restriction of access to essential resources.

The establishment of the Próspera ZEDE has exposed the Crawfish Rock community to serious violations of their environmental rights. In addition to the lack of consultation and consent in advance of the project, there are little to no options in terms of redress and avenues to repair environmental damage that has already occurred. The ambiguity surrounding administrative and civil responsibility deepens the vulnerability of the community, and delays crucial opportunities to put in place measures to repair existing damage which may lead to exacerbated climate and environmental issues later down the line.

D. SEZs and Secrecy Jurisdictions Contribute to Tax Injustice in the Region

A core feature of many SEZs and Secrecy Jurisdictions are tax exemptions. SEZs and other tax havens facilitate corporations and individuals' ability to pay less or no tax than they should.¹⁰² In its 2017 report, the World Bank's Competitive Industries and Innovation Program elaborated the types of tax incentives SEZs may offer, including "reduced corporate taxes or tax holidays; investment tax credits or accelerated depreciation allowances to encourage capital formation; or sometimes lower import taxes and tariffs."¹⁰³ According to the Program, the resulting revenue "losses may be acceptable in a case in which the investments are additional and generate positive externalities[.]"

¹⁰¹ IACHR Res. 3/2021, at 17 (Dec. 31, 2021).

¹⁰² Tax Justice Network, *Tax Havens and Secrecy Jurisdictions*, (Nov. 14, 2020), <https://taxjustice.net/topics/tax-havens-and-secrecy-jurisdictions/>.

¹⁰³ WORLD BANK, SPECIAL ECONOMIC ZONES: AN OPERATIONAL VIEW OF THEIR IMPACTS 17 (2017)

Secrecy Jurisdictions, meanwhile, permit corporations to evade taxes by enabling them to “hide their wealth and financial affairs from the rule of law,”¹⁰⁴ a problem that this Commission has explicitly acknowledged.¹⁰⁵ The British Virgin Islands, Cayman Islands, Panama, and Bahamas, appear in Tax Justice Network’s top 22 suppliers of financial security, which facilitates tax abuse and undermines human rights,¹⁰⁶ and are among 18 noted Secrecy Jurisdictions across the Caribbean and Central America.¹⁰⁷ Notably, the United States is the top ranked Secrecy Jurisdiction in their Financial Secrecy Index 2022.¹⁰⁸

This part of the hearing would complement the work of the Commission and the Special Rapporteur on Social, Economic and Cultural Rights on “fiscal policies, corporate tax practices, and influence over decision-making.”¹⁰⁹ It would build off of the Commission’s landmark hearing in 2016 on fiscal policy and human rights.¹¹⁰

Corporate tax policy in particular has the potential to significantly impact a State’s ability to mobilize its resources and, ultimately, to fulfill its obligations under international human rights law. As the Committee on Economic, Social and Cultural Rights explained in its General Comment 24 on State obligations in the context of business activities: “[l]owering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights[,]” making “this practice...inconsistent with the duties of the States parties to the Covenant.”¹¹¹ This Commission has explained:

¹⁰⁴ Tax Justice Network, *Tax Havens and Secrecy Jurisdictions*, (Nov. 14, 2020), <https://taxjustice.net/topics/tax-havens-and-secrecy-jurisdictions/>.

¹⁰⁵ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 143 (1 Nov. 2019) (“transnational corporations . . . prevent the State from collecting taxes by diverting large amounts of money that should have been destined to it as part of their tax obligations, for example through tax evasion or avoidance”); Id. at 147 (explaining that these practices are facilitated by “excessive protection of financial secrets and the lack of financial transparency allowed by certain countries”).

¹⁰⁶ Tax Justice Network, *Financial Secrecy Index 2022*, <https://fsi.taxjustice.net/> (last visited Dec. 2, 2023).

¹⁰⁷ Guide to Combating Corruption & Fraud in Infrastructure Development Projects, *Secrecy Jurisdictions*, <https://guide.iacrc.org/secrecy-jurisdictions/> (last visited Dec. 2, 2023).

¹⁰⁸ Tax Justice Network, *Financial Secrecy Index 2022*, <https://fsi.taxjustice.net/> (last visited Dec. 2, 2023).

¹⁰⁹ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 142 - 147 (1 Nov. 2019).

¹¹⁰ CESR, Fiscal Policy and Human Rights in the Americas (Jan. 20, 2016), <https://www.cesr.org/fiscal-policy-and-human-rights-americas-1/>.

¹¹¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 24 State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 37, UN doc. E/C.12/GC/24, Aug. 10, 2017. *See also* Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty), Report of the Special Rapporteur on extreme poverty and human rights, para. 43, UN doc. A/HRC/26/28 (May 22, 2014) (describing how using corporate “tax incentives” to compete for foreign investment creates a “race to the bottom” among participating States); TAX JUSTICE NETWORK, STATE OF TAX JUSTICE 2023 25 (2023) (similarly describing the practice of using tax incentives to attract foreign companies as a “race to the bottom” that ultimately “leads to even lower tax revenue for all governments”).

“States must evaluate the specific and differentiated impact on human rights that corporate tax practices and tax policies applicable to companies produce, including their extraterritorial impact, and build public knowledge on paying taxes in the place where the corporations’ commercial operations really occur as a way of calculating and distributing the benefits and profits of companies with transnational operations and structures.”¹¹²

There has been increasing attention to the ways in which taxation policies interact with States’ human rights obligations. State parties to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) are responsible for pursuing the “progressive realization” of economic, social, and cultural rights protected by the Convention “to the maximum of its available resources.”¹¹³ The Committee on Economic, Social, and Cultural Rights has connected a State’s obligation to act “to the maximum of its available resources” to its chosen tax policy, which can facilitate “the mobilization of [such] resources[.]”¹¹⁴

In 2014, former UN Special Rapporteur on extreme poverty and human rights Magdalena Sepúlveda Carmona similarly identified “[r]evenue collection [as] a critical tool for States in tackling and redressing systemic discrimination and ensuring equal access to economic, social and cultural rights,” explaining that faulty policies “may result in its inability to fund social protection or adequate and accessible public services, a situation that is likely to create or entrench inequalities.”¹¹⁵ The UN High Commissioner for Human Rights has also linked tax policy with the ability of States to meet their human rights obligations, noting that the practice of profit shifting by corporations to “low- or no-tax jurisdictions...undercuts the ability of countries to mobilize revenues to fulfill human rights.”¹¹⁶

112 IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 224 -225 (1 Nov. 2019).

¹¹³ International Covenant on Economic, Social and Cultural Rights, Art. 2(1), Dec. 16, 1966, U.N.T.S. 993. (“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”). See *also*, UN Committee on Economic, Social and Cultural Rights, General Comment No. 3 The Nature of States Parties’ Obligations, para. 9, UN doc. E/1991/23, Dec. 14, 1990 (“The principal obligation of result reflected in article 2 (1) is to take steps “with a view to achieving progressively the full realization of the rights recognized” in the Covenant. The term “progressive realization” is often used to describe the intent of this phrase.”). Cf. American Convention on Human Rights, Art. 26 (Jul, 18, 1978) (“The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires”).

¹¹⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 24 State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 23, UN doc. E/C.12/GC/24, Aug. 10, 2017 (“The obligation to fulfil requires States parties to take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of Covenant rights, and, in certain cases, to directly provide goods and services essential to such enjoyment. Discharging such duties may require the mobilization of resources by the State, including by enforcing progressive taxation schemes”).

¹¹⁵ Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty), *Report of the Special Rapporteur on extreme poverty and human rights*, para. 17, UN doc. A/HRC/26/28 (May 22, 2014).

¹¹⁶ Volker Türk, *Türk: Human rights are antidote to prevailing politics of distraction, deception, indifference and repression*, UN Human Rights Office of the High Commissioner (Sept. 11, 2023), <https://www.ohchr.org/en/statements/2023/09/turk-human-rights-are-antidote-prevailing-politics-distraction-deception>.

It is additionally unclear that such corporate tax incentives produce even those results that their proponents promise. According to a 2016 policy paper by Oxfam, participation in such “tax competition” not only reduces a State’s tax revenue, but is also unnecessary to attract investment, with “low corporate tax rates” trailing behind several other investment promoting factors.¹¹⁷ Actually, Oxfam points out, by lowering corporate tax rates, States have fewer resources to invest in those other more important factors, such as “the quality of the country’s infrastructure, the availability of an educated, healthy workforce, and social stability[,]”¹¹⁸ making it a “self-defeating” policy choice.¹¹⁹

Given the links between corporate tax policy and economic, social, and cultural rights, the distinct tax regimes that govern SEZs must be considered when analyzing the human rights impacts of such zones.¹²⁰ As Oxfam’s 2016 analysis revealed, the necessity of making such tax cuts to promote investment is “a deeply entrenched assumption” that is “often...unfounded.”¹²¹

There is no question that SEZs result in State revenue loss,¹²² and human rights authorities have repeatedly established the link between a State’s tax revenue and its ability to fulfill its human rights obligations.¹²³ Reduced tax rates in SEZs can negatively impact the provision of social services¹²⁴ and “undermine the ability of authorities—particularly in poorer countries—to finance public services.”¹²⁵

¹¹⁷ OXFAM, TAX BATTLES: THE DANGEROUS GLOBAL RACE TO THE BOTTOM ON CORPORATE TAX 6 (2016). <https://www.weforum.org/reports/the-global-competitiveness-report-2016-2017-1/>l=; see also id. pp. 2 and 18; Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), at 2, <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf> (“There is mixed evidence as to whether tax incentives drive significant FDI flows and positive outcomes, and their overall costs and benefits”).

¹¹⁸ OXFAM, TAX BATTLES: THE DANGEROUS GLOBAL RACE TO THE BOTTOM ON CORPORATE TAX 18 (2016).

¹¹⁹ OXFAM, TAX BATTLES: THE DANGEROUS GLOBAL RACE TO THE BOTTOM ON CORPORATE TAX 3 (2016).

¹²⁰ See, e.g., UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, THE IMPACT OF INTERNATIONAL TAX REFORMS ON SPECIAL ECONOMIC ZONES 3 (2023); WORLD BANK, SPECIAL ECONOMIC ZONES: AN OPERATIONAL VIEW OF THEIR IMPACTS 17 (2017)

¹²¹ OXFAM, TAX BATTLES: THE DANGEROUS GLOBAL RACE TO THE BOTTOM ON CORPORATE TAX 18 (2016).

¹²² WORLD BANK, SPECIAL ECONOMIC ZONES: AN OPERATIONAL VIEW OF THEIR IMPACTS 17 (2017)

¹²³ See, e.g., UN Committee on Economic, Social and Cultural Rights, General Comment No. 24 State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 37, UN doc. E/C.12/GC/24, Aug. 10, 2017; see also Volker Türk, *Türk: Human rights are antidote to prevailing politics of distraction, deception, indifference and repression*, UN Human Rights Office of the High Commissioner (Sept. 11, 2023), <https://www.ohchr.org/en/statements/2023/09/turk-human-rights-are-antidote-prevailing-politics-distraction-deception>; Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), at 2, <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>.

¹²⁴ LAND TENURE AND DEVELOPMENT TECHNICAL COMMITTEE, SPECIAL ECONOMIC ZONES AND LAND TENURE: GLOBAL TRENDS AND LOCAL IMPACTS IN SENEGAL AND MADAGASCAR 17 (2022).

¹²⁵ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), at 2, <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>.

More specifically, as explained by former UN Special Rapporteur on extreme poverty and human rights Magdalena Sepúlveda Carmona, various social, cultural, and economic rights are implicated by or dependent on State spending, “such as the rights to an adequate standard of living, health, education and social security.”¹²⁶ The consequences of lost tax revenue resulting from SEZ tax policy may also be “gendered” when the loss of such revenue translates to reduced spending “on public services such as education and health[.]”¹²⁷ thereby implicating human rights related to non-discrimination and equality.¹²⁸

These human rights and tax justice issues are poised to become even more critical in the context of the climate crisis, as related to financing climate resiliency in climate vulnerable countries.

E. SEZs and Secrecy Jurisdictions Contribute to Impunity, Money Laundering, and Corruption in the region

SEZs and secrecy jurisdiction also contribute to impunity, money laundering, and corruption in the region, particularly by decreasing transparency.

The Inter-American system has additionally established the existence of corporate responsibility for human rights harms.¹²⁹ The Inter-American Court of Human Rights has found that all companies, regardless of their nature, have an obligation to “ensure that their activities do not cause or contribute to human rights violations, and must adopt measures to redress such violations.”¹³⁰ The Commission has echoed this sentiment, stating that corporate actors’ responsibility to respect human rights necessarily involves mitigating and redressing harm caused by business activities, as well as engaging in due diligence efforts to avoid violations.¹³¹

¹²⁶ Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty), *Report of the Special Rapporteur on extreme poverty and human rights*, para. 43, UN doc. A/HRC/26/28 (May 22, 2014).

¹²⁷ Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development or Sites of Exploitation?*, Int’l Inst. for Env’t and Dev. (Oct. 2018), at 2, <https://www.iied.org/sites/default/files/pdfs/migrate/17481IIED.pdf>.

¹²⁸ *See, e.g.*, UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 Non-discrimination in economic, social and cultural rights, para. 39, UN doc. E/C.12/GC/20, Jul. 2, 2019 (“Eliminating systemic discrimination will frequently require devoting greater resources to traditionally neglected groups.”); *see also* UN Committee on Economic, Social and Cultural Rights, General Comment No. 13 The Right to Education para. 1, UN doc. E/C.12/1999/10, Dec. 8, 1999 (“Education has a vital role in empowering women...”); UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health, para. 21, UN doc. E/C.12/2000/4, Aug. 11, 2000 (“To eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women’s right to health throughout their life span”).

¹²⁹ INTER-AM. COMM’N H.R., INDIGENOUS PEOPLES, AFRO-DESCENDENT COMMUNITIES, AND NATURAL RESOURCES 24 (2015).

¹³⁰ *Miskito Divers (Lemoth Morris et al.) v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 432, ¶48 (Aug. 31, 2021); *see also Case of the Kalina and Lokono Peoples v. Suriname*, paras. 223-34, Inter-Am. Ct. H. R. (ser. A) No. 309.

¹³¹ SOLEDAD GARCIA MUÑOZ, BUSINESS AND HUMAN RIGHTS: INTER-AMERICAN STANDARDS 186 (Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights 2019) (referencing observations made by the Commission in response to the human rights impacts of the mining industry in Brazil).

The UN Guiding Principles also explicitly state that corporate actors must respect human rights by avoiding, mitigating, and preventing “adverse human rights impacts” resulting from their activities and relationships.¹³² Additionally, the UN Committee on Economic, Social and Cultural Rights has expressed that even in the absence of adequate domestic legal protections in the country of their operation, corporate actors are “expected to respect” international human rights standards.¹³³

Under these international and regional standards, it is clear that, regardless of the gaps in human rights protections states create through establishing SEZs and Secrecy Jurisdictions, corporate actors have an independent obligation to refrain from activities that violate human rights.

The Commission has stated that “The State must establish a clear legal framework that provides for sanctions against businesses that are involved in criminalization, stigmatization, abuses, and violence against those who defend human rights, including private security companies and contractors who act on behalf of the company involved.”¹³⁴ Considering the nature of multinational business in the region, these obligations must apply not only to the country where a given project is being carried out, but also to countries where corporate actors alleged to have been involved in violence are incorporated, domiciled, or otherwise subject to jurisdiction.

For example, in the case of a business that is alleged to have financed and/or facilitated violence that occurred in Honduras, but is incorporated in Panama, it is not only Honduras who has these obligations, but also Panama. In practice, however, such obligations are neither widely recognized nor executed. Instead, financial secrecy in jurisdictions such as Panama, the Cayman Islands, and the United States frequently obscure who is involved in certain projects, thereby making accountability impossible in cases where violence occurs.

As Secrecy Jurisdictions have been strengthening as a phenomena in the region, efforts have been made to increase transparency and fight impunity. The Escazú Agreement is a regional agreement that obliges states to provide access to environmental information and facilitate public participation in environmental matters in Latin America and the Caribbean.¹³⁵ The Agreement was adopted in 2018 and outlines a variety of rights in the pursuit of environmental democracy.¹³⁶ To date, there are 25 signatories, 15 of which have ratified the Agreement. The Agreement signals a positive move towards transparency and accountability in the region.

While the Escazú Agreement marks a major step forward for environmental transparency, there is a clear tension between this movement towards access to information and the growth of Secrecy Jurisdictions. The incongruity in the parallel movements across Latin America and the Caribbean is made starker as private actors are not subject to duties and responsibilities under Escazú, and many human rights violating projects in the region can be traced back to companies registered in Secrecy Jurisdictions, making it difficult to identify relevant

¹³² Guiding Principles, 14.

¹³³ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/237/17/PDF/G1723717.pdf?OpenElement> at 5

¹³⁴ IACHR, OEA/Ser.L/V/II, Business and Human Rights: Inter-American Standards, p. 44 (1 Nov. 2019),

¹³⁵ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Mar. 4, 2018, U.N.T.S. 3398

¹³⁶ Environment-rights.org, *The Escazú Agreement*, <https://environment-rights.org/the-escazu-agreement/> (last visited Dec. 2, 2023).

actors and pursue accountability. However, because of secrecy laws that facilitate the creation of shell companies, and the lack of public disclosure obligations on the part of companies, it can be incredibly difficult if not impossible to trace activity undertaken by businesses that is causing human rights violations. Nefarious practices are able to take place with impunity.

Further, the OECD reports that there has been progress across the region in promoting transparency to tackle tax evasion.¹³⁷ In 2018, the Punta del Este Declaration was signed which called for collaborative action against tax evasion and corruption in Latin America, recognizing its impact on public trust.¹³⁸ Through the Declaration, States in the region have been working together to share information concerning tax administration and evasion.¹³⁹ Since 2018, States have continued to reiterate commitments to fully implement the international tax transparency standards through the Latin America Initiative, which aims at using transparency and information exchange to combat corruption “tax evasion, corruption and other illicit financial flows (IFFs).”¹⁴⁰

Secrecy Jurisdictions and SEZs hence provide further evasion of transparency efforts undertaken at a state level, and deepen issues around human rights violations and accountability.

Furthermore, both SEZs and Secrecy Jurisdictions increase risks for illicit activity such as money laundering, corruption, and other illicit activity. The semi-autonomous nature of SEZs poses a range of challenges that make them especially prone to such activity. A 2020 report by the Royal United Services Institute raised concerns over, among other factors, the lack of international standards regarding SEZs, the absence of adequate monitoring mechanisms, and the ambiguity over the specific governance and oversight roles of the government and corporate actors involved.¹⁴¹ Various criminal and terrorist networks have taken advantage of these weaknesses; according to the Financial Action Task Force, cash was funneled through Panama’s Colón Free Zone as part of a USD \$15 billion drug trafficking and money laundering scheme involving Hezbollah leaders.¹⁴² Similarly, the lack of transparency surrounding Secrecy Jurisdictions make them “an attractive

¹³⁷ Organisation for Economic Co-operation and Development, *Latin American countries make headway on transparency and exchange of information for tax purposes, with margin for improvements*, <https://www.oecd.org/tax/exchange-of-tax-information/latin-american-countries-make-headway-on-transparency-and-exchange-of-information-for-tax-purposes-with-margin-for-improvements.htm> (last visited Dec. 2, 2023).

¹³⁸ Declaración de Punta del Este, Nov. 19, 2018, <https://www.oecd.org/tax/transparency/documents/Latin-American-Ministerial-Declaration.pdf>

¹³⁹ ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *TAX TRANSPARENCY IN LATIN AMERICA 2023: PUNTA DEL ESTE DECLARATION PROGRESS REPORT 2* (2023).

¹⁴⁰ ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *TAX TRANSPARENCY IN LATIN AMERICA 2023: PUNTA DEL ESTE DECLARATION PROGRESS REPORT 4* (2023).

¹⁴¹ ANTON MOISEIENKO ET AL., *IMPROVING GOVERNANCE AND TACKLING CRIME IN FREE-TRADE ZONES* 8, 9 (2020).

¹⁴² FINANCIAL ACTION TASK FORCE, *MONEY LAUNDERING VULNERABILITY OF FREE TRADE ZONES* 21 (2010).

destination for routing illicit financial flows.”¹⁴³ For instance, organized crime groups have specifically utilized banks in secrecy jurisdictions to prevent investigators from tracking their funds.¹⁴⁴

These same factors that facilitate money laundering and trafficking activities in SEZs and Secrecy Jurisdictions allow corruption to flourish. For example, the ZEDEs law in Honduras created a “sanctuary for corruption”¹⁴⁵ whereby Próspera was able to create its own judicial system, prison system, and police force, regardless of the conflict of interest concerns. In this system, there is no incentive to investigate crimes, let alone provide methods of redress. The system therefore produces combined factors that create an environment ripe for corruption, completely undermining public accountability and facilitating impunity.

V. Conclusions and Request

For all of the above reasons, the undersigned organizations consider it is of utmost importance that the IACHR receive direct information on the problem in question, so that the challenges that currently exist surrounding the impact of SEZs and Secrecy Jurisdictions on human rights and climate change can be analyzed.

Given the expanding nature of the topic and development of it in the Commission, the petitioners consider that this hearing is an excellent opportunity to deepen the analysis and understanding of how the SEZs, and the widespread installation of them by governments, entrenches discrimination and perpetuates human rights violations. The hearing will provide an opportunity to delve deeper into this issue which touches all areas of Latin America and the Caribbean, and to see the patterns that cut across the experiences of different groups, communities, and geographies. These are issues that affect the entire region and therefore will contribute to the analytical development of the conceptualization of the multiple violations of rights that occur through the establishment of SEZs and the associated derogation of human rights responsibilities and routes of redress.

We also respectfully request, within the framework of the Joint Actions Mechanism to contribute to the protection of human rights defenders in the Americas, that an invitation is extended to:

- The office of the United Nations High Commissioner for Human Rights
- U.N. Special Rapporteur on the Right to Development
- U.N Special Rapporteur on Human Rights and the Environment

Consequently, we respectfully request that a thematic hearing be considered and granted at its next session, in order to present these concerns in greater detail and generate a space for dialogue with the relevant States that will allow for progress in the protection of the rights despite the SEZs and Secrecy Jurisdictions.

¹⁴³ ALEX COBHAM ET AL., VULNERABILITY AND EXPOSURE TO ILLICIT FINANCIAL FLOWS IN LATIN AMERICA 17 (Tax Justice Network, 2021).

¹⁴⁴ GERALD HILSHER, *Banking Secrecy: Coping with Money Laundering in the International Arena*, in CURRENT LEGAL ISSUES AFFECTING CENTRAL BANKS 239, 240 (1992).

¹⁴⁵ Ana Pereyra Baron, *The ZEDEs Law in Honduras: Sanctuary for Exploitation, Corruption, and Organized Crime*, Latin America Working Group, <https://www.lawg.org/the-zedes-law-in-honduras-sanctuary-for-exploitation-corruption-and-organized-crime/> (last visited Dec. 2, 2023).

Cordially,

Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (Honduras)

Crawfish Rock Community Governance Board (*Patronato*) (Honduras)

Dejusticia (Colombia)

Freedom Imaginaries (Jamaica)

Instituto de Abogados para la Protección del Medio Ambiente (INSAPROMA) (Dominican Republic)

International Human Rights Clinic, Santa Clara Law (United States)

National Lawyers' Guild International Committee (United States)

Observatorio Fiscal de la Pontificia Universidad Javeriana (Colombia)

Organización Fraternal Negra Hondureña (OFRANEH)(Honduras)

Smith Family Human Rights Clinic, Columbia Law School (United States)