

COURTESY TRANSLATION: *The Spanish version of Respondent's Counter-Memorial on the Merits and Memorial on Jurisdictional Objections dated July 12, 2026 is the original version. In the event of a discrepancy between the original text and the English translation, the original Spanish text prevails.*

**ARBITRATION BEFORE THE INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES**

ICSID Case No. ARB/23/2

**HONDURAS PRÓSPERA INC., ST. JOHN'S BAY DEVELOPMENT COMPANY LLC, AND
PRÓSPERA ARBITRATION CENTER LLC**

(Claimants)

v.

REPUBLIC OF HONDURAS

(Respondent)

Counter-Memorial on the Merits and Memorial on Jurisdictional Objections

July 12, 2026



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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	11
A.	The ZEDEs were the continuation of the REDs and the Claimants were aware of the facts that led to their declaration of unconstitutionality	11
1.	The REDs were the first attempt to establish “model cities” in Honduras.....	12
2.	The Supreme Court of Honduras declared the RED Legal Framework unconstitutional because it was contrary to immutable provisions of the Constitution regarding national territory and the form of government	16
3.	The Magistrates of the Constitutional Chamber were illegally dismissed in retaliation for declaring the RED Legal Framework unconstitutional	22
4.	The Claimants had direct knowledge of the dispute over the REDs because one of their shareholders participated in the initiative	27
B.	The ZEDE Legal Framework accentuated the vices of unconstitutionality of the REDs instead of correcting them	29
1.	The approval of the ZEDE Legal Framework was only possible due to the dismissal of the Magistrates of the Constitutional Chamber of the Supreme Court	30
2.	ZEDEs allow private operators to exercise executive, legislative, and judicial powers in place of the nation-state	36
3.	The CAMP and the Technical Secretaries are not state bodies in charge of democratic control or supervision of the ZEDEs and have been co-opted by Próspera	39
4.	The creation of the ZEDEs was the exclusive responsibility of the National Congress	46
5.	The ZEDEs were not just any type of Special Economic Zone	52
C.	The Claimants developed their investments in Honduras outside the applicable legal framework and incurred multiple irregularities.....	58
1.	The Claimants made their investment knowing, or having reason to know, that the ZEDE Legal Framework had sparked widespread and permanent opposition and that its repeal had even been proposed before they made their investment.....	58
2.	The Claimants construct an account of the alleged representations that motivated their investment, which does not correspond to reality	64
3.	Próspera ZEDE was created in open contravention of the requirements established by the applicable Honduran legislation.....	69
4.	Even though it was in open contravention of the ZEDE Legal Framework, Próspera operated in Honduras incurring multiple irregularities, conflicts of interest, violations of legal regulations, and ignoring the warnings of its own advisors.....	76
5.	Faced with a possible repeal of the ZEDE Legal Framework, the Claimants fraudulently manufactured the so-called LSA	91

D.	The systematic social rejection and the multiple vices of origin of the ZEDE Legal Framework finally led to its repeal	95
1.	The articulation of civil society around the repeal of the ZEDE Legal Framework	95
2.	The repeal of the ZEDE Legal Framework in the National Congress.....	103
3.	The Supreme Court’s ruling of unconstitutionality	107
4.	The measures that Honduras has progressively taken to protect its sovereignty	125
E.	Próspera’s business failures are not attributable to Honduras, but to its own conduct and irregular development of its business	130
1.	The bulk of the Claimants’ purported investment was made when the repeal of the ZEDE Legal Framework was imminent	131
2.	The Duna project was carried out irregularly, accounting for a possible fraud by the Claimants	133
3.	The irregularities of the Claimants’ business in Roatán are replicated in another one of their projects: Próspera África	134
4.	By means of this arbitration, the Claimants attempt to attribute their commercial failures to Honduras with a claim for compensation that is clearly absurd and extortionate	136
III.	THE TRIBUNAL DOES NOT HAVE JURISDICTION TO HEAR THE PRESENT DISPUTE. 138	
A.	The Claimants have not made a protected investment under Honduran law and CAFTA-DR.....	138
B.	The CAFTA-DR does not allow the Claimants to import clauses from other treaties	145
1.	The Claimants are not Kuwaiti investors and cannot invoke the rights enshrined in the Honduras-Kuwait BIT	146
2.	Article 32 of the ZEDE Organic Law is revocable, domestic legislation that does not create international obligations for Honduras	147
3.	MFN clauses may not be used to import substantive standards from treaties with third States	150
C.	The LSA is not an “investment agreement” subject to Article 10.28 of the CAFTA-DR.....	156
1.	The Technical Secretary of Próspera is not a “national authority”	157
2.	The LSA does not confer rights in respect of natural resources or assets controlled by a national authority	159
3.	The Claimants’ investment decisions predate the LSA by several years, and they could therefore not rely on it	161
4.	Honduras never consented to ICSID arbitration under the LSA	162
D.	HPI does not have an “investment authorization” under CAFTA-DR	163
E.	The relief sought by the Claimants in the main part of their Claim falls outside the Tribunal’s jurisdiction	173

IV. THE REPUBLIC OF HONDURAS HAS NOT BREACHED ANY OF THE OBLIGATIONS CLAIMED	180
A. The Essential Security Exception in Article 21.2(b) of the CAFTA-DR prevents the Tribunal from ruling on the merits.....	180
1. The ESI invoked by Honduras is self-judging and, therefore, prevents the Tribunal from ruling on its admissibility	180
2. Even in the event that the Tribunal considers that it can rule on the admissibility of the ESI invoked by Honduras (<i>quod non</i>), such review is limited to analyzing, with a light touch, whether it was invoked in good faith by the Republic	183
B. Honduras has not violated the minimum standard of treatment	189
1. The applicable standard under Article 10.5 of the CAFTA-DR is the Minimum Standard of Treatment, not a stand-alone standard of Fair and Equitable Treatment.....	190
2. The Claimants have not demonstrated that the MST contains an autonomous obligation to protect legitimate expectations, nor that their expectations are of such a nature or have actually been frustrated.....	196
3. Honduras' measures were not arbitrary or unreasonable	203
4. Neither were Honduras' measures discriminatory, non-transparent, inconsistent, abusive or hostile	210
5. The Supreme Court has not denied justice to the Claimants and has acted in accordance with the law.....	218
C. Honduras has not expropriated the Claimants' investments.....	220
1. The ZEDE Legal Framework does not confer on the Claimants the acquired rights they claim	220
2. The measures challenged by the Claimants have not led to the expropriation of their investment	224
D. Honduras has not breached any alleged contractual obligations under the LSA	231
1. The LSA is openly contrary to transnational public order	231
2. The LSA also does not meet the requirements to which legal stability agreements are subject under international law	234
3. The LSA is also null and void under applicable Honduran law	236
4. Honduras did not violate the MFN standard with regard to the umbrella clauses that the Claimants seek to import	241
E. Honduras has not breached any alleged obligations arising from the Charter of Próspera ZEDE	242
V. THE CLAIMANTS ARE NOT ENTITLED TO THE REMEDIES THEY SEEK NOR HAVE THEY PROVED THE ALLEGED DAMAGES THEY CLAIM	246
A. Restitution is inadmissible in both legal and factual terms.....	246
B. The Claimants also do not meet the general criteria required to order monetary compensation	248

1.	The Claimants adopt a partial interpretation of the full reparation standard and apply it incorrectly	249
2.	The Claimants have not proved that they have suffered actual damage, which is certain and not merely speculative	250
3.	The Claimants have failed to prove the existence of the requisite causal link between the alleged violations and the damages claimed	253
C.	BRG’s valuation lacks the rigor necessary to support any compensation.....	257
1.	The Claimants’ chosen Valuation Date is an attempt to artificially increase the compensation sought	257
2.	The only appropriate methodology for assessing the Claimants’ alleged damages is sunk costs	260
3.	BRG’s DCF is not viable.....	266
D.	The remaining claims for compensation and ancillary claims must also be rejected.....	272
1.	The claim for moral damages must be rejected for not meeting the standard of exceptionality required by arbitral practice	273
2.	The Claimants are not entitled to the interest they claim	274
3.	Any compensation should not be net of taxes, nor is there any legal basis for restricting Honduras’ right to collect them.....	276
VI.	REQUEST FOR RELIEF	277

I. INTRODUCTION

1. Pursuant to Procedural Order No. 5 dated May 14, 2025, the Republic of Honduras (the “**Republic**”, the “**State**”, “**Honduras**” or the “**Respondent**”) files its Counter-Memorial on the Merits and on Jurisdictional Objections on the date set forth in the amended Procedural Calendar, in response to the Claimants’ Memorial (“**Memorial**”) filed by Honduras Próspera Inc. (“**HPI**”), St. John’s Bay Development Company LLC (“**SJBDC**”), and Próspera Arbitration Center LLC (“**PAC**”) (collectively, the “**Claimants**” and, together with the Republic, the “**Parties**”). Attached to this Counter-Memorial are Exhibits **R-0074** through **R-0341** and Legal Exhibits **RLA-0120** through **RLA-0310** and the Expert Valuation Report of the Damages claimed by the Claimants of Dr. Daniel Flores, Chief Executive Officer of Quadrant Economics LLC (“**Quadrant**”).
2. This is a fabricated case that should never have come before this Tribunal. The Claimants present themselves as diligent investors committed to promoting prosperity through a model of good governance who, attracted by the alleged commitments to stability of a legal framework supposedly comparable to that of other jurisdictions, would have made substantial investments in a proven business model, of which they would have been deprived only by the alleged animosity of a government in power. As Honduras demonstrates throughout this Counter-Memorial, that account does not withstand scrutiny: the facts tell a radically different story.
3. In reality, the Claimants always knew that they were investing in a challenged regime, whose pillars – the transfer to private hands of the original powers of the State and the virtual suppression of all democratic control – had already been declared unconstitutional by the Honduran institutions years earlier, and whose repeal had been proposed again even before they made their investments. Precisely because they knew the enormous risks and regulatory uncertainty surrounding the project, they tried to fabricate a shield for their investment, using every spurious mechanism they could find, including supposed stabilization agreements

signed with themselves. And they did so because their true objective was never the prosperity of Honduras, or even a genuine business project, but to establish an idiosyncratic model, unprecedented in the world, in which a private operator would exercise the essential functions of the State and citizens would be reduced to the status of mere customers.

4. Faced with such a level of misrepresentations and omissions on the part of the Claimants, Honduras has found it necessary throughout this Counter-Memorial and, in particular, in **Section II**, to reconstruct the facts from their origin. This has required explaining the context that led to the establishment of the ZEDE Legal Framework in Honduras, its main characteristics and the way in which this regime operated before and after the Claimants' investment; as well as to expose the multiple irregularities that marked the development and operation of said investment, and the broad opposition of civil society that finally led to its repeal and the declaration of the regime's unconstitutionality.
5. As set out below, the ZEDE Legal Framework did not appear in a vacuum. It has its immediate and direct precursor in the Special Development Regions ("**REDs**"), inspired by the model of "model cities" or *charter cities* that Paul Romer publicly disseminated towards the end of the 2000s. The REDs, incorporated into the Constitution in 2011, granted private operators broad administrative, regulatory and jurisdictional powers. However, unlike what would later happen with the ZEDEs, they preserved relevant democratic counterweights: their creation could not respond exclusively to a private initiative; their regulations had to be approved by a qualified majority of the National Congress; the judges of their special jurisdictions required the support of two-thirds of the congressmen; and their organs were subject to renewal through periodic elections.
6. Even with the safeguards they retained, the REDs aroused immediate and massive opposition. More than fifty constitutional appeals were filed along with public complaints from figures such as the former prosecutor for the defense of the Constitution and the National Commissioner for Human Rights, for violating immutable clauses related to

sovereignty and territory. On October 17, 2012, the Plenary of the Supreme Court of Honduras declared the RED Legal Framework unconstitutional by an overwhelming majority of thirteen votes, finding that it contravened immutable provisions of the Constitution. The only dissenting vote came from the magistrate whose previous link with the project and the government at the time had even led to an attempt to recuse him.

7. Thus, instead of complying with the ruling, the National Congress opted to remove the Supreme Court that had issued it, in an action that, according to the Inter-American Court of Human Rights, was aimed at punishing the magistrates for the direction of their vote and conditioning the future composition of the Judiciary. It was the Constitutional Chamber reconstituted with new magistrates appointed by the National Congress that, barely a month after the removal, endorsed the new regime of the ZEDEs – introduced by Decree No. 236-2012 – without examining the merits of the reasons that had sustained the REDs’ unconstitutionality.
8. Hence, the three 2014 constitutional confirmations that the Claimants invoke as proof of stability do not constitute *res judicata* or give rise to any legitimate expectation. This was the original sin that allowed the establishment of the ZEDE Legal Framework, a circumstance that was known, or at least should have been known, by the Claimants given the attempt of Mr. Delgado – co-founder of HPI and witness in this arbitration – to constitute a RED. Not even the report commissioned by the Claimants themselves from Ernst & Young (“EY”) could hide that the ZEDE legislation was passed to replace the framework that had been rejected by the illegitimately dismissed judges.
9. Nor is it true that the ZEDE Legal Framework has corrected the defects of the REDs, as the Claimants maintain, but rather that – on the contrary, and with the path cleared after the reconfiguration of the Supreme Court – it aggravated them. On the one hand, it further expanded the transfer of powers from the Executive, Legislative and Judicial branches of the State to private entities, in open contradiction with the immutable clauses of the Honduran

Constitution; and, on the other, it concentrated power in entities outside any effective state control. In this regard, the two mechanisms relied on by the Claimants, the Committee for the Adoption of Best Practices (“**CAMP**”) and the Technical Secretary, clearly lacked the minimum conditions for exercising real control over the ZEDEs.

10. The CAMP was a collegiate entity whose members could perpetuate themselves in power by filling their own vacancies and imposing their own internal regulations, without intervention by the powers of the State. In addition, it was not subject to democratic control or state removal mechanisms and concentrated extraordinary powers, including the power to approve land expropriations carried out through the ZEDEs without effective external controls. In practice, this configuration allowed the promoters of the ZEDE Legal Framework to perpetuate themselves in the CAMP. This structural weakness was aggravated when, around February 2020, Próspera began to finance the activities of the CAMP, including the salaries of its members, its facilities and other operating expenses, depriving it of any appearance of independence.
11. The Technical Secretary did not constitute a state control mechanism either. Although the Technical Secretary was the highest executive authority of the ZEDE (and not of Honduras), he or she was nominated by the promoters and ratified by the CAMP. In the case of Próspera, this lack of independence went so far that the first Technical Secretary was also one of the owners of the parent company and a childhood friend of Mr. Brimen. It was precisely these facts that allowed the Claimants to sign, on their own and before themselves, the Agreement on Legal Stability and Investment Protection (“**LSA**”), using the Technical Secretary of the ZEDE itself, linked to the project promoter, as a counterparty to obtain an alleged stability guarantee and an autonomous route to arbitration. Therefore, the fact that the Claimants today describe this framework as a “stable” framework is untenable.
12. Even though the autonomy of the ZEDEs was practically absolute and the control and supervision mechanisms were non-existent, the Claimants abused this regime by

establishing Próspera ZEDE without complying with the only and most basic requirement for its creation: approval by the National Congress by a two-thirds qualified majority. Notably, Próspera ZEDE never obtained such approval. In addition, that provision required the preparation of an official list of low-density areas that was never issued, and there is no evidence in the record that the Claimants had even sought to prepare it. The only “approval” invoked by Próspera emanated from the CAMP, an entity that lacked the competence to replace the National Congress in the exercise of an exclusive constitutional attribution.

13. Moreover, the Claimants made their investment knowing, or having reason to know, that the ZEDE Legal Framework faced public, cross-cutting, and sustained opposition, and that even relevant sectors of the political spectrum had proposed its repeal. Since its approval, the regime had been the object of questioning by local communities, civil society organizations, indigenous and Garifuna peoples, international organizations and political actors, opposition that repeatedly manifested itself in response to the various attempts to establish ZEDes in Honduran territory. By the time HPI decided to develop Próspera, the repeal of the regime was already part of the national political debate and had been publicly announced by the main opposition candidate in the 2017 elections. The Claimants themselves were aware of these risks. HPI submitted its application to the CAMP just ten days after the election, and the EY report they commissioned warned that the ZEDE legislation was vulnerable to a change of government.
14. Once Próspera ZEDE began operating, its conduct was plagued by irregularities, conflicts of interest and the absence of effective controls. The Claimants appointed as Technical Secretary, as noted, an HPI shareholder and personal friend of Mr. Brimen, took advantage of the institutional and financial crisis of the CAMP to expand their own powers of government, and operated on the island of Roatán in disregard of environmental and human rights obligations. All this occurred despite the warnings made by their own advisers about the political and legal vulnerability of the regime and without the ambitious investments they

presented as evidence of success materializing in real commitments of capital or significant economic development.

15. It was precisely the fact that Próspera's concrete operation became known nationally—by becoming the first ZEDE effectively implemented in Honduras—that transformed a previously latent opposition to the ZEDE Legal Framework into a public and articulated mobilization. The release in September 2020 of a video in which Mr. Brimen explained the ZEDEs' power to expropriate land to Crawfish Rock residents generated an immediate reaction in the Honduran population and revealed, for the first time before public opinion, the practical consequences of the regime that the Claimants intended to implement. From then on, local communities, civil society organizations, professional associations, municipal authorities, business organizations and political actors progressively articulated the demand to repeal the ZEDE Legal Framework, denouncing not only the institutional and constitutional risks of the regime, but also the specific irregularities associated with the installation of the Próspera ZEDE, including the absence of consultation with the affected communities and the violation of fundamental rights.
16. This articulation of civil society led to the presentation of two citizen initiatives aimed at the repeal of the ZEDE Legal Framework to the National Congress, both promoted from the widespread conviction that this regime suffered from serious constitutional defects and affected national sovereignty, fundamental rights, and democratic guarantees. These acts prompted the National Congress, acting within the framework of its constitutional powers and in accordance with the applicable legislative procedure, to definitively repeal the ZEDE Organic Law and the other regulations that made up that regime.
17. At the same time, the mobilization of civil society led the National Autonomous University of Honduras to file a new petition challenging the constitutionality of the ZEDE Legal Framework, in exercise of its constitutional autonomy and in order to protect the competences that the Constitution recognizes in the field of higher education. That appeal

was fully admissible since the 2014 judgments did not produce the effect of *res judicata* nor did they establish a mandatory legal doctrine that would prevent a new examination of constitutionality. It was this appeal that led the Supreme Court of Honduras in 2024 – formed in accordance with Honduran constitutional procedures, acting independently of the political powers, and resolving through a divided vote of the Plenary – to declare the unconstitutionality, with *ex tunc effects*, of the ZEDE Legal Framework.

18. Since then, the Honduran institutions have taken all necessary steps to regularize the situation in which the Claimants find themselves, on the understanding that the ZEDE regime was repealed, subsequently declared unconstitutional, and that, consequently, the entities operating under that regime must adapt their operation to the general legal system in force in Honduras. The purpose of these measures was not to prevent the continuity of the legitimate economic activities of the Claimants or to ignore the investments made, but rather to restore the exercise of the sovereign powers of the State and to guarantee that any natural or legal person operating in Honduran territory does so under the same rules applicable to the rest of the economic actors.
19. Despite this, the Claimants have sought to continue operating as if they were a ZEDE, invoking powers and prerogatives derived from a legal regime that had already been repealed and declared unconstitutional. They further made new investments and committed additional resources with full knowledge that the ZEDE Legal Framework had been eliminated from the Honduran legal system. Moreover, they have continued to develop projects outside the applicable general regulatory framework, including real estate projects executed without observing the corresponding environmental and administrative requirements.
20. Not satisfied with all of the above, they have initiated this arbitration with the aim of transferring to Honduras the economic consequences of their own commercial decisions and, even worse, exerting pressure on the State to discourage the legitimate exercise of its regulatory and sovereign powers. In the end, their claim for compensation, in addition to

having originally been inflated by more than 85% with respect to the amount currently claimed and lacking correspondence with the economic reality of their assets and investments, seeks to make the Honduran State pay the bill for an idiosyncratic and failed bet by the Claimants.

21. That said, and without it being necessary to go into the merits of the dispute, **Section III** of this Counter-Memorial exposes the absolute lack of jurisdiction and competence of the Tribunal to hear the Claimants' claims.

- *First*, because the activities carried out through Próspera ZEDE do not constitute a “protected investment”, since they were carried out in violation of Honduran law, without the approval of the National Congress that the Constitution and the Organic Law required.
- *Second*, because the Claimants are also unable to import, by way of the most-favoured-nation (“MFN”) clause, guarantees provided for in the Honduras-Kuwait BIT, since they are not Kuwaiti investors, Article 32 of the Organic Law is a domestic law, and the MFN clause does not permit the transplantation of abstract treaty standards with third States.
- *Third*, because the LSA is not an “investment agreement” within the meaning of Article 10.28 of the CAFTA-DR, since the Technical Secretary is not a “national authority”, it does not deal with resources or assets controlled by the State, and it is subsequent to investment decisions.
- *Fourth*, because HPI does not in any event have a valid investment authorization that it can rely on in support of its claims; and,
- *Fifth*, and finally, the remedies for restitution and the declarations requested exceed the powers conferred on this Tribunal by the CAFTA-DR.

22. On the merits, and in the hypothetical scenario that the Tribunal were to declare itself

competent, **Section IV** makes clear that the Claimants have not demonstrated that Honduras has committed any violation of its obligations.

- *First*, because Honduras has invoked the essential security exception of Article 21.2 of the CAFTA-DR, which is self-judging and, in any case, obviously appropriate in this case, since the measures were necessary to preserve national sovereignty.
- *Second*, because the State did not violate the minimum standard of treatment in Article 10.5. The applicable standard is that of customary international law — not autonomous or expansive fair and equitable treatment; the Claimants did not have legitimate protected expectations, since they knew or should have known of the sustained opposition to this regime and the defects of unconstitutionality that affected it from its origin; and the repeal and subsequent declaration of unconstitutionality responded to constitutional causes of public order, with broad social and parliamentary support, without being arbitrary, discriminatory or lacking in transparency.
- *Third*, because there was no expropriation under Article 10.7, since the ZEDE Legal Framework did not confer on the Claimants the alleged rights they invoke and the measures were the result of the legitimate exercise of the State's police power, under international law.
- *Fourth*, because Honduras did not breach the LSA – which is contrary to transnational public order, was fabricated through a captured CAMP, is null and void under Honduran law, and does not represent the genuine will of the State.
- *Fifth* and finally, because Honduras did not fail to comply with the provisions of the Charter of Próspera ZEDE, which are not a source of international obligations enforceable before this Tribunal.

23. As regards the remedies sought, **Section V** demonstrates that the Claimants are not entitled

to either restitution or the compensation claimed. Restitution exceeds the powers of the Tribunal and, in any event, is materially impossible and manifestly disproportionate, since it would require the reinstatement of a repealed legislative regime by arbitration. The claim for damages also fails: the Claimants have not demonstrated damage that is certain or a causal link with the contested measures, and their own business decisions interrupted or contributed to any possible damage. In addition, BRG's valuation employs a speculative DCF for a pre-operational project, based on unrealistic projections, non-existent financing, and flawed methodological assumptions, when the proper approach is sunk costs, which demonstrates that the Claimants made a profit and not a loss. Finally, the moral damage does not meet the standard of exceptionality and the requests for compound interest and tax-free compensation are unfounded.

24. Finally, **Section VI** reproduces the request for relief of the Republic of Honduras, in which it is requested, in addition and in view of all the above, that the Claimants be expressly ordered to pay costs.

II. BACKGROUND

25. In this section, Honduras sets forth the facts that frame the present dispute and that refute the Claimants' narrative, following a chronological sequence. First, the ZEDEs were the continuation of the REDs – declared unconstitutional in 2012 – and the Claimants were aware of the facts that led to that declaration (II.A). Second, the ZEDE Legal Framework, approved after the illegal dismissal of the Supreme Court magistrates, accentuated these defects of unconstitutionality instead of correcting them (II.B). Third, the Claimants carried out their investments outside the applicable legal framework and incurred multiple irregularities (II.C). Fourth, the broad opposition of civil society culminated in the repeal and the declaration of unconstitutionality of the ZEDE Legal Framework (II.D). And finally, Próspera's commercial failures are not attributable to Honduras, but to its own conduct and the irregular development of its project (II.E).

A. THE ZEDES WERE THE CONTINUATION OF THE REDS AND THE CLAIMANTS WERE AWARE OF THE FACTS THAT LED TO THEIR DECLARATION OF UNCONSTITUTIONALITY

26. The ZEDE Legal Framework that the Claimants invoke as the basis for all their claims did not emerge from one day to the next. It has a clear and direct precedent: the REDs¹, approved on January 24, 2011 – just two years before the approval of Decree No. 236-2012 that created the ZEDEs in Honduras².

27. Despite this, the Claimants' Memorial refers only superficially to the legal regime of the REDs. While acknowledging that the regime was declared unconstitutional³, they conveniently omit to examine the circumstances that gave rise to that declaration and its close relationship with the present case⁴. This background is essential to understand the

¹ Decree No. 283-2010, published on February 15, 2011 (C-0422); Decree No. 4-2011, published on March 7, 2011 (C-0423); United Nations General Assembly, Report of the *Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Mission to Honduras (22 March 2013) (R-0134-SPA), ¶ 31.

² Decree No. 236-2012 approving the constitutional provisions on ZEDE (C-0002).

³ Claimants' Memorial, ¶¶ 52-55.

⁴ Claimants' Memorial, ¶¶ 52-55.

context in which the Claimants made their investment and the subsequent repeal and declaration of unconstitutionality of the ZEDE Legal Framework.

28. In view of the above, this section addresses: (A.1) the origin of the legal regime of the RED and its main characteristics; (A.2) the judgment by which the Supreme Court declared said regime unconstitutionality in 2012; (A.3) the subsequent removal of the magistrates of the Constitutional Chamber who made this decision, to pave the way for the ZEDE Legal Framework that was being drafted; and (A.4) the participation of the Claimants, in particular Mr. Delgado, in the promotion of the RED regime, which demonstrates their full knowledge of this background.

1. The REDs were the first attempt to establish “model cities” in Honduras

29. The general model of model cities or “*charter cities*”, which initially inspired the RED regime and, later, the ZEDE Legal Framework, was imported to Honduras towards the end of the 2000s.
30. In August 2009, Paul Romer, a U.S. national and former chief economist of the World Bank, presented a TED talk entitled “*Why the World Needs Charter Cities*.”⁵ There, he argued that one of the main obstacles to the development of many countries was the weakness of their institutional and regulatory frameworks. As a solution, he proposed the creation of cities in the unoccupied territories of a host State, subject to a legal regime different from that applicable in the rest of its territory and supported by a guarantor State whose institutions and regulatory framework offered greater guarantees of stability and reliability⁶.
31. At the same time, these ideas—or, at least, a version of them—began to be promoted in Honduras by Mark Klugmann, a U.S. political advisor linked to the Reagan and Bush (senior) administrations,⁷ who at the time served as an advisor to Honduran President

⁵ TED Lecture, “Paul Romer’s Radical Idea: Cities Under Statute” (August 5, 2009) (R-0093-ENG).

⁶ TED Lecture, “Paul Romer’s Radical Idea: Cities Under Statute” (August 5, 2009) (R-0093-ENG).

⁷ Geglia B., “Honduras: Reinventing the Enclave,” in NACLA Report on the Americas, Vol. 48, No. 4 (December 2, 2016) (R-0161), pp. 358.

Porfirio Lobo⁸. In this context, President Lobo, whose family environment would be involved in drug trafficking and corruption scandals⁹, set up a commission in charge of studying these models.

32. This commission was made up of Octavio Rubén Sánchez Barrientos, Chief of Staff of the Presidency; Ebal Jair Díaz Lupián, presidential advisor to Lobo and then to Juan Orlando Hernández, and currently a fugitive from justice for diverting public funds to his personal accounts¹⁰; and Carlos Alejandro Pineda Pinel, advisor on investment attraction and later in charge of public-private partnership agencies¹¹. In December 2010, Mr. Sánchez met with Mr. Romer to collaborate and promote the establishment of a model city in Honduras through the RED regime¹².
33. Ultimately, this collaboration led to the adoption of Decree No. 283-2010 by the National Congress on January 24, 2011, amending Articles 304 and 329 of the Constitution of the Republic and incorporating the REDs into the Honduran legal system¹³. Subsequently, on August 11, 2011, it approved Decree No. 123-2011, which completed this regime through the adoption of the “Constitutional Statute of the REDs”¹⁴ (together with Decree No. 283-

⁸ “The Blank Slate State,” *reason.com* (May 13, 2013) (**R-0135-ENG**), p. 2 (“Klugmann sold both Sanchez and Lobo on the notion that Honduras should have its own Hong Kong—a more market-friendly island within the stultifying state.”); “Mark Klugmann – New Media New Media”, *newmedia.ufm* (4 November 2016) (**R-0160**).

⁹ United States Department of State, “Section 353 Corrupt and Undemocratic Actors Report: Report to Congress on Foreign Persons who have Knowingly Engaged in Actions that Undermine Democratic Processes or Institutions, Significant Corruption, or Obstruction of Such Corruption in El Salvador” (September 2021) (**R-0224-ENG**), p. 6.

¹⁰ “Court of Appeals confirms that Ebal Díaz illegally increased his assets by more than L 32 million”, *El Herald* (May 2, 2025) (**R-0260-SPA**); “Honduran Justice Goes for Extradition of Former Minister Ebal Díaz, Protected by Nicaragua,” Public File (August 15, 2024) (**R-0255-SPA**).

¹¹ “LEAP Zones: Faster growth with less conflict”, *compasscayman* (12 July 2013) (**R-0138-ENG**), p. 2. This initiative was also supported by the then President of the National Congress, Juan Orlando Hernández. See: “The controversial private city of Honduras”, *BBC Mundo* (September 2012) (**R-0101-SPA**); “Honduras to build new city with its own laws and tax system to attract investors”, *The Guardian* (6 September 2012) (**R-0102-SPA**); “Coming soon to Honduras: privately run cities”, *Financial Times* (7 September 2012) (**R-0104-ENG**); M. Yepe, “Disaster Capitalism for Honduras,” *Cubadebate* (February 1, 2011) (**R-0004-SPA**).

¹² “The Blank Slate State”, *reason.com* (May 13, 2013) (**R-0135-ENG**) (“Sanchez, delighted to find such a renowned intellectual on the side of free zones, invited Romer to participate in Honduras’ attempt to create them.”); TED Lecture, “Paul Romer: The World’s First Charter City?” (June 9, 2011) (**R-0098-ENG**).

¹³ Republic of Honduras, *Decree No. 283-2010, Decree amending the Constitution of the Republic* (February 15, 2011) (**C-0422**); Republic of Honduras, *Decree No. 4-2011*, published on March 7, 2011 (**C-0423**).

¹⁴ Republic of Honduras, *Decree No. 123-2011, Constitutional Statute of the Special Development Regions (RED)* (23 August 2011) (**R-0005-SPA**).

2010, the “RED Legal Framework”).

34. In accordance with amended Articles 304 and 329 of the Constitution, the REDs would have their own legal personality; they would have to establish their own system of administration; they could issue their own regulations; they would have their own judicial jurisdiction; they were empowered to conclude international treaties and conventions in matters related to trade and cooperation within the scope of their competences; and they were urban in nature.¹⁵ In essence, this regime granted administrative, legislative, and judicial autonomy to those who constituted a RED.
35. With a view to achieving these objectives, the Statute empowered the REDs to define their own immigration policy; to administer and control ports and airports; to enter into visa suppression agreements; to establish economic missions abroad; to limit the use of physical means of payment; to organize their own education, health and social security systems; and to formulate monetary and financial policies without exchange controls¹⁶. The Statute even conferred powers relating to the monopoly of force on the REDs, as Article 20 provided that the authorities of the REDs were responsible for maintaining public order and Article 8 empowered them to create their own police force and exercise that function directly or by delegation¹⁷.
36. As set out below, these powers are substantially equivalent to the powers that would later be conferred by the ZEDE Legal Framework¹⁸. However, unlike the ZEDEs that could be created by exclusively private initiative and with the approval of the National Congress, the REDs could only be created by public initiative or citizen consensus. In accordance with

¹⁵ Republic of Honduras, *Decree No. 283-2010, Decree amending the Constitution of the Republic* (February 15, 2011) (C-0422), arts. 304 and 329; Republic of Honduras, *Decree No. 123-2011, Constitutional Statute of Special Development Regions (RED)* (August 23, 2011) (R-0005-SPA), art. 4.

¹⁶ Republic of Honduras, *Decree No. 123-2011, Constitutional Statute of the Special Development Regions (RED)* (23 August 2011) (R-0005-SPA), arts. 1, 4, 7, 8, 11, 12, 57-58, 62, 69-71.

¹⁷ Republic of Honduras, *Decree No. 123-2011, Constitutional Statute of the Special Development Regions (RED)* (23 August 2011) (R-0005-SPA), arts. 8, 20.

¹⁸ See Section II.B.

Article 75 of the Constitutional Statute of the RED, their establishment could only be promoted by the Executive Branch, the Legislative Branch, an international treaty, the decision of the population of the respective region or a public-private partnership. In addition, each initiative had to identify the limits and territorial extension of the proposed RED, which had to be approved by the National Congress¹⁹. Moreover, the REDs established by virtue of an international treaty or a public-private partnership had to have, from their creation, a previously defined investment and development plan for public services. Failure to comply with this plan constituted a cause for revocation of the authorization to operate as a RED²⁰.

37. In the same way, the RED regime contemplated significant democratic control by the National Congress, an issue particularly absent in the ZEDEs, as set out below. In fact, according to Article 329 of the Constitution, in its amended version, all regulations applicable to the REDs had to be approved or rejected by Congress through the favorable vote of a qualified majority of all its members²¹. In addition, in accordance with Article 304 of the Constitution, as amended, the judges of the special jurisdictions of the RED had to be appointed by a qualified majority of two-thirds of the members of Congress²². This democratic control was also reflected in the institutional structure of the REDs. Thus, for example, the members of its Normative Council were elected through free elections held every five years²³.
38. Despite these safeguards, the adoption of the RED Legal Framework sparked fierce

¹⁹ Republic of Honduras, *Decree No. 123-2011, Constitutional Statute of the Special Development Regions (RED)* (23 August 2011) (**R-0005-SPA**), art. 75.

²⁰ Republic of Honduras, *Decree No. 123-2011, Constitutional Statute of the Special Development Regions (RED)* (23 August 2011) (**R-0005-SPA**), art. 77.

²¹ Republic of Honduras, *Decree No. 283-2010, Decree amending the Constitution of the Republic* (February 15, 2011) (**C-0422**), arts. 304 and 329; Republic of Honduras, *Decree No. 123-2011, Constitutional Statute of Special Development Regions (RED)* (August 23, 2011) (**R-0005-SPA**), art. 4.

²² Republic of Honduras, *Decree No. 283-2010, Decree amending the Constitution of the Republic* (February 15, 2011) (**C-0422**), arts. 304 and 329.

²³ Republic of Honduras, *Decree No. 123-2011, Constitutional Statute of the Special Development Regions (RED)* (August 23, 2011) (**R-0005-SPA**), art. 36.

opposition from civil society to model cities²⁴. Since its publication in 2011, various civil society organizations and individuals have filed more than fifty appeals of unconstitutionality against the RED Legal Framework²⁵. Likewise, public figures such as Óscar Cruz, former prosecutor for the defense of the Constitution of the Public Prosecutor's Office and Ramón Custodio, National Commissioner for Human Rights, spoke out against this reform, alleging that it violated immutable articles of the Constitution referring to sovereignty and national territory²⁶. Moreover, multiple civil society organizations, such as the Justice and Action Association of Lawyers, filed complaints with the Public Prosecutor's Office against the deputies who approved these reforms for the crimes of treason and abuse of authority²⁷. As set out below, the same would occur two years later with the ZEDE Legal Framework²⁸.

2. The Supreme Court of Honduras declared the RED Legal Framework unconstitutional because it was contrary to immutable provisions of the Constitution regarding national territory and the form of government

39. As already noted, the Claimants limited themselves in their Memorial to mentioning that the

²⁴ “Thousands of Hondurans Ask Supreme Court to Reject 'Model Cities,’” *Derechos.org* (October 10, 2012) (R-0120-SPA) (“A total of 12,500 people asked the Supreme Court of Honduras on Wednesday to reject the creation of model cities”); “The controversial private city of Honduras”, *BBC Mundo* (September 2012) (R-0101-SPA); “Model Cities of Honduras: Economic Miracle or Benefit for Some?” (I), *PlazaPublica* (October 17, 2012) (R-0121-SPA), p. 2 (“Within the limitation of knowledge that I may have, I am sure that this is against national sovereignty because the one who brings the investment also imposes the rules of the game,” adds Flores [Víctor Flores, mayor of Nacaome, elected by the Liberal Party]. “They (the deputies) say that it is not incompatible with the principle of municipal autonomy but it is and the resources that come to us for the exploitation of the resources of the sea would be for them (the authorities of the RED) and not for the municipality.”)

²⁵ “Model Cities of Honduras: Economic Miracle or Benefit for Some?” (II), *PlazaPública* (October 20, 2012) (R-0123-SPA), p. 10. Among its promoters was Antonio Trejo, a prominent human rights lawyer, who was murdered by unknown persons hours after participating in a debate on open television in which he criticized these reforms. “Antonio Trejo, Honduras rights lawyer, killed at wedding”, *BBC News* (23 September 2012) (R-0114), p. 2; “Model Cities of Honduras: Economic Miracle or Benefit for Some? (II), *PlazaPublica* (October 20, 2012) (R-0123-SPA); “Court Admits 14 Appeals Against Model Cities,” *La Prensa* (September 18, 2012) (R-0111-SPA); “More Challenges Against Model City,” *El Heraldo* (September 6, 2012) (R-0103-SPA); “A 24 suman los recursos de inconstitucionalidad”, *La Tribuna* (20 September 2012) (R-0112-SPA); “Nine Appeals Against the RED,” *El Heraldo* (September 20, 2012) (R-0113-SPA); “On the 17th the fate of the model cities would be decided”, *El Tiempo* (October 6, 2012) (R-0119-SPA); “12,600 signatures filed against Model Cities”, *El Tiempo* (October 11, 2012) (R-0107-SPA).

²⁶ “Model Cities of Honduras: Economic Miracle or Benefit for Some?” (II), *PlazaPública* (October 20, 2012) (R-0123-SPA), pp. 9-10.

²⁷ “For treason they denounce deputies”, *Revistazo* (September 12, 2012) (R-0106-SPA); “Model Cities of Honduras: Economic Miracle or Benefit for Some?” (II), *PlazaPública* (October 20, 2012) (R-0123-SPA), p. 10.

²⁸ See Section II.D.1.

RED Legal Framework was declared unconstitutional, without developing the grounds for that decision in any way²⁹. This omission is not trivial. By dispensing with that analysis, what the Claimants seek to cover up is that the considerations set forth by the Supreme Court of Honduras in 2012 were, and are, fully applicable to the ZEDE Legal Framework and that the only reason why they were not applied then was the alteration in the composition of the Supreme Court of Honduras that followed that decision³⁰. As set out below, this is confirmed by the fact that these grounds are equivalent to those that supported the declaration of unconstitutionality of the ZEDE Legal Framework in 2024³¹.

40. Under the Honduran Law on Constitutional Justice, the appeals of unconstitutionality filed against the RED regime were filed with the Constitutional Chamber of the Supreme Court of Honduras³². Thus, on October 2, 2012, the Chamber ruled on the appeal filed on October 18, 2011, by Óscar Cruz and others against the RED Legal Framework³³. On that occasion, four of the five magistrates of the Chamber voted in favor of unconstitutionality and only one against³⁴. This sole dissenting vote corresponded to Judge Óscar Fernando Chinchilla, who, according to press reports at the time, maintained a close relationship with then-President Lobo and had been part of the delegation that visited South Korea and Singapore to learn about comparative experiences of special economic zones³⁵.
41. Under Honduran law, when the Constitutional Chamber does not adopt a unanimous decision, the matter must be referred to the Plenary of the Supreme Court of Honduras, which

²⁹ Claimants' Memorial, ¶ 55; Delgado-I, ¶¶ 9-11; Cosenza-I, ¶ 36.

³⁰ See Section II.A.3.

³¹ See Section II.D.3.

³² Republic of Honduras, *Law on Constitutional Justice* (September 3, 2005) (C-0709), art. 74.

³³ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), p. 2.

³⁴ "Unconstitutional decree of 'model cities'", *El Heraldo* (April 7, 2014) (R-0146-SPA). The magistrates who voted in favor of the unconstitutionality were José Antonio Gutiérrez Navas, Gustavo Enrique Bustillo Palma, Rosalinda Cruz Sequeira and José Francisco Ruiz Gaekel, the same ones who would later be illegitimately dismissed by the National Congress; "Model Cities of Honduras: Economic Miracle or Benefit for Some?" (II), *PlazaPública* (October 20, 2012) (R-0123-SPA), p. 12.

³⁵ "Model Cities of Honduras: Economic Miracle or Benefit for Some?" (II), *PlazaPública* (October 20, 2012) (R-0123-SPA), p. 10.

is made up of fifteen magistrates³⁶. Since this is precisely what happened, on October 17, 2012, the Plenary of the Supreme Court, after a favorable opinion of the Public Prosecutor's Office³⁷, declared the unconstitutionality of the RED Legal Framework by a majority of thirteen votes³⁸. The only vote against corresponded, again, to Judge Óscar Fernando Chinchilla³⁹, with respect to whom an attempt was even made to promote a recusal due to his link to the project⁴⁰.

42. The Plenary concluded that the RED Legal Framework violated immutable precepts of the Constitution, including the integrity of the national territory, sovereignty, the form of government and equality before the law⁴¹. For the Supreme Court, by operating as autonomous jurisdictions endowed with their own rules and institutions of government, the REDs escaped the constitutional order and the control of the State⁴². Based on the appellants' arguments, the Supreme Court identified three main reasons that justified the unconstitutionality.
43. *First*, the Supreme Court agreed that the RED Legal Framework violated the integrity of the

³⁶ See "Magistrates did not achieve unanimity", *El Tiempo* (October 4, 2012) (**R-0118-SPA**); Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (**C-0004**), art. 316; Republic of Honduras, *Law on Constitutional Justice* (September 3, 2005) (**C-0709**), art. 8. For reasons of procedural economy, the appeal resolved by the Chamber was joined with the other fifty-one appeals of unconstitutionality filed against the Legal Framework of the RED. "Unconstitutional decree of 'model cities'", *El Heraldo* (April 7, 2014) (**R-0146-SPA**).

³⁷ On January 25, 2012, the Special Prosecutor's Office for the Defense of the Constitution of the Public Prosecutor's Office, through Prosecutor Xiomara Yamileth Osorio Velásquez, issued an opinion in which it concluded that the appeal of unconstitutionality should be accepted, based on Article 93, first paragraph, of the Code of Criminal Procedure and Article 15 of the Law on the Public Prosecutor's Office. Judgment No. RI-769-11, Supreme Court of Honduras (**C-0426**), pp. 1-2.

³⁸ Judgment No. RI-769-11, Supreme Court of Honduras (**C-0426**), p. 23.

³⁹ Judgment No. RI-769-11, Supreme Court of Honduras (**C-0426**), p. 23. The president of the Court, Jorge Alberto Rivera Avilés, issued a dissenting vote, neither in favor nor against; "Unconstitutional decree of 'model cities'", *El Heraldo* (April 7, 2014) (**R-0146-SPA**).

⁴⁰ "Unconstitutional decree of 'model cities'", *El Heraldo* (April 7, 2014) (**R-0146-SPA**).

⁴¹ Judgment No. RI-769-11, Supreme Court of Honduras (**C-0426**), p. 16, Whereas 24 ("That the National Congress of the Republic, in undertaking the modification of Articles 304 and 329 of our Carta Magna in contravention of the provisions of immutable or irreformable precepts, has done so outside the scope of the competences conferred on it as a derived constituent power by the National Constituent Assembly, so that the Legislative Decrees that it approved and ratified, respectively, to reform the aforementioned articles, have never been able to validly acquire the character or rank of superior norm of the legal system, and therefore constitute a kind of foreign body to the Fundamental Text, which is not part of it") (emphasis added).

⁴² Judgment No. RI-769-11, Supreme Court of Honduras (**C-0426**), p. 9, Whereas 12 ("for which reason it is appropriate and in accordance with law, to declare the unconstitutionality as to the first ground by reason of content, as promoted by the petitioners"); p. 17, Whereas 28 (emphasis added).

national territory as a constituent element of the State⁴³ and that its establishment implied “a reform of the aforementioned constitutional postulates, which by their very nature and with special consideration of the rigid structure with which the Constituent Assembly of 1981 endowed the Constitution of the Republic of Honduras, they are immutable in all places and times and unavailable to the Honduran legislator.”⁴⁴

44. In particular, the Supreme Court found that the regime violated Article 107 of the Constitution, which only allows Hondurans by birth, companies that are made up entirely of Honduran partners or State institutions to acquire, own or have land located in the border areas, the coastline of both seas, islands,⁴⁵ and other specially protected areas under penalty of annulment⁴⁶, since it allowed the establishment of the RED in such areas without respecting the constitutional restriction.
45. Likewise, the Supreme Court considered that the RED Legal Framework violated Articles 10, 11, 12, 13 and 19 of the Constitution. Again, agreeing with the appellants, it indicated that, by conferring territorial, organizational, and functional autonomy on the REDs, the regime created a form of concession that compromised the territorial integrity, sovereignty, and independence of Honduras, all of which are constituent elements of the State⁴⁷. It also agreed that the consolidation of this model would lead to the dismantling of the political-administrative division in force in Honduras, replacing it with a structure made up of multiple REDs with broad powers of self-government⁴⁸.
46. *Second*, the Constitution defines Honduras as a democratic, representative and decentralized

⁴³ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), p. 9, Whereas 12.

⁴⁴ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), p. 9, Whereas 12.

⁴⁵ To this effect, we recall that the Claimants initiated Próspera ZEDE on the island of Roatan, in the department of Islas de la Bahía, in the Caribbean Sea. Claimants’ Memorial, ¶ 126.

⁴⁶ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 107 (emphasis added).

⁴⁷ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), pp. 8-9, Whereas 12.

⁴⁸ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), po. 8-9, Whereas 12.

Republic, founded on the division of powers⁴⁹. Based on this, the Supreme Court concluded that, by enabling autonomous judicial, legislative, administrative, and fiscal systems, the RED Legal Framework altered the constitutional structure of the State and transferred essential powers of the public power to private entities, in contravention of the principle of separation of powers⁵⁰:

[T]he provisions of the Statute are opposed to the Constitutional regulations, regulating matters pertaining to the attributions of each of the Powers of the State [...] creating jurisdictional bodies of exception, which constitutionally may at no time be created [...] These precepts form a system aimed at reducing and/or limiting the exercise of sovereignty that corresponds to the people manifested in the attributions of the Powers of the State⁵¹.

47. *Third*, the Supreme Court warned that the REDs could lead to the violation of fundamental rights. The autonomy of the REDs opened the door to unequal and discriminatory treatment of residents and workers, contrary to the principle of equality before the law⁵². Likewise, the right of free movement and residence of Hondurans was violated⁵³.
48. In short, and on the basis of these considerations, the Supreme Court concluded that, by

⁴⁹ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), arts. 1-2.

⁵⁰ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), p. 9, Whereas 13 (“That the petitioners indicate that the reforms to articles 304 and 329 transcend their original scope, violating sovereignty as the primary source of the form of government, which leads to a violation of the attributions of the Powers of the State.”); p. 13, Whereas 17 (“That sovereignty as the primary source of the form of Government cannot be delegated to one person, or group of persons, such as those who can reside in the RED; the people cannot be excluded from the decisions that are taken in relation to the State of Honduras and its territory.”) (emphasis added)

⁵¹ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), p. 10, Whereas 13.

⁵² Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), p. 11, Whereas 14 (“Having analyzed the objective of the challenged decrees, in accordance with the reforms of Article 304, the Special Development Regions are empowered to create exceptional jurisdictional bodies, indicating that the Judges shall be appointed by the National Congress, and Article 329 is intended to promote comprehensive economic and social development that will be subject to strategic planning; however, despite the laudable purpose of the State, the norms contained in the Constitutional Statute must observe the principle of legality, guaranteeing judicial protection, which means that citizens will not be diverted from the jurisdiction predetermined by law, nor subjected to procedures other than those already established in the Constitution and the laws. For all these reasons, this Supreme Court of Honduras, in making the judgment of contrast between the aforementioned Constitutional norm and Decrees 283-2010 and 123-2011, considers that they violate the principle of equality set forth in Article 60 of the Magna Carta.”).

⁵³ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), p. 12, Whereas 14 (“Consequently, this Supreme Court of Honduras, in making the judgment of contrast between the aforementioned Constitutional provision and Decrees 283-2010 and 123-2011, considers that it conflicts with the right of free movement and residence of citizens set forth in Article 81 of the Magna Carta, for which reason it is necessary to declare the unconstitutionality of the same”).

approving the RED Legal Frameworks, the National Congress had acted *ultra vires*, granting itself powers of the original constituent power, despite the fact that, according to the Honduran Constitution, it only exercises a derived constituent power:

[T]he National Congress does not have within its powers to grant concessions that harm the territorial integrity, sovereignty and independence of the Republic, **nor to limit or diminish the constitutional attributions of the supreme constituted powers** [...] inasmuch it harms territorial integrity by conceding to the RED part of our national territory [...]⁵⁴.

49. Through this judgment, widely celebrated by national and international civil organizations⁵⁵, the Supreme Court put an end to the first attempt to establish in Honduras a regime that violated immutable clauses of the Constitution and compromised the State's territorial integrity, sovereignty and form of government. Thus, for example, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who visited Honduras between August 7 and 14, 2012, highlighted the importance of this pronouncement in the report issued for that mission:

“the establishment of so-called “development” programs that seek to go beyond the territorial regime of the country and the jurisdiction of the courts of justice [...] they are a violation of national sovereignty, the right of access to justice, and the guarantee of respect, promotion and protection of human rights that the State has with the population in its territory. The Special Rapporteur notes with satisfaction that the Supreme Court of Honduras has declared unconstitutional Legislative Decree No. 283-2010 that created the ‘model cities’, considering that this decree violates sovereignty, territory and the form of government”.⁵⁶

50. At the same time, Paul Romer —until then an advisor on the implementation of the REDs— made his resignation from the project public and expressed his concern regarding the direction that the government at the time was adopting by insisting on the implementation of model cities outside of adequate involvement and control by State institutions – an

⁵⁴ Judgment No. RI-769-11, Supreme Court of Honduras (C-0426), p. 14, Whereas 19 (emphasis added).

⁵⁵ “CSJ declares model cities unconstitutional”, *El Heraldo* (October 18, 2012) (R-0122-SPA).

⁵⁶ United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Mission to Honduras (March 22, 2013) (R-0134-SPA), ¶ 52.

initiative that would end up materializing in the subsequent ZEDE Legal Framework:

I don't know what people mean when they refer to private cities. But if it suggests that there will be no institutions or government, then I fear that misses the essential requirement for successful urbanisation. I would be concerned about how a private attempt to provide things like policing services could be held accountable⁵⁷.

51. These events should have definitively ended the establishment of such a regime in Honduras. However, as set out below, the opposite happened.

3. The Magistrates of the Constitutional Chamber were illegally dismissed in retaliation for declaring the RED Legal Framework unconstitutional

52. The decision of the Constitutional Chamber regarding the REDs – as well as others on policies of the government at the time – generated deep discomfort in the Executive and the Legislature⁵⁸. The government decided that the magistrates were an obstacle and decided to remove them, illegitimately, to reconstitute the Chamber with like-minded judges.
53. After the ruling, former President Lobo described the magistrates as “enemies of Honduras,” stating that: “[i]t is like fighting on a route, but there is an enemy of Honduras there, that everything we do pulled backwards, as in the case of the Special Development Regions or model cities; it is as if the Court plays against the country.”⁵⁹ These words anticipated the actions that the Executive and the Legislative would undertake to remove them.
54. On December 10, 2012, the National Congress, headed by Juan Orlando Hernández (extradited to the United States and convicted on drug trafficking charges, pardoned by Donald Trump and currently the subject of criminal proceedings in Honduras⁶⁰), approved a

⁵⁷ “Plans for Honduras start-up city hit by transparency concerns,” *The Guardian* (September 8, 2012) (R-0105-ENG) (emphasis added).

⁵⁸ “Facts that originated a blow against the Judiciary”, *El Heraldo* (December 14, 2012) (R-0130-SPA); Lobo lashes out at the Court: Which side are they on, he says?”, *La Prensa* (December 4, 2012) (R-0124-SPA); “Magistrates ask to cease attacks against judicial independence”, *El Tiempo* (December 6, 2012) (R-0125-SPA).

⁵⁹ “Supreme Court and National Congress Face Crucial Challenges for Honduran Institutions,” *Proceso Digital* (December 10, 2012) (R-0126-SPA).

⁶⁰ “BBC Interview | Juan Orlando Hernández, former president of Honduras pardoned by Trump: ‘I plan to return to my country but I have no interest in participating in politics’”, *BBC Mundo* (May 20, 2026) (R-0271-SPA).

motion to investigate “the administrative conduct of the magistrates of the Supreme Court of Honduras, particularly the Constitutional Chamber.” under the pretext that their decisions hindered the development policies of the State⁶¹. In reality, he sought to justify their removal after the ruling on the REDs, contrary to the interests of the government and the influence of external actors⁶².

55. Just one day later, on December 11, 2012, a Special Commission of Congress presented a report denouncing alleged administrative irregularities in an appeal of unconstitutionality against the “Police Purge” law, arguing that the Chamber’s resolution “was not consistent with the security policy implemented by the Executive and Legislative Branches” and caused serious damage to the State⁶³.
56. The report was nothing more than an excuse to support a motion by deputies calling for the removal of judges for conduct “contrary to the public interest”.⁶⁴ The motion added that, “by failing to observe their fidelity to the Republic,” they put “citizen security in imminent danger,” and based the dismissal on the fact that a decision would have been issued “with the malicious purpose of conspiring against the policies of the State in matters of security.”⁶⁵
57. Thus, in the early morning of December 12, 2012, the National Congress proceeded to vote on the motion to dismiss José Antonio Gutiérrez Navas, Gustavo Enrique Bustillo Palma, Rosalinda Cruz Sequeira and José Francisco Ruiz Gaekel, originally appointed for a seven-

⁶¹ National Congress, *Official Letter No. 480-2012.CN, notifying the President of the CSJ of the motion to appoint a Special Commission* (December 11, 2012) (**R-0127-SPA**).

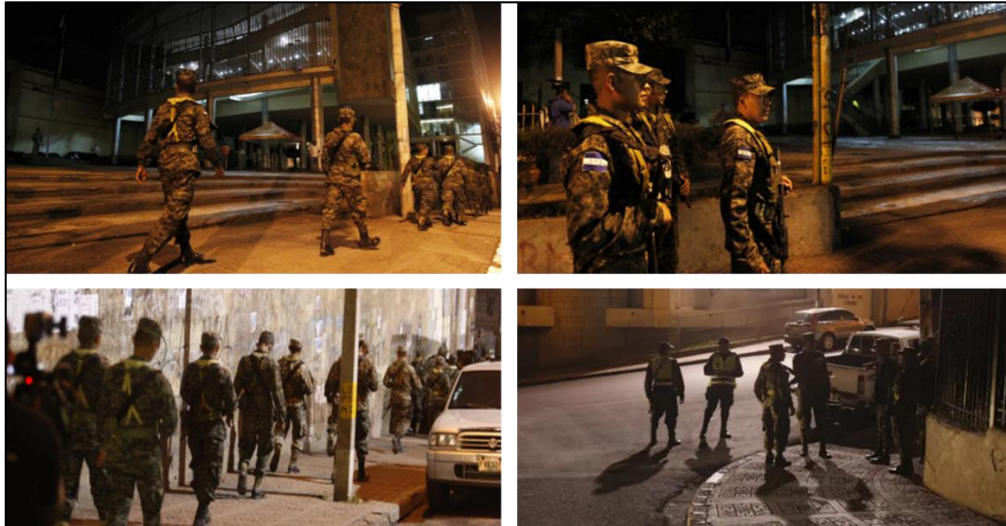
⁶² Inter-American Court of Human Rights. Brief of Requests, Arguments, and Evidence, *José Antonio Gutiérrez Navas et al. v. Honduras* (March 18, 2022) (**R-0232-SPA**) ¶ 52.

⁶³ “Report that caused the fall of the magistrates”, *La Tribuna* (13 December 2012) (**R-0128-SPA**); Inter-American Commission on Human Rights (“IACHR”), Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (**R-0210-SPA**), ¶ 5.

⁶⁴ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (**R-0210-SPA**), ¶ 51.

⁶⁵ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (**R-0210-SPA**), ¶ 51.

year term (2009-2016).⁶⁶ The four shared a common trait: they were the ones who voted for the unconstitutionality of the REDs⁶⁷. Notably, this vote was carried out after the vicinity of the Presidential House, the National Congress, and the Supreme Court of Honduras were suddenly surrounded by military forces⁶⁸:



58. In this way, in just three days, four Supreme Court magistrates were investigated, “tried” and dismissed by Congress for having upheld the Constitution of the Republic. The removed judges filed legal actions, but they were rejected for formal reasons under the argument that the deputies of Congress are not public officials⁶⁹. The only magistrate of the Constitutional Chamber not dismissed was Chinchilla, who voted in favor of the REDs⁷⁰. Tellingly, on that day he was appointed President of the Chamber and, later, Attorney General – a position he held until 2023, which dissuaded the dismissed judges from criminally denouncing the

⁶⁶ “This is how the deputies voted to dismiss the magistrates of the CSJ”, *El Heraldo* (December 13, 2012) (R-0129-SPA); “Honduran Congress deals technical blow to the CSJ”, *The Herald* (April 7, 2014) (R-0012-SPA), p. 5; Inter-American Commission on Human Rights, *José Antonio Gutiérrez Navas et al. v. Honduras, Broad Initial Petition* (February 5, 2013) (R-0010-SPA)

⁶⁷ See “Magistrates did not achieve unanimity”, *El Tiempo* (October 4, 2012) (R-0118-SPA).

⁶⁸ Images rescued from “Honduran Congress deals technical blow to the CSJ”; *El Heraldo* (April 7, 2014) (R-0012-SPA).

⁶⁹ Inter-American Commission on Human Rights, *José Antonio Gutiérrez et al. v. Honduras, Broad Initial Petition* (February 5, 2013) (R-0010-SPA), pp. 5-6.

⁷⁰ See “Magistrates did not achieve unanimity”, *El Tiempo* (October 4, 2012) (R-0118-SPA); “Honduran Congress Dismisses Magistrates for Ruling Against Government”, *Diario DW* (December 12, 2012) (R-0007-SPA); See Section II.A.2.

threats they suffered⁷¹.

59. The dismissed magistrates were immediately replaced by people loyal to the Executive Branch⁷². On December 12, 2012, Congress appointed Silvia Trinidad Santos Moncada, Germán Vicente García, José Elmer Lizardo and Víctor Manuel Lozano, who joined Chinchilla in the Constitutional Chamber⁷³. Juan Orlando Hernández himself would later admit that the dismissal had been discussed with the President of the Republic and that “we reached a consensus that [the dismissal] was necessary for the good of the country,” specifying that the President of the Supreme Court, Jorge Alberto Rivera Avilés, was in charge of “calling or agreeing on proposals of the new magistrates who would be sworn in to replace their own colleagues.”⁷⁴ The haste was such that Rivera Avilés swore in the new magistrates on the morning of December 12, 2012, consummating what the dismissed judges called a “political coup against judicial institutions.”⁷⁵
60. The blatant and absolute illegality of what happened led the affected magistrates to resort to the Inter-American Commission on Human Rights (“**IACHR**”) for the violation of their rights and the destruction of judicial independence in Honduras.⁷⁶ In their pleadings, the magistrates expressly identified their decision on the unconstitutionality of the REDs as an immediate precedent to their subsequent dismissal:

From their appointment until their arbitrary dismissal, the victims issued, within the framework of their own powers as members of the

⁷¹ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (**R-0210-SPA**), §32; Inter-American Court of Human Rights, *Case of Gutiérrez Navas et al. v. Honduras*, Judgment (November 29, 2023) (**R-0037-SPA**), ¶ 76.

⁷² See; Republic of Honduras, *Decree No. 191-2012, Decrees the replacement of Magistrates of the Supreme Court of Honduras* (December 18, 2012) (**R-0009-SPA**) National Congress, *Official Letter No. 482-2012, informing of the dismissal of magistrates of the Supreme Court of Honduras* (December 12, 2012) (**R-0008-SPA**).

⁷³ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (**R-0210-SPA**), §32.

⁷⁴ “Avilés concerted proposals for new magistrates”, *El Herald* (7 April 2014) (**R-0144-SPA**); See IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (**R-0210-SPA**), § 42.

⁷⁵ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (**R-0210-SPA**), §6.

⁷⁶ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (**R-0210-SPA**).

Constitutional Chamber, various rulings that generated discontent in the Honduran government because they were contrary to their political interests. The Constitutional Chamber issued these rulings against norms sanctioned during the government of Porfirio Lobo Sosa, while Juan Orlando Hernández was the president of Congress. These laws were clearly in violation of the Magna Carta. [...]

Another norm strongly questioned was Legislative Decree No. 283-2010, which created the [REDs]. This decree took away sovereignty and power of the State over those regions, reaching what some called “Territorial Piracy”. [...] The law was declared unconstitutional on October 17, 2012, with 12 votes in favor and one against [...]. After the ruling, President Porfirio Lobo Sosa said that ‘it is regrettable, the magistrates do great damage to the country’⁷⁷.

61. After analyzing the case, the IACHR found that the State had violated fundamental guarantees under the American Convention on Human Rights, such as the protection of judicial guarantees,⁷⁸ the principle of legality,⁷⁹ and the right to defense⁸⁰. The IACHR also described the dismissal in question as a highly arbitrary act, as it pursues completely different ends from those allegedly announced:

In this regard, **the Commission observes that the arbitrary resolution of Congress was not adopted by virtue of possible facts or administrative infractions that would give rise to some type of responsibility on the part of the dismissed magistrates, but rather pursued a completely different purpose related to an abuse of power.** This had a highly negative impact on judicial independence in its institutional facet, constituting an attack on it, altering the democratic order, the rule of law and implying that at that time there was no real separation of powers⁸¹.

62. The IACHR referred the case to the Inter-American Court of Human Rights so that it could rule on the international liability of the State of Honduras. In its judgment of November 29, 2023, the Inter-American Court of Human Rights not only reaffirmed the arbitrariness of the

⁷⁷ Inter-American Court of Human Rights. Brief of Requests, Arguments, and Evidence, *José Antonio Gutiérrez Navas et al. v. Honduras* (March 18, 2022) (R-0232-SPA), ¶¶ 27, 29, and 31.

⁷⁸ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (R-0210-SPA), ¶¶ 53.

⁷⁹ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (R-0210-SPA), ¶ 63.

⁸⁰ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (R-0210-SPA), ¶ 71.

⁸¹ IACHR, Report No. 74/21, Case 13.638, Merits, *José Antonio Gutiérrez Navas et al. v. Honduras* (April 16, 2021) (R-0210-SPA), ¶ 94.

conduct of Congress⁸² and the human rights violations of the magistrates⁸³, but, even more, concluded that the dismissal would have been made with the purpose of guaranteeing future decisions favorable to the government at the time:

As acknowledged by the President of the National Congress at the time, the dismissal was due to the consensus reached with the President of the Republic in order to remove the victims and appoint those who would replace them “for the good of the country” [...]

Such circumstances lead this Court to conclude in this case [...] that there was a deviation of power since the National Congress invoked the power to approve or disapprove the administrative conduct of the Judiciary [...] with the purpose of punishing the victims for the manner in which they had exercised their functions in the Constitutional Chamber of the Supreme Court of Justice. **This deviation of power was also intended to exert external pressure on the Judiciary, modifying its configuration in order to guarantee its future support to the decisions promoted by the Executive Branch.**⁸⁴

63. In short, the dismissal of the magistrates in December 2012 was an illegal act, described by the IACHR and the Inter-American Court of Human Rights as a true misuse of power aimed at capturing the body in charge of constitutional control and thus ensuring that their initiatives did not face judicial opposition, no matter how unconstitutional they were. This institutional capture would allow the installation of a new policy, which not only repeated the vices of the REDs, but also strengthened and deepened them: the ZEDE Legal Framework.

4. The Claimants had direct knowledge of the dispute over the REDs because one of their shareholders participated in the initiative

64. Although they decisively try to minimize their importance, the facts described above were known to the Claimants years before the establishment of Próspera ZEDE. According to them, Gabriel Delgado Ayau—co-founder and member of the Board of Directors of HPI,

⁸² Inter-American Court of Human Rights, *Case of Gutiérrez Navas et al. v. Honduras*, Judgment (November 29, 2023) (R-0037-SPA), ¶ 118.

⁸³ Inter-American Court of Human Rights, *Case of Gutiérrez Navas et al. v. Honduras*, Judgment (November 29, 2023) (R-0037-SPA), ¶ 133.

⁸⁴ Inter-American Court of Human Rights, *Case of Gutiérrez Navas et al. v. Honduras*, Judgment (November 29, 2023) (R-0037-SPA), ¶ 118-119. (emphasis added)

and a witness in this arbitration—”was one of the first investors to try to develop a RED in Honduras.”⁸⁵

65. In fact, Mr. Delgado indicated in his witness statement that, after learning of the approval of the RED Legal Frameworks in Honduras, he formed the MGK Group and that, in September 2012, the Grupo de Desarrollos Especiales LLC (“GDE”) – a vehicle of the MGK Group – signed a Memorandum of Understanding with the government through the Commission for the Promotion of Public-Private Partnerships (“COALIANZA”)⁸⁶. According to him, he planned to build an industrial zone in the Municipality of Omoa, where he acquired land, to employ those who lived in the RED⁸⁷.
66. The RED powered by GDE anticipated the business model that Mr. Delgado would later attempt to develop through HPI. Like Próspera ZEDE, GDE aimed to “become a provider of high-quality services”⁸⁸ and, in turn, “recover the investment necessary for the creation of the RED [...] through sublease contracts, the reimbursement of expenses charged to the collection of taxes or the collection of royalties”.⁸⁹ As Mr. Delgado acknowledges, the project did not prosper because the Supreme Court of Honduras declared the RED Legal Frameworks unconstitutional⁹⁰.
67. The agreement between the MGK Group and COALIANZA also triggered the resignation of Paul Romer, until then the government’s advisor for the establishment of the REDs⁹¹. After being denied any information about the agreement signed with Grupo MGK⁹², he

⁸⁵ Claimants’ Memorial, ¶ 115; Delgado-I, ¶¶ 8-9.

⁸⁶ Delgado-I, ¶¶ 8-9; Memorandum of Understanding between Grupo de Desarrollos Especiales LLC and COALIANZA (September 4, 2012) (C-0457).

⁸⁷ Delgado-I, ¶ 9.

⁸⁸ Memorandum of Understanding between Grupo de Desarrollos Especiales LLC and COALIANZA (September 4, 2012) (C-0457), clause 1(5).

⁸⁹ Memorandum of Understanding between Grupo de Desarrollos Especiales LLC and COALIANZA (September 4, 2012) (C-0457), clause 1(3); Claimants’ Memorial, ¶ 170 (“Claimants business model is premised on two principal lines of business: (i) governance as a service [...]”).

⁹⁰ Delgado-I, ¶ 9.

⁹¹ “MGK will buy land to install model cities”, *El Heraldo* (September 26, 2012) (R-0116-SPA).

⁹² “The debate of the model cities”, *El Heraldo* (25 September 2012) (R-0115-SPA).

publicly denounced the opacity and influence peddling around the RED.⁹³

68. In short, this background demonstrates the in-depth knowledge that the Claimants had, or should have had, of the RED Legal Framework, its main characteristics, its similarities with the subsequent ZEDE Legal Framework, and the circumstances that led to its declaration of unconstitutionality.

B. THE ZEDE LEGAL FRAMEWORK ACCENTUATED THE VICES OF UNCONSTITUTIONALITY OF THE REDS INSTEAD OF CORRECTING THEM

69. On January 24, 2013, barely a month after the dismissal of the magistrates of the Constitutional Chamber of the Supreme Court of Honduras who had declared the unconstitutionality of the RED Legal Framework, the National Congress approved Decree No. 236-2012 through which Articles 294, 303 and 329 of the Constitution were reformed and the first provisions of the ZEDE Legal Framework were incorporated⁹⁴.
70. Claimants maintain that the ZEDE Legal Framework corrected the defects of unconstitutionality that affected the RED regime and that, precisely for this reason, it was subsequently approved by the National Congress and the Constitutional Chamber of the Supreme Court of Honduras⁹⁵. However, and as the Tribunal will easily be able to verify, this story does not withstand the slightest analysis and contrasts markedly with the facts and the content of the ZEDE Legal Framework themselves.
71. In order to expose the above, this section **(B.1)** explains how the institutional breakdown that occurred in Honduras allowed the approval of the ZEDE Legal Framework; **(B.2)** examines its main characteristics, which, far from correcting the vices of unconstitutionality of the RED regime, aggravated them, bringing it closer to the most radical versions of the model

⁹³ “Romer dissociated himself from the REDs”, *El Heraldo* (September 13, 2012) (**R-0108-SPA**); “Plans for Honduras start-up city hit by transparency concerns”, *The Guardian* (8 September 2012) (**R-0105-ENG**); “Romer Leaves Model Cities,” *Review* (September 13, 2012) (**R-0109-SPA**); “Charter City Plan to Fight Honduras Poverty Loses Initiator,” *The New York Times* (September 30, 2012) (**R-0117-ENG**).

⁹⁴ Decree No. 236-2012, published on January 24, 2013 (**C-0002**). This decree was ratified on March 20, 2013. See Decree No. 9-2013, published on March 20, 2013 (**C-0003**); On September 6, 2013, the ZEDE Organic Law was approved. See ZEDE Law (**C-0006**).

⁹⁵ Claimants’ Memorial, ¶ 55; Delgado-I, ¶ 11.

cities promoted by libertarian thinkers; (B.3) analyzes the figure of the Committee for the Adoption of Best Practices (“CAMP”) and the Technical Secretaries of the ZEDEs to verify that they are not state bodies in charge of the democratic control of the ZEDEs and that they have been co-opted by Próspera; (B.4) demonstrates that the creation of the ZEDEs was an exclusive and non-delegable attribution of the National Congress; and concludes by explaining that, (B.5) contrary to what the Claimants are trying to install, the ZEDEs are not a type of special economic zone.

1. The approval of the ZEDE Legal Framework was only possible due to the dismissal of the Magistrates of the Constitutional Chamber of the Supreme Court

72. In parallel to the illegitimate dismissal of the magistrates of the Constitutional Chamber of the Supreme Court of Honduras, the government at the time made progress in the elaboration of a new legal regime that would give continuity to the project of model cities through the ZEDE Legal Framework. The facts reveal that the removal of these magistrates constituted the fundamental condition for this regime to finally be established in Honduras.
73. Thus, on January 17, 2013, barely a month after the impeachment and at the same time that the National Congress was debating the constitutional reform project that would give rise to the ZEDEs, the deputy of the Liberal Party Wenceslao Lara already warned that this project was “unconstitutionally worse than the one presented previously”.⁹⁶ This conclusion is confirmed, as set out below, when analyzing the main characteristics of the ZEDE Legal Framework, whose regulatory design only aggravated the defects of unconstitutionality that had already led to the declaration of unconstitutionality of the REDs regime⁹⁷.
74. Then, on January 24, 2013, the day of the approval of Decree No. 236-2012⁹⁸, lawyer Fredin

⁹⁶ “‘A dictatorship of more than 16 years awaits us,’ warns Wenceslao Lara,” *Proceso.hn* (January 17, 2013) (R-0131-SPA).

⁹⁷ See Section II.B.2.

⁹⁸ Decree No. 236-2012 amended the Constitution to introduce the original norms of the ZEDE Legal Framework. Decree No. 236-2012, published on January 24, 2013 (C-0002); This decree was ratified on March 20, 2013. See Decree No. 9-2013, published on March 20, 2013 (C-0003); Later, on September 6, 2013, the ZEDE Organic Law was approved. See ZEDE Law (C-0006).

Fúnez, representative of the Association of Jurists for the Rule of Law, announced that the ZEDE Legal Framework would be challenged for reproducing the same defects of unconstitutionality that had led to the invalidation of the REDs⁹⁹. That same day, it was reported that thousands of people demonstrated in Tegucigalpa, the capital of Honduras, and in San Pedro Sula, expressing their rejection of the new ZEDE Legal Framework¹⁰⁰.

75. In the months following the approval of the ZEDE Legal Framework in the National Congress, various civil society organizations and individuals filed multiple appeals of unconstitutionality against them¹⁰¹. Among them, the appeal promoted by more than fifty non-governmental organizations, represented by the lawyer and former prosecutor for the defense of the Constitution of the Public Ministry, Óscar Cruz, stands out¹⁰². The basis of these appeals was that the ZEDE Legal Framework, like that of the extinct RED, violated immutable articles of the Honduran Constitution relating to the national territory and the form of government¹⁰³, and also affected fundamental rights recognized by the Constitution and international treaties, such as non-expatriation, free movement and public protection of

⁹⁹ “New Model Cities Will Be Challenged,” *Derechos.Org* (January 24, 2013) (R-0132-SPA).

¹⁰⁰ On the same occasion, Xiomara Castro, then the Libre Party's candidate for the 2013 presidential elections, read a statement in which she rejected the constitutional reform that established the ZEDEs. See “Teachers and the popular resistance of Honduras reject the new model cities law”, *El País* (January 24, 2013) (R-0133-SPA).

¹⁰¹ Attorney Marta Adelina Ávila Sarmiento, acting in her personal capacity. See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, May 26, 2014 (C-0008), p. 2. A group of fourteen persons acting in their personal capacity, see Decision of the Supreme Court of Honduras, Case No. RI 174-2014 dated August 12, 2014 (C-0435), p. 2. Jorge Nelson Ávila Gutiérrez, Ph.D. in economics and Honduran politician, together with Edwin Antonio Sandoval Lagos, acting in his personal capacity, see Decision of the Supreme Court of Honduras, Case No. RI 424-2014 dated April 29, 2014 (C-0436), p. 3. Jari Dixon Herrera Hernández, along with five other people, all in their capacity as members of the Honduran political party FNRP. See also Decision of the Supreme Court of Honduras, Case No. RI 179-2014 dated June 10, 2014 (C-0434), p. 2.

¹⁰² “Honduras: Supreme Court Rejects Appeal of Unconstitutionality Against ZEDE,” *Panam Post* (June 20, 2014) (C-0009), p. 3. (“Cruz held that “these cities should not be under debate, in fact, there is no prohibition, but the same judgment that declared the unconstitutionality of the first bill on model cities provides that it is a project that should not be resumed; however, three months after that judgment, the Congress, with little appreciation for the country’s constitutionality and institutional stability, approved the second bill on model cities.”); “They file an appeal of unconstitutionality against the ZEDEs”, *La Tribuna* (February 26, 2014) (R-0142-SPA).

¹⁰³ These correspond to articles 12, 13, 35, 107 and 374 of the Constitution. See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, May 26, 2014 (C-0008), pp. 2-5; Decision of the Supreme Court of Honduras, Case No. RI 174-2014 dated August 12, 2014 (C-0435), p. 4; Opinion of the Attorney General of Honduras dated February 20, 2014 (C-0433), p. 6.

labor relations¹⁰⁴.

76. As had happened in 2011, the aforementioned appeals of unconstitutionality were filed in the Constitutional Chamber of the Supreme Court of Honduras¹⁰⁵. The big difference was that, on this occasion, the Constitutional Chamber was made up of the four magistrates with whom the Supreme Court was reconstituted¹⁰⁶. They were joined by Lidia Estela Cardona Padilla¹⁰⁷, who a month earlier had replaced Chinchilla¹⁰⁸ after his appointment as Attorney General of the Public Ministry¹⁰⁹. Once the Chamber was reconfigured, the way was paved for the declaration of constitutionality of the ZEDE Legal Framework¹¹⁰.
77. Between May and August 2014, this Chamber, with its new composition, unanimously issued three judgments declaring the appeals of unconstitutionality inadmissible¹¹¹. It was precisely the absence of dissenting votes that prevented the matter from being brought to the attention of the Plenary of the Supreme Court¹¹². In its first judgment, RI 30-2013, and in just nine pages, the Chamber set out the grounds on which it supported the constitutionality of the ZEDE Legal Framework¹¹³. The same reasoning was reproduced in subsequent

¹⁰⁴ Decision of the Supreme Court of Honduras, Case No. RI 0030-13, May 26, 2014 (C-0008), pp. 2-5; Decision of the Supreme Court of Honduras, Case No. RI 174-2014 dated August 12, 2014 (C-0435), p. 4; Opinion of the Attorney General of Honduras dated February 20, 2014 (C-0433), p. 6.

¹⁰⁵ Republic of Honduras, *Law on Constitutional Justice* (September 3, 2005) (C-0709), art. 74 (“Only the Supreme Court of Honduras, through the Constitutional Chamber, as the final and definitive interpreter of the Constitution in the specific cases submitted to it, has the original and exclusive power to hear the guarantee of unconstitutionality in accordance with articles 184, 313 (5) and 316 of the Constitution, and of the prior control of constitutionality provided for in Article 216 of the same”).

¹⁰⁶ Decision of the Supreme Court of Honduras, Case No. RI 0030-13, May 26, 2014 (C-0008), p. 9.

¹⁰⁷ Ms. Cardona is close to the National Party. “Estela Cardona assumes as magistrate of the CSJ”, *El Heraldo* (April 7, 2014) (R-0145-SPA); She has recently been charged with the crime of fraud associated with the embezzlement of more than three million lempiras. “MP presents fiscal injunction against former officials for embezzlement of more than L 3 million”, *Hondudiario* (July 30, 2025) (R-0262-SPA).

¹⁰⁸ Mr Chinchilla had been the only judge who voted against the unconstitutionality of the RED regime and who, unlike his colleagues, was not dismissed. See Section II.A.2

¹⁰⁹ “Estela Cardona assumes as magistrate of the CSJ”, *El Heraldo* (April 7, 2014) (R-0145-SPA).

¹¹⁰ Inter-American Commission on Human Rights, Report No. 74/21. Case 13.638. *Merits. José Antonio Gutiérrez Navas et al.*, (April 16, 2021) (R-0210-SPA), §32.

¹¹¹ See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, May 26, 2014 (C-0008); Decision of the Supreme Court of Honduras, Case No. RI 179-2014 dated June 10, 2014 (C-0434); Decision of the Supreme Court of Honduras, Case No. RI 174-2014 dated August 12, 2014 (C-0435). The Court also declared one of the appeals inadmissible because the appellants had not clearly and precisely indicated their direct, personal, and legitimate interest in the action. Decision of the Supreme Court of Honduras, Case No. RI-424 2014 dated April 29, 2014 (C-0436).

¹¹² Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 316.

¹¹³ Decision of the Supreme Court of Honduras, Case No. RI 0030-13, May 26, 2014 (C-0008).

decisions¹¹⁴. Unlike previous instances, on this occasion, the Chamber did not analyze the rule and limited itself to making a “formal” acceptance of the ZEDE Legal Framework¹¹⁵.

78. *First*, with regard to the impact on the national territory, although the Chamber recognized that the constitutional provisions relating to the territory were immutable by the legislator, it did not examine whether the ZEDE Legal Framework had an impact on them¹¹⁶. On the other hand, it limited itself to a verbatim reproduction of Article 329 of the amended Constitution and Article 1 of the ZEDE Organic Law to conclude, without further analysis, that the mere fact that they mandated respect for the territory of Honduras demonstrated that no immutable constitutional norms were violated¹¹⁷. Nothing was said about the violation of Article 107 of the Constitution, the effects on the territorial integrity of Honduras, the territorial, organizational and functional autonomy conferred on the ZEDEs, and the dismantling of the political-administrative division in force in Honduras¹¹⁸.
79. *Second*, with regard to the violation of the form of government, although the Chamber recognized that, constitutionally, in Honduras the government is exercised by the legislative, executive, and judicial branches, it limited itself to stating that, because the Constitution formally governs the ZEDEs, their legal framework would not be opposed to the form of government¹¹⁹. Thus, the Chamber simply failed to analyze whether the transfer of essential powers from the public power – administrative, legislative and judicial – to private entities

¹¹⁴ Claimants’ Memorial, ¶ 99 (“*In both decisions, the Supreme Court affirmed the ruling of 26 May 2014 and dismissed the unconstitutionality actions.*”); Judgment RI 179-2014, Supreme Court of Honduras (June 10, 2014) (C-0434), p. 22, Whereas 10; Judgment RI-174-2014, Supreme Court of Honduras (August 12, 2014) (C-0435), p. 21, Whereas 7.

¹¹⁵ The CNA documented nine structural inconsistencies in the ruling: misuse of language; disorder in the approach; little appreciation of the reforms; redundant treatment; non-observance of the principle of congruence; scarce legal reasoning; breach of the guarantee of motivation; lack of coherence; and weak argumentative load; and concluded that the Chamber “did not comply with its duty as protector and guarantor of the Constitution of Honduras, by issuing an irrational sentence, lacking foundation and argumentation.”, pp. 5-6. National Anti-Corruption Council & Anti-Corruption Criminal Policy Observatory, *The deadly sins of the ZEDEs* (June 2021) (R-0020-SPA)

¹¹⁶ Judgment RI-30-14, Supreme Court of Honduras (May 26, 2014) (C-0008), p. 5, Whereas 11.

¹¹⁷ Judgment RI-30-14, Supreme Court of Honduras (May 26, 2014) (C-0008), pp. 5-6, Whereas 11.

¹¹⁸ These are the arguments that the Plenary of the Supreme Court of Honduras had adopted just two years earlier. See Section II.A.2.

¹¹⁹ Judgment RI-30-14, Supreme Court of Honduras (May 26, 2014) (C-0008), p. 7, Whereas 14.

– the ZEDEs – contravened the principle of separation of powers, as had been previously ruled¹²⁰.

80. *Third*, with regard to the possible violation of fundamental rights in the ZEDEs, the Chamber limited itself to concluding that, since the Legal Framework contained provisions that formally recognized and protected certain rights, there was no constitutional infringement¹²¹. However, it did not examine whether the absence of effective mechanisms of democratic control and the broad autonomy conferred on the ZEDEs could lead to violations of fundamental rights that, in practice, would be irremediable¹²².
81. The truth is that, if the RED Legal Frameworks was declared unconstitutional for alienating sovereign functions, the ZEDE Legal Framework, whose provisions have a “greater scope in terms of autonomy and independence given to them compared to the REDs¹²³”, should have received *a fortiori* the same fate. The only plausible explanation for the jurisprudential turn and the disregard of the reasons that justified the previous declaration of unconstitutionality is, in the words of the National Anti-Corruption Council of Honduras, “the dismissal and change of magistrates of the Constitutional Chamber.”¹²⁴
82. The deficiencies in the grounds of the decision of the Constitutional Chamber were such that they were soon called into question, even at the international level. In September 2014, the National Lawyers Guild (“NLG”) of the United States¹²⁵ published a comprehensive report

¹²⁰ This is the argument that the Plenary of the Supreme Court of Honduras had adopted just two years earlier. See Section II.A.2.

¹²¹ Judgment RI-30-14, Supreme Court of Honduras (May 26, 2014) (**C-0008**), pp. 7-9, Whereas 15.

¹²² This is the argument that the Plenary of the Supreme Court of Honduras had adopted just two years earlier. See Section II.A.2.

¹²³ National Anti-Corruption Council & Anti-Corruption Criminal Policy Observatory, *The deadly sins of the ZEDEs* (June 2021) (**R-0020-SPA**), p. 33.

¹²⁴ National Anti-Corruption Council & Anti-Corruption Criminal Policy Observatory, *The deadly sins of the ZEDEs* (June 2021) (**R-0020-SPA**), p. 33.

¹²⁵ NLG is a bar association founded in the United States in 1937, recognized for being the oldest and one of the largest progressive legal organizations in the country. See “About,” *National Lawyers Guild (NLG)* (February 15, 2016) (**R-0157-ENG**). NLG was one of the non-governmental organizations chosen by the U.S. government to represent the American people at the founding of the United Nations in 1945. NLG members helped draft the Universal Declaration of Human Rights. Report of the Investigative Delegation of the National Lawyers' Guild on Employment and Economic Development Zones in Honduras, September 14, 2014 (**R-0069-SPA**), p. 2.

on ZEDEs, prepared from a fact-finding delegation that visited Honduras in June of that same year¹²⁶. Domestically, the report argues that the ZEDEs are privatized enclaves that erode Honduran sovereignty and the rights of its inhabitants, lack adequate democratic governance mechanisms, and operate under unprecedented levels of opacity¹²⁷. At the international level, it indicates that the regime is incompatible with the rights of self-determination and democratic participation, affects property rights and ignores the guarantees of prior consultation and protection of traditional lands of indigenous peoples¹²⁸. It also warns that companies involved in these projects could incur liability under the United Nations Guiding Principles on Business and Human Rights¹²⁹.

83. Like the facts that preceded it, the circumstances surrounding the Chamber's decision were known to the Claimants. Ernst & Young's ("EY") own report, prepared at the request of the Claimants, expressly acknowledged that "ZEDE legislation was passed through a scenario where judges were substituted to pass the law after the Supreme Court rejected it".¹³⁰ In turn, the Claimants, at least, should have known that the judgments rejecting these appeals of unconstitutionality did not produce the effect of *res judicata* nor did they establish a mandatory legal doctrine in Honduras¹³¹.

¹²⁶ The delegation was also composed of representatives from the American Association of Jurists (AAJ), the International Association of Democratic Lawyers (IADL), and the International Association Against Torture (AICT). Report of the Investigative Delegation of the National Lawyers Guild on Employment and Economic Development Zones in Honduras, September 14, 2014 (R-0069-SPA), pp. 2-3.

¹²⁷ Report of the Investigative Delegation of the National Lawyers' Guild on Employment and Economic Development Zones in Honduras, September 14, 2014 (R-0069-SPA), pp. 8-13.

¹²⁸ Report of the Investigative Delegation of the National Lawyers' Guild on Employment and Economic Development Zones in Honduras, September 14, 2014 (R-0069-SPA), pp. 21-25. Article 39 of that law provided that areas of low population density in coastal municipalities were subject to the ZEDE regime without the need for additional approval, which made this regime applicable to large areas of Honduran territory, including areas of historical Garifuna settlement, without prior consultation with the affected communities. This was incompatible with Honduras' obligations to free, prior, and informed consultation of indigenous and tribal peoples. United Nations in Honduras, *Press Release: ZEDEs Could Pose Serious Risks to the Honduran State's Guarantee of Human Rights* (June 8, 2021) (R-0022-SPA).

¹²⁹ Report of the Investigative Delegation of the National Lawyers' Guild on Employment and Economic Development Zones in Honduras, September 14, 2014 (R-0069-SPA), p. 26.

¹³⁰ EY, Project Oasis Final Report (July 2019) (C-0322), p. 109.

¹³¹ As will be developed in more detail below, the legal expert of the Claimants seeks to erroneously apply Article 73 of the Law on Constitutional Justice to such appeals, a provision that is limited exclusively to amparo

84. In short, the ZEDE Legal Framework was approved in a context of grave institutional deterioration, challenged from the outset for reproducing the same vices of unconstitutionality of the REDs and validated by a Constitutional Chamber whose independence had been seriously compromised.

2. ZEDEs allow private operators to exercise executive, legislative, and judicial powers in place of the nation-state

85. The Claimants contend that the ZEDE Legal Framework preserves Honduras' sovereignty, while offering a high degree of autonomy to the ZEDEs¹³². Honduras categorically rejects this characterization. The ZEDE Legal Framework ultimately granted private operators virtually all the powers that are the prerogative of State sovereignty.

86. The Claimants describe at length the high degree of autonomy granted to the ZEDEs from the central government¹³³. As they themselves explain, the ZEDEs have operational and administrative autonomy, being able to adopt their own public policies¹³⁴; and judicial autonomy, with the power to have autonomous courts with exclusive jurisdiction¹³⁵. This implies that each ZEDE operates with its own executive, legislative and judicial powers, completely alien to the powers constituted in Honduras.

87. In their attempt to normalize this situation, the Claimants hide behind a formalistic reading of Article 329 of the Constitution, by virtue of which the ZEDEs continue to be "subject to the Constitution of the Republic and the national government in matters related to sovereignty, application of justice, territory, national defense, foreign relations, electoral

actions and that is only applicable when there are three conforming judgments issued in that matter. Consequently, the decisions rejecting constitutional challenges to the ZEDE Legal Framework did not prevent the Supreme Court from reviewing the constitutionality of the ZEDE regime again at a later time. Cosenza-I, ¶¶ 78, 132; Law on Constitutional Justice (C-0709), art. 73.

¹³² Claimants' Memorial, ¶ 56.

¹³³ Claimants' Memorial, ¶¶ 88-91.

¹³⁴ The Claimants indicate that this autonomy extends to fiscal, financial, economic, commercial, real estate, monetary, land management, internal security, social services, and environmental matters. Claimants' Memorial, ¶¶ 88-91; Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 3.

¹³⁵ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), arts. 3, 14, 17-19.

issues, issuance of identity documents and passports”.¹³⁶ However, ignoring the reasoning that in 2012 led the Supreme Court to declare the unconstitutionality of a similar rule¹³⁷, they fail to explain how this limitation is effective.

88. In the same way, the Claimants argue that the ZEDEs would be comparable to existing figures, such as autonomous departments and municipalities¹³⁸. However, no department or municipality in Honduras can ignore what the Executive, Legislative or Judicial Branch orders in the same way that the Claimants intend to do when defending their autonomy¹³⁹. The other alleged limitations invoked by the Claimants – taxes, minimum labor rights and free flow of capital – do not constitute mechanisms of State control but are rather in line with the Claimants’ objective of reducing taxes and promoting an open market¹⁴⁰.
89. The truth is that, as Honduras has already indicated¹⁴¹, the ZEDEs’ autonomy has resulted in Próspera ZEDE acting as a State within another State. This is confirmed by Honduran legal analyses that conclude that “the ZEDEs are structured as small states within the national state and are granted properties and powers of the latter, to such an extent that the national authorities do not have authority in the ZEDEs.”¹⁴²
90. This has meant the issuance of dubious regulations not sanctioned by state authorities¹⁴³, the loss of the monopoly of force¹⁴⁴, the establishment of a justice system that applies law

¹³⁶ Claimants’ Memorial, ¶ 73; Decree No. 236-2012, published on January 24, 2013 (C-0002), p. 2, art. 329.

¹³⁷ See Section II.A.2.

¹³⁸ Claimants’ Memorial, ¶ 83.

¹³⁹ Claimants’ Memorial, ¶ 88.

¹⁴⁰ Claimants’ Memorial, ¶ 89.

¹⁴¹ Preliminary Objection of the Republic of Honduras, ¶ 3.

¹⁴² García, F., *Zones of Employment and Economic Development (ZEDE) in Honduras, Legal Approximations: 2017-2020*. Friedrich Ebert Stiftung (2021) (R-0206-SPA), p. 34.

¹⁴³ See L. Clarke, “This biohacking company is using a crypto city to test controversial gene therapies,” *MIT Technology Review* (February 13, 2023) (R-0033-ENG); Próspera Arbitration Center, “Regulated Industries” available at <https://pzgps.hn/regulated-industries/> (R-0047-ENG).

¹⁴⁴ “Installation of ZEDE confirms that the Armed Forces do not comply with a mandate to defend territory and sovereignty,” *Criterio.hn* (September 30, 2020) (R-0195-SPA).

different from the Honduran one, and its own monetary policy¹⁴⁵. EY's own report prepared for the Claimants had already identified these risks by highlighting the concerns raised by ZEDEs in international organizations about the excessive power granted, judicial autonomy and lack of transparency¹⁴⁶.

91. The most controversial prerogative conferred on the ZEDEs was the power to expropriate land on behalf of the State of Honduras¹⁴⁷. By virtue of Article 28 of the ZEDE Organic Law, the State, acting through the ZEDEs and with the prior approval of the CAMP – an entity outside the State and controlled by the ZEDEs themselves – could declare the expropriation for reasons of public utility or necessity of the assets that it considered necessary for their development or expansion. upon payment of compensation equivalent to the replacement value of the property¹⁴⁸. The Claimants understand the radical nature of this attribution, which is why they have been forced to publicly state that they would not make use of it¹⁴⁹.
92. Technically, since only the creation of a ZEDE required the approval of the National Congress (a requirement that Próspera ZEDE did not even satisfy, as set out below),¹⁵⁰ the regime allows them to expand progressively throughout Honduran territory, acquiring property through expropriation without an effective control by the State. Lacking

¹⁴⁵ United Nations, “Laundering of money through cryptocurrencies” (**R-0049-SPA**); G. González, “How does Honduras' bitcoin ban affect the citadel of Próspera?”, *Crypto News* (February 22, 2024) (**R-0040-SPA**). The International Monetary Fund has highlighted these problems with respect to the regulation issued by El Salvador, which is similar in character to that of Próspera ZEDE.

¹⁴⁶ EY, Project Oasis Final Report (July 2019) (**C-0322**), p. 110 (“*International organizations have communicated their concerns with the amount of power the law gives to the potential ZEDE government. Organizations such as CIEL have expressed its matters with the approval of the law in areas such as lack of transparency, excessive power to a small group, lack of specifications of what are the ZEDE, judicial autonomy, and other factors.*”).

¹⁴⁷ The press has reported that the Claimants have undertaken not to expropriate third parties. This alleged commitment, to which the Claimants have not referred in their Statement of Claim, does not detract from the fact that the power existed and that the Republic of Honduras had no mechanism to prevent it from being exercised by the Claimants whenever they wished. “Honduras: Sovereignty in Exchange for Economic Development?”, *DW* (March 18, 2021) (**R-0209**)

¹⁴⁸ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (**C-0006**), art. 28.

¹⁴⁹ “Honduras: Sovereignty in Exchange for Economic Development?”, *DW* (March 18, 2021) (**R-0209**)

¹⁵⁰ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (**C-0006**), art. 38. See Section II.C.3.b.

supervisory powers over the CAMP, the State is prevented from exercising real control over such decisions¹⁵¹. In practice, the expansion of the ZEDEs could result in a progressive loss of the State's capacity to administer, legislate, and impart justice within practically all its territory.

3. The CAMP and the Technical Secretaries are not state bodies in charge of democratic control or supervision of the ZEDEs and have been co-opted by Próspera

93. The Claimants assert that the ZEDE Legal Framework was designed “to ensure that the ZEDEs remained subject to the control of the Honduran authorities and fundamental laws.”¹⁵² According to them, the control and supervision of the ZEDEs would allegedly be exercised by the State through the CAMP and the Technical Secretary of each ZEDE.¹⁵³ This statement is incorrect and hides the fact that, in reality, the ZEDEs were completely devoid of democratic control or supervision mechanisms.
94. Regarding the CAMP, it was an *ad hoc* entity created by the ZEDE Organic Law to exercise certain functions in relation to the ZEDEs¹⁵⁴. Originally, the CAMP was to be made up of 21 members, but it would be considered installed and could begin functions once the first 12 had been appointed¹⁵⁵. The first appointment had to be made by the President of the Republic and ratified by the National Congress. From that moment on—and essentially *ad eternum*—CAMP itself assumed the power to “fill its vacancies.”¹⁵⁶ Consequently, once its designation is made, CAMP would be able to perpetuate itself and operate outside of any democratic and state control.
95. Herein lies a fundamental difference with the RED regime, which contemplated certain control mechanisms such as the intervention of the Honduran authorities in the cases

¹⁵¹ See Section II.B.3.

¹⁵² Claimants' Memorial, ¶ 72.

¹⁵³ Claimants' Memorial, ¶¶ 57, 70, 76, 77.

¹⁵⁴ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 11.

¹⁵⁵ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 11.

¹⁵⁶ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 11; Cosenza-I, ¶¶ 86-87.

provided for by the Constitution, a transitional Transparency Commission, and an independent Audit Commission that was accountable to the National Congress.¹⁵⁷ The ZEDE Legal Framework eliminated these counterweights. Instead, it established a CAMP of indefinite duration and excluded any power of state intervention, without providing for mechanisms of oversight or dismissal¹⁵⁸. In practice, nothing would prevent the CAMP from being made up of individuals convicted of crimes of any nature, linked to drug trafficking, investigated for acts of corruption or incurring other circumstances incompatible with the exercise of public functions.

96. In addition, the functions assigned to the CAMP were enormous and included, for example: (i) appointing and removing the ZEDEs' Technical Secretaries at the proposal of the inhabitants or promoters of a ZEDE, depending on its population density; (ii) approving or disapproving the Technical Secretaries' actions and conduct; (iii) establishing the ZEDEs' general guidelines of internal policy and transparency; (iv) approving or disapproving the internal regulations of the ZEDEs previously approved by the Technical Secretary; (v) nominating the individuals who would occupy the positions of judge or magistrate in the ZEDEs to the Council of the Judiciary and recommending their removal; (vi) establishing areas for the ZEDEs' future expansion and planning¹⁵⁹; (vii) hiring an auditing firm to audit the resources collected by the ZEDEs once a year¹⁶⁰; (viii) approving the expropriations carried out through the ZEDEs because they are considered necessary for their development or expansion¹⁶¹; (ix) determining the components and conditions of the ZEDEs' tax regime¹⁶².
97. In this context, on January 24, 2014 the appointment of the first 21 members of the CAMP

¹⁵⁷ Decree No. 123-2011, *Constitutional Statute of the REDs (R-0005-SPA)*, arts. 15, 26, 33.

¹⁵⁸ Decree No. 123-2011, *Constitutional Statute of the RED (R-0005-SPA)*, art. 13.

¹⁵⁹ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 11.

¹⁶⁰ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 14.

¹⁶¹ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 28.

¹⁶² Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 29.

was ratified¹⁶³. Among the first appointees are the very same people who spearheaded the ZEDE Legal Framework and who, previously, had promoted the RED Legal Framework: Mark Klugmann, former advisor to Lobo, Ebal Jair Díaz Lupián, a fugitive for diversion of public funds¹⁶⁴, and Octavio Rubén Sánchez Barrientos, both former presidential advisors in charge of implementing these models¹⁶⁵. Multiple members associated with libertarian ideals were also appointed, such as Grover Norquist, Mark Skousen, and Barbara Kolm¹⁶⁶.

98. In an interview in April 2015, several years before the Claimants began their investment, Paul Romer, the ideologue of the model on which the ZEDEs are founded, publicly criticized the CAMP's institutional design and warned that its integration and renewal mechanism made it an entity beyond any democratic control and lacking effective accountability mechanisms:

I stopped working on a project in Honduras because a group of people there is trying to create a system that establishes a type of aristocracy that will never be subject to local electoral control. They are doing this by establishing a government board that will reappoint its own members. It will not be subject to political control by the people in the zone, nor by the citizens of Honduras, nor even voters elsewhere as was the case in Hong Kong. They are trying to create a true aristocracy in a small group of twenty or so people, who will appoint their own replacements, and who will always be in charge.

There will be no flexibility, no ability to respond to future developments. And no accountability in the event that this small circle of self-appointed aristocrats misuses their powers. A core of appointees, all from the current governing party in Honduras, controls this board¹⁶⁷.

99. In the same interview, Mr. Romer went even further and concluded that the ZEDEs were

¹⁶³ Republic of Honduras, *Decree 368-2013, Decree Appointing the CAMP* (January 24, 2014) (R-0011-SPA), Art. 1.

¹⁶⁴ "Court of Appeals confirms that Ebal Díaz illegally increased his assets by more than L 32 million", *El Heraldo* (May 2, 2025) (R-0260-SPA); "Honduran Justice Goes for Extradition of Former Minister Ebal Díaz, Protected by Nicaragua," *Public File* (August 15, 2024) (R-0255-SPA).

¹⁶⁵ Republic of Honduras, *Decree 368-2013, Decree Appointing the CAMP* (January 24, 2014) (R-0011-SPA), art. 1; Geglia B., "Honduras: Reinventing the Enclave," in *NACLA Report on the Americas*, Vol. 48, No. 4 (December 2, 2016) (R-0161).

¹⁶⁶ Republic of Honduras, *Decree 368-2013, Decree Appointing the CAMP* (January 24, 2014) (R-0011-SPA), art. 1; Geglia B., "Honduras: Reinventing the Enclave," in *NACLA Report on the Americas*, Vol. 48, No. 4 (December 2, 2016) (R-0161).

¹⁶⁷ "Interview on Urbanization, Charter Cities and Growth Theory," *Paul Romer (April 29, 2015)* (R-0150-ENG), pp. 15-16.

destined to fail, as he considered it unimaginable that a competent and common-sense investor would decide to invest under such a legal framework:

What they are trying to do is so wrong that I can't tell if what we are watching is a farce or a tragedy. It could end up as farce because I can't imagine a thoughtful investor would go in and invest under these circumstances, in a place controlled by a crony aristocracy. I predict that this effort will collapse on its own¹⁶⁸.

100. The absolute absence of control and supervision mechanisms over the activities of the CAMP, and the total opacity with which it has been conducted, prevent Honduras from having documents that would make it possible to determine whether the originally appointed members even met or performed any of their functions. There are only a few leaked documents, press releases, and public statements by people involved.
101. In this regard, in August 2017, *The Economist* reported that the CAMP had only met once, in March 2015, on the island of Roatán¹⁶⁹. The newspaper also noted that Mr. Ebal Jair Díaz Lupián and Mr. Octavio Rubén Sánchez Barrientos stated that the CAMP had been reduced to 12 members, of whom seven were Hondurans linked to the National Party and five foreigners, and that, in practice, decisions were taken by a group of five people headed by Barbara Kolm¹⁷⁰. Finally, *The Economist* reported that Mr. Klugmann, designated as an original member of the CAMP, “denounced the sidelining of the original CAMP as “illegitimate” and illegal” and that this group had been meeting in a secretive manner in Miami¹⁷¹.
102. The information reported by this newspaper partially coincides with the CAMP Meeting Minutes dated April 30, 2016¹⁷². Only three of the original members of the CAMP

¹⁶⁸ “Interview on Urbanization, Charter Cities and Growth Theory,” *Paul Romer (April 29, 2015)* (R-0150-ENG), pp. 15-16.

¹⁶⁹ “Honduras experiments with charter cities,” *The Economist* (August 12, 2017) (R-0166-SPA), pp. 5-6.

¹⁷⁰ “Honduras experiments with charter cities,” *The Economist* (August 12, 2017) (R-0166-SPA), pp. 5-6.

¹⁷¹ “Honduras experiments with charter cities,” *The Economist* (August 12, 2017) (R-0166-SPA), pp. 5-6.

¹⁷² The minutes indicate that the meeting would have been held by electronic means on April 30, 2016, but that it would have been held in Tegucigalpa, Honduras on May 3, 2016. Only Octavio Rubén Sánchez Barrientos, in his capacity as Secretary of the CAMP, and Eny Bautista Guevara, in his capacity as Executive Secretary, signed the minutes. CAMP, Meeting Minutes (April 30, 2016) (R-0158).

participated in that meeting: Barbara Kolm, as president; Octavio Rubén Sánchez Barrientos, as secretary; and Ebal Jair Díaz Lupian. The remaining 12 members would have acted as “temporary alternate members”, appointed by the president of the CAMP on April 26, 2016¹⁷³. The document also gives an account of two previous meetings held on November 30 and December 7, 2015, of which Honduras has not found records¹⁷⁴.

103. At that same meeting, the CAMP agreed to reduce its composition from 21 to 12 proprietary members and ratified that the general administration of the ZEDEs would be in charge of a Permanent Commission made up of the President and the Secretary of the CAMP, together with Ebal Jair Díaz Lupian, Carlos Alejandro Pineda Pinel and Arnaldo Castillo Figueroa¹⁷⁵. Likewise, manifestly exceeding its powers and in open contravention of Article 38 of the ZEDE Organic Law, the CAMP resolved to “delegate to the Executive Branch the process of incorporation of a ZEDE”, despite the fact that this power corresponded exclusively to the National Congress¹⁷⁶.
104. Later, at least since February 2020¹⁷⁷, Próspera ZEDE began to finance the operations of the CAMP. Through Resolution No. 5-1-85-0-0-0-1 of Próspera ZEDE, the latter committed to make a “prorated annual contribution to cover the operating expenses of CAMP” which would start at US\$194,000 and increase annually based on inflation in the United States¹⁷⁸. Likewise, the existing ZEDEs at that date committed to give an extraordinary contribution of US\$ 10,000 for the physical installation of a new office for the CAMP.¹⁷⁹ The resolution,

¹⁷³ CAMP, Minutes of Meeting (April 30, 2016) (**R-0158**), p. 1.

¹⁷⁴ CAMP, Minutes of Meeting (April 30, 2016) (**R-0158**), p. 1.

¹⁷⁵ CAMP, Meeting Minutes (April 30, 2016) (**R-0158**).

¹⁷⁶ CAMP, Meeting Minutes (April 30, 2016) (**R-0158**).

¹⁷⁷ The resolutions reporting on the financing agreement indicate that this agreement superseded a resolution approving a previous agreement with the CAMP, identified as “Resolution Approving the Intergovernmental Agreement with the CAMP, § 5-1-80-0-0-0-1.” The Republic of Honduras will request this alleged agreement at the stage of the discovery of documents. Próspera ZEDE Resolution § 5-1-85-0-0-0-1, “Resolution Governing CAMP Contributions” (February 27, 2020) (**R-0191-SPA**), p. 4.

¹⁷⁸ Próspera ZEDE Resolution § 5-1-85-0-0-0-1, “Resolution Governing CAMP Contributions” (February 27, 2020) (**R-0191-SPA**), p. 9, art. 1.

¹⁷⁹ Próspera ZEDE Resolution § 5-1-85-0-0-0-1, “Resolution Governing CAMP Contributions” (February 27, 2020) (**R-0191-SPA**), p. 10, art. 4.

despite being issued by Próspera ZEDE, also aims to force the ZEDEs that join in the future to follow the same form of contribution¹⁸⁰. In essence, this event consummated the capture of the alleged regulator of the ZEDEs and eliminated any semblance of independence between the CAMP and Próspera ZEDE¹⁸¹. As if this were not enough, at the request of the CAMP, the ZEDEs increased their annual contribution to US\$200,000 in September 2020¹⁸² and, subsequently, to US\$441,000 in March 2022¹⁸³.

105. The complete disconnection between the CAMP and the State is confirmed once again by the recent actions of this body. More than four years after the repeal of the ZEDE Organic Law and almost two years since the declaration of unconstitutionality of the entire ZEDE Legal Framework, this body continues to act and arrogate to itself powers that no longer even exist in the Honduran legal system, despite lacking any legal basis for doing so¹⁸⁴. In a session held on May 8, 2026, the CAMP reportedly sought to approve the incorporation of 2.5 million square meters to Próspera ZEDE and, in turn, to approve six internal regulations for the latter¹⁸⁵. This document shows that the CAMP would be acting through a new

¹⁸⁰ Próspera ZEDE Resolution § 5-1-85-0-0-0-1, “Resolution Governing CAMP Contributions” (February 27, 2020) (**R-0191-SPA**), p. 9, art. 2.

¹⁸¹ Próspera ZEDE Resolution § 5-1-85-0-0-0-1, “Resolution Governing CAMP Contributions” (February 27, 2020) (**R-0191-SPA**), p. 9 (“Próspera ZEDE will make a prorated annual contribution to cover CAMP’s operating expenses with CAMP’s approval of this Resolution and its concurrence with its premises. The initial contribution of all **ZEDEs** will be a total of one hundred and ninety-four thousand dollars, currency of the United States of America (US\$194,000.00). That amount shall be increased annually on the basis of U.S. inflation.”).

¹⁸² Próspera ZEDE Resolution § 5-1-115-0-0-0-1, “Resolution Approving the Increase in CAMP Annual Funding” (September 21, 2020) (**R-0194-SPA**), p. 5 (“[...] that the Próspera ZEDE has, however, received the attached request from CAMP to increase these annual contributions from all ZEDES to US\$ 200,000.00”).

¹⁸³ ZEDE Resolution Próspera § 5-1-169-0-0-0-1, “Resolution of Próspera Restructuring of CAMP’s Annual Funding” (March 23, 2022) (**R-0233-SPA**), p. 11 (“[...] CAMP has requested an increase in its annual funding on the basis of the budget annexed to the attached appendix [...]”), p. 14 (“The initial annual contribution of all ZEDES will be increased to US\$441,000.00”).

¹⁸⁴ “ZEDE’s CAMP Reappears, Now Led by Former Official Wanted in Nemesis III,” *Criterio.hn* (June 3, 2026) (**R-0273-SPA**).

¹⁸⁵ “Próspera ZEDE expands its territory in Roatan despite ruling of unconstitutionality,” *Criterio.hn* (May 21, 2026) (**R-0272-SPA**); Standing Committee of the Committee for the Adoption of Best Practices in Employment and Economic Development Zones (CP-CAMP), Certification of Minute Point No. 5(b), Minutes CP-CAMP No. 003-2026 (May 8, 2026), signed by Erick Hernández, Recording Secretary (May 11, 2026) (**R-0270-SPA**).

Permanent Commission¹⁸⁶, now chaired by Francisco René Flores Bonilla, investigated for acts of corruption¹⁸⁷, and made up of Arnaldo Castillo Figueroa, linked to drug trafficking¹⁸⁸, Ebal Jair Díaz Lupian, a fugitive for diversion of public funds¹⁸⁹, and other members who are not mentioned in the 2016 minutes¹⁹⁰.

106. As for the Technical Secretary of the ZEDEs, this figure was originally conceived as their highest executive authority and legal representative¹⁹¹. The Organic Law stipulated that he had to be Honduran by birth, that he would be appointed by the CAMP at the proposal of the inhabitants or promoters of the ZEDE – according to its population density – and that he would be responsible for his actions before that institution¹⁹².
107. This structure shows that, contrary to what the Claimants maintain¹⁹³, the Technical Secretaries were not a State authority in charge of supervising or controlling the ZEDEs. On the contrary, these were the administrators who concentrated the powers of the three branches of government that were granted to each ZEDE: executive, legislative, and judicial¹⁹⁴.
108. According to the ZEDE Organic Law, the Technical Secretary had among his functions those

¹⁸⁶ Standing Committee of the Committee for the Adoption of Best Practices in Employment and Economic Development Zones (CP-CAMP), Certification of Minute Point No. 5(b), Minutes CP-CAMP No. 003-2026 (May 8, 2026), signed by Erick Hernández, Recording Secretary (May 11, 2026) (**R-0270-SPA**).

¹⁸⁷ “CAMP of the ZEDE reappears, now led by former official wanted in Nemesis III”, *Criterio.hn* (June 3, 2026) (**R-0273-SPA**), p. 2.

¹⁸⁸ “CAMP of the ZEDE reappears, now led by former official wanted in Nemesis III”, *Criterio.hn* (June 3, 2026) (**R-0273-SPA**), p. 3.

¹⁸⁹ “Court of Appeals confirms that Ebal Díaz illegally increased his assets by more than L 32 million”, *El Heraldo* (May 2, 2025) (**R-0260-SPA**); “Honduran Justice Goes for Extradition of Former Minister Ebal Díaz, Protected by Nicaragua,” *Public File* (August 15, 2024) (**R-0255-SPA**).

¹⁹⁰ CAMP, Meeting Minutes (April 30, 2016) (**R-0158**). All these acts are null and void under Honduran law: the CAMP was left without any normative basis after the repeal of the ZEDE Legal Framework and the subsequent declaration of unconstitutionality of origin issued by the Supreme Court of Honduras, which annulled, with *ex tunc* scope, Legislative Decree No. 368-2013 that ratified the original members of the CAMP, as well as any regulations and legal acts related to this regime. See Judgment of the Supreme Court of Honduras (Gazette No. 36,698) (November 25, 2024) (**C-0559**), p. 24.

¹⁹¹ ZEDE Law (**C-0006**), art. 12.

¹⁹² ZEDE Law (**C-0006**), arts. 11.3, 12.

¹⁹³ Claimants’ Memorial, ¶¶ 79-81.

¹⁹⁴ Claimants’ Memorial, ¶ 138; ZEDE Law (**C-0006**), art. 11.3. García, F. *Zones of Employment and Economic Development (ZEDE) in Honduras, Legal Approaches: 2017-2020*. Friedrich Ebert Stiftung (2021) (**R-0206-SPA**), p. 34 (“it is practically a kind of President, Legislative and Supreme Court within the territory of the ZEDE”).

of representing the ZEDE (not Honduras), directing its administration and government, executing the measures defined by the CAMP, constituting trusts, proposing to the CAMP the measures he deems appropriate, promulgating the regulations of the ZEDE, applying the rules of the ZEDE, to sign agreements of legal stability with respect to the regulations of the ZEDE (not the Honduran legal framework), to appoint Secretaries, to issue ordinances, and all other powers delegated by the CAMP.¹⁹⁵

109. The appointment of the first Technical Secretary of Próspera ZEDE, Tristán Monterroso, confirms that this position lacked independence and was not subject to effective state control. Mr. Monterroso was nominated by HPI to fill the position in June 2018¹⁹⁶. As is explained later, and Mr. Brimen himself confirms, both of them were friends and had known each other since high school; Mr. Monterroso was the one who first told him about Roatán, brought him closer to the local community, and in return, Mr. Brimen gave him an initial 3% stake in HPI.¹⁹⁷
110. In short, the ZEDE Legal Framework did not establish an effective system of state control, but an autonomous institutional structure lacking accountability mechanisms. The CAMP and the Technical Secretaries operated as authorities of the ZEDEs, with broad powers and without democratic or state control or supervision.

4. The creation of the ZEDEs was the exclusive responsibility of the National Congress

111. Aware of the serious legal consequences that the creation of a ZEDE entailed in terms of the transfer of eminently state sovereign prerogatives, and with a view to achieving its approval in Congress, the promoters of the ZEDEs included within the Legal Framework certain basic requirements that any promoter would have to comply with in order to install a ZEDE. This point is vital, since – as established *infra* – Próspera ZEDE was created in open disregard of

¹⁹⁵ ZEDE Law (C-0006), art. 12.

¹⁹⁶ Letter from Erick A. Brimen to CAMP, dated June 27, 2018 (C-0467), Brimen-I, ¶ 44.

¹⁹⁷ Brimen-I, ¶¶ 30, 44.

these constitutional requirements.

112. The fundamental rule was found in paragraph six of Article 329 of the Constitution. Several requirements for the creation of a ZEDE could be deduced from the transcribed regulation:

The creation of a zone subject to a special regime is the exclusive power of the National Congress, by a qualified majority, given an approving plebiscite by two thirds in accordance with that established in article five of the Constitution. This requirement is not necessary for special regimes created in zones of low population density. A zone of low population density means those in which the number of permanent inhabitants per square kilometer is less than the average for rural zones calculated by the National Institute of Statistics, which shall issue the corresponding ruling [...]"¹⁹⁸.

113. First, and above all, the creation of any ZEDE had as an essential requirement that it be created by the National Congress. This was an *exclusive attribution* of Congress.
114. Second, for the creation of a ZEDE, the same article provided that the approval of Congress must be by qualified majority, that is, with the favorable vote of at least 86 congressmen. The requirement of a qualified quorum shows that the approval of a ZEDE was not just any legislative act, but had a special importance only comparable to matters in respect of which the constitutional text has established the same requirement—such as the reform or repeal of the electoral law¹⁹⁹ and/or the appointment of judges of the Judicial Branch²⁰⁰.
115. Third, Article 329 of the Constitution established an additional requirement, consisting of the holding of a citizen referendum in the area where the ZEDE would be created, which had to have the support of two-thirds of the inhabitants.²⁰¹ Such a referendum could be held at the “national, regional, subregional, departmental and municipal levels,” according to

¹⁹⁸ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 329 (emphasis added).

¹⁹⁹ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 329 (emphasis added).

²⁰⁰ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 329 (emphasis added).

²⁰¹ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 329 (emphasis added).

Article 5 of the Constitution²⁰². However, the same provision established an exception by stating that this last requirement “is not necessary for special regimes created in areas with low population density”, that is, “those where the number of permanent inhabitants per square kilometer is lower than the average for rural areas calculated by the [INE] which must issue the corresponding opinion.”²⁰³

116. The Claimants, on the other hand, put forward an entirely distorted reading of those rules which, in fact, empties them of all content. With reference to the provisions of Article 329 of the Constitution, the Claimants maintain that *none* of the aforementioned requirements would be necessary when, in accordance with an opinion of the INE, the area destined for the ZEDE is of low population density.²⁰⁴ The same is stated by their expert, Mr. Cosenza, who maintains that “those areas of low population density, that is, those with a permanent number of inhabitants per square kilometer lower than the average for rural areas, were excluded from this requirement.”²⁰⁵
117. The Claimants’ reading is as unfounded as it is radical and must be rejected outright. Accepting the twisted interpretation proposed by the Claimants not only implies ignoring the clear meaning of the rule but also entails annulling the only mechanism of democratic control conceived under the ZEDE Legal Framework, that is, the approval of a qualified majority of the National Congress. Incidentally, the Claimants raise the above with the clear purpose of correcting the fact that Próspera ZEDE *was never* approved by Congress and, as established below²⁰⁶, that their investment was made in contravention of the applicable legislation.
118. *First*, the Claimants’ reading contravenes the literal meaning of Article 329 of the

²⁰² Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 5 (emphasis added).

²⁰³ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 5 (emphasis added).

²⁰⁴ Claimants’ Memorial, ¶ 67.

²⁰⁵ Cosenza-I, ¶ 63.

²⁰⁶ See Sections II.C.3; III.A.

Constitution, by virtue of which it is peremptorily established that the creation of the ZEDEs was the “*exclusive attribution*” of the National Congress. This is reinforced by the seventh paragraph of the same article, which states that “the National Congress, when approving the creation of zones subject to special regimes, must guarantee [...]”²⁰⁷.

119. This is also reiterated in Article 38 of the repealed ZEDE Organic Law, specifying that the creation of the ZEDEs corresponds to the National Congress exclusively by legislative decree:

The National Congress shall be responsible for creating the Zones of Economic Development and Employment (ZEDE) by decree, in compliance with the following rules:

- 1) When the Zone to be declared is of low population density, the opinion of the National Institute of Statistics (INE) must be obtained, certifying such situation in accordance with the provisions of Article 329 of the Constitution of the Republic; and
- 2) When the Zone to be declared is located in an area of high population density, prior to its creation a Plebiscite must be held in the area where the zone is located, and its creation may be decreed only if the result of the consultation is favorable in accordance with Article 5 of the Constitution of the Republic²⁰⁸.

120. As can be seen, the heading of the transcribed norm established the main and elementary requirement for the creation of any ZEDE: the approval of the National Congress by means of a legislative decree. This is regardless of the population density of the area destined for the ZEDE, an issue that was only relevant to determine the need to comply with one of the requirements set forth in the numerals – not in the heading – of the norm, either (1) the opinion of the INE or (2) the approving referendum.
121. It thus is clear that the fact that an area is of low population density merely made it possible to dispense with holding the referendum requiring approval by two-thirds of the population consulted, and not the approval of the National Congress. If the intention had been to extend this exception to such a point, it would have been expressly established in the Constitution

²⁰⁷ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 329.

²⁰⁸ ZEDE Law, art. 38 (C-0006).

and in the ZEDE Organic Law. That, however, is simply not the case.²⁰⁹

122. *Second*, and in relation to the foregoing, the Claimants’ interpretation would allow for a scenario in which the National Congress was stripped of an exclusive attribution, without there being any entity authorized to assume it. In accordance with Article 206 of the Constitution, the creation of any ZEDE was not only the exclusive attribution of the National Congress: it was also a constitutionally non-delegable attribution. In accordance with the aforementioned regulation:

The powers of the Legislative Branch are non-delegable except that of receiving the constitutional promise to the high officials of the Government²¹⁰.

123. With this in mind, the interpretation of the ZEDE Legal Framework proposed by the Claimants leads to emptying Article 329 of its content and annulling the non-deferability of Article 206, since the power to create a ZEDE – by qualified majority – belonged exclusively to the National Congress, and could not be assumed by any other entity. To allow such an alteration, Decree 236-2012 – through which the constitutional provisions of the ZEDEs were given rise – should have included an exceptional constitutional norm that instructed the relocation of said power to the sphere of competence of another State organ, so that Article 206 of the Constitution would not be violated. By the way, such a rule does not exist.
124. *Third*, the minutes of the parliamentary discussion of the ZEDE Organic Law show that the congressmen *always* understood that the approval of the National Congress was an indispensable condition for the creation of a ZEDE. The deliberate incorporation of this requirement may well have been what made it possible to disguise the true scope of the

²⁰⁹ In this regard, see J. A. Mejía Rivera, “Notes for reflection on international claims derived from the repeal of the ZEDEs” *Revista Envío Honduras*. Year 21. No. 73 (April 2023) (**RLA-0106-SPA**), p. 25 (“It cannot be argued that Article 329 of the Constitution also provides an exception to the requirement that ZEDE be created by the National Congress, since this provision clearly establishes that this is an “exclusive power” of that branch of the State [...] Therefore, if the reformist legislator had wanted the National Congress's power to create ZEDEs to be delegated to another body, he would have expressly established this in the Constitution and in the Organic Law on ZEDEs, which explicitly ratifies in Article 38 that: “The National Congress is responsible for creating ZEDEs by decree.”).

²¹⁰ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (**C-0004**), art. 206.

proposed regime and prevent the National Congress from realizing that, in practice, it was authorizing the creation of entities with broad autonomous powers outside of subsequent legislative control.

125. This is evidenced in the intervention of Mr. Ebal Jaír Díaz, advisor to the National Congress and promoter of the ZEDEs, who, responding to the query of deputies Lorena Herrera Estévez and Donaldo Reyes Avelar regarding the internal regulations that each ZEDE would present,²¹¹ emphasized that each ZEDE in particular would be approved by Congress:

Attorney Ebal Jaír Díaz, Advisor to the National Congress said:
Thank you, in the case of the Honorable Deputy Lorena Enriqueta Herrera Estévez [sic] we want to say that each Regime is going to have its own legislation and regulatory development if it is for example a financial district it is a regulation that regulates the financial function **and that will be approved by the National Congress when it creates that district** [...] ²¹².

126. Similarly, Deputy José Oswaldo Ramos Soto (National Party), in responding to the criticisms of other deputies about the relationship between the ZEDEs and the municipalities, stressed that it would be the National Congress that would have to determine which would be the specific ZEDEs at the time of deliberating their creation, avoiding collisions with the municipalities:

An Employment and Economic Development Zone (ZEDE) may be located within a municipality, within two (2) municipalities, within three (3) municipalities of a department [...] therefore, to avoid those clashes, those collisions, **whenever the National Congress submits to debate an initiative aimed at creating Employment and Economic Development Zones (ZEDE), at that time it will be known which is the zone, which are the municipalities, and the corresponding Decree of approval mandated by the Constitution of the Republic and the Law** must establish those zones [...] ²¹³.

²¹¹ National Congress, Minutes No. 24 (June 10, 2013) (R-0136-SPA), pp. 229-230 (“The Honorable Deputy Donaldo Ernesto Reyes Avelar stated: [...] I would like to ask the Ruling Commission what is meant by the adoption of legal systems or traditions, says the Article, they will have autonomous and independent courts with exclusive jurisdiction in them, which may adopt legal systems or traditions from other parties. It worries me [...]”).

²¹² National Congress, Minutes No. 24 (June 10, 2013) (R-0136-SPA), pp. 230-231.

²¹³ National Congress, Minutes No. 24 (June 10, 2013) (R-0136-SPA), pp. 225-226.

127. In short, what has been developed above shows that the ZEDE Legal Framework, without prejudice to their unconstitutionality of origin, established a series of minimum requirements that had to be met to create a ZEDE in Honduras. Within this framework, the approval of the National Congress by a qualified majority proved to be the indispensable requirement. This is confirmed both by the text of the ZEDE Legal Framework and by the records of its legislative debate.

5. The ZEDEs were not just any type of Special Economic Zone

128. The Claimants attempt to characterize the ZEDEs as a type of special economic zone comparable to others that can be found in comparative law (“SEZs”) or even in Honduran law²¹⁴. However, that characterization is not consistent with either the Claimants’ own statements or the reality of the facts.

129. *First*, the Claimants themselves acknowledge that Próspera ZEDE did not constitute a conventional SEZ²¹⁵, but was based on the charter city model, the very configuration of which involves the transfer of sovereignty from the Honduran State to the Claimants.

130. The ZEDE Legal Framework did not satisfy one of the essential elements of the SEZs identified by Mr. Chaisse, the Claimants’ expert in this arbitration, namely the maintenance of the State’s full control over the fundamental sovereign functions, including legislative power, the judicial function, public security and monetary policy, within the area²¹⁶. As

²¹⁴ Claimants’ Memorial, § II.A.2(c). In their Memorial, the Claimants frame the ZEDEs as an “innovative” form of SEZs—“a form of SEZ [...] which were to be semi-autonomous” but “remained an integral part of the State subject to oversight by Honduran authorities”—and describe them as a “semi-autonomous SEZ regime.” Claimants’ Memorial, ¶¶ 5-6. The characterisation is erroneous and conceals the true nature of the regime, which goes beyond the conceptual, functional and regulatory limits of any SEZ of comparative law.

²¹⁵ According to UNCTAD’s 2019 World Investment Report – cited by the Claimants’ own expert, Professor Julien Chaisse – SEZs are defined geographical perimeters that provide “a regulatory regime for businesses and investors distinct from what normally applies in the broader national or subnational economy where they are established”. Chaisse-I, note 3; UNCTAD, World Investment Report 2019: Special Economic Zones (C-0240), p. 128; .”). Lantern, F., “Special economic zones in Africa: comparing performance and learning from global experiences,” *The World Bank* (2011) (R-0095-ENG), p. 17 (“Special economic zones (SEZs) are spatially delimited areas within an economy that function with administrative, regulatory, and often fiscal regimes that are different (typically more liberal) than those of the domestic economy.

²¹⁶ Chaisse-I, ¶ 22. The others are: (i) a territorial delimitation for predominantly economic purposes; (ii) tax and customs incentives to attract investment; and, (iii) a regulatory regime that is differentiated but subordinate to the general legal framework of the host State. Chaisse-I, ¶¶ 11, 19.

explained in the preceding sections, the ZEDE regime reduced to a minimum the mechanisms of state and democratic control over these entities.

131. On the other hand, the founder of HPI, Mr. Brimen, recognizes that Próspera ZEDE came from the theoretical concept of charter cities²¹⁷, a model alien to traditional SEZs²¹⁸, which is based on the ability to “build new governance institutions from scratch”.²¹⁹ In these entities, a private “operator” provides government services—security, dispute resolution, infrastructure—through individual contracts with those who choose to reside in the city²²⁰. As Titus Gebel, publicly associated with Próspera ZEDE, explains, “the relationship between ruler and subject in traditional governance systems is replaced by a relationship between customer and service provider”.²²¹
132. The differences between a SEZ and a charter city have been identified by Mark Lutter, founder of the Charter Cities Institute, in the following terms:

SEZs envisage limited governance reforms, focusing on tax incentives and infrastructure, while model cities involve profound reforms covering business registration, dispute resolution, labour law and taxation;

SEZs occupy a small geographical area – often an industrial park – while model cities cover a large territory that allows their growth;

²¹⁷ Brimen, Erick, et al., *Creating the First Honduran ZEDE: Lessons in Political Economy, Institutional Design, and Governance Systems*, JOURNAL OF SPECIAL JURISDICTIONS (May 7, 2021) (C-0036), p. 154. The Próspera model is associated with charter cities and, more specifically, with “Free Private Cities” formulated by Titus Gebel, publicly associated with Próspera ZEDE. Gebel, T. “Free Private Cities: A New Operating System for living together” (2023) (R-0241-ENG), p. 2; “A Model for a Truly Free Society,” *Mises Institute* (September 7, 2018) (R-0182-ENG), p. 1 (“Imagine a system in which a private company as a “government service provider” offers you protection of life, liberty, and property. This service includes internal and external security, a legal and regulatory framework and independent dispute resolution. You pay a contractually fixed fee for these services per year.”); Brimen-I, ¶ 21.

²¹⁸ The promoters of this type of project themselves recognize the categorical difference between the two models. Lutter, M. “A Beginners Guide to Building Charter Cities,” *Exponents Magazine* (January 14, 2020) (R-0190-ENG), pp. 2-7; Torres, D. “The Employment and Economic Development Zones (ZEDE), and the Improvement of Dispossession Mechanisms in Honduras”, in *Revista de Ciencias Sociales*, no. 167, (2020) (R-0189-SPA), p. 3 (“First, it is necessary to distinguish the concept of model city – or in English charter city – from that of Special Economic Zones (SEZ). The latter, although they provide certain degrees of concession in fiscal and productive matters, do not venture into depth in terms of autonomy and territorial political-administrative self-control.”).

²¹⁹ Brimen, Erick, et al., *Creating the First Honduran ZEDE: Lessons in Political Economy, Institutional Design, and Governance Systems*, JOURNAL OF SPECIAL JURISDICTIONS (May 7, 2021) (C-0036), p. 188.

²²⁰ Gebel, T. “Free Private Cities: A New Operating System for living together” (2023) (R-0241-ENG), pp. 8-9.

²²¹ Gebel, T. “Free Private Cities: A New Operating System for living together” (2023) (R-0241-ENG), p. 10.

SEZs focus on a single industry, as opposed to the multisectoral and residential nature of model cities; y

SEZs have limited administrative autonomy, while model cities have legislative authority that allows them to make rules without further intervention by the national government²²².

133. These differences explain the enormous difficulties inherent in the implementation of these models. This has been acknowledged by Mr. Gebel, who is publicly associated with Próspera, when he stated that “[u]ndoubtedly, getting existing states to give up part of their sovereignty is an ambitious task”.²²³ Without going any further, Mr. Brimen himself acknowledged at a conference in 2015 that the entrepreneurship of a charter city consists of trying to make “the impossible” possible²²⁴.
134. *Second*, the charter city model has been widely criticized internationally and has not been successfully implemented anywhere else in the world.
135. One of the main criticisms of the charter city model is that it compromises state sovereignty

²²² Lutter, M. “A Beginners Guide to Building Charter Cities”, Exponents Magazine (14 January 2020) (R-0190-ENG), p. 4. In the words of Titus Gebel, the model on which Próspera ZEDE is founded requires host states to “surrender some of their power”. Gebel, T. “Free Private Cities: A New Operating System for living together” (2023) (R-0241-ENG), p. 15; Wiblin, R. & Harris, K. “Mark Lutter on trying to end poverty by founding well-governed ‘charter’ cities, ft Tamara Winter,” 80,000 Hours Podcast (March 31, 2019) (R-0185-ENG), p. 13. Mr. Brimen himself confirms this distinction. Brimen, Erick, et al., *Creating the First Honduran ZEDE: Lessons in Political Economy, Institutional Design, and Governance Systems*, Journal of Special Jurisdictions (C-0036), p. 154. (“These kinds of institutional improvements are only possible in new special jurisdictions that are fully or partially autonomous, within which a charter city can be created. It should be noted that this concept of a special jurisdiction is separate both from charter cities and from special economic zones. A charter city can be built upon a special jurisdiction, but so can many other things. As the World Bank described, special economic zones are typically quite small, cannot expand geographically, and most importantly, do not solve any deep institutional issues.”); See also Cao, L. “Charter Cities”, in 27 Wm. & Mary Bill Rts. J. 717 (2019) (R-0184-ENG), p. 722 (“As a special reform zone, the charter city “extends the concept of a special economic zone by increasing its size to the scale of a city and expanding the scope of its reforms.””); Michael Castle-Miller & L. Grant Shubin, *Fostering Justice and Stability: Rights Protection and National Sovereignty in the Honduran Zones for Employment and Economic Development*, 2019 (C-0030), p. 27; Castle-Miller, M. “The Model Cities Project: Testing the Legality of Paul Romer’s Charter Cities Concept by Analyzing the Constitutionality of the Honduran Zones for Employment and Economic Development”, 22.2 Willamette J. Int’l L. & Disp. Res. 271 (2015) (R-0150-ENG), p. 308.

²²³ Gebel, T. “Free Private Cities: A New Operating System for living together” (2023) (R-0241-ENG), pp. 14-15; Cao, L., “Charter Cities”, in 27 Wm. & Mary Bill Rts. J. 717 (2019) (R-0184-ENG), p. 725.

²²⁴ Babson College. “Babson Global’s Competitiveness and Enterprise Cities Project” (00:31:51 – 00:32:19) (R-0275-ENG) (“So, consider that almost everything that was worth it in the world was at some point first declared impossible [...] the job of the entrepreneur is to convert what the world considers as impossible, not viable, into actually being possible. [...]).

and representative democracy²²⁵. As Rahul Sagar, associate professor of political science at New York University Abu Dhabi, explains, these are based on the premise that people can accept restrictions on their political and civil liberties in exchange for higher levels of security, order, or economic development²²⁶. The doctrine has also questioned the premise that charter cities generate benefits for the host state. In particular, professors Helmut Philipp Aust and Alejandro Rodiles Bretón have questioned whether an enclave legally, economically, and physically separate from the rest of the territory can effectively contribute to the development of the country in which it is located²²⁷.

136. The questioning of this model has not only been theoretical, but also practical. Attempts to establish charter cities in other jurisdictions, such as Madagascar and Georgia, failed as a result of the political and social rejection that these initiatives provoked²²⁸. In the case of Madagascar, the proposal even triggered a political crisis that culminated in a change of government²²⁹.
137. *Third*, contrary to what the Claimants have stated through their expert, Mr. Chaisse, the ZEDEs are not equivalent to internationally accepted SEZs²³⁰ and are in no event located on the same spectrum as the Dubai International Financial Centre (“**DIFC**”), the Abu Dhabi

²²⁵ Sagar, R., “Are Charter Cities Legitimate?”, *Journal of Political Philosophy* (24) (2016) (**R-0155-ENG**), pp. 512-513 (“*So understood there are no contemporary examples of a charter city. This is not surprising since, historically, sovereigns have ceded territory only under the threat of violence, and the territory so ceded has rarely, if ever, been permitted to govern itself.*”), p. 518 (“*One cause of concern is its seeming unwillingness to take seriously the possibility that democracy may not be able to flourish everywhere.*”), p. 522 (“*[...] absent the procedural and substantive securities associated with liberal democracy, power will be abused.*”).

²²⁶ Sagar, R., “Are Charter Cities Legitimate?”, *Journal of Political Philosophy* (24) (2016) (**R-0155-ENG**), p. 521. (“*[i]n environments where poverty and inequality have fostered violence, exploitation, and instability, individuals may be willing to forego political and civil liberties should this be necessary to secure more fundamental interests such as order, security, and an escape from poverty and stagnation*”).

²²⁷ Aust, H & Rodiles, A. “Carving Out the City from the State: Charter Cities and the Quest for New Urban Futures”, *Max Planck Institute for Comparative Public Law & International Law* (6 May 2026) (**R-0269-ENG**), p. 9 (“*An obvious question is how any state is supposed to benefit from the wealth of communities that are almost completely – legally, economically, and physically – cut-off from their broader territory, fragmenting space and suspending the public life within it. Those outside the charter city are most likely to remain in their preexisting conditions, often of poverty and violence*”).

²²⁸ “The Blank Slate State,” *reason.com* (May 13, 2013) (**R-0135-ENG**), pp. 3, 9.

²²⁹ “The Blank Slate State,” *reason.com* (May 13, 2013) (**R-0135-ENG**), p. 3.

²³⁰ Chaisse-I, ¶ 56 (“Accordingly, the ZEDE Legal Framework must be understood not as a departure from international practice but as a domestically bounded variant of it, with Próspera’s autonomy operating within well-defined constitutional and supervisory limits, rather than as independent sovereignty.”).

Global Market (“**ADGM**”) and the Astana International Financial Centre (“**AIFC**”), and Latin American comparisons such as the Colon Free Zone and Panama-Pacific²³¹.

138. The Claimants’ attempt to normalize the broad autonomy and sovereign powers granted to Próspera ZEDE²³² by comparing it to these models²³³ is erroneous:

- First, Professor Tom W. Bell²³⁴, advisor to the Próspera project and author of the “Roatan Common Law Code”²³⁵ directly contradicts Professor Chaisse’s statement, stating that these models are not comparable to ZEDES²³⁶. EY made the same statement in the report prepared for the Claimants, in which it was recognised that “ZEDE legislation allows potential investors to establish an autonomous city with a series of benefits not present in SEZ around the world”²³⁷ and that the ZEDES have “an autonomy very distant from the one Hong Kong, Shanghai, or Shenzhen”.²³⁸
- Second, while the DIFC, the ADGM and the AIFC constitute sectoral financial centers that do not house the population or exercise jurisdiction over the civil, criminal, and social life of the people, the ZEDES, on the other hand, were autonomous cities with a population and integral jurisdiction over education, health, public security, the prison system, the environment, and municipal functions. The private companies that promoted each ZEDE controlled the proposal of the Technical Secretary, the appointment of the regulatory council and the provision of public services: a comprehensive privatization of public functions without parallel in any SEZ.²³⁹
- Third, unlike the DIFC, the ADGM and the AIFC which tie their legal system to

²³¹ Chaisse-I, ¶¶ 16, 48 y 54 (“These differences show that Próspera’s autonomy is both narrower and more conditional than the leading high-autonomy SEZs, reinforcing its integration within the Honduran constitutional framework rather than representing an unprecedented delegation of sovereignty.”) ¶ 55 (“This table confirms that Próspera ZEDE does not exceed the autonomy or legal insulation of other prominent SEZs.”).

²³² Professor Chaisse's own report indicates that Próspera ZEDE had the authority to issue its own regulations, operate its own courts, create internal security forces (police, investigation, criminal prosecution and prison system) and maintain a special property registration regime. Chaisse-I, ¶¶ 32, 43.

²³³ Chaisse-I, ¶ 36 (“Honduras's approach to the ZEDE Regime parallels models in other jurisdictions where zones operate with degrees of autonomy under defined State oversight”).

²³⁴ Professor Emeritus, Chapman University, Fowler School of Law, California, United States (**R-0274-ENG**).

²³⁵ Tom W. Bell, Common Law Zones: An Illustrated Review, J. of Special Jurisdiction (2021) (**C-0627**), p. 99; Claimants’ Memorial, ¶ 178; Roatan Common Law Code, dated January 3, 2019 (**C-0483**).

²³⁶ Tom W. Bell, Common Law Zones: An Illustrated Review, J. of Special Jurisdiction (2021) (**C-0627**), p. 60 (“the DIFC, ADGM, and AIFC are hardly perfect counterparts to ZEDE. The non-Honduran zones do not face the huge task before each ZEDE: Provide the functional equivalent of a super-municipality complete with a resident population, comprehensive legal system, social benefit programs, and the other trappings of government”).

²³⁷ EY, Project Oasis Final Report (July 2019) (**C-0322**), p. 61 (emphasis added).

²³⁸ EY, Project Oasis Final Report (July 2019) (**C-0322**), p. 61.

²³⁹ Chaisse-I, ¶ 47.

the legislation and jurisprudence of a foreign State²⁴⁰, the ZEDEs were not subject to the legislation of a third State²⁴¹. In this regard, Mr. Brimen has recognized that the legal system of Próspera ZEDE did not come from a particular country but from a combination of models proposed by private entities²⁴². The same contrast operates with respect to Panama's economic zones – Panama-Pacific and the Colon Free Zone – which operate entirely under Panamanian law²⁴³.

- Fourth, unlike what happens in the DIFC²⁴⁴, the ADGM²⁴⁵ and the AIFC,²⁴⁶ in the Colon Free Zone²⁴⁷, in Panama-Pacific²⁴⁸, and Shenzhen²⁴⁹, where governance remains in the hands of or linked to state entities or public officials, in the ZEDEs the alleged governance and supervision is based on the CAMP and the Technical Secretary²⁵⁰ organizations without democratic control and without any mechanism

²⁴⁰ Tom W. Bell, *Common Law Zones: An Illustrated Review*, J. of Special Jurisdiction (2021) (C-0627), p. 59 (“The DIFC, ADGM, and AIFC invoked the common law of England (and sometimes also Wales) when building the foundations of their zones' rules and set up nominally independent courts to interpret those rules.”); Chaisse-I, ¶ 16. The ADGM even gives immediate effect to changes in the English courts on a basis that commentators call “*evergreen*”, that is, a dependence on the English law in force at any given time. Tom W. Bell, *Common Law Zones: An Illustrated Review*, J. of Special Jurisdiction (2021) (C-0627), pp. 95-96.

²⁴¹ Tom W. Bell, *Common Law Zones: An Illustrated Review*, J. of Special Jurisdiction (2021) (C-0627), pp. 87-88 (“Though Prospera's legal system borrows from many sources, at its core runs the Roatan Common Law Code, a name it earned thanks to the many Restatements of the Common Law incorporated into it by reference. In notable contrast to the court opinions and statutes borrowed from foreign sovereigns by the DIFC, ADGM, and AIFC, Prospera's Roatan Common Law Code thus borrows only from private, non-governmental sources for its laws of contracts, property, and other matters.”); p. 96 (“Because it cites only published Restatements for its common law, Prospera ZEDE definitely does not walk in lockstep with foreign authorities.”).

²⁴² Brimen, Erick, et al., *Creating the First Honduran ZEDE: Lessons in Political Economy, Institutional Design, and Governance Systems*, JOURNAL OF SPECIAL JURISDICTIONS (C-0036), p. 178.

²⁴³ Republic of Panama, Panama Law No. 41, which creates the Panama-Pacific Economic Area (C-0210), art. 6. As the Claimants' expert acknowledges, disputes are resolved before Panamanian courts, judicial oversight remains under the Panamanian Constitution, and there is no adoption of a foreign legal system. Chaisse-I, ¶ 16 (“In Panama, the Panama-Pacífico Special Economic Area and the Colón Free Zone, zones combining fiscal and trade autonomy with judicial recourse to Panamanian courts.”).

²⁴⁴ The public governance of the Dubai International Financial Centre (DIFC) is set out in the DIFC Act No. 9 of 2004 (C-0212), and according to Article 3 thereof, the governing bodies of the Centre are public entities: the Dubai International Financial Centre Authority, the Dubai Financial Services Authority and the Dispute Resolution Authority. Article 5 assigns the “President” of the DIFC – appointed by the Emir of Dubai – the power to approve strategies, legislation, and budgets, and according to Article 7, its budget comes from the government.

²⁴⁵ The Abu Dhabi Global Market (ADGM) Act No. 4 of 2013 (C-0228) sets out its governance. According to Article 4, a Board of Directors governs the ADGM and its members are appointed by the Crown Prince of the Emirate of Abu Dhabi.

²⁴⁶ The Constitutional Statute of the Astana International Financial Centre (AIFC) (C-0233) establishes in its Article 10.1 that the Board of Directors of the AIFC is a permanent collegiate body chaired by the President of the Republic of Kazakhstan. The Governor of the AIFC is also appointed and dismissed by the President of the Republic of Kazakhstan.

²⁴⁷ The administration corresponds to a Board of Directors composed of State officials, including Ministers, and a General Manager appointed by the Executive Power. Chaisse-I, footnote No. 98.

²⁴⁸ The autonomous State Agency operates under the supervision of the Executive Branch, the Legislative Branch and the Office of the Comptroller General of the Republic. Chaisse-I, footnote No. 97.

²⁴⁹ Authority is exercised by a Provincial Committee acting “on behalf of the Guangdong Provincial People's Government”, a body within the Chinese government structure and subject to the National People's Congress. Chaisse-I, footnote No. 103.

²⁵⁰ Chaisse-I, ¶ 54 (“In regulatory matters, Próspera ZEDE's rulemaking competence is circumscribed by Articles 11 and 12, which require prior approval and continuing oversight by CAMP, unlike DIFC or ADGM, which issue regulations without external oversight and in contrast to ADGM and QFC where local authorities exercise primary lawmaking powers.”).

of accountability to the State²⁵¹.

139. To a large extent, these are also the characteristics that distinguish ZEDEs from any other special regime previously implemented in Honduras, none of which was comparable to them²⁵².

C. THE CLAIMANTS DEVELOPED THEIR INVESTMENTS IN HONDURAS OUTSIDE THE APPLICABLE LEGAL FRAMEWORK AND INCURRED MULTIPLE IRREGULARITIES

140. As will be demonstrated below, the Claimants decided to develop their investment in a context that they were aware of – or, at least, should have been aware of – and voluntarily assumed the risks inherent in the ZEDE project. In particular, and as set out below: (C.1) the Claimants made their investment with full knowledge of the constitutional and political controversy surrounding the ZEDE regime, deliberately ignoring the risks associated with their investment; (C.2) the Claimants’ account of the alleged representations of the State that would have induced them to invest is not in line with reality; (C.3) the creation of the Próspera ZEDE was marked by multiple irregularities and by non-compliance with the requirements set out in the ZEDE’s own Legal Framework; (C.4) the operation of Próspera ZEDE was marked by repeated irregularities; and, (C.5) faced with the growing possibility of a repeal of the regime, they sought to artificially shield their position through a supposed stabilization agreement that they fabricated for themselves.

1. The Claimants made their investment knowing, or having reason to know, that the ZEDE Legal Framework had sparked widespread and permanent opposition and that its repeal had even been proposed before they made their investment

141. The Claimants contend that the ZEDE Legal Framework “enjoyed significant support from Honduras and local communities from inception and over the years”²⁵³ and that, only in mid-

²⁵¹ Tom W. Bell, *Common Law Zones: An Illustrated Review*, J. of Special Jurisdiction (2021) (C-0627), p. 97 (“It is not as easy to trace the most direct route for Honduran politicians to influence ZEDE because no route can get them there easily. The CAMP, an unelected and self-sustaining body, stands between the rest of the Honduran government and ZEDE Court.”). See Section II.B.3.

²⁵² Cosenza-I, ¶¶ 20-34.

²⁵³ Claimants’ Memorial, ¶ 230.

2020, the Claimants “became aware of scattered opposition to the ZEDEs from nascent political organizations, but this was limited and was not considered a real cause for concern”²⁵⁴. This narrative is not based on reality and ignores the public, notorious, widespread, and permanent rejection that the ZEDE Legal Framework has provoked.

142. In the preceding sections, it has been established that the ZEDE Legal Framework was the object of intense opposition from civil society from the very moment of its approval²⁵⁵. That opposition did not cease after its controversial and irregular entry into force. On the contrary, each time the possible incorporation of different areas of Honduras into the ZEDE regime was announced, such initiatives sparked significant opposition.
143. The first precedent of citizen opposition to a specific ZEDE project dates back to June 2013. It was reported that year, during the general elections of Honduras to be held in November, that a fourth ballot box would be included in the town of Nueva Suyapa, in order to submit to consultation of approximately seventy thousand inhabitants the eventual transformation of the sector into a ZEDE with a tourist and religious focus²⁵⁶. The president of the Suyapa board of trustees²⁵⁷ announced that the residents of the sector would oppose the holding of the referendum²⁵⁸. Subsequently, in November 2013, a few days before the general elections, it was reported that the referendum would not be carried out as a result of citizen opposition²⁵⁹.
144. Then, in February 2014, it was reported that the municipalities of Nacaome, Amapala, San Lorenzo, Goascorán, and Alianza, all located in the Department of Valle, on the Pacific coast of Honduras south of Tegucigalpa, would be the subject of a feasibility study for the eventual

²⁵⁴ Claimants’ Memorial, ¶ 231.

²⁵⁵ See Section II.B.1. In addition, civil society had already opposed its predecessor, the Legal Framework of the RED. See Section II.A.2.

²⁵⁶ “Suyapa is emerging as a development zone”, *El Heraldo* (June 14, 2013) (R-0137-SPA).

²⁵⁷ According to the Royal Spanish Academy, a board of trustees is a “Council made up of several people who exercise directing, advisory or supervisory functions in an institution.” See Real Academia Española, “Patronato”, *Diccionario de la lengua española* (R-0075-SPA).

²⁵⁸ “Suyapa is emerging as a development zone”, *El Heraldo* (June 14, 2013) (R-0137-SPA).

²⁵⁹ “En ‘stand by’ consulta de ZEDE en Aldea Suyapa”, *El Heraldo* (November 16, 2013) (R-0139-SPA).

installation of a ZEDE.²⁶⁰ On October 23 of the same year, communities and individuals from all over southern Honduras—El Tránsito, Nacaome, Amapala, Zacate Grande, Tegucigalpa, among others—crossed the Gulf of Fonseca to participate in a march against the ZEDE project proposed for the area²⁶¹. Over the next few years, announcements and public opposition from civil society to the installation of a ZEDE in these areas continued²⁶², however, no concrete progress was ever announced²⁶³.

145. Subsequently, in July 2016, the United Nations Special Rapporteur on the rights of indigenous peoples published the report corresponding to her visit to Honduras, which took place between November 2 and 10, 2015, in which she expressed her deep concern about the possible creation of a ZEDE on the Sico River and in the bay of Trujillo²⁶⁴. The report notes that these projects would affect 24 Garifuna communities through forced displacement, including the relocation of approximately 3,500 people from the Garifuna community of Puerto Castilla for the construction and expansion of infrastructure for a ZEDE in Trujillo²⁶⁵. It also accounts for the opposition expressed by these communities and the total absence of a prior consultation process²⁶⁶. Again, it was a project that did not generate real progress.

²⁶⁰ “Valle can host the first ZEDE in Honduras”, *El Heraldo* (February 10, 2014) (R-0141-SPA).

²⁶¹ “Plans to Develop the Gulf of Fonseca Move Forward While Communities Say No to ZEDE and ‘That Kind’ of Development,” *Aquí Abajo* (October 28, 2014) (R-0149-SPA), pp. 3-5; “Demonstration in Amapala in opposition to the Zede”, *La Prensa* (24 October 2014) (R-0148-SPA); In September 2015, road blockades were reported by residents demonstrating against the installation of ZEDE in the sector. See “Pobladores de Zacate Grande se toman carretera demandando land deeds,” *La Tribuna* (September 1, 2015) (R-0153-SPA).

²⁶² “Despite Opposition from Peoples, President Goes to South Korea to Promote ZEDE,” *Criterio.hn* (July 6, 2015) (R-0152).

²⁶³ “Government seeks the promotion of the ZEDEs in the country”, *El Heraldo* (July 27, 2017) (R-0165-SPA).

²⁶⁴ United Nations General Assembly, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Honduras*, 33rd session (21 July 2016) (R-0159-SPA); The risk that ZEDEs posed to indigenous peoples and Afro-Honduran communities had already been warned by the United Nations Committee on the Elimination of Racial Discrimination in its concluding observations on Honduras' first to fifth periodic reports, issued on March 13, 2014. In those meetings, the Committee recommended that the State examine the compatibility of the ZEDE Legal Framework with the international instruments to which Honduras is a party, in particular those relating to the rights of indigenous peoples and Afro-descendants. United Nations, Committee on the Elimination of Racial Discrimination, *Concluding Observations on the First to Fifth Periodic Reports of Honduras* (March 13, 2014) (R-0143-SPA), ¶ 17.

²⁶⁵ United Nations General Assembly, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Honduras*, 33rd session (July 21, 2016) (R-0159-SPA), ¶ 56.

²⁶⁶ United Nations General Assembly, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Honduras*, 33rd session (July 21, 2016) (R-0159-SPA), ¶ 56.

146. The following year, in 2017, during the campaign for the general elections in Honduras, the eventual creation of a ZEDE in Amapala was reactivated²⁶⁷. On that occasion, international media collected testimonies of opposition to the implementation of this regime in the area, including that of the mayor of Amapala, Santos Alberto García, who criticized the ZEDEs for constituting “a space within our territory that will no longer be part of our territory²⁶⁸,” and that of the Jesuit priest Ismael Moreno of the Society of Jesus in Honduras, who maintained that “[t]he ZEDEs are fundamentally the continuity of the banana enclave.”²⁶⁹ These examples, as well as the others reported in the accompanying background, reflect the sustained opposition of civil society, which ultimately contributed to the project’s failure to be executed.
147. That same year, the Inter-American Development Bank (“**IDB**”) announced that it was evaluating the granting of a US\$20 million loan to Honduras to finance the preparation of technical studies and designs for the establishment of ZEDEs²⁷⁰. In response, on August 25, 2017, representatives of the Center for International Environmental Law (“**CIEL**”) and other institutions asked the United States not to approve or support the IDB loan, warning that the ZEDEs established an undemocratic governance structure, violated constitutional rights and international treaties ratified by Honduras, and that their financing contravened the IDB²⁷¹’s

²⁶⁷ “What are the ZEDEs, the controversial territories with which Honduras wants to become the Hong Kong of Latin America that mark the elections in the Central American country”, *BBC Mundo* (November 23, 2017) (**R-0172-SPA**).

²⁶⁸ “What are the ZEDEs, the controversial territories with which Honduras wants to become the Hong Kong of Latin America that mark the elections in the Central American country”, *BBC Mundo* (November 23, 2017) (**R-0172-SPA**), p. 4; “Honduras and its libertarian experiment in the Gulf of Fonseca,” *CIPER Chile* (April 24, 2017) (**R-0162-SPA**).

²⁶⁹ “What are the ZEDEs, the controversial territories with which Honduras wants to become the Hong Kong of Latin America that mark the elections in the Central American country”, *BBC Mundo* (November 23, 2017) (**R-0172-SPA**), p. 11.

²⁷⁰ The registration of project No. HO-L1191 is no longer available on the website of the Inter-American Development Bank. See Letter from Kelsey Alford-Jones, Lauren Carasik & Karen Spring to Mark Edward & Alex Severens with the subject line “*Concerns about HO-L1191: Support to the Creation of Employment and Economic Development Zones (ZEDE)*” (August 25, 2017) (**R-0167-ENG**).

²⁷¹ Letter from Kelsey Alford-Jones, Lauren Carasik & Karen Spring to Mark Edward & Alex Severens with the subject line “*Concerns about HO-L1191: Support to the Creation of Employment and Economic Development Zones (ZEDE)*” (August 25, 2017) (**R-0167-ENG**). On November 16, 2017, CIEL

operational policies. On November 15, 2017, the Black Fraternal Organization of Honduras (“OFRANEH”) sent a letter to the president of the IDB warning that the ZEDEs constituted a threat to the survival of the Garifuna people in Honduras and that they were being promoted without free, prior, and informed consultation, in contravention of ILO Convention No. 169²⁷². On December 15, 2017, the IDB responded to this letter, stating that the project was in a preliminary phase²⁷³. As far as this Party has been able to ascertain, the loan was not finally executed.

148. The reactivation of the debate around the ZEDEs during the 2017 general elections also had repercussions in the political sphere. During his presidential campaign, Salvador Nasralla, candidate of the Opposition Alliance, made his intention to repeal the ZEDE Legal Framework public²⁷⁴.
149. While the main opposition candidate announced that he would repeal the ZEDE Legal Framework, Mr. Brimen and Mr. Delgado —co-founders of HPI— constituted the corporate vehicles that would give rise to Próspera²⁷⁵, presented their project to the CAMP²⁷⁶, and

representatives presented a public alert to the IDB through its internal mechanism, reiterating their objections. Center for International Environmental Law, “*EWS Project Alert: IDB Support to Investment Attraction and Job Creation in Honduras (ZEDE)*” (November 16, 2017) (R-0169-ENG), p. 3 (“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. 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.”).

²⁷² “OFRANEH sends letter to IDB president over the unconsulted ‘model cities’”, *Criterio.hn* (November 16, 2017) (R-0170-SPA).

²⁷³ Letter from Mirna Liévano de Marques to Miriam Miranda with the subject “Response to official letter OFRANEH” (December 15, 2017) (R-0174-SPA).

²⁷⁴ “Elections in Honduras: who is Salvador Nasralla, ‘The Lord of Television’ who can prevent the re-election of Juan Orlando Hernández as president”, *BBC Mundo* (November 27, 2017) (R-0173-SPA), p. 6 (“Among other points, the alliance’s program includes the repeal of what it considers ‘harmful economic laws’, including that of the controversial Employment and Economic Development Zones, ZEDE”).

²⁷⁵ Claimants’ Memorial, ¶ 125 (“On August 28, 2017, Messrs. Brimen and Delgado incorporated Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, which would later be renamed Honduras Próspera, Inc.”).

²⁷⁶ Claimants’ Memorial, ¶ 127 (“On September 22, 2017, HPI made a presentation to CAMP on ‘The City of Roatan.’”)

acquired properties in Roatán²⁷⁷.

150. Their knowledge of the political risk faced by the ZEDE Legal Framework is confirmed by the fact that HPI submitted its application to the CAMP to constitute Próspera ZEDE on December 29, 2017²⁷⁸, just 12 days after the Supreme Electoral Tribunal, in a disputed election²⁷⁹, declared Juan Orlando Hernández elected with a difference of only 1.53% of the votes over Salvador Nasralla²⁸⁰. In this context, Mr. Delgado’s assertion that Xiomara Castro’s opposition to the ZEDEs “was an abrupt change for foreign investors in the ZEDEs” is incomprehensible.²⁸¹ On the contrary, this opposition had always existed and had manifested itself concretely before the constitution of Próspera.
151. As if this were not enough, the report that the Claimants commissioned from the international firm EY, highlights that “ZEDE Legislation is vulnerable and can potentially be an issue if a radical change in the current government happens”²⁸² and indicates that “politician Salvador Nasralla who obtained the second place in the elections publicly announced being against the ZEDE”.²⁸³
152. This background shows that when HPI decided to develop Próspera, the ZEDE Legal Framework was already facing sustained and widespread opposition from local communities, civil society organizations, international organizations, and political actors.

²⁷⁷ Claimants’ Memorial, ¶ 131 (“In that same period, HPI began acquiring the properties that would be the starting point of Próspera ZEDE in Roatan. As a starting point, HPI had identified land in Pristine Bay, on the north coast of Roatan, adjacent to the community of Crawfish Rock.”).

²⁷⁸ Claimants’ Memorial, ¶ 132; See also ZEDE Application Packet for: Village of North Bay, a zone for economic development and employment, from Sociedad para el Desarrollo Socio-Económico de Honduras, LLC (**C-0017**). In Minute No. 16 of November 2017, CAMP itself stated that it had not received formal requests between October 2016 and January 2018. CAMP, Minute No. 16 (November 17, 2017) (**R-0171-SPA**).

²⁷⁹ Organization of American States, General Secretariat, “Statement by the OAS General Secretariat on the Elections in Honduras,” Ref. E-092/17 (December 17, 2017) (**R-0175-SPA**) (“[T]he electoral process was characterized by irregularities and deficiencies, with very low technical quality and lacking integrity. [...] [T]he narrow difference of votes between the two most voted candidates, make it impossible to determine with the necessary certainty the winner”).

²⁸⁰ “Supreme Electoral Tribunal Declares Juan Orlando Hernández President-Elect of Honduras,” *El Heraldo* (December 17, 2017) (**R-0176-SPA**).

²⁸¹ Delgado-I, ¶ 49.

²⁸² EY, Project Oasis Final Report (July 2019) (**C-0322**), p. 110.

²⁸³ EY, Project Oasis Final Report (July 2019) (**C-0322**), p. 110.

The repeated failed attempts to establish ZEDEs in different areas of the country, the warnings issued by national and international organizations, and the incorporation of the repeal of the regime into the 2017 electoral debate established that its continuity was far from being a guaranteed fact. HPI simply could not reasonably ignore the political and regulatory risk inherent in its investment.

2. The Claimants construct an account of the alleged representations that motivated their investment, which does not correspond to reality

153. In their Memorial, the Claimants construct a narrative that seeks to hide the deep opposition that the ZEDEs generated in Honduras and to present their investment as the result of specific representations of the State that allegedly led them to constitute a ZEDE between 2014 and 2017²⁸⁴. The reality, however, is different. As will be seen below, **(2.a)** the State of Honduras carried out, as usual, a general campaign to promote foreign investment; although it included the ZEDEs, they were never its central axis; and **(2.b)** it was the Claimants who, on their own account, approached the Honduran entities to inquire about investment possibilities in the ZEDEs.

a. Honduras did not develop a campaign focused on the ZEDEs, but a general policy of attracting foreign investment

154. Between 2014 and 2017, the Republic of Honduras promoted the ZEDE regime as one component of a general policy to attract foreign investment designed for the country's economic development, aimed at dozens of countries and hundreds of potential investors. There was no personalized invitation to the Claimants, nor a campaign aimed solely at the ZEDEs.
155. The Claimants base their narrative on the Government's Strategic Plan 2014-2017, in its version published in 2015, arguing that attracting investment to the ZEDEs was one of the

²⁸⁴ Claimants' Memorial, § II.C.1 and § II.C.2.

State's primary strategies²⁸⁵. However, the document itself refutes that reading. Throughout its more than fifty pages, the ZEDEs are mentioned in only one paragraph and as one measure among numerous initiatives aimed at attracting foreign investment to improve the living conditions of Hondurans²⁸⁶. The same Plan, in its modified version, confirms that the objective of the Sectoral Cabinet of International Relations was to attract foreign direct investment in general, and not an institutional campaign aimed at the Claimants or the ZEDEs in particular²⁸⁷.

156. In implementing this Plan, Honduras embarked on a general policy of promoting foreign investment in 2014. Thus, in his September 2014 speech to the United Nations General Assembly, then-President Juan Orlando Hernández pointed out that one of the fundamental pillars of his government plan was to “generate investment opportunities” in generic terms²⁸⁸. In this context, the ZEDEs were just one of the various initiatives promoted for this purpose, along with the implementation of the Public-Private Partnerships regime and the development of infrastructure projects, such as the Interoceanic Logistics Corridor aimed at connecting the Atlantic and Pacific Oceans²⁸⁹. Far from “inducing” a concrete investment in the ZEDEs, his invitation was generic: “*I invite you to discover this great opportunity.*”²⁹⁰
157. The general nature of this policy is confirmed in the Technical Report on Accountability of the Ministry of Economic Development for the period 2014-2017²⁹¹. The report shows that the promotion of foreign investment, in general terms, was based on three programs, called: competitiveness, pre-investments, and international promotion. Each of these programs was

²⁸⁵ Claimants' Memorial, ¶ 103; *citing* the Strategic Government Plan 2014-2017 Presidency of the Republic of Honduras (C-0437), p. 42; Strategic Government Plan 2014-2017 Presidency of the Republic of Honduras (modified) (2015), (C-0438), p. 31.

²⁸⁶ Strategic Government Plan 2014-2017, (C-0437), pp. 42-43. Strategic Government Plan 2014-2017 modified (2015), (C-0438), pp. 30-31.

²⁸⁷ Strategic Government Plan 2014-2017 modified (2015), (C-0438), p. 25.

²⁸⁸ Speech by the President of Honduras to the UN General Assembly, September 24, 2014 (C-0010), p. 1.

²⁸⁹ Speech by the President of Honduras to the UN General Assembly, September 24, 2014 (C-0010), p. 3.

²⁹⁰ Speech by the President of Honduras to the UN General Assembly, September 24, 2014 (C-0010), p. 3.

²⁹¹ Secretariat of Economic Development of Honduras, *Technical Report on Accountability* (December, 2017) (C-0018).

made up of activities, projects, and initiatives aimed at promoting foreign investment. The ZEDEs were one of the initiatives that were promoted under the international promotion program²⁹². In addition, the Report itself indicates that the attraction of foreign direct investment – supported by a stable and transparent political regime – was part of the general mission of the Government, not a measure specifically directed at the Claimants or the ZEDEs.²⁹³²⁹⁴

158. The same is true of the trips made by Honduran delegations to South Korea, Japan, and the United States. One of the objectives of these international tours was the promotion of foreign investment, presenting the ZEDEs as one among various investment opportunities in Honduras, along with interoceanic transport, infrastructure, energy, and tourism projects, among others²⁹⁵. These were missions of general objective, typical of the country's economic development strategies, and not of a measure directed at “inducing” the investment of the Claimants. In fact, by then, the current government was not clear on how the ZEDEs would operate in practice, and was waiting for a feasibility study from the Korean International Cooperation Agency (“**KOICA**”).²⁹⁶
159. Similarly, in October 2017, Honduras organized an event to promote its investment platform at the national level, with companies from Honduras, Canada, the United States, Finland, the Philippines, China, and Taiwan, in which the ZEDEs were presented as only one of the

²⁹² Secretariat of Economic Development of Honduras, *Technical Report on Accountability* (December, 2017) (C-0018), pp. 18-24.

²⁹³ Secretariat of Economic Development of Honduras, *Technical Report on Accountability* (December, 2017) (C-0018), pp. 21-22.

²⁹⁴ Secretariat of Economic Development of Honduras, *Technical Report on Accountability* (December, 2017) (C-0018), p. 4.

²⁹⁵ Redacción E&N. Honduras: Hernández to present ZEDE in March, in South Korea and the U.S. Strategy and Business (January 21, 2015) (C-0443), p. 3; “President Hernández after trip to the U.S.: “It was a very positive tour that projected Honduras in a regional context””, *El Informativo* (April 26, 2015) (C-0444), pp. 1-2; “Country Brand- Honduras is Exhibited in Louisiana” *Proceso Digital* (August 12, 2015) (C-0449); “Honduras: Supreme Court Rejects Appeal of Unconstitutionality Against ZEDE,” *Panam Post* (June 20, 2014) (C-0009), p. 3.

²⁹⁶ “Honduras: Hernandez to present ZEDEs in March, in South Korea and the U.S. USA”. *Strategy and Business* (January 21, 2015) (C-0443), p. 2. In 2016, when Honduras began to disseminate more information about the ZEDEs through the zede.gob.hn website, it did so through a public and open call, aimed at any interested promoter and not specifically the Claimants. Official website of the ZEDE (zede.gob.hn), “Requirements to be part of the ZEDE regime” (captured via Wayback Machine, Nov. 2016) (C-0451).

investment alternatives, informing the sites identified for their development. The magnitude and geographical diversity of this campaign – extended to Asia, North America, Europe, and Latin America – confirms its general nature and denies that it was directed at the Claimants²⁹⁷.

160. In short, this shows that the ZEDEs were part of a general policy of promoting foreign investment. Accordingly, the Claimants cannot claim that they were the object of a personalized invitation or representations specifically aimed at inducing their investment.

b. In 2014, the Claimants, on their own account, approached the Honduran entities to inquire about the investment possibilities in the ZEDEs

161. The Claimants contend that it was Honduras that approached Messrs. Brimen and Delgado in 2014 to personally invite them to invest in the ZEDEs²⁹⁸. However, their own testimonies belie that version.
162. Mr. Brimen states that since before 2014 he participated in the “Competitiveness and Enterprise Cities Project”, focused on the development of charter cities as a vehicle for economic growth²⁹⁹, and that in the same year he founded NeWAY Capital, a fund dedicated precisely to financing such projects and pursuing opportunities in “prosperity cities”³⁰⁰. He was looking for exactly that kind of opportunity when, according to his own account, he “learned” about the ZEDE Legal Framework when he was contacted by a Honduran businessman: “In late 2015, I was approached by a Honduran businessman who was seeking to establish a ZEDE and had heard about NeWay’s efforts in Arizona and that we were considering investments in special economic zones internationally.”³⁰¹
163. Mr. Delgado’s case is even more telling. He did not arrive in Honduras attracted by the ZEDEs, but by the REDs, a direct antecedent of the ZEDEs that was declared

²⁹⁷ “Ten companies are interested in building the ZEDEs.” *El Herald* (October 24, 2017) (C-0015), p. 1.

²⁹⁸ Claimants’ Memorial, ¶ 115.

²⁹⁹ Brimen-I, ¶¶ 9-11.

³⁰⁰ Brimen-I, ¶ 12.

³⁰¹ Brimen-I, ¶ 14.

unconstitutional³⁰². He himself confirms that in 2012 he signed a Memorandum of Understanding with COALIANZA to develop a RED, an experience that he describes as “disappointing”.³⁰³ His previous interest shows that his participation in the ZEDEs was the continuation of a pre-existing search, and not the response to a novel call from the Republic.

164. It was on the basis of the Claimants’ own expressions of interest that, between 2016 and 2017, meetings were held with members of the CAMP, an entity not representative of Honduras, to discuss the possible constitution of a ZEDE in the Bay Islands³⁰⁴. The Claimants assert – with no basis other than the statements of Messrs. Brimen and Delgado – that in those meetings they were made concrete promises about their investment or about the alleged legal stability of the ZEDE Legal Framework. The documents in the file confirm, on the other hand, that those meetings were intended to resolve the Claimants’ doubts about the constitution of a ZEDE.
165. Mr. Brimen himself admits that these alleged representations are based on mere “impressions”: he claims that the meetings left him with “a strong sense of confidence” and the impression that officials “seemed to sincerely believe that the ZEDEs could lift Honduras out of poverty and were committed to making the ZEDE regime work”³⁰⁵. Clearly, the personal impressions of an investor – today a Claimant – based on the expressions of members of an incompetent entity such as the CAMP, do not amount to a legal guarantee or representation on the stability of the ZEDE Legal Framework.
166. Moreover, the CAMP’s own statements during these exchanges dispel the expectations that the Claimants claim to have acquired during this period. In written response to Mr. Brimen’s and Mr. Delgado’s queries, the CAMP expressly warned that it was not speaking on behalf

³⁰² See Section II.A.2.

³⁰³ Delgado-I, ¶¶ 8-10; Memorandum of Understanding between Grupo de Desarrollos Especiales LLC and COALIANZA, September 4, 2012 (C-0457).

³⁰⁴ Brimen-I, ¶¶ 14-19; Delgado-I, ¶ 11-12.

³⁰⁵ Brimen-I, ¶ 17.

of the Government of Honduras and that its responses did not constitute binding interpretations of the ZEDE Law. An example of this is the communication of March 11, 2017, by virtue of which the CAMP clarified that “[it] cannot speak on behalf of the government of Honduras”,³⁰⁶ and that its responses should “be considered guidelines or the expectations we have on how those provisions in the ZEDE law should be interpreted”³⁰⁷. Thus, if the CAMP itself stated that it could not give a binding interpretation of the law, it could hardly have made any promise about the legal stability of the ZEDE Legal Framework.

167. The foregoing shows that the Claimants’ account of their inquiries into a possible investment in the ZEDEs is disconnected from reality. It is clear that at no point did the Claimants receive any invitation from a competent Honduran authority to establish a ZEDE in Honduras, and that even the CAMP itself clarified that it was not acting on behalf of the Government of Honduras. Hence, any representation that the Claimants claim to have acquired in the context of these discussions is of no value.

3. Próspera ZEDE was created in open contravention of the requirements established by the applicable Honduran legislation

168. The Claimants’ distorted account continues with the process of “creating” Próspera ZEDE. In their Memorial, they present their entry into the ZEDE regime as a linear history of growing commitments, in which each step would be a natural consequence of the previous one, at the end of which Próspera ZEDE would have been constituted in compliance with all legal requirements.³⁰⁸ That is profoundly disconnected from reality. As will be seen, **(3.a)** the development of Próspera ZEDE has as its precursor the irregular attempt by Mr. Delgado to establish a ZEDE with his company Haven Capital; and **(3.b)** the creation of Próspera ZEDE was carried out in open breach of the requirements established by the ZEDE Legal Framework.

³⁰⁶ CAMP. Letter to Erick Brimen re: ZEDE Law Interpretation Request (March 11, 2017) (C-0459), p. 4.

³⁰⁷ CAMP. Letter to Erick Brimen re: ZEDE Law Interpretation Request (March 11, 2017) (C-0459), p. 1.

³⁰⁸ Claimants’ Memorial, § II.C.3(a) and II.C.3(b).

a. The development of Próspera ZEDE has as a precursor the failure of Haven Capital—Mr. Delgado’s company—to establish a ZEDE

169. The Claimants’ story regarding the installation of Próspera ZEDE begins with the efforts made by Mr. Brimen and Mr. Delgado between 2016 and 2017. Specifically, the Claimants refer to an application submitted by Mr. Delgado to the CAMP, through his company Haven Capital, to create the “Haven Americas” ZEDE. According to them, this request would have been approved by the CAMP in June 2016, thus granting “a conditional authorization to develop a ZEDE” that would mean the creation of 4,500 jobs and an investment of USD 80 million.³⁰⁹ What the Claimants omit, however, is that this first attempt at a ZEDE failed because it was affected by a series of irregularities that would frustrate the minimum requirements.
170. *First*, and of course, “the conditional authorization” to which the Claimants refer was not even granted by the CAMP – an entity that, as has been shown, lacked any competence to create a ZEDE:³¹⁰ it was granted by an *ad hoc* group of members of the CAMP, not by the Standing Committee³¹¹. This group established that Haven had to prove within one year (until June 17, 2017): (i) a schedule for the execution of the project; and (ii) a collection of USD 14 million to start development³¹².
171. Haven, however, did not meet any of the conditions. On June 30, 2017, through Act No. 12, the CAMP formally declared the expiration of Haven’s authorization “because more than one year had elapsed and he had not complied with the requirements indicated in his certificate of provisional incorporation.”³¹³ Thus, even before initiating the procedure for the constitution of Próspera ZEDE, Mr. Delgado had already failed in his first attempt to

³⁰⁹ Claimants’ Memorial, ¶ 120, referring to Delgado-I, ¶¶ 10 and 12.

³¹⁰ See Section II.B.4.

³¹¹ CAMP. Certificate of Conditional Authorization for Entry into the ZEDE (Haven Americas) Regime (June 24, 2016) (C-0458), p. 1.

³¹² CAMP. Certificate of Conditional Authorization for Entry into the ZEDE (Haven Americas) Regime (June 24, 2016) (C-0458), p. 1.

³¹³ CAMP, Record No. 12 (June 30, 2017) (R-0164-SPA), p. 2.

establish a ZEDE.

172. *Second*, and notwithstanding the foregoing, the Claimants have contended that Próspera ZEDE would have “inherited” Haven Capital’s previous “work”. They point out that, on August 28, 2017—that is, two months after the expiration of Haven Americas was declared—Messrs. Brimen and Delgado incorporated HPI in Delaware to pursue their project to create Próspera ZEDE.³¹⁴ In this regard, Mr. Delgado claims to have “transferred” Haven’s work to Kayros, a company that, together with Mr. Brimen’s NeWay, he used to set up HPI, stating that “Kayros contributed the intellectual property covering my prior work, including the land negotiations, conditional approvals, and relationships.”³¹⁵ Neither he nor Memorial explains how “conditional approvals” that had already expired could be transferred: Haven had lost his authorization and had no rights under the ZEDE regime. The Memorial simply says nothing about it.
173. HPI then emerged as a new company without prior authorizations, with the capitalization structure that the Claimants themselves describe: NeWay, Mr. Brimen’s entity, contributed USD 1,250,000 in exchange for 68%; Mr. Delgado’s entity Kayros contributed USD 250,000 in cash plus intellectual property valued at USD 285,715 in exchange for 29%³¹⁶; and the third founding partner, Tristán Monterroso, a pastor and community organizer in Roatán, received 3%³¹⁷ —who would later be appointed Technical Secretary of Próspera ZEDE³¹⁸.
174. On December 15, 2017, HPI made its first and only real estate acquisition in Honduras, through Brimont Investments S.A.: a 4,717-acre parcel in Crawfish Rock, Roatán, for USD

³¹⁴ Claimants’ Memorial, ¶ 125; Delgado-I, ¶ 22.

³¹⁵ Delgado-I, ¶ 22.

³¹⁶ Sociedad para el Desarrollo Socioeconómico de Honduras, LLC. Limited Liability Company Operating Agreement (June 30, 2018) (C-0019), p. 54; Delgado-I, ¶ 22.

³¹⁷ Sociedad para el Desarrollo Socioeconómico de Honduras, LLC. Limited Liability Company Operating Agreement (June 30, 2018) (C-0019), p. 54; Delgado-I, ¶ 22.

³¹⁸ See Section II.C.4.a.

225,000³¹⁹. It was under these conditions that the Claimants would turn again to the CAMP and seek to create Próspera ZEDE in complete disregard of the requirements established in the ZEDE Legal Framework.

b. The Claimants did not meet the legal requirements to establish Próspera ZEDE

175. The Claimants’ narrative continues with what they call the “certification [of] the constitution” of Próspera ZEDE.³²⁰ The Claimants focus their account on their interactions with the CAMP, an entity that would have accepted the creation of their project in accordance with the document “Requirements to be part of the ZEDE regime” of November 14, 2016³²¹. As can be seen, the story presented by the Claimants is fundamentally different from what the ZEDE Legal Framework required for the creation of a ZEDE. The fact is that the Claimants never met the necessary requirements to create Próspera ZEDE in accordance with Honduran law.
176. *First*, as noted above³²², Article 329 of the Honduran Constitution provided that the creation of the ZEDes was an exclusive attribution of the National Congress by a qualified majority of its members. The same was reiterated by the ZEDE Organic Law in its article 38, specifying the need to have a legislative decree of Congress, regardless of the population density of the area.³²³ In fact, in accordance with the peremptory requirements of the applicable legislation, the creation of Próspera ZEDE should have been approved by two-thirds of the National Congress.
177. It is an undisputed fact that the Claimants never obtained such approval. None of the steps referred to by the Claimants relating to the creation of Próspera – the preparation of a

³¹⁹ Deed of sale of 4,717 acres by Brimont Investments S.A. to Loma de Obos S.A., December 15, 2017 (C-0463), pp. 1-9.

³²⁰ Claimants’ Memorial, § II.C.3(b).

³²¹ Claimants’ Memorial, ¶ 129, regarding *Requirements to Be Part of the ZEDE Regime*, ZEDE (November 14, 2016) (C-0451).

³²² See Section II.B.4

³²³ See Section II.B.4.

feasibility study, the implementation of a master plan, and the submission of those documents to the CAMP –³²⁴ are even aimed at obtaining it. The reason is obvious: the Claimants were fully aware that they had no way of obtaining such approval for their project. As we have seen, social and political opposition was always present, even before their installation, which only grew as their project gained greater visibility.³²⁵ They knew, in effect, that Próspera ZEDE would not survive the deliberation of Congress, thus failing to comply with the only democratic safeguard conceived by the ZEDE Legal Framework.

178. Faced with this difficulty, in their pleadings the Claimants try to circumvent the foregoing by arguing that, in reality, the National Congress would have intervened in the approval of Próspera ZEDE through the enactment of Decree No. 120-2013, that is, the ZEDE Organic Law. They indicate that, by virtue of Article 39 of that regulation, it was established that “the areas with low population density of the municipalities located in the departments adjacent to the Gulf of Fonseca and the Caribbean Sea” were “subject to this [ZEDE] regime.”³²⁶ In their view, the National Congress would have exercised its powers in accordance with Article 329 of the Constitution, allowing ZEDE projects to be established in municipalities adjacent to the Gulf of Fonseca and the Caribbean Sea, such as Roatán and La Ceiba, where Próspera *de facto* operates – without the need for additional legislative approval³²⁷.

179. Again, the Claimants’ interpretation contradicts the literal meaning of the ZEDE Legal

³²⁴ Claimants’ Memorial, ¶¶ 132-135.

³²⁵ See Section II.C.1.

³²⁶ ZEDE Law, art. 39 (C-0006).

³²⁷ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 43. See also Claimants’ Memorial, ¶ 70 (“[...] *Creation*. In line with the Constitution, the ZEDE Law establishes that Congress may create ZEDes in areas of both low and high population density and that the indicated areas are declared subject to the ZEDE regime without the need for a vote in Congress. Specifically, Article 39 immediately subjects to the ZEDE regime the areas with low population density of the municipalities contiguous to the Gulf of Fonseca and the Caribbean Sea [...].”); Cosenza-I, ¶ 68 (“In line with the foregoing, by means of Article 39 the National Congress declared directly subject to the ZEDE Regime the areas of low population density of the municipalities located in contiguous departments [...]. Article 39 of the Organic Law thus operated as an act of the National Congress itself to affect these areas to the ZEDE Regime, without the need for a new legislative decree.”).

Framework. The fact that, by virtue of Article 39 of the ZEDE Organic Law, municipalities with low population density in certain departments are “declared subject” to the ZEDE regime did not exclude the need for each ZEDE to be approved by the Congress in particular. Thus, the act of “declaring subjects” – which Congress supposedly carried out when approving Article 39 in question – was different from the act of “creating” a ZEDE. Hence, Article 329 of the Constitution coherently provided that “the creation of an area subject to a special regime is the exclusive attribution of the National Congress”.³²⁸

180. Moreover, the Claimants’ interpretation does not find any basis in legislative history either. In this sense, the intervention of Mr. Ebal Jaír Díaz is once again clarifying, who makes it crystal clear that, by approving the ZEDE Organic Law, the parliamentarians were not creating any particular ZEDE: that would be an eventual, future and independent legislative act:

Attorney Ebal Jaír Díaz, Advisor to the National Congress said: Thank you Mr. President, effectively Article 294 says that the national territory is divided into departments, municipalities [...] **If in the future the National Congress wishes to authorize the creation of an agroforestry district**, for example, there we would be covering the extension of several municipalities [...] **let’s not forget that this is an Organic Law that establishes the general parameters**, so putting that type of element could be counterproductive **in the future when the le|special r|egímenes are already created, at this time none are being created**, simply the general rules under which these [ZEDEs] are going to operate, thank you very much³²⁹.

181. The above clarifies any regulatory ambiguity. It is clear that by approving the ZEDE Organic Law, the National Congress was not abdicating – nor could it have done so – its power to approve the creation of any ZEDE by a qualified majority of its members, much less delegating it to the CAMP. Any reading to the contrary is nothing more than a gross misrepresentation of what was provided for in Article 329 of the Constitution.
182. *Second*, even assuming that Article 39 of the Organic Law exempted the areas located in the

³²⁸ Constitution of Honduras, 1982, with amendments until 2013, dated March 20, 2013 (C-0004), art. 329.

³²⁹ Congreso Nacional, Acta No. 24 (June 10, 2013) (R-0136-SPA), pp. 216-217.

municipalities of the departments adjacent to the Gulf of Fonseca and the Caribbean Sea from being approved by the National Congress, Próspera ZEDE would have also failed to comply with the requirements of the Legal Framework.

183. As we have seen, Article 39 of the ZEDE Organic Law declared “subject to the ZEDE regime the areas with low population density of the municipalities located in the Departments contiguous to the Gulf of Fonseca and the Caribbean Sea”.³³⁰ However, the same regulation established that the “National Institute of Statistics (INE) should issue a list of areas with low population density located within these Departments.”³³¹ It follows that not every piece of land located in those departments automatically qualified as a ZEDE: the designation applied only to those areas that the INE identified as having low population density in the relevant list.
184. This list, however, was *never* prepared by the INE. To date, the existence of the list that the INE was required to issue as expressly required by Article 39 of the ZEDE Organic Law has not been demonstrated. Moreover, none of the more than 800 documents annexed to their Memorial allows it to be maintained that the Claimants have even submitted a formal request addressed to the INE aimed at obtaining the required list or population density opinion. The “approval” of the Próspera ZEDE itself does not contain any mention of the identification of an area of low population density, despite being an unavoidable requirement³³². In these circumstances, Próspera ZEDE could not have been exempted from being approved by a qualified majority of the National Congress, an issue that the Claimants never complied with

³³⁰ ZEDE Law (C-0006), art. 39.

³³¹ ZEDE Law (C-0006), art. 39.

³³² CAMP, Minute No. 17 (December 29, 2017) (C-0464). The only document issued by the INE that the Claimants provide is an opinion of the INE of 31 August 2015 that is limited to defining the concept of low population density. However, the existence of a definition does not confirm that the Próspera ZEDE is located in such an area: the document does not mention the Claimants, Roatán, Village of North Bay or Próspera. See National Institute of Statistics, Opinion (August 31, 2015) (C-0664) (“In applicability to this concept, according to the 2013 National Population and Housing Census, carried out by the National Institute of Statistics (INE), all rural areas below the average of 35.0 inhabitants per square kilometer, will be considered areas of low population density.”).

and never attempted to comply with.

185. In short, the Claimants did not comply with the requirements established by the ZEDE Legal Framework for the constitution of the Próspera ZEDE. The National Congress never approved its creation, thus violating the requirements of Article 329 of the Constitution. The only “approval” obtained by the Claimants was issued by the CAMP, an entity not representative of the State of Honduras that usurped the functions of the National Congress.

4. Even though it was in open contravention of the ZEDE Legal Framework, Próspera operated in Honduras incurring multiple irregularities, conflicts of interest, violations of legal regulations, and ignoring the warnings of its own advisors

186. Notwithstanding the fact that the creation of Próspera ZEDE was carried out in complete contravention of the requirements established in Article 329 of the Constitution, as well as Article 38 of the ZEDE Organic Law, the Claimants continued with their operations.
187. In their Memorial, the Claimants construct the narrative of a promising business, based on alleged commitments and express statements by representatives of the Republic³³³, and present in that light all the actions deployed for the start of operations of Próspera ZEDE³³⁴. What they omit is that these operations were surrounded by irregularities, insurmountable conflicts of interest, and clear violations of the legal protections of the communities in the area and the environment.
188. As will be seen below, **(4.a)** the Technical Secretary appointed for Próspera ZEDE had a direct interest in the project and a close relationship with Mr. Brimen; **(4.b)** the reform of the Charter of Próspera ZEDE was carried out to take advantage of the financial crisis of the CAMP; **(4.c)** Próspera ZEDE operated in Roatán in violation of environmental and human rights protections; and, in short, **(4.d)** Próspera ZEDE ignored the warnings of its own advisors, which finally prevented real investments in Próspera from materializing.

³³³ Claimants’ Memorial, ¶¶ 101-113.

³³⁴ Claimants’ Memorial, § II.C.3.

a. The Technical Secretary appointed for Próspera ZEDE had direct interests in the project and a close relationship with Mr. Brimen

189. On June 27, 2018, HPI nominated Mr. Tristán Monterroso as Technical Secretary of Próspera ZEDE³³⁵. Under the ZEDE Law, the Technical Secretary is the highest-ranking executive officer and legal representative of the ZEDE, responsible, among other functions, for supervising compliance with the ZEDE Legal Framework and signing legal stability agreements³³⁶. A person so closely linked to the Claimants was not suitable for that position.
190. The Claimants contend that Mr. Monterroso was suitable because he was “a native of Roatán, where he was also a pastor with strong ties to the community” and, according to Mr. Brimen, “an honorable person”.³³⁷ They add that, in order to preserve his neutrality despite his minority stake in HPI, “Mr. Monterroso agreed to place his minority shareholding in HPI in a blind trust”.³³⁸ They do not provide any evidence of that trust, beyond Mr. Brimen’s testimony, nor do they explain how a “blind trust” would guarantee objectivity: even if Mr. Monterroso did not agree to the movements of his participation, he retained a personal interest in its performance, which made him unsuitable for the position.
191. Added to this is the close relationship between Mr. Monterroso and Mr. Brimen, which the Claimants shamelessly minimize. The Memorial describes him as a simple childhood acquaintance, but omits that they attended high school together until 2002 in Virginia,³³⁹ in the United States, and that Mr. Brimen himself (born Erick Briceño) described him, in the 2002 graduation yearbook, as **a brother**:

Erick Briceño Marquez: [...] Parting Words: [...] Tristan, **what can I say, you are like a brother to me, you were here when I needed you the most and I will never forget that**, it has been an honor working with you for the past three years. I’m proud of you! Don’t get lost, study hard and

³³⁵ CAMP, Minutes No. 24 (May 21, 2018 - July 4, 2018) (R-0179-SPA).

³³⁶ ZEDE Law (C-0006), art. 12.

³³⁷ Claimants’ Memorial, ¶ 142.

³³⁸ Brimen-I, ¶ 44.

³³⁹ Hargrave Military Academy Yearbook (2002) (R-0084-SPA), pp. 22, 26.

do your best and you'll get to (*sic*) the top of the world (God willing). I'll miss you!³⁴⁰

192. Despite his obvious conflicts of interest, the CAMP appointed Mr. Monterroso as Technical Secretary of Próspera ZEDE on July 4, 2018, the date on which the statutes and regulations of the ZEDE were also approved³⁴¹. That appointment was orchestrated by Mr. Brimen himself, who nominated him for the position in June 2018³⁴².
193. Under this clear conflict of interest, and as we will have the opportunity to see, Mr. Monterroso carried out questionable actions, such as the signing of the alleged Legal Stability Agreement (the “LSA”).

b. The reform to the Charter of Próspera ZEDE substantially expanded its governance framework, taking advantage of the financial crisis of the CAMP

194. The Claimants allege that in August 2019 Honduras and the CAMP also supported the amendment of the Charter of Próspera ZEDE (“**Amended Charter**”) and the renaming of “Village of North Bay” to “Próspera”.³⁴³ They omit, again, that since the beginning of 2019 the CAMP had been going through a financial crisis that even led to the suspension of salaries and prevented it from supervising (if there was ever the will to do so) the ZEDEs, a decisive circumstance given the magnitude of the reform³⁴⁴.
195. The Memorial also fails to mention that the reform was not a minor adjustment, but a complete reformulation of Próspera ZEDE’s governance framework, which substantially expanded the powers of its private bodies and established a regime incompatible with human rights guarantees³⁴⁵. Processed in the midst of the weakening of the CAMP – and, therefore, under a supervision that is at least deficient – the reform allowed the incorporation of

³⁴⁰ Hargrave Military Academy Yearbook (2002) (R-0084-SPA), pp. 138-139.

³⁴¹ CAMP, Record No. 25 (July 4, 2018 - August 16, 2018) (R-0180-SPA); CAMP, Record No. 26 (August 16, 2018 - September 26, 2018) (R-0181-SPA), p. 236.

³⁴² Claimants’ Memorial, ¶ 142.

³⁴³ Claimants’ Memorial, ¶¶ 165-167.

³⁴⁴ CAMP, Minutes No. 30 (December 31, 2018 – January 31, 2019) (R-0183-SPA).

³⁴⁵ Charter & Bylaws of Próspera ZEDE, (CLA-0005).

arbitrary provisions such as the following.

196. *First*, the Amended Charter concentrated institutional power in the “Promoter and Organizer”—that is, HPI—³⁴⁶by empowering him to appoint on his own half of the members of the Council of Próspera, to the detriment of all democratic governance³⁴⁷. This was confirmed by Article 2.02, which assigned the vote of the owners at the rate of *one vote per square meter*, which concentrated power in HPI, the largest landowner and arbiter of those who accessed Próspera³⁴⁸.
197. *Second*, although the Amended Charter provided for a human rights ombudsman, its constitution was subject to multiple conditions, such as that the ZEDE reach a thousand natural person residents³⁴⁹.
198. *Third*, and particularly grave, the Amended Charter authorized Próspera to establish and control exclusively its own security entities—“police, criminal investigation bodies, intelligence services, criminal prosecution, and penitentiary system”—³⁵⁰and subordinated the actions of the Honduran security forces to an exclusive agreement with Próspera³⁵¹.
199. In a clear attack on sovereignty, they empowered it to exercise police, justice and law enforcement functions and regulate activities “both within and outside its boundaries”³⁵² for health and safety reasons, even going so far as to restrict freedom of expression by prohibiting any act of support for the repeal or amendment of articles 294, 303 or 329 of the Constitution or the ZEDE Organic Law “in any manner that is intended to diminish the public policy autonomy of Próspera from any Non-Próspera Governing Body”.³⁵³
200. The Claimants therefore took advantage of the CAMP crisis to amend the Charter of

³⁴⁶ Charter & Bylaws of Próspera ZEDE, (CLA-0005), art. 1.02(15).

³⁴⁷ Charter & Bylaws of Próspera ZEDE, (CLA-0005), arts. 1.02(15) and 3.08(1).

³⁴⁸ Charter & Bylaws of Próspera ZEDE, (CLA-0005), art. 6.02.

³⁴⁹ Charter & Bylaws of Próspera ZEDE, (CLA-0005), art. 9.03 (1).

³⁵⁰ Charter & Bylaws of Próspera ZEDE, (CLA-0005), arts. 10.01 and 10.02.

³⁵¹ Charter & Bylaws of Próspera ZEDE, (CLA-0005), art. 10.02.

³⁵² Charter & Bylaws of Próspera ZEDE, (CLA-0005), art. 2.04(10)-(11).

³⁵³ Charter & Bylaws of Próspera ZEDE, (CLA-0005), art. 12.01(2)(c)(iii)(V).

Próspera ZEDE and incorporate powers contrary to the territorial sovereignty of Honduras and basic human rights, such as freedom of expression.

c. Próspera ZEDE operated in Roatán in violation of the communities' environmental and human rights protections, which enjoy enhanced protection

201. The Claimants offer an idealized narrative of their relationship with local communities, especially Crawfish Rock, portraying Próspera as the savior of a community allegedly abandoned by the state³⁵⁴.
202. This narrative omits conduct widely documented by international organizations, human rights organizations, and national and international media, which shows that the installation and operation of Próspera ZEDE caused serious environmental damage, violations of the rights of indigenous peoples and Afro-descendants, and intimidation and social division.
203. As shown below, Próspera ZEDE presented irregularities since its constitution in Roatán and seriously affected the area: **(c.i)** it was installed in an ecologically sensitive and legally protected area; **(c.ii)** caused environmental damage; and **(c.iii)** violated the right to prior consultation of the Crawfish Rock community.

i. Próspera ZEDE was installed in an ecologically sensitive area and under legal protection

204. Crawfish Rock, located north of the island of Roatán in the Bay Islands, is surrounded by reefs that make up the Mesoamerican Reef System — the second largest in the world, stretching from Mexico to Honduras and home to more than 60 types of coral and more than 500 species of fish³⁵⁵. It also has more than ten hectares of mangrove swamps that constitute the first line of defense against reef sedimentation, attenuating waves and reducing the risks of flooding and coastal erosion.
205. Due to its ecological importance, the area is classified as completely restricted by the Special

³⁵⁴ Claimants' Memorial, ¶¶ 16-17, 198-199.

³⁵⁵ Western Caribbean. Coral Reef Alliance (R-0078-SPA).

Law of the Protected Areas of the Bay Islands. Article 4, paragraph 2, subsection B, provides that in these areas “*human intervention shall be completely restricted, except for those activities related to scientific research and environmental education*”³⁵⁶ so that human occupation, creation of aquatic lots or commercial exploitation are not permitted. The Claimants completely ignored this protection, both in the initial discussions and in their Development Progress Reports.

206. The High Court of Accounts (“TSC”) itself had already stressed the need to protect the Crawfish Rock mangroves and prevent abusive logging and development, given their scientific and landscape interest, in relation to an ecological project in Pristine Bay³⁵⁷, adjacent to the Claimants’ project. The TSC concluded that the environmental management of the Ministry of Natural Resources and Environment (“SERNA”) in Roatán had been “inadequate and insufficient” and that the lack of monitoring resources allowed both the State and the private sector to act “outside the law, generating environmental pressure on ecosystems.”³⁵⁸

ii. Próspera ZEDE has caused serious environmental damage in the area

207. The construction works of Próspera have been denounced by the Alternative of Community and Environmental Reclamation of Honduras (“ARCAH”) for being located a few meters from the coral reef³⁵⁹.
208. Crawfish Rock community leader Venessa Cardenas has stated that the massive deforestation carried out by Próspera destroyed the forests that retained rainwater and

³⁵⁶ Special Law on Protected Areas of the Bay Islands (Decree No. 75-2010) (July 26, 2010) (**R-0094-SPA**), art. 4, paragraph 2, subsection B.

³⁵⁷ Superior Court of Accounts of Honduras, Report No. 006-2012-DARNA-SERNA-A, Environmental Management Audit on Environmental Sanitation of the Island of Roatan, Bay Islands (2012) (**R-0099-SPA**), pp. 27-29.

³⁵⁸ Superior Court of Accounts of Honduras, Report No. 006-2012-DARNA-SERNA-A, Environmental Management Audit on Environmental Sanitation of the Island of Roatan, Bay Islands (2012) (**R-0099-SPA**), p. 45.

³⁵⁹ “ARCAH denounces extreme damage to the Roatan forest by Próspera”, *Criterio.hn* (October 13, 2022) (**R-0240-SPA**). See also “Honduras: Zones of Employment and Economic Development (ZEDE) and their impacts on human rights,” *Business and Human Rights Resource Centre* (September 30, 2024) (**R-0256**).

caused, for the first time in more than a hundred years, flooding in the community; that wildlife lost their habitat; that mud from the removal of soil reached the sea and affected the reefs and marine life on which the community depends; and that logging heat and diseases such as dengue fever increased³⁶⁰.

209. The Ministry of Natural Resources and Environment (“**SERNA**”) reported that there is no environmental license registration for the Duna Residences project³⁶¹. In view of this, the current Technical Secretary of Próspera, Jorge Colindres, exhibited an “environmental permit” issued by the ZEDE itself, invoking Article 329 of the Constitution³⁶². In other words, Próspera granted its own environmental license, without the intervention of the state authorities and ignoring the legislation that protected the area.
210. According to CESPAD’s analysis, Próspera has operated in total environmental impunity, since the ZEDE Organic Law allowed it to dictate its own regulatory frameworks – including environmental ones – and, thus, circumvent national environmental legislation³⁶³.

iii. Próspera ZEDE violated the human rights of the Crawfish Rock community

211. Although the Claimants assert throughout the Memorial that they had the support of the communities³⁶⁴, there is no evidence in the record of formal consultations at Crawfish Rock.
212. In mid-2018, HPI had interactions with local mayors that differ markedly from unrestricted support. In August 2018, the mayor of La Ceiba, Jerry Sabio, wrote to Mr. Brimen offering support and inviting him to develop a ZEDE in the Port of Satuyé³⁶⁵; in early 2019, the

³⁶⁰ Statements by Luisa Connor before the IACHR (November 15, 2024) (**R-0257-SPA**). *See also* Statements by Venessa Cárdenas before the IACHR (November 15, 2024) (**R-0258-SPA**).

³⁶¹ “SERNA did not extend environmental permit to Duna Residences in Próspera ZEDE”, *Criterio.hn* (August 26, 2023) (**R-0248-SPA**), p. 2.

³⁶² “SERNA did not extend environmental permit to Duna Residences in Próspera ZEDE”, *Criterio.hn* (August 26, 2023) (**R-0248-SPA**), p. 3.

³⁶³ CESPAD. “Employment and Economic Development Zones (ZEDEs): The Crawfish-Roatan Próspera Case” (October 13, 2021) (**R-0226-SPA**), pp. 50-51; CESPAD. “Without being in the political debate, environmental conflict advances due to the ZEDE in Crawfish Rock, Roatán ” (November 8, 2023) (**R-0251-SPA**).

³⁶⁴ Claimants’ Memorial, ¶¶ 155-158.

³⁶⁵ Claimants’ Memorial, ¶ 156; Letter from the Mayor of La Ceiba to Erick Brimen (August 14, 2018) (**E-0020**).

mayor of Roatán sent a letter of support³⁶⁶, followed in April by another from the governor of the Bay Islands³⁶⁷. The Claimants present these gestures as “a multi-level State effort to welcome the investment” which would have led them to rely on that alleged State support³⁶⁸.

213. The content of these communications does not support such a statement either: none were accompanied by formal agreements, budget allocations, or infrastructure commitments, but were mere invitations from municipal leaders to learn about possible investment sites³⁶⁹.
214. The Claimants further claim to have received the support of the Crawfish Rock community in those first interactions and even to have carried out consultations, [REDACTED] [REDACTED]. However, they provide no evidence of such consultations other than the testimony of Mr. Brimen or [REDACTED] confirming that the alleged community support was not as described and that their entry into the area was not coordinated with the relevant communities.
215. The Crawfish Rock community is mostly made up of English-speaking people of African descent, whose ancestors were brought to the Bay Islands between the 18th and 19th centuries. In 1859, through the Wyke-Cruz Treaty, Honduras made a commitment to Great Britain to respect the property of the inhabitants of the islands and not to cede them to any other State. This international obligation, in force for more than a century before the creation of the ZEDEs, is especially relevant in the face of the installation of Próspera in that territory³⁷².

³⁶⁶ Claimants’ Memorial, ¶ 157; Letter from the Mayor of Roatan to Erick Brimen (March 22, 2019) (E-0024).

³⁶⁷ Claimants’ Memorial, ¶ 158; Letter from the Governor of the Bay Islands to Erick Brimen (April 1, 2019) (E-0025).

³⁶⁸ Claimants’ Memorial, ¶ 155.

³⁶⁹ See Letter from the Mayor of La Ceiba to Erick Brimen (August 14, 2018) (E-0020); Letter from the Mayor of Roatan to Erick Brimen (March 22, 2019) (E-0024); Letter from the Governor of the Bay Islands to Erick Brimen (April 1, 2019) (E-0025).

³⁷⁰ Claimants’ Memorial, ¶¶ 159-160; see also [REDACTED] Brimen-I, ¶ 56.

³⁷¹ Brimen-I, ¶ 56; [REDACTED]

³⁷² Wyke-Cruz Treaty between the United Kingdom and the Republic of Honduras (28 November 1859) (R-0074-SPA).

216. For this reason, Crawfish Rock enjoys multiple levels of protection³⁷³. In particular, the Property Law (Decree 82-2004) recognizes “*the right that indigenous and Afro-Honduran peoples have over the lands they traditionally own*” and requires collective titling in favor of the communities³⁷⁴.
217. At the international level, Crawfish Rock is protected, as an Afro-descendant people, by ILO Convention 169, ratified by Honduras in 1996, whose articles 6 and 7 enshrine the right to prior, free and informed consultation on any legislative or administrative measure that affects their lands, territories, and resources³⁷⁵. In accordance with Articles 16 to 19 of the Constitution³⁷⁶, this Agreement has supralegal status, above any other norm, including the entire ZEDE Legal Framework.
218. In addition, on two occasions, the Inter-American Court of Human Rights has imposed binding obligations on Honduras in terms of prior consultation and ancestral territories of indigenous and tribal peoples³⁷⁷. Various international organizations have expressed their concern about the potential human rights violations derived from Próspera ZEDE. On June 8, 2021, the United Nations System in Honduras warned that the “*ZEDEs could pose serious risks to the guarantee of human rights by the State of Honduras*”³⁷⁸ pointing out, among other reasons, the high density of indigenous and Afro-descendant populations in the affected areas, the lack of prior consultation, the lack of protection of the right to land, the deregulation and possible privatization of public services and the disproportionate impact on

³⁷³ See, for example, Constitution of Honduras, 1982, with amendments up to 2013, dated March 20, 2013 (C-0004), art. 346.

³⁷⁴ Property Law (Decree No. 82-2004) (2004) (R-0086-SPA), art. 93.

³⁷⁵ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (entry into force) (5 September 1991) (RLA-0137-SPA), arts. 6 and 7.

³⁷⁶ Constitution of Honduras, 1982, with amendments until 2013, dated March 20, 2013 (C-0004), arts. 16 to 19.

³⁷⁷ Inter-American Court of Human Rights, *Case of Garifuna Community Triunfo de la Cruz and its Members v. Honduras*, Judgment (October 8, 2015) (R-0154-SPA), ¶¶ 100-104.

³⁷⁸ United Nations in Honduras, *Press Release: ZEDEs Could Pose Serious Risks to the Honduran State's Guarantee of Human Rights* (June 8, 2021) (R-0022-SPA).

Afro-descendant communities³⁷⁹. The ILO, for its part, has launched an investigation into the ZEDEs for the persecution and murder of indigenous and Afro-descendant leaders who oppose the project³⁸⁰.

219. Despite this robust protection framework, the installation of Próspera ZEDE was carried out without prior, free, and informed consultation with the affected indigenous and Afro-descendant communities. The Memorial does not allege that it carried out any consultation process in accordance with ILO Convention 169, in direct violation of internationally recognized rights.
220. Próspera ZEDE also violated other fundamental rights of the community, such as the right to water. The Claimants claim to have provided drinking water to Crawfish Rock as part of their social development efforts³⁸¹, but the documented reality is different. According to public complaints and testimonies of its inhabitants, Próspera appropriated the community's water reserve and diverted the underground watershed that supplied it. Before, the neighbors were supplied by a community well at a reasonable cost; after Próspera's intervention, they had to pay the company itself for a resource that always belonged to them³⁸².
221. The inhabitants who have demonstrated against Próspera ZEDE have been threatened, intimidated and even victims of attacks. The Black Fraternal Organization of Honduras (OFRANEH) denounced that envoys from Próspera "*terrorize Crawfish Rock*," a complaint reiterated by community leader Luisa Connor of the Crawfish Rock community³⁸³. Residents were threatened with expropriation of their land if they did not support the project, and

³⁷⁹ United Nations in Honduras, *Press Release: ZEDEs Could Pose Serious Risks to the Honduran State's Guarantee of Human Rights* (June 8, 2021) (**R-0022-SPA**).

³⁸⁰ "Honduras: Zones of Employment and Economic Development (ZEDE) and their impacts on human rights", Business and Human Rights Resource Centre (30 September 2024) (**R-0256-SPA**).

³⁸¹ Claimants' Memorial, ¶ 17; Brimen-I, ¶ 52.

³⁸² "Crawfish Rock: Between Government Abandonment and the Threat of Expropriation by ZEDE Facility," *Criterio.hn* (November 6, 2020) (**R-0202**), pp. 12-14. See also Statements by Venessa Cárdenas before the IACHR (November 15, 2024) (**R-0258-SPA**) (28:51-29:40); Statements by Luisa Connor before the IACHR (November 15, 2024), (**R-0257-SPA**) (09:56-13:09).

³⁸³ "Envoys from Próspera Terrorize Crawfish Rock: Ofrañeh," *Report Without Fear* (December 9, 2023) (**R-0252**), p. 2; Statements by Luisa Connor before the IACHR (November 15, 2024), (**R-0257-SPA**), (1:06:02-1:07:07).

several feared losing their land after parts of Crawfish Rock appeared in plans for later stages posted on Próspera’s website. In 2023, community leader Venessa Cárdenas was attacked and seriously injured by hitmen during a meeting convened to denounce human rights violations³⁸⁴. OFRANEH denounces that several leaders of the Garifuna communities have suffered persecution, threats and intimidation by people linked to the ZEDEs³⁸⁵.

222.

[REDACTED]

[REDACTED]

d. The Claimants ignored the risks warned against in the 2019 EY Report and, furthermore, failed to effect any real investments in Próspera ZEDE.

223. It was also during this process that EY delivered to the Claimants, in July 2019, its final report on “Project Oasis”, to evaluate the business model and the potential expansion to the ZEDE.³⁸⁷ The Claimants repeatedly invoke this study to confirm the viability of the project – the so-called “Shenzhen of the Caribbean” –³⁸⁸ but a full reading reveals that EY clearly identified the political and legal risks threatening the ZEDE regime and the expansion into La Ceiba, which the Claimants ignored.
224. In effect, EY warned that Honduras was not “politically stable” and constituted a “hybrid regime,”³⁸⁹ and described the ZEDE Legal Framework as a “vulnerable” legislation that “can potentially be a problem if a radical change in the current government occurs.”³⁹⁰ For this reason, it insisted on ensuring legal protection for more than 30 years to “stay ahead of

³⁸⁴ “Prospera Envoys Terrorize Crawfish Rock: Ofrañeh,” *Report Without Fear* (December 9, 2023) (R-0252); See also “Prospera ZEDE expands its territory in Roatan despite unconstitutionality ruling,” *Criterio.hn* (May 21, 2026) (R-0272-SPA); “Prospera ZEDE, the anarcho-capitalist project that has stealthily taken over 3% of the island in the Honduran Caribbean,” *Criterio.hn* (August 9, 2023) (R-0246-SPA).

³⁸⁵ “Prospera Envoys Terrorize Crawfish Rock: Ofrañeh,” *Report Fearless* (December 9, 2023) (R-0252), p. 7.

³⁸⁶ Claimants’ Memorial, ¶ 17; [REDACTED]

³⁸⁷ EY (Ernst & Young) Project Oasis Final Report (July 2019) (E-0322).

³⁸⁸ Claimants’ Memorial, ¶ 169; NeWAY, Roatán-La Ceiba as the Hong Kong-Shenzhen of the Caribbean, (C-0470), pp. 1-4.

³⁸⁹ EY (Ernst & Young) Project Oasis Final Report (July 2019) (C-0322), pp. 51, 73-75.

³⁹⁰ EY (Ernst & Young) Project Oasis Final Report (July 2019) (E-0322), p. 110.

political instability” and to hold “conversations with all members of the political parties.”³⁹¹

225. Despite these clear risks, during 2019 the Claimants set out to contact potential investors, efforts that the Memorial presents as evidence of a booming project that attracted “world-class investors” and generated “expressions of interest from dozens of companies around the world”.³⁹² The reality is very different.
226. An examination of the documents submitted as evidence of this “global interest” shows that the alleged commitments of the “*world-class investors*” were, strictly speaking, letters of interest and memorandums of understanding that were expressly non-binding, that did not generate any obligation, and that never translated into real investments.
227. Thus, on February 4, 2019, Mr. Delgado signed a letter of interest with Hover Racing Grand Prix to organize a manned drone race in Roatán, which the Memorial exhibits as a business development activity³⁹³. The document itself clarifies that it is “a non-binding invitation to engage in further good faith negotiations towards final and binding joint venture agreement”.³⁹⁴ The race never took place.
228. Likewise, on March 13, 2019, the Claimants signed a Memorandum of Understanding with Allied Global Services, which they present as an investment commitment of USD 5 million and 1,000 jobs. The document reveals, instead, a non-binding commitment, conditional on Allied Global determining commercial viability within 90 days³⁹⁵. The Claimants do not prove that this investment materialized.
229. Another case occurs with the December 2019 business plan for Próspera Medical Center, in partnership with CEMESA, described as a potential investment of close to USD 15 million.

³⁹¹ EY (Ernst & Young) Project Oasis Final Report (July 2019) (E-0322), p. 110.

³⁹² Claimants’ Memorial, ¶ 190.

³⁹³ Claimants’ Memorial, ¶ 193.

³⁹⁴ Letter of Interest between NeWAY (via HPI) and Hover Racing Championship (February 4, 2019) (C-0498), p. 2.

³⁹⁵ Memorandum of Understanding between NeWAY (through HPI) and Allied Global Services (March 13, 2019) (C-0499), p. 2.

The evidence is reduced to a 27-page commercial presentation with market projections, architectural models, and financial estimates, with no commitment to any financing – neither from CEMESA nor from third parties.³⁹⁶

230. The Claimants also rely on the September 2020 contract with Jacobs Engineering for urban operations and facilities management services at the Port of Satuyé³⁹⁷, which they describe as a “key partner”.³⁹⁸ They omit that Jacobs was not an investor, but a contractor paid for a professional service, with no proven intention of providing its own capital³⁹⁹.
231. In short, throughout 2019 and 2020 the Claimants accumulated non-binding documents to explore business in the ZEDE, none of which resulted in real investments from third parties⁴⁰⁰.
232. In the absence of actual, large-scale capital commitments, the Memorial resorts to four companies that would have “started operations” in the ZEDE between 2019 and 2021 as a sign of their prosperity⁴⁰¹.
233. The first, Circular Factory – described by the Claimants as a company of “micro-factories specialized in computational technologies and advanced manufacturing” –⁴⁰² was still “under development” according to the 2022 Development Progress Report itself⁴⁰³. Mr. Brimen acknowledges that, after opening in 2023, “it has been unable to operate fully” and that “HPI has been purchasing its output (e.g., cabins for hotel inventory) to keep it afloat”.⁴⁰⁴ The main company attracted to the ZEDE has thus operated as an internal subsidy of HPI.

³⁹⁶ Honduras Próspera, Próspera Medical Center (C-0503), p. 4.

³⁹⁷ Jacobs Engineering, Proposal for City Operation and Facility Management Services – Start-Up Phase (updated as of September 4, 2020) (C-0493).

³⁹⁸ Claimants’ Memorial, ¶ 184.

³⁹⁹ Port of Satuyé Nearshoring Hub, Infrastructure Master Plan 2022 (C-0540), p. 4; Murcott, ¶¶ 15-17.

⁴⁰⁰ See, e.g., Letter of Interest between NeWAY (via HPI) and Greenergize Energy (C-0500), p. 3; Marriott International Letter of Interest (C-0336), p. 1; Exploratory Memorandum of Understanding between HPI and Samboro S.A. (C-0501), pp. 1-2; Memorandum of Understanding between HPI and Adaptive Medical Systems Inc. (C-0502).

⁴⁰¹ Claimants’ Memorial, ¶ 196.

⁴⁰² Claimants’ Memorial, ¶ 196.

⁴⁰³ Próspera, Progreso de Desarrollo de Próspera (C-0320), p. 14.

⁴⁰⁴ Brimen-I, ¶ 106.

234. The other two examples, Aerialoop and Relay Human Cloud, also do not prove any investment. The Memorial merely mentions them, without any data on the volume of their operations, their number of employees, their income, or the capital invested⁴⁰⁵.
235. The only companies with demonstrated autonomous activity would be Higher Ground Education and Beta Building. The first opened the Guidepost Montessori Roatan school, whose first class, in 2021, served just six children, a fact that does not even appear in the 2022 Development Progress Report. A minor result for such an ambitious project⁴⁰⁶.
236. For its part, Beta Building concluded in February 2021, a project that offers office and coworking space for up to 75 employees⁴⁰⁷. While tangible, it is a modest achievement after more than three years of trading, which stands in stark contrast to the multibillion-dollar projections presented to investors and in EY reports.
237. Finally, the Claimants present as a relevant achievement the conceptualization of the Roatan International Financial Center (“**RIFC**”), under the leadership of Mr. Shah. It should be noted, however, that its formal creation was subsequent to the signing of the alleged LSA – whose validity and conflicts of interest are questioned below – and coincided with the serious financial crisis of the CAMP.⁴⁰⁸
238. The Claimants also refer to the “Project Oasis II” real estate project, allegedly validated by a second EY report of 2 June 2020⁴⁰⁹. Quoting it selectively, they argue that EY “confirmed” that one of the main value drivers was the real estate business, in particular the “business opportunities arising from land appreciation”.⁴¹⁰ Its comprehensive reading belies such “validation”: it documents a project without a business plan, without audited financial

⁴⁰⁵ Claimants’ Memorial, ¶ 196.

⁴⁰⁶ Claimants’ Memorial, ¶ 196.

⁴⁰⁷ Próspera, Progreso de Desarrollo de Próspera (**C-0320**), p. 1.

⁴⁰⁸ Claimants’ Memorial, ¶¶ 219-222; Shah, ¶¶ 14-27.

⁴⁰⁹ Claimants’ Memorial, ¶¶ 180-183, 190; EY Report, Project Oasis II: Phase I, Final Report (July 2, 2020) (**E-0492**).

⁴¹⁰ Claimants’ Memorial, ¶¶ 182-183.

statements, in the pre-operational stage, and with merely speculative real estate prospects, for the reasons that follow.

239. *First*, the report verified the status of the project as of July 2020 – more than two years after the creation of the ZEDE – and described the quality of the available information as “*average*”: (i) no entity issued audited financial statements; (ii) no bank reconciliations were provided; (iii) the financial statements of HPI’s subsidiaries were not delivered; and (iv) details on intercompany accounts receivable and payable were missing⁴¹¹. EY also found that the project lacked a complete business plan and recommended that HPI prepare it, and that HPI’s financial statements reflected millions of dollars in losses between 2018 and 2019, with minimal revenue, a far cry from the multimillion-dollar potential invoked by the Memorial⁴¹².
240. *Second*, and contrary to the Claimants’ assertions⁴¹³, EY only identified three potential lines of real estate value generation, without describing them as existing businesses. In fact, the only development completed to that date was Brimont Investments’ land in Roatán (53.5 acres in Crawfish Rock) and a pending MOU to acquire the “Port of Satuyé” in La Ceiba, regarding which EY warned that (i) the lease had not yet been signed; (ii) there was no complete title to Parcels 2 and 3; and (iii) Parcel 4 was in litigation⁴¹⁴.
241. The Claimants’ own statements confirm the failure of those real estate projects. Mr. Delgado admits that Banco Atlántida *rejected* the loan to finance the Duna Residences, that of the three towers projected, *only one was built* and that HPI should have financed *100%* of the costs, and not the 20% planned⁴¹⁵. The same happened with Leaf Residences, which promised low-cost housing to Honduran workers and was abandoned and dismantled⁴¹⁶. The

⁴¹¹ EY Report, Project Oasis II: Phase I, Final Report (July 2, 2020) (C-0492), pp. 5, 39-40.

⁴¹² EY Report, Project Oasis II: Phase I, Final Report (July 2, 2020) (C-0492), p. 44.

⁴¹³ Claimants’ Memorial, ¶¶ 182-183.

⁴¹⁴ EY Report, Project Oasis II: Phase I, Final Report (July 2, 2020) (C-0492), pp. 10, 24.

⁴¹⁵ Delgado, ¶ 57.

⁴¹⁶ Delgado, ¶ 57.

Beyabu project, presented as a luxury development by Zaha Hadid Architects, is listed in the progress report itself as “*planned for groundbreaking in 2023*”,⁴¹⁷ without its materialization having been credited.

242. In this context of real risks, of mere intentions without investment and of companies without significant operation, the Claimants delayed their expansion to La Ceiba and only acquired their first plot there on March 29, 2021⁴¹⁸, almost two years after the EY study and almost three years after the first contact of the mayor of La Ceiba. As in Crawfish Rock, they did not carry out community impact studies, consultations with the population or agreements with municipal authorities, which reveals their true expectations for the self-styled “Shenzhen of the Caribbean”.

5. Faced with a possible repeal of the ZEDE Legal Framework, the Claimants fraudulently manufactured the so-called LSA

243. On March 9, 2021, HPI and the then Technical Secretary of Próspera ZEDE, Mr. Monterroso, who in turn owned part of HPI, signed the so-called LSA,⁴¹⁹ which was later modified by amendment of November 18, 2021, which, among other changes, raised the agreed compensation from USD 45 million to USD 150 million⁴²⁰.
244. In their Memorial, the Claimants present this instrument as a legitimate agreement between HPI, an alleged investor covered by the CAFTA-DR, and the Honduran State, which would have reinforced their legitimate expectations regarding the stability of the ZEDE Legal Framework⁴²¹. The reality is different. The so-called LSA was nothing more than the product of the personal and transactional relationship between the two people who negotiated and signed it, Messrs. Brimen and Monterroso, which prevents it from being considered a valid

⁴¹⁷ Próspera, Progreso de Desarrollo de Próspera (C-0320), p. 22.

⁴¹⁸ Certificate of Registration and Incorporation of Parcels to Próspera ZEDE (March 29, 2021) (C-0331).

⁴¹⁹ Agreement on Legal Stability and Investor Protection between Honduras Próspera and the Republic of Honduras (March 9, 2021) (CLA-0006).

⁴²⁰ Modification to the Legal Stability Agreement signed between the Legal Representative of Próspera ZEDE and HPI (November 18, 2021) (CLA-0007).

⁴²¹ Claimants’ Memorial, ¶ 209.

agreement, concluded in conditions of independence and good faith. As we saw,⁴²² the closeness between the two was absolute:⁴²³ they were both childhood friends⁴²⁴ and – more importantly – HPI partners⁴²⁵.

245. Moreover, the evidence shows that Mr. Monterroso acted as Mr. Brimen’s representative in the acquisition of land in the name of Brimont Investments, a company used by Mr. Brimen for its real estate investments in Honduras⁴²⁶. In other words, the same person who, as Technical Secretary, according to the Claimants, represented the State in the supervision and regulation of Próspera ZEDE, was, at the same time, Mr. Brimen’s personal agent for the purchase of real estate linked to the project. Such a conflict of interest would alone suffice to invalidate any act held by Mr. Monterroso on behalf of Honduras *vis-à-vis* HPI. In short, by placing his childhood friend, a shareholder in his company and personal proxy, in that position, Mr. Brimen ensured that the person who was supposed to supervise Próspera and negotiate on behalf of the State was, in fact, a member of his own inner circle.
246. In addition, despite the limits imposed by the Regulations of the Law for the Promotion and Protection of Investments for the State to enter into contracts of legal stability⁴²⁷, pretending that the LSA is one of such contracts (although entered into by someone without any authority to represent Honduras), the Claimants sought to freeze the Honduran legal framework beyond the stabilization of direct taxes, for a period of more than 15 years and without evidence of being requested from the Executive Secretariat of the National Investment Council or having obtained its approval and that of Congress.

⁴²² See Section II.C.4.a.

⁴²³ Brimen-I, ¶¶ 30, 44; *see also* Delgado, ¶ 22.

⁴²⁴ Brimen-I, ¶¶ 28, 74; *see also* Delgado, ¶ 20.

⁴²⁵ Claimants’ Memorial, ¶ 142; Brimen-I, ¶ 74. The Claimants have not provided evidence of such a trust or clarified its terms; in any case, its mere existence did not eliminate the economic interest of Monterroso, who remained the final beneficiary of his participation and thus retained a direct interest in the commercial prosperity of Próspera ZEDE.

⁴²⁶ Registry of Title Incorporated into the ZEDE (Johnson Building 1) (January 19, 2022) (C-0270), p. 2; Registration of Title Incorporated into the ZEDE (Crawfish Rock 2) (January 31, 2020) (C-0255), p. 95.

⁴²⁷ Regulations of the Law for the Promotion and Protection of Investments (Executive Agreement No. 22-DGTC-2014) (2014) (R-0140-SPA), art. 28.

247. It should also be noted that since the beginning of 2019, the CAMP, the entity supervising the actions of the Technical Secretary, faced a crisis that even led to suspending the payment of the salaries of its members⁴²⁸. In this context of paralysis, Mr. Monterroso operated for an extended period practically without supervision.
248. After the signing of the LSA, the CAMP's financial dependence on Próspera was formalized even more explicitly. By Resolution §5-1-169-0-0-0-1 of March 23, 2022, Próspera's Technical Secretary and Council of Trustees restructured the CAMP's annual funding, raising Próspera's contribution from \$200,000 to \$441,000 annually.⁴²⁹ The Resolution itself acknowledges that "Próspera ZEDE lacks sufficient tax revenues" and authorizes North Bay GSP Inc., HPI's General Service Provider, to transfer the funds as a reimbursable expense.⁴³⁰ It was signed by Mr. Brimen, as Secretary of the Council; Mr. Delgado, as Trustee; and Mr. Monterroso, as Technical Secretary.⁴³¹ Worse still, the Addendum to the Financing Agreement channeled all funds through a trust controlled by Próspera, subjecting the CAMP to conditions of disbursement and transparency imposed by the Claimants themselves. Thus, the entity called upon to audit Próspera ZEDE was financed and conditioned by the entity that was supposed to supervise, so that, when the LSA was signed, there was no independent supervision whatsoever over Mr. Monterroso's actions⁴³².
249. Moreover, the content of the LSA itself confirms that it was not the result of a negotiation between independent parties. *First*, it sets a minimum term of validity until January 15, 2064, that is, more than 40 years⁴³³. *Second*, it contemplates indemnity clauses that, after the

⁴²⁸ CAMP, Minutes No. 30 (December 31, 2018 – January 31, 2019) (**R-0183-SPA**).

⁴²⁹ Resolution of Próspera ZEDE §5-1-169-0-0-0-1, "Resolution of Próspera Restructuring of CAMP's Annual Funding" (March 23, 2022) (**R-0233-SPA**), p. 14

⁴³⁰ Resolution of Próspera ZEDE §5-1-169-0-0-0-1, "Resolution of Próspera Restructuring of CAMP's Annual Funding" (March 23, 2022) (**R-0233-SPA**), p. 11.

⁴³¹ Resolution of Próspera ZEDE §5-1-169-0-0-0-1, "Resolution of Próspera Restructuring of CAMP's Annual Funding" (March 23, 2022) (**R-0233-SPA**), pp. 4-8.

⁴³² Resolution of Próspera ZEDE §5-1-169-0-0-0-1, "Resolution of Próspera Restructuring of CAMP's Annual Funding" (March 23, 2022) (**R-0233-SPA**), p. 18 (Annex A of the CAMP Financing Agreement).

⁴³³ Agreement on Legal Stability and Investor Protection between Honduras Próspera and the Republic of Honduras (March 9, 2021) (**CLA-0006**).

November 2021 amendment, amount to USD 150 million, fifteen times the investment of the mere USD 10 million that HPI declared when signing it. It is implausible that, in a neutral negotiation with an independent State, an investor would obtain a fixed compensation fifteen times higher than his own declared investment.⁴³⁴ *Third*, it incorporates a clause of submission to ICSID arbitration that sought a direct path to investment arbitration, with predetermined amounts of compensation and independent even of the protections of the Treaty. All this reveals a deliberate strategy of the Claimants: a network of instruments, all subscribed to by Mr. Monterroso, to fraudulently shield their investment from any sovereign decision of Honduras.

250. The LSA cannot therefore be understood as an agreement concluded between Honduras and the Claimants under conditions of independence. On the supposedly state side, it was negotiated and signed by someone who: (i) was a close childhood friend of the main promoter of Próspera; (ii) was a shareholder of HPI; (iii) acted as Mr. Brimen's personal representative for the purchase of land linked to the project; and (iv) operated under the nominal supervision of a financially paralyzed and HPI-sponsored entity—the CAMP. It was not a negotiation between parties with conflicting interests, but an act of *self-contracting*, in which the same person acted both as an investor and as a supposed representative of the State. These circumstances do not constitute minor irregularities or procedural deficiencies that can be remedied, but a structural defect that affects the very legitimacy of the LSA as an instrument attributable to the Republic.
251. Moreover, the timing of the signing of the LSA reveals that it was not conceived as genuine investment protection, but as a mechanism to secure an arbitration claim. HPI signed the initial LSA on March 9, 2021 in the absence of materialized investments in Próspera ZEDE,

⁴³⁴ Agreement on Legal Stability and Investor Protection between Honduras Próspera and the Republic of Honduras (March 9, 2021) (CLA-0006); Modification to the Legal Stability Agreement signed between the Legal Representative of Próspera ZEDE and HPI (November 18, 2021) (CLA-0007).

in a scenario of growing political and community opposition, and global paralysis due to COVID-19. In addition, just ten days before the election of November 28, 2021, by means of the amendment of November 18, the Claimants tripled the agreed compensation and incorporated even more favorable conditions into their position⁴³⁵.

D. THE SYSTEMATIC SOCIAL REJECTION AND THE MULTIPLE VICES OF ORIGIN OF THE ZEDE LEGAL FRAMEWORK FINALLY LED TO ITS REPEAL

252. The Claimants seek to construct a narrative according to which the repeal and declaration of unconstitutionality of the ZEDE Legal Framework would have been sudden events, allegedly triggered by Xiomara Castro's arrival to power in January 2022, and by the will of said government to eliminate the regime at any cost⁴³⁶.

253. However, the facts show a completely different reality. Opposition to the ZEDEs arose since the establishment of their legal framework in 2013, (D.1) was consolidated with the rejection of civil society and various institutions before the 2021 elections and (D.2) culminated in their unanimous repeal by Congress in 2022. Subsequently, (D.3) the Supreme Court confirmed the unconstitutionality of the regime, which led to (D.4) the adoption of measures aimed at restoring constitutional order.

1. The articulation of civil society around the repeal of the ZEDE Legal Framework

254. As explained above, the ZEDE Legal Framework had been the object of widespread opposition from civil society⁴³⁷. However, since no project was effectively implemented during the first years, and the first decisions of the CAMP regarding Próspera ZEDE remained largely hidden, this opposition remained in a latent state, deprived of a concrete and public target against which to mobilize.

255. This began to change only in April 2019, when the head of the Ministry of Economic

⁴³⁵ Modification to the Legal Stability Agreement signed between the Legal Representative of Próspera ZEDE and HPI (CLA-0007).

⁴³⁶ Claimants' Memorial, ¶ 229.

⁴³⁷ See Section II.C.1.

Development, Arnaldo Castillo, indicated that in the next two months the first ZEDE would be seen⁴³⁸; and it was consolidated in September 2020, when, in the context of the pandemic, a video went viral on social networks in which Erick Brimen reads Article 28 of the ZEDE Organic Law before a group of residents in Crawfish Rock. In it, he explained that the State, through the ZEDEs, can expropriate their lands for the development or expansion of Próspera ZEDE⁴³⁹.

256. Not surprisingly, the video generated outrage in the Honduran population and marked the beginning of a greater articulation of civil society⁴⁴⁰, which would later culminate in the unanimous repeal of the ZEDE Legal Framework by the National Congress⁴⁴¹ and the declaration of unconstitutionality by the Supreme Court of Honduras⁴⁴².
257. Thus, on October 13, 2020, and barely a month after the incident in Crawfish Rock, the Honduran Bar Association (“CAH”) issued a 13-page statement in which it indicated that the ZEDE Legal Framework was unconstitutional and urged the National Congress to proceed with its immediate repeal⁴⁴³. In its pronouncement, the CAH maintains that by approving the ZEDE Legal Framework, the National Congress modified immutable or unreformable clauses of the Constitution, exceeding the powers conferred on it as a derived

⁴³⁸ “Honduras’ First ZEDE will start in two months,” *El Heraldo* (April 22, 2019) (R-0186-SPA). The lack of information about the existing ZEDEs in Honduras was absolute. In June 2019, the Secretary of State for Trade of the Kingdom of Spain, through the Economic and Commercial Office in Tegucigalpa, reported in its country guide on Honduras that no model city had been created to that date. Economic and Commercial Office of Spain in Tegucigalpa, “Country Guide: Honduras” (June 2019) (R-0187-SPA), pp. 13, 25.

⁴³⁹ “Roatan Municipal Police Withdraws Investors from Zede During Alleged Socialization,” *El Heraldo* (September 19, 2020) (R-0193-SPA); Recording of Mr. Brimen reading the ZEDE Organic Law in the Crawfish Rock community, later disseminated through social networks and news portals (September 2020) (R-0192-SPA).

⁴⁴⁰ In October 2020, the television program “Frente a Frente” aired the debate entitled “The ZEDEs represent the privatization of sovereignty in Honduras”. “This model city is a level of privatization, experts say”, Frente a Frente, Telecentro Noticias (October 1, 2020) (R-0196-SPA). In the following months, the national media “Criterio” produced a series of press reports on Próspera. See “Crawfish Rock: The Essay on Radical Neoliberalism in Central America,” *Criterio.hn* (November 4, 2020) (R-0201-SPA); “Crawfish Rock: Between Government Abandonment and the Threat of Expropriation by ZEDE Facility,” *Criterio.hn* (November 6, 2020) (R-0202-SPA); “Crawfish Rock: How a Restricted Zone in Roatan Was Chosen as a ZEDE?,” *Criterio.hn* (December 8, 2020) (R-0203). See also: “Roatan: A Micro Nation for Sale,” *Contracorriente* (September 3, 2020) (R-0188).

⁴⁴¹ See Section II.D.2.

⁴⁴² See Section II.D.3.

⁴⁴³ Honduran Bar Association. Statement on ZEDEs (October 13, 2020) (R-0197-SPA), pp. 1, 13.

constituent power by the National Constituent Assembly of 1982 and, as a consequence, the reforms never acquired the rank of constitutional norm⁴⁴⁴.

258. Just six days later, on October 19, 2020, the municipalities of Roatán, Santos Guardiola, Guanaja, and Utila, together with the Chambers of Tourism and Industry and Commerce of the Bay Islands and the deputy for that department, Ronnie Richard McNab, issued a joint statement in which they expressed their concern about the installation of Próspera without prior consultation with the inhabitants of the islands⁴⁴⁵. They also requested the intervention and investigation of Próspera and the process by which it was approved, expressed their opposition to the installation of said ZEDE, and urged the National Congress to call a referendum to revoke the application of the ZEDE Legal Framework in the Bay Islands⁴⁴⁶.
259. The next day, on October 20, 2020, Edmundo Orellana, Doctor of Law, former Attorney General of the Republic, and former deputy of the National Congress, among other positions, argued that no ZEDE had been approved by the qualified majority required by the Constitution⁴⁴⁷ and that, consequently, the then-existing ZEDes, Próspera and Ciudad Morazán, could not operate validly until they had the corresponding approval⁴⁴⁸. Then, on

⁴⁴⁴ Honduran Bar Association. Statement on ZEDes (October 13, 2020) (**R-0197-SPA**), p. 9. In its pronouncement, the CAH also formulates other defects of unconstitutionality, among them, that regulatory powers reserved to the Legislative Branch are delegated to twenty-one individuals – the CAMP – infringing the principle of non-delegation reservation and invading matters of exclusive competence of the State; it harms popular and national sovereignty, by removing the inhabitants of the areas of the Honduran legal system in what constitutes a usurpation of sovereignty comparable to treason to the homeland; it violates the principle of territoriality of national law; contravenes article 107 of the Constitution and the Law on the Acquisition of Urban Goods on the acquisition of land by foreigners in bordering and coastal areas; and violates the Anglo-Honduran Treaty of 1859 relating to the Bay Islands and the Mosquito Territory, exposing the State to a possible lawsuit before the International Court of Justice. It adds that the Law suppresses the fundamental rights to effective judicial protection and judicial protection and violates the principles of equality and non-discrimination, by enabling foreign judges trained in common *law* and creating differentiated treatment between those who live inside and outside the areas; and disqualifies as a mere “subterfuge or legal artifice” the ruling of the Constitutional Chamber that endorsed the regime. Honduran Bar Association. Statement on the ZEDes (October 13, 2020) (**R-0197-SPA**).

⁴⁴⁵ Authorities, unions and political representatives of the Bay Islands. Public Demonstration (October 19, 2020) (**R-0199-SPA**).

⁴⁴⁶ Authorities, unions and political representatives of the Bay Islands. Public Demonstration (October 19, 2020) (**R-0199-SPA**).

⁴⁴⁷ “Edmundo Orellana: Construction of ZEDE in Roatan ‘is out of context’ because Congress has not approved projects”, *TuNota Honduras Hoy* (October 20, 2020) (**R-0200-SPA**).

⁴⁴⁸ “Edmundo Orellana: Construction of ZEDE in Roatan ‘is out of context’ because Congress has not approved projects”, *TuNota Honduras Hoy* (October 20, 2020) (**R-0200-SPA**).

November 6 of the same year, Ana Pineda, former Secretary of State in the Offices of Justice and Human Rights and constitutional lawyer,⁴⁴⁹ declared that “the reform of the Constitution of the Republic to add the ZEDEs and their organization is another violation of the Constitution itself, which if we were in an authentic State of Law would never have been done or otherwise it would have been declared unconstitutional and consequently repealed” since the ZEDEs “openly violate several constitutional precepts, including those of a stony nature, and establish an exception to the constitutional duty of Hondurans and foreigners to submit to the Constitution and the laws, in addition to violating fundamental rights and freedoms protected in international treaties.”⁴⁵⁰

260. This reality, as can be seen, is a dramatic departure from that described by Mr. Brimen, who merely states that, in 2020, the “opposition consisted mainly of criticism by certain NGOs that presented themselves in front of Próspera ZEDE with anti-ZEDE posters”.⁴⁵¹ The truth is that opposition to the ZEDEs had been brewing and developing for years, intensifying significantly in that last period until it spread to broad sectors of civil society. Moreover, the public statements existing on that date already evidenced the illegalities in which the Claimants incurred in trying to establish their investment, which constitute the basis of the corresponding jurisdictional objection⁴⁵². Despite this, the Claimants continued with their investment plans⁴⁵³.

261. The following year, civil society demonstrations of opposition to the ZEDEs multiplied. On June 5, 2021, the Honduran Council of Private Enterprise (“COHEP”), the main business organization in Honduras, issued a statement indicating that the existing ZEDEs – including

⁴⁴⁹ Ana Pineda was also the best-evaluated candidate in the 2023 Supreme Court of Honduras magistrate selection process, obtaining the highest rating among all candidates. “Final List of 45 Candidates for CSJ Magistrates,” *National Congress of Honduras* (January 23, 2023) (R-0243-SPA), p. 5.

⁴⁵⁰ “Crawfish Rock: Between Government Abandonment and the Threat of Expropriation by ZEDE Facility,” *Criterio.hn* (November 6, 2020) (R-0202-SPA), pp. 7-8.

⁴⁵¹ Brimen-I, ¶ 92.

⁴⁵² See Sections II.C; II.A.

⁴⁵³ Claimants’ Memorial, ¶¶ 168-228.

Próspera – had not complied with the requirement of having the approval of the National Congress, whose powers could not be replaced by the CAMP⁴⁵⁴. This statement confirmed once again the illegality of the Claimants in attempting to establish their investment.

262. Just three days later, on June 8, 2021, the United Nations Office in Honduras issued a press release expressing its concern about the incompatibility of the ZEDE Legal Framework with Honduras’ international obligations⁴⁵⁵:

An analysis from a human rights perspective suggests that the constitutional and legal design, as well as the implementation of the ZEDEs in Honduras, jeopardizes the full enjoyment of human rights by all residents. This is a result, among other key factors, of the autonomy these entities would have with regard to the administration of public services, the justice system, and the criminal justice system. [...]

The United Nations System respectfully calls on the State of Honduras to review the compatibility of the constitutional and legal framework governing ZEDEs with its international obligations to respect and guarantee the exercise of human rights, including the right to free, prior, and informed consultation of indigenous peoples and Afro-descendants, and the right to equitable and sustainable development. Similarly, it urges the State to explore alternatives that promote the country’s inclusive economic growth, based on a development model that is equitable, sustainable, and guarantees equality⁴⁵⁶.

263. That statement also referred directly to the Claimants’ project, indicating that “it is of particular concern, for example, the lack of free, prior and informed consultation in the areas where the Próspera ZEDE was installed; the lack of protection of the right to property and access to land of local communities; and the deregulation and possible privatization of public services such as health and education.”⁴⁵⁷ Thus, as of that date, a second failure by the Claimants to establish their investment was already publicly denounced, namely the

⁴⁵⁴ Honduran Council of Private Enterprise, Certification of the transcript of Resolution No. 28-02-06-21 (June 2, 2021) (**R-0211-SPA**); Honduran Council of Private Enterprise. *Legal Analysis of ZEDEs in Honduras* (June 2, 2021) (**R-0021-SPA**). The same organization warned investors “in general of the consequences they could face when investing under an illegitimate and denatured investment model.” Honduran Council of Private Enterprise. *Annual Report 2021* (2021) (**R-0207-SPA**), p. 7.

⁴⁵⁵ United Nations in Honduras, Press Release: ZEDEs Could Pose Serious Risks to the Honduran State's Guarantee of Human Rights (June 8, 2021) (**R-0022-SPA**).

⁴⁵⁶ United Nations in Honduras, Press Release: ZEDEs Could Pose Serious Risks to the Honduran State's Guarantee of Human Rights (June 8, 2021) (**R-0022-SPA**).

⁴⁵⁷ United Nations in Honduras, Press Release: ZEDEs Could Pose Serious Risks to the Honduran State's Guarantee of Human Rights (June 8, 2021) (**R-0022-SPA**).

omission of free, prior and informed consultation with the communities existing in the place where they intended to develop their project.

264. Just nine days later, on June 17, 2021, the Association of Mayors of Honduras, in conjunction with the CAH, issued a statement in which it argued that the ZEDE Organic Law was unconstitutional for violating immutable clauses of the Constitution, fundamental rights and international treaties, and urged the National Congress to repeal the decrees that made up the ZEDE Legal Framework⁴⁵⁸. In the following days, the National Autonomous University of Honduras (“UNAH”),⁴⁵⁹ the Senate of Professors of the Faculty of Legal Sciences of the UNAH⁴⁶⁰ and the Association of Prosecutors of Honduras⁴⁶¹ publicly joined that call. In particular, the UNAH announced that it would file the necessary legal actions to obtain a declaration of unconstitutionality of the aforementioned regulatory framework and, barely a month later, filed the corresponding appeal, which culminated in the declaration of unconstitutionality, with *ex tunc* effects, of the ZEDE Legal Framework by the Supreme Court of Honduras; a measure challenged by the Claimants⁴⁶².
265. At the same time, on June 28, 2021, the National Anti-Corruption Council (CNA) – a civil society body with its own legal personality⁴⁶³ – issued a report on the legal and economic aspects of the ZEDEs, reiterating the unconstitutionality of the ZEDE regime and explaining how its radical functional and administrative autonomy represents a danger to the fight

⁴⁵⁸ Honduran Bar Association with the Association of Mayors of Honduras. Statement on the Employment and Economic Development Zones (ZEDE) (June 17, 2021) (**R-0213-SPA**).

⁴⁵⁹ National Autonomous University of Honduras. Statement on Employment and Economic Development Zones (ZEDEs) (June 20, 2021) (**R-0214-SPA**).

⁴⁶⁰ Faculty of the Faculty of Legal Sciences of the National Autonomous University of Honduras. Public letter regarding the Employment and Economic Development Zones (ZEDEs) (June 21, 2021) (**R-0215-SPA**).

⁴⁶¹ Association of Prosecutors of Honduras. Statement against the Employment and Economic Development Zones (ZEDE) (July 12, 2021) (**R-0217-SPA**).

⁴⁶² National Autonomous University of Honduras. Statement on Employment and Economic Development Zones (ZEDEs) (June 20, 2021) (**R-0214-SPA**). Barely a month after that statement, on July 21, 2021, Mr. Francisco José Herrera Alvarado, in his capacity as Rector of the National Autonomous University of Honduras (UNAH), filed the appeal of unconstitutionality that subsequently led to the declaration of unconstitutionality of the ZEDE Legal Framework. Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 1.

⁴⁶³ Home page of the official website of the National Anti-Corruption Council (CNA) (**R-0100-SPA**).

against corruption in Honduras⁴⁶⁴. The CNA itself promoted a national campaign to collect signatures that gathered more than fifteen thousand signatures from Honduran citizens and made it possible to present, on July 19, 2021, a citizen initiative to repeal the regulations on the ZEDEs before the National Congress⁴⁶⁵. This project constituted the immediate antecedent of the measure challenged by the Claimants, consisting of the repeal of the ZEDE Legal Framework by the National Congress⁴⁶⁶.

266. As the citizen initiatives promoted through the institutional channels described above did not advance with the speed demanded by civil society opposed to the ZEDEs, it promoted new forms of mobilization. In August 2021, the press reported that, after the celebration of open town halls convened by citizens, real plebiscites held on the sidelines of the National Congress, the municipalities of Marcala, in the department of La Paz; Juticalpa, in Olancho; and San Francisco, Tela, Arizona and La Ceiba, in Atlántida, had declared themselves municipalities free of ZEDEs⁴⁶⁷. During the following months, other municipalities held open town halls in which ZEDE-free zones were also declared⁴⁶⁸. Although these declarations were not enough, on their own, to repeal or render ineffective the ZEDE Legal Framework, they were intended to put pressure on the Honduran institutions to achieve that

⁴⁶⁴ National Anti-Corruption Council & Anti-Corruption Criminal Policy Observatory, *The Deadly Sins of the ZEDEs* (June 2021) (R-0020-SPA).

⁴⁶⁵ “National Anti-Corruption Council presents to the National Congress initiative against ZEDEs”, *El Herald* (July 19, 2021) (R-0218-SPA); Secretariat of the National Congress of Honduras. Certificate signed by José Tomás Zambrano Molina, First Secretary, stating the receipt of the citizen initiative presented by the National Anti-Corruption Council (July 19, 2021) (R-0219-SPA). The press reported another similar initiative promoted by the ancestral peoples, which gathered more than ten thousand signatures. “Municipalities demand open town halls to declare their territories free of ZEDEs”, *Criterio.hn* (August 4, 2021) (R-0220-SPA). At the same time, the Central American Institute for Fiscal Studies (ICEFI) recommended repealing the ZEDE Legal Framework. “Icefi recommends repealing the ZEDE Organic Law”, *Criterio.hn* (July 6, 2021) (R-0216-SPA).

⁴⁶⁶ It was precisely in the context of these multiple statements in opposition to the ZEDEs that the Claimants constituted with themselves, through the Technical Secretary of Próspera ZEDE, the LSA and the Amendment to the LSA, on 9 March and 18 November, both 2021, respectively. Claimants’ Memorial, ¶ 204.

⁴⁶⁷ “Municipalities demand open councils to declare their territories free of ZEDEs”, *Criterio.hn* (August 4, 2021) (R-0220-SPA).

⁴⁶⁸ “Mayor’s Office of Choloma declares the municipality free of ZEDE, although it is still not enough to stop “Ciudad Morazán””, *Contra Corriente* (November 8, 2021) (R-0228-SPA). See also: “Danlí also declares itself free of ZEDE”, *Criterio.hn*, (August 22, 2021) (R-0223-SPA); “Comayagua Declares Free of ZEDE,” *Criterio.hn*, (August 18, 2021) (R-0221-SPA).

objective⁴⁶⁹.

267. The mobilization against Próspera ZEDE was particularly intense in the Garifuna community of Crawfish Rock⁴⁷⁰, on the island of Roatán, where the project was installed and a video was recorded that went viral and contributed decisively to the widespread opposition to the ZEDEs. Luisa Connor, president of the Crawfish Rock Board of Trustees, led her community's opposition to the installation of Próspera ZEDE for four years, publicly denouncing that there was never a prior, free, and informed consultation⁴⁷¹, in accordance with Article 6(1)(a) of ILO Convention No. 169⁴⁷² and Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples⁴⁷³.
268. That same pattern of expansion without consultation was reproduced in mainland Honduras. On March 18, 2021, the Port of Satuyé, located less than twenty minutes from the Garifuna community of Sambo Creek, in La Ceiba, department of Atlántida, was allegedly incorporated into the Próspera ZEDE regime without prior consultation with the Garifuna

⁴⁶⁹ The realization of these councils was recognized by the Inter-American Commission on Human Rights in its annual report on the follow-up of recommendations made to Honduras in 2021. Inter-American Commission on Human Rights, Annual Report 2021, Chapter V Honduras (2021) (**R-0205-SPA**).

⁴⁷⁰ See Section II.C.4.c. According to the Royal Spanish Academy, the Garifuna are “a people who are the product of the mixture of Arawaks, insular Caribs [indigenous descendants] and black African slaves in the Antilles that the English deported from the island of St. Vincent to Roatan in 1797, and then spread along the Atlantic coast of Honduras, Belize, Guatemala and Nicaragua.” See Royal Spanish Academy, “Garifuna,” *Dictionary of the Spanish Language* (**R-0076-SPA**); Merriam-Webster, “Garifuna,” *Merriam-Webster.com Dictionary* (**R-0077**). In February of this year, the United Nations High Commissioner for Human Rights issued its report on Honduras and found that the Garifuna community of Crawfish Rock was being criminalized for defending their ancestral territory; United Nations General Assembly, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras*, 61st session (February 4, 2026) (**R-0265**), ¶ 28.

⁴⁷¹ “ZEDEs in Honduras: A History of Unconstitutionality,” *Criterio.hn* (December 9, 2024) (**R-0259-SPA**); “Honduras: Sovereignty in Exchange for Economic Development?,” *DW* (March 18, 2021) (**R-0209-SPA**); See also “Go Home: Honduran islanders fight against crypto colonialists,” *The Guardian* (5 July 2022) (**R-0239-ENG**).

⁴⁷² ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (entered into force: 5 September 1991) (**RLA-0137-SPA**), art. 6(1)(a).

⁴⁷³ United Nations. United Nations Declaration on the Rights of Indigenous Peoples (UNRRIP), A/RES/61/295 (13 September 2007) (**RLA-0303-SPA**), art. 19. In September 2021, the Inter-American Commission on Human Rights (IACHR) admitted a complaint filed by OFRANEH against the ZEDE Organic Law, in which the organization denounced that indigenous peoples “were not informed or consulted” regarding the ZEDE Organic Law, among other normative texts. See Inter-American Commission on Human Rights. *Inadmissibility Report No. 197/21, Petition 1364-11* (September 7, 2021) (**R-0225**), ¶ 8.

communities in the sector⁴⁷⁴. In response to this measure, Miriam Miranda, coordinator of OFRANEH, publicly denounced that the ZEDEs represented “the mortal blow” to make the Garifuna disappear as a people⁴⁷⁵.

269. The concerns of these communities were not limited to the lack of prior consultation but also extended to the effects that the installation of the Próspera ZEDE would have on their living conditions as a result of its disproportionate impact on the environment⁴⁷⁶ and the absence of adequate state control⁴⁷⁷. These concerns are based on the fact that, as we have seen, the Claimants installed their project in a restricted area of the Bay Islands due to its special ecological importance⁴⁷⁸. These risks materialized with the construction of the Duna Residences project in Próspera ZEDE without any type of supervision regarding its environmental impact⁴⁷⁹.

2. The repeal of the ZEDE Legal Framework in the National Congress

270. The Claimants contend that the repeal of the ZEDE Legal Framework was essentially a consequence of Xiomara Castro’s coming to power⁴⁸⁰ and that they would only have learned of its eventual repeal at the end of January 2022⁴⁸¹. However, they omit the abundant

⁴⁷⁴ “Honduras. Human Rights Commission admitted complaints against the ZEDE Law among others,” *Latin American Summary* (August 18, 2023) (**R-0247-SPA**) (“the Port of Satuyé in La Ceiba, Atlántida, ‘was incorporated and enacted under the regime of the Employment and Economic Development Zone of Prosperous Honduras on March 18, 2021’”).

⁴⁷⁵ “Honduras: ‘There is a genocidal plan against the Garifuna people | Interview’,” *Mongabay* (October 13, 2021) (**R-0227-SPA**) (interview with Miriam Miranda, coordinator of OFRANEH).

⁴⁷⁶ “Crawfish Rock: How a Restricted Zone in Roatan Was Chosen as a ZEDE?,” *Criterio.hn* (December 8, 2020) (**R-0203**).

⁴⁷⁷ See Section II.B.3.

⁴⁷⁸ Special Law on Protected Areas of the Bay Islands (Decree No. 75-2010) (July 26, 2010) (**R-0094-SPA**), p. 3, art. 4(2)(b); p. 9, art. 5.

⁴⁷⁹ The Alternative for Community and Environmental Reclamation of Honduras (ARCAH), an organization for the defense of the commons recognized by Front Line Defenders, requested public information from the Ministry of Natural Resources and Environment (SERNA) in 2023 on the situation of the ZEDEs, obtaining as a response that there was no record of environmental licenses extended for the Duna Residences project of Próspera ZEDE. “SERNA did not extend environmental permit to Duna Residences in Próspera ZEDE,” *Criterio.hn* (August 26, 2023) (**R-0248-SPA**); Ministry of Natural Resources and Environment (SERNA), Official Letter No. UTGPC-167-2023 (response to ARCAH’s request) (September 4, 2023) (**R-0249-SPA**); “Alternative for Community and Environmental Reclamation of Honduras (ARCAH),” *Front Line Defenders* (**R-0276-SPA**).

⁴⁸⁰ Claimants’ Memorial, ¶¶ 243-251.

⁴⁸¹ Claimants’ Memorial, ¶ 245.

precedents set out above, which account for the sustained opposition to the ZEDEs since the establishment of this regime⁴⁸². Finally, the repeal was preceded by an intense mobilization of civil society that emerged as a reaction to the installation of Próspera and the effective materialization of the first ZEDEs⁴⁸³.

271. Faced with this situation, on Wednesday, April 20, 2022, the parliamentary session was held in which the National Congress debated and approved the repeal of the ZEDE Legal Framework⁴⁸⁴. This legislative act, which required the favorable vote of a qualified majority of at least 86 deputies, was approved unanimously by the 128 members of the National Congress, belonging to the entire political spectrum, including the National Party—which had initially promoted the ZEDEs—the Liberal Party, the Libre Party and other political forces of lesser representation⁴⁸⁵.
272. As reported by the media cited by the Claimants, “[a]ll of the benches represented in the Legislative Branch supported the repeal of the ZEDEs after lengthy speeches by the representatives of the political parties that make up this branch of the State.”⁴⁸⁶ The grounds put forward by the parliamentarians were reflected in the Whereass of Decrees Nos. 32-2022 and 33-2022 that initiated the repeal of the constitutional reform and repealed other infra-constitutional norms associated with the ZEDEs, respectively⁴⁸⁷. From these Whereass, it is clear that the National Congress considered that this regulatory framework was null and void from the outset, because it had been established in contravention of the formal and material limits imposed by the Constitution and through the modification of provisions of a stony

⁴⁸² See Section II.C.1.

⁴⁸³ See Section II.D.1.

⁴⁸⁴ “Honduran Parliament repeals controversial Zede as it considers that they violate the country's sovereignty”, *BBC* (April 21, 2022) (**R-0031-SPA**).

⁴⁸⁵ “Honduran Parliament repeals the controversial Zede as it considers that they violate the country's sovereignty”, *BBC* (21 April 2022) (**R-0031-SPA**); The minutes of the legislative session show that deputies from across the political spectrum expressed themselves in favor of the repeal. National Congress of Honduras, Minutes No. 24 (April 19-21, 2022) (**R-0256-SPA**).

⁴⁸⁶ “ZEDEs repealed”, *Proceso Digital* (April 20, 2022) (**C-0610**).

⁴⁸⁷ Decree No. 32-2022 published on April 21, 2022 (**C-0057**); Decree No. 33-2022 published on April 26, 2022 (**C-0060**). See also: National Congress of Honduras, Minute No. 24 (April 19-21, 2022) (**R-0236-SPA**).

nature, affecting the powers of the State, the national territory, the form of government, the sovereignty and independence of the Honduran people⁴⁸⁸. It should be noted that these are the same foundations that civil society had consistently sustained for years⁴⁸⁹.

273. The comparisons and classifications made by the Claimants in that context are particularly inappropriate. The procedure followed for the repeal of the ZEDE Legal Framework was fully in accordance with the Honduran legal system⁴⁹⁰ and, therefore, in no case can it be described as “typical of a politburo” or “carnavalesque”, as the Claimants claim.⁴⁹¹ The original unconstitutionality of the constitutional and legal reform that gave rise to the ZEDEs constituted, in itself, a sufficient basis for agreeing to their repeal, without it being necessary to invoke additional considerations of public policy, the assessment of which, in any case, does not correspond to either the Claimants or this Court⁴⁹².
274. In view of the widespread rejection that the ZEDE Legal Framework had aroused in Honduran society, it is not surprising that its repeal was widely celebrated. The measure was supported by unions⁴⁹³, communities⁴⁹⁴ and institutions⁴⁹⁵, thus demonstrating the lack of

⁴⁸⁸ Decree No. 32-2022 published on April 21, 2022 (C-0057), pp. 4-7; Decree No. 33-2022 published on April 26, 2022 (C-0060), pp. 5-8. The Claimants themselves reproduce the video of the Vice President of the National Congress using part of these arguments. See Proceso Digital, TWITTER @PROCESODIGITAL (April 21, 2022) (E-0612).

⁴⁸⁹ See Sections II.C.1; II.C.4; II.D.1.

⁴⁹⁰ Constitution of Honduras, 1982, with amendments through 2013 (C-0004), art. 205(1). The vote on the decrees had to be carried out by a show of hands, because the electronic voting system had flaws that had been reported by the Technology Management of the National Congress since at least August 2021. See García, L. *Report on the current status of the electronic voting system* (August 20, 2021) (R-0222-SPA); García, L. *Technical Report: Electronic Voting Cards and Electronic Voting System Assistance* (February 23, 2022) (R-0231-SPA); García, L. *Technical Report on the Current Status of the Electronic Voting System* (April 5, 2022) (R-0235-SPA); García, L. *Report on the Operation of the Electronic Voting System* (February 23, 2026) (R-0266-SPA). As confirmed by the Claimants themselves, the difficulties associated with the electronic voting system extended throughout the 2022 legislature. See Claimants’ Memorial, footnote No. 622.

⁴⁹¹ Claimants’ Memorial, ¶ 254.

⁴⁹² Claimants’ Memorial, ¶ 255.

⁴⁹³ “The IUF celebrated the approval of projects that will repeal the Employment and Economic Development Zones in Honduras”, *LATAM Gremial* (April 25, 2022) (R-0238-SPA).

⁴⁹⁴ “Between joy and caution they receive repeal of the ZEDEs in Honduras”, *Criterio.hn* (April 22, 2022) (R-0237-SPA) (“The vice president of the Crawfish Rock board of trustees, Venessa Cárdenas Woods, reacted with joy after the proclamation of the National Congress of Honduras in which it abolishes the ZEDE Organic Law.”).

⁴⁹⁵ “Between joy and caution they receive repeal of the ZEDEs in Honduras”, *Criterio.hn* (April 22, 2022) (R-0237-SPA) (“For the economist and analyst of the Center for the Study of Democracy (CESPAD), Lucía Vijil, the announcement of the repeal of the legal regulation that created the ZEDEs is good news.”).

popularity and legitimacy of the ZEDEs. This is also consistent with the objections and concerns expressed during its validity by numerous institutions, both national and⁴⁹⁶ international⁴⁹⁷.

275. As anticipated, the repeal of the ZEDE regime materialized through Decrees Nos. 32-2022 and 33-2022. On the one hand, Decree No. 32-2022 repealed the constitutional reform decrees through which the creation and configuration of the ZEDEs were approved and ratified. In particular, it annulled Decree No. 236-2012, which approved the reform of Articles 294, 303, 304 and 329 of the Constitution of the Republic of Honduras; Decree No. 9-2013, which ratified said reform; and provided that “[a]ll legal norms that derive from this constitutional reform repealed in the previous article [...] or any other related regulation in favor of the Employment and Economic Development Zones (ZEDE), lack legal validity.”⁴⁹⁸ On the other hand, Decree No. 33-2022 repealed the ZEDE Organic Law, approved by Decree No. 120-2013, as well as the decrees and reforms related to its implementation. In particular, it annulled Decree No. 368-2013, which ratified the appointment of the members of the CAMP made through Executive Agreement No. 003-2014; Decree No. 153-2013, which approved the Program for the Establishment of the ZEDEs; Decrees Nos. 32-2021 and 68-2021, relating to the sales tax applicable to ZEDEs and the companies established in them; and any other regulation of a different nature and legal hierarchy on the same subject

⁴⁹⁶ “Bar Association speaks out against the ZEDEs and asks Congress to meet to repeal said decree”, *Radioamerica.hn* (October 14, 2020) (**R-0198-SPA**); Honduran Council of Private Enterprise. *Legal Analysis of ZEDEs in Honduras* (June 2, 2021) (**R-0021-SPA**); Honduran Council of Private Enterprise, Resolution No. 28-02-06-21, Minute No. 207-2021 (June 2, 2021) (**R-0212-SPA**).

⁴⁹⁷ Inter-American Commission on Human Rights, “*Report on the Situation of Human Rights in Honduras*” (March 24, 2024) (**R-0253-SPA**), ¶ 141 (“The Commission has observed that the creation and establishment of the ZEDEs has had a differentiated impact on indigenous and Afro-Honduran communities due to the broad powers that the ZEDEs have in terms of the disposition of territories without consultation and free consent, prior and informed.”); Inter-American Commission on Human Rights, Annual Report 2021, Chapter V Honduras (2021) (**R-0205-SPA**) (“The Commission observes a serious risk for indigenous peoples and tribal Afro-descendants, due to the broad powers that the ZEDEs have in terms of the disposition of territories without their free, prior, and informed consultation and consent, which contravenes inter-American standards on the matter and endangers their lands, territories and natural resources.”); United Nations in Honduras, Press Release: ZEDEs Could Pose Serious Risks to the Honduran State’s Guarantee of Human Rights (June 8, 2021) (**R-0022-SPA**).

⁴⁹⁸ Decree No. 32-2022 dated April 21, 2022, published in the Official Gazette on the same day (**C-0057**).

of the Employment and Economic Development Zones (ZEDEs).⁴⁹⁹

276. Decree No. 33-2022 fully produced its effects with its approval by the National Congress. However, as the Claimants contend, Decree No. 32-2022 did not complete the ratification procedure provided for constitutional reforms⁵⁰⁰. The president of the National Congress, Luis Redondo, declared that the ratification of this decree would not have been achieved, since the National Party bench would have conditioned its vote in favor of the repeal to favor a ZEDE located in the south of the country that allegedly would have financed his campaign⁵⁰¹.
277. However, as will be seen below, in parallel to the processing of these reforms, the Supreme Court of Honduras heard various appeals of unconstitutionality filed by Honduran civil society organizations against the ZEDE Legal Framework.

3. The Supreme Court's ruling of unconstitutionality

278. Consistent with their account of a crime novel, the Claimants attempt to present the 2024 unconstitutionality ruling as the result of a political maneuver promoted by the Government of President Castro and executed by a Supreme Court allegedly captured by partisan interests. However, this characterization distorts both the background of the procedure, the functioning of the Honduran institutions involved and the content of the decision itself. The following establishes **(3.a)** the procedure that gave rise to the judgment of unconstitutionality; **(3.b)** the formation of the Supreme Court and the issuance of the 2024 judgment; and **(3.c)** the merits of the judgment of unconstitutionality challenged by the

⁴⁹⁹ Decree No. 33-2022 dated April 22, 2022, published in the Official Gazette on April 26, 2022 (**C-0060**).

⁵⁰⁰ Republic of Honduras, *Decree No. 33-2022, which decrees the repeal of the ZEDE Organic Law* (April 22, 2022) (**C-0060**), art. 3. The purpose of this provision is to comply with Article 373 of the Constitution, which was interpreted by the National Congress through Decree No. 169-86 of November 3, 1986, by virtue of which it was understood that the expression “subsequent” refers to the ordinary legislature that immediately follows the ordinary legislature in which the Constitutional Reform Decree was approved. See Republic of Honduras, Decree No. 169-86 (November 3, 1986) (**R-0079-SPA**), art. 1.

⁵⁰¹ The ZEDE to which Mr. Redondo refers could correspond to the ZEDE Orquídea located in San Marcos de Colón, Choluteca. See “Ratification of the repeal of the ZEDEs is dissolved with the end of the period of ordinary sessions”, *Criterio.hn* (November 2, 2023) (**R-0250-SPA**).

Claimants.

a. The procedure that gave rise to the judgment of unconstitutionality

279. In their Memorial, the Claimants contend that “[t]he Castro Government appealed to the Supreme Court of Honduras” to declare the ZEDE Legal Framework unconstitutional⁵⁰². However, this statement is not at all consistent with reality.
280. The 2024 Judgment itself records that the procedure had its origin in a guarantee of unconstitutionality filed on July 21, 2021 by Mr. Francisco José Herrera Alvarado, in his capacity as Rector of the UNAH.⁵⁰³ That is, the action was filed during the administration of President Juan Orlando Hernández and more than four months before the elections that brought Xiomara Castro to the Presidency of the Republic⁵⁰⁴. It is therefore impossible to argue that the Castro government had “resorted” to the Supreme Court to promote a procedure that was already underway even before his election.
281. Nor is it effective that the action responded to partisan interests or that it had been promoted by actors politically aligned with the subsequent government. The record shows precisely the opposite. UNAH is the main public institution of higher education in Honduras. It has its own legal personality and enjoys academic, regulatory, financial and governance autonomy⁵⁰⁵. In addition, the Constitution confers on it the exclusive responsibility of

⁵⁰² Claimants’ Memorial, ¶ 299. The Claimants also seek to attribute to an interview with Luis Redondo, President of the National Congress, a meaning that their statements clearly do not have. The reference to a “legislative strategy” with respect to the ZEDEs alluded, naturally, to the initiatives that could be promoted by the Legislative Branch in the exercise of its constitutional powers, and not to an alleged use or coordination with the Judicial Branch. In fact, such an insinuation is incompatible with the facts, since the proceedings that culminated in the declaration of unconstitutionality of the ZEDE regime had their origin in initiatives promoted by civil society actors and not by the National Congress. See Claimants’ Memorial, ¶¶ 294-295. See also Statement by Luis Redondo in Frente a Frente (C-0732) and “Lack of ratification of the elimination of the ZEDEs obeys a strategy, assures Redondo”, *El Heraldo* (September 5, 2023) (C-0731).

⁵⁰³ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), p. 1.

⁵⁰⁴ The 2021 Honduran general election was held on November 28, 2021. See “After first results of the CNE, Xiomara Castro declares herself the winner of the general elections in Honduras”, *El Heraldo* (November 28, 2021) (R-0229-SPA); The inauguration of President Xiomara Castro took place on January 27, 2022. See also “Five facts about Xiomara Castro’s inauguration,” *El Heraldo* (December 14, 2021) (R-0230-SPA).

⁵⁰⁵ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 160. Article 161 of the Constitution obliges the State to allocate annually no less than 6% of the net income of the General Budget; Organic Law of the National Autonomous University of Honduras (Decree No. 209-2004) (February 12, 2005) (R-0088-SPA), arts. 1 and 2.

organizing, directing and developing higher and professional education in the country⁵⁰⁶. Its governance structure is made up of the University Council, as the highest management body; the University Board of Directors, as a collegiate executive body; and the Rector, who also presides over the Council of Higher Education⁵⁰⁷. It is, therefore, an autonomous institution whose action is not subordinate to the governments in power.

282. Similarly, Rector Francisco José Herrera Alvarado has no political affiliation. He is a surgeon graduated from the UNAH itself in 1980 and developed a career of more than three decades within the institution before being appointed interim rector on September 25, 2017 by the University Board of Directors⁵⁰⁸. His appointment responded to his recognized academic career, his acceptance within the university community, and his capacity for dialogue in a particularly complex period for the institution⁵⁰⁹. Nothing in his career allows him to be associated with partisan interests or, even less, with a political strategy promoted by the government that he would assume several months after the presentation of the action⁵¹⁰.
283. The UNAH's decision to promote the guarantee of unconstitutionality was due to strictly institutional reasons linked to the protection of the competencies that the Honduran Constitution reserves to it in the field of higher education. In particular, the University argued that Article 34 of Legislative Decree No. 120-2013 (ZEDE Organic Law) was

⁵⁰⁶ Through this institutionality, the UNAH exercises coordination and supervision functions over the entire national university system, including private universities. See Constitution of the Republic of Honduras (1982) with amendments up to March 20, 2013 (**C-0004**), art. 160.

⁵⁰⁷ Organic Law of the National Autonomous University of Honduras (Decree No. 209-2004) (February 12, 2005) (**R-0088-SPA**), arts. 5(2), 6, 7, 11.

⁵⁰⁸ "Francisco José Herrera Alvarado is sworn in as the new interim rector of the National Autonomous University of Honduras (UNAH)", *El Heraldo* (September 26, 2017) (**R-0168-SPA**); Organic Law of the National Autonomous University of Honduras (Decree No. 209-2004) (February 12, 2005) (**R-0088-SPA**), art. 15(1), Section Three.

⁵⁰⁹ "Francisco José Herrera Alvarado is sworn in as the new interim rector of the National Autonomous University of Honduras (UNAH)", *El Heraldo* (September 26, 2017) (**R-0168-SPA**).

⁵¹⁰ "Francisco José Herrera, rector of the UNAH: Swimmer, dancer and great motagüense", *El Heraldo* (May 18, 2018) (**R-0178-SPA**).

incompatible with the Constitution for at least four reasons⁵¹¹.

- First, this provision violated Article 160 of the Constitution by conferring on the ZEDEs powers to establish their own educational and curricular policies, invading attributions that correspond exclusively to the UNAH, including the organization, direction and development of higher and professional education, as well as the validation of academic degrees⁵¹².
- Second, this provision violated Article 151 of the Constitution by allowing the ZEDEs to develop educational policies outside the direction and supervision of the State, compromising the non-discriminatory, secular, democratic and national development-oriented character that the Constitution requires for education⁵¹³.
- Third, this provision exceeded the scope of Article 329 of the Constitution, even after its reform, since it did not confer educational powers on the ZEDEs or modify the constitutional provisions that attribute such functions to the UNAH.⁵¹⁴ *Fourth*, this provision was incompatible with various international obligations assumed by Honduras in the field of higher education, including those derived from the 1974 Regional Convention on the Recognition of Studies, Degrees and Diplomas in Higher Education in Latin America and the Caribbean, the 2019 Global Convention on the Recognition of Qualifications concerning Higher Education, and the Convention on the Exercise of University Professions and recognition of university studies of 1962⁵¹⁵.

284. Once the guarantee of unconstitutionality was presented, the procedure was carried out in accordance with the stages and formalities provided for in the Constitution of the Republic and in the Law on Constitutional Justice, fulfilling the following milestones:

- On August 6, 2021, the Constitutional Chamber decided to admit the guarantee, ordered to omit the issuance of communication to the National Congress, as it was a challenge by reason of content, and ordered that the prosecutor of the office be given a view of the background for a period of six days for the issuance of his opinion⁵¹⁶.
- On June 7, 2022, the Public Prosecutor's Office issued its opinion through prosecutor Sagrario Rosibel Gutiérrez Maldonado, concluding that the action of

⁵¹¹ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 3-8.

⁵¹² Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 4.

⁵¹³ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 4-5.

⁵¹⁴ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 5-6.

⁵¹⁵ Supreme Court of Honduras, *Constitutional Appeal SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 6-8.

⁵¹⁶ Supreme Court of Honduras, *Constitutional Appeal SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 2; Law on Constitutional Justice (**C-0709**), art. 80.

unconstitutionality should be declared admissible “by reason of content and in a total manner.”⁵¹⁷

- On October 12, 2022, the *amicus curiae* brief of Attorney Marlon Osmín Donaire Coello, acting personally and in favor of the Olga and Manuel Ayau Córdón LLC University (UOMAC), was considered filed, and the opinion of the prosecutor’s office was considered issued in a timely manner⁵¹⁸. UOMAC is a private institution, located in Próspera, that offers online education services⁵¹⁹. UOMAC’s brief was accompanied by a legal opinion issued by Jorge Colindres⁵²⁰, nominated by HPI as Technical Secretary of Próspera ZEDE on January 19, 2022, the same day he issued this legal opinion⁵²¹. By means of this presentation, Mr. Colindres presented at length his arguments as to the autonomy of the ZEDEs, the constitutionality of their provisions and the legal stability that they had allegedly been guaranteed, not limited only to the scope of Article 34 of the ZEDE Organic Law⁵²².
- On February 7, 2024, the Constitutional Chamber submitted the matter for discussion, voting and ruling, without reaching the required unanimity, with Justices Sonia Marlina Dubón Villeda, as President of the Chamber, Wagner Vallecillo Paredes and Francisca Villela Zavala voting in favor of the unconstitutionality, and Justices Luis Fernando Padilla Castellanos and Isbela Bustillo Hernández ⁵²³against. Consequently, the matter was referred to the plenary of the Supreme Court of Honduras⁵²⁴. The divided vote in the Constitutional Chamber and the transmission of this matter to the plenary show that the Supreme Court acted independently and that it was not controlled by a party.
- On September 20, 2024, the plenary of the Supreme Court issued the final judgment with the majority vote of eight justices⁵²⁵.

⁵¹⁷ Supreme Court of Honduras, *Constitutional Appeal SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 2; Law on Constitutional Justice (**C-0709**), art. 80.

⁵¹⁸ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 2; Verses 14-15.

⁵¹⁹ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 8-9; 11 (“the Olga and Manuel Ayau Córdón University (UOMAC) is an entity of Guatemalan capital, domiciled in the employment and economic development zone called “Próspera ZEDE”, in St. John’s Bay, Roatán, Bay Islands and is dedicated to offering low-cost higher education opportunities through mechanisms innovative online teaching.”); J. Constantino Colindres, *Legal Opinion as Amicus Curiae in relation to the appeal of unconstitutionality filed by the UNAH against Art. 34 of the ZEDE Organic Law* (January 19, 2022) (**R-0054-SPA**), p. 14.

⁵²⁰ J. Constantino Colindres, *Legal Opinion as Amicus Curiae in relation to the appeal of unconstitutionality filed by the UNAH against Art. 34 of the ZEDE Organic Law* (January 19, 2022) (**R-0054-SPA**).

⁵²¹ Claimants’ Memorial, ¶ 249. J. Constantino Colindres, *Legal Opinion as Amicus Curiae in relation to the appeal of unconstitutionality filed by the UNAH against Art. 34 of the ZEDE Organic Law* (January 19, 2022) (**R-0054-SPA**), p. 12.

⁵²² J. Constantino Colindres, *Legal Opinion as Amicus Curiae in relation to the appeal of unconstitutionality filed by the UNAH against Art. 34 of the ZEDE Organic Law* (January 19, 2022) (**R-0054-SPA**); Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 10.

⁵²³ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 2.

⁵²⁴ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 2.

⁵²⁵ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 57.

- On November 20, 2024, the certification of the ruling was extended to be sent to the National Congress of the Republic, being published in *La Gaceta*, Official Gazette of the Republic, on November 25, 2024⁵²⁶.

285. In short, the process that gave rise to the judgment of unconstitutionality was not initiated or promoted by the Executive Branch, but by an autonomous institution of the Honduran State during the administration prior to that of President Castro's, and complied with all the stages and formalities provided for in the Constitution of the Republic and the Law on Constitutional Justice.

b. The composition of the Supreme Court of Honduras and the issuance of the 2024 Judgment

286. The Claimants maintain that the Supreme Court's ruling of unconstitutionality was the result of an "irregular process" and was motivated by "openly political" ⁵²⁷ motivations. In support of this thesis, they allege, on the one hand, that the process of appointing the magistrates would have been manipulated by the exclusion of candidates allegedly favorable to the ZEDE Legal Framework⁵²⁸ and the selection of others for political considerations⁵²⁹; and, on the other hand, that the composition of the Plenary that resolved the unconstitutionality would have been altered through the incorporation of member magistrates in order to ensure a majority in favor of the declaration of unconstitutionality⁵³⁰. These allegations are unfounded, as will be demonstrated below.

287. *First*, in accordance with Article 311 of the Honduran Constitution, the magistrates of the Supreme Court of Honduras are elected with the favorable vote of two-thirds of the National Congress⁵³¹ from a list of 45 candidates⁵³² drawn up by an independent Nominating

⁵²⁶ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 60.

⁵²⁷ Claimants' Memorial, ¶ 307.

⁵²⁸ Claimants' Memorial, ¶ 300.

⁵²⁹ Claimants' Memorial, ¶ 301.

⁵³⁰ Claimants' Memorial, ¶ 304.

⁵³¹ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (**C-0004**), art. 311.

⁵³² Decree No. 74-2022, published on July 20, 2022 (**C-0104**), art. 4.

Board⁵³³, based on the nominations presented by those who aspire to be members of the country⁵³⁴ 's highest court and meet the requirements established in articles 309 and 310 of the Constitution⁵³⁵. In January 2023, it was up to the National Congress to appoint the 15 magistrates who would make up the Supreme Court of Honduras for the period between January 27, 2023, and January 27, 2030⁵³⁶.

288. In accordance with Article 5 of the Special Law on the Organization and Functioning of the Nominating Board, this body is composed of seven full members and seven alternate members, appointed respectively by the Supreme Court of Honduras, the CAH, the National Commissioner for Human Rights, the Honduran Council of Private Enterprise, the faculty of the schools of legal sciences convened by the National Autonomous University of Honduras, civil society organizations and workers' confederations⁵³⁷. The law also provides that each of these institutions must select its representatives in accordance with the law and its own internal rules or procedures⁵³⁸.
289. The composition of the Nominating Board reflects, therefore, the participation of actors from different sectors of the State and Honduran society, preventing the preparation of the list of

⁵³³ The organization and operation of the Nominating Board is regulated by law. Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 311. On July 19, 2022, the National Congress of Honduras approved Decree No. 74-2022, the Special Law on the Organization and Operation of the Nominating Board for the Proposal of Candidates for Magistrates of the Supreme Court of Honduras, which replaced the legal regime in force since 2001. See Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 27.

⁵³⁴ Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 14.

⁵³⁵ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), arts. 309 ("To be a Magistrate of the Supreme Court of Honduras it is required: 1. To be Honduran by birth; 2. Citizen in the enjoyment and exercise of his rights; 3. Notary Attorney duly registered; 4. Thirty-five (35) years of age or older; and, 5. To have been the head of a court for five (5) years, or to have practised the profession for ten (10) years.") and 310 ("The following may not be elected Magistrates of the Supreme Court of Honduras: 1. Those who have any of the disqualifications to be Secretary of State; and, 2. Spouses and relatives of each other in the fourth degree of consanguinity or second degree of affinity."); See Flow Chart and Legal Process of the Law of the Nominating Board of the Supreme Court of Honduras (R-0177-SPA).

⁵³⁶ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 314; "Designation of candidate of private universities for Nominating Board generates controversy", *Criterion* (August 28, 2022) (C-0744).

⁵³⁷ Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 5. In the case of representatives of civil society, certain special rules are established. Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 6. In addition, the same law establishes certain requirements and incompatibilities applicable to any candidate. Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 8.

⁵³⁸ Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 5.

candidates from being concentrated in a single authority or political sector⁵³⁹. This institutional design responds directly to the mandate contained in Article 311 of the Constitution and seeks to provide the process of selecting magistrates with greater guarantees of plurality, independence and legitimacy⁵⁴⁰. Therefore, there was not and could not be in this legal modification, approved by the National Congress, “an effort by President Castro to take over the Court in her favor.”⁵⁴¹

290. *Second*, the Government did not “intervene in the Nominating Board to remove the members and candidates of the Supreme Court who had favorable opinions on the ZEDE Legal Framework”⁵⁴² as alleged by the Claimants. This assertion lacks factual support and is directly contrary to the facts.

- María Elena Ulloa did not suffer “violent reactions” as alleged by the Claimants⁵⁴³. On the contrary, she voluntarily withdrew her candidacy to be a member of the Nominating Board on behalf of the faculty, after receiving public criticism from members of the academic community “because she has represented clients with the issue of Employment and Economic Development Zones” in the exercise of her profession as a lawyer⁵⁴⁴. In other words, she was criticized by civil society for the “imminent conflict of interest in which she would be involved.”⁵⁴⁵
- The Nominating Board evaluated the Supreme Court candidates through a system of structured interviews⁵⁴⁶ in which each Claimant had to answer “five random questions, which the Claimants had to take from a tombola and be answered in a five-minute time frame for each one.”⁵⁴⁷ Far from focusing on a specific topic, these questions covered diverse subjects, since they consisted of “questions of general

⁵³⁹ Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 2.

⁵⁴⁰ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 311.

⁵⁴¹ Claimants’ Memorial, ¶ 300.

⁵⁴² Claimants’ Memorial, ¶ 300.

⁵⁴³ Claimants’ Memorial, ¶ 300.

⁵⁴⁴ “Attorney María Elena Ulloa also renounces her aspirations to be a member of the Nominating Board,” *Hondudiario* (August 29, 2022) (C-0745) (“**The controversy in the case of Attorney Ulloa occurred because she has represented clients with the issue of the Employment and Economic Development Zones (ZEDE).**”) (emphasis added).

⁵⁴⁵ “Designation of candidate of private universities for Nominating Board generates controversy”, *Criterion* (August 28, 2022) (C-0744) (“**The imminent conflict of interest in which Ulloa would be involved, if elected nominator in the election process of the new Court, did not generate pleasure at the José Cecilio del Valle University either**”).

⁵⁴⁶ This system is expressly provided for in the law. See Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 18

⁵⁴⁷ “On hourly employment and the zedes ask candidates to the Court”, *La Prensa* (January 4, 2024) (C-0746), p. 3.

knowledge of specific cases that occur in the current legislation”.⁵⁴⁸

291. The exclusion of six candidates to the Supreme Court by the Nominating Board took place in accordance with the procedure provided for in the law⁵⁴⁹, based on strikes and challenges presented by third parties, and with full respect for the right of those affected to be heard and to exercise their defense⁵⁵⁰. Moreover, those challenges were not limited to questions relating to the ZEDEs, as the Claimants maintain.⁵⁵¹ On the contrary, the Nominating Board unanimously decided to exclude these candidates on the basis of multiple observations⁵⁵². Among them, were “the transgression of the principle of alternation in the exercise of the presidency,”⁵⁵³ as well as “the unjustified delay in the issuance of resolutions, the lack of absence of motivation in terms [sic] of the restriction of the right to liberty when the extension of pretrial detention is carried out, the undue excuse to hear cases of high impact and that have delayed the resolution of these and the relying on legal technicalities to protect rights”.⁵⁵⁴
292. Therefore, contrary to what the Claimants point out, the record shows that the Board exercised its functions autonomously, through the mechanisms, criteria and stages provided for by law, with the participation of representatives from various institutional and social sectors and without discriminating against those candidates who had a position favorable to

⁵⁴⁸ Given that the ZEDE Legal Framework was subject to a constitutionality control procedure, it was natural that it was addressed during the interviews as a topical legal issue. Their inclusion was not an attempt to identify or exclude candidates on the basis of their views on that matter. See “On hourly employment and the zedes ask candidates to the Court”, *La Prensa* (January 4, 2024) (C-0746), p. 3.

⁵⁴⁹ Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 20.

⁵⁵⁰ Decree No. 74-2022 published on July 20, 2022 (C-0104), art. 20; *Nominating Board for the Nomination of Candidates for Justices of the Supreme Court of Honduras*, API (January 18, 2023) (C-0747), ¶ 106.

⁵⁵¹ Claimants’ Memorial, ¶ 300.

⁵⁵² The Nominating Board excluded the six candidates who had been objected to by third parties. Jorge Alberto Zelaya Zaldaña, Edwin Francisco Ortiz Cruz, Jorge Abilio Serrano Villanueva, Rafael Bustillo Romero and María Fernanda Castro Mendoza were unanimously excluded; and, Edgardo Cáceres Castellanos was excluded by a majority of five votes to two, with the Supreme Court and the Bar Association being dissenting. See *Nominating Board for the Proposal of Candidates for Justices of the Supreme Court of Honduras*, API (January 18, 2023) (C-0747), ¶ 112.

⁵⁵³ *Nominating Board for the Nomination of Candidates for Justices of the Supreme Court*, API (Jan. 18, 2023) (C-0747), ¶ 105.

⁵⁵⁴ *Nominating Board for the Proposal of Candidates for Justices of the Supreme Court of Honduras*, API (January 18, 2023) (C-0747), ¶¶ 107-108; Article 112.

the ZEDEs.

293. *Third*, the magistrates of the Supreme Court were elected by the National Congress, with the vote of all political parties with parliamentary representation, from the list of candidates proposed by the Nominating Board⁵⁵⁵, in accordance with the procedure provided for in the Constitution⁵⁵⁶. It is also incorrect to state that the appointed magistrates shared a uniform position contrary to the ZEDEs⁵⁵⁷. If this were true, it would not explain that five of the titular magistrates who made up the plenary of the Supreme Court voted against the declaration of unconstitutionality of the ZEDE Legal Framework in the 2024 ruling⁵⁵⁸.
294. In its first plenary session and in accordance with Honduran law, the Supreme Court of Honduras elected, by a majority vote of its titular magistrates, Rebecca Lizette Raquel Obando to serve as President of the Supreme Court⁵⁵⁹. Similarly, the Supreme Court introduced a reform to its Internal Rules of Procedure to redefine the form of its composition in the event of the absence of one of its magistrates⁵⁶⁰, in exercise of the powers granted to it by the Honduran Constitution⁵⁶¹. The new Supreme Court integration mechanism

⁵⁵⁵ The 15 elected magistrates were part of the list of candidates drawn up by the Nominating Board and were assigned an identifier code corresponding to their respective candidacies. “Final List of 45 Candidates for CSJ Magistrates,” *National Congress of Honduras* (January 23, 2023) (**R-0243-SPA**), pp. 4-5; Legislative Branch, *Decree No. 2-2023, Election of Supreme Court Justices* (February 17, 2023) (**R-0057-SPA**).

⁵⁵⁶ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (**C-0004**), art. 311. Through a vote that registered 117 votes in favor, 10 against and one abstention, the National Congress of Honduras proceeded to the election of the magistrates of the Supreme Court of Honduras. See “Honduras elected the 15 new magistrates of the Supreme Court of Honduras,” *File* (February 16, 2023) (**C-0110**), p. 3.

⁵⁵⁷ Claimants’ Memorial, ¶ 301.

⁵⁵⁸ Such is the case of magistrates Gaudy Alejandra Bustillo Martínez, Anny Belinda Ochoa Medrano, Odalis Aleyda Nájera Medina, Nelson Danilo Mairena Franco and Walter Raúl Miranda Sabio, all of them elected by the National Congress. Two member magistrates also voted against. Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 57.

⁵⁵⁹ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (**C-0004**), art. 315.

⁵⁶⁰ Under this new mechanism, three-quarters of the titular magistrates of the Supreme Court must approve a list of at least six member magistrates, who participate mainly in the plenary sessions of the Supreme Court in the absence of the titular magistrates. All of them must come from the latest list of candidates proposed by the Nominating Board to the National Congress. In addition, the composition of the Tribunal is carried out in a successive and rotating order, which prevents the ad hoc selection of the judges and ensures that they are not appointed with the purpose of achieving a specific result. See *Agreement of the Supreme Court of Honduras* published in La Gaceta No. 36.158, § B, amending the Internal Regulations of the Supreme Court of Honduras dated February 17, 2023 (**C-0111**), art. 5(15).

⁵⁶¹ The Honduran Constitution empowers the Supreme Court to issue its Internal Rules of Procedure and other rules that may be necessary for the performance of its functions. Considering that the figure of the member

introduced in 2023 was a substantial improvement over the previous regime, which allowed the President to discretionally appoint the members of the Supreme Court in the absence of a titular magistrate⁵⁶².

295. Consequently, the Claimants' allegations regarding the composition of the Supreme Court that resolved the appeal of unconstitutionality are absolutely unfounded⁵⁶³. It is also incorrect to state that these magistrates shared a uniform position contrary to the ZEDEs. In fact, two of them voted against the declaration of unconstitutionality of the ZEDE Legal Framework in the 2024 ruling⁵⁶⁴.
296. *Fourth*, the allegations that the Claimants reproduce with respect to the President of the Supreme Court⁵⁶⁵ are absolutely unfounded, as evidenced by the press releases that they attached as evidence. In effect, the entire accusation rests on statements made by a judge⁵⁶⁶ who was arrested in flagrante delicto while receiving a bribe in exchange for archiving a

magistrates was already contemplated in the Honduran legal system and that the existence of a substitute mechanism constitutes an inherent necessity in the operation of a court composed of fifteen magistrates who may be absent for health reasons or other justified causes, the Supreme Court was fully empowered to adapt its Internal Regulations in the way it did. Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (**C-0004**), art. 313(8).

⁵⁶² In accordance with the 2002 Rules of Procedure of the Supreme Court, it was the responsibility of the President of the Supreme Court to make the call for membership of the Court in the absence of a titular judge. It was usually customary to call magistrates of the Courts of Appeals. Supreme Court of Honduras, *Decision No. 04-02, Internal Rules of Procedure of the Supreme Court of Honduras* (June 20, 2002) (**R-0052-SPA**), art. 15(d). This integration mechanism had been the subject of questions due to the wide margin of discretion it conferred on the President. Precisely for this reason, the new magistrates decided to reform the Internal Regulations and incorporate the figure of the member magistrates, with the purpose of making up the Court in a more orderly, objective manner and with the approval of the Plenary. See "Mario Diaz Manifests with 'integrative' magistrates there is intended to be transparency and not manipulation," *Paradigma.hn* (February 23, 2023) (**R-0245-SPA**); "The figure of 'member magistrates' already existed in the internal regulations and will prevent manipulation of the presidency of the CSJ, defends Mario Díaz," *Proceso.hn* (February 22, 2023) (**R-0244-SPA**).

⁵⁶³ Claimants' Memorial, ¶¶ 301-303.

⁵⁶⁴ These are Marvin Rigoberto Espinal Pinel and Luis Alonso Discua Cerrato. See Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021, Judgment* (September 20, 2024) (**R-0066-SPA**), p. 57.

⁵⁶⁵ Claimants' Memorial, ¶ 304.

⁵⁶⁶ "Arrest of Judge Marco Vallecillo shakes the leadership of the Supreme Court in Honduras," *Expediente Público* (August 21, 2024) (**C-0127**) ("Tell the president of the (Supreme) Court that, if I fall, I'm going to talk,' was Vallecillo's response to an ATIC agent whom he called at the time of his arrest").

criminal case⁵⁶⁷. Subsequently, the judge himself retracted these statements⁵⁶⁸. Moreover, Ms. Obando herself requested the Honduran Public Prosecutor's Office to investigate her personally, as well as her husband⁵⁶⁹. Consequently, the Claimants have merely reproduced arguments that are completely unfounded on the basis of a partial and distorted reading of certain press releases.

297. *Fifth*, the convening and composition of the Plenary of the Supreme Court of Honduras to hear the appeal of unconstitutionality with respect to the ZEDE Legal Framework was carried out in accordance with the procedures and formalities provided for in Honduran legislation. In effect, the summons was made by the President of the Supreme Court more than 48 hours in advance, in compliance with the provisions of Article 12 of the Internal Rules of Procedure of the Supreme Court⁵⁷⁰. Likewise, the Plenary was composed of ten titular magistrates and five member magistrates⁵⁷¹, in accordance with Article 316 of the Constitution, which provides that, in the event of lack of unanimity in the decision of a matter

⁵⁶⁷ “Arrest of Judge Marco Vallecillo shakes the leadership of the Supreme Court in Honduras,” *Public Record* (August 21, 2024) (**E-0127**); See also “Jorge Cálix calls for impeachment against CSJ president Rebeca Ráquel, HCH Televisión Digital,” *Youtube* (August 20, 2024) (**C-0126**); See “Rebeca Obando denies resigning from the CSJ: ‘They want to remove people who work well,’” *El Herald* (August 19, 2024) (**C-0125**).

⁵⁶⁸ “Arrest of Judge Marco Vallecillo shakes the leadership of the Supreme Court in Honduras,” *Expediente Público* (August 21, 2024) (**C-0127**) (“However, when the protected witness was transferred to the early hearing, Judge Vallecillo clarified that the president of the Court was not involved in his detention.”) (emphasis added); See also “Jorge Cálix asks for Impeachment against president of the CSJ, Rebeca Ráquel, HCH Televisión Digital,” *Youtube* (August 20, 2024) (**C-0126**) (“The truth is that the same defendant has come forward yesterday to deny that this alleged bribe or bribe, let's call it that, was not intended for the husband of the president of the Court.”).

⁵⁶⁹ The Claimants do not present any evidence to the effect that this investigation has yielded any precedent against them. “Arrest of Judge Marco Vallecillo shakes the leadership of the Supreme Court in Honduras,” *Expediente Público* (August 21, 2024) (**C-0127**) (“The president of the Court agreed to be investigated by the Public Prosecutor's Office, along with her husband, José Luis Melara [...] ‘Everything must be investigated, these are excuses and slanders. This is called extortion,’ Rebeca Raquel Obando defended herself.”); Rebeca Obando denies resigning from the CSJ: “They want to remove people who work well,” *El Herald* (August 19, 2024) (**C-0125**) (“Obando asked the Public Ministry to investigate her personally, as well as her husband”).

⁵⁷⁰ Supreme Court of Honduras, *Decision No. 04-02, Internal Rules of Procedure of the Supreme Court of Honduras* (June 20, 2002) (**R-0052-SPA**), art. 12. The call was informed on Tuesday, September 17, 2024, so that the session would be held on Friday, September 20, 2024. See Judicial Branch of Honduras, Convocation of Plenary Session (September 17, 2024) (**C-0137**).

⁵⁷¹ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 57; “Supreme Court of Honduras 2023-2030,” *Judicial Branch Honduras* (**R-0277-SPA**); The member magistrates who made up the Plenary were José Ricardo Pineda Medina, Felipe René Speer Lainez, Aida Patricia Martínez Linares, Marvin Rigoberto Espinal Pinel and Luis Alonso Discua Cerrato. See “Magistrates Integrante 2023-2030,” *Poder Judicial Honduras* (**R-0278-SPA**).

by the Constitutional Chamber, the magistrates who have participated in said Chamber may not be part of the Plenary to hear the same matter⁵⁷². Therefore, once again, the Claimants reproduce unfounded criticisms of the convening and composition of the Plenary that resolved the appeal of unconstitutionality⁵⁷³.

298. *Sixth*, the Claimants invoke an alleged copy of the Supreme Court judgment that was circulated in the press before its official publication, despite the fact that said document has not been authenticated or validated by any Honduran authority; facts that are sufficient to rule it out⁵⁷⁴. On that basis, they question the time elapsed between the adoption of the decision and its subsequent notification and publication⁵⁷⁵. However, this criticism ignores Honduran judicial practice, in which it is common for there to be a lapse between the deliberation and adoption of the judgment, the issuance of its full text, its certification, notification and its subsequent official publication⁵⁷⁶. Consequently, the mere existence of a

⁵⁷² Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 316. The Constitutional Chamber had been made up of the titular magistrates Sonia Marlina Dubón Villeda (rapporteur and president of the Chamber), Wagner Vallecillo Paredes, Francisca Villela Zavala, Luis Fernando Padilla Castellanos and Isbela Bustillo Hernández who could not participate in the Plenary. See Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), p. 1, footnote No. 1; “Supreme Court of Honduras 2023-2030”, *Honduran Judiciary* (R-0277-SPA).

⁵⁷³ Claimants’ Memorial, ¶ 304. In fact, the press release cited by the Claimants itself reports that the Supreme Court spokesperson reported that the remote participation of the titular justices who were outside the country would be allowed to dispel the unfounded criticisms reproduced by the Claimants. See “Nasralla says magistrates are sent on a trip to approve illegalities in the Honduran CSJ,” *El Espectador* (September 19, 2024) (E-0142).

⁵⁷⁴ The Claimants themselves acknowledge that the judgment that circulated in the press was not signed by the judges, was not certified by the Court Secretariat, nor did it include the corresponding formal or administrative adjustments. Claimants’ Memorial, ¶ 308; footnote No. 750. Moreover, the alleged judgment contained manifest errors such as the erroneous identification of the appellant, Mr. Herrera Alvarado, who was described as a lawyer, being a doctor. See *Unofficial Decision of the Supreme Court of Honduras*, Case No. RI 0738-2021 on the unconstitutionality of the ZEDE Legal Framework dated September 20, 2024, published by the Honduran press on November 14, 2024 (C-0172).

⁵⁷⁵ Claimants’ Memorial, ¶ 306.

⁵⁷⁶ The final paragraph of the Judgment states that the ruling was extended on November 20, 2024, without prejudice to the fact that its issuance was certified on September 20, 2024. See Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), p. 60. The same is true of the judgments cited by the Claimants, which show that a period of two months between the extension of the judgment and its issuance is short in relation to the practice of the Court. By way of example, in case RI-0030-13, cited by the Claimants, the judgment was extended on October 14, 2014, notwithstanding the fact that the judgment was certified on May 26, 2014. See Decision of the Supreme Court of Honduras, Case No. RI 0030-13, May 26, 2014 (C-0008), p. 50. The same can be observed in case AA-281-19, also cited by the Claimants, in which the judgment was extended on November 3, 2021, without prejudice to the fact that its issuance was certified on September 3, 2020. Decision of the Supreme Court of Honduras, Case No. AA-281-19, June 3, 2022 (C-0711).

temporal difference between these proceedings does not constitute any indication of irregularity or affect the validity of the judgment.

299. In short, the Claimants have not provided any evidence to conclude that the process of appointing the magistrates of the Supreme Court of Honduras or the composition of the Plenary that resolved the action of unconstitutionality have been the object of political manipulation or irregularities contrary to Honduran law. On the contrary, the record shows that both the composition of the Nominating Board and the selection of the titular and member magistrates, the convocation of the Plenary and the issuance of the judgment were in accordance with the procedures provided for in the Constitution and the laws of Honduras.

c. The substance of the Supreme Court’s unconstitutionality ruling

300. The Claimants criticize four aspects of the Supreme Court’s decision that declared the ZEDE Legal Framework unconstitutional: (i) that it would have ignored its decisions of 2014 and would have declared the unconstitutionality of the entire regime in circumstances that a single article had been challenged⁵⁷⁷; (ii) that the *ex tunc* effect of the decision would be contrary to Honduran law⁵⁷⁸; (iii) that the position of the Supreme Court in relation to the investors of the ZEDEs in force was incomprehensible and deepened the legal uncertainty with respect to their rights⁵⁷⁹; (iv) that the decision would not have respected the Claimants’ right to due process⁵⁸⁰. Each of the four criticisms put forward by the Claimants is answered below.
301. *First*, the Supreme Court itself explained at length the reasons why the extension of the object of unconstitutionality beyond the challenged Article 34 was appropriate. In the first place, Article 90 of the Law on Constitutional Justice expressly empowers the Supreme Court to declare unconstitutional “those precepts of the same law or of another, or others

⁵⁷⁷ Claimants’ Memorial, ¶ 308.

⁵⁷⁸ Claimants’ Memorial, ¶¶ 309-310.

⁵⁷⁹ Claimants’ Memorial, ¶ 311; Free Cities Foundation, “*The Próspera Master Plan | Gabriel Delgado*” *YouTube* (April 10, 2026) (R-0110-ENG), (00:36:36 - 00:37:20).

⁵⁸⁰ Claimants’ Memorial, ¶ 312.

that have a direct or necessary relationship”,⁵⁸¹ and there was consolidated jurisprudence in this regard⁵⁸². Second, it invoked the imperative mandate of Article 375 of the Constitution, which imposes on every citizen the duty to cooperate in the maintenance or restoration of the validity of the Constitution when it is allegedly modified by procedures other than those provided for by the Constitution⁵⁸³. Given that the analysis of Article 34 inevitably led to the finding that the ZEDEs as a whole violated the immutable articles on territory and form of government, the extension was mandatory for the Supreme Court⁵⁸⁴.

302. Regarding the jurisprudential change with respect to the 2014 judgments, the Claimants’ own expert recognizes that the Supreme Court of Honduras can “depart from its own doctrine.”⁵⁸⁵ Indeed, Honduras has a civil law system in which the decisions of the higher courts do not constitute binding precedents for future cases and, in particular, in which the 2014 unconstitutionality rulings do not have the effect of *res judicata*⁵⁸⁶. This is confirmed by Article 91 of the Law on Constitutional Justice, by virtue of which the Constitutional Chamber “may dismiss” any question of unconstitutionality “when the reasons alleged are the same” with respect to a previous case in which the constitutionality of a rule has been

⁵⁸¹ Law on Constitutional Justice (C-0709), art. 90.

⁵⁸² Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), p. 17; See, for example, Supreme Court of Honduras, *Constitutional Appeal RI-0172-2006*, Judgment (October 4, 2006) (R-0089-SPA); Supreme Court of Honduras, *Appeal of Unconstitutionality RI-1165-2014*, Judgment (June 23, 2017) (R-0163-SPA).

⁵⁸³ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), pp. 17-18; Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 375.

⁵⁸⁴ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), pp. 15-16.

⁵⁸⁵ Cosenza-I, ¶ 132.

⁵⁸⁶ Among the exceptions to this general rule is Article 73 of the Law on Constitutional Justice mentioned by the Claimants’ expert. Cosenza-I, ¶ 132. By virtue of this article, “[t]he three conforming judgments issued by the Supreme Court of Honduras through the Constitutional Chamber in amparo applications constitute legal doctrine. However, the Constitutional Chamber may depart from its own doctrine, reasoning the innovation.” See Law on Constitutional Justice (C-0709), art. 73. As can be seen from its simple reading, this article applies only to amparo applications, not to the control of constitutionality regulated in Title III of the Law on Constitutional Justice. Therefore, contrary to what was pointed out by the Claimants’ expert, in this case the Supreme Court should not identify the reasons why the previous precedent is no longer adequate. Cosenza-I, ¶¶ 132-133.

declared⁵⁸⁷. The discretionary, and not mandatory, nature of this rule confirms that the Chamber may adopt a criterion different from that upheld in previous judgments of unconstitutionality.

303. Notwithstanding the foregoing, the Supreme Court nevertheless explained that those decisions should be discarded since they were issued by magistrates elected to replace those who had been dismissed precisely for declaring the “model cities” unconstitutional, and that their arguments were insufficient since they had not analyzed the material effects of the reform⁵⁸⁸. The circumstances to which it alluded are precisely those that were ratified by the judgment of the Inter-American Court of Human Rights already mentioned above⁵⁸⁹.
304. *Second*, the Supreme Court explained why the derogatory effect (*ex nunc*) was insufficient in this case. The national territory and the form of government are primordial elements of the State protected by immutable clauses⁵⁹⁰, whose dominion is “inalienable and imprescriptible”.⁵⁹¹ If the declaration only had future effects, the laws and acts that compromised the sovereign dominion of the State over its territory would remain firm and without the possibility of being restored, which would constitute, in the words of the Supreme Court, “a terrible absurdity from the perspective of the imprescriptibility, inalienability and intangibility of the territory”⁵⁹². In addition, it pointed out that the Constituent Assembly itself provided for nullity effects in Article 3, which declares null and void the acts of authorities that violate the Constitution, and that Article 375 orders the

⁵⁸⁷ Law on Constitutional Justice (C-0709), art. 91 (emphasis added). The Claimants' expert cites this rule; however, they have not proven that the cases in which the constitutionality of the ZEDE Legal Framework was declared have dealt with the same reasons alleged in file SCO-0738-2021 in relation to Article 34 of the ZEDE Organic Law. Cosenza-I, ¶ 131.

⁵⁸⁸ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), pp. 51-53.

⁵⁸⁹ See Section II.A.3.

⁵⁹⁰ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 374.

⁵⁹¹ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 13; Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), p. 22.

⁵⁹² Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), p. 22.

“restoration” of the validity of the Constitution, a term that necessarily implies returning the situation to the state prior to the violation⁵⁹³. The Supreme Court also noted that the application of the ex nunc effect had already generated negative consequences for Honduras, including complaints to the IACHR stemming from judgments RI-1665-2001 and RI-2424-2001⁵⁹⁴.

305. *Third*, the Supreme Court’s position sought to reconcile the nullity of origin of the ZEDE regulation with the protection of the legal certainty of those who acted in good faith. The ruling expressly stated that “the claim of acquired rights is totally discarded” in relation to the ZEDEs, because no commercial company or company effectively achieved the status of ZEDE, given that the National Congress never formally approved the creation of any ZEDEs⁵⁹⁵. However, the Supreme Court made it clear that lawful investments constituted in good faith are protected by the general legal framework prior to the regulation declared unconstitutional, so that “their constitution and operation are understood to be included in the normal or regular regulations that currently and have been in force since before in commercial, tariff, tax, financial, etc.”⁵⁹⁶. This solution is consistent with the principle that no one can benefit from acts that are unconstitutional and illegitimate, especially when the unconstitutionality was widely announced and denounced from the beginning by multiple actors⁵⁹⁷, so that every investor was warned of the risk.

306. *Fourth*, the Claimants’ criticism of the lack of due process ignores the specific facts of the

⁵⁹³ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 17;21.

⁵⁹⁴ Supreme Court of Honduras, *Constitutional Appeal SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 22; Supreme Court of Honduras, *Constitutional Appeal RI-0172-2006*, Judgment (October 4, 2006) (**R-0089-SPA**); Supreme Court of Honduras, *Appeal of Unconstitutionality RI-1165-2014*, Judgment (June 23, 2017) (**R-0163-SPA**).

⁵⁹⁵ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 24.

⁵⁹⁶ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 42.

⁵⁹⁷ Among them, COHEP, the Association for a More Just Society (ASJ) and the CNA. Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 27-36.

case file and the nature of the unconstitutionality process in Honduras.

307. On the one hand, the procedure complied with all the stages provided for by the Law on Constitutional Justice: admissibility, opinion of the Public Prosecutor's Office, receipt of the *amicus curiae*, discussion and vote in the Chamber, and referral to the plenary in the absence of unanimity in accordance with Article 316 of the Constitution⁵⁹⁸. It should be noted that under Honduran law there is no ordinary or extraordinary remedy against the judgments of unconstitutionality issued by the Supreme Court of Honduras, given that in accordance with Article 316, paragraph 2, of the Constitution and Article 94 of the Law on Constitutional Justice, they are immediately executed, have general effects and constitute a definitive and unappealable pronouncement in the exercise of its original and exclusive jurisdiction⁵⁹⁹.
308. On the other hand, the interests of the investors in the ZEDEs were represented by the *amicus curiae* brief filed by Attorney Marlon Osmin Donaire Coello for the benefit and representation of the Universidad Olga y Manuel Ayau Cordón LLC (UOMAC), an entity of Guatemalan capital, domiciled in Próspera ZEDE that operated under the challenged Article 34, accompanied by the legal opinion of Attorney Jorge Constantino Colindres, who was Technical Secretary of Próspera ZEDE⁶⁰⁰. This brief was admitted on October 12, 2022⁶⁰¹. In it, the exclusion of higher education from the scope of the ZEDEs by Article 329; the analogy with municipal autonomy; the non-stony nature of the articles invoked; the membership of the ZEDE regime in the constitutional block; international obligations under the CAFTA-DR and the Honduras-Kuwait BIT; and legal stability contracts with legal

⁵⁹⁸ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 2-3; Verses 14-15.

⁵⁹⁹ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (**C-0004**), art. 184; Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 19.

⁶⁰⁰ Supreme Court of Honduras, *Constitutional Appeal SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 8-9.

⁶⁰¹ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 2.

entities and natural persons in the ZEDEs⁶⁰². All these arguments were analyzed and answered by the Supreme Court, which concluded that they were unfounded because they were based on an “absolutely spurious” constitutional text that violated Article 374⁶⁰³.

309. In short, the Supreme Court’s ruling constitutes a pronouncement based on Honduran law, issued in the exercise of its exclusive constitutional competence, which followed the legally established procedure, guaranteed the participation of the interested parties through the *amicus curiae* mechanism, and responded in a reasoned manner to each of the arguments put forward in defense of the regime. The fact that the Claimants disagree with the result does not make the decision arbitrary or violate due process. On the contrary, the judgment fulfilled the imperative duty that Article 375 of the Constitution imposes on any Honduran authority to restore the validity of the constitutional order when it has been broken in its unreformable clauses.

4. The measures that Honduras has progressively taken to protect its sovereignty

310. As has been demonstrated, it was only after the ZEDE Legal Framework was repealed and declared unconstitutional in accordance with Honduran law that the Executive Branch of Honduras began to adopt, through its various entities, a series of measures aimed at implementing the statements of the National Congress⁶⁰⁴ and the Supreme Court of Honduras⁶⁰⁵ and, therefore, to adapt the legal situation of the ZEDEs to what is allowed by

⁶⁰² Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 10-14.

⁶⁰³ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), p. 41.

⁶⁰⁴ See the statement of Congressman Yuri Cristhian Sabas Gutiérrez, referring to the possible applicability of the ZOLI regime. National Congress of Honduras, Minutes No. 24 (April 19-21, 2022) (**R-0236-SPA**), pp. 84-85.

⁶⁰⁵ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (**R-0066-SPA**), pp. 59-60. (“4. The investment of companies or companies constituted in good faith that intended to become areas of employment and economic development, as well as their property, acquired in good faith and in accordance with our laws and constitutional provisions, is declared protected. Such companies or companies are subject to the regulations and legal protection (security) in force in the time prior to the regulations declared unconstitutional with this judgment. Therefore, such companies and companies have at their disposal all the legislation and civil, commercial, fiscal, administrative, etc., procedures to legalize and regularize their condition, in order to continue operating in Honduras under the constitutionally provided economic regime, as long as they have acted in good faith and their lines, businesses and transactions are transparent and lawful in accordance with national and international legislation.”)

current legislation. As confirmed by the Claimants, Honduras has not taken steps to close Próspera⁶⁰⁶; on the contrary, the project has continued to operate subject, it is to be hoped, to the legal system in force.

311. In this regard, it is not true that the Claimants are in a situation of uncertainty or legal uncertainty, as they claim⁶⁰⁷. On the contrary, as will be demonstrated below, they are in a process of adaptation aimed at bringing the legal regime applicable to their projects into line with that of other companies operating in Honduras, within the current legal framework.
312. In January 2022, the Government of Honduras appointed Fernando Emilio García Rodríguez as Presidential Commissioner against ZEDEs, entrusting him with leading the analysis, review, and eventual repeal of the ZEDE Legal Framework⁶⁰⁸. According to what he recounted, among his first functions, and considering that the repealing decrees had not yet been promoted before the National Congress and there was no ruling from the Supreme Court of Honduras, he devoted himself to compiling the available information on that regime. In the context of this work, and in the absence of documentation in the public institutions that had allegedly interacted with the ZEDEs, it required the Claimants to submit the commitments assumed by previous administrations in relation to that regime, as well as the corresponding documentation. However, the Claimants did not provide information in response⁶⁰⁹.
313. It was not until June 2024, after the repeal of the ZEDE Legal Framework, that Mr. García filed a complaint with the Public Prosecutor's Office against members of the CAMP for the possible commission of the crimes of abuse of authority and usurpation of functions, in relation to the exercise of powers that, according to the Constitution, correspond to the

⁶⁰⁶ Claimants' Memorial, ¶¶ 279, 313.

⁶⁰⁷ Claimants' Memorial, ¶¶ 266, 320, 419-420.

⁶⁰⁸ "Fernando García, appointed by the president of Honduras to fight against the ZEDEs," *Criterio.hn* (February 10, 2022) (**E-0053**).

⁶⁰⁹ "Members of ZEDE's regulatory body asked to be investigated for possible abuse of authority," *Criterio.hn* (June 8, 2024) (**R-0254-SPA**).

Executive, Legislative and Judicial powers⁶¹⁰. In view of the repeal of the Organic Law on the ZEDEs, the adoption of this type of measure was necessary to restore the normal functioning of the Honduran legal system, especially considering that the CAMP was contained only in that same law⁶¹¹. This complaint was added to others filed by civil society organizations and citizen movements against members of the CAMP and by members of the National Congress against other members of the Legislative Branch⁶¹².

314. At the same time, the Honduran authorities began to adopt various measures aimed at advancing the process of regularization of companies that previously operated under the now annulled ZEDE regime:

- The **Revenue Administration Service (SAR)**, the Honduran tax authority, is in an internal process to regularize the situation of subjects who were adhered to the ZEDE regime and were not registered with the SAR. This is a long process of identification of subjects with activity and registration of operations that, eventually, will conclude in an injunction to register and pay the corresponding taxes of those taxpayers who do not voluntarily appear before the Service. In this sense, it is important to consider that in Honduras the tax system is self-assessment (i.e., the taxpayer registers, calculates, declares and pays) and that, since the ruling of the Supreme Court of Honduras and the beginning of said internal investigation, the SAR has not carried out an inspection in the Roatán area to identify subjects not registered in the tax regime.⁶¹³ While the SAR carries out its internal investigation, in response to the publicity of the Supreme Court's ruling, any taxpayer who has activity in Próspera has the legal obligation to register in the tax regime, file an affidavit and pay their taxes (even requesting a payment facility plan). It should also be noted that even the Organization for Economic Cooperation and Development (“OECD”) has declared the ZEDEs tax regime repealed. As confirmed by EY, the consultancy firm hired by the Claimants⁶¹⁴, the repeal took place after the OECD observed in July 2022, in the results of the Peer Review on Harmful Tax Practices, that the ZEDE regime had potentially harmful aspects under Action 5 of the Action Plan to Prevent Base Erosion and Profit Shifting (the “BEPS Plan”) that needed to

⁶¹⁰ The complaint, of approximately fifty pages, was accompanied by supporting documentation intended to support the initiation of the corresponding investigations by the Public Prosecutor's Office. This complaint referred to actions both before and after the repeal of the ZEDE Organic Law. “They ask to investigate members of ZEDE's regulatory entity for possible abuse of authority”, *Criterio.hn* (June 8, 2024) (**R-0254-SPA**).

⁶¹¹ This complaint was filed despite the fact that the identity of the majority of the members of the CAMP was not publicly known, a situation that is hardly compatible with the nature of a State body, as the Claimants claim. “They ask to investigate members of ZEDE's regulatory entity for possible abuse of authority”, *Criterio.hn* (June 8, 2024) (**R-0254-SPA**).

⁶¹² Claimants' Memorial, ¶¶ 272, 274, 314.

⁶¹³ Tax Code of Honduras (Decree No. 170-2016) (2016) (**R-0156-SPA**), arts. 58, 62-63, 66.

⁶¹⁴ Claimants' Memorial, ¶ 169.

be duly addressed⁶¹⁵.

- The **Honduran Customs Administration** publicly challenged any alleged independent customs authority that Próspera ZEDE would have illicitly sought to exercise under Article 32 of the unconstitutional ZEDE Organic Law⁶¹⁶. In this way, today the Customs Administration allows imports and exports from Próspera, but in accordance with Honduran regulations and no longer with those that the Claimants had wanted to establish in a completely discretionary manner⁶¹⁷. If the Claimants had declared imports or exports to Customs since the declaration of nullity of the ZEDE regime, the treatment would be the same as that of any other company regularly incorporated in Honduras; if, since then, the Claimants had imported or exported Honduras without the corresponding declaration, this would imply an unlawful act⁶¹⁸. Similarly, the fact that the Claimants have continued to pay concepts for a contract that was declared null and void in the 2024 judgment of the Supreme Court and despite the fact that the customs agent had withdrawn from the post located in Próspera ZEDE⁶¹⁹, has no implication whatsoever since in cases in which an importer or exporter of goods overpays, the procedure provides that it is the person who must initiate the administrative procedure for the recovery of the underpaid, since, by regulation, ex officio refunds by the Customs Administration are not appropriate⁶²⁰.
- The **Property Institute** celebrated the 2024 Supreme Court ruling as a step in favor of protecting the sovereignty of the State in a statement in which it expressed that the Institute had been instrumentalized to hand over parts of the national territory to the Claimants⁶²¹. Beyond this, as a preliminary matter, it is necessary to observe that the Claimants misinterpret the effects of the creation of the Special Registry of the ZEDEs by alleging that the registered real estate would have been “transferred from the Property Institute to the ZEDE”.⁶²² Article 28 of the Honduran Property Law states that all registries under the Property Institute function as a Unified Property Registry, which includes, among others, the Real Property Registry and the Special Registries⁶²³, and the ZEDE Registry was nothing more than a Special

⁶¹⁵ “Honduras repeals the ZEDE Regime after its review by the OECD Forum on Harmful Tax Practices”, *EY* (January 18, 2023) (**R-0242-SPA**).

⁶¹⁶ “Customs does not recognize privileges of the ZEDE regime, says head of the entity”, *Criterio.hn* (November 16, 2023) (**C-0567**); ZEDE Law, art. 32 (**C-0006**).

⁶¹⁷ “Customs does not recognize privileges of the ZEDE regime, says head of the entity”, *Criterio.hn* (November 16, 2023) (**C-0567**).

⁶¹⁸ Customs Law (Decree No. 212-87) (1987) (**R-0080-SPA**), arts. 49, 53, 67, 134, 167-169.

⁶¹⁹ Claimants’ Memorial, ¶ 284.

⁶²⁰ Honduran Tax Code (Decree No. 170-2016) (2016) (**R-0156-SPA**), art. 116; Central American Uniform Customs Code (2003) (**R-0085-SPA**), art. 63; Regulations to the Central American Uniform Customs Code (2008) (**R-0092-SPA**), art. 223(b), 224(d).

⁶²¹ Declaration of the Property Institute celebrating the declaration of unconstitutionality of Articles 294, 303 and 329 of the Constitution of Honduras dated September 20, 2024 (**C-0811**).

⁶²² Claimants’ Memorial, ¶ 320.

⁶²³ Property Law (Decree No. 82-2004) (2004) (**R-0086-SPA**), art. 28; Property Law Regulations (May 7, 2011) (**R-0097-SPA**), art. 66.

⁶²⁴Registry. In this sense, not only did Próspera’s properties never leave the Unified Property Registry of the Property Institute, but the certification of Agreement No. CD-IP-008-2019, which the Claimants cite, explicitly provides that “[f]or the effect of their transfer, the registry entries are not extinguished or canceled, there is only a registry closure in the district of origin that must be linked by referential annotation for the purposes of successive tract with the act of registration in the Special Registry of exogenous circumscription”.⁶²⁵ Thus, the repeal of the ZEDE Legal Framework only implies that the Claimants — and whoever has assets whose folio was transferred to the Special Registry of the ZEDEs — must request the transfer of the registry entry back to the Real Estate Registry. This transfer does not proceed *ex officio*⁶²⁶.

- The **Directorate of Departmental Regime of the Ministry of the Interior, Justice and Decentralization** issued a ruling confirming that the ZEDEs did not have the power to control public events⁶²⁷. Thus, it determined that any natural or legal person who intended to hold a public event within the territory of a ZEDE would be subject to the same requirements as natural or legal persons who intend to hold public events in any municipality in Honduras, thus having to go to the Directorate of Departmental Regime to urge the procedures established in national legislation.
- The **National Commission of Banks and Insurance (“CNBS”)** does not act *ex officio*, so it is waiting for those alleged financial institutions that had a license or authorization issued by the body created within the ZEDEs and that would like to regularize themselves to continue operating in the national territory in a legal manner to request an authorization in accordance with the current regulatory framework applicable to the authorization of new financial institutions⁶²⁸.
- The **Roatán Tax Control Department** regularized the tax situation of businesses located in Próspera and proceeded to make legitimate claims for the payment of municipal taxes applicable to all businesses under the jurisdiction of the Roatán authority. In the event of non-compliance with these obligations, the Department exercised its police power and proceeded to close those businesses that, under the repealed unconstitutional regime, refused to pay the taxes owed⁶²⁹.
- The **Municipality of Roatán** also demanded that Próspera pay the municipal fees owed, as well as the corresponding operation, construction and environmental permits. Faced with the refusal to pay the taxes, it proceeded to close, with the assistance of the National Police, the headquarters of the defaulter, as would be the

⁶²⁴ Certification of Agreement No. CD-IP-008-2019 issued by the Property Institute dated June 10, 2019 (C-0325), invoking, among other regulations, the Property Law (Decree No. 82-2004) (2004) (R-0086-SPA), arts. 10(5), 28(5), 29, 52.

⁶²⁵ Certification of Agreement No. CD-IP-008-2019 issued by the Property Institute dated June 10, 2019 (C-0325); Property Law (Decree No. 82-2004) (2004) (R-0086-SPA), art. 29.

⁶²⁶ Property Law (Decree No. 82-2004) (2004) (R-0086-SPA), arts. 25-26.

⁶²⁷ Ruling of the Directorate of Departmental Regime of the Secretariat of State in the Offices of Governance, Justice and Decentralization of September 2, 2022 (C-0564).

⁶²⁸ Financial System Law (Decree No. 129-2004) (2004) (R-0087-SPA), arts. 3-4, 6.

⁶²⁹ Roatan Infoinsular post on Municipal Coffee Closure dated March 20, 2023 (C-0562).

case with any other company that, operating in Roatán, fails to pay its taxes⁶³⁰.

315. Apart from these measures, the Claimants identify that the CAMP, despite the fact that the legal framework that gave rise to it has been declared unconstitutional, still collects fees, issues regulatory requests, approves regulations or certifies the incorporation of land into Próspera⁶³¹. However, it must be emphasized that these acts have been carried out entirely outside the law in force, in no way on behalf of Honduras and in clear complicity with the Claimants, probably because they believe that ignoring the measures adopted will allow them to continue acting under an illegal regime that has already ceased to exist.
316. It is important to note that several current members of the CAMP—which, since the Supreme Court’s ruling, has lost all legal status (if it ever had one)—were not even included in the original list approved by the National Congress⁶³². In addition, there is no public information that allows one to verify the process by which they were subsequently incorporated⁶³³. On the other hand, it is currently led by Francisco René Flores Bonilla, a former official of Juan Orlando Hernández’s trusted environment, who has been criminally charged for crimes related to the violation of the duties of public officials⁶³⁴. Ultimately, the CAMP has continued to act in a completely *ultra vires* manner, and all its acts are null and void under Honduran law.

E. PRÓSPERA’S BUSINESS FAILURES ARE NOT ATTRIBUTABLE TO HONDURAS, BUT TO ITS OWN CONDUCT AND IRREGULAR DEVELOPMENT OF ITS BUSINESS

317. Honduras has demonstrated that the repeal of the ZEDE Legal Framework responded to the need to restore constitutional order, comply with its international human rights obligations,

⁶³⁰ “For not paying taxes, the mayor's office of Roatan orders the closure of the gates of the ZEDE “Prospera””, *Confidencial* (October 15, 2024) (C-0568).

⁶³¹ Claimants’ Memorial, ¶ 280; “Próspera ZEDE expands its territory in Roatan despite unconstitutionality ruling,” *Criterio.hn* (May 21, 2026) (R-0272-SPA).

⁶³² “ZEDE's CAMP Reappears, Now Led by Former Official Wanted in Nemesis III,” *Criterio.hn* (June 3, 2026) (R-0273-SPA).

⁶³³ “ZEDE's CAMP Reappears, Now Led by Former Official Wanted in Nemesis III,” *Criterio.hn* (June 3, 2026) (R-0273-SPA).

⁶³⁴ “MP accuses former director of the OABI in Operation Nemesis III”, *Public Prosecutor's Office* (March 31, 2022) (R-0234-SPA).

safeguard its sovereignty, and meet the legitimate demands of the Honduran population. However, even irrespective of the legitimacy of those measures, the Claimants are unable to demonstrate that the problems in their project are attributable to the repeal of the ZEDE regime. Rather, the failure of their investment is due to their own conduct and the multiple irregularities surrounding their business.

318. As will be seen below, (E.1) the Claimants resumed their investment with full knowledge that the National Congress had repealed the ZEDE Legal Framework; (E.2) the Duna project was carried out irregularly and accounts for a possible fraud committed by the Claimants; (E.3) the Claimants' problems in Roatán are replicated in another of their projects: Próspera África; all of which shows that (E.4) through this arbitration, the Claimants intend to foist on Honduras the failure of their investment.

1. The bulk of the Claimants' purported investment was made when the repeal of the ZEDE Legal Framework was imminent

319. In their Memorial, the Claimants assert that Honduras destroyed a massive and expanding investment⁶³⁵. The chronology of events belies that narrative. The reality is that most of the capital they are claiming today was invested after Honduras adopted the measures they are now contesting. The Claimants resumed and expanded their investments in 2022 with full knowledge that the incoming Government would promote the repeal of the ZEDE Legal Framework – as indeed happened through Decrees Nos. 32-2022 and 33-2022 and the Judgment of the Supreme Court of Honduras that declared them unconstitutional – concentrating the bulk of their capital in Pristine Bay after those Decrees.
320. The very investment that the Claimants present as the most significant – the acquisition of the Pristine Bay resort – confirms this reality. Far from being a consolidated investment, it materialized when the repeal of the ZEDE Regime was already imminent. According to their own Memorial and as Dr. Flores confirms, the bulk of their contributions occurred after the

⁶³⁵ Claimants' Memorial, ¶¶ 216, 228.

repeal. Indeed, the resolution approving the incorporation of 322,824 acres into the Próspera ZEDE was issued on November 18, 2021, just ten days before Xiomara Castro won the November 28, 2021 presidential election with a platform that expressly announced the repeal of the ZEDE regime⁶³⁶.

321. Pristine Bay's formal incorporation into the Próspera ZEDE was completed in January 2022, when the new President had already taken office and publicly announced her decision to repeal the ZEDE Legal Framework. The Claimants cannot reasonably claim that they were unaware of the risks they were taking⁶³⁷.
322. In addition, following the entry into force of the challenged measures, the Claimants acquired new parcels and capitalized SJBDC with almost USD 43 million in land and almost USD 80 million in cash, contributions disbursed between 2022 and 2024, *i.e.* after those measures⁶³⁸.
323. The rest of the real estate and infrastructure projects that the Claimants invoke never went beyond paper: they only provide studies, master plans, and projections, without accrediting any productive investment⁶³⁹. The timeline is thus unambiguous: the 2017 land-based investments at Crawfish Rock (4.7 acres) and the 2021-2022 investments at Pristine Bay (322,824 acres) were not followed by actual productive investment, but by speculative plans and projections. The multimillion-dollar figures on which the Claimants build their claim for damages do not reflect actual investments, but expectations that were never realized.
324. The foregoing fundamentally contradicts the narrative that the Claimants have sought to

⁶³⁶ Quadrant-I, ¶¶ 49, 52; Resolution approving voluntary incorporation of specific privately owned lot(s) of land (322.824 Acres) located in Pristine Bay into Próspera ZEDE (**C-0520**).

⁶³⁷ Claimants' Memorial, ¶¶ 216, 240; Liberty and Refoundation Party (Libre). Government Plan for the Refoundation of the Homeland and the Construction of the Socialist and Democratic State (2021), p. 5 (**R-0204-SPA**).

⁶³⁸ Claimants' Memorial, ¶ 240.

⁶³⁹ Deloitte Report, Prosperous Project: Medical Tourism, dated March 25, 2022 (**C-0340**); St. John's Bay (Center for Combating Addictions) brochure, dated March 25, 2022 (**C-0341**); St. John's Bay (Comprehensive Center) brochure, dated March 25, 2022 (**C-0537**); St. John's Bay (Specialty Clinic) brochure, dated March 25, 2022 (**C-0538**); Deloitte Report, Próspera Project: Financial Center, dated March 25, 2022 (**C-0539**); Regional Nearshoring Pole of the Port of Satuyé, Infrastructure Master Plan 2022 (**C-0540**).

establish as the basis of their claims. The largest disbursements made by the Claimants in their business were made once the repeal of the ZEDE Legal Framework was imminent. That was a real possibility of which the Claimants were aware from the time of the (illegal) establishment of their business; nevertheless, they continued to operate it at their own risk, and they cannot validly attribute the losses claimed to Honduras.

2. The Duna project was carried out irregularly, accounting for a possible fraud by the Claimants

325. In their Memorial, the Claimants recount, in an almost fanciful manner, their “Duna Residences” project⁶⁴⁰. They indicate that their plan was for SJBDC to grant the land (which they would have illegally de-annexed from Honduras) and provide financing for 20% of the project, a bank lender would finance the rest of the project, and they would seek to partner with a developer to handle the construction.
326. As explained above, the development of the Duna project was marked by serious irregularities and human rights violations.⁶⁴¹ But that’s not all: recent precedents would show that, in addition, the construction company Apolo Group Honduras (“AGH”) would have been defrauded by Mr. Brimen and Mr. Delgado in the execution of the project⁶⁴².
327. On May 23, 2025, Erik Eduardo Pitsikalis Poujol – Honduran real estate entrepreneur, founder and CEO of AGH – filed a criminal complaint against Mr. Brimen and Mr. Delgado for the crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks. According to him, Mr. Brimen and Mr. Delgado convinced him to establish Dionysius LLC in 2021, a *joint venture* with SJBDC to develop Duna Residences, for which Apolo Group LLC was created as an operational extension of AGH within the Próspera ZEDE partnership regime⁶⁴³. Dionysius LLC was incorporated with an initial capital of USD

⁶⁴⁰ Claimants’ Memorial, ¶¶ 188-189, 217, 290, 325, 415.

⁶⁴¹ See Section II.C.

⁶⁴² Complaint for crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**).

⁶⁴³ Complaint for crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**), ¶ 5.

1 million: Mr.⁶⁴⁴ Pitsikalis contributed, out of a budget of USD 8 million, 5% in cash (USD 400,730.18) and an additional 3% (USD 240,438.11) as an equity interest equivalent to 24% of the company, while SJBDC contributed the land, valued at USD 318,000.00⁶⁴⁵.

328. However, internal documents and subsequent appraisals revealed that the real value of the land contributed by SJBDC was ten times lower than declared, which would show an artificial overvaluation of its capital carried out with the clear purpose of obtaining a disproportionate shareholding against Apolo Group⁶⁴⁶. This maneuver would have deepened when, with the project more than 85% complete, Mr. Brimen unilaterally decided to dilute Apolo Group's stake in Dionysius LLC, at a July 2024 meeting held without its presence or consent, canceling the economic rights that originally corresponded to it.⁶⁴⁷ To this is added an outstanding balance of more than USD 800,000 for the execution of work and sales management that the defendants would have refused to pay⁶⁴⁸.
329. In short, the case of the Duna project, far from accounting for the success and vitality of the Claimants' business, is a clear example of the abuses and irregularities committed by them during the development of Próspera ZEDE.

3. The irregularities of the Claimants' business in Roatán are replicated in another one of their projects: Próspera África

330. The controversies in which Próspera has been involved do not end there. Since 2022, Mr. Brimen has reportedly planned to extend Próspera to countries in Africa. Instead of having managed to establish himself there, his initiative led to legal disputes with his partner in the project.

⁶⁴⁴ Complaint for crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**), ¶ 17.

⁶⁴⁵ Complaint for crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**), ¶¶ 11, 20.

⁶⁴⁶ Complaint for crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**), ¶¶ 11, 20-21.

⁶⁴⁷ Complaint for crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**), ¶ 62.

⁶⁴⁸ Complaint for crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**), ¶ 40.

331. In 2023, Mr. Brimen, along with NeWay Capital LLC, would have partnered with Ms. Magatte Wade, for the purpose of incorporating Próspera África LLC, a Wyoming company based in Roatán⁶⁴⁹. Ms. Wade is a Senegalese entrepreneur who, through her contacts in Senegal, has promoted links between Próspera África and African governments in order to push for the establishment there of an iteration of what the Claimants did in Honduras⁶⁵⁰. As expected, the project has been strongly criticized⁶⁵¹.
332. In 2025, the relationship between Mr. Brimen and Ms. Wade deteriorated until, in September of that year, Ms. Wade resigned from her position and requested the purchase of her shares⁶⁵². In response, Mr. Brimen reportedly called an assembly without Ms. Wade present – as he would have done with Mr. Pitsikalis – at which she was accused of having committed crimes⁶⁵³. In response to these expressions, which she considered false, offensive, and malicious, Ms. Wade filed a lawsuit in Wyoming against Mr. Brimen, NeWay Capital and others in January 2026 for the reputational damage caused^{654 655}.
333. However, the case of Próspera África demonstrates that the Claimants’ business model, as in Roatán, has been used irregularly and illicitly for their own benefit, and is not a source of development and employment for the country.

⁶⁴⁹ Magatte Wade's Amended Complaint v. Prospera Africa LLC et al., Case No. 1:25-cv-00285-SAH, U.S. District Court (January 28, 2026) (**R-0264-SPA**), ¶¶ 28-29.

⁶⁵⁰ “Controversial Libertarian 'Startup City' Project Sued By Former Exec Amid Tense Africa Push,” *WeeTracker* (January 26, 2026) (**R-0263-ENG**); Magatte Wade's Amended Complaint v. Prospera Africa LLC et al., Case No. 1:25-cv-00285-SAH, U.S. District Court (January 28, 2026) (**R-0264**).

⁶⁵¹ “Controversial Libertarian 'Startup City' Project Sued By Former Exec Amid Tense Africa Push,” *WeeTracker* (January 26, 2026) (**R-0263-ENG**).

⁶⁵² Magatte Wade's Amended Complaint v. Prospera Africa LLC et al., Case No. 1:25-cv-00285-SAH, U.S. District Court (January 28, 2026) (**R-0264-SPA**); “Controversial Libertarian 'Startup City' Project Sued By Former Exec Amid Tense Africa Push,” *WeeTracker* (January 26, 2026) (**R-0263-ENG**).

⁶⁵³ Magatte Wade's Amended Complaint v. Prospera Africa LLC et al., Case No. 1:25-cv-00285-SAH, U.S. District Court (January 28, 2026) (**R-0264**).

⁶⁵⁴ “Controversial Libertarian 'Startup City' Project Sued By Former Exec Amid Tense Africa Push,” *WeeTracker* (January 26, 2026) (**R-0263-ENG**); Magatte Wade's Amended Complaint v. Prospera Africa LLC et al., Case No. 1:25-cv-00285-SAH, U.S. District Court (January 28, 2026) (**R-0264**); “‘Prosperous Africa’: The Project That Generated Lawsuits to Zede Owners in Roatan,” *El Libertador* (February 26, 2026) (**R-0267-SPA**).

⁶⁵⁵ The defendants' response would have been to countersue Wade in Texas for the alleged breach of an intellectual property agreement. Case Record Prospera Africa LLC v. Wade, Case No. 1:26-cv-00060, U.S. District Court. in PacerMonitor (**R-0279-ENG**).

4. By means of this arbitration, the Claimants attempt to attribute their commercial failures to Honduras with a claim for compensation that is clearly absurd and extortionate

334. The Claimants’ procedural conduct is, in itself, eloquent evidence of the instrumental and coercive nature of their claim. In filing the Request for Arbitration in December 2022, the Claimants claimed damages of up to USD 10.775 billion⁶⁵⁶—equivalent to approximately 60% of Honduras’ national budget by 2026 and close to one-third of its Gross Domestic Product—sparking international criticism of the use of investment arbitration as a tool to pressure against regulatory measures in the public interest⁶⁵⁷. However, in the course of the arbitration, the Claimants have reduced their claim by more than 85%, without any new objective circumstances to justify it.
335. Furthermore, the disproportionate nature of the original claim clearly contradicts the available evidence on the actual value of the Claimants’ assets in Honduras. In the case file for the criminal complaint filed with the Local Prosecutor’s Office of Roatán on May 23, 2025,⁶⁵⁸ there is an independent appraisal carried out by the firm Crespo y Asociados S.A. de C.V., an entity authorized by the CNBS, which determined that the commercial value of Tower No. 1 of the Duna Residences complex amounts to USD 39,178,579.13⁶⁵⁹. This valuation proves that the Claimants and their partners within Próspera ZEDE have continued to generate and appropriate significant economic value, which contrasts head-on with the scenario of total destruction that they invoked when claiming USD 10.775 billion.
336. In sum, the evolution of this claim confirms that the Claimants have used this arbitration as

⁶⁵⁶ Request for Arbitration, ¶ 11 (“if Honduras persists in its refusal to honor its legal stability guarantees and the remainder of Claimants’ investment is destroyed, the total losses to the Próspera Group’s investment over the course of the remaining period of the guaranteed legal stability will be at least several billion US dollars, and as high as US\$ 10.775 billion”).

⁶⁵⁷ “World Report 2026: Honduras | Human Rights Watch,” *Hrw.org* (January 21, 2026) (**R-0208**).

⁶⁵⁸ Complaint for the commission of the crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. filed on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**). See Section II.E.2.

⁶⁵⁹ Complaint for the commission of the crimes of aggravated fraud and illegitimate use of distinctive or registered trademarks against executives of Honduras Próspera Inc. filed on behalf of Apolo Group (May 23, 2025) (**R-0261-SPA**), ¶ 42 (appraisal of Crespo y Asociados S.A. de C.V., which determined a value of Lps. 999,053,767.73, equivalent to USD 39,178,579.13).

a mechanism to pressure Honduras' sovereign decisions, initially supporting a claim that is manifestly disproportionate and incompatible with the real value of their assets⁶⁶⁰.

⁶⁶⁰ In their Request for Arbitration, the Claimants acknowledged that their claims were about possible breaches and hypothetical damages, admitting that "Respondent's apparent failure to maintain the ZEDE Legal Framework in effect" and that Decrees Nos. 32-2022 and 33-2022 did not expressly resolve the fate of the existing ZEDEs or their guarantees of legal stability. Request for Arbitration, ¶¶ 11, 62. A claim articulated on contingent scenarios and projections calculated over half a century does not constitute a legitimate claim for reparation, but an exercise of political and economic pressure contrary to the purposes of the CAFTA-DR.

III. THE TRIBUNAL DOES NOT HAVE JURISDICTION TO HEAR THE PRESENT DISPUTE

337. As stated in the introduction, this Tribunal lacks jurisdiction *ratione materiae* and *ratione voluntatis* to hear the present case and, in any event, the Claimants' claims are inadmissible. *First, (III.A)* the Claimants have not made an investment protected under Honduran law, so their activities through Próspera ZEDE do not enjoy protection under the CAFTA-DR. *Second, (III.B)* claims based on clauses imported from other treaties exceed the jurisdiction *ratione materiae* of the Tribunal. *Third, (III.C)* contractual claims relating to the LSA are outside its jurisdiction *ratione voluntatis*, as such agreement does not constitute an "investment agreement" within the meaning of Article 10.28 of the CAFTA-DR. *Fourth, (III.D)* claims based on a non-existent "investment authorization" also have no place before this Tribunal. *Finally, (III.E)* the measures requested in the Memorial exceed the powers conferred on the Tribunal by the CAFTA-DR.

A. THE CLAIMANTS HAVE NOT MADE A PROTECTED INVESTMENT UNDER HONDURAN LAW AND CAFTA-DR

338. The Tribunal lacks jurisdiction *ratione materiae* because the Claimants have not made a protected investment under Honduran law and their activities related to Próspera ZEDE therefore do not enjoy protection under the CAFTA-DR.

339. In order for an investment to fall within the scope of protection of an international treaty, the investment must have been made in accordance with the domestic law of the host State at the time of its establishment. This is a general principle of international law that has been widely accepted, and which applies even in a supplementary manner. In the words of the tribunal in *Mamidoil Jetoil v. Albania*:

“[T]he Tribunal shares the **widely-held opinion that investments are protected by international law only when they are made in accordance with the legislation of the host State.** States accept arbitration and accept to waive part of their immunity from jurisdiction to encourage and protect investments in international conventions. **In doing so, they cannot be expected to have agreed to extend that mechanism to investments that violate their laws;** likewise, it cannot

be expected that States would want illegal investments by their nationals to be protected under those international conventions”.⁶⁶¹

340. In application of these criteria, different arbitral tribunals have declared their lack of jurisdiction on the grounds that the investment does not fall within the scope of protection of the treaty. An example of this can be found in *Inceysa v. El Salvador*, where the Tribunal concluded that “because *Inceysa*’s investment was made in an openly illegal manner, it is not included within the scope of the consent expressed by Spain and the Republic of El Salvador in the APPRI and, consequently, the differences arising from it are not subject to the jurisdiction of the Center.”⁶⁶² As pointed out by another court, this principle aims “**to ensure the legality of the investment by excluding investments made in breach of fundamental principles of the host State’s law**”.⁶⁶³
341. In the case of the CAFTA-DR, the requirement of the investment’s legality is included in the text of the Treaty itself. This flows from the definition of “enterprise” in Article 2.1 of the CAFTA-DR, according to which “enterprise means any entity incorporated or organized

⁶⁶¹ *Mamidoil Jetoil Greek Petroleum Products S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award (March 30, 2015) (**RLA-0082-ENG**), ¶¶ 359-360. The tribunal in *Phoenix Action v. Czech Republic* takes a similar view. *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award (April 15, 2009) (**CLA-0069**), ¶¶ 101, 102 (“States cannot be deemed to offer access to the ICSID dispute settlement mechanism to investments made in violation of their laws. If a State, for example, restricts foreign investment in a sector of its economy and a foreign investor disregards such restriction, the investment concerned cannot be protected under the ICSID/BIT system. These are illegal investments according to the national law of the host State and cannot be protected through an ICSID arbitral process [...] The core lesson is that the purpose of the international protection through ICSID arbitration cannot be granted to investments that are made contrary to law”). See also *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24 Award (August 27, 2008) (**CLA-0167**), ¶¶ 138-139.

⁶⁶² *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award (August 2, 2006) (**RLA-0162-SPA**), ¶ 257. See also *Fynerdale Holdings BV v. Czech Republic*, UNCITRAL, PCA Case No. 2018-18, Award (29 April 2021) (**RLA-0261-ENG**), ¶ 554 (“this [standard] clearly established that the conformity of investment with the national law of the host State of the investment is part of the notion of investment. Accordingly, the jurisdiction of this [tribunal] only covers disputes concerning legal investments.”); *ELA v. Republic of Estonia*, PCA Case No. 2018-42, Award (February 21, 2025) (**RLA-0295-ENG**), ¶ 620 (“The Tribunal agrees with the analysis made in *Phoenix Action v. Czech Republic*, and *Plama v. Bulgaria*, that an investment may not qualify for protection under a BIT where such investment was made in breach of relevant laws and regulations.”).

⁶⁶³ *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award (February 6, 2008) (**CLA-0101**), ¶ 104. See also *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (II)*, ICSID Case No. ARB/11/12, Award (10 December 2014) (**RLA-0205-ENG**), ¶ 332 (“The Tribunal is also of the view that, even absent the sort of explicit legality requirement that exists here, it would still be appropriate to consider the legality of the investment. As other tribunals have recognized, there is an increasingly well-established international principle which makes international legal remedies unavailable with respect to illegal investments, **at least when such illegality goes to the essence of the investment**.”) (emphasis added).

under applicable law, whether or not for profit, and privately or governmentally owned, including any partnership, trust, participation, sole proprietorship, joint venture, or other partnership.”⁶⁶⁴

342. The same is true of Article 10.28, which recognizes as a form of investment the “(g) licenses, authorizations, permits and similar rights granted in accordance with domestic law”.⁶⁶⁵ This has even been recognized and endorsed by the United States itself, the Claimants’ country of origin and a Contracting Party to the CAFTA-DR, in its submissions as a non-disputing Party in other cases under the CAFTA-DR. In its words:

“The determination as to whether a particular instrument has the characteristics of an investment is a case-by-case inquiry, **involving an examination of the nature and extent of any rights conferred under the State’s domestic law**. While Article 10.28 does not expressly provide that each type of investment must be made in compliance with the laws of the host state, **it is implicit that the protections in Chapter Ten only apply to investments made in compliance with the host state’s domestic law at the time that the investment is established or acquired**”.⁶⁶⁶

343. In this case, the Claimants allege that they have protected investments in Honduras⁶⁶⁷. They attempt to justify this by listing a number of assets, which adoptsome of the forms that an investment can take under Article 10.28 of the CAFTA-DR.⁶⁶⁸ It happens, however, that all these assets have as their foundation and common denominator the extinct ZEDE Legal

⁶⁶⁴ CAFTA-DR, art. 2.1 (CLA-0002).

⁶⁶⁵ CAFTA-DR, art. 10.28 (CLA-0002).

⁶⁶⁶ *Sargeant Petroleum, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/22/1, Statement of the United States (November 9, 2023) (RLA-0108-ENG), ¶¶ 7-8 (emphasis added). *See also Daniel W. Kappes and Kappes, Cassiday & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Declaration of the United States (February 19, 2021) (RLA-0103-ENG), ¶¶ 7-8 (“Article 10.28 sets out a list of forms that ‘investment’ may take, including, at subparagraph (g) of the definition, ‘licenses, authorizations, permits, and similar rights conferred pursuant to domestic law.’ Subparagraph (g), together with its footnote 10, reference domestic law to provide guidance as to when such an instrument may have the requisite characteristics of an investment. Specifically, whether such an instrument may constitute an investment will depend on such factors as the nature and extent of the rights that the holder has under the law of the host State Party. As the United States has previously explained with respect to the meaning of footnote 10, the determination as to whether a particular instrument has the characteristics of an investment is a case-by-case inquiry, involving examination of the nature and extent of any rights conferred under the State’s domestic law.”) (emphasis added); *Sea Search-Armada, LLC v. Republic of Colombia*, CPA Case No. 2023-37, U.S. Statement (December 8, 2023) (RLA-0109-ENG), ¶¶ 7-8.

⁶⁶⁷ Claimants’ Memorial, ¶ 346.

⁶⁶⁸ Claimants’ Memorial, ¶¶ 356-357.

Framework and the activities of Próspera ZEDE in Honduras⁶⁶⁹. This regime suffers from serious and patent defects of unconstitutionality and illegality, which deprive the Claimants' alleged investments in Honduras of any protection.

344. *First*, and with regard to their constitutionality, the defects that afflict the ZEDE Legal Framework are structural and of origin and, therefore, cannot be remedied: the regime on which the Claimants built their alleged investment was devoid of any value from its inception. This was declared early on by the Supreme Court of Honduras⁶⁷⁰, and has been reiterated over the years⁶⁷¹.
345. As explained in section II.B *supra*, the illegality of the ZEDE Regime dates back to the RED, the first attempt to create model cities in Honduras: autonomous territorial entities whose establishment was declared unconstitutional by the Plenary of the Supreme Court in October 2012, for violating the integrity of the national territory, the form of government and the principle of equality before the law – essential and irreformable elements of the State of Honduras, protected by immutable articles of the Constitution⁶⁷². Less than a year later, its promoters reinstated the same scheme under another name: far from correcting these defects, the ZEDE Legal Framework maintained and deepened them – its own regulatory and jurisdictional attributes, differentiated territory, autonomous police power and self-appointed authorities – to the point that not even the Claimants themselves, who maintain the opposite, have been able to point out any difference that constitutionally legitimizes the

⁶⁶⁹ Claimants' Memorial, ¶ 347 ("HPI's investments in Honduras include (i) direct and indirect ownership of shares in enterprises incorporated under the laws of Honduras and of Próspera ZEDE [...] (ii) capital contributions to fund acquisitions, operations, and the development of its businesses in Próspera ZEDE [...] (iii) contributions to and development of Próspera ZEDE's governance services [...] (ix) other intangible property rights, including, without limitation, acquired rights under the ZEDE Legal Framework."); *ibid.*, ¶ 348 ("SJBDC's investments in Honduras include (i) shares in enterprises incorporated under the laws of Próspera ZEDE [...] (vii) other intangible property rights, including, without limitation, acquired rights under the ZEDE Legal Framework."); *ibid.*, ¶ 349 ("PAC's investments in Honduras include (i) contracts with related entities and third parties necessary to provide dispute resolution services in Próspera ZEDE [...] and (iv) other intangible property rights, including, without limitation, acquired rights under the ZEDE Legal Framework.").

⁶⁷⁰ See Section II.A.3.

⁶⁷¹ See Sections II.D.3; II.D.4.

⁶⁷² See Section II.A.2.

ZEDEs compared to their predecessors⁶⁷³. And this was only possible through the dismissal of the four magistrates of the Constitutional Chamber who had voted for the unconstitutionality of the RED: an illegal and arbitrary act that earned Honduras a conviction from the Inter-American Court of Human Rights and that the Claimants, revealingly, fail to mention.⁶⁷⁴

346. *Second*, and even if the patent unconstitutionality of the origin of the ZEDE Legal Framework were ignored, the Claimants' investment would be equally illegal since it was made in open contravention of the Honduran legislation applicable at the time they claim to have made their investment. As explained above⁶⁷⁵, the Claimants' investment *never* met any of the constitutional and legal requirements to be developed. Notably, there is no legislative decree by means of which the National Congress created Próspera ZEDE, nor an opinion issued by the INE that certifies the population density of the area destined for the ZEDE, nor, much less, an approving referendum.
347. The Claimants have tried to disregard the foregoing based on distorted interpretations of Article 329 of the Constitution and Article 39 of the ZEDE Organic Law⁶⁷⁶. However, it was demonstrated that such an approach lacks any basis, as it openly contradicts both the letter and the legislative history of the norm⁶⁷⁷. Even if the Claimants' interpretation were accepted, their non-compliance would still be present, because the INE never issued the list of areas of low population density required by Article 39 in question, nor did the Claimants

⁶⁷³ See Section II.B.

⁶⁷⁴ See Section II.A.3.

⁶⁷⁵ See Section II.C.

⁶⁷⁶ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 43. *See also* Claimants' Memorial, ¶ 70 (“[...] *Creation*. In line with the Constitution, the ZEDE Law establishes that Congress may create ZEDEs in areas of both low and high population density and that the indicated areas are declared subject to the ZEDE regime without the need for a vote in Congress¹⁴³. Specifically, Article 39 immediately subjects to the ZEDE regime the areas with low population density of the municipalities contiguous to the Gulf of Fonseca and the Caribbean Sea [...].”); Cosenza-I, ¶ 68 (“In line with the foregoing, by means of Article 39 the National Congress declared directly subject to the ZEDE Regime the areas of low population density of the municipalities located in contiguous departments [...]. Article 39 of the Organic Law thus operated as an act of the National Congress itself to affect these areas to the ZEDE Regime, without the need for a new legislative decree.”).

⁶⁷⁷ See Section II.B.4.

do anything to obtain it⁶⁷⁸. The illegality of their investment, in fact, remains evident and cannot be remedied.

348. However, as an alternative point, in their Observations on the Request for Bifurcation of the Republic of Honduras, the Claimants surprisingly maintained that, if the requirements of Article 329 of the Constitution had been breached in the establishment of Próspera ZEDE, that would not influence the (il)legality of their investment in accordance with the CAFTA-DR. The Claimants consider that, as the ZEDEs are a “political subdivision of Honduras”, any deficiency in the constitution of the Próspera ZEDE would be attributable to the Republic of Honduras, not to the Claimants⁶⁷⁹; adding that their investment does not refer to the ZEDE itself, but to the assets they hold within the framework of said ZEDE.⁶⁸⁰
349. The Claimants’ argument is outright absurd, circular, and does not withstand scrutiny. As has become clear, *all* the investment and rights that the Claimants claim to possess have their basis and *raison d’être* in the creation and development of Próspera ZEDE, a project of which the Claimants – as they reiterate over and over again throughout their Memorial –⁶⁸¹ are nothing less than its promoters and organizers. The Claimants themselves have stated that their investment is, in essence, the creation of Próspera ZEDE. In their words:

“HPI and Honduras created a ZEDE [Próspera ZEDE]. **HPI and its affiliates invested to create the regulatory scaffolding and physical**

⁶⁷⁸ See Section II.C.3.b.

⁶⁷⁹ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 44.

⁶⁸⁰ Claimants' Comments on Honduras' Request for Bifurcation, ¶ 45.

⁶⁸¹ See, e.g., Claimants’ Memorial, ¶¶ 138 (“The Authorization of Próspera ZEDE directed HPI, in its capacity **as promoter and organizer of the ZEDE**, to propose candidates for appointment to the position of technical secretary of the ZEDE in accordance with Article 11, paragraph 3), letter b) of the ZEDE Law.”), 347 (“HPI’s investments in Honduras include [...] (vi) licenses, authorizations, permits, and other rights granted by Honduras under its internal rules to HPI, including the right to act as **Promoter and Organizer of Próspera ZEDE**, authorizations to add land to the ZEDE, and their corresponding rights under the Bylaws.”), 199 (“[CAMP] authorized the expansion of Próspera ZEDE through the incorporation of new land, **confirmed HPI’s status as a Promoter and Organizer of Próspera ZEDE**, established the governing rules of Próspera ZEDE [...] and ratified HPI’s rights with respect to the constitution of the Council and the provision of government services.”), 529 (“(i) HPI has been deprived of its rights to serve as **a Promoter and Organizer of Próspera ZEDE**, to issue rules and promote development, to propose the Technical Secretary, to control which land is incorporated into Próspera ZEDE, to appoint members of the Regulatory Council, to provide government services (directly or through a subsidiary) for at least 50 years”), 415 (“The Claimants committed a substantial amount of capital, resources and professional competence in order **to develop and operate Próspera ZEDE** and their own lines of business **subject to the ZEDE platform**.”) (emphasis added).

infrastructure that would make Próspera ZEDE attractive to investors.

[...]

HPI worked with Honduras to create Próspera ZEDE and implement its governance structure. HPI developed a detailed plan to establish a ZEDE in Roatan and, at the end of 2017, submitted its application to CAMP to create a Próspera ZEDE.

[...]

The Claimants worked for years to create and develop Próspera ZEDE and its associated businesses, with the expectation of making billions of dollars: USD 10,600 million on average”⁶⁸² (emphasis added).

350. In addition, the Claimants’ project did not go through the mandatory consultation process with the communities concerned in the region. As established, the Crawfish Rock community enjoys constitutional and legal protection that, in particular, recognizes “*the right that indigenous and Afro-Honduran peoples have over the lands they traditionally own*” and requires collective titling in favor of the communities⁶⁸³.
351. In light of this right, Crawfish Rock is protected, as a people concerned, by ILO Convention 169, ratified by Honduras in 1996 and incorporated into its domestic law⁶⁸⁴. Specifically, Articles 6 and 7 of the Convention enshrine the right to free, prior and informed consultation on any legislative or administrative measure that affects their lands, territories and resources⁶⁸⁵. However, despite this robust protection framework, the installation of Próspera ZEDE was carried out without prior, free, and informed consultation with the affected indigenous and Afro-descendant communities⁶⁸⁶.
352. In these circumstances, it is evident that the Claimants do not have a protected investment

⁶⁸² Claimants’ Memorial, ¶¶ 14, 124, 549.

⁶⁸³ Property Law (Decree No. 82-2004) (2004) (R-0086-SPA), art. 93; Constitution of Honduras, 1982, with amendments until 2013, dated March 20, 2013 (C-0004), art. 346.

⁶⁸⁴ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (entry into force) (5 September 1991) (RLA-0137-SPA), arts. 6 and 7; Constitution of Honduras, 1982, with amendments until 2013, dated March 20, 2013 (C-0004).

⁶⁸⁵ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (entry into force) (5 September 1991) (RLA-0137-SPA), arts. 6 and 7; Inter-American Court of Human Rights, *Case of Garifuna Community Triunfo de la Cruz and its Members v. Honduras*, Judgment (October 8, 2015) (R-0154-SPA), ¶¶ 100-104.

⁶⁸⁶ See Section II.C.4.c.iii.

under the CAFTA-DR and that they have operated irregularly all this time, as the Republic of Honduras has previously expressed⁶⁸⁷, various social actors permanently denounced for many years⁶⁸⁸, and the Supreme Court itself made clear in its decision dated September 20, 2024⁶⁸⁹.

B. THE CAFTA-DR DOES NOT ALLOW THE CLAIMANTS TO IMPORT CLAUSES FROM OTHER TREATIES

353. The Tribunal also lacks jurisdiction to hear the Claimants' claims based on clauses of other Honduran treaties, to which the United States is not a party, and which, therefore, do not confer rights or protections on the Claimants. This is because neither the CAFTA-DR nor the rest of international law allows the Claimants to incorporate clauses of those other treaties.
354. The Claimants contend that Article 10.4 of the CAFTA-DR entitles them to claim the 50-year guarantee of legal stability of Article 16(4) of the Honduras-Kuwait BIT⁶⁹⁰, as well as umbrella clauses of the Switzerland-Honduras and Germany-Honduras BITs⁶⁹¹. Their chain of argument has four links⁶⁹²: (i) Article 16(4) of the Honduras-Kuwait BIT guarantees that the framework of the ZEDEs will remain unchanged for no less than 50 years; (ii) the MFN clause of Article 32 of the ZEDE Organic Law and the LSA itself would have extended that benefit to all investors in the ZEDEs; (iii) such treatment would be invokable by the Claimants, as U.S. investors, via Article 10.4 of the CAFTA-DR⁶⁹³; and (iv) Article 1.3 of the CETII contains a state "recognition" that Article 16(4) of the Honduras-Kuwait BIT is incorporated into the CAFTA-DR⁶⁹⁴.

⁶⁸⁷ Preliminary Objections of the Republic of Honduras pursuant to Article 10.20.5 of the CAFTA-DR (August 30, 2024), ¶ 6.

⁶⁸⁸ See Sections II.C.1; II.D.1.

⁶⁸⁹ See Section II.D.3.

⁶⁹⁰ Claimants' Memorial, ¶ 405.

⁶⁹¹ Claimants' Memorial, ¶ 366.

⁶⁹² Claimants' Memorial, ¶¶ 95-97.

⁶⁹³ Claimants' Memorial, ¶¶ 455-466.

⁶⁹⁴ Claimants' Memorial, ¶ 206.

355. The complexity of the reasoning, which requires an entirely forced reading of various standards and autonomous instruments, itself illustrates its implausibility. In any event, Honduras has already demonstrated⁶⁹⁵, and will continue to demonstrate, that the chain of argument is incorrect at every link: **(B.1)** the Claimants are not Kuwaiti investors; **(B.2)** Article 32 of the ZEDE Organic Law and the LSA are domestic law, which does not generate international obligations; and **(B.3)** the jurisprudence has rejected the use of MFN clauses to import substantive standards of treaties with third States.

1. The Claimants are not Kuwaiti investors and cannot invoke the rights enshrined in the Honduras-Kuwait BIT

356. Article 2 of the Honduras-Kuwait BIT clearly states that:

Article 2. Scope of the Agreement.

1. This Agreement shall apply to all investments, made after the date of its entry into force, **by investors of a Contracting Party** in the territory of the other Contracting Party in accordance with its laws and regulations.

2. For greater certainty in the case of Honduras and where Kuwaiti **investments** have been made under the Economic Development and Employment Zones regime or are located in an area that has been designated as a ZEDE in accordance with the current provisions of the Constitution and laws of Honduras, such protection further extends to the provisions of this Agreement⁶⁹⁶.

357. The preamble defines “Contracting Party” as the Governments of Kuwait and Honduras⁶⁹⁷, so its scope of protection is limited to investments and investors from these two States. As for ZEDEs, “protection” is specifically limited to “Kuwaiti investors.”⁶⁹⁸ For greater certainty, Article 16(4) states that:

In the case of **investments** made under the ZEDE regime [...] all rights, conditions, procedures and protections, [...] must be **guaranteed to the investments and investors of the State of Kuwait** for a period of not less than fifty (50) years⁶⁹⁹.

358. This confirms that, far from being a guarantee of general application to the ZEDE regime,

⁶⁹⁵ Request for Bifurcation, ¶¶ 75-85.

⁶⁹⁶ Honduras-Kuwait BIT (CLA-0003), art. 2.

⁶⁹⁷ Honduras-Kuwait BIT (CLA-0003), Preamble.

⁶⁹⁸ Honduras-Kuwait BIT (CLA-0003), art. 2.

⁶⁹⁹ Honduras-Kuwait BIT (CLA-0003), art 16(4).

the text limits the benefits to investments and investors of the State of Kuwait. It is not disputed that the Claimants are entities incorporated in Delaware, USA⁷⁰⁰. Therefore, they are not “Kuwaiti investors” and do not qualify for the benefits of the Honduras-Kuwait BIT.

2. Article 32 of the ZEDE Organic Law is revocable, domestic legislation that does not create international obligations for Honduras

359. The Claimants also confuse a rule of national law with an international treaty obligation. Article 32 of the repealed ZEDE Organic Law, of an indisputable internal nature, established that:

Natural and legal persons operating within the Employment and Economic Development Zones (ZEDEs) shall be treated on the basis of the Most Favored Nation (MFN) principle, for which they shall obtain the automatic extension of any better treatment that is granted or has been granted to the other parties to an international trade agreement signed by the State of Honduras.⁷⁰¹

360. By asserting that the benefits of the Honduras-Kuwait BIT “became automatically applicable to all investors in the ZEDEs pursuant to Article 32 of the ZEDE Organic Law”,⁷⁰² the Claimants assume, instead, that Article 32 is an autonomous international law instrument, comparable to a conventional MFN clause. That is their fundamental error. Article 32 is not a source of international law⁷⁰³: it is Honduran domestic law, adopted by Congress by ordinary decree and subject, like any law, to modification and repeal.

361. In order to establish an “international obligation of the State”,⁷⁰⁴ Article 32 would have had to be incorporated into an international instrument or to implement an obligation already

⁷⁰⁰ Claimants’ Memorial, ¶ 343.

⁷⁰¹ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 32.

⁷⁰² Claimants’ Memorial, ¶ 96.

⁷⁰³ *Vienna Convention on the Law of Treaties*, U.N. Doc. A/CONF.39/27, 1155 U.N.T.S. 331 (“CVDT”) (23 May 1969) (CLA-0001), art. 1 (“an international agreement concluded **between States** in written form and **governed by international law**, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”) (emphasis added). United Nations General Assembly, Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), Arts. 3 and 12.

⁷⁰⁴ United Nations General Assembly, Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), art. 2 (“There is an internationally wrongful act of the State when conduct consisting of an act or omission: (a) Is attributable to the State under international law; and (b) It constitutes a violation of **an international obligation of the State**”) (emphasis added).

assumed in that area. None of these conditions is verified in the species: Article 32 is not incorporated with the CAFTA-DR or any other treaty, nor is it an act of the State in its international relations. It is domestic law, modifiable or revocable by the legislator without generating international responsibility by itself⁷⁰⁵; in fact, it was validly repealed by Decree No. 33-2022 along with the entire ZEDE Organic Law.

362. Mr. Cosenza, the legal expert for the Claimants, states that the signing of the Honduras-Kuwait BIT “turned the legal stability of the ZEDE into an international obligation”.⁷⁰⁶ In accordance with the principle *pacta sunt servanda*, the treaty “is binding upon the parties to it” (Honduras and Kuwait).⁷⁰⁷ That is precisely the point: treaty obligations are enforceable *inter se*, not against third States or their investors. Despite this, and without basis in treaty law, Mr. Cosenza argues that the effects of Article 16(4) “extend far beyond the signatory parties” by the MFN principle⁷⁰⁸. This conclusion is supported by two academic texts, neither of which is actually relevant to support the conclusion that the Claimants seek to draw.
363. The first source, a book on international business, mentions the MFN clause not as a general rule, but in the context of the Latin American Free Trade Association negotiations⁷⁰⁹. If anything can be inferred from this quotation, it is the weakness of the Claimants’ reasoning and the confirmation that, if any scope is to be attributed to Article 32, it must necessarily be confined to **tariff concessions and trade benefits**, which were the issues on which the cited discussions were concerned, not to investment protection standards. As other tribunals have recognized, the MFN clause in investment law has a different logic and purpose from

⁷⁰⁵ Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), Art. 12 (“There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, whatever the origin or nature of that obligation.”).

⁷⁰⁶ Cosenza-I, ¶ 105.

⁷⁰⁷ United Nations General Assembly, Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27, 1155 U.N.T.S. 331 (“CVDT”) (May 23, 1969) (CLA-0001), art.

⁷⁰⁸ Cosenza-I, ¶ 105.

⁷⁰⁹ Cosenza-I, ¶ 106 and footnote 119; Osvaldo Marzorati, International Business Law (C-0803), p. 206.

that of international trade⁷¹⁰.

364. The second text, on international investment law, merely states that the MFN obligation “is directed at inappropriate distinctiveness between foreign investors or investment of different nationalities”.⁷¹¹ Honduras agrees, but it does not follow from this premise that the MFN allows the importation of substantive treaty obligations with third States. In fact, the same work contains decisions of annulment committees concluding that the Claimants’ interpretation “[w]ould not be consistent with the generally accepted rules of treaty interpretation, including the principle of effectiveness” and “must be rejected”.⁷¹²
365. This same logic applies to the alleged recognition of the State in Article 1.3 of the LSA “that Article 16(4) of the Honduras-Kuwait BIT is incorporated into CAFTA-DR pursuant to the MFN provision in Article 10.4 thereof”.⁷¹³ A statement contained in a private contract does not constitute an “authentic interpretation” of the CAFTA-DR⁷¹⁴. The authentic interpreters of the CAFTA-DR are the Contracting Parties to the Treaty, *i.e.* the seven signatory States⁷¹⁵. None of them participated in the signing of Article 1.3 in question. The LSA, on the other hand, was signed on behalf of Próspera ZEDE, not the Honduran State, as discussed in Section III.C.1 *infra*. Therefore, it cannot be considered an act attributable to the State of Honduras and the Claimants have not demonstrated the contrary⁷¹⁶. Even assuming *arguendo* that it is, such a **contractual declaration** does not constitute a modification of the CAFTA-DR without the consent of the other Contracting Parties⁷¹⁷.

⁷¹⁰ *Merrill & Ring Forestry L.P. v. Government of Canada*, ICSID Case No. UNCT/07/1, Award (31 March 2010) (RLA-0178-ENG), ¶ 88.

⁷¹¹ Cosenza-I, ¶ 106 and footnote 120; Chin Leng Lim, Jean Ho, and Martins Paparinskis, *International Investment Law and Arbitration* (C-0802), p. 384.

⁷¹² Chin Leng Lim, Jean Ho, and Martins Paparinskis, *International Investment Law and Arbitration* (C-0802), p. 388.

⁷¹³ Claimants’ Memorial, ¶ 206.

⁷¹⁴ CVDT (CLA-0001), arts. 31-32.

⁷¹⁵ Dorr, O & Schmalenbach, K. “Vienna Convention on the Law of Treaties: A commentary”, Second Edition, Springer (2018) (RLA-0231-ENG), p. 570, ¶ 19; *Jaworzina Question (Polish-Czechoslovak Border)*, Advisory Opinion, CPJI Series B No. 8 (December 6, 1923) (RLA-0123-ENG), p. 37.

⁷¹⁶ Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), Chapter II.

⁷¹⁷ CVDT (CLA-0001), art. 39.

366. In any event, even if Article 32 were an international norm (*quod non*), its scope of application is expressly limited to any “international trade agreement[s]”⁷¹⁸ and does not incorporate bilateral investment treaties, instruments with clearly different objects and disciplines. This is consistent with the source that the Claimants’ own expert cites⁷¹⁹. In this context, it is clear that the Honduras-Kuwait BIT is not an international trade agreement, but a bilateral treaty for the reciprocal protection of investments⁷²⁰. By the same logic, the stability guarantee in Article 16(4) is also not a commercial or customs benefit⁷²¹.

3. MFN clauses may not be used to import substantive standards from treaties with third States

367. Finally, and in an attempt to use the MFN clause of the CAFTA-DR to make up for the deficiencies in their case, the Claimants complain that “Respondent relies on a small minority of tribunals and authority that have stated that MFN provisions cannot be used to import substantive protections from other treaties”.⁷²² However, their claim is incompatible with the most recent and persuasive jurisprudential trend (as well as the doctrine⁷²³) on MFN clauses. As will be seen, **(3.a)** MFN clauses are substantive protections against discriminatory conduct, not a transplant mechanism; **(3.b)** the use of the MFN clause sought by the Claimants is not consistent with the consent of the States Parties to the CAFTA-DR; and **(3.c)** the interpretation proposed by the Claimants exceeds the consent given by Honduras.

a. MFN clauses are substantive protections against discriminatory conduct, not a transplant mechanism

⁷¹⁸ Decree No. 120-2013, which approves the Law Organic of ZEDEs (September 6, 2013) (C-0006), art. 32.

⁷¹⁹ Cosenza-I, ¶ 106 and footnote 119; Osvaldo Marzorati, International Business Law (C-0803), p. 206.

⁷²⁰ Honduras-Kuwait BIT (CLA-0003), art. 16(4).

⁷²¹ Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (C-0006), art. 32 (“The Employment and Economic Development Zones (ZEDEs) are extra-territorial fiscal and customs zones, different from those of the rest of the national territory”) (emphasis added).

⁷²² Claimants’ Observations on the Request for Bifurcation of Honduras, ¶ 58.

⁷²³ Cole, T. “The Boundaries of Most Favored Nation Treatment in International Investment Law,” 33 *Michigan Journal of International Law* 537 (2012) (RLA-0189-ENG), p. 560; Batifort, S & Heath, J.B. “The New Debate on the Interpretation of MFN Clauses in Investment Treaties: Putting the Brakes on Multilateralization”, 111 *American Journal of International Law* 873 (2018) (RLA-0232-ENG), pp. 907-908.

368. The purpose of an MFN clause is to prevent discrimination between investors or investments in similar circumstances of treatment. As Prof. Douglas explains, the MFN “operates to secure more favourable treatment for the claiming party; it does not operate to rewrite the terms of a treaty in respect of which the claimant is not even a signatory”.⁷²⁴ As also noted by the tribunal in *VEB v. Ukraine*, the MFN clause “does not import other standards of protection, such as FET... [but] amounts to a non-discrimination standard”.⁷²⁵
369. Indeed, as a standard of non-discrimination, Article 10.4 of the CAFTA-DR requires determining whether investors in “similar circumstances” are treated more favorably than the complaining investor, specifically with respect to the “establishment, acquisition, expansion, management, conduct, operation, sale, or other disposition of investments.”⁷²⁶ This presupposes an analysis of factual and operational circumstances, not a comparison between treaties. As the tribunal noted in *Pope & Talbot*, “‘circumstances’ **are context dependent**.”⁷²⁷ More recently, distinguished tribunals in two cases against Turkmenistan also concluded that “given the limitation of the scope of application of the MFN clause to ‘similar situations’, it cannot be read, in good faith, to refer to standards of investment

⁷²⁴ Douglas, Z. “The MFN Clause in Investment Arbitration: Treaty Interpretation Off the Rails,” 2 *Journal of International Dispute Settlement* 97 (2011) (RLA-0185-ENG), p. 105 (énfasis omitido).

⁷²⁵ *State Development Corporation “VEB. RF” c. Ukraine*, SCC Case No. V2019/088, Partial Award on Preliminary Objections (January 31, 2021) (RLA-0259-ENG), ¶ 269.

⁷²⁶ CAFTA-DR (CLA-0002), art. 10.4 (“Each Party shall accord to the investors of the other Party a treatment **no less favorable** than the one who bestows, **in similar circumstances**, to investors from any other Party or a non-Party, with respect to the **establishment, acquisition, expansion, management, conduction, operation, sale, or other disposition of investments**.”) (emphasis added); *İçkale İnşaat Limited Şirketi c. Turkmenistan*, ICSID Case No. ARB/10/24, Award (8 March 2016) (CLA-0082), ¶ 329 (“The terms ‘treatment accorded in similar situations’ therefore suggest that the MFN treatment obligation requires a comparison of **the factual situation** of the investments of the investors of the home State and that of the investments of the investors of third States [...]”) (emphasis added); *Muhammet Çap & Sehil İnşaat Endüstri ve Ticaret Ltd. Şti. c. Turkmenistan (Muhammet v. Turkmenistan, Award)*, ICSID Case No. ARB/12/6, Award (May 4, 2021) (RLA-0262-ENG), ¶ 793 (“The Tribunal has concluded that the MFN provision in Article II(2) BIT applies to **de facto discrimination** where two actual investors in a similar situation are treated differently. That is not the case here. Further, the wording of Article II(2), requiring such **factually similar situation**, does not entitle Claimants to rely on the MFN provision to import substantive standards of protection from a third-party treaty which are not included in the BIT, and to rely on such standards in the present Arbitration.”) (emphasis added)

⁷²⁷ *Pope & Talbot Inc. c. Government of Canada*, UNCITRAL, Award on the Phase 2 Fund (10 April 2001) (CLA-0175), ¶ 75 (emphasis added).

protection included in other investment treaties between a State party and a third State”.⁷²⁸

370. The Claimants self-interestedly shy away from such an analysis: they do not identify investors in similar circumstances of treatment or demonstrate that they are receiving “less favourable treatment” *vis-à-vis* them. As they expressly stated in the exchanges on bifurcation, “‘Claimants’ claim relating to that provision is not a claim under Article 10.4 of CAFTA-DR (the MFN clause) but rather a claim for breach of Article 10.5 of the Treaty.”⁷²⁹
371. Their own formulation reveals that their position goes through a treaty comparison: in the exchanges on bifurcation, they stated that their “main claim under Article 10.4 is that Respondent failed to accord Claimants MFN treatment ... **by according to them less legal stability than it guaranteed Kuwaiti investors** under the Honduras-Kuwait BIT”.⁷³⁰ However, the guarantee in Article 16(4) is not a “more favourable standard of protection”,⁷³¹ but an abstract provision, negotiated between Honduras and Kuwait and conferred only on “Kuwaiti investors”. Nor is it an umbrella clause, which merely allows contractual claims to be brought under a treaty⁷³². This was confirmed by the tribunal in *Veolia v. Egypt*⁷³³. In fact, even if the protections under separate treaties were circumstances of treatment (*quod*

⁷²⁸ *İçkale İnşaat Limited Şirketi c. Turkmenistan*, ICSID Case No. ARB/10/24, Award (8 March 2016) (CLA-0082), ¶ 329; *Muhammet v. Turkmenistan*, Award (RLA-0262-ENG), ¶ 789.

⁷²⁹ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 59.

⁷³⁰ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 55.

⁷³¹ Claimants' Memorial, ¶ 457.

⁷³² The Paris Court of Appeal, in setting aside a preliminary award of the tribunal in *DS Construction FZCO v. Libya*, which allowed the use of MFN provisions to import provisions from third-party agreements, has already held that “the ambiguous references [included in Article 8] to the 'context of economic activity' and to 'rights and privileges' do not allow [the Court] to consider that they may extend to the procedural advantages of dispute settlement provided for in other investment protection treaties.” See *State of Libya v. D.S. Constriction FZCO*, Paris Court of Appeal No. RG 18/05756, Judgment (March 23, 2021) (RLA-0260-ENG), ¶ 101 (“the equivocal references to 'the context of the economic activity' and to 'rights and privileges' do not allow to judge that they can be extended to the procedural advantages of dispute settlement provided in other investment protection treaties.”). The Republic respectfully submits that it should be no different from the Claimants' attempt to fabricate jurisdiction over a cause of action that does not appear in the Treaty.

⁷³³ *Veolia Propreté v. Arab Republic of Egypt*, ICSID Case No. ARB/12/15, Decision on Objections to Jurisdiction (April 13, 2015) (RLA-0209-ENG), ¶ 154 (“notwithstanding the contradictory conclusions arrived at by various arbitral awards as to whether the FET standard may be considered in international investment law to cover other standards such as FPS and an umbrella clause, **this Tribunal is of the view that an MFN clause [...] cannot be used to introduce into the treaty other autonomous standards of international investment law such as the FPS clause or the umbrella clause.** Indeed, each of these standards stands on its own and they should neither be conflated nor considered to belong to the same category or the same subject-matter under an MFN clause”) (emphasis added).

non), they could not be “similar” because, by definition, they are investors and investments under different treaties and legal circumstances.

b. The Claimants have failed to prove that their use of the MFN clause is consistent with the consent of the States

372. Undoubtedly, the interpretation of an MFN clause must be based on the intention of the Contracting Parties. As the tribunal explains in *Telenor v. Hungary*, what is applicable “is not some abstract principle of investment protection in favour of a putative investor who is not a party to the BIT ... but the intention of the States who are the contracting parties”.⁷³⁴ In that regard, the Commission has pointed out that the MFN “operates only in respect of the subject matter to which the two States had referred when they inserted the clause in their treaty”⁷³⁵ and should not create additional causes of action.
373. The same principle has been reflected in case law. In *AlIY Ltd. v. Czech Republic*, relying on *Hochtief*, *Plama* and *EURAM*, the tribunal recalled that a tactic such as that of the Claimants is inadmissible “unless the Contracting Parties clearly and explicitly agreed thereto”.⁷³⁶ More recently, the tribunal in *Neustar v. Colombia* upheld this interpretation and required showing that the parties to the base treaty intended to “circumvent the most restrictive clause” in order to “import a broader obligation.”⁷³⁷
374. On this basis, numerous tribunals have confirmed that an investor cannot use the MFN clause to redesign the normative balance that states agreed to. To mention a few, the tribunal in *Paushok v. Mongolia* stated that an investor “cannot use that MFN clause to introduce into

⁷³⁴ *Telenor Mobile Communications A.S. v. Hungary*, ICSID Case No. ARB/04/15, Award (September 13, 2006) (CLA-0100), ¶ 95 (emphasis added).

⁷³⁵ Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), art. 9.

⁷³⁶ *AlIY Ltd. v. Czech Republic*, ICSID Case No. UNCT/15/1, Decision on Jurisdiction (9 February 2017) (RLA-0225-ENG), ¶¶ 103-104; *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Decision on Jurisdiction (8 February 2005) (CLA-0097), ¶ 198; *European American Investment Bank AG (Austria) v. Slovak Republic*, PCA Case No. 2010-17, Award on Jurisdiction (October 22, 2012) (RLA-0196-ENG), ¶¶ 448, 450; *Hochtief AG v. Argentine Republic*, ICSID Case No. ARB/07/31, Decision on Jurisdiction (24 October 2011) (CLA-0075), ¶ 79.

⁷³⁷ *Neustar, Inc. & Vercara, LLC v. Republic of Colombia (Neustar v. Colombia, Award)*, ICSID Case No. ARB/20/7, Award (20 September 2024) (RLA-0291-ENG), ¶ 726.

the Treaty completely new substantive rights”.⁷³⁸ In *Accession Mezzanine v. Hungary*, the tribunal held that MFN clauses “are not and should not be interpreted or applied to create new causes of action beyond those to which consent to arbitrate has been given by the Parties”.⁷³⁹ In *Teinver v. Argentina*, the tribunal concluded that, if the parties “had intended to include such a clause ..., they would have done so”.⁷⁴⁰ In *Orazul v. Argentina* (2023), the tribunal reaffirmed that the object of the MFN clause is to “extend the scope of treatment actually accorded under the basic treaty, not to provide a back-door to protections the treaty parties chose not to include”.⁷⁴¹ Just two years ago, in *Paiz v. Honduras*, a tribunal under the CAFTA-DR itself, confirmed that the MFN clause does not operate automatically to extend protections not provided for in the base treaty⁷⁴².

375. The Claimants do not provide evidence of an intention by the States Parties to the CAFTA-DR (signed eight years prior to the Honduras-Kuwait BIT by third parties) to incorporate, via Article 10.4, a 50-year stability guarantee or an umbrella clause negotiated with a third State. The evidence is the opposite. As the tribunal in *Chemtura* upheld, NAFTA (with identical wording as the Treaty) States have consistently opposed the use of the MFN clause to import more substantive standards from other agreements⁷⁴³. Likewise, in the context of the CAFTA-DR, the other signatory States have consistently maintained that the MFN clause was agreed with the sole objective of avoiding discrimination based on nationality in specific

⁷³⁸ *Sergei Paushok et al. v. Government of Mongolia*, UNCITRAL, Award on Jurisdiction and Liability (28 April 2011) (**RLA-0187-ENG**), ¶ 570.

⁷³⁹ *Accession Mezzanine Capital L.P. and Danubius Kereskedőház Vagyongkezelő Zrt. v. Hungary*, ICSID Case No. ARB/12/3, Decision on the Respondent's Objection under Rule 41(5) (January 16, 2013) (**RLA-0075-ENG**), ¶ 73.

⁷⁴⁰ *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Award (July 21, 2017) (**RLA-0091-SPA**), ¶ 884.

⁷⁴¹ *Orazul International España Holdings S.L. v. República Argentina*, ICSID Case No. ARB/19/25, Award (December 14, 2023) (**RLA-0110-SPA**), ¶ 999.

⁷⁴² *Fernando Paiz Andrade y Anabella Schloesser de León de Paiz c. Republic of Honduras*, ICSID Case No. ARB/23/43, Procedural Order No. 3, Decision on Bifurcation (20 December 2024) (**RLA-0117-SPA**), ¶ 52.

⁷⁴³ *Chemtura Corp. v. Government of Canada*, PCA Case No. 2008-01, Award (August 2, 2010) (**RLA-0182-ENG**), ¶ 235 (“The Respondent as well as the United States and Mexico in their Article 1128 interventions [...] firmly oppose of the possibility of importing a FET clause from a BIT concluded by Canada”).

circumstances of treatment⁷⁴⁴.

376. In sum, the Claimants' theory is incompatible with the principle of State consent that underlies any investment treaty, the importance of which is heightened when the provision sought to be imported affects the jurisdiction, admissibility, or scope of the obligations consented to⁷⁴⁵. This is inevitably the case with a regulatory stability of 50 years (a commitment and duration that the CAFTA-DR itself does not offer)⁷⁴⁶ and an umbrella clause, which is also not contemplated in the Treaty. In fact, the other Honduran treaties cited by the Claimants demonstrate that, where the State has intended to offer such protections, it has done so expressly⁷⁴⁷. This was not the case under the Treaty.

c. The Claimants' interpretation of the MFN clause would exceed what Honduras has consented to arbitrate

377. Finally, the Claimants' theory is incompatible with the very mandate of this Tribunal. Pursuant to Article 10.16 of the CAFTA-DR, the consent of the Parties is limited to claims arising from an alleged breach of "an obligation under Section A," "an investment authorization," or "an investment agreement."⁷⁴⁸ In addition, under Article 10.22, the Tribunal must decide "in accordance with this Treaty and the applicable rules of international law".⁷⁴⁹ That is the basis of the Tribunal's jurisdiction and the limit of its powers.

378. The 50-year stability under the Honduras-Kuwait BIT and the LSA do not meet any of these

⁷⁴⁴ *Riverside Coffee, LLC c. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Counter-Memorial on Jurisdiction and Merits (3 March 2023) (**RLA-0277-ENG**), ¶ 387.

⁷⁴⁵ *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (29 May 2003) (**CLA-0120**), ¶ 74. The tribunal observed that certain admissibility requirements "are necessarily a part of the essential core of negotiations of the Contracting Parties", without which "they would not have entered into the Agreement", and therefore "fall outside the scope of the most favored nation clause".

⁷⁴⁶ *Conversely*, while Article 16(4) of the Honduras-Kuwait BIT commits Honduras not to modify the regulatory framework of ZEDEs for 50 years, Annex 10-B of the CAFTA-DR expressly preserves the regulatory power of the Parties (including Honduras) to adopt, maintain or enforce measures that they deem appropriate to protect the public interest. These two provisions are structurally irreconcilable. If the MFN of Article 10.4 could import Article 16(4) of the Honduras-Kuwait BIT, the result would be to empty Annex 10-B of content with respect to all CAFTA-DR investors for all sectors linked to the ZEDE framework, for half a century.

⁷⁴⁷ Switzerland-Honduras BIT (**CLA-0130**), art. 11; Germany-Honduras BIT (**CLA-0131**), art. 8(2).

⁷⁴⁸ CAFTA-DR (**CLA-0002**), art. 10.16.

⁷⁴⁹ CAFTA-DR (**CLA-0002**), art. 10.22.

categories: they are not agreed to in the Treaty and are not applicable rules of international law. What then is the breach claimed by the Claimants? They themselves recognize that these are “contractual breaches for which Honduras is liable **as a matter of contract law**.”⁷⁵⁰ In their opinion, this is relevant under the Treaty “pursuant to the umbrella clauses **in other treaties to which Honduras is a party**”.⁷⁵¹ This shows that both the claim and its basis are not supported by the CAFTA-DR, but by instruments (contracts or treaties) with third parties, such that they exceed the powers of the Tribunal and would affect the integrity of the award⁷⁵².

C. THE LSA IS NOT AN “INVESTMENT AGREEMENT” SUBJECT TO ARTICLE 10.28 OF THE CAFTA-DR

379. The Tribunal lacks jurisdiction *ratione voluntatis* over the Claimants’ contractual claims based on alleged breaches of the LSA because the LSA is not an “investment agreement” within the meaning of Article 10.28 of the CAFTA-DR. According to this provision, an “investment agreement” is:

a written agreement [...] that takes effect on or after the date of entry into force of this Agreement between a national authority [...] of a Party and a covered investment or an investor of another Party that grants the covered investment or investor rights:

(a) with respect to natural resources or other assets that a national authority controls; and

(b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself⁷⁵³.

380. For its part, footnote No. 12 of the English version (No. 8 of the Spanish version) complements the above, clarifying that a written agreement “refers to an agreement in

⁷⁵⁰ Claimants’ Memorial, ¶ 517 (emphasis added).

⁷⁵¹ Claimants’ Memorial, ¶ 518 (emphasis added).

⁷⁵² *Klöckner Industrie-Anlagen GmbH et al. v. Republic of Cameroon and Société Camerounaise des Engrais*, ICSID Case No. ARB/81/2, Decision of the Ad Hoc Committee (3 May 1985) (**RLA-0133-ENG**), ¶ 4; *CMS Gas Transmission Company v. Republic of Argentina*, ICSID Case No. ARB/01/8, Excerpts from the Decision of the Ad Hoc Committee on Annulment (September 25, 2007) (**RLA-0169-ENG**), ¶ 47.

⁷⁵³ CAFTA-DR (**CLA-0002**), art. 10.28 (“[An] investment agreement means a written agreement [...] that takes effect on or after the date of entry into force of this Agreement between a national authority [...] of a Party and a covered investment or an investor of another Party that grants the covered investment or investor rights”).

writing and executed by both parties that generates an exchange of rights and obligations binding on both parties under the applicable law according to Article 10.22.2”⁷⁵⁴.

381. As can be seen, these requirements do not admit the type of expansive interpretation advocated by the Claimants⁷⁵⁵. Article 10.28 is an exceptional provision that allows certain contractual claims to be submitted to arbitration under Chapter 10 of the CAFTA-DR; as a result, tribunals constituted under similar definitions have rigorously applied its elements and rejected the existence of investment agreements when not all the requirements of the treaty were met⁷⁵⁶.
382. The Claimants argue, however, that this case-law would not apply in this case because the defects in the alleged “investment agreements” identified there were those of the private parties and not of the State agencies⁷⁵⁷, as in this case. That argument ignores the essential point and leaves it unanswered: Honduras invokes these cases on the principle they reflect: the conditions of Article 10.28 must be strictly satisfied, whether the defect falls on the private parties or on the public actors.
383. Ultimately, the central question in deciding this objection is whether the LSA satisfies the requirements of Article 10.28. Honduras has already demonstrated⁷⁵⁸ and will continue to demonstrate that it does not for four reasons: (C.1) the signatory to the LSA is not a “national authority”; (C.2) the LSA does not refer to natural resources or assets controlled by a national authority; (C.3) the LSA was not the instrument relied upon by the Claimants to establish or acquire their investment; and (C.4) Honduras never consented to ICSID arbitration through the LSA.

1. The Technical Secretary of Próspera is not a “national authority”

⁷⁵⁴ CAFTA-DR (CLA-0002), footnote 12.

⁷⁵⁵ Claimants’ Memorial, ¶ 359.

⁷⁵⁶ *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award (18 August 2008) (RLA-0069-SPA), ¶¶ 182-183; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction (June 2, 2010) (RLA-0013-SPA), ¶ 235.

⁷⁵⁷ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 63(d).

⁷⁵⁸ Honduras’ Request for Bifurcation, ¶¶ 86-121.

384. Footnote 13 to Chapter 10 provides that, for Article 10.28, a “national authority” is an “authority at the level of **the central government**”.⁷⁵⁹ The definition is not ambiguous nor does it admit implicit exceptions: if the LSA was not held by an authority of the Honduran central government, the analysis ends there.
385. *First*, the Honduran legal system clearly identifies which entities make up the central government: the General Law of Public Administration provides that the Central Public Administration is composed of the Presidency, the Council of Ministers and the Secretariats of State⁷⁶⁰. The Technical Secretary of the Próspera ZEDE is not a member of any of these structures. The Claimants do not respond to this point. Instead of demonstrating that the Technical Secretary was an authority of the central government, they conflate two different concepts: (i) being a public official or exercising public functions; and (ii) being an authority of the central government within the meaning of Article 10.28⁷⁶¹. The second category may include officials, but not every official is a central government authority. Thus, even if the Technical Secretary were considered a public official or someone who exercised public functions (*quod non*), the Claimants’ argument rests on that false equivalence.
386. *Second*, the legal regime of the ZEDEs itself confirms that the Technical Secretary acted as part of them and not as an organ of the Honduran central government. The Claimants assert that the LSA was signed by the Technical Secretary in his purported capacity as “agent and authorized representative for the Republic of Honduras [...] pursuant to the ZEDE Law”.⁷⁶² However, Article 12 of the ZEDE Organic Law attributes to the Technical Secretary functions of administration and representation of the ZEDE; not of the Honduran State⁷⁶³.

⁷⁵⁹ CAFTA-DR (CLA-0002), chapter 10, footnote 13.

⁷⁶⁰ General Law on Public Administration (Decree No. 146-86) (November 29, 1986) (R-0067-SPA), arts. 9-10.

⁷⁶¹ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 63(a).

⁷⁶² Claimants’ Memorial, ¶ 361.

⁷⁶³ Decree No. 120-2013, which approves the Law Organic of the ZEDEs (6 September 2013) (C-0006), art. 12 (“The Technical Secretary of the Employment and Economic Development Zones (ZEDE) is the highest-level executive officer **of the same and its legal representative** [...] Its functions are: To exercise representation **of the Employment and Economic Development Zone**”) (emphasis added).

387. *Third*, the Claimants’ own evidence reveals a structural anomaly inconsistent with Article 10.28: the Technical Secretary exercised administrative and governance functions within the ZEDE **controlled by the Claimants**. The LSA thus does not reflect a negotiation between a foreign investor and an independent central government authority over state assets (the type of relationship contemplated in Article 10.28), but rather an agreement between the Claimants as investors and a representative of their own ZEDes.
388. Accordingly, the Claimants have not and cannot demonstrate that the LSA was concluded by a “*national authority*” within the meaning of Article 10.28 and footnote 13. The absence of this requirement is itself sufficient to exclude the LSA from the definition of “*investment agreement*” and to deprive the Tribunal of jurisdiction over the Claimants’ contractual claims. The other defects only confirm this conclusion.

2. The LSA does not confer rights in respect of natural resources or assets controlled by a national authority

389. Article 10.28 further requires that the agreement grant rights “with respect to natural resources or other assets that a national authority controls”.⁷⁶⁴ The Claimants allege that the LSA meets this condition because it granted them legal stability “with respect to the rights that Honduras conferred on Próspera ZEDE under the ZEDE Legal Framework in relation to governance, land and property, sea and air navigation, and the environment, which all are ‘natural resources or other assets’ that the Technical Secretary [...] controlled”.⁷⁶⁵ But that assertion assumes the conclusion: the Claimants never explain why this regulatory stability is a form of “natural resources or assets that a national authority controls”. It is not.
390. The Claimants’ listing does not identify natural resources or state assets, but rather areas of public regulation. Governance, maritime and air navigation, environmental regulation or territorial planning are not natural resources or heritage assets over which an authority

⁷⁶⁴ CAFTA-DR (CLA-0002), art. 10.28.

⁷⁶⁵ Claimants’ Memorial, ¶ 363.

exercises control within the meaning of Article 10.28. Unlike other definitions of “investment agreement” not qualified in other treaties⁷⁶⁶, the language of the CAFTA-DR is designed to focus on specific natural resources and assets, such as mining or port concessions⁷⁶⁷, not general regulatory stability commitments. To be sure, this should be read in conjunction with the requirement in footnote 12 that requires “an exchange of rights and obligations binding on both parties.”⁷⁶⁸

391. The difference is fundamental. A mining concession grants rights and obligations “for both parties” over a specific natural resource; a port contract, on a specific state asset. The LSA does nothing of the sort: it does not transfer or make available to the Claimants any natural resource or asset under state control. Furthermore, even if this were the case, the LSA does not recognize any rights or benefits towards Honduras or obligations for the Claimants, so it does not satisfy the requirement of bilaterality in footnote 12.
392. The Claimants do not respond to this point; they merely assert that the rights were granted “by the central level of government of Honduras through constitutional amendments and legislation”.⁷⁶⁹ This conflates different categories. The question is not who created the ZEDE regulatory framework or through what instruments it did so, but whether the resources or assets covered under Article 10.28 were granted and whether these were controlled by a central government authority in Honduras. None of these conditions are met.
393. Under the Claimants’ interpretation, any stability agreement would automatically be an “investment agreement”, regardless of its object or its signatories, whether it was bilateral or not, making the material limitations agreed by the Contracting States redundant and in

⁷⁶⁶ *Freeport-McMoRan Inc. v. Republic of Peru*, (**Freeport v. Peru, Award**) ICSID Case No. ARB/20/8, Award (May 17, 2024) (**RLA-0286-SPA**), ¶¶ 632-635

⁷⁶⁷ So it was already confirmed by a tribunal in an arbitration under the investment chapter of the FTA between the United States and Panama, with an identical definition of “investment agreement”, *Omega Engineering LLC and Oscar Rivera v. Republic of Panama*, ICSID Case No. ARB/16/42, Award (October 14, 2022) (**CLA-0206**), ¶ 115.

⁷⁶⁸ CAFTA-DR (**CLA-0002**), footnote 12 (emphasis added).

⁷⁶⁹ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 63(b).

direct violation of the principle of *effet utile*. However, Article 10.28 is not a generalized umbrella clause, as evidenced by the fact that the Claimants themselves attempt to import such clauses from third agreements⁷⁷⁰.

3. The Claimants' investment decisions predate the LSA by several years, and they could therefore not rely on it

394. Article 10.28 requires that an investment agreement be one “upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself”.⁷⁷¹ This requirement is also not met. The LSA was signed on March 9, 2021⁷⁷², but the Claimants themselves acknowledge that their investment activities in Honduras began several years earlier: Mr. Brimen initiated contacts with the Government in 2016⁷⁷³ and, in the following years, the Claimants invested capital, entered into contracts, and acquired assets linked to Próspera ZEDE⁷⁷⁴, all prior to the existence of the LSA.
395. The incompatibility is obvious: an agreement signed years after the start of an investment cannot be the instrument on which the investor relied to establish or acquire it. The temporal sequence alone prevents the requirement from being satisfied. As a point of comparison, the tribunal in *Freeport-McMoRan* found that a 1998 agreement had been the basis for acquiring an investment in 2004 because it predated the investment and there were submissions that explicitly referred to that agreement as being “directly related” to the decision to invest.⁷⁷⁵
396. The Claimants respond that “[t]here is no requirement in CAFTA-DR, or elsewhere that an investment agreement must predate the entirety of an investor’s investments”.⁷⁷⁶ This argument does not address the objection. Honduras does not claim that the Treaty literally requires that the agreement precede the investment, but this follows from simple logic: in

⁷⁷⁰ Claimants’ Memorial, ¶ 366.

⁷⁷¹ CAFTA-DR (CLA-0002), art. 10.28.

⁷⁷² Agreement for Legal Stability and Investor Protection between the Republic of Honduras and Honduras Próspera Inc. (“**Agreement for Legal Stability**”) (March 9, 2021) (CLA-0006)

⁷⁷³ Claimants’ Memorial, ¶¶ 120-123. Brimen-I, ¶¶ 22-24.

⁷⁷⁴ Claimants’ Memorial, § II.C(4)

⁷⁷⁵ *Freeport v. Peru*, Award (RLA-0286-SPA), ¶ 639.

⁷⁷⁶ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 63(c).

order for an investor to be able to rely on an agreement when establishing or acquiring an investment, such an agreement must exist before, or at least contemporaneously, with the relevant investment decision.

397. Aware of this difficulty, the Claimants maintain that certain investments “**increased** following the LSA”.⁷⁷⁷ However, the requirement of Article 10.28 is not met by claiming that an agreement increased the investment, but rather that the investor relied on it to establish or acquire the investment. In fact, this argument confirms Honduras’ point: if investments increased after the LSA, it is because they already existed before it was executed.

4. Honduras never consented to ICSID arbitration under the LSA

398. The Claimants assert that “the Tribunal nonetheless has jurisdiction over HPI’s contractual claim that Honduras has breached the LSA, for which the LSA itself designates ICSID as the exclusive mandatory jurisdiction”.⁷⁷⁸ Article 25(3) of the ICSID Convention provides that the consent of a political subdivision or public body of a Contracting State shall require the approval of that State, unless the State notifies the Centre that such approval is not required⁷⁷⁹. Honduras has not granted such approval in respect of the Technical Secretary of the Próspera ZEDE, nor has it notified ICSID that it is not necessary.
399. The Respondent has already demonstrated that the Technical Secretary is not a public body of Honduras nor does it represent the State. Its representation functions are limited to the respective ZEDE. This is not undermined by the fact that Article 2.2 of the LSA (a private agreement) indicates that claims for monetary damages shall be arbitrated before the ICSID “as stated under the CAFTA-DR”.⁷⁸⁰ In particular, such a reference does not replace the jurisdictional requirements of Article 25 of the ICSID Convention, which cannot be

⁷⁷⁷ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 63(c).

⁷⁷⁸ Claimants' Memorial, ¶ 366.

⁷⁷⁹ ICSID Convention, Rules and Regulations (April 2006) (RLA-0009-SPA), art. 25.

⁷⁸⁰ Agreement for Legal Stability (9 March 2021) (CLA-0006), p. 6, ¶ 2.2.

circumvented by means of a private contract⁷⁸¹.

400. Instead of contesting Honduras' arguments, the Claimants insist that the LSA was signed by the State and cite Schreuer to argue that State agencies can "become party, as respondent or claimant, to ICSID proceedings instead of, or in addition to, the host State itself".⁷⁸² This reference does not respond to the Respondent's argument and is irrelevant here, since in this case the Claimants are not suing the Technical Secretary, even assuming that he was a State agency, but Honduras.

D. HPI DOES NOT HAVE AN "INVESTMENT AUTHORIZATION" UNDER CAFTA-DR

401. The Tribunal also lacks jurisdiction over the Claimants' claims based on alleged violations of the December 2017 Certification of Registration and Incorporation into the ZEDE Regime, as well as the establishment of the Charter and Amended Charter of Próspera in August 2018 and September 2019, respectively. Contrary to the Claimants' contention, none of these instruments constitutes an "investment authorization" under Articles 10.16(1)(a) and 10.28 of the CAFTA-DR⁷⁸³.
402. According to Article 10.16.1(a) of the CAFTA-DR, an investor may submit a claim to arbitration alleging that the respondent State has violated an investment authorization⁷⁸⁴. For its part, Article 10.28 of the CAFTA-DR defines what should be understood by "investment authorization" in the following terms:

⁷⁸¹ S. Schill *et al.*, "Article 25" in *Schreuer's Commentary on the ICSID Convention* (2022) (RLA-0055-ENG), p. 101. See also: *Cable Television of Nevis, Ltd. and Cable Television of Nevis Holdings, Ltd. v. Federation of St. Kitts and Nevis*, ICSID Case No. ARB/95/2, Award (13 January 1997) (RLA-0060-ENG) ¶¶ 2.01-2.17, 2.22-2.33, 5.06-5.10, 7.02.

⁷⁸² Claimants' Observations on Honduras' Request for Bifurcation, ¶ 64.

⁷⁸³ Claimants' Memorial, ¶¶ 356-357, 603 ("[...] B) DECLARE, with respect to HPI, that Honduras also failed to comply [...] (ii) the Bylaws of Próspera ZEDE, which constitutes a breach of an investment authorization, as defined in [CAFTA-DR];").

⁷⁸⁴ CAFTA-DR (CLA-0002), art. 10.16.1(a) ("1. In the event that a disputing party believes that a dispute relating to an investment cannot be resolved through consultation and negotiation: (a) the claimant, on its own behalf, may arbitrate a claim, pursuant to this Section, alleging (i) that the respondent has breached (A) an obligation under Section A, (B) **an investment authorization**, or (C) an investment agreement;") (emphasis added).

“**investment authorization** means an authorization granted by the foreign investment authorities of one Party to a covered investment or to an investor of another Party.”⁷⁸⁵

403. Under the terms of Article 10.28 of the CAFTA-DR, the investment authorization must be granted by the “foreign investment authority”. Accordingly, the doctrine has emphasized that not any state authority would be authorized to issue such authorization. In the words of Professor Mark Kantor:

“[...] the concept of ‘investment authorization’ is limited to authorizations granted by the ‘foreign investment authority’ of a Party, **not all competent authorities**”⁷⁸⁶ (emphasis added).

404. In addition, arbitral jurisprudence shows that an “investment authorization”, to be considered as such, must mean the granting of rights to the investor, on the one hand, and the acquisition of obligations for the State, on the other. This was made clear by the tribunal in *Mihaly v. Sri Lanka* when examining whether it enjoyed jurisdiction on the basis of an authorization or an investment agreement. Despite the existence of different instruments that linked the State with the investor, the tribunal rejected the existence of an investment authorization in the following terms:

“The Tribunal concludes in regard to the three Letters of Intent, of Agreement and of Extension successively issued by and on behalf of the Government of Sri Lanka in the course of 1993 and 1994 that none of these Letters contains any binding obligation either on Sri Lanka or on the Claimant”⁷⁸⁷ (emphasis added).

405. This requirement is reflected in the text of the Treaty. Article 10.28 of the CAFTA-DR, referring to “licenses, authorizations, permits or a similar instrument” as forms of

⁷⁸⁵ CAFTA-DR (CLA-0002), art. 10.28.

⁷⁸⁶ M.A. Kantor. “*The New Draft Model U.S. BIT: Noteworthy Developments*”, Journal of International Arbitration, Volume 21, No. 4, (2004) (RLA-0063-ENG), p. 386. Along these lines, see also Lee M. Caplan, Jeremy K. Sharpe, “18. United States,” in C. Brown, Commentaries on Selected Model Investment Treaties (January 17, 2013) (RLA-0076-ENG), p. 817 (“A third type of claim is a breach of an ‘investment authorization’, a term defined as ‘an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party’, **e.g. an authorization issued by a Party’s investment screening authority.**”) (emphasis added).

⁷⁸⁷ *Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award (15 March 2002) (RLA-0145-ENG), ¶ 59.

investment, specifies that:

“Among the licenses, authorizations, permits or similar instruments that *do not* have the characteristics of an investment are those that do not generate rights protected under domestic legislation. For greater certainty, the foregoing is without prejudice to the fact that an asset associated with such license, authorization, permit or similar instrument has the characteristics of an investment.” (emphasis added)⁷⁸⁸.

406. In this case, HPI has not received an investment authorization, much less from a foreign investment authority, as peremptorily required by Article 10.28 of the CAFTA-DR, nor does it therefore have a jurisdictional basis to invoke Article 10.16.1(a) of the CAFTA-DR.
407. *First*, as explained above⁷⁸⁹, Honduras does not grant “investment authorizations” under the terms of the CAFTA-DR. Unlike the old Law on the Promotion and Protection of Investments⁷⁹⁰, the current Decree No. 51-2011⁷⁹¹, which created the National Investment Council (CNI), does not provide for this figure⁷⁹². In particular, Article 44 of the aforementioned law, in listing the specific functions of the CNI, *does not* include the granting of permits, licenses and/or authorizations for any investment. On the contrary, its functions focus on the promotion of Honduras as an investment destination, the definition of priority investment sectors, the promotion of the facilitation of the necessary procedures to open businesses, among others⁷⁹³.

⁷⁸⁸ CAFTA-DR (CLA-0002), chapter 10, footnote 10 (“Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. **Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law.** For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.”) (emphasis added).

⁷⁸⁹ Honduras’ Request for Bifurcation, ¶ 125.

⁷⁹⁰ Article 18 of the repealed Decree No. 80-92 enshrined the possibility of establishing by law a list of activities in which it would be necessary to obtain authorization from the Honduran government to invest. This authorization was granted through the Ministry of Economy and Commerce. *See* Honduran Investment Law (Decree No. 80-1992) (1992) (R-0081-SPA).

⁷⁹¹ Law for the Promotion and Protection of Investments of Honduras, Decree No. 51-2011 (C-0165).

⁷⁹² Law for the Promotion and Protection of Investments of Honduras, Decree No. 51-2011 (C-0165), art. 42 (“The National Investment Council (CNI) is hereby created as a public law entity, with legal personality and its own assets, whose main purposes shall be: 1) The promotion and development of private investment; (2) The establishment of facilitation and assistance offices for investors; and 3) The formulation of public policy proposals aimed at creating a favorable climate for both domestic and foreign investment.”).

⁷⁹³ Law for the Promotion and Protection of Investments of Honduras, Decree No. 51-2011 (C-0165), art. 44.

408. In their Observations on the Request for Bifurcation, the Claimants seek to dismiss the foregoing and maintain that the reference to Decree No. 51-2011 would be inadmissible. This is due to (i) the fact that the Treaty does not require that the “investment authorization” be granted in accordance with a particular investment law⁷⁹⁴; and (ii) that, in their opinion, the truly applicable norm would be the ZEDE Organic Law, as it has been specially designed to encourage foreign investment in Honduras⁷⁹⁵. The opposing side, however, is wrong.
409. Not only is the designation of the so-called “Roatan Common Law Code” as applicable law invalid⁷⁹⁶, but, as arbitral practice shows, when hearing claims based on genuine investment authorizations, tribunals have sought to analyze those national regulations of the State that have the specific purpose of regulating foreign investment. This flows, for example, from the reasoning of the tribunal in *PSEG v. Turkey*, which considered that the investor had indeed obtained an authorization, but always within the framework of the regulation *especially referring to foreign investment*⁷⁹⁷.
410. In this case, such regulations are given by Decree No. 51-2011, that is, the Law for the Promotion and Protection of Investments, within which the granting of any “investment authorization” is not conceived⁷⁹⁸. This is especially true considering that, as indicated, the

⁷⁹⁴ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 69(a) (“Critically, nothing in CAFTA-DR requires that an “investment authorization” be granted further to a particular investment law. On the contrary, the Treaty defines the term “investment authorization” broadly to encompass any authorization by a foreign investment authority, regardless of the law pursuant to which it is issued.”).

⁷⁹⁵ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 69(a) (“Moreover, Respondent's reference to Decree No. 51-2011 is particularly inapposite because it entirely disregards that the ZEDE Legal Framework was deliberately established to facilitate investment under conditions separate from other Honduran legislation and was neither governed nor constrained by that Decree.”)

⁷⁹⁶ See Sections IV.E; IV.D.3.a.

⁷⁹⁷ *PSEG Global, Inc., The North American Coal Corporation, and Konya Ingin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award (January 19, 2007) (**RLA-0164-ENG**), ¶¶ 116-118 (“The Tribunal also concludes that, in addition, the proper authorization has been granted by the foreign investment authority to the company. The **Turkish law governing foreign investment does not require a string of authorizations nor does the Foreign Capital Framework Decree of 1995** [...] It is quite common that countries, host to an investment, will require a number of other authorizations to permit the investment to operate a number of specific activities, but in so far as the authorization to invest is concerned only one decision by the pertinent government service suffices. This authorization has been duly given by the Foreign Investment General Directorate, as noted.”).

⁷⁹⁸ Law for the Promotion and Protection of Investments (Decree No. 51-2011) (July 15, 2011) (**R-0096-SPA**), art. 44.

Decree in question entailed the repeal of the old law on the promotion and protection of investments, Article 18 of which expressly provided for the possibility of establishing by law a list of activities in which it would be necessary to obtain authorization from the Honduran government to invest⁷⁹⁹. Today, under the current foreign investment regulation, such a figure does not exist. Furthermore, the reference made by the Claimants to the ZEDE Organic Law is completely inadmissible, since – and without prejudice to its unconstitutional nature, as decided by the Supreme Court of Honduras –⁸⁰⁰ said regulation simply *does not* conceive of a figure analogous to an investment authorization.

411. *Second*, the CAMP is also not a “foreign investment authority” in the terms required by the CAFTA-DR and, therefore, could hardly grant investment authorizations. As explained⁸⁰¹, Article 11 of the repealed ZEDE Organic Law lists a total of ten functions assigned to the CAMP, among which is to approve its own internal regulations, appoint and remove the Technical Secretary of the ZEDE, or establish the guidelines of internal policy⁸⁰². None of these functions includes the granting of “investment authorizations”. Not even the power to “incorporate lots of land” to which the Claimants refer can be found in this regulation⁸⁰³.
412. The Claimants have tried (unsuccessfully) to refute the above, arguing that the CAMP would be, in effect, the “relevant” foreign investment authority for the purposes of the ZEDE Organic Law, by participating in activities to “promote” the ZEDEs to foreign investors⁸⁰⁴.

⁷⁹⁹ Honduran Investment Law (Decree No. 80-1992) (1992) (**R-0081-SPA**), art. 18.

⁸⁰⁰ See Judgment of the Supreme Court of Honduras (Gazette No. 36,698) (November 25, 2024) (**C-0559**), pp. 26-27 (“It is noteworthy that the constitutional reform of Articles 294, 303 and 329 of the Constitution of the Republic, and the consequent enactment of the Organic Law of the Employment and Economic Development Zones (ZEDE), constitute the most obvious and gross acts against Honduras and its sovereign people, violating their will instituted in the Constitution of the Republic.”) (emphasis added).

⁸⁰¹ Honduras’ Request for Bifurcation, ¶ 127.

⁸⁰² At most, Article 11 of the ZEDE Law recognized the CAMP as having the power to set areas for the “*future expansion*” of a ZEDE, something essentially different from the authorization of foreign investments. See Decree No. 120-2013, approving the ZEDE Organic Law (September 6, 2013) (**C-0006**), art. 11(8).

⁸⁰³ Claimants’ Memorial, ¶ 356 (“CAMP is the competent foreign investment authority for the purposes of ZEDEs under the ZEDE Act [...] is in charge of key aspects of the governance and oversight of ZEDEs on behalf of Honduras, including the incorporation of land into the ZEDE regime.”).

⁸⁰⁴ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 69(b), referring to Claimants’ Memorial, ¶ 106 (“[...] CAMP played an active role in promoting ZEDEs to foreign investors. Among other promotional initiatives, CAMP held events in the United States in order to attract U.S. investors to develop ZEDEs.”).

That, however, is completely unfounded. At the outset, *none* of the functions assigned to the CAMP by the ZEDE Organic Law refers – not even tacitly – to the promotion or protection of foreign investment⁸⁰⁵; so much so, that the Claimants have not been able to indicate any rule in that regard. The only thing they have managed to do is take refuge in the statement of one of their witnesses, which refers to an alleged “promotional” “event” – clearly only a private meeting – organized by members of the CAMP in June 2016, the realization of which is accompanied by a photograph of unknown origin⁸⁰⁶. Obviously, such rudimentary argumentation does not modify the text of Article 11 of the ZEDE Organic Law, which does not authorize the CAMP to issue “investment authorizations” in the terms provided by the CAFTA-DR.

413. *Third*, even if the repealed ZEDE Legal Framework were considered to provide for the granting of investment authorizations, the CAMP would not be the competent authority to authorize the establishment of a ZEDE. As has been explained at length⁸⁰⁷, this power –

⁸⁰⁵ ZEDE Law (C-0006), art. 11 (“The Committee for the Adoption of Best Practices shall be created, comprising twenty-one (21) persons of recognized integrity, leadership, executive capacity and international reputation in the private for profit or non-profit sector, in academia or in the public sector. Its functions shall be the following: 1) To approve its internal regulations; 2) To approve or disapprove the actions or conduct of the Technical Secretary of the Zones of Economic Development and Employment (ZEDE); 3) To appoint and remove the Technical Secretary of each Employment and Economic Development Zone (ZEDE), the appointment will be made at the proposal of: a) the inhabitants of the Zones of Economic Development and Employment (ZEDE) when it is located in an area of high population density. or, b) The promoters or organizers of the Zones of Economic Development and Employment (ZEDE) in the event that it is located in an area of low population density. The population density shall be established in accordance with Article 37 of this Law. 4) To establish the general guidelines of internal policy and transparency of the Zones of Economic Development and Employment (ZEDE), seeking to accelerate the fulfillment of the objectives of their creation; 5) To approve or disapprove the regulations approved by the Technical Secretary; 6) o propose to the Judiciary Council a list of ten (10) people to occupy the position of judge or magistrate of the Special Jurisdiction of the Zones of Economic Development and Employment (ZEDE), which will appoint them after a competitive examination; and/or recommend their removal when appropriate; ; 7) To fill its vacancies; 8) To set an area in an adjacent zone for future expansion and planning in the design of a Zone of Economic Development and Employment (ZEDE); 9) To employ the services of an internationally renowned audit firm to carry out the audit of the resources collected by the Zones of Economic Development and Employment (ZEDE) and publish the corresponding reports; and; and, 10) Other functions conferred by this Organic Law. The members of the Committee for the Adoption of Best Practices will be appointed by the President of the Republic. This appointment must be ratified by the National Congress. The Committee for the Adoption of Best Practices shall be considered to be established and may begin its functions once its first twelve (12) members have been appointed. The Committee for the Adoption of Best Practices shall meet in plenary session as often as the Committee indicates and shall form a Permanent Commission whose functions shall be those delegated to it by the plenary session. To this effect, five (5) of its members shall be appointed.”).

⁸⁰⁶ See Claimants' Observations on Honduras' Request for Bifurcation, footnote No. 186; Delgado-I, ¶ 18.

⁸⁰⁷ See Section II.B.4.

constitutionally non-delegable – corresponded exclusively to the National Congress and no one else⁸⁰⁸. This is clearly provided for in Article 329 of the Constitution of Honduras⁸⁰⁹, Article 38 of the ZEDE Organic Law⁸¹⁰, and ratified by the Supreme Court in its decision dated September 20, 2024 in application of the corresponding Honduran law⁸¹¹.

414. In this regard, the Claimants, instead of taking responsibility for the foregoing, refer again to Article 39 of the ZEDE Organic Law, by virtue of which the CAMP would have the power to “authorize” investments through the incorporation of “lots of land” into the ZEDE regime⁸¹². This, however, misses the point: the “incorporation of land” by the CAMP can only apply once the constitutionally required requirements for the establishment of a ZEDE have been met, that is, approval by a qualified majority of the National Congress. It has been established that Próspera ZEDE *never* obtained an approval decree from the National Congress, which is why the alleged “incorporation of land” by the CAMP is completely invalid.

⁸⁰⁸ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 206 (“**The functions of the legislative branch are not delegable** except that of the taking of the constitutional oath of office of high government officials, in accordance with this Constitution. .”) (emphasis added)

⁸⁰⁹ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 329 (“**The creation of a zone subject to a special regime is the exclusive power of the National Congress, by a qualified majority, given an approving plebiscite by two thirds** in accordance with that established in article five of the Constitution. [...]”) (emphasis added).

⁸¹⁰ ZEDE Law (C-0006), art. 38 (“**The National Congress shall be responsible for creating the Zones of Economic Development and Employment (ZEDE) by decree**, in compliance with the following rules: 1) When the Zone to be declared is of low population density, the opinion of the National Institute of Statistics (INE) must be obtained, certifying such situation in accordance with the provisions of Article 329 of the Constitution of the Republic; and, 2) When the Zone to be declared is located in an area of high population density, prior to its creation a Plebiscite must be held in the area where the zone is located, and its creation may be decreed only if the result of the consultation is favorable in accordance with Article 5 of the Constitution of the Republic.”) (emphasis added).

⁸¹¹ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021, Judgment* (September 20, 2024) (R-0066-SPA), p. 24 (“The Honduran jurist Doctor Joaquín Mejía Rivera, in an academic publication explains that for the constitution of a ZEDE it is an unavoidable requirement according to the reformed article 329, the approval of such zone by the honorable National Congress, through a qualified vote and with the previous citizen participation in an approving plebiscite, with a result of two thirds of the population according to article 5 of the Constitution. Said jurist emphasizes that the exclusive or non-delegable nature of the National Congress to approve a ZEDE. To date, there is no publication in La Gaceta that provides for the approval, constitution or creation of a ZEDE,33 by virtue of which the existence of acquired rights originated in the regulations under analysis, and which are considered unconstitutional for violating irreformable or entrenched articles, is ruled out.”) (emphasis added).

⁸¹² Claimants' Observations on Honduras' Request for Bifurcation, ¶ 69 (b) (“Contrary to what Respondent now contends, CAMP was competent to incorporate land into the ZEDE regime —i.e., to authorize investment into the regime— pursuant to Article 39 of the ZEDE Law.”).

415. *Fourth*, none of the instruments referred to by the Claimants—namely, the Certification of Registration and Incorporation into the ZEDE Regime and the Bylaws of Próspera ZEDE—⁸¹³ could constitute an “investment authorization,” since they do not give rise to any obligation for the Republic of Honduras. As provided above, both the jurisprudence⁸¹⁴ and the text of the CAFTA-DR itself⁸¹⁵ specify that “authorizations”, in order to be understood as such, must involve the establishment of rights for the investor and obligations for the State. The same has been affirmed by the United States in its submissions as a non-disputing Party in other CAFTA-DR cases when it states that “[f]or example, under U.S. law, it is well established that revocable government-granted licenses or permits do not confer property interests that give rise to claims for compensation.”⁸¹⁶
416. The Claimants seek to challenge the foregoing and argue that the CAFTA-DR—unlike investment agreements—does not explicitly state that the imposition of obligations is a requirement for an “investment authorization.” The United States notes that the “footnote” including this requirement does not refer to the concept of “investment authorization”, but only to the concept of “authorization” as one of the “forms of investment” provided for in Article 10.28⁸¹⁷. They are also of the view that the instruments in question would recognize Honduras’ obligation to respect HPI’s acquired rights under the Treaty and the Honduras-Kuwait BIT⁸¹⁸. Both arguments are unfounded.
417. First, the Claimants’ approach to the requirement of the creation of obligations is not only unserious—in that it merely questions, in essence, the *location* of a footnote—but contradicts the most basic rules of international law relating to the interpretation of treaties. From the

⁸¹³ Claimants’ Memorial, ¶ 357.

⁸¹⁴ *Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award (15 March 2002) (RLA-0145-ENG), ¶ 59.

⁸¹⁵ CAFTA-DR (CLA-0002), Chapter 10, footnote 10.

⁸¹⁶ *Daniel W. Kappes and Kappes, Cassiday & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Declaration of the United States (February 19, 2021) (RLA-0103-ENG), footnote No. 12.

⁸¹⁷ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 69 c).

⁸¹⁸ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 69 c).

provisions of article 31 of the Vienna Convention, a rule that enjoys an undisputed customary character⁸¹⁹, the rule of interpretation in accordance with the context of the treaty is inferred, by virtue of which the scope of a rule is sought to be determined in terms of the provisions of another rule of the same treaty. In the words of Richard K. Gardiner:

“The second role [of context] is the identification in the Vienna rules of the material which is to be taken into account as forming context. Context is defined by spelling out this second role, **directing attention to the whole text of the treaty**, its preamble, and any annexes [...] **This directs the interpreter to look to many factors ranging from those that are fairly immediate**, such as the wording of surrounding provisions, headings of articles and punctuation, **to more remote elements such as comparisons with other provisions on similar matters or using similar wording**, extending to the function of the context as a bridge to the further element in the first paragraph of the general rule, that is ‘the object and purpose’”⁸²⁰ (emphasis added).

418. In this case, the opposing side’s approach directly contradicts this rule of interpretation, in that it refuses to integrate the notion of “investment authorization” in Article 10.28⁸²¹, with the treatment offered by the *same* provision to the word “authorization” by enumerating—

⁸¹⁹ This has been stated numerous times by the International Court of Justice. See *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ, Judgment (26 February 2007) (RLA-0165-ENG), ¶ 160 (“The Court observes that what obligations the Convention imposes upon the parties to it depends on the ordinary meaning of the terms of the Convention read in their context and in the light of its object and purpose. To confirm the meaning resulting from that process or to remove ambiguity or obscurity or a manifestly absurd or unreasonable result, the supplementary means of interpretation to which recourse may be had had include the preparatory work of the Convention and the circumstances of its conclusion. Those propositions, reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, are well recognized as part of customary international law.”); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, Advisory Opinion (9 July 2004) (RLA-0155-ENG), ¶ 94 (“The Court would recall that, according to customary international law as expressed in Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.”); *Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, ICJ, Judgment, (March 31, 2004) (RLA-0153-ENG), p. 48, ¶ 83; *LaGrand Case (Germany v. United States of America)*, ICJ, Judgment (27 June 2001) (RLA-0142-ENG), p. 501, ¶ 99; and *Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*, ICJ, Judgment (17 December 2002) (RLA-0150-ENG), p. 645, ¶ 37.

⁸²⁰ Gardiner, R. “Treaty Interpretation”, The Oxford International Law Library. Second Edition (2015) (RLA-0206-ENG), p. 197.

⁸²¹ CAFTA-DR (CLA-0002), art. 10.28, p. 138 (“***investment authorization*** means an authorization granted by the foreign investment authorities of one Party to a covered investment or to an investor of another Party.”) (emphasis added).

just *paragraphs* later—the forms of “investment” included in the Treaty⁸²². The Claimants cannot seriously claim that any value is attached to such a rudimentary argument.

419. Second, it is not true that the instruments referred to by the Claimants imply the creation of any *obligation* on the part of the State of Honduras.
420. The Certification of Registration and Incorporation into the ZEDE Regime dated December 29, 2017 – issued by the incompetent authority of the CAMP – does not bind the State in any way or generate any right (at most, it has a declaratory effect). Rather, it merely states that “a parcel of land at Crawfish Rock” was included in the “special land register” administered by CAMP.⁸²³
421. For their part, the original Charter of Próspera ZEDE, as well as its Amended Charter, do not imply any obligation for the Republic of Honduras either. As has been proposed⁸²⁴, they only comprise a list of rules that the foreign investors of Próspera ZEDE themselves imposed on themselves to organize their project, rules that were designed and promulgated by themselves, and signed by their employee, Technical Secretary Tristán Monterroso⁸²⁵. The mere fact that reference is made to the CAFTA-DR and the Honduras-Kuwait BIT in one of its provisions⁸²⁶ does not imply the assumption of new obligations by the State of Honduras.

⁸²² CAFTA-DR (CLA-0002), art. 10.28, p. 139, footnote 13 (“**investment** means [...] The forms that an investment may take include: [...] (g) licences, **authorisations**, permits and similar rights granted in accordance with domestic law [...] 13. Whether a type of licence, **authorization**, permit, or similar instrument (including a concession, to the extent that it is in the nature of such an instrument) has the characteristics of an investment depends on factors such as the nature and extent of the holder's rights under the Party's law. Among the licenses, authorizations, permits or similar instruments **that do not have the characteristics of an investment are those that do not generate rights protected under domestic legislation**. For greater certainty, the foregoing is without prejudice to the fact that an asset associated with such license, authorization, permit or similar instrument has the characteristics of an investment.”) (emphasis added).

⁸²³ Certification of Registration and Incorporation into the ZEDE Regime of the Village of North Bay, dated December 29, 2017 (C-0016).

⁸²⁴ See Bifurcation Request, ¶ 129, footnote 115.

⁸²⁵ ZEDE Village of North Bay Charter, dated August 23, 2018 (CLA-0004); Charter of Próspera ZEDE, dated September 12, 2019 (CLA-0005).

⁸²⁶ Notably, this is the only argument that the Claimants have been able to make in response to Honduras' well-founded questions. See Claimants' Observations on Honduras' Request for Bifurcation, ¶ 69.c) (“In any event, Respondent's argument is moot because, as Claimants already explained in their Memorial, the Próspera ZEDE Authorization and the Charter did in fact grant rights to Claimants and also acknowledged the existence of an obligation to respect HPI's right to the protections of CAFTA-DR and the Honduras-Kuwait BIT.”).

422. In sum, the foregoing shows that the Tribunal lacks jurisdiction to hear the claims of the Claimants pursuant to Articles 10.16(1)(a) and 10.28 of the CAFTA-DR, since HPI does not have an investment authorization issued by a competent foreign investment authority under applicable Honduran law.

E. THE RELIEF SOUGHT BY THE CLAIMANTS IN THE MAIN PART OF THEIR CLAIM FALLS OUTSIDE THE TRIBUNAL'S JURISDICTION

423. The Tribunal also does not have jurisdiction to adopt the measures that the Claimants request as primary relief in their Memorial⁸²⁷. Those measures would consist, they claim, of: (i) the recognition of the Claimants' rights under the ZEDE Legal Framework and the guarantee that they will remain in force throughout the period of legal stability; (ii) in the event that their alleged rights under the ZEDE Legal Framework are not kept in force, their reinstatement; and, (iii) the cessation of alleged acts of interference, harassment, and defamation⁸²⁸.

424. As can be seen, none of these measures seek the restitution of their property. This is consistent with the Claimants' own statements, which assert that their assets, including their businesses, their contracts, their intellectual property rights, their real estate, are still in their possession and have not been taken from them⁸²⁹. Instead, what they are actually seeking is the restoration of the constitutional and legal provisions that made up the defunct ZEDE Legal Framework, at least with respect to the Claimants⁸³⁰, and the cessation of alleged acts of interference, harassment, and defamation⁸³¹. This is manifestly inappropriate under the

⁸²⁷ The subsidiary nature of his claim for damages is expressly stated in paragraph 33 and reiterated in section V(B) of the Memorial on the Merits. *See* Claimants' Memorial, ¶ 33; § V(B). Moreover, the inclusion of the expression "or" at the end of subparagraph (c) – followed by subparagraph (d) *et seq.*, relating to pecuniary compensation and other compensation – reveals that the Claimants' pecuniary claims are subsidiary to the remedies requested in subparagraphs (a) to (c); Claimants' Memorial, ¶ 603.

⁸²⁸ Claimants' Memorial, ¶¶ 33, 542, 603(c).

⁸²⁹ Claimants' Memorial, ¶¶ 321, 324-325.

⁸³⁰ What the Claimants describe as the recognition or restoration of their rights under the ZEDE Legal Framework constitutes, in reality, an injunction aimed at reinstating, for their exclusive benefit, a general regulatory regime declared unconstitutional with *ex tunc effect*.

⁸³¹ Claimants' Memorial, ¶¶ 33, 542, 603(c).

CAFTA-DR⁸³².

425. *First*, Article 10.26(1) of the CAFTA-DR—in terms similar to NAFTA and other more recent model treaties⁸³³—limits the remedies that the Tribunal may order for alleged non-compliance to pecuniary damages and restitution of property, *i.e.*, to what the Claimants refer to as “material restitution” or “physical return of property”⁸³⁴:

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney’s fees in accordance with this Section and the applicable arbitration rules⁸³⁵.

426. This interpretation is consistent with the ordinary meaning that must be attributed to the term “restitution of property”.⁸³⁶ By adding the prepositional complement “of property” to the⁸³⁷ noun “restitution”, the Contracting States intended to limit the scope of this remedy⁸³⁸. Had they wished to empower the Tribunal to grant it in broad terms — as understood by the ILC articles cited by the Claimants⁸³⁹ — they would simply have used the term “restitution” autonomously, as those same articles do⁸⁴⁰. By opting instead for the term “restitution of property”, they assimilated it to the concept of “material restitution” or “physical return of

⁸³² The argument provided for in respect of the Agreement for Legal Stability anticipated in the Request for Bifurcation has not been considered in this presentation, in view of the fact that in their brief of Observations on the Request for Bifurcation the Claimants clarify that “they do not request restitution in respect of their claims by the LSA”. Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 81.

⁸³³ North American Free Trade Agreement (1992) (**CLA-0012**), Art. 1135(1); *See also* Model U.S. Bilateral Investment Treaty (2012) (**RLA-0073-ENG**), art. 34(1); Canada’s Model Bilateral Investment Treaty (2004) (**RLA-0064-ENG**), art. 44.

⁸³⁴ Claimants’ Memorial, ¶ 535.

⁸³⁵ CAFTA-DR (**CLA-0002**), art. 10.26(1).

⁸³⁶ CVDT (**CLA-0001**), Art. 31(1).

⁸³⁷ Royal Spanish Academy, “complement of regime (prepositional)”, *Glossary of grammatical terms* (**R-0091-SPA**).

⁸³⁸ Contrary to what the Claimants point out, this limitation is sufficient to exclude other forms of restitution and not necessarily a formulation such as that of the United States – Mexico – Canada treaty. *See* Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 80.

⁸³⁹ Claimants’ Memorial, ¶ 535.

⁸⁴⁰ Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (**CLA-0216**), art. 35.

property” that commentary 5 to article 35 of those articles links to the restitution of tangible property or other types of property⁸⁴¹.

427. This interpretation is also shared by a number of authors—including *Borzu Sabahi*, the author on whose analysis of the restitution decision in *Border Timbers Limited v. Zimbabwe*, cited by the Claimants, is based—who points out that the term “restitution of property” in Article 1135 of the NAFTA, the wording of which is identical to that of Article 10.26(1) of the CAFTA-DR that served as a model⁸⁴², is limited exclusively to “material restitution”:

The great majority of investment treaties (especially BITs) generally do not circumscribe the power of the arbitral tribunals to grant restitution. Exceptions include NAFTA Article 1135 and the recent model BITs of the United States and Canada, which narrow the scope of the remedies that a tribunal may award to monetary damages and return of property (ie, material restitution for our purposes) or a combination thereof, thereby excluding juridical restitution⁸⁴³.

428. Moreover, this interpretation finds support in arbitral practice under the CAFTA-DR, in which judicial restitution has never been granted—understood as the revocation, annulment, or modification of a constitutional or legal norm, or the rescission or reconsideration of an

⁸⁴¹ Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), art. 35, commentary (5).

⁸⁴² Indeed, CAFTA-DR represents an evolution of U.S. practice in multilateral treaties, incorporating the lessons learned from the NAFTA experience and substantively revising its investment chapter – including expropriation, transparency of arbitration, and mechanisms to prevent frivolous claims – in accordance with the guidance of the U.S. Congress. Office of the United States Trade Representative, CAFTA Policy Brief, *Investment Provisions in CAFTA* (May 2005) (RLA-0065-ENG)

⁸⁴³ B. Sabahi, “Chapter 4: Restitution,” *Compensation and Restitution in Investor-State Arbitration: Principles and Practice*, Oxford University Press (2011) (RLA-0072-ENG), p. 64; See also G. Stephens-Chu, “Is it Always All About the Money? The Appropriateness of Non-Pecuniary Remedies” in *Investment Treaty Arbitration, Arbitration International*, Vol. 30, No. 4 (January 7, 2017) (RLA-0090-ENG), pp. 662-663 (“Article 1135(1) of the North American Free Trade Agreement (NAFTA) limits the range of remedies that may be awarded to compensation and material restitution, and allows the respondent state to pay damages in lieu of such restitution”); G. Yusuf, “Bridging the Gap between Theory and Practice: Revisiting the Role of Restitution” in *Investment Treaty Arbitration, African Yearbook of International Law Online* (November 28, 2018) (RLA-0096-ENG), p. 127; This practice of “cross-interpretation” between treaties is based on Article 31(1) of the Vienna Convention, in that it allows recourse to the ordinary meaning given to identical or substantially similar terms or expressions. CVDT (CLA-0001), art. 31(1); Precisely because of their close linkage, numerous tribunals constituted under the CAFTA-DR have systematically resorted to the jurisprudence issued by NAFTA tribunals, as well as to other instruments associated with that agreement, to interpret provisions of the CAFTA-DR. P. Dumberry, “‘Cross Treaty Interpretation,’ in *pad* or How CAFTA-DR Tribunals Are Systematically Interpreting the FET Standard Based on NAFTA Case Law,” in *The Law and Practice of International Courts and Tribunals* 22 (July 21, 2023) (RLA-0107-ENG), pp. 406-410.

administrative or judicial decision—as sought in the present case⁸⁴⁴.

429. *Second*, the restitution sought by the Claimants does not constitute a return of intangible property, as the Claimants contend⁸⁴⁵. The restoration of the alleged rights of the Claimants under the ZEDE Legal Framework cannot be qualified as such because, as set out below, their restitution would necessarily imply a legal restitution that the CAFTA-DR does not authorize.
430. In their Observations on the Request for Bifurcation, the Claimants contend that they are not asking the Tribunal to order Honduras to amend its legal framework, but rather “to establish the rights of the Claimants for the period of 50 years during which it guaranteed them the legal stability of those rights”.⁸⁴⁶ However, the Claimants themselves acknowledge that Decrees Nos. 32-2022 and 33-2022, as well as the Supreme Court Judgment, repealed the ZEDE Legal Framework with *ex tunc* effect. Consequently, restoring the alleged rights claimed by the Claimants would necessarily imply revoking, annulling or modifying the contested rules, or rescinding or reconsidering the contested decision; that is, it would be a form of judicial restitution⁸⁴⁷.
431. Moreover, as a consequence of the foregoing, if the Claimants’ application were to succeed, the award would necessarily produce effects *vis-à-vis* third parties, either by entailing the reinstatement of repealed constitutional and legal norms with general effect or, in the

⁸⁴⁴ See: *Railroad Development Corporation v. Republic of Guatemala* (ICSID Case No. ARB/07/23); *Pac Rim Cayman LLC v. Republic of El Salvador* (ICSID Case No. ARB/09/12); *Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador* (ICSID Case No. ARB/09/17); *TECO Guatemala Holdings, LLC v. Republic of Guatemala* (ICSID Case No. ARB/10/23); *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz v. Republic of Costa Rica* (ICSID Case No. UNCT/13/2); *Corona Materials, LLC v. Dominican Republic* (ICSID Case No. ARB(AF)/14/3); *David Aven et al. v. Republic of Costa Rica* (ICSID Case No. UNCT/15/3); *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua* (ICSID Case No. ARB/17/44); *Riverside Coffee, LLC v. Republic of Nicaragua* (ICSID Case No. ARB/21/16); *Fibranet, Sociedad Anónima v. Republic of El Salvador* (ICSID Case No. ARB/25/6). In addition, this remedy has not been sought by the Claimants in the following pending cases: *Sargeant Petroleum, LLC v. Dominican Republic* (ICSID Case No. ARB(AF)/22/1); *Juan Carlos Arguello and Ernesto Argüello v. Republic of Honduras* (ICSID Case No. ARB/23/17); *Fernando Paiz Andrade and Anabella Schloesser de León de Paiz v. Republic of Honduras* (ICSID Case No. ARB/23/43).

⁸⁴⁵ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 80.

⁸⁴⁶ Claimants' Observations on Honduras' Request for Bifurcation, ¶ 78.

⁸⁴⁷ See Section V.A.

alternative, by conferring a discriminatory benefit with respect to other investors in ZEDEs⁸⁴⁸. Such a result would be inconsistent with Article 10.26(4) of the CAFTA-DR, according to which the award produces effects only between the disputing parties and with respect to the specific case⁸⁴⁹.

432. *Third*, the interpretation of Article 10.26(1) of the CAFTA-DR just set forth is consistent with respect for the sovereignty of the Contracting States and with the approach adopted by other tribunals in investor-State arbitration, including on the basis of treaties that (unlike the CAFTA-DR) do not expressly establish this limitation⁸⁵⁰. Cases in which requests to establish general legal frameworks have been rejected because they affect the sovereignty of the State are dealt with in Section V.A *infra*⁸⁵¹.
433. On the contrary, the precedents cited by the Claimants to assert that “[t]he courts have granted restitution in various forms”⁸⁵² differ significantly from the present case; therefore, if anything, they confirm what the Republic of Honduras has pointed out. In none of the three cases relied on by the Claimants did the applicable treaty provide for a limitation on

⁸⁴⁸ This would have an effect on other ZEDEs incorporated in Honduras, such as ZEDE Morazán, ZEDE Orquidea, among others. Claimants’ Memorial, ¶¶ 201-202. In this regard, the Ontario Court of Appeal, in interpreting section 1135 of NAFTA – in almost identical wording to section 10.26(1) of the CAFTA-DR – noted that “*the tribunal award cannot invalidate the impugned government measure or have any other effect on domestic law beyond the disputants and the particular case*” reaffirming the limited nature of the restitution permitted by the treaty. *Council of Canadians, CUPW and the Charter Committee on Poverty Issues v. The Attorney General of Canada*, Judgment of the Court of Appeal of Ontario (30 November 2006) (**RLA-0068-ENG**), ¶ 14.

⁸⁴⁹ CAFTA-DR (**CLA-0002**), art. 10.26(4).

⁸⁵⁰ See: *Cube Infrastructure Fund SICAV et al. v. Kingdom of Spain*, ICSID Case No. ARB/15/20, Decision on Jurisdiction, Liability and Partial Decision on Quantum (19 February 2019) (**RLA-0243-ENG**), ¶ 460 (“The Parties argued the case in terms of compensation as the appropriate remedy. The Tribunal agrees that it was correct for them to do so. The Respondent has the right to determine its own regulatory regime. Restitution, in the sense of an order to the Respondent to restore at least the main bases of the original regulatory framework in relation to the Claimants, is beyond the proper scope of the powers of the Tribunal and is moreover plainly materially impossible and disproportionately burdensome. Compensation is the appropriate form of redress in the present case.”); *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Decision on Liability and Principles of Amount (30 November 2018) (**RLA-0238-ENG**), ¶ 473; *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Award (May 16, 2018) (**CLA-0155**), ¶ 562; *BP Exploration Company (Libya) Limited v. Government of the Libyan Arab Republic*, International Law Reports, Volume 53, Cambridge University Press (1979) (**RLA-0130-ENG**), p. 354.

⁸⁵¹ See Section V.A.

⁸⁵² Claimants’ Memorial, ¶ 535.

the remedies that the tribunal could grant⁸⁵³. Moreover, those cases concern restitution measures linked precisely to the ownership of investors or of undertakings controlled by them, and not to the re-establishment of a regulatory framework of general application⁸⁵⁴.

434. In particular, *Cairn v. India*⁸⁵⁵ differs in an obvious way from the present arbitration in that it ordered the State to neutralize the continuing effect of a tax injunction against Cairn in respect of the 2007-2008 tax year and to withdraw it permanently. In other words, it was the judicial restitution – not limited by the applicable treaty – of an individual and specific measure addressed to the investor, and not a State act with *erga omnes* effects, such as the one sought by the Claimants in this case⁸⁵⁶.
435. *Fourth*, in their Observations on the Request for Bifurcation, the Claimants argued that the present objection “is a remedy issue that has nothing to do with jurisdiction”.⁸⁵⁷ This statement is incorrect. As provided for in the precedents cited by the Claimants, *Perenco v. Ecuador* and *Micula v. Romania (I)*, the remedies, being specifically defined in the applicable treaty, like the jurisdiction of the Tribunal, are based on the consent of the

⁸⁵³ *Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (July 28, 2015) (CLA-0219), ¶ 708; *Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Republic of India (I)*, PCA Case No. 2016-7, Final Award (December 21, 2020) (CLA-0220), ¶ 1873; *Peter Pázmány University v. The State of Czechoslovakia*, CJIJ Decisions, Orders and Legal Opinions, Appeal against a judgment of the Hungarian-Czechoslovak Joint Arbitral Tribunal, Decision (15 December 1933) (CLA-0221), p. 239.

⁸⁵⁴ In *Border Timbers Limited v. Zimbabwe*, the tribunal ordered the restitution of certain property expropriated by Zimbabwe to an investor-controlled company in conjunction with its water permits, not the reinstatement of general standards. *Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (July 28, 2015) (CLA-0219), ¶ 743. In the case of *Peter Pázmány University v. Czechoslovakia*, the tribunal ordered the State to return “the immovable property claimed by it, free from any measure of transfer, compulsory administration or seizure, and in the state in which it was before the application of the measures in question”. In other words, it provided for material restitution, and not legal restitution. *Peter Pázmány University v. The State of Czechoslovakia*, CJIJ Decisions, Orders and Legal Opinions, Appeal against a judgment of the Hungarian-Czechoslovak Joint Arbitral Tribunal, Decision (15 December 1933) (CLA-0221), p. 249.

⁸⁵⁵ In their Observations on the Request for Bifurcation, the Claimants misrepresent the content of the reference made by Honduras to the case of *Cairn v. India*, cited by the Claimants in their Claimants’ Memorial. Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 138.

⁸⁵⁶ In *Cairn v. India*, the tribunal ordered the State to withdraw a tax injunction that had been directed only against the investor, not the reinstatement of general rules. *Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Republic of India (I)*, PCA Case No. 2016-7, Final Award (December 21, 2020) (CLA-0220), ¶¶ 1870-1877.

⁸⁵⁷ Claimants’ Observations on Honduras’ Request for Bifurcation, ¶ 74.

parties⁸⁵⁸. A separate question, going to the merits, is whether restitution is an appropriate remedy in the circumstances of the case.

436. *Finally*, the Claimants' attempts to base their restitution claim on the ILC articles are also of no avail⁸⁵⁹. As the articles themselves make clear, they are not applicable to situations involving a State and non-State persons or entities:

However, while Part One applies to all the cases in which an internationally wrongful act may be committed by a State, Part Two has a more limited scope. It does not apply to obligations of reparation to the extent that these arise towards or are invoked by a person or entity other than a State.⁸⁶⁰

437. Even if the aforementioned articles were considered applicable to this matter, there is no doubt that it is nevertheless appropriate to recognize primacy to what was agreed by the contracting States themselves in the respective treaty; in this case, the CAFTA-DR, which, as indicated above, provides only for the restitution of property⁸⁶¹.

⁸⁵⁸ In *Micula v. Romania*, the tribunal found it necessary to analyse whether restitution was available to it as a remedy under the applicable treaty and under the ICSID Convention and, only when it confirmed that it had the power to grant such a remedy under those instruments, did it consider that it could reject the respondent's objection as an objection of jurisdiction and admissibility. See *Ioan Micula, Viorel Micula et al. v. Romania (I)*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility (24 September 2008) (**CLA-0285**), ¶¶ 166-168. In the case of *Perenco v. Ecuador*, the tribunal considered it relevant to indicate that the applicable treaty did not establish specific remedies in case of non-compliance, which is why, in that specific case, the question of the remedies available under international law was not a matter of jurisdiction or admissibility. See *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Jurisdiction (June 30, 2011) (**CLA-0284**), ¶¶ 237-240.

⁸⁵⁹ Claimants' Memorial, ¶¶ 533-535; Claimants' Observations on Honduras' Request for Bifurcation, ¶ 80.

⁸⁶⁰ United Nations General Assembly, *Yearbook of the International Law Commission*, A/CN.4/SER. A/2001/Add.1 (vol. II, part two) (2001), article 28, commentary No. 3 (**RLA-0061-SPA**).

⁸⁶¹ This was also held by the tribunal in *Wintershall v. Argentina* when it concluded that the applicable rule in matters of State responsibility – and, therefore, in defining the remedies available – is that provided for in the specific treaty governing the dispute. *Wintershall Aktiengesellschaft v. Republic of Argentina*, ICSID Case No. ARB/04/14, Award (December 8, 2008), ¶ 113 (“The ILC's Articles on State Responsibility is a detailed and official study on the subject but it contains no rules and regulations of State Responsibility vis-à-vis non-State actors. Tribunals are left to determine “the ways in which State Responsibility may be invoked by non-State entities” from the provisions of the text of the particular Treaty under consideration”) (**RLA-0010-SPA**). In analysing this decision, *James Crawford* has pointed out that Article 33(2), by distinguishing the remedies available in favour of persons or entities other than a State, confirms that Part II of the ILC Articles does not regulate issues relating to non-compliance that may occur between a State and a foreign investor. See Crawford, J., “Investment Arbitration and the ILC Articles on State Responsibility,” *ICSID Review - Foreign Investment Law Journal*, Vol. 25, No. 1 (2010), p. 130 (“But it is true—as confirmed by Article 33(2)—that the ILC Articles make no attempt to regulate questions of breach between a state and a private party such as a foreign investor. Those rules must be found elsewhere in the corpus of international law, to the extent that they exist at all.”) (**RLA-0071-ENG**).

IV. THE REPUBLIC OF HONDURAS HAS NOT BREACHED ANY OF THE OBLIGATIONS CLAIMED

438. In the event that the Tribunal considers that it has jurisdiction to hear all or part of the present dispute, the Claimants have in no way demonstrated that the Republic of Honduras has violated the obligations they invoke. Indeed, and contrary to what the Claimants maintain, **(IV.A)** the essential security exception of Article 21.2(b) of the CAFTA-DR prevents the Tribunal from ruling on the merits; **(IV.B)** Honduras has not violated the minimum standard of treatment; **(IV.C)** Honduras has not expropriated the Claimants' investments; **(IV.D)** Honduras has not breached any alleged contractual obligation under the LSA; and **(IV.E)** nor has Honduras failed to comply with any alleged obligation arising from the Charter of Próspera ZEDE.

A. THE ESSENTIAL SECURITY EXCEPTION IN ARTICLE 21.2(B) OF THE CAFTA-DR PREVENTS THE TRIBUNAL FROM RULING ON THE MERITS

439. In its Request for Bifurcation, Honduras already invoked the Essential Security Interests ("ESI") clause of Article 21.2(b) of the CAFTA-DR, declaring that the measures adopted in relation to the ZEDE Legal Framework were necessary for the protection of its sovereignty, an essential security interest⁸⁶².

440. As Honduras demonstrates below, **(A.1)** since the ESI is a *self-judging* clause, it follows from the foregoing that the Tribunal is precluded from ruling on its admissibility. In any case, **(A.2)** if the Tribunal considers that it can rule on the admissibility of the ESI, its review is limited to analyzing, with a *light touch*, whether it was invoked in good faith and this also confirms its admissibility in this case.

1. The ESI invoked by Honduras is self-judging and, therefore, prevents the Tribunal from ruling on its admissibility

441. Article 21.2 clearly states that the Tribunal shall be precluded from ruling on the measures that Honduras has implemented to protect its essential security interests. According to this

⁸⁶² Honduras' Request for Bifurcation, Section II.A.

provision:

Article 21.2: Essential Security

Nothing in this Treaty shall be construed: [...]

(b) **to preclude a Party from applying measures that it considers necessary** for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, **or the protection of its own essential security interests**⁸⁶³.

442. As can be seen, paragraph (b) of Article 21.2 makes it clear that the ESI clause is a provision of a “self-judging” nature, by virtue of which the discretion of each Contracting Party is enshrined to define the interests that will be essential for its respective security and the need for the measures it adopts to protect them. This is supported by an interpretation of Article 21.2(b) in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties (“VCLT”), *i.e.*, “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and having regard to their object and purpose”.⁸⁶⁴
443. *First*, a good faith interpretation of Article 21.2(b), *i.e.*, one that allows the Treaty to have the effects expected by the Contracting Parties⁸⁶⁵, demonstrates that the intention of the CAFTA-DR Contracting Parties in agreeing to the ESI was to allow States to implement such measures as they deem necessary, in their sole discretion, to protect what they consider to be their essential security interests, without this constituting a violation of the obligations enshrined in the Treaty.
444. *Second*, this same understanding is confirmed by the object and purpose of the CAFTA-DR, enshrined in its Preamble, in which the Contracting Parties included their intention to

⁸⁶³ CAFTA-DR (CLA-0002), Art. 21.2(b) (emphasis added).

⁸⁶⁴ United Nations General Assembly, *Vienna Convention on the Law of Treaties*, U.N. Doc. A/CONF.39/27, 1155 U.N.T.S. 331 (“CVDT”) (23 May 1969) (CLA-0001), Art. 31(1) (emphasis added).

⁸⁶⁵ Draft Articles on the Law of Treaties with Commentaries, in *Yearbook of the International Law Commission*, Vol. II (1966) (CLA-0029), p. 219 (“First, the interpretation of treaties in good faith and according to law is essential if the pacta sunt servanda rule is to have any real meaning. [...] When a treaty is open to two interpretations, one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted.”). *See also*, *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Award (August 22, 2012) (CLA-0107), ¶ 173.

“**RETAIN** their flexibility to safeguard the public welfare” under the Treaty⁸⁶⁶. This intention is clearly reflected in the exceptions in Chapter 21 of the Treaty. In the end, by concluding a treaty, the Contracting States cede part of their sovereignty; in this context, the ESI allows them to retain control to adopt the measures they deem necessary to safeguard their own interests.

445. *Third*, the ordinary meaning of the term “deems necessary” confirms that the determination of the necessity of measures is a matter of self-judgment. In fact, the Royal Spanish Academy defines the term “*consider*” as “*thinking or believing, based on some data, that someone or something is as it is expressed*”,⁸⁶⁷ and the term “*necessary*” means “[*what*] is indispensable for something”.⁸⁶⁸ Similarly, the fact that Article 21.2(b) speaks of “its interests” confirms that the clause allows each Contracting Party to determine at its discretion the interests that are essential to its security. The word “*its*” is a possessive adjective and the Royal Spanish Academy defines the term “*interest*” as “[*c*]onvenience or benefit in the moral or material order”.⁸⁶⁹
446. *Fourth*, the context of Article 21.2(b), made up of the other provisions of the Treaty⁸⁷⁰, confirms that the essential security interest declared by a State cannot be the subject of analysis by an arbitral tribunal. Indeed, Article 10.2.1 of the CAFTA-DR confirms the prevalence of the ESI over the Investment Chapter of the Treaty, by establishing that “[*i*]n the event of any inconsistency between this Chapter [*the Investment Chapter*] and another

⁸⁶⁶ DR-CAFTA (CLA-0002), Preamble.

⁸⁶⁷ Royal Spanish Academy, “to consider,” *Dictionary of the Spanish Language*, Available in <https://dle.rae.es/considerar> (R-0071-SPA), p. 2. The English definition of the term “consider” confirms the same understanding: “*To fix the mind on, with a view to careful examination*” Black’s Law Dictionary, definitions of *consider* and *necessary* (6th ed. 1990) (R-0068-SPA), p. 2.

⁸⁶⁸ Real Academia Española, “necessary,” *Dictionary of the Spanish Language* (R-0072-SPA), p. 1. The English definition of the term “necessary” confirms the same understanding: “*that which is indispensable*”, Black’s Law Dictionary, definitions of *consider* and *necessary* (6th ed. 1990) (R-0068-SPA), p. 3.

⁸⁶⁹ Royal Spanish Academy, “interest” *Dictionary of the Spanish Language* (R-0280-SPA).

⁸⁷⁰ See, CVDT (CLA-0001), art. 31(2). Similarly, the tribunal in *Eskosol v. Italy* considered that this includes “*both the words and sentences found in close proximity to that passage, including definitional terms, and other provisions of the same treaty which help illuminate its object and purpose.*” See *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Decision on Intra-EU Termination and Objection (7 May 2019) (RLA-0099-ENG), ¶ 80.

Chapter, *the other Chapter shall prevail to the extent of the inconsistency.*⁸⁷¹

447. Without going any further, the tribunal in *Seda v. Colombia*, which analyzed a clause virtually identical to that of Article 21.2(b) of the Treaty, concluded that the ESI, being drafted in these terms, constitutes a self-judging provision, “*which allows a Contracting State to invoke an interest that it judges to be critical for its security as a justification for the measures*”.⁸⁷² The tribunal in *Riverside Coffee v. Nicaragua* made the same interpretation and concluded that it is a self-judging clause, noting that, in the face of an ESI invoked under the Treaty:

an arbitral tribunal constituted under DR-CAFTA cannot second-guess the determination made by a State Party and cannot at a later stage form its own view on whether the measures taken by a State Party were indeed “*necessary*”.⁸⁷³

448. In short, since the ESI clause is self-judging, and the ESI has been invoked in relation to the measures adopted by Honduras on the ZEDE Legal Framework, the Claimants’ claims which allege the purported illegality of those measures are simply not justiciable.

2. Even in the event that the Tribunal considers that it can rule on the admissibility of the ESI invoked by Honduras (*quod non*), such review is limited to analyzing, with a light touch, whether it was invoked in good faith by the Republic

449. In any case, even if the Tribunal were to determine that it can rule on Honduras’ invocation of ESI (*quod non*), it will only be able to conduct a *light-touch* analysis to determine whether the exception has been invoked in good faith to protect its essential interests⁸⁷⁴. In such a case, it is also not for it to judge the necessity of the measures adopted⁸⁷⁵. This has recently

⁸⁷¹ DR-CAFTA (CLA-0002), art. 10.2.1 (emphasis added).

⁸⁷² *Ángel Samuel Seda and Others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112-SPA), ¶ 662.

⁸⁷³ *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (17 October 2025) (RLA-0119-SPA), ¶ 257 (emphasis added).

⁸⁷⁴ See *Ángel Samuel Seda and Others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112-SPA), ¶ 655; *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (17 October 2025) (RLA-0119-SPA), ¶¶ 265, 267, 271.

⁸⁷⁵ *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (17 October 2025) (RLA-0119-SPA), ¶ 257 (emphasis added); *Ángel Samuel Seda and Others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112-SPA), ¶ 662.

been determined by the two arbitral tribunals that accepted the ESI invoked by the respondent States in two key decisions for investment arbitration⁸⁷⁶.

450. In this regard, the tribunal in *Riverside Coffee v. Nicaragua* analyzed the ESI invoked by Nicaragua under the same Article 21.2(b) of the CAFTA-DR in relation to measures adopted during a period of widespread civil unrest and concluded that its review should be limited to “whether the measures in question are reasonably or plausibly related to the alleged essential security interests.”⁸⁷⁷ Applying this standard, the tribunal determined that there was “a reasonable and plausible relation” between one of the measures adopted by Nicaragua (the May 2018 shelter order) and its essential security interest in dealing with the civil strife that arose in the country⁸⁷⁸. In reaching that conclusion, the tribunal referred to the considerations of the case of *Seda v. Colombia*, which reviewed the ESI, the wording of which is almost identical to that of Article 21.2(b), invoked by Colombia in relation to the measures adopted to combat organized crime and drug trafficking⁸⁷⁹.
451. The tribunal in *Seda* also adopted a “plausibility standard,” according to which its task in analyzing the merits of the ESI was to verify that it was “plausible” that Colombia’s declared essential security interest “may be related” to the measures adopted, subject to a “good faith review with a ‘light touch’.” Based on this approach, the *Seda* tribunal concluded that there was a plausible link between the forfeiture proceedings, the applicable legislation and the objective of combating drug trafficking and organized crime⁸⁸⁰. The *Seda* tribunal was emphatic that the ESI review cannot be “too restrictive as to infringe on the explicit self-

⁸⁷⁶ See *Ángel Samuel Seda and Others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112-SPA), ¶ 655; *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (17 October 2025) (RLA-0119-SPA), ¶¶ 265, 267, 271.

⁸⁷⁷ *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (17 October 2025) (RLA-0119-SPA), ¶ 271.

⁸⁷⁸ *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (17 October 2025) (RLA-0119-SPA), ¶ 277.

⁸⁷⁹ *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (17 October 2025) (RLA-0119-SPA), ¶¶ 257-258.

⁸⁸⁰ *Ángel Samuel Seda and Others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112-SPA), ¶¶ 655, 742-743, 748.

judging language of the ESI Provision.”⁸⁸¹

452. In the present case, as is evident and will be demonstrated below, there is no doubt that the (2.a) ZEDE Legal Framework undermined the essential security interests of Honduras consisting, among other things, of the protection of its territorial sovereignty, which is a fundamental pillar of its existence as a State and (2.b) measures adopted by Honduras in relation to the ZEDE Legal Framework bear a reasonable and plausible relationship with its essential security interest.

a. The ZEDE Legal Framework undermined the essential security interests of Honduras

453. In the Request for Bifurcation, the Republic of Honduras declared that the essential security interest it sought to protect was its territorial sovereignty, which was directly violated by the ZEDE Legal Framework, and whose protection was the primary objective of Decrees Nos. 32-2022 and 33-2022, as well as the Supreme Court of Honduras’ Judgment of 2024⁸⁸².

454. As indicated, Honduras has the firmest conviction that the determination of “*its essential security interests*” is a matter of self-judgment. In any case, and whatever the position adopted, it is sufficient that the aforementioned interest has two qualities: (i) “it must be of higher importance than just *any* interest – vital and **going to the core of the State’s main functions**”; and (ii) it “it must be related to the matters of security, i.e., protection from threats.”⁸⁸³ In this line, the tribunal in *Seda* concluded that “the essential security interests of a State **are an expression of its sovereignty**”.⁸⁸⁴

455. *First*, the protection of its sovereignty is the most essential and fundamental interest that a

⁸⁸¹ *Ángel Samuel Seda and Others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112-SPA), ¶ 655.

⁸⁸² Honduras’ Request for Bifurcation, ¶¶ 57-65.

⁸⁸³ *Ángel Samuel Seda and Others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112-SPA), ¶ 642. (emphasis added)

⁸⁸⁴ *Ángel Samuel Seda and Others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112-SPA), ¶ 644. (emphasis added)

State can have. The fundamental theory of the state confirms this⁸⁸⁵. This same theory is reflected in the basic conception of international law according to which sovereignty is an exclusive attribute of States⁸⁸⁶. Thus, the protection of sovereignty is related to the very protection of the functions of the State, since without effective sovereignty over the whole of its territory it cannot exercise any of its other functions – nor legislate, nor impart justice, nor collect taxes, nor guarantee the fundamental rights of its population throughout its territory. The preservation and protection of its sovereignty, by definition, constitutes a vital interest for the existence of the State, which transcends *any* ordinary interest.

456. Moreover, the sovereignty of States, the territorial integrity, and self-determination of their peoples are fundamental principles of international law whose preservation translates into essential interests of States⁸⁸⁷. The same is true of the interest of States in ensuring that external actors do not cause human rights violations against their inhabitants⁸⁸⁸.
457. *Second*, the creation of the ZEDEs with autonomous jurisdictions, removed from the constitutional control of the State, constitutes a concrete and current threat to the security of the State. In other words, these are interests intrinsically linked to the security of the State and its ability to protect its population against threats in its territory. In effect, the ZEDE

⁸⁸⁵ Hobbes, T. “Leviathan, or the Matter, Forme, & Power of a Common-Wealth Ecclesiasticall and Civill”, Chapter XVIII (“Of the Rights of Sovereignes by Institution”) (1651) (RLA-0120-ENG), pp. 126-127; Locke, J. “Two Treatises of Government,” Second Treatise, chap. XI (1689) (RLA-0121-ENG), ¶ 141; Rousseau, J. “Social Contract”, Book II, Ch. I, (1762) (RLA-0122-SPA), pp. 55-56.

⁸⁸⁶ Czubik, P. ‘Sovereignty in International Law’, Raisz, A. (ed.) International Law From a Central European Perspective. Miskolc-Budapest: Central European Academic Publishing (2022) (RLA-0267-ENG), pp. 96-102.

⁸⁸⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ (February 25, 2019) (RLA-0244-ENG), ¶ 155; United Nations General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (XV) (14 December 1960) (RLA-0300); Charter of the United Nations (1945) (RLA-0299-SPA), arts. 1.2, 2.4, 2.7 and 55; International Covenant on Civil and Political Rights (1976) (RLA-0129-SPA), art. 1.1; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, Resolution 2625 (XXV) (1970) (RLA-0302-SPA); Organization of American States (OAS), Charter of the Organization of American States (1967) (RLA-0301-SPA), arts. 1 and 2; *East Timor (Portugal v. Australia)*, Judgment, International Court of Justice, Reports 1995 (30 June 1995) (RLA-0139-ENG), ¶ 29.

⁸⁸⁸ Charter of the United Nations (1945) (RLA-0299-SPA), arts. 55 and 56; United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (1 January 2012) (RLA-0304-SPA), Pillar I.

Legal Framework threatened the sovereignty of Honduras, its territorial integrity, the self-determination of the Honduran people, and a series of human rights of its inhabitants, such as the rights of its indigenous populations to prior consultations and the rights to a healthy environment⁸⁸⁹. This was because it granted state authority to the ZEDEs, granting them regulatory, administrative, fiscal, monetary, budgetary, and judicial autonomy within the territory of the Republic of Honduras⁸⁹⁰.

458. So much so that, in its Judgment, the Supreme Court of Honduras emphatically pointed out that the ZEDE Legal Framework amounted to a usurpation of popular sovereignty, contrary to the “*territorial integrity, sovereignty and independence of the republic*”.⁸⁹¹ The Office of the United Nations High Commissioner for Human Rights in Honduras had also described the ZEDE Legal Framework as an attack on national sovereignty and the constitutional rights of Honduran citizens⁸⁹².

459. From the foregoing, it is clear that the protection and preservation of sovereignty constitute an essential security interest of the Republic of Honduras. As explained below, the measures implemented by the Republic bear a reasonable and plausible relationship to this essential security interest.

b. The measures taken by the Government of Honduras in relation to the ZEDE Legal Framework are directly related to the essential security interest invoked by Honduras

460. The measures adopted by the Republic – Decrees Nos. 32-2022 and 33-2022 that repealed the constitutional provisions relating to ZEDEs, as well as the Supreme Court’s ruling of unconstitutionality – aimed precisely to restore the territorial sovereignty of Honduras and restore the full validity of its Constitution throughout the national territory. These measures

⁸⁸⁹ See Sections II.B.2; II.C.4.c; II.D.1; II.D.3.

⁸⁹⁰ Claimants’ Memorial, ¶¶ 68-70.

⁸⁹¹ Judgment of the Supreme Court of Honduras (Gazette No. 36,698) (November 25, 2024) (C-0559), pp. 17-22.

⁸⁹² United Nations in Honduras, *Press Release: ZEDEs Could Pose Serious Risks to the Honduran State's Guarantee of Human Rights* (June 8, 2021) (R-0022)

also had an unequivocal democratic mandate: the repeal of the ZEDE regime was a central platform of the 2021 presidential campaign, and more than 180 municipalities had declared themselves free of ZEDEs through the National Movement against ZEDEs and for Sovereignty, which shows that the measure responded to the popular will and not to an isolated government decision.

461. Decree No. 32-2022, for its part, repealed Decree No. 236-2012, which approved the reform of Articles 294, 303, 304 and 329 of the Constitution of Honduras, which approved and ratified the creation of the ZEDEs, in clear contradiction of the founding constitutional norms⁸⁹³. In the Preamble of Decree No. 32-2022 itself, Congress was emphatic that the ZEDE Legal Framework transgressed “the formal and subject-matter limitations imposed by the constituent power to the branches of Government, which protect our national territory and form of government”, making it clear that the order sought the protection of territorial sovereignty and the mandate of the Constitution of Honduras⁸⁹⁴.
462. On the other hand, Decree No. 33-2022 repealed the ZEDE Organic Law, as well as the related decrees and their amendments, for going directly against the Constitution of Honduras⁸⁹⁵. In this regard, Decree No. 33-2022 stated that the National Congress would not allow a system which “violated, altered, modified and damaged the national territory and the sovereignty and independence of the Republic” and that it would not allow a replacement of “the people’s sovereignty” through the ZEDE Legal Framework⁸⁹⁶.
463. In turn, the 2024 Judgment was also directly related to the essential security interest invoked by Honduras. In its Judgment, the Supreme Court indicated that through its decision it sought the protection of “the territorial integrity, sovereignty and independence of the republic.”⁸⁹⁷

⁸⁹³ Decree No. 32-2022, published on April 21, 2022 (C-0057), published in the Official Gazette on the same day.

⁸⁹⁴ Decree No. 32-2022, published on April 21, 2022 (C-0057), p. 2.

⁸⁹⁵ Decree No. 33-2022, published on April 21, 2022 (C-0060).

⁸⁹⁶ Decree No. 33-2022, published on April 21, 2022 (C-0060), p. 2.

⁸⁹⁷ Judgment of the Supreme Court of Honduras (Gazette No. 36,698) (November 25, 2024) (C-0559), p. 21.

In addition, it stressed that the ZEDE Legal Framework amounted to a usurpation of popular sovereignty, which “is typified as treason.”⁸⁹⁸

464. In particular, the Supreme Court made an emphatic reference to Article 375 of the Constitution, pointing out the need to restore the validity of the Constitution when it is modified to include precepts that contravene its spirit⁸⁹⁹. It also clearly pointed out that the national territory and the form of government are original elements of the State protected by immutable clauses and therefore cannot be ceded⁹⁰⁰.
465. The good faith of its decision is also evidenced by its provision that investments in ZEDEs would remain operational although subject to the legal regime in force prior to the ZEDE Legal Framework⁹⁰¹. In doing so, the Supreme Court demonstrated its clear and limited intention to act solely in order to protect an essential interest in Honduras’ security.
466. Consequently, there is no doubt that the ESI of Article 21.2(b) of the CAFTA-DR has been properly invoked by Honduras and, therefore, the Tribunal is prevented from ruling on the Claimants’ challenges to the measures adopted by Honduras for the protection of its sovereignty, an essential security interest.

B. HONDURAS HAS NOT VIOLATED THE MINIMUM STANDARD OF TREATMENT

467. In their Memorial, the Claimants allege, primarily, that Honduras violated the CAFTA-DR, by violating the standard of fair and equitable treatment (“FET”), allegedly enshrined in Article 10.5 of the Treaty. Thus, the Claimants first distort the agreed scope of the minimum standard of treatment (“MST”) obligation and define it as if it were equivalent to the autonomous FET obligation⁹⁰². Then, they argue that Honduras would have failed to comply

⁸⁹⁸ Judgment of the Supreme Court of Honduras (Gazette No. 36,698) (November 25, 2024) (C-0559), p. 21.

⁸⁹⁹ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021, Judgment* (September 21, 2024) (R-0066-SPA), pp. 15-17, 21-24.

⁹⁰⁰ Constitution of the Republic of Honduras (1982) with amendments until March 20, 2013 (C-0004), art. 374.

⁹⁰¹ See Sections II.D.3.c; II.D.4.

⁹⁰² Claimants’ Memorial, ¶¶ 375-396.

with its alleged legitimate expectations by repealing the ZEDE Legal Framework⁹⁰³.

468. The Claimants articulate the rest of their claims under the MST standard, based on three alleged conducts by Honduras⁹⁰⁴. First, the repeal of the ZEDE Legal Framework and the refusal to recognize the supposed guarantees of legal stability, conduct that they describe as arbitrary and unreasonable, discriminatory, incoherent, and lacking in transparency⁹⁰⁵. Second, the Supreme Court Judgment of 2024, which they call arbitrary and unreasonable, incoherent, and lacking in transparency⁹⁰⁶. Finally, they invoke various statements and measures by the government of President Castro, which they denounce as a sustained campaign of harassment and defamation of a hostile nature against them⁹⁰⁷.

469. However, these statements do not find any legal or factual support. As will be seen below, **(B.1)** the standard applicable under Article 10.5 of the CAFTA-DR is the MST, not a stand-alone FET standard; **(B.2)** legitimate expectations do not form part of the customary MST and, in any event, the Claimants did not and would not have been frustrated; **(B.3)** Honduras' measures were not arbitrary or unreasonable; **(B.4)** Honduras' measures were also not discriminatory, non-transparent, inconsistent, abusive or hostile; **(B.5)** the Supreme Court of Honduras acted in accordance with the law and has not denied justice to the Claimants.

1. The applicable standard under Article 10.5 of the CAFTA-DR is the Minimum Standard of Treatment, not a stand-alone standard of Fair and Equitable Treatment

470. The Claimants allege that Article 10.5 of the CAFTA-DR establishes an autonomous FET standard since it obliges Honduras to grant covered investments the MST, including a FET.⁹⁰⁸ Based on this erroneous interpretation, the Claimants allege that Honduras should have guaranteed them an autonomous FET, including the protection of their legitimate

⁹⁰³ Claimants' Memorial, ¶¶ 397-426.

⁹⁰⁴ Claimants' Memorial, ¶¶ 427-454.

⁹⁰⁵ Claimants' Memorial, ¶¶ 429-441.

⁹⁰⁶ Claimants' Memorial, ¶¶ 442-448.

⁹⁰⁷ Claimants' Memorial, ¶¶ 449-453.

⁹⁰⁸ Claimants' Memorial, ¶ 375.

expectations⁹⁰⁹, and protection against arbitrary, unreasonable, discriminatory, non-transparent, inconsistent, and hostile treatment⁹¹⁰. The Claimants also argue that the violation of this standard can occur through a series of cumulative acts or measures that, individually, would not violate the FET, but would together⁹¹¹.

471. The truth is that the interpretation presented by the Claimants, as the Tribunal will easily notice, completely ignores the text of the Treaty, as well as the consistent jurisprudence of other arbitral tribunals in relation to the application of the MST standard, in particular, in the context of the CAFTA-DR.

472. *First*, from the text of Article 10.5 of the Treaty, the applicable standard is that of the MST, which clearly provides, in its Numeral 2, that the concept of FET does not require treatment beyond that required under customary international law. Article 10.5 of the CAFTA-DR states:

Minimum Standard of Treatment

1. **Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment** and full protection and security..

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. **The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights**. The obligation in paragraph 1 to provide:

(a) **“fair and equitable treatment” includes the obligation not to deny justice** in criminal, civil, or administrative litigation proceedings, in accordance with the principle of due process embodied in the principal legal systems of the world [...] ⁹¹².

473. Article 10.5 of the CAFTA-DR should be read in line with Annex 10-B of the Treaty, which provides as follows:

⁹⁰⁹ Claimants’ Memorial, ¶¶ 383-388.

⁹¹⁰ Claimants’ Memorial, ¶¶ 389-396.

⁹¹¹ Claimants’ Memorial, ¶ 382.

⁹¹² CAFTA-DR (CLA-0002), art. 10.5.

Customary International Law

The Parties confirm their shared understanding that “**customary international law**” generally and as specifically referenced in Articles 10.5, 10.6, and Annex 10-C results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of alien⁹¹³.

474. In interpreting Article 10.5 of the CAFTA-DR in conjunction with Annex 10-B, the tribunal in *Lopez Goyne v. Nicaragua* confirmed that the Article prescribes FET only to the extent required by the customary MST⁹¹⁴. In this way, the tribunal considered that, although the MST has evolved, it still imposes a very high threshold to prove its transgression, and always higher than that required to prove a violation of the autonomous FET⁹¹⁵.
475. As noted by the International Law Commission, the party arguing a particular content for a rule of customary international law has the burden of demonstrating widespread and virtually uniform State practice, as well as *opinio juris* on the application of that rule with that content⁹¹⁶, even if MST’s obligation is guaranteed by its inclusion in a treaty, such as Article 10.5.1, since it refers to customary international law to determine its content. The tribunal in *Interconexión Eléctrica v. Chile*, in analyzing a similar MST clause, concluded that the claimant must prove that the obligations it invokes are part of the MST⁹¹⁷. Here, however,

⁹¹³ CAFTA-DR (CLA-0002), Annex 10-B.

⁹¹⁴ *The Lopez-Goyne Family Trust et al. v. Republic of Nicaragua (Lopez-Goyne v. Nicaragua, Award)*, ICSID Case No. ARB/17/44, Award, March 1, 2023, (CLA-0136), ¶ 408.

⁹¹⁵ *Lopez-Goyne v. Nicaragua*, Award (CLA-0136), ¶¶ 411-416. See also, *International Thunderbird Gaming Corporation v. United Mexican States*, UNCITRAL, Arbitral Award, 26 January 2006, (CLA-0127), ¶ 194; *Adel A Hamadi Al Tamimi c. Sultanate of Oman*, ICSID Case No. ARB/11/33, Award (November 3, 2015) (RLA-0213-ENG), ¶ 383.

⁹¹⁶ ILC, Draft Conclusions on the Identification of Customary International Law with Commentaries (2018) (RLA-0305-SPA), Conclusion 1, Commentary 4 and Conclusion 2 (“To determine the existence and **content** of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (*opinio juris*)”) (emphasis added). See also *Lone Pine Resources Inc. v. Government of Canada*, (*Lone Pine v. Canada, Award*) ICSID Case No. UNCT/15/2, Award (November 21, 2022) (RLA-0273-ENG), ¶¶ 591, 595; *Interconexión Eléctrica S.A. E.S.P. v. Republic of Chile*, ICSID Case No. ARB/21/27, Award (December 13, 2024) (*Interconexión v. Chile, Award*) (RLA-0294-SPA), ¶ 752; *Montauk Metals Inc. v. Republic of Colombia (Montauk v. Colombia, Award)* ICSID Case No. ARB/18/13, Award (June 7, 2024) (RLA-0287-ENG), ¶ 940; *Mason Capital L.P. & Mason Management LLC v. Republic of Korea (Mason v. Korea, Award)*, PCA Case No. 2018-55, Award (April 11, 2024) (RLA-0285-ENG), ¶¶ 667-668.

⁹¹⁷ *Interconexión v. Chile*, Award (RLA-0294-SPA), ¶ 752.

the Claimants have failed to demonstrate that the customary MST has evolved to the point of providing protection comparable to the autonomous FET rules, which they allege have been violated⁹¹⁸.

476. *Second*, as the International Court of Justice has pointed out, State practice in the application of a treaty does not constitute proof of the element of *opinio juris*⁹¹⁹. In this sense, the arbitral decisions invoked by the Claimants, in which a treaty obligation of FET independent of the MST is analyzed, do not serve to demonstrate that the autonomous protection of legitimate expectations, non-discrimination, transparency, and consistency is part of the content of the MST⁹²⁰.
477. Despite this, the Claimants, in order to overcome the high threshold imposed by the MST, refer to decisions of other tribunals that have defined the scope of the autonomous FET. Clearly, these are irrelevant decisions and alien to the content of the MST clause. For example, they cite *Telefónica v. Colombia*, where the tribunal defined the autonomous FET standard⁹²¹, but in interpreting the autonomous FET clause of the Spain-Colombia BIT⁹²². The difference between that clause and the MST clause of the CAFTA-DR is dramatic, such that the *Telefónica* award is irrelevant.
478. *Third*, the decisions relied on by the Claimants, interpreting the MST in accordance with

⁹¹⁸ Honduras is also not aware of the existence of State practice or *opinio juris* that establishes that the obligations under which the Claimants claim constitute the MST. See *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (September 18, 2009) (RLA-0176-ENG), ¶ 273 (“The burden of establishing any new element of this custom rests with the Claimant. [...] However, **the proof of the change of a habit is not a matter that can be easily established**. However, the burden of proof clearly lies with the Claimant. **If the Claimant does not submit to the Court evidence of such developments, it is not for the Court to undertake that task**. On the contrary, the Court, in those circumstances, must hold that the Claimant has failed to establish the rule in question.”) (emphasis added).

⁹¹⁹ *North Sea Continental Shelf (Federal Republic of Germany/Netherlands)*, Judgment (20 February 1969) (RLA-0127-ENG), ¶ 76. See also, ILC, Draft Conclusions on the Identification of Customary International Law with Commentaries (2018) (RLA-0305-SPA), Conclusion 9, Comment 2.

⁹²⁰ *Lone Pine v. Canada*, Award (RLA-0273-ENG), ¶ 601; *Lupaka Gold Corp. v. Republic of Peru*, ICSID Case No. ARB/20/46, Award (June 30, 2025) (RLA-0296-SPA), ¶ 300; *Glamis Gold, Ltd. v. United States of America (Glamis Gold v. U.S., Award)*, UNCITRAL (NAFTA), Award (June 8, 2009) (RLA-0175-ENG), ¶ 608.

⁹²¹ *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (November 12, 2024) (CLA-0118), ¶ 407; Claimants’ Memorial, ¶ 377.

⁹²² Spain-Colombia BIT (2007) (R-0090-SPA), art. 2(3).

customary law, although more relevant, do not satisfy the burden on the Claimants to establish State practice and *opinio juris* that account for the evolution of the MST to the extent of the obligations of the autonomous FET that they claim; they therefore have a purely subsidiary value that depends on the value of their own sources⁹²³. According to the Claimants, the award in *Rusoro v. Venezuela* demonstrates that the MST clause of the CAFTA-DR extends its protection to the standard of the autonomous FET⁹²⁴. However, this is a position that omitted to analyze state practice and *opinio juris*, and that has been widely contradicted by arbitral jurisprudence.

479. *Fourth*, regardless of any evolution that the content of the MST may have had, the majority position of the tribunals is that the threshold for determining a breach of the MST has remained different from that required by the autonomous FET obligation and, in particular, higher⁹²⁵. In this regard, the tribunal in *Glamis Gold v. United States* considered that the evolution of the MST standard should be understood as the evolution of the international concept of what is considered “outrageous.”⁹²⁶ In this sense, while what did not constitute outrageous conduct 100 years ago may be outrageous today, the threshold required for the violation of the minimum standard of treatment remains particularly high, and clearly fundamentally different from the FET⁹²⁷.

⁹²³ ILC, Draft Conclusions on the Identification of Customary International Law with Commentaries (2018) (RLA-0305-SPA), Conclusion 13, Comment 3. See also *Lone Pine v. Canada*, Award (RLA-0273-ENG), ¶ 600; *Interconexión v. Chile*, Award (RLA-0294-SPA), ¶ 752; *Mason v. Korea*, Award (RLA-0285-ENG), ¶ 669.

⁹²⁴ Claimants’ Memorial, ¶ 380, citing *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (August 22, 2016) (CLA-0123), ¶ 520.

⁹²⁵ *Lopez-Goyne v. Nicaragua*, Award (CLA-0136), ¶¶ 413-416, citing *International Thunderbird Gaming Corporation v. United Mexican States*, UNCITRAL, Arbitral Award, January 26, 2006, (CLA-0127), ¶¶ 152-153; *Adel A Hamadi Al Tamimi c. Sultanate of Oman*, ICSID Case No. ARB/11/33, Award (November 3, 2015) (RLA-0213-ENG), ¶ 383; *Mondev International Ltd. v. United States of America (Mondev v. U.S., Award)*, ICSID Case No. ARB(AF)/99/2, Award (October 11, 2002) (RLA-0148-ENG), ¶ 127. See also *Lone Pine v. Canada*, Award (RLA-0273-ENG), ¶¶ 601, 611; *Red Eagle Exploration Limited v. Republic of Colombia*, (Red Eagle v. Colombia, Award) ICSID Case No. ARB/18/12, Award (February 28, 2024) (RLA-0283-ENG), ¶¶ 287, 289; *Montauk v. Colombia*, Award (RLA-0287-ENG), ¶ 940.

⁹²⁶ *Glamis Gold v. USA*, Award (RLA-0175-ENG), ¶¶ 612-613.

⁹²⁷ *Glamis Gold v. USA*, Award (RLA-0175-ENG), ¶ 616 (“[...] [A]lthough situations may be more varied and complicated today than in the 1920s, the level of scrutiny is the same. The fundamentals of the Neer standard

480. Thus, considering an evolved MST standard, the tribunal in *Waste Management II* determined that for state conduct to violate that standard it must be “*arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory, and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety.*”⁹²⁸. This same notion of the scope of the MST has recently been replicated by other arbitral tribunals⁹²⁹.
481. Finally, in relation to the Claimants’ argument of a composite violation of the MST (not the FET), it is relevant to note that, as the Commission explained, compound wrongful act imposes the burden of demonstrating a systematic policy or practice that is only revealed through a series of actions or omissions that, taken together and not as isolated acts, constitute the internationally wrongful composite act⁹³⁰. In the same vein, the tribunals in *Interconexión Eléctrica v. Chile* and *Rompotrol v. Romania* concluded that a composite act requires a common link, pattern of conduct or purpose between the actions that comprise it, and not a mere succession of unrelated acts or damages⁹³¹. The Claimants, however, have not demonstrated the existence of a sequence or pattern of conduct in Honduras’ conduct

thus still apply today: to violate the customary international law minimum standard of treatment codified in Article 1105 of the NAFTA, an act must be sufficiently egregious and shocking—a gross denial of justice, manifest arbitrariness, blatant unfairness, a complete lack of due process, evident discrimination, or a manifest lack of reasons—so as to fall below accepted international standards and constitute a breach of Article 1105(1).”).

⁹²⁸ *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (April 30, 2004) (CLA-0119), ¶ 98.

⁹²⁹ *Interconexión v. Chile*, Award (RLA-0294-SPA), ¶¶ 767-769 (“[I]t follows that a “breach of the minimum standard of treatment thus requires more than a minor derogation from the ideal standard of perfectly fair and equitable treatment” and that “all authorities agree that the mere breach of domestic law or any kind of unfairness does not violate the international minimum standard.”); *Lopez-Goyne v. Nicaragua*, Award (CLA-0136), ¶ 416; *Mason v. Korea*, Award (RLA-0285-ENG), ¶¶ 675-676, 679; *Glamis Gold v. USA*, Award (RLA-0175-ENG), ¶¶ 22, 615-616; *International Thunderbird Gaming Corporation v. United Mexican States*, UNCITRAL, Arbitral Award, January 26, 2006, (CLA-0127), ¶ 194; *Odyssey Marine Exploration, Inc. v. United Mexican States (Odyssey v. Mexico)*, Award, ICSID Case No. UNCT/20/1, Award (September 17, 2024) (RLA-0290-ENG), ¶¶ 324, 439; *Neustar v. Colombia*, Award (RLA-0291-ENG), ¶ 606; *Antonio del Valle Ruiz et al. v. The Kingdom of Spain (Antonio del Valle v. Spain)*, Award, UNCITRAL Arbitration, Award (March 13, 2023) (RLA-0278-SPA), ¶ 518; *Lone Pine v. Canada*, Award (RLA-0273-ENG), ¶¶ 612, 623; *Mondev v. USA*, Award (RLA-0148-ENG), ¶ 118; *Eli Lilly and Company v. Government of Canada*, ICSID Case No. UNCT/14/2, Award (March 16, 2017) (RLA-0228-ENG), ¶ 222.

⁹³⁰ Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), art. 15, Commentaries (3) and (7).

⁹³¹ *Interconexión v. Chile*, Award (RLA-0294-SPA), ¶ 1182; *The Rompotrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award (May 6, 2013) (RLA-0200-ENG), ¶ 271.

that reveals an intent to affect their investment. Accordingly, their claim of a composite breach of the MST is unfounded.

482. Accordingly, since Article 10.5 of the CAFTA-DR **expressly** limits the FET to the customary MST, but the Claimants base their claims entirely on an autonomous FET standard not provided for in the Treaty, they must be rejected in their entirety. In any event, Honduras will now examine the components of the customary MST and the Claimants' claims to demonstrate that there is no violation of that standard.

2. The Claimants have not demonstrated that the MST contains an autonomous obligation to protect legitimate expectations, nor that their expectations are of such a nature or have actually been frustrated

483. The Claimants also claim that Article 10.5 protects their expectations, which they classify as legitimate⁹³². According to the Claimants, such expectations can be consolidated on the basis of representations, commitments, promises, or guarantees that the State receiving the investment has made to the investor, explicitly or implicitly⁹³³. In addition, they indicate that the obligation to respect these supposed legitimate expectations includes maintaining a stable and predictable regulatory environment⁹³⁴.

484. As Honduras demonstrates below, the Claimants are wrong. **(2.a)** The purported protection of legitimate expectations is not an autonomous obligation under MST. In any event, **(2.b)** the Claimants have not demonstrated that the expectations they claim are legitimate, realistic, or reasonable, or that they arise from an express promise by Honduras. **(2.c)** Much less have proven that Honduras frustrated such expectations.

a. The protection of legitimate expectations is not a stand-alone obligation under the customary MST

485. One of the main differences between the customary MST and the autonomous FET is precisely that the MST does not include an obligation to protect the legitimate expectations

⁹³² Claimants' Memorial, ¶ 383.

⁹³³ Claimants' Memorial, ¶¶ 384-385.

⁹³⁴ Claimants' Memorial, ¶¶ 387-388.

of investors. The ICJ pointed out as much in *Bolivia v. Chile*:

The Court notes that **references to legitimate expectations may be found in arbitral awards** concerning disputes between a foreign investor and the host State **that apply treaty clauses providing for fair and equitable treatment. It does not follow from such references that there exists in general international law a principle that would give rise to an obligation on the basis of what could be considered a legitimate expectation.** Bolivia's argument based on legitimate expectations thus cannot be sustained⁹³⁵.

486. A number of arbitral tribunals have simply considered that the analysis of whether legitimate expectations have been frustrated by the conduct of the State is at best part of the determination of whether its conduct was arbitrary. The tribunal in *Interconexión Eléctrica v. Chile* agreed that the frustration of legitimate expectations does not in itself constitute a violation of the MST but is an element to consider when analyzing whether the other components of the standard have been violated⁹³⁶. Specifically, the tribunal indicated that it must first analyze whether the State “*acted in an arbitrary or discriminatory manner or in violation of due process, in order to assess whether and to what extent Chile’s actions may have frustrated [...] alleged legitimate expectations.*”⁹³⁷ This has also been confirmed by the United States, the Claimants’ State of nationality, in interpreting the CAFTA-DR⁹³⁸.
487. Even if the MST were to enshrine an obligation to protect an investor’s legitimate expectations (*quod non*), it imposes a high threshold for establishing that such expectations do indeed exist, based on specific conduct by the host State of the investment, and not on the basis of mere implicit commitments, as the Claimants incorrectly claim. For example, the tribunal in *Lopez Goyne v. Nicaragua* held that the requirements for finding a violation

⁹³⁵ Obligation to Negotiate Access to the Pacific Ocean (*Bolivia v. Chile*), I.C.J. Rep, Ruling (October 1, 2018) (RLA-0236-ENG), ¶ 162.

⁹³⁶ *Interconexión v. Chile*, Award (RLA-0294-SPA), ¶¶ 759-761.

⁹³⁷ *Interconexión v. Chile*, Award (RLA-0294-SPA), ¶ 761, *see also* *Mason v. Korea*, Award (RLA-0285-ENG), ¶¶ 679, 686-687.

⁹³⁸ *Spence International Investments, LLC, Berkowitz et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Non-Disputing Party Filing of the United States of America (April 17, 2015) (RLA-0210-ENG), ¶¶ 17-18 (“**Neither the concepts of 'good faith' nor 'legitimate expectations' are component elements of 'fair and equitable treatment' under customary international law** that give rise to an independent host State obligation”) (emphasis added).

of legitimate expectations are rigorous and require objectively demonstrating that the State “made assurances or representations” on which the investor based its investment and that “the reliance on those assurances was reasonable.”⁹³⁹ Likewise, the tribunal in *Grand River v. United States* specified that these expectations can only arise from “**targeted representations or assurances**”.⁹⁴⁰ Even in *Thunderbird v. Mexico*, a decision cited by the Claimants, the tribunal rejected the claim precisely because the State’s communications invoked did not generate sufficiently specific representations⁹⁴¹.

488. In any event, the Claimants’ references to *Micula v. Romania* are irrelevant since they begin their analysis from an autonomous FET provision and not from the MST, which ignores the main difference that, under the MST, the origin of legitimate expectations must be demonstrated on the basis of express commitments by the State and not on simple assumptions arising from State conduct⁹⁴².
489. In relation to the Claimants’ argument that legitimate expectations include an obligation to maintain a predictable and stable regulatory system⁹⁴³, jurisprudence has consistently held that this occurs only when the State has made an express commitment to do so. For example, the tribunal in *Glamis Gold v. United States* held that the MST does not impose an obligation on the State to protect investor expectations arising from the general regulatory framework⁹⁴⁴. The tribunal in *Merrill & Ring v. Canada* specified that the MST does not protect against any change in the legal or contractual environment that affects the investor’s expectations⁹⁴⁵. In *Mobil v. Canada*, the tribunal stressed that the MST standard “protects

⁹³⁹ *Lopez-Goyne v. Nicaragua*, Award (CLA-0136), ¶ 422.

⁹⁴⁰ *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Award (12 January 2011), (RLA-0186-ENG), ¶¶ 141, 144.

⁹⁴¹ *International Thunderbird Gaming Corp. v. United Mexican States*, UNCITRAL, Arbitral Award (January 26, 2006) (CLA-0127), ¶¶ 149-166.

⁹⁴² Claimants’ Memorial, ¶¶ 385-386, citing *Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania*, ICSID Case No. ARB/05/20, Award (December 11, 2013) (CLA-0144), ¶ 677.

⁹⁴³ Claimants’ Memorial, ¶ 386.

⁹⁴⁴ *Glamis Gold v. USA*, Award (RLA-0175-ENG), ¶¶ 620-622, 798-799.

⁹⁴⁵ *Merrill & Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award (March 31, 2010) (RLA-0178-ENG), ¶ 219.

against egregious behaviour” and that investor expectations cannot be based exclusively on domestic law existing at the time of the investment⁹⁴⁶.

b. The Claimants have failed to demonstrate that their expectations are legitimate, realistic, or reasonable, or that their decision to invest in Honduras was based on them

490. The Claimants allege, in this regard, that Honduras induced the Claimants’ investment in Próspera ZEDE through “repeated express representations, guarantees, commitments and assurances, both in the general legislation and directly to Claimants”.⁹⁴⁷ According to them, the alleged “direct” representations and commitments assumed by Honduras in relation to their investment would be (i) the legal stability provisions within the ZEDE Legal Framework, which the Supreme Court allegedly confirmed with its 2014 decisions⁹⁴⁸; (ii) the promotional campaigns of the ZEDEs and the alleged direct invitations made to the Claimants⁹⁴⁹; (iii) knowledge of the activities and intentions of the Claimants with Próspera ZEDE⁹⁵⁰; and (iv) the purported signing between Honduras and HPI of the LSA.⁹⁵¹ The Claimants are completely mistaken.
491. *First*, the existence of general legislation does not constitute any commitment to the permanence of the legal regime. The Claimants confuse the existence of a legal framework with the obligation not to amend it. Even in *Total v. Argentina*, a decision relied on by the Claimants, the tribunal held that expectations are only legitimate when the State has expressly assumed a specific legal obligation for the future, such as through contracts, concessions, or stabilization clauses, and that, in the absence of such a commitment or a specific treaty provision, the legal regime in force at the time of the investment is not

⁹⁴⁶ *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada (Mobil v. Canada, Liability Decision)*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and Principles of Quantum (May 22, 2012) (RLA-0234-ENG), ¶¶ 153-156.

⁹⁴⁷ Claimants’ Memorial, ¶ 399.

⁹⁴⁸ Claimants’ Memorial, ¶¶ 400-401.

⁹⁴⁹ Claimants’ Memorial, ¶ 406.

⁹⁵⁰ Claimants’ Memorial, ¶¶ 408-409.

⁹⁵¹ Claimants’ Memorial, ¶ 410.

automatically guaranteed against the modifications⁹⁵². This, of course, is not the case here.

492. Moreover, the 2014 Supreme Court decisions were not a legitimate guarantee for the Claimants. Just as they considered the 2014 decisions, they also had to consider the 2012 Supreme Court decision, which declared the RED Legal Frameworks unconstitutional⁹⁵³. The Claimants were aware of this as Mr. Delgado attempted to create a “model city” under the RED regime. They also had to consider that, prior to the 2014 decisions, the magistrates who issued the 2012 decision were removed and replaced by people loyal to the Executive and in favor of the REDs⁹⁵⁴.

493. *Second*, the actions of the Honduran authorities in the process of promoting the ZEDEs took place within the framework of a general campaign to attract foreign investment and did not consolidate any commitment with respect to the permanence of the ZEDE Legal Framework. In addition, the interactions between the Honduran authorities and the Claimants regarding their interest in establishing a ZEDE were generic promotional conversations, similar to those held with different potential investors. Nor have the Claimants identified any commitment or express affirmation that Honduras made to the Claimants during this period of time⁹⁵⁵.

494. *Third*, the alleged knowledge of the Honduran authorities about the activities and intentions of the Claimants with Próspera ZEDE does not constitute, under any circumstances, express representations by Honduras to the Claimants⁹⁵⁶. It should not be forgotten that the LSA was not signed by Honduras, but, on the contrary, it was a document signed between the Technical Secretary of Próspera ZEDE, a close friend of Mr. Brimen and owner of capital

⁹⁵² *Total S.A. v. Republic of Argentina*, ICSID Case No. ARB/04/01, Liability Decision (December 27, 2010) (CLA-0143), ¶ 117; See also *Glamis Gold v. U.S.*, Award (RLA-0175-ENG), ¶ 766; *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Award (12 January 2011), (RLA-0186-ENG), ¶ 141.

⁹⁵³ See Section II.A.2.

⁹⁵⁴ See Section II.A.3.

⁹⁵⁵ See Sections II.C.1; II.C.2.

⁹⁵⁶ See Sections II.C.1; II.C.2.

in HPI, on behalf of Próspera ZEDE and HPI itself⁹⁵⁷. In addition, the LSA is completely null and void⁹⁵⁸. Therefore, it is absolutely unreasonable that the Claimants would have based their expectations on a document signed between themselves, of which Honduras was not a party, and which was clearly null and void. Thus, it is clear that none of Honduras' actions pointed out by the Claimants could have induced or generated legitimate expectations for them.

495. In any event, and as has been demonstrated, the Claimants cannot claim that the legitimate expectations they claim to have had regarding the legal stability of the ZEDE regime were reasonable⁹⁵⁹.
496. *First*, the RED regime had been declared unconstitutional by the Supreme Court. Therefore, it is unreasonable to believe that the Claimants were confident that the same could not happen with respect to the ZEDEs, especially given their irrefutable similarity, the institutional capture of the Supreme Court prior to the regulation of the ZEDE regime, and the considerable opposition that the ZEDEs faced in Honduras and the world even before their installation⁹⁶⁰.
497. *Second*, given this background, the alleged team of experts on special economic zones that the Claimants claim to have⁹⁶¹, and the 2019 EY Report, which clearly warned them of the risks to the stability of the ZEDE Legal Framework⁹⁶², it is unreasonable to believe that the Claimants made their investment in Próspera ZEDE with the conviction that the ZEDE Legal Framework could not be repealed or annulled.
498. As the tribunal in *Parkerings v. Lithuania* noted, legitimate expectations are only protectable when the investor has exercised due diligence, and these are reasonable in light of the

⁹⁵⁷ See Sections II.C.4.a; II.C.5; III.C.

⁹⁵⁸ See Section IV.D.

⁹⁵⁹ Claimants' Memorial, ¶ 415.

⁹⁶⁰ See Sections II.A; II.B; II.C.1; II.C.4.d; II.D.1.

⁹⁶¹ Claimants' Memorial, ¶ 415.

⁹⁶² EY (Ernst & Young) Project Oasis Final Report (July 2019) (C-0322), p. 74.

circumstances⁹⁶³. In a context in which the attempt to implement the REDs in Honduras had already failed, with permanent social and political opposition, and in the face of the risks noted by their own advisors, the Claimants could not reasonably base their investment on the ZEDE Legal Framework, and even less so on the LSA, to which they themselves executed.

c. Honduras has not frustrated any legitimate expectation of the Claimants

499. The Claimants allege that Honduras frustrated their legitimate expectations by dismantling the ZEDE Legal Framework and thwarting their ability to develop Próspera ZEDE and obtain the “multi-billion dollar benefits” they expected from the project⁹⁶⁴.
500. However, it is a consolidated rule of arbitral jurisprudence that the change of the regulatory regime does not violate the legitimate expectations of the investor, except when the State has assumed an express and specific commitment not to modify it *vis-à-vis* that investor. Without such commitment, the investor assumes the regulatory risk inherent in all economic activity. Thus, the tribunal in *EDF v. Romania* held that international investment protection does not constitute an insurance policy against changes in the legal or economic framework of the State⁹⁶⁵. Similarly, the tribunal in *Philip Morris v. Uruguay* held that changes to general legislation do not violate the FET, unless they exceed the normal exercise of regulatory power or there is a stabilization clause⁹⁶⁶.
501. The Claimants invoke *Telefónica v. Colombia* and *Bilcon v. Canada* to argue that a change made by the courts or an administrative rejection may violate the FET⁹⁶⁷. However, in *Telefónica*, the tribunal applied an autonomous clause of the FET and dealt with an allegedly

⁹⁶³ *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, September 11, 2007, (CLA-0142), ¶ 333.

⁹⁶⁴ Claimants’ Memorial, ¶ 418.

⁹⁶⁵ *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (CLA-0165), ¶ 217.

⁹⁶⁶ *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award (July 8, 2016), (RLA-0222-ENG), ¶ 423.

⁹⁶⁷ Claimants’ Memorial, ¶¶ 424-425.

arbitrary and contradictory change of the asset reversion regime⁹⁶⁸. In *Bilcon*, the dispute did not concern a regulatory change, but an environmental assessment process that the tribunal found to be biased and arbitrary⁹⁶⁹. These assumptions are unrelated to the present case, in which the repeal and subsequent declaration of unconstitutionality of the ZEDE Legal Framework were the result of the exercise of the constitutional powers of the National Congress and the Supreme Court of Honduras.

502. In this case, and as has been demonstrated in the preceding sections, the repeal and subsequent declaration of unconstitutionality of the ZEDE Legal Framework were executed in accordance with the Honduran legal system, in the exercise of the legitimate regulatory power of the State, with respect to a legal regime of a general nature and with the purpose of protecting essential⁹⁷⁰ interests. In particular, these measures sought to safeguard the Honduras' sovereignty, as reflected in the exercise of the powers of the constituted branches of government; preserve its territorial integrity, through the full exercise of those powers over its entire territory⁹⁷¹; and eliminate a regime incompatible with its Constitution⁹⁷². Moreover, and as also developed in Sections II.C.5, III.C and IV.D, the adoption of these measures was not limited by any stabilization clause, since the LSA is an instrument signed by a person who did not represent the State, lacked independence and impartiality and is, moreover, entirely invalid⁹⁷³.

3. Honduras' measures were not arbitrary or unreasonable

503. The Claimants allege that Honduras violated Article 10.5 of the Treaty by acting in an

⁹⁶⁸ *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (November 12, 2024) (CLA-0118), ¶¶ 410-442.

⁹⁶⁹ *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton, and Bilcon of Delaware, Inc. v. Canada*, UNCITRAL, Award on Jurisdiction and Liability (March 17, 2015) (CLA-0182), ¶¶ 591, 598-599.

⁹⁷⁰ See Sections II.B; II.D.2; II.D.3.

⁹⁷¹ See Section II.B.2; II.D.

⁹⁷² See Section II.B.; II.D.3.

⁹⁷³ See Sections II.C.5, III.C; IV.D.

arbitrary and unreasonable manner⁹⁷⁴. In particular, they maintain that both the repeal of the ZEDE Legal Framework and the 2024 Judgment of the Supreme Court of Honduras would have been arbitrary and unreasonable measures.

504. The Claimants seem to forget, however, that the threshold for establishing arbitrariness under the MST is particularly high. As the ICJ pointed out in *ELSI*, arbitrariness is not something opposed to a rule of law, but something opposed to the rule of law: “It is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety”.⁹⁷⁵ In this regard, numerous tribunals, interpreting the standard of arbitrariness under the MST, have emphasized that it is limited to the existence of “*manifest arbitrariness*” or “*blatant injustice*” that is unacceptable from the international perspective⁹⁷⁶, and that the fact that agents of the State may err in the application or enforcement of local rules does not amount to a violation of the MST⁹⁷⁷. These courts have also emphasized that the arbitrariness analysis does not examine whether the conduct was correct, effective, desirable, or questionable implementation of a policy—or whether it harmed the investment, since legislating inevitably harms competing interests⁹⁷⁸. The analysis must focus on whether the conduct was based on a reasoned approach, linked to the legal system of the State, or, on the other hand, on the manifest and deliberate ignorance of

⁹⁷⁴ Claimants’ Memorial, ¶¶ 389-392.

⁹⁷⁵ *Elettronica Sicala S.p.A. (ELSI)*, Judgment, I.C.J. Rep. 1989, p. 15 (July 20, 1989) (RLA-0004-ENG), ¶ 128.

⁹⁷⁶ *Lone Pine v. Canada*, Award (RLA-0273-ENG), ¶¶ 610, 612; *Glamis Gold c. USA*, Award (RLA-0175-ENG), ¶¶ 625-626.

⁹⁷⁷ *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala (D. Kappes v. Guatemala, Award)*, ICSID Case No. ARB/18/43, Award (December 23, 2025) (RLA-0297-ENG), ¶ 716; *Glamis Gold c. USA*, Award (RLA-0175-ENG), ¶ 626.

⁹⁷⁸ *Glamis Gold c. USA*, Award (RLA-0175-ENG), ¶¶ 625, 803-804 (“The Tribunal agrees with Respondent’s assertion that governments must compromise between the interests of competing parties and, if they were bound to please every constituent and address every harm with each piece of legislation, they would be bound and useless.”); *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award (December 19, 2013) (RLA-0203-ENG), ¶ 493; *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (September 18, 2009) (RLA-0176-ENG), ¶¶ 291-293; *Joshua Dean Nelson and Jorge Blanco v. United Mexican States*, ICSID Case No. UNCT/17/1, Award (June 5, 2020) (RLA-0254-ENG), ¶ 325.

the applicable rules⁹⁷⁹.

505. In this context, the burden is on the Claimants to demonstrate objectively – with evidence of the motivations of the State agents that goes beyond mere speculation – that the conduct suffers from a manifest lack of motivation⁹⁸⁰ or that the agents acted with the intention of harming, personal preferences, abuse or pretext to conceal improper ends⁹⁸¹. This evidence – which the Tribunal must assess by taking a thorough and exhaustive approach because of the inherent gravity of the accusation – must be clear and conclusive, leaving no doubt about the arbitrariness of the measures, to the point of being scandalous, even considering “*the real-world difficulties of government decision-making in the face of legitimate objectives that may go in different directions*” and the slowness that state processes can suffer in light of the complexity of coordinating different departments in the face of elaborate and multifaceted state responsibilities⁹⁸². These conclusions regarding the high standard of arbitrariness are shared by tribunals that have analyzed the FET as an autonomous obligation outside the MST⁹⁸³.
506. As Honduras demonstrates below, the Claimants have not demonstrated that Honduras acted

⁹⁷⁹ *D. Kappes v. Guatemala*, Award (RLA-0297-ENG), ¶ 717; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award (December 19, 2013) (RLA-0203-ENG), ¶¶ 493, 465.

⁹⁸⁰ *Glamis Gold c. USA*, Award (RLA-0175-ENG), ¶ 803; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award (December 19, 2013) (RLA-0203-ENG), ¶ 621.

⁹⁸¹ Such evidence must also be verified by comparison with any other evidence that supports the presumption that state agents acted in good faith and with the reasoned intent to comply with what they understood to be the objectives of the law. *D. Kappes v. Guatemala*, Award (RLA-0297-ENG), ¶¶ 717-718; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award (December 19, 2013) (RLA-0203-ENG), ¶ 587.

⁹⁸² *Red Eagle v. Colombia*, Award (RLA-0283-ENG), ¶ 309 (“In the search for balance, and in the face of competing pressures, different branches of the same government may express different and potentially conflicting priorities, and, over time, the direction taken may change.”); *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Dissenting Opinion of Professor Philippe Sands (August 27, 2024) (RLA-0289-ENG), ¶ 18 (“**To determine that a State has taken a decision for reasons other than those stated is a very serious accusation. In essence, it amounts to determining that a State and its officials have acted dishonestly.**”) (emphasis added). See *Montauk v. Colombia*, Award (RLA-0287-ENG), ¶¶ 938-939.

⁹⁸³ *Addiko Bank AG v. Montenegro*, ICSID Case No. ARB/17/35, Excerpts from the Award (November 24, 2021) (RLA-0266-ENG), ¶ 741; *Infracapital F1 S.à r.l. and Infracapital Solar B.V. v. Spain*, ICSID Case No. ARB/16/18, Decision on Jurisdiction, Liability and Instructions on the Amount of Compensation (13 September 2021) (RLA-0265-ENG), ¶ 675; *Mr. Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Award (July 7, 2011) (RLA-0188-ENG), ¶ 192; *Ronald S. Lauder v. Czech Republic*, UNCITRAL, Award (3 September 2001) (RLA-0143-ENG), ¶ 221.

arbitrarily or unreasonably. (3.a) The repeal of the Legal Framework was based on a rational policy and the measures adopted within the framework of that policy were reasonable to achieve their objective, and (3.b) the 2024 Judgment was justified and reasoned.

a. Honduras' actions in relation to the ZEDE Legal Framework were not arbitrary or unreasonable

507. The Claimants contend that the dismantling of the ZEDE Legal Framework responded to an alleged “vendetta” in favor of the Castro government and not to a legitimate public policy objective⁹⁸⁴. Thus, since the measures would have been motivated by political ends, they are automatically arbitrary⁹⁸⁵. Added to this are questions regarding the “reasonableness” of public policy,⁹⁸⁶ the legislative deliberation on the repeal of the ZEDEs⁹⁸⁷, and the way in which Honduras would have faced the supposed stability commitments.⁹⁸⁸
508. Even applying Schreuer’s definition as an expert in *EDF* and proposed by the Claimants, it is clear that Honduras’ conduct was not arbitrary or unreasonable⁹⁸⁹. Under this standard, Honduras’ measures to repeal the ZEDE Legal Framework (i) served a legitimate purpose (to safeguard the sovereignty and territorial integrity of the State); (ii) were based on legal standards (the Constitution of the Republic and its principles) and not on discretion, prejudice or personal preferences; (iii) were not adopted for reasons other than those expressed; and (iv) did not intentionally omit due process or the corresponding procedure.
509. *First*, it is not for the Claimants or the Tribunal to question the substantive correctness of the grounds for Honduras’ decisions. Nor should the importance that Honduras attaches to certain public policy objectives over others (including the protection of the interests of

⁹⁸⁴ Claimants’ Memorial, ¶¶ 429-430.

⁹⁸⁵ Claimants’ Memorial, ¶¶ 430-431.

⁹⁸⁶ Claimants’ Memorial, ¶ 432.

⁹⁸⁷ Claimants’ Memorial, ¶ 432.

⁹⁸⁸ Claimants’ Memorial, ¶¶ 436-437.

⁹⁸⁹ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (CLA-0165), ¶ 303.

foreign investors) be questioned⁹⁹⁰.

510. *Second*, Honduras' action was based on a rational policy and the measures taken under that policy were reasonable to achieve their objective⁹⁹¹. Honduras adopted a public policy with the aim of safeguarding its territorial integrity and sovereignty by promoting the repeal of the ZEDE Legal Framework⁹⁹². This policy was based on the observance of immutable constitutional elements, essential for the existence of the Republic of Honduras. The Honduran state bodies, considering that the ZEDEs violated these elements, acted within their competences and adopted measures consistent with their objective of protecting Honduras' sovereignty and repealing the Legal Framework⁹⁹³. The Claimants are aware of this and therefore resort to the absurd argument that "an appeal to sovereignty is itself arbitrary and unreasonable".⁹⁹⁴
511. *Third*, the political character of a public policy does not make it arbitrary *per se*. The Claimants' claim to make "*politics*" an *ipso iure* arbitrary matter is unreasonable, since the legislative process is inevitably a political process and it is impossible to demarcate the two concepts. Thus, tribunals that have found conduct to be unreasonable because it is motivated by "*political ends*" have not done so when the measure reflects the convictions of one political party imposing itself on another, but in cases where the government's action was motivated by a hostile attitude toward investment or the investor rather than by legitimate public policy considerations⁹⁹⁵.

⁹⁹⁰ *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (April 4, 2016) (**RLA-0217-ENG**), ¶ 583.

⁹⁹¹ See *Micula v. Romania* (I), ICSID Case No. ARB/05/20, Award (December 11, 2013) (**RLA-0202-ENG**), ¶ 525; *D. Kappes v. Guatemala*, Award (**RLA-0297-ENG**), ¶ 717.

⁹⁹² See Section II.D.2.

⁹⁹³ See Sections II.D.2; II.D.4.

⁹⁹⁴ Claimants' Memorial, ¶ 435.

⁹⁹⁵ *B-Mex, LLC & others v. United Mexican States*, ICSID Case No. ARB(AF)/16/3, Award (June 21, 2024) (**RLA-0288-ENG**), ¶ 96. See also *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award (July 14, 2006) (**RLA-0261-ENG**), ¶ 92; *Eureko B.V. v. Republic of Poland*, Ad Hoc Arbitration, Partial Award (August 19, 2005) (**RLA-0160-ENG**), ¶ 233; *Biwater v. Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008) (**CLA-0068**), ¶¶ 500, 615, 627; *Eastern Sugar v. Czech Republic*, SCC Case No. 088/2004, Partial Award (March 27, 2007) (**RLA-0166-ENG**), ¶¶ 263-266.

512. *Fourth*, with respect to Honduras’ alleged “*volte face*” regarding the ZEDE Legal Framework⁹⁹⁶, Article 10.5 of the CAFTA-DR does not prevent Honduras from modifying its regulatory framework to take into account new policies and needs of the State, even if those changes may have far-reaching consequences and effects for foreign investment⁹⁹⁷.
513. *Finally*, beyond the fact that the alleged stability commitments to which the Claimants refer are invalid⁹⁹⁸, their non-compliance (even if they existed, which is plainly denied) would not be arbitrary, since it would have been based on public policy reasons to preserve its sovereignty, and not on personal preferences or on a pretext intended to conceal those improper aims in order to harm the Claimants.

b. The Supreme Court of Honduras acted in a justified and reasonable manner by declaring the unconstitutionality of the ZEDE Legal Framework

514. The Claimants argue that “the circumstances” and the content of the Supreme Court’s Judgment were arbitrary and unreasonable because⁹⁹⁹: (i) the Government spuriously modified the requirements and procedures for the appointment of Supreme Court justices¹⁰⁰⁰; (ii) there were irregularities in the process of publishing the judgment¹⁰⁰¹; (iii) the judgment responded to a pre-existing intentionality, discretion, prejudices or personal preferences and not to the application of the law¹⁰⁰²; (iv) the Supreme Court unlawfully modified its criteria with respect to the ZEDEs, allegedly accentuating legal uncertainty¹⁰⁰³; and (v) the *ex tunc* effect of the judgment implied a repudiation of Honduran law¹⁰⁰⁴.
515. The Claimants’ assertions are unfounded. As explained *supra*, the Judgment was based on a

⁹⁹⁶ Claimants’ Memorial, ¶ 436.

⁹⁹⁷ *Mobil v. Canada*, Liability Decision (RLA-0234-ENG), ¶ 153 (“Governments change, policies changes [sic] and rules change. These are facts of life with which investors and all legal and natural persons have to live with”).

⁹⁹⁸ See Sections II.C.5, III.B.1; II.B.2; III.C; IV.D.

⁹⁹⁹ Claimants’ Memorial, ¶¶ 442-448. The Claimants never explain why the judgment would have been inconsistent or not very transparent.

¹⁰⁰⁰ Claimants’ Memorial, ¶ 443.

¹⁰⁰¹ Claimants’ Memorial, ¶ 443.

¹⁰⁰² Claimants’ Memorial, ¶ 444.

¹⁰⁰³ Claimants’ Memorial, ¶ 443.

¹⁰⁰⁴ Claimants’ Memorial, ¶¶ 443, 445-447.

reasoned approach, linked to the Honduran legal system, and not, on the contrary, on the manifest and deliberate disregard of the applicable legal norms.

- *First*, the election of the magistrates of the Supreme Court of Honduras was carried out on the basis of a list prepared by the Nominating Board, an independent entity that is made up of actors from different sectors of the State and Honduran society, including the Honduran Council of Private Enterprise¹⁰⁰⁵.
- *Second*, in the judicial practice of the Honduran courts it is common for there to be a period of time between the deliberation and adoption of a meaning of the judgment and the issuance of the full text of the respective decision and its subsequent official notification¹⁰⁰⁶.
- *Third*, the Supreme Court of Honduras justified its decision on constitutional precepts and not on prejudices or personal preferences of the magistrates, who complied with all the procedures provided for their deliberation and decision¹⁰⁰⁷.
- *Fourth*, in Honduras there is no *horizontal (or vertical) stare decisis* and the Supreme Court's decision clearly and thoroughly explained the reasons why it departed from the 2014 judgments, pointing out that those decisions were issued by those who replaced those who had been dismissed for declaring the REDs unconstitutional¹⁰⁰⁸.
- *Finally*, the *ex-tunc* effect of the Judgment does not constitute an arbitrary action by the Supreme Court either. The Court presented in a clear and reasoned manner the grounds for its decision, indicating that granting a different effect to the Judgment would maintain the effects on the territorial sovereignty of Honduras¹⁰⁰⁹. Likewise, its actions were in accordance with the Constitution of Honduras, which in its Article 3 provides for the nullification of acts of unconstitutional authorities and, in its Article 375, the restoration of the validity of the Constitution¹⁰¹⁰.

516. This claim by the Claimants is based almost exclusively on the tribunal's decision in *South32 v. Colombia*. However, that case did not find that a measure with retroactive effects was *per se* arbitrary, but that it was so because there was no "*express agreement or authorisation in*

¹⁰⁰⁵ Decree No. 74-2022 published on July 20, 2022 (C-0104), arts. 2 and 5; Constitution of Honduras, 1982, with amendments until 2013 (March 20, 2013) (C-0004), art. 311.

¹⁰⁰⁶ See Section II.D.3.b.

¹⁰⁰⁷ See Section II.D.3.

¹⁰⁰⁸ See Section II.D.3.c. Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), pp. 51-53. See also Sections IV.B.4; IV.B.5.

¹⁰⁰⁹ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), p. 22.

¹⁰¹⁰ Supreme Court of Honduras, *Appeal of Unconstitutionality SCO-0738-2021*, Judgment (September 20, 2024) (R-0066-SPA), pp. 17, 21.

the regulation to do so”.¹⁰¹¹ In any case, the circumstances in *South32* are not analogous to this case, because the retroactive application of law to existing that predated its entry into force was criticized there¹⁰¹². Here, it is not a question of the application of a subsequent law to previous legal acts, but of a judgment that declared the nullity of origin of a manifestly unconstitutional legal regime.

4. Neither were Honduras’ measures discriminatory, non-transparent, inconsistent, abusive or hostile

517. The Claimants increase their claims under Article 10.5 of the Treaty, attributing to Honduras discriminatory¹⁰¹³, non-transparent¹⁰¹⁴, incoherent,¹⁰¹⁵ and hostile¹⁰¹⁶ conduct. As Honduras demonstrates below, these allegations must also be rejected: **(4)(a)** virtually none of the obligations they invoke are part of the customary MST and, even if they were, **(4)(b)** Honduras’ conduct does not come close to meeting the thresholds required to constitute a violation.

a. The obligations invoked by the Claimants are not part of the customary MST and/or impose high thresholds

518. The Claimants have failed to demonstrate, as they should have, that State practice and *opinio juris* support the existence of obligations of non-discrimination, transparency or consistency under the customary MST. On the contrary, States—including CAFTA-DR Parties—have explicitly and repeatedly rejected the existence of non-discrimination¹⁰¹⁷, transparency,¹⁰¹⁸

¹⁰¹¹ *South32 SA Investments Limited v. Republic of Colombia (I)*, ICSID Case No. ARB/20/9, Award (June 21, 2024) (**CLA-0185**), ¶ 729.

¹⁰¹² *South32 SA Investments Limited v. Republic of Colombia (I)*, ICSID Case No. ARB/20/9, Award (June 21, 2024) (**CLA-0185**), ¶ 722.

¹⁰¹³ Claimants’ Memorial, ¶¶ 389, 394.

¹⁰¹⁴ Claimants’ Memorial, ¶¶ 383, 395.

¹⁰¹⁵ Claimants’ Memorial, ¶¶ 395, 439, 441, 448.

¹⁰¹⁶ Claimants’ Memorial, ¶¶ 449-454.

¹⁰¹⁷ *Sargeant Petroleum, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/22/1, Submission of the United States of America (November 9, 2023) (**RLA-0108-ENG**), ¶ 34; *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Award (September 3, 2019) (**RLA-0247-ENG**), ¶ 411; *D. Kappes v. Guatemala*, Award (**RLA-0297-ENG**), ¶¶ 701-703.

¹⁰¹⁸ *Nicaragua (Lopez-Goyne v. Nicaragua)*, Award (**CLA-0136**), ¶ 399; *Guatemala (Railroad Development Corporation v. Republic of Guatemala)*, ICSID Case No. ARB/07/23, Award (June 29, 2012) (**CLA-0128**), ¶ 192); *Costa Rica (David R. Aven et al. v. Republic of Costa Rica)*, ICSID Case No. UNCT/15/3, (April 8, 2016)

or consistency¹⁰¹⁹ obligations under the customary MST.

519. This has also been confirmed recently by other tribunals called upon to assess the current state of customary international law. These tribunals—even in interpreting content referred to in Article 10.5 of the CAFTA-DR itself—ruled out the existence of autonomous obligations of non-discrimination¹⁰²⁰, transparency,¹⁰²¹ or consistency¹⁰²² under the customary MST. Moreover, and with regard to the principle of non-discrimination, the fact that the National Treatment and MFN standards provided for in Articles 10.3 and 10.4 already address the obligation of non-discrimination is evidence that the MST provided for under Article 10.5 does not provide for such an autonomous obligation¹⁰²³.
520. Be that as it may, even under autonomous FET standards agreed to in other treaties, the jurisprudence agrees that their application thresholds are particularly high and demanding.

(**RLA-0219-ENG**), ¶¶ 479-480); Dominican Republic (*Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Award (September 3, 2019) (**RLA-0247-ENG** ¶ 404); U.S. (*Lopez-Goyne v. Nicaragua*, Award (**CLA-0136**), ¶ 402).

¹⁰¹⁹ Dominican Republic (*Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Award (October 6, 2023) (**RLA-0274-ENG**) ¶ 418); Guatemala (*Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Counter-Memorial, (December 7, 2020) (**R-0257-SPA**) ¶¶ 305-306, 331-336); Costa Rica (*David R. Aven et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/15/3, Counter-Memorial (April 8, 2016) (**RLA-0219-ENG**), ¶¶ 479-480; U.S.A. (*Glamis Gold v. U.S.*), Award (**RLA-0175-ENG**), ¶ 578).

¹⁰²⁰ *D. Kappes v. Guatemala*, Award (**RLA-0297-ENG**), ¶ 719. Similarly, in *Neustar v. Colombia*, the tribunal recognized the doctrinal debate on whether non-discrimination is part of the MST, but refused to resolve it in favor of its inclusion. *Neustar v. Colombia*, Award (**RLA-0291-ENG**), ¶ 633.

¹⁰²¹ *Marvin Feldman v. Mexico*, ICSID Case No. ARB (AF)/99/1, Award (December 16, 2002) (**RLA-0149-ENG**) ¶ 133; *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, September 18, 2009, (RLA-0176-ENG), ¶ 294; *Lopez-Goyne v. Nicaragua*, Award (**CLA-0136**), ¶ 428; *Interconnection v. Chile*, Award (**RLA-0294-SPA**), ¶ 755. See also *Adel A Hamadi Al Tamimi v. Sultanate of Oman*, ICSID Case No. ARB/11/33, Award (November 3, 2015) (RLA-0213-ENG), ¶ 386; *United Mexican States v. Metalclad Corp.*, Supreme Court of British Columbia, Challenge to Arbitral Award (May 2, 2001) (**RLA-0141-ENG**), ¶¶ 70-74. The Claimants refer to the award in *Metalclad v. Mexico*, but omit that that award was partially set aside precisely because it erroneously recognized a duty of transparency under Article 1105 of the NAFTA.

¹⁰²² *Interconexión v. Chile*, Award (**RLA-0294-SPA**), ¶¶ 754-757. In that case, the tribunal ruled that the consistency of conduct can only be taken into account to assess whether the State acted arbitrarily. Honduras emphasizes that in order to consider conduct as arbitrary, it must not only be inconsistent but also not be aimed at pursuing any apparent legitimate purpose, not be based on legal standards, or be taken for ulterior underlying motives. See *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania*, ICSID Case No. ARB/15/31, Award (8 March 2024) (**RLA-0284-ENG**), ¶ 854 (“[...] simple error, controversial decisions, inconsistent application of a policy, and/or a misapprehension of facts are not sufficient in principle to establish a violation”).

¹⁰²³ *D. Kappes v. Guatemala*, Award (**RLA-0297-ENG**), ¶ 720 (“CAFTA-DR Article 10.5 ‘can add nothing’ to the Claimants’ case that is not already present in their NT and MFN claims”).

521. Discrimination requires more than mere different treatment¹⁰²⁴: it requires the person alleging discrimination to (i) identify a reference case in “similar circumstances” after making an evidentiary analysis of each investor’s specific situation, sensitive to the facts and context¹⁰²⁵; (ii) establish that he was treated differently; and (iii) establish that such treatment was not justified¹⁰²⁶. This is the same test used under the MFN standard¹⁰²⁷.
522. The alleged obligation of transparency – questioned even as part of the autonomous FET¹⁰²⁸ – only reproaches its total failure¹⁰²⁹, without obliging the State to correct the investor’s misunderstandings¹⁰³⁰ or to make any statements¹⁰³¹.
523. The supposed obligation of consistency does not deprive the State of its power to modify the

¹⁰²⁴ *SAUR International SA v. Republic of Argentina*, ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability (June 6, 2012) (**RLA-0192-SPA**), ¶ 486; *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (January 14, 2010) (**RLA-0177-ENG**), ¶ 261; *Saluka Investments BV v. Czech Republic*, CPA Case No. 2001-04, Partial Award, March 17, 2006, (**CLA-0122**), ¶ 313; *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Award (November 25, 2015) (**RLA-0214-ENG**), ¶ 175. *Ulysseas, Inc. v. The Republic of Ecuador*, PCA Case No. 2009-19, Final Award (June 12, 2012) (**CLA-0169**), ¶¶ 290-298; *Pawłowski AG and Project Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award (November 1, 2021) (**CLA-0168**), ¶¶ 306, 534; *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (October 17, 2025) (**RLA-0119-SPA**), ¶ 336; *Quiborax S.A. and Non Metallic Minerals S.A. v. Bolivia*, ICSID Case No. ARB/06/2, Award (September 16, 2015) (**CLA-0200**), ¶ 247; *Enron Co. and Ponderosa Assets L.P. v. Argentina*, ICSID Case No. ARB/01/3, Award (May 22, 2007) (**CLA-0156**), ¶¶ 280-282; *LSG Building Solutions GmbH et al. v. Romania*, ICSID Case No. ARB/18/19, Decision on Jurisdiction, Liability and Principles of Redress (July 11, 2022) (**RLA-0308-ENG**), ¶¶ 1056-1057.

¹⁰²⁵ *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (September 18, 2009) (**RLA-0176-ENG**), ¶ 310 (“The meaning of the terms ‘in like circumstances’ varies depending on the facts of each case.”); *Pawłowski AG and Project Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award (November 1, 2021) (**CLA-0168**), ¶ 307; *Methanex Corporation v. United States of America*, UNCITRAL, Award (August 3, 2005) (**RLA-0158-ENG**), ¶¶ 16-19 (“It would be a forced application of Article 1102 if a tribunal were to ignore the identical comparator and to try to lever in an, at best, approximate (and arguably inappropriate) comparator.”); *Metalpar S.A. & Buen Aire S.A. v. Republic of Argentina*, ICSID Case No. ARB/03/5, Award on the Merits (June 6, 2008) (**RLA-0172-SPA**), ¶ 162.

¹⁰²⁶ *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, (**CLA-0142**), ¶¶ 368, 381-383.

¹⁰²⁷ *Pawłowski AG and Project Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award (November 1, 2021) (**CLA-0168**), ¶¶ 305, 531-534; *South American Silver v. Bolivia*, PCA Case No. 2013-15, Award (November 22, 2018) (**RLA-0237-ENG**), ¶¶ 710-711.

¹⁰²⁸ *Interconexión v. Chile*, Award (**RLA-0294-SPA**), ¶ 755; United Nations Conference on Trade and Development (UNCTAD), Fair and Equitable Treatment, UNCTAD Series on Issues in International Investment Agreements II, UNCTAD/DIAE/IA/2011/5, 2012, (**C-0553**), p. 63

¹⁰²⁹ *RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v. Spain (RWE v. Spain, Decision on Jurisdiction)* ICSID Case No. ARB/14/34, Decision on Jurisdiction, Liability and Details of Amount (30 December 2019) (**RLA-0250-ENG**), ¶ 660; *Renergy S.à r.l. v. Spain*, ICSID Case No. ARB/14/18, Award (May 6, 2022) (**RLA-0270-ENG**), ¶ 928.

¹⁰³⁰ *Global Telecom Holding S.A.E v. Canada*, ICSID Case No. ARB/16/16, Award (March 27, 2020) (**RLA-0253-ENG**), ¶ 570; *Antonio del Valle v. Spain*, Award (**RLA-0278-SPA**), ¶ 569.

¹⁰³¹ *Saluka Investments BV v. Czech Republic*, CPA Case No. 2001-04, Award, March 17, 2006, (**CLA-0122**) ¶ 304 (“[...] if their terms were to be taken too literally, they would impose upon host States’ obligations which would be inappropriate and unrealistic.”); *Antonio del Valle v. Spain*, Award (**RLA-0278-SPA**), ¶ 548.

regulatory framework, even dramatically¹⁰³² and even imposing significant additional burdens on the investor¹⁰³³. Nor does it impose the obligation that there be no simultaneous contradiction between different State authorities¹⁰³⁴.

524. Abusive or hostile conduct does not cover any conduct attributable to the State that causes distress or even harm to investors. It requires proof of exceptional facts — use of legal instruments for purposes other than those intended, deliberate conspiracy to destroy the investment, or a serious and persistent pattern of wrongdoing¹⁰³⁵ — that far exceed the good faith exercise of police powers¹⁰³⁶. These facts must show the absence of legal basis and undue motivations¹⁰³⁷, despite the presumption of the good faith of the State and the consequent high burden of proof¹⁰³⁸.
525. In short, these are standards that are not part of the MST and that, in any case, are subject to particularly demanding requirements with a view to safeguarding the regulatory capacity of the States.

¹⁰³² *Glamis Gold v. USA*, Award (RLA-0175-ENG), ¶ 761.

¹⁰³³ *Mobil v. Canada*, Liability Decision (RLA-0234-ENG), ¶ 153 (“there is nothing in Article 1105 to prevent a public authority from changing the regulatory environment to take account of new policies and needs, even if some of those changes [...] impose significant additional burdens on an investor. [...] Governments change, policies changes and rules change. These are facts of life with which investors and all legal and natural persons have to live with.”).

¹⁰³⁴ *Montauk v. Colombia*, Award (RLA-0287-ENG), ¶¶ 938-939.

¹⁰³⁵ *Frontier v. Czech Republic*, PCA Case No. 2008-09, Award (November 12, 2010) (RLA-0184-ENG), ¶ 300; *D. Kappes v. Guatemala*, Award (RLA-0297-ENG), ¶ 998; *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (April 30, 2004) (CLA-0119), ¶ 138; *Biwater Gauff Ltd. v. Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008) (CLA-0068), ¶¶ 223-224.

¹⁰³⁶ *AES Summit Generation Ltd. and AES-Tisza Erőmű Kft. v. Republic of Hungary*, ICSID Case No. ARB/07/22, Award (September 23, 2010) (RLA-0183-ENG), ¶ 319; *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award (July 8, 2016) (RLA-0222-ENG), ¶¶ 292-294; *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. the Argentine Republic*, ICSID Case No. ARB/09/1, Award (July 21, 2017) (RLA-0091-SPA), ¶ 190; *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (January 14, 2010) (RLA-0177-ENG), ¶ 285; *Antonio del Valle v. Spain*, Award (RLA-0278-SPA), ¶¶ 548-549.

¹⁰³⁷ United Nations Conference on Trade and Development (UNCTAD), Fair and Equitable Treatment, UNCTAD Series on Issues in International Investment Agreements II, UNCTAD/DIAE/IA/2011/5, 2012, (C-0553), p. 83.

¹⁰³⁸ *UAB v. Republic of Latvia*, ICSID Case No. ARB/12/33, Award (22 December 2017) (RLA-0230-ENG), ¶ 541; *Quasar of Securities et al. v. Russia*, SCC Case No. 24/2007, Award (July 20, 2012) (RLA-0194-ENG) ¶¶ 4, 181; *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award (May 6, 2013) (RLA-0200-ENG), ¶ 273; *South American Silver v. Bolivia*, PCA Case No. 2013-15, Award (November 22, 2018) (RLA-0237-ENG), ¶ 673; *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (September 18, 2009) (RLA-0176-ENG), ¶¶ 286-287, 296-298.

b. In any event, Honduras has not acted contrary to any of the obligations invoked

526. In this case, and even assuming that the alleged obligations invoked by the Claimants were part of the MST, the Claimants’ allegations are manifestly insufficient to establish the violations they claim.
527. *First*, Honduras has not acted in a discriminatory manner. The Claimants assert that Honduras discriminated against them by not having a transitional regime—unlike the ZOLT, the ZADEs, and the ZOLITURs¹⁰³⁹—and by denying them the guarantee of stability for fifty years of the Honduras-Kuwait BIT¹⁰⁴⁰. However, they do not identify any Kuwaiti investors in the same circumstances who have been treated differently, nor do they explain why they would find themselves in similar circumstances to those of previous regimes or why dissimilar treatment would be unjustified: those regimes were repealed, while the ZEDE Legal Framework was declared unconstitutional and annulled. Without a comparator, without similarity of circumstances, and with an obvious objective justification, the claim simply vanishes.
528. *Second*, Honduras’ actions have been transparent. Faced with the accusation of “opaque, evasive and obstructive” conduct¹⁰⁴¹, the facts show the opposite: the deliberation that culminated in the repeal of the ZEDE Legal Framework was absolutely transparent, as stated in the minutes of the session¹⁰⁴²; the 2024 Judgment is a public document that, as in *Red Eagle v. Colombia*, confirms the transparency of the legal system¹⁰⁴³; and authorized officials have publicly pronounced themselves on its effects, while the different State entities operationalize the transition to a lawful framework¹⁰⁴⁴.

¹⁰³⁹ Claimants’ Memorial, ¶ 438.

¹⁰⁴⁰ Claimants’ Memorial, ¶ 466.

¹⁰⁴¹ Claimants’ Memorial, ¶¶ 439-440.

¹⁰⁴² National Congress of Honduras, Minutes No. 24 (April 19-21, 2022) (R-0236-SPA)

¹⁰⁴³ *Red Eagle v. Colombia*, Award (RLA-0283-ENG), ¶ 304. It should also be noted that the Claimants never explain why the circumstances and content of the 2024 Supreme Court decision would have been non-transparent.

¹⁰⁴⁴ See Section II.D.4.

529. On the contrary, the failure to respond to the Claimants’ 2022 letters—as resolved in *Corona Materials v. Dominican Republic*—does not constitute an international wrong¹⁰⁴⁵. Moreover, the Claimants’ claims bear no resemblance to the cases in which a breach of the alleged obligation of transparency has been found: licenses granted by means of collusive agreements or in a clandestine manner¹⁰⁴⁶, or invitations to apply for a permit that had already been refused¹⁰⁴⁷.
530. *Third*, there was no legally reprehensible inconsistency either. The Claimants refer, without clarity, to alleged specific inconsistencies due to alleged contradictions between different State authorities¹⁰⁴⁸, and consecutive inconsistencies, while the 2024 Judgment of the Supreme Court contradicted previous judgments¹⁰⁴⁹.
531. However, the actions of the Honduran authorities all responded to the same public policy: to put an end to the ZEDE Legal Framework and to regularize the situation of the companies conceived under this regime¹⁰⁵⁰. The specific contradictions that may have existed between different bodies do not constitute an international violation: as the tribunals in *Montauk Metals v. Colombia* and *Aven v. Costa Rica* recognized, state coordination “*is not simple*”¹⁰⁵¹ and the complexity of the legislation explains these discrepancies without any illegality¹⁰⁵².
532. As for the alleged contradiction between the 2014 decisions and the 2024 Judgment, it is an essential feature of a system that expressly chooses not to adopt judicial precedent or *stare decisis*. To understand an obligation of coherence, as the Claimants claim, would be

¹⁰⁴⁵ *Corona Materials LLC. v. Dominican Republic*, ICSID Case No. ARB(AF)14/3, Award (May 31, 2016) (RLA-0221-ENG), ¶ 252; *RWE v. Spain*, Decision on Jurisdiction (RLA-0250-ENG), ¶ 660.

¹⁰⁴⁶ *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (January 14, 2010) (RLA-0177-ENG), ¶¶ 416-417.

¹⁰⁴⁷ *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)11/2, Award (April 4, 2016) (RLA-0217-ENG), ¶ 598.

¹⁰⁴⁸ Claimants’ Memorial, ¶¶ 439-441.

¹⁰⁴⁹ Claimants’ Memorial, ¶¶ 442-448.

¹⁰⁵⁰ See Sections II.D.2; II.D.4.

¹⁰⁵¹ *Montauk v. Colombia*, Award (RLA-0287-ENG), ¶¶ 938-939.

¹⁰⁵² *David R. Aven et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/15/3, Award (September 18, 2018) (RLA-0235-ENG), ¶ 762.

tantamount to depriving the State of its sovereign capacity to modify its policies over time, imposing a particular design of the Judiciary (*stare decisis*) different from that chosen by the constituents and advocating the dogmatism of a one-party political system¹⁰⁵³.

533. Finally, Honduras' conduct has not been abusive or hostile. The Claimants denounce an alleged sustained campaign of harassment and defamation¹⁰⁵⁴, consisting of public expressions about the illegality of their investment, warnings of possible criminal actions and the demand for payments, together with banking, tax and customs measures¹⁰⁵⁵.

534. It is enough to compare these facts with those of the cases they themselves cite to notice the abyss that separates them: in *Pope & Talbot v. Canada*, the State invoked “non-existent policy reasons” and misrepresented the facts in retaliation for the mere initiation of arbitration¹⁰⁵⁶; in *Tecmed v. Mexico*, the license was used as a coercive tool to force the investor's relocation¹⁰⁵⁷; and in *Desert Line v. Yemen*, the military detained the claimant's personnel and the State withheld payments due under a binding award, forcing an unfavorable conciliation,¹⁰⁵⁸ despite which the Claimants seek compensation for moral damages identical to that awarded therein. The references to *Stati v. Kazakhstan* and *Burlington Resources v. Ecuador* do not even identify the allegedly comparable acts¹⁰⁵⁹.

535. Beyond that, the Claimants' speculative assertion that Honduras' measures were intended to

¹⁰⁵³ *Mobil v. Canada*, Liability Decision (**RLA-0234-ENG**), ¶ 153.

¹⁰⁵⁴ Claimants' Memorial, ¶ 449.

¹⁰⁵⁵ Claimants' Memorial, ¶ 450.

¹⁰⁵⁶ *Pope & Talbot v. Canada*, UNCITRAL, Award of Damages (31 May 2002) (**RLA-0147-ENG**), ¶¶ 57-58.

¹⁰⁵⁷ *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (May 29, 2003) (**CLA-0120**), ¶ 163.

¹⁰⁵⁸ *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008) (**CLA-0101**), ¶¶ 165-168, 170, 184-185.

¹⁰⁵⁹ Claimants' Memorial, ¶ 453. In the aforementioned case, the tribunal devotes 134 paragraphs of the award to listing each of the different measures taken by Kazakhstan (including the irregular criminal proceedings that led to the arrest of the CEO of one of the companies) after the Kazakh president received a letter from the President of Moldova suggesting to expel Stati's investments from Kazakhstan. See *Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Traiding Ltd. v. Republic of Kazakhstan*, CCE Case (SCC) No. V116/010, Award (December 19, 2013) (**CLA-0173**), ¶¶ 949-1084; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award (February 7, 2017) (**CLA-0174**), ¶¶ 171-172.

intimidate and deter investors is unsustainable¹⁰⁶⁰: the measures had a legitimate objective, although contrary to the interests of the Claimants, and had a legal basis, public policy justification, and were consistent with those grounds.

536. The public statements, even with the usual exaggerations of political discourse, expressed the government's honest interest in repealing legislation that it reasonably considered unconstitutional¹⁰⁶¹, and the Claimants do not establish any credible causal link between those expressions and the acts of violence they denounce.
537. The warnings of possible criminal actions constitute an exercise in good faith by the police powers of the State¹⁰⁶², with respect to a criminal offense provided for in the Honduran law since before the alleged investment and under which it is not unreasonable for anyone to subsume the conduct of the Claimants, given that those who expressed themselves in this way were convinced that the ZEDEs undermine the territorial integrity of Honduras¹⁰⁶³.
538. The demand for payments and the administrative measures of the Honduran officials and state entities only sought, in the legitimate exercise of their functions, to operationalize the annulment of the ZEDE Legal Framework and to regularize the situation of the companies originally conceived under the ZEDE Legal Framework¹⁰⁶⁴. In addition, these actions took place only after the actions of Congress and the Supreme Court and were aimed at safeguarding the sovereignty and territorial integrity of the State by repealing the ZEDE Legal Framework¹⁰⁶⁵.
539. In short, the Claimants have not identified a discriminated comparator, nor a lack of

¹⁰⁶⁰ Claimants' Memorial, ¶ 451.

¹⁰⁶¹ *Pawłowski AG and Project Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award (November 1, 2021) (**CLA-0168**), ¶ 463.

¹⁰⁶² *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Republic of Argentina*, ICSID Case No. ARB/09/1, Decision on Provisional Measures (April 8, 2016) (**RLA-0218-ENG**), ¶ 190. It is even less reasonable for the Claimants to claim that they have been harassed because the Honduran Constitution makes it difficult for "Claimants' to present their claims". Claimants' Memorial, ¶ 452.

¹⁰⁶³ Honduran Criminal Code (**C-0026**), art. 555.

¹⁰⁶⁴ See Section II.D.4.

¹⁰⁶⁵ See Section II.D.

transparency – much less a total lack of transparency –, nor a legally reprehensible inconsistency, nor the use of legal instruments for purposes other than those for which they were created or a pattern of pressure intended to punish them. Their accusations, vague and speculative, are not sufficient even to support a *prima facie* case of violation of the Treaty¹⁰⁶⁶.

5. The Supreme Court has not denied justice to the Claimants and has acted in accordance with the law

540. The Claimants allege that the Supreme Court Judgment violated the MST¹⁰⁶⁷. As set out below, however, they ignore that: **(5.a)** for a judicial decision to violate the MST they must demonstrate that there was a denial of justice¹⁰⁶⁸, which they have not done, and, in any case, **(5.b)** the Supreme Court acted in accordance with the law in issuing the aforementioned judgment.

a. Claimants must demonstrate a denial of justice to allege violation of the MST based on court decisions

541. As doctrine and jurisprudence have emphasized, the denial of justice requires judicial conduct of particular gravity: a decision that is manifestly arbitrary, involves corruption of the judicial process, or represents a refusal by the State to administer justice¹⁰⁶⁹. It is a recognizably high standard¹⁰⁷⁰.

542. In *Bridgestone v. Panama*, for example, the tribunal – on the basis of an MST clause identical to that of the CAFTA-DR – rejected the denial of justice claim on the grounds that the flaws pointed out in the Panamanian Supreme Court’s decision were “*no more than errors of*

¹⁰⁶⁶ *Jan Oostergetel & Theodora Laurentius v. Slovak Republic*, UNCITRAL, Award (23 April 2012) (**RLA-0191-ENG**), ¶ 319.

¹⁰⁶⁷ Claimants’ Memorial, ¶¶ 442-448.

¹⁰⁶⁸ See, e.g., *Eli Lilly and Company v. Government of Canada*, ICSID Case No. UNCT/14/2, Award (16 March 2017) (**RLA-0228-ENG**), ¶ 224.

¹⁰⁶⁹ *Eli Lilly and Company v. Government of Canada*, ICSID Case No. UNCT/14/2, Award (March 16, 2017) (**RLA-0228-ENG**), ¶ 224; *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award (June 26, 2003) (**CLA-0162**), ¶ 217; *Mondev v. USA*, Award (**RLA-0148-ENG**), ¶ 127.

¹⁰⁷⁰ *Eli Lilly and Company v. Government of Canada*, ICSID Case No. UNCT/14/2, Award (March 16, 2017) (**RLA-0228-ENG**), ¶ 224.

judgment,” well below the threshold of incompetence or corruption required¹⁰⁷¹. That tribunal also reiterated that it did not exercise an appeal function before the national judicial bodies¹⁰⁷². For its part, the United States (the Claimants’ country of origin in this case) noted as a non-disputing party to the treaty that arbitral tribunals are not empowered to act as supranational courts of appeal over the application of domestic law, and that erroneous judicial decisions or incorrect interpretations of domestic law do not in themselves constitute a denial of justice¹⁰⁷³.

543. As can be seen, in order to challenge whether the 2024 Judgment of the Supreme Court could have constituted a violation of the MST, the Claimants had to submit a denial of justice claim. They did not do so and that should be enough to dismiss such allegations.

b. The Supreme Court of Honduras acted in accordance with due process

544. In any case, the Honduran Supreme Court acted in accordance with due process during the process of deliberation and issuance of its ruling confirming the unconstitutionality of the ZEDEs.
545. As discussed in Section II.D.3.c *supra*, the Supreme Court’s decision (i) substantiated the reasons why it departed from the 2014 “model cities” decisions; (ii) set forth the reasons for its decision, supported by consolidated jurisprudence, as well as by the Constitution of Honduras itself; (iii) set out in a reasoned manner why it decided to grant its Judgment the effect *ex tunc*; and (iv) took into account the positions in support of the ZEDE Regime, as well as the interests of the ZEDEs’ investors¹⁰⁷⁴.
546. Honduras has thus respected the due process of the Claimants and, even if the Claimants had

¹⁰⁷¹ *Bridgestone Licensing Services Inc. & Bridgestone Americas, Inc. v. Republic of Panama (Bridgestone v. Panama, Award)* ICSID Case No. ARB/16/34, Award (August 14, 2020) (RLA-0256-ENG), ¶¶ 547-548.

¹⁰⁷² *Bridgestone v. Panama*, Award (RLA-0256-ENG), ¶ 410.

¹⁰⁷³ *Bridgestone Licensing Services Inc. & Bridgestone Americas, Inc. v. Republic of Panama*, ICSID Case No. ARB/16/34, Third U.S. Non-Disputing Party Filing (December 13, 2018) (RLA-0239-ENG), ¶¶ 3-4 (cited in *Bridgestone v. Panama*, Award (RLA-0256-ENG), ¶¶ 405-406).

¹⁰⁷⁴ See Section II.D.3.c.

submitted a denial of justice claim, it would not have succeeded.

C. HONDURAS HAS NOT EXPROPRIATED THE CLAIMANTS' INVESTMENTS

547. The Claimants have articulated a claim for alleged expropriation of a conditional nature, the admissibility of which, they maintain, would depend on the position adopted by Honduras with respect to the validity of their rights under the ZEDE Legal Framework¹⁰⁷⁵. Such a claim fails on its own, since by raising it in those terms the Claimants acknowledge that, as a matter of law, no expropriation has taken place. This is confirmed by the facts: although the ZEDE Legal Framework was repealed and declared unconstitutional *ex tunc*, in practice Próspera continues to operate under the protection of current legislation and retains ownership of all its assets¹⁰⁷⁶.
548. Moreover, the Claimants have made a claim unprecedented in the history of investment arbitration, alleging that Honduras has expropriated their alleged rights to “provide government services”.¹⁰⁷⁷ In essence, what the Claimants are challenging is that Honduras has resumed the exclusive exercise of powers that are inherent to any sovereign State, including the legitimate monopoly of force, regulatory power, the administration of justice, and the collection of taxes within its territory. A claim of this nature is unparalleled in international arbitral practice and is not comparable to any of the cases invoked by the Claimants.
549. Apart from this, and as set out below, the Claimants’ claim is destined to fail since (C.1) the ZEDE Legal Framework does not confer on the Claimants the acquired rights they claim and (C.2) the measures challenged by the Claimants have not led to an expropriation of their investment.

1. The ZEDE Legal Framework does not confer on the Claimants the acquired rights they claim

¹⁰⁷⁵ Claimants’ Memorial, ¶ 469.

¹⁰⁷⁶ See Section II.D.4.

¹⁰⁷⁷ Claimants’ Memorial, ¶ 489.

550. The Claimants maintain that Honduras expropriated their rights allegedly conferred on them by the ZEDE Legal Framework¹⁰⁷⁸. To this effect, they base their claim on the Report of Mr. Cosenza, who states that “[a]ny right which have been recognized to an investor under the ZEDE Regime [...] are [...] a vested right which has become part of the property of such investor.”¹⁰⁷⁹
551. These presumed rights would be: (i) “the right to perform as a Promoter and Organizer of Próspera ZEDE”; (ii) “the right to propose to the Technical Secretary”; (iii) the right to “control which lands are incorporated into Próspera ZEDE”; (iv) the right to “appoint the members of the Normative Council”; (v) the right to “provide government services (directly or through a subsidiary) for at least 50 years”; and (vi) “a valuable legal stability”.¹⁰⁸⁰
552. As is well known, any claim for expropriation requires the Claimants to prove, first, the existence of a property right, tangible or intangible, or of an essential attribute of ownership in respect of a protected investment¹⁰⁸¹. The existence and extent of a property right must be determined in accordance with the law of the State party¹⁰⁸². However, following the tribunal

¹⁰⁷⁸ Claimants’ Memorial, ¶ 491. It is undisputed that the Claimants continue to own their investments and continue to enjoy their assets, both tangible and intangible, including their intellectual property. See Section II.D.4.

¹⁰⁷⁹ Cosenza-I, ¶ 109.

¹⁰⁸⁰ Claimants’ Memorial, ¶ 489.

¹⁰⁸¹ CAFTA-DR (CLA-0002), Annex 10-C, ¶ 2. See *D. Kappes v. Guatemala*, Award (RLA-0297-ENG), footnote No. 2554 (“[...] the first step in any expropriation analysis must begin with an examination of whether there is an investment capable of being expropriated”).

¹⁰⁸² *D. Kappes v. Guatemala*, Award (RLA-0297-ENG), ¶ 1141. This is acknowledged by the Claimants, when they point out that “[t]he existence and scope of rights are generally determined in relation to domestic law”. Memorandum of Claim, footnote No. 1081. To the same effect, see: *Sargeant Petroleum, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/22/1, Statement of the United States (November 9, 2023), ¶ 40 (“It is appropriate to look to the law of the host State for a determination of the definition and scope of the property right or property interest at issue, including any applicable limitations”) (RLA-0108-ENG); *Infinito Gold Ltd v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award (June 3, 2021) (RLA-0263-SPA), ¶ 705 (“[...] the Tribunal must first determine whether the Claimant (through Industrias Infinito) held rights capable of being expropriated. If no valid rights exist under domestic law, there can be no expropriation.”); *Emmis International Holding, B.V. et al. v. Hungary*, ICSID Case No. ARB/12/2, Award (April 16, 2014) (RLA-0204-ENG), ¶ 162 (“In order to determine whether an investor/claimant holds property or assets capable of constituting an investment it is necessary in the first place to refer to host State law. Public international law does not create property rights. Rather, it accords certain protections to property rights created according to municipal law.”); Higgins, R. “The Taking of Property by the State: Recent Developments in International Law”, *Recueil des Cours de l’Académie de Droit International de La Haye*, vol. 176 (1982) (RLA-0131-ENG), p. 270 (“Let us begin by saying a few words about what is meant by “property”. We necessarily draw on municipal law sources and on the general principles of law.”).

in *Emmis v. Hungary*, not every right conferred by contract or by the domestic legal system constitutes, in itself, property susceptible to expropriation. For this to happen, this right must be translated into a patrimonial asset belonging to the investor and susceptible to economic valuation¹⁰⁸³.

553. In the present case, the Claimants are not holders of acquired rights subject to expropriation for at least three independent reasons, each of which is sufficient to reject the Claimants' claims in their entirety.
554. *First*, the Claimants have not demonstrated that Honduran law recognizes that any person, natural or legal, may be the holder of acquired rights derived from the establishment of the ZEDE Legal Framework¹⁰⁸⁴. In fact, the Claimants' expert in Honduran law, Mr. Cosenza, concludes, without further analysis, that the Honduran legal system granted them acquired rights over that regulatory framework, based on a mere exposition of the recognition of the right to property in the Constitution, the general definitions of the concepts of real property, personal property. and domain in the Civil Code and the principle of non-retroactivity of the law¹⁰⁸⁵.
555. However, the fact that Honduran law guarantees the right to property and recognizes that assets may consist of both tangible and intangible rights or assets does not imply that any law that confers certain benefits on an investor confers, by that very fact, a right of ownership over those benefits. Similarly, the principle of non-retroactivity enshrined in Article 96 of the Constitution is not applicable to the judgment issued by the Supreme Court in 2024, since

¹⁰⁸³ *Emmis International Holding, B.V. et al. v. Hungary*, ICSID Case No. ARB/12/2, Award (16 April 2014), ¶ 169 (RLA-0204-ENG) ("Pausing at this point in the analysis, the Tribunal summarises the legal position under international law in the following way: the loss of a right conferred by contract may be capable of giving rise to a claim of expropriation but only if it gives rise to an asset owned by the claimant to which a monetary value may be ascribed. The claimant must own the asset at the date of the alleged breach. It is the asset itself - the property interest or chose in action - and not its contractual source that is the subject of the expropriation claim. Contractual or other rights accorded to the investor under host state law that do not meet this test will not give rise to a claim of expropriation").

¹⁰⁸⁴ Claimants' Memorial, ¶ 491.

¹⁰⁸⁵ Cosenza-I, ¶¶ 40-44.

it does not constitute a “new norm”, but the result of the exercise of the control of constitutionality with respect to a law.

556. This interpretation is consistent with Decree No. 314-1998, cited by the Claimants, by which Honduras repealed the regimes of the Industrial Export Processing Zones (“ZIP”) and the Tourist Free Zones (“ZOLT”)¹⁰⁸⁶. In that decree, the legislator referred to the “*benefits*” that the laws establishing these regimes granted to those who operated under them, but at no time did it qualify them as acquired rights or recognize that their beneficiaries were holders of a property right over such benefits¹⁰⁸⁷.
557. *Second*, the Claimants cannot be holders of acquired rights with respect to a Legal Framework declared unconstitutional from the beginning and that, therefore, must be considered legally ineffective from its adoption¹⁰⁸⁸. A null act does not generate acquired rights¹⁰⁸⁹. This is especially true in this case, in which the Claimants were aware of the defects of unconstitutionality and illegality that affected that Legal Framework and in which they structured their investment in breach of even the minimum requirements that the regime established for its constitution and operation.
558. Indeed, as explained above, the Claimants requested authorization to operate as a ZEDE just 12 days after the results of the hard-fought and controversial presidential election were finalized and produced as the winner the only candidate who did not promote the repeal of said Legal Framework. They also established Próspera ZEDE without complying with the requirements for approval by the National Congress or with the issuance of the corresponding decree by the National Institute of Statistics¹⁰⁹⁰.

¹⁰⁸⁶ Cosenza-I, ¶ 49(a).

¹⁰⁸⁷ Decree No. 37-1987, published on 27 April 1987 (C-0409).

¹⁰⁸⁸ Administrative Procedure Law, 1987 (Decree No. 152-87) (R-0002-SPA), arts. 38, 124.

¹⁰⁸⁹ That is another obvious difference from the other schemes referred to by the Claimants, which were repealed but not annulled.

¹⁰⁹⁰ See Sections II.B.4; II.C; III.A.

559. *Third*, under Honduran law¹⁰⁹¹, the so-called “*provision of government services*,” that is, the exercise of public powers such as legislating, administering justice, and governing, does not constitute an asset susceptible to private appropriation¹⁰⁹². As pointed out by the Supreme Court of Honduras, these are sovereign functions of the State that, by their very nature, cannot be the object of a property right or be economically valued as an asset belonging to an investor¹⁰⁹³. For the same reason, such powers cannot give rise to acquired rights in favor of individuals or be classified as rights susceptible to expropriation.

2. The measures challenged by the Claimants have not led to the expropriation of their investment

560. Article 10.7 of the CAFTA-DR should be read in conjunction with Annexes 10-B and 10-C of the Treaty, which provide that Article 10.7 reflects customary international law on expropriation¹⁰⁹⁴. Accordingly, as established in *Kappes v. Guatemala*, Article 10.7 does not impose expropriation obligations broader than those already existing under customary international law¹⁰⁹⁵.

561. Thus, even if the Claimants were holders of a property right subject to expropriation (*quod non*), their claim would fail, since, under Article 10.7 of the CAFTA-DR, the challenged measures **(2.a)** do not constitute a direct expropriation or **(2.b)** an indirect expropriation.

a. Direct expropriation

562. The Claimants contend that Honduras “has directly deprived Claimants of their rights in their entirety, without leaving Claimants even a nominal right with respect to Próspera

¹⁰⁹¹ The existence and scope of a property right must be determined in accordance with the law of the State party, in this case, Honduras. *D. Kappes v. Guatemala*, Award (RLA-0297-ENG), ¶ 1141. This is acknowledged by the Claimants, when they point out that “[t]he existence and scope of rights are generally determined in relation to domestic law”. Memorandum of Claim, footnote No. 1081. To the same effect, see: *Sargeant Petroleum, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/22/1, Submission of the United States (November 9, 2023), ¶ 40.

¹⁰⁹² See Sections II.A.2; II.B; II.D.3.

¹⁰⁹³ See Section II.D.3. At the international level, the International Court of Justice has distinguished between activities linked to sovereign powers and commercial activities. *Certain Iranian Assets* (Islamic Republic of Iran v. United States of America), ICJ, Judgment, Preliminary Objections (February 13, 2019) (RLA-0309-ENG), ¶¶ 88-91.

¹⁰⁹⁴ CAFTA-DR (CLA-0002), art. 10.7, footnote No. 3 and annexes 10-C ¶ 1, 10-B.

¹⁰⁹⁵ *D. Kappes v. Guatemala*, Award (RLA-0297-ENG), ¶ 1140.

ZEDE”¹⁰⁹⁶ and that, as a result, Honduras would recover “the right to deliver governance services, create regulations, and administer dispute resolution, and the right to tax revenues, among other rights”.¹⁰⁹⁷ However, there has been no direct expropriation here.

563. First, in *Burlington v. Ecuador*, the tribunal found that “a State measure constitutes [direct] expropriation under the Treaty if (i) the measure deprives the investor of its investment, (ii) the deprivation is permanent, and (iii) the deprivation finds no justification under the police powers doctrine.”¹⁰⁹⁸ Annex 10-C of the CAFTA-DR clarifies that, in the case of a direct expropriation, the deprivation must occur “through the formal transfer of title or the right of ownership.”¹⁰⁹⁹
564. Thus, a direct expropriation necessarily implies the deprivation of property through the physical seizure of tangible property or the formal, obligatory or forced transfer of title or the right of ownership over the investment¹¹⁰⁰. In fact, in the three direct expropriation cases cited by the Claimants – *Flughafen Zürich*, *Kardassopoulos* and *Quiborax* – there was a formal transfer of title to the investment or a physical seizure of tangible property¹¹⁰¹. Nothing like this has happened here. The Claimants continue to own their assets and maintain control of the entities through which they made their investment¹¹⁰².
565. Second, the Claimants seek to equate Honduras’ actions with the conduct sanctioned in the

¹⁰⁹⁶ Claimants’ Memorial, ¶ 497.

¹⁰⁹⁷ Claimants’ Memorial, ¶ 497.

¹⁰⁹⁸ *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Liability Decision (December 14, 2012) (RLA-0197-SPA), ¶¶ 255, 506.

¹⁰⁹⁹ CAFTA-DR (CLA-0002), Annex 10-C, ¶ 3.

¹¹⁰⁰ *D. Kappes v. Guatemala*, Award (December 23, 2025) (RLA-0297-ENG), ¶ 1143; *Glamis Gold v. USA*, Award (RLA-0175-ENG), ¶ 355.

¹¹⁰¹ *Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/19, Award (November 18, 2014) (CLA-0183), ¶¶ 503, 508 (“assumed effective control of the Airport, expelling the Consortium and depriving it of possession over the facilities [...] took physical control of the Airport through the use of police forces and directly assumed its management”); *Ioannis Kardassopoulos v. Republic of Georgia*, ICSID Case No. ARB/05/18, Award (March 3, 2010) (CLA-0200), ¶¶ 387-388. Specifically, among what was transferred to the other entity was “the sole and exclusive control and possession of the pipelines, all rights relating to the pipelines, and the right to own and use the assets of Transneft.” *Ioannis Kardassopoulos v. Republic of Georgia*, ICSID Case No. ARB/05/18, Award (March 3, 2010) (CLA-0199), ¶ 96 (emphasis added); *Quiborax S.A. & Non Metallic Minerals S.A. v. Bolivia*, ICSID Case No. ARB/06/2, Award (September 16, 2015) (CLA-0200), ¶¶ 229-230, 234 (“further ordering the company to physically deliver the concessions to the Prefecture of the Department of Potosí within thirty days”).

¹¹⁰² See Section II.D.4.

three cases they cite. However, as they acknowledge, these cases concerned the granting of concessions to own and exploit infrastructure or natural resources – namely an airport, a pipeline, and mining concessions, respectively. In none of those cases was the attribution of sovereign powers to dictate regulations, administer justice or collect taxes discussed¹¹⁰³.

566. *Third*, the tribunal in *Tecmed v. Mexico* recognized that the legitimate exercise of sovereign powers by a State may cause economic damage to those subject to its authority without giving rise to an obligation to compensate¹¹⁰⁴. The same principle was reaffirmed by the tribunal in *CME v. Czech Republic*, which distinguished between a deprivation of property and the ordinary exercise of the State’s regulatory powers, stressing that regulatory measures are common in all types of legal and economic systems to prevent private property from being used in a manner contrary to the general interest of the receiving State¹¹⁰⁵.
567. Precisely because of the exceptional nature of this case and because the powers whose recovery is challenged correspond to powers inherent in any sovereign State, the measures adopted by Honduras were legitimate and do not constitute an expropriation: the repeal of the ZEDE regime was not intended to appropriate the assets of the Claimants or transfer them to third parties, but to restore the exercise of administrative powers, legislative powers, jurisdictional and tax laws that are part of the essential core of state sovereignty¹¹⁰⁶.
568. The decision to recover these powers so that the laws, taxes, and the administration of justice within Honduran territory return to the constitutionally competent authorities responds to one of the most fundamental public purposes that a State can pursue. In such circumstances, it is impossible to equate the contested measures with a direct expropriation.

b. Indirect expropriation

¹¹⁰³ Claimants’ Memorial, ¶ 498.

¹¹⁰⁴ *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (May 29, 2003) (CLA-0120), ¶ 119.

¹¹⁰⁵ *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award (13 September 2001) (RLA-0144-ENG), ¶ 603.

¹¹⁰⁶ See Section II.D.

569. Annex 10-C of the CAFTA-DR sets forth the criteria for determining whether a State measure constitutes an indirect expropriation in the circumstances of each case¹¹⁰⁷. In view of this, it is clear that there was no indirect expropriation here.
570. *First*, paragraph 4(b) of Annex 10-C incorporates the police power doctrine, which establishes as a general principle that non-discriminatory regulatory acts adopted by the host State to protect legitimate public welfare objectives do not constitute indirect expropriation even if they may generate adverse economic effects for investors, except in exceptional circumstances¹¹⁰⁸.
571. In this case, the measures adopted by Honduras pursued precisely that type of legitimate objective: they were intended to restore the exercise of administrative, legislative, jurisdictional and tax powers that are part of the essential core of State sovereignty¹¹⁰⁹. Moreover, the Claimants have not alleged the existence of exceptional circumstances justifying a departure from that general rule confirming that the contested measures do not constitute indirect expropriation.
572. *Second*, where the exception in paragraph 4(b) does not apply, paragraph 4(a) of Annex 10-C sets out a number of factors that tribunals must consider in determining whether a measure taken by the receiving State constitutes an indirect expropriation in the particular circumstances of the case¹¹¹⁰.
573. Regarding the first factor—the economic impact of the governmental act—the tribunal in

¹¹⁰⁷ CAFTA-DR (CLA-0002), Annex 10-C, ¶¶ 3-4.

¹¹⁰⁸ CAFTA-DR (CLA-0002), Annex 10-C, ¶ 4; *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award (December 6, 2022) (CLA-0164), ¶ 1191; *Glamis Gold v. USA*, Award (RLA-0175-ENG), ¶ 354. In *Kappes v. Guatemala* indicates that this constitutes a consecration of the doctrine of “police powers”. *D. Kappes v. Guatemala*, Award (RLA-0297-ENG), ¶ 1145.

¹¹⁰⁹ See Section II.E.4.

¹¹¹⁰ CAFTA-DR (CLA-0002), Annex 10-C, ¶ 4. In *Gramercy v. Peru*, the tribunal interpreted a provision very similar to Article 10.7 of the CAFTA-DR, together with its Annex 10-B, which bears close similarity to Annex 10-C of the CAFTA-DR. See *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award (December 6, 2022) (CLA-0164), ¶ 1191 (“[...] the first paragraph defines certain “factors”, which tribunals must take into consideration to establish whether a certain measure adopted by the host State constitutes an indirect expropriation.”).

Gramercy v. Peru held that the assessment requires comparing the economic value of the investment immediately prior to the alleged expropriation, based on the circumstances known at the time, with the value of the investment immediately after the challenged measure. It also specified that such analysis must isolate the effects attributable to the measure in question and exclude any impact derived from circumstances or measures unrelated to the conduct that is alleged to be expropriatory¹¹¹¹.

574. Paragraph 4(a)(i) itself makes clear that the mere existence of an adverse economic effect on the investment is, by itself, insufficient to constitute an indirect expropriation. Along these lines, arbitral jurisprudence has consistently held that a claim of this nature can only succeed when the investor has been effectively deprived of all, or practically all, of the essential attributes of the property¹¹¹².
575. As for the second factor—the extent to which government action interferes with unambiguous and reasonable expectations in the investment—the reasonableness of the investor’s expectations must be assessed objectively in light of the regulatory context in place at the time the investment is made. This analysis requires considering the degree of regulation specific to the sector in question, since the more regulated an economic activity is, the lower the legitimate expectation of regulatory stability that an investor can claim. Consequently, when an investment is made in a sector subject to intense regulation,

¹¹¹¹ *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award (December 6, 2022) (**CLA-0164**), ¶ 1194.

¹¹¹² *D. Kappes v. Guatemala*, Award (**RLA-0297-ENG**), ¶¶ 1143-1144; *El Paso Energy International Company v. Republic of Argentina*, ICSID Case No. ARB/03/15, Award (October 31, 2011) (**CLA-0145**), ¶¶ 255-256 (“In conclusion, the Tribunal, consistently with mainstream case-law, finds that for an expropriation to exist, the investor should be substantially deprived not only of the benefits, but also of the use of his investment. A mere loss of value, which is not the result of an interference with the control or use of the investment, is not an indirect expropriation.”); *Mamidoil Jetoil Greek Petroleum Products S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award (30 March 2015) (**RLA-0082-ENG**), ¶ 579 (“It is not the Tribunal’s task to evaluate business opportunities but to determine whether the dramatic losses of benefit are caused by the loss of one or all elements which constitute the essence of property.”). See *Mamidoil Jetoil Greek Petroleum Products S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award (30 March 2015) (**RLA-0082-ENG**), ¶ 571 (“In sum, illegal conduct will not give rise to a claim for expropriation (though it may ground a different claim) if the [sic] substance and attributes of property are left intact. Conversely, legal conduct may be expropriatory if the essence of property is touched, as set out above, and no compensation is paid.”).

reasonable modifications or developments in the regulatory framework constitute a foreseeable possibility that the investor should consider when investing¹¹¹³.

576. Regarding the third factor – the nature of the government action – the Tribunal must analyze whether the challenged measure is part of a public policy aimed at adjusting the benefits and burdens of economic activity in the general interest and the promotion of the common good, rather than constituting a direct interference with the investor’s property rights¹¹¹⁴.

577. The present case does not meet these criteria:

- The economic impact of the governmental act: The Claimants have not demonstrated that the challenged measures have produced a substantial decrease in the value of their investment in the manner required by the standard applied by the jurisprudence, including, recently, the tribunal in *Gramercy v. Peru*. On the contrary, the Claimants retain their main real estate assets, including land, buildings and infrastructure, which can be sold, liquidated or continue to be used. In fact, according to their own financial statements, the fair value of their net assets amounts to US\$ 354.3 million, a figure that exceeds by US\$ 186 million the US\$ 168.3 million that they claim to have invested in the Project. Moreover, the Claimants’ valuation significantly underestimates the value they still hold: while BRG attributes to their real estate assets a value of just US\$65.4 million, calculated on the basis of their acquisition cost, their financial statements assign them a fair value of US\$307.4 million.¹¹¹⁵ In addition, and as developed in Section V *infra*, the valuation proposed by the Claimants is based on highly speculative projections about the future success of a project that lacked a proven track record of profitability and whose performance depended on multiple factors independent of the contested measures, such as the recruitment of residents and investors, the availability of financing, the development of infrastructure and the social acceptance of the project.¹¹¹⁶ In these circumstances, the Claimants have not demonstrated that the measures adopted by Honduras have had the economic impact required to constitute an indirect expropriation. Much less have they been able to prove a substantial, radical, severe or fundamental deprivation of the investor’s rights, or the virtual annihilation, effective neutralization or factual destruction of the investment, its value or its use.
- Unequivocal and reasonable expectations in investment: no reasonable investor could expect the ZEDE regime to remain unchanged indefinitely. Before making

¹¹¹³ *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award (December 6, 2022) (CLA-0164), ¶¶ 1195-1197.

¹¹¹⁴ *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award (December 6, 2022) (CLA-0164), ¶ 1198.

¹¹¹⁵ Quadrant-I, ¶¶ 65-67, 137-138.

¹¹¹⁶ Quadrant-I, ¶¶ 34-45, 53, 56-57.

their investments, the Claimants were aware that the scheme was surrounded by profound legal, political and social controversies. Among other circumstances, they were aware of the questions regarding its compatibility with the Honduran Constitution, the irregularities denounced in the process by which the judicial validation of the regime was obtained, and the intense opposition that the ZEDEs aroused both nationally and internationally. This background was public, notorious, and widely discussed. In fact, the social and political opposition to the project itself was identified as a relevant risk factor in the documentation and assessments considered by the Claimants and their advisors. Consequently, the Claimants invested with full knowledge that the continuity of the scheme depended on a regulatory framework which was extremely controversial and subject to a high risk of change¹¹¹⁷.

- The nature of the government's action: The challenged measures did not constitute an interference specifically directed against their investment nor were they intended to deprive them of their property rights. On the contrary, the repeal of the ZEDE regime was part of a public policy decision of general scope aimed at restoring the uniform application of the Honduran constitutional order and recovering for the State the exercise of administrative, legislative, jurisdictional and tax powers considered essential for the promotion of the general interest. Both the legislative repeal and the unconstitutionality ruling produced general and abstract effects with respect to the entire ZEDE regime, without distinguishing between investors, projects or specific areas¹¹¹⁸. Consequently, the contested measures constituted a general adjustment of the benefits and charges derived from an economic activity previously regulated by an exceptional regime, and not a targeted intervention on the Claimants' property rights.

578. Finally, it is well known that decisions adopted by national courts cannot constitute, in themselves, an expropriation under the terms of Article 10.7. Judicial measures applying domestic law may only, in certain circumstances, give rise to a claim for denial of justice under Article 10.5 of the Treaty. This was ratified by the tribunal in *Gramercy v. Peru* when it interpreted norms very similar to those of the CAFTA-DR:

The Tribunal coincides with the above views:

- the primary cause of action established in the Treaty to challenge a judicial measure is denial of justice under Article 10.5;
- the domestic Court's conduct may only form the basis of an expropriation claim where it is established that the executive or legislative branches interfered with court rulings so as to effectively cause an expropriation;

¹¹¹⁷ See Sections II.A.4 and II.C.1

¹¹¹⁸ See Sections II.D.2 and II.D.3.

- a conclusion that a domestic Court caused a wrongful expropriation (in conjunction with the legislative or executive branches) requires a prior finding of denial of justice.

579. Consequently, an investor's mere disagreement with the outcome of judicial proceedings or with the interpretation of domestic law by national courts is not sufficient to transform a judicial decision into an expropriatory measure.

D. HONDURAS HAS NOT BREACHED ANY ALLEGED CONTRACTUAL OBLIGATIONS UNDER THE LSA

580. The Claimants allege that Honduras' conduct also constitutes a breach of the LSA, since, by allegedly failing to grant legal stability to the Claimants, it would have violated the commitments allegedly undertaken¹¹¹⁹. Specifically, the Claimants contend that Honduras has violated Section 1.4 of the LSA ("*General Stabilization of Law and Policy*"), which would constitute a guarantee of legal stability of the ZEDE Legal Framework granted in the Claimants' favor¹¹²⁰.

581. Without prejudice to the fact that this claim is completely outside the Tribunal's jurisdiction¹¹²¹, it is also without merit because: **(D.1)** the LSA is contrary to transnational public policy; **(D.2)** the LSA does not constitute a valid stability contract under international law; **(D.3)** the LSA is null and void under applicable law; and **(D.4)** Honduras did not breach Article 10.4 of the CAFTA-DR, since it did not violate the umbrella clauses of other treaties that the Claimants seek to import.¹¹²²

1. The LSA is openly contrary to transnational public order

582. The Tribunal cannot and should not give effect to contractual provisions that violate international or transnational public policy. This is a basic rule of international law that is

¹¹¹⁹ Claimants' Memorial, ¶ 508.

¹¹²⁰ Claimants' Memorial, ¶¶ 510-515.

¹¹²¹ See Section III.C.

¹¹²² Before proceeding with the analysis, it should be recalled that the LSA is an agreement concluded by the Claimants with each other. With this in mind, the lack of seriousness of this claim and of the LSA as such is doubly exposed in the analysis under this section. Similarly, it should be noted that the possible characterization of the LSA as an administrative contract is subsidiary and only applicable in the unlikely event that the Tribunal considers that its conclusion can be attributed to Honduras.

also widely accepted in doctrine and jurisprudence¹¹²³.

583. Following this principle, in *World Duty Free v. Kenya*, the tribunal went beyond the applicable law designated by the parties (English and Kenyan law) and determined, on the basis of transnational public policy, the inadmissibility of the claimant's claims¹¹²⁴. Thus, the tribunal concluded that¹¹²⁵:

this Tribunal is convinced that **bribery is contrary to the international public policy of most, if not all, States** or, to use another formula, to transnational public policy. **Thus, claims based on contracts of corruption or on contracts obtained by corruption cannot be upheld by this Arbitral Tribunal.**

584. As far as it is concerned, the present case is entirely comparable. The sovereignty of States, the territorial integrity and self-determination of peoples — such as the prohibition of corruption — are part of the set of fundamental principles of international law¹¹²⁶, and therefore make up transnational public order¹¹²⁷. Therefore, any provision of an investment

¹¹²³ Schreuer et al. "Schreuer's Commentary on the ICSID Convention", Vol. I (3rd ed., Cambridge University Press, 2022) (RLA-0268-ENG), pp. 825-826; Mayer, P. & Sheppard, A. "Final ILA Report on Public Policy as a Bar to Enforcement of International Arbitral Awards", in *Arbitration International*, Vol. 19, No. 2 (2003) (RLA-0151-ENG); Institut de Droit International, "Arbitration Between States, State Enterprises, or State Entities, and Foreign Enterprises" (Santiago de Compostela Session, 12 September 1989), art. 2; *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award (August 2, 2006) (RLA-0162-SPA), ¶¶ 245-252; *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24, Award (August 27, 2008) (CLA-0167), ¶¶ 138-146; *Niko Resources (Bangladesh) Ltd. v. People's Republic of Bangladesh, Bangladesh Petroleum Exploration et al.*, ICSID Case No. ARB/10/11 and ICSID Case No. ARB/10/18, Decision on Jurisdiction (August 19, 2013) (RLA-0201-ENG), ¶¶ 431-435; *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and ARB/12/40, Award (6 December 2016) (RLA-0224-ENG), ¶¶ 493, 508; *Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award (June 22, 2010) (RLA-0181-ENG), ¶ 193.

¹¹²⁴ *World Duty Free Company Limited v. Republic of Kenya*, ICSID Case No. ARB/00/7, Award (October 4, 2006) (RLA-0163-ENG), ¶ 188(3).

¹¹²⁵ *World Duty Free Company Limited v. Republic of Kenya*, ICSID Case No. ARB/00/7, Award (October 4, 2006) (RLA-0163-ENG), ¶ 157 (emphasis added).

¹¹²⁶ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, ICJ (February 25, 2019) (RLA-0244-ENG), ¶ 155; Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (XV) (14 December 1960) (RLA-0300); Charter of the United Nations (1945) (RLA-0299-SPA), arts. 1.2, 2.4 and 55; International Covenant on Civil and Political Rights (1976) (RLA-0129-SPA), art. 1.1; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, Resolution 2625 (XXV) (1970) (RLA-0302-SPA); Organization of American States (OAS), Charter of the Organization of American States (1967) (RLA-0301-SPA), arts. 1 and 2; *East Timor (Portugal v. Australia)*, Judgment, International Court of Justice, Reports 1995 [p. 90] (30 June 1995) (RLA-0139-ENG), ¶ 29.

¹¹²⁷ *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award (August 2, 2006) (RLA-0162-SPA), ¶ 245 ("International public policy consists of a series of fundamental principles that

agreement or incorporated by reference therein that is contrary to these principles must be set aside by the Tribunal and considered null and void *ab initio*.

585. In this sense, the LSA is not only an agreement obtained through acts contrary to transnational public order—the ZEDE Legal Framework—¹¹²⁸, but it is also an agreement whose chief object, in itself, constitutes an act of violation of these fundamental principles.
586. Indeed, the real objective of LSA is not to protect the Claimants’ alleged specific investment against the possible effects of a change in State regulation. HPI’s objective in signing the LSA with itself, on the contrary, is to obtain the early, irrevocable, and virtually perpetual renunciation of the Honduran State to exercise its sovereign power to legislate, regulate, and govern over a portion of its own territory, for the exclusive benefit of a foreign private entity.¹¹²⁹
587. The practical consequence of LSA is also contrary to transnational public policy¹¹³⁰. This would not only consist in the unenforceability of the effects of the measures against the Claimants, but also in the fact that Honduras cannot legislate, regulate, interpret or act on its territory without the authorization of the Claimants. The only exception to the very broad

constitute the very essence of the State, and its essential function is to preserve the values of the international legal system against actions contrary to it.”); *NJSC and Others v. the Russian Federation*, PCA Case No. 2017-16, Judgment of the Court of Appeal in The Hague (July 19, 2022) (**RLA-0271-ENG**), ¶¶ 5.14.6-5.14.7; *State Development Corporation “VEB. RF” c. Ukraine*, SCC Case No. 2019/113 and V2019/088, Judgment of the Supreme Court of Ukraine (January 14, 2021) (**RLA-0258-ENG**), ¶ 39; *Hardy Exploration and Production (India) Inc. v. Government of India*, Ministry of Petroleum and Natural Gas, Civil Action No. 16-140 (RC), Memorandum of Opinion of the U.S. District Court for the District of Columbia (June 7, 2018) (**RLA-0233-ENG**), ¶¶ 34, 41, 48.

¹¹²⁸ See Section IV.A.2.a.

¹¹²⁹ Original LSA (**CLA-0006**). Section 1.4 of the LSA is clear evidence of this. Far from stabilizing only sectoral economic or regulatory conditions in favor of a given investment project, it freezes the entire legal framework applicable to Próspera ZEDE as it existed on March 9, 2021, including the Constitution, the ZEDE Law, Legislative Decree No. 368-2013, the Property Institute Agreement No. CD-IP-008-2019, the CAMP ZEDE Regulation No. 001-2018 and “all rights, conditions, procedures and protections, explicit or implicit” contained in said instruments. Moreover, the aforementioned Section prohibits Honduras from doing any act—legislative, regulatory, administrative, judicial—that, “to any extent or degree,” alters, restricts, harms, or infringes the interests of the Claimants (§ 1.4(a)-(j)), any measure that impairs the “value of any investment related to the promotion and organization of Próspera ZEDE” (§ 1.4(i)), and any measure that affects “any other vested legal right of Honduras Próspera or its affiliates by majority ownership or control, or any other investor or lawful inhabitant of Próspera ZEDE (§ 1.4(j)(bis)).

¹¹³⁰ *Amoco International Finance Corporation v. Iran*, IUSCT Case No. 56, Partial Award (July 14, 1987) (**RLA-0134-ENG**), ¶ 178.

prohibition is that HPI, by unilateral decision of its president, expressly waives the protection of the affected provision¹¹³¹.

588. In practical terms, the LSA would never end, unless Honduras decided to fail to comply with it and incur alleged responsibility¹¹³². This contractual design therefore places the State in an inescapable dilemma: complying with the LSA implies permanently renouncing the exercise of its sovereignty and legislative power over its territory, while failure to comply with it implies triggering a clause that subjects it to an economic condemnation of exorbitant and growing magnitude.

2. The LSA also does not meet the requirements to which legal stability agreements are subject under international law

589. The LSA is not only contrary to the basic principles of international law, but, in any case, in the field of stabilization clauses – a figure in itself questionable if it is not limited to economic equilibrium – it is clearly invalid.
590. To be valid under international law, stabilization clauses must cover only a relatively limited period of time and must conform to local regulations governing the conclusion of such public contracts by the State¹¹³³.

¹¹³¹ Indeed, Section 1.4 provides: “[...] the Republic of Honduras may adopt or promulgate a new or amended treaty, constitutional provision, law, administrative regulation, rule or enforceable policy, or any enforceable interpretation thereof, in contravention of any section or subsection of this Agreement only if Honduras Próspera knowingly and voluntarily waives the protection of the contravened provision [...]”. LSA Original (CLA-0006), § 1.4 (emphasis added).

¹¹³² According to Section 1.1, the LSA would be in force until the later of (i) January 15, 2064 (i.e., 42 years after the signing of the agreement) or (ii) ten years after “the last of any amendment, reform, interpretation or repeal of all or any part of the ZEDE law” by Honduras. LSA Original (CLA-0006) § 1.1. However, any “amendment, reform, interpretation or repeal [...] of the ZEDE law” would inevitably imply a violation of Section 1.4(b) of the LSA (LSA Original (CLA-0006) § 1.4(b)), so that the event on which the termination of the contract depends coincides, precisely, with the fact that the contract itself prohibits. Thus, the only path Honduras would have to exit the LSA (violating the LSA) would immediately activate the liquidated damages clause of Section 3.8, which establishes USD 150,000,000.00 with an increase of 10% compound annual since the entry into force of the LSA. Amendment to the LSA (CLA-0007), §3.8.

¹¹³³ *Amoco International Finance Corporation v. Iran*, IUSCT Case No. 56, Partial Award (July 14, 1987) (RLA-0134-ENG), ¶ 179; *The American Independent Oil Company v. The Government of the State of Kuwait*, Ad Hoc Arbitration, Award (March 24, 1982) (RLA-0132-ENG), ¶ 95; Gehne, K. & Brillo, R. “Stabilization Clauses in International Investment Law: Beyond Balancing and Fair and Equitable Treatment”, in *Beiträge zum Transnationalen Wirtschaftsrecht*, Heft 143, Martin Luther University Halle-Wittenberg (March 2017) (RLA-0227-ENG), p. 46; Nikiéma, S.H., Readhead, A., Bowers, I. & Schaugg, L., “Stabilization Clauses: The

591. First, in *Amoco v. Iran*, the tribunal considered, with reference to *AMINOIL v. Kuwait*, that, although the agreement governing stabilization had been concluded for a shorter period (35 years) than *AMINOIL* (60 years), from an economic and legal point of view, 35 years could not be considered “a ‘relatively limited period’”, as required by international law¹¹³⁴.
592. In the present case, according to Section 1.1, the LSA would have a minimum duration of 42 years, extendable indefinitely as already explained. Thus, the LSA is not, in any sense, a fixed-term contract or, failing that, a valid fixed-term contract.
593. Second, in the event that the LSA were to be considered a contract attributable to Honduras, it also fails to meet the requirements imposed for the execution of public stability contracts for foreign investors by the Law for the Promotion and Protection of Investments and its respective Regulations.
594. The Law for the Promotion and Protection of Investments limits the stabilization contracts that the State can sign to guarantee the investor “no increases or new taxes under the national and municipal tax regime existing at the time of their execution and for the duration of their term”¹¹³⁵ and establishes that these contracts will have a maximum duration of 15 years¹¹³⁶.
595. In turn, the Law’s Regulations stipulate that the investor must submit an application to the Executive Secretariat of the CNI, the entity in charge of ruling on its viability¹¹³⁷. It also

Hidden Provisions That Can Hinder Tax and Investment Policy Reform,” International Institute for Sustainable Development (IISD) (November 22, 2024) (**RLA-0292-ENG**); UNIDROIT, Working Group on International Investment Contracts, “Summary Report of the First Session” (October 23-25, 2023), Study L-IIC - W.G. 1 - Doc. 3 (December 2023) (**RLA-0281-ENG**), ¶ 138; UNIDROIT, Working Group on International Investment Contracts, “Summary Report of the Fourth Session” (25-27 November 2024), Study L-IIC – W.G. 4 – Doc. 2 (November 2024) (**RLA-0293-ENG**), ¶¶ 10-11; UNIDROIT, Working Group on International Investment Contracts, “Summary Report of the Seventh Session” (27–29 October 2025), Study L-IIC – W.G. 7 – Doc. 4 (January 2026) (**RLA-0298-ENG**), ¶¶ 19-21.

¹¹³⁴ *Amoco International Finance Corporation v. Iran*, IUSCT Case No. 56, Partial Award (July 14, 1987) (**RLA-0134-ENG**), ¶ 179, citing *The American Independent Oil Company v. The Government of the State of Kuwait*, Ad Hoc Arbitration, Award (March 24, 1982) (**RLA-0132-ENG**), ¶ 95.

¹¹³⁵ Law for the Promotion and Protection of Investments (Decree No. 51-2011) (July 15, 2011) (**R-0096-SPA**), art. 20.

¹¹³⁶ Law for the Promotion and Protection of Investments (Decree No. 51-2011, as amended by Decree No. 248-2013) (June 5, 2014) (**R-0147-SPA**), art. 21.

¹¹³⁷ Regulations of the Law for the Promotion and Protection of Investments (Executive Agreement No. 22-DGTC-2014) (2014) (**R-0140-SPA**), art. 19.

confirms that the stabilization contract can only refer to tax issues and that, in its application, the investor must indicate the duration of the project¹¹³⁸. After the Executive Secretariat verifies that the investor applying for the contract meets all the requirements, the file is submitted to the CNI.¹¹³⁹ Once the request has been approved by the CNI, the application and the draft contract are sent to the Presidency for submission to Congress, which, in turn, must also approve the contract for its entry into force¹¹⁴⁰.

596. In the case of the LSA, its subject matter exceeds the stabilization of direct taxes, does not establish a duration of less than 15 years, was not requested before the Executive Secretariat of the CNI, and did not obtain the approval of the CNI or Congress¹¹⁴¹.

3. The LSA is also null and void under applicable Honduran law

597. The LSA is not only null and void under international law, but also under applicable Honduran law, as discussed in the preceding section and discussed in this one in greater depth. **(3.a)** Although the LSA contains a choice of law clause, it is not valid under the ICSID Convention and the CAFTA-DR. **(3.b)** The validity of the LSA must, therefore, be assessed in accordance with Honduran law, according to which the LSA is inevitably null and void.

a. The designation of applicable law in the LSA is not a valid designation under the ICSID Convention or the CAFTA-DR

598. The Claimants assert that, for claims of non-compliance with the LSA, the Tribunal must apply the rules set out therein, as well as any rules of international law that may be applicable¹¹⁴². From there, they conclude that the designated law would be that of the “Roatan

¹¹³⁸ Regulations of the Law for the Promotion and Protection of Investments (Executive Agreement No. 22-DGTC-2014) (2014) (**R-0140-SPA**), arts. 20(6), 22, 25.

¹¹³⁹ Regulations of the Law for the Promotion and Protection of Investments (Executive Agreement No. 22-DGTC-2014) (2014) (**R-0140-SPA**), arts. 24, 27.

¹¹⁴⁰ Regulations of the Law for the Promotion and Protection of Investments (Executive Agreement No. 22-DGTC-2014) (2014) (**R-0140-SPA**), art. 28.

¹¹⁴¹ See Section II.C.5. As explained below, this also matters for the nullity of the LSA.

¹¹⁴² Claimants’ Memorial, footnote No. 1167.

Common Law Code”,¹¹⁴³ that is, a series of rules that the Claimants themselves have created and designated as those that would govern, in replacement of Honduran law, within the territory occupied by Próspera ZEDE¹¹⁴⁴. But this does not constitute a valid designation under Articles 42(1) of the ICSID Convention and 10.22.2 of the CAFTA-DR.

599. *First*, the doctrine has been categorical in this regard: parties can only choose between “*rules of law*” that already exist.¹¹⁴⁵ Thus, the thesis that contracts can be considered self-sufficient or that they exist in a bubble, outside any legal system, both national and international, has been rejected¹¹⁴⁶. This conclusion is supported by the second sentence of Article 42(1), which clearly states that it is national and international law – and nothing else – that are applicable to a dispute between a Contracting State and an investor¹¹⁴⁷. The “Roatan Common Law Code”, regardless of what inspires it, does not constitute a rule of law or a legal norm with international acceptance. Therefore, this cannot, under any circumstances, constitute a valid designation of law for assessing the validity of the contract.
600. *Second*, in the agreement that the Claimants entered with themselves on behalf of Honduras (the LSA), they designated as applicable law a set of rules that they themselves invented and that they can easily modify to accommodate their interests. To admit such a procedure would imply very serious practical problems. If the parties could define as applicable law a set of

¹¹⁴³ LSA, § 3.7 (“[t]he present Agreement shall be governed by and construed in accordance with the Roatan Code of Common Law, [...] of the Próspera ZEDE, [...] without regard to conflict of law principles”), 3.9 (“[w]hen applicable, the provisions of this Agreement shall be interpreted in the light of CAFTA-DR and customary international law, including awards rendered by duly constituted tribunals...”).

¹¹⁴⁴ Roatan Common Law Code dated January 3, 2019 (**C-0483**).

¹¹⁴⁵ Masood, A. “Law Applicable in Arbitration of Investment Disputes under the World Bank Convention” in Indian Law Institute (1973) (**RLA-0128-ENG**), pp. 311, 317; Delaume, G.R. “Convention on the Settlement of Investment Disputes between States and Nationals of Other States”, The International Lawyer, Vol. 1, No. 1 (1967) (**RLA-0125-ENG**), p. 64; Kahn, P. “The Law Applicable to Foreign Investments: The Contribution of the World Bank Convention on the Settlement of Investment Disputes”, Indiana Law Journal, Vol. 44, No. 1 (1968) (**RLA-0126-ENG**), pp. 1, 14; HCCH, Hague Principles on the Choice of Law Applicable to International Commercial Contracts (19 March 2015) (**RLA-0208-SPA**), art. 3.

¹¹⁴⁶ Delaume, G.R. “Convention on the Settlement of Investment Disputes between States and Nationals of Other States”, The International Lawyer, Vol. 1, No. 1 (1967) (**RLA-0125-ENG**), pp. 64, 77.

¹¹⁴⁷ ICSID Convention, Art. 42(1) (**RLA-0009-SPA**); Masood, A. “Law Applicable in Arbitration of Investment Disputes under the World Bank Convention” in Indian Law Institute (1973) (**RLA-0128-ENG**), pp. 311, 317; Kahn, P. “The Law Applicable to Foreign Investments: The Contribution of the World Bank Convention on the Settlement of Investment Disputes”, Indiana Law Journal, Vol. 44, No. 1 (1968) (**RLA-0126-ENG**), pp. 1, 14.

rules that they themselves incorporate into the contract, any question about the validity of that agreement would end up being resolved on the basis of rules whose binding force derives precisely from the contract whose validity is intended to be examined.

601. *Finally*, and in any case, in accordance with Section 188 of the American Law Institute’s Restatement of Conflict of Laws (Second), to which Section 3401 (Conflict of Laws) of Division 3 of the “Roatan Common Law Code” refers, Honduran law itself is applicable¹¹⁴⁸.

b. The LSA is invalid under Honduran law

602. Under Honduran law, the LSA is insurmountably null and void. In Honduran administrative law, contracts are null and void when “*any of their essential elements do not concur*”; these are consent, object, cause, form and formalities¹¹⁴⁹.
603. *First*, the LSA has insurmountable defects in its consent and in its formalities. In Honduras, for an administrative contract to be valid, the will of the State must be expressed through the body to which the law attributes the power to enter into the contract, and following the formalities or procedures established by law¹¹⁵⁰. In this sense, the incompetence of the person who signs the contract on behalf of the State implies the nullity of the contract concluded¹¹⁵¹. Similarly, the State’s consent is not considered to have been expressed if the steps required by law are not followed, both at the stage of preparation of the contract and at the stage after its conclusion¹¹⁵². Thus, a contract entered into without obtaining the authorization that the law may require is also null and void¹¹⁵³.

¹¹⁴⁸ Roatan Common Law Code, dated January 3, 2019 (C-0483), Div. 3, Ch. 4, § 3401 Restatement [Second] of the Conflict of Laws (RLA-0241-SPA), § 188. If the Tribunal wanted to assess the validity of the terms of the LSA under the “*Roatan Common Law Code*”, it could not do so either, since its own provisions refer to the “*legislation*” and “*public policy*” of a legal system that is necessarily terminated by the conflict rule. See Roatan Common Law Code, dated January 3, 2019 (C-0483), Div. 3, Ch. 3, § 3300 Restatement [Two] of Contracts (RLA-0240-SPA), § 178(1).

¹¹⁴⁹ Orellana, E. “Administrative Procurement in Honduras” (2013) (RLA-0198-SPA), pp. 231-232, 442; Civil Code of Honduras (1906) (C-0548), arts. 1552, 1586, 1589; Law on State Contracting (Decree No. 74-2001) (R-0083-SPA), art. 110.

¹¹⁵⁰ Orellana, E. “Administrative Procurement in Honduras” (2013) (RLA-0198-SPA), p. 233.

¹¹⁵¹ Orellana, E. “Administrative Procurement in Honduras” (2013) (RLA-0198-SPA), pp. 442-443.

¹¹⁵² Orellana, E. “Administrative Procurement in Honduras” (2013) (RLA-0198-SPA), pp. 236-237.

¹¹⁵³ Orellana, E. “Administrative Procurement in Honduras” (2013) (RLA-0198-SPA), p. 446.

604. As has been demonstrated, the Technical Secretary was not authorized to commit Honduras through the LSA.¹¹⁵⁴ In turn, during the process of signing the LSA, the channels established by the Regulations of the Law for the Promotion and Protection of Investments to enter a stability contract were not followed¹¹⁵⁵. In addition, under Article 205(19) of the Constitution, administrative consent requires approval from the National Congress for contracts that will produce or prolong their effects in a subsequent term of government¹¹⁵⁶. Despite the fact that the duration of the LSA is at least 42 years, it was not approved by Congress either.
605. *Second*, the LSA is invalid because of the defects in its object. In Honduras, a contract for services that are not certain, determined, possible, or lawful is flawed¹¹⁵⁷. An object that contravenes Honduran public law is illicit, for example, “*when the object of an administrative contract is the prerogatives of the Administration, since these are inalienable insofar as they are an expression of the Public Power*”.¹¹⁵⁸
606. Beyond the example of Prof. Orellana that already resolves the discussion, in the private sphere, the provisions of any contract that contravene public order are recognized as having an illicit object¹¹⁵⁹. Moreover, in the public sphere, the analysis of the lawfulness of the object is reversed: not only must the object not be prohibited, but it must be expressly permitted by the laws and regulations that govern the will of the administration¹¹⁶⁰.
607. In the case of the LSA, not only was it not an object authorized in accordance with the procedures established by law, but it was also an act contrary to public order¹¹⁶¹. The

¹¹⁵⁴ See Section III.C.

¹¹⁵⁵ Regulations of the Law for the Promotion and Protection of Investments (Executive Agreement No. 22-DGTC-2014) (2014) (**R-0140-SPA**), arts. 19-28; See Section IV.D.2.

¹¹⁵⁶ Constitution of Honduras, 1982, with amendments until 2013, dated March 20, 2013 (**C-0004**), art. 205(19).

¹¹⁵⁷ Civil Code of Honduras (1906) (**C-0548**), arts. 1563-1564; Orellana, E. “Administrative Procurement in Honduras” (2013) (**RLA-0198-SPA**), pp. 235, 444.

¹¹⁵⁸ Orellana, E. “Administrative Procurement in Honduras” (2013) (**RLA-0198-SPA**), p. 236.

¹¹⁵⁹ Civil Code of Honduras (1906) (**C-0548**), art. 1547.

¹¹⁶⁰ Orellana, E. “Administrative Procurement in Honduras” (2013) (**RLA-0198-SPA**), pp. 9-10, 224, 226.

¹¹⁶¹ See Sections II.D.3; IV.D.1.

Supreme Court of Honduras has confirmed this by declaring the unconstitutionality of the LSA, a pronouncement that it adopted after having heard arguments on the alleged lawful origin of the stability contract and the obligations that would derive from it for Honduras¹¹⁶². In effect, the Supreme Court expressly held that the LSA would allow the subsistence of an unconstitutional regime during its validity. Explicitly recognizing this assumption of “*regulatory ultra-activity*”, it concluded that unconstitutionality with *ex tunc* effect was necessary¹¹⁶³.

608. In addition, the LSA is invalid as it does not comply with the material limits established by the Investment Promotion and Protection Law and its Regulations¹¹⁶⁴: the LSA is not limited exclusively to the direct tax regime nor does it last less than 15 years¹¹⁶⁵. Nor was it requested from the Executive Secretariat of the CNI, nor did it have the approval of that body or the National Congress.
609. *Third*, the LSA is null and void insofar as its cause is flawed. In Honduran law, an administrative contract that lacks a cause or, if it has one, is illegal, is null and void¹¹⁶⁶. In this sense, the contract must be oriented to satisfy a public need and not oppose laws or morals¹¹⁶⁷. The LSA case merits its nullity, since the Technical Secretary had a direct interest in the HPI project and the agreement was aimed at illegally excluding a portion of the territory from the effects of all state acts that impact the Claimants and requiring their authorization to carry them out.
610. *Finally*, there is no doubt that the LSA is invalid, since its basis is found in the ZEDE Legal

¹¹⁶² *Decision of the Supreme Court of Honduras* published in La Gaceta No. 36.698 dated November 25, 2024 (C-0559), p. 56 (“2. To declare BY IMPERATIVE AND UNAVOIDABLE MANDATE of Article 375 of the Constitution of the Republic of Honduras, the total unconstitutionality from its origin or *ex tunc* : [...]; f) and any other regulation or legal acts related to the ZEDES that infringes on this unavoidable mandate and power”).

¹¹⁶³ *Decision of the Supreme Court of Honduras* published in La Gaceta No. 36.698 dated November 25, 2024 (C-0559), p. 25.

¹¹⁶⁴ See Section IV.D.2.

¹¹⁶⁵ LSA, §§ 1.1, 1.4.

¹¹⁶⁶ Civil Code of Honduras (1906) (C-0548), arts. 1570-1571; Orellana, E. “Administrative Procurement in Honduras” (2013) (RLA-0198-SPA), p. 445.

¹¹⁶⁷ Orellana, E. “Administrative Procurement in Honduras” (2013) (RLA-0198-SPA), pp. 236-237.

Framework. In fact, the nullity manifests itself progressively and, since the LSA was established on the basis of a regime that has been declared null and void, the LSA, as a derivation of that regime, is also invalid¹¹⁶⁸.

4. Honduras did not violate the MFN standard with regard to the umbrella clauses that the Claimants seek to import

611. In the alternative, because the Claimants acknowledge that they allege breaches of “*contractual order*”, they contend that Honduras would be liable for an alleged breach of Article 10.4 of the CAFTA-DR, *i.e.*, the MFN clause¹¹⁶⁹, in an attempt to import in this way “*the umbrella clauses of other treaties to which it is a party*”¹¹⁷⁰. Beyond the fact that the Claimants pervert the proper functioning of the MFN clause and that the LSA is inevitably null and void and cannot be attributed to Honduras, the Claimants’ position lacks any basis for at least three additional reasons¹¹⁷¹.
612. *First*, the Claimants are wrong to assert that the “umbrella clauses elevate contractual obligations under domestic law to the level of international treaty obligations”.¹¹⁷² Indeed, multiple tribunals have criticized this interpretation of the effect of umbrella clauses, including the ones cited by the Claimants to make such a statement¹¹⁷³.

¹¹⁶⁸ Administrative Procedure Law, 1987 (Decree No. 152-87) (R-0002-SPA), art. 38; Civil Code of Honduras, art. 9; Decree No. 32-2022, published on April 21, 2022 (C-0057), art. 2; Decree No. 33-2022, published on April 26, 2022 (C-0060), art. 2(3). The Claimants acknowledge that “*the Honduran decrees aimed at repealing the ZEDE Legal Framework also provide that any norm of any kind derived from said legal framework is null and void.*” See Claimants’ Memorial ¶ 320.

¹¹⁶⁹ Claimants’ Memorial, ¶ 517.

¹¹⁷⁰ Claimants’ Memorial, ¶ 518.

¹¹⁷¹ See Sections III.B; III.C.

¹¹⁷² Claimants’ Memorial, ¶ 522.

¹¹⁷³ *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision on Objections to Jurisdiction (29 January 2004) (RLA-0152-ENG), ¶ 126 (“Article X(2) addresses not the *scope* of the commitments entered into with regard to specific investments but the *performance* of these obligations, once they are ascertained.”); *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (28 March 2011) (CLA-0225), ¶ 498; *Oxus Gold PLC v. Republic of Uzbekistan*, the State Committee of Uzbekistan for Geology & Mineral Resources, and Navoi Mining & Metallurgical Kombinat, UNCITRAL Arbitration (UNCITRAL), Award (December 17, 2015) (RLA-0215-ENG), ¶ 371; *WNC Factoring Ltd v. Czech Republic*, PCA Case No. 2014-34, Award (February 22, 2017) (RLA-0226-ENG), ¶¶ 346-347 citing *CMS Gas Transmission Company v. Republic of Argentina*, ICSID Case No. ARB/01/8, Decision of the Ad Hoc Committee on the Request for Annulment of the Republic of Argentina (September 25, 2007) (RLA-0169-ENG), ¶ 95(a) and *Continental Casualty Company v. Republic of Argentina*, ICSID Case No. ARB/03/9, Award (September 5, 2008) (RLA-0173-ENG), ¶ 300.

613. *Second*, Honduras has no obligation to the Claimants under the umbrella clauses they invoke. Specifically, the clauses they invoke use, for example, the expression “*Each Contracting Party shall comply with any other **obligation** which it has **assumed**...*”.¹¹⁷⁴ This language implies, as is widely accepted in relation to such clauses, that the umbrella clauses invoked by the Claimants require a direct contractual relationship (privity) with Honduras¹¹⁷⁵. However, the LSA was not celebrated by Honduras but by the Technical Secretary¹¹⁷⁶.
614. *Third*, even if the umbrella clauses could be imported through the MFN clause and allowed the contractual obligations of the LSA to be internationalized and assigned to Honduras, this does not remedy the invalidity of the obligations contained in that instrument. In this sense, regardless of the application and effect of the umbrella clauses, the LSA is invalid and unenforceable against Honduras both under applicable domestic law and under international law¹¹⁷⁷.
615. In short, there are no valid contractual commitments that can be elevated to international obligations, nor contractual commitments whose breach implies a violation of the Treaty.

E. HONDURAS HAS NOT BREACHED ANY ALLEGED OBLIGATIONS ARISING FROM THE CHARTER OF PRÓSPERA ZEDE

616. The Claimants’ last substantive claim consists of a particularly unusual approach in which they argue that Honduras has failed to comply with the Charter of Próspera ZEDE and the instruments by which the CAMP would have authorized the Claimants’ investments¹¹⁷⁸. According to the Claimants, such non-compliance occurred when Honduras “*annulled the*

¹¹⁷⁴ Bilateral Investment Treaty between Honduras and Germany (CLA-0131), art. 8(2) (emphasis added).

¹¹⁷⁵ *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction (June 2, 2010) (RLA-0179-SPA), ¶¶ 216, 233; *Impregilo S.p.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction (22 April 2005) (RLA-0159-ENG), ¶ 223.

¹¹⁷⁶ LSA, p. 1.

¹¹⁷⁷ See Section IV.D.3.

¹¹⁷⁸ Claimants’ Memorial, ¶ 526. Note that, in this section, the Claimants refer to such instruments interchangeably as “*investment authorizations*” and “*investment agreements*”. This confusion demonstrated by the Claimants about the nature of these instruments is probably due to the far-fetched and implausible nature of the argument, in which they fail to identify any specific commitment on the part of Honduras. See Claimants’ Memorial, ¶¶ 527, 530.

legal status of Próspera ZEDE as a ZEDE".¹¹⁷⁹

617. As explained above, neither the Charter of Próspera ZEDE nor the CAMP instruments constitute an investment authorization under the terms of the CAFTA-DR.¹¹⁸⁰ Of course, these are not investment agreements under the terms of the CAFTA-DR, either. Beyond these problems, which are fatal in themselves, the Claimants' claim is based on a series of documents that, even if they were considered authorizations issued by Honduras, would be completely legally ineffective. So much so that they have already been declared irrevocably null and void¹¹⁸¹.
618. As explained above, the Claimants' claim is governed by Honduran law and any applicable rules of international law, in accordance with the rule in the second sentence of Article 42(1) of the ICSID Convention and Article 10.22.2(b) of the CAFTA-DR¹¹⁸². Thus, under international law and Honduran law, these alleged authorizations are null and void.
619. As far as international law is concerned, what was expressed in the previous section regarding the invalidity of the LSA in the face of transnational public policy is fully applicable to the instruments in question¹¹⁸³. These alleged authorizations contravene the

¹¹⁷⁹ Claimants' Memorial, ¶ 529.

¹¹⁸⁰ See Section III.D.

¹¹⁸¹ *Decision of the Supreme Court of Honduras* published in La Gaceta No. 36.698, dated November 25, 2024 (C-0559), p. 58; Decree No. 32-2022, published on April 21, 2022 (C-0057) art. 2; Decree No. 33-2022, published on April 26, 2022 (C-0060), art. 2(3). The Claimants acknowledge that "the Honduran decrees aimed at repealing the ZEDE Legal Framework also provide that any norm of any kind derived from said legal framework is null and void." See Claimants' Memorial, ¶ 320.

¹¹⁸² ICSID Convention (RLA-0009-SPA), art. 42(1) ("In the absence of agreement, the Tribunal shall apply the law of the State party to the dispute, including its rules of private international law, and such rules of international law as may be applicable."); CAFTA-DR (CLA-0002), art. 10.22.2(b).

¹¹⁸³ In a lengthy footnote to their Memorial, the Claimants appear to contend that the law applicable to this claim would be the "Applicable Law" as defined in Section 1.02 of Próspera ZEDE's own Bylaws. See Claimants' Memorial, p. 279, footnote No. 1184; Próspera ZEDE Bylaws (CLA-0005), § 1.02(1). The argument fails twice. First, as explained in Section IV.D.3.a, this is not a valid designation of applicable law within the meaning of Article 42(1) of the ICSID Convention and Article 10.22.2 of the CAFTA-DR, as it is not an internationally recognized "rule of law" or "rule of law". See ICSID Convention (RLA-0009-SPA), art. 42(1); CAFTA-DR (CLA-0002), art. 10.22.2; Masood, A. "Law Applicable in Arbitration of Investment Disputes under the World Bank Convention" in *Indian Law Institute* (1973) (RLA-0128-ENG), pp. 311, 317; Delaume, G.R. "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", *The International Lawyer*, Vol. 1, No. 1 (1967) (RLA-0125-ENG), pp. 64, 77; Kahn, P., "The Law Applicable to Foreign Investments: The Contribution of the World Bank Convention on the Settlement of Investment Disputes", in *Indiana Law Journal*, Vol. 44, No. 1 (1968) (RLA-0126-ENG), pp. 1, 14; HCCH,

most basic and fundamental principles of international law, insofar as their central object is itself an act of violation of Honduras' sovereignty and, at the same time, an authorization obtained through an act of violation of Honduras' sovereignty.

620. As for Honduran law, the instruments on which the Claimants' claim is based, in the event that they are considered acts of the Honduran administration that would have recognized their rights, are also null and void. Specifically, Article 34 of the Honduran Administrative Procedure Law provides that an administrative act will be null and void in multiple cases, and several of them are configured with respect to the alleged authorizations in question.
621. *First*, subsection (a) of Article 34 establishes that administrative acts “*issued by an absolutely incompetent body*”¹¹⁸⁴ will be null and void. However, as previously established, the CAMP was not the competent authority to authorize the establishment of a ZEDE or to declare or recognize any rights to the Claimants¹¹⁸⁵.
622. *Second*, subsection (b) of Article 34 establishes that administrative acts “*whose object is impossible or constitutes a crime*”¹¹⁸⁶ will be null and void. However, as we have seen, any authorization granted within the framework of the ZEDEs violates the Honduran legal system¹¹⁸⁷. So much so that it has already been declared unconstitutional by the Supreme Court of Honduras¹¹⁸⁸.
623. *Third*, subsection (f) of Article 34 establishes that administrative acts “*provided for in Article*

Choice of Law Principles in International Commercial Contracts (2015) (**RLA-0208-SPA**), art. 3. Second, the argument rests on a misreading of its own Bylaws: Section 1.02 is a definitions clause, and the term “Applicable Law” is used throughout the document to refer to “those laws that apply in Próspera” — that is, the rules that would govern the portion of the territory in which the Claimants sought to disregard the sovereignty of Honduras — not to the law applicable to the validity and interpretation of the Statute. See Próspera ZEDE Charter (**CLA-0005**), §§ 1.02, 2.04(14), 3.15(1)(a), 3.16(1), 4.03(9), 4.04, 9.01(3), 12.01(2)(e), 12.01(2)(h).

¹¹⁸⁴ Administrative Procedure Law, 1987 (Decree No. 152-87) (**R-0002-SPA**), s. 34(a); Orellana, E. “The administrative procedure in Honduras” (2013) (**RLA-0199-SPA**), p. 64.

¹¹⁸⁵ See Sections II.B.3; II.B.4; III.D.

¹¹⁸⁶ Administrative Procedure Law, 1987 (Decree No. 152-87) (**R-0002-SPA**), art. 34(b); Orellana, E. “The administrative procedure in Honduras” (2013) (**RLA-0199-SPA**), p. 64.

¹¹⁸⁷ See Section II.C.5.

¹¹⁸⁸ *Decision of the Supreme Court of Honduras* published in La Gaceta No. 36.698, dated November 25, 2024 (**C-0559**), p. 58.

8 of the [General Law of Public Administration]” will be null and void¹¹⁸⁹. In turn, Article 8 of the aforementioned law establishes that the public administration may not, among other things, “recognize, declare or limit the rights of individuals, if they are not attributed such powers by law” or “execute acts that diminish, restrict or distort the rights and guarantees recognized by the Constitution of the Republic”.¹¹⁹⁰

624. In view of the foregoing, it is also clear that the instruments which, according to the Claimants, recognize their rights, are contrary to the provisions of the aforementioned Article 8, inasmuch as the CAMP did not have the power to recognize their rights by law and, in any event, to do so would constitute a diminution, restriction or distortion of the constitutional rights and guarantees relating to sovereignty, territorial integrity, the self-determination of the people, and the democratic system of sanctioning norms¹¹⁹¹.

¹¹⁸⁹ Administrative Procedure Law, 1987 (Decree No. 152-87) (**R-0002-SPA**), art. 34(f); Orellana, E. “The administrative procedure in Honduras” (2013) (**RLA-0199-SPA**), pp. 66-67.

¹¹⁹⁰ General Law on Public Administration (Decree No. 146-86), November 29, 1986 (**R-0067-SPA**), art. 8(3) and 8(4).

¹¹⁹¹ See Sections III.C and II.B.3

V. THE CLAIMANTS ARE NOT ENTITLED TO THE REMEDIES THEY SEEK NOR HAVE THEY PROVED THE ALLEGED DAMAGES THEY CLAIM

625. The Claimants are also not entitled to the remedies they seek nor have they proven the alleged damages they claim to have suffered. In particular, and as Honduras demonstrates in this chapter, (V.A) restitution is inadmissible in this case, both in legal and factual terms; (V.B) the Claimants do not meet the general criteria for monetary compensation; (V.C) BRG's valuation lacks the necessary rigor to sustain any compensation, and even less one of the exorbitant magnitude claimed; and (V.D) the remaining compensation claims, which are ancillary, must also be rejected.

A. RESTITUTION IS INADMISSIBLE IN BOTH LEGAL AND FACTUAL TERMS

626. The Claimants request, in the first place, the full restitution of the rights allegedly conferred on them by the ZEDE Legal Framework. As explained in Section III.E, *supra*, such a claim exceeds the powers of the Tribunal, since Article 10.26(1) of the CAFTA-DR only authorizes the restitution of property, understood as material restitution. But even if the Tribunal were to conclude — *quod non* — that restitution is an available remedy and that the Claimants are, in principle, entitled to reparation, the circumstances of the case still preclude its grant: the restitution sought is both materially impossible and manifestly disproportionate within the meaning of Article 35 of the ILC Articles.

627. *First*, Article 35(a) and (b) of the ILC Articles permits restitution only where it is not “materially impossible” and requires that restitution not “entail a burden wholly disproportionate to the benefit that would accrue from restitution rather than compensation.”¹¹⁹² Both requirements prevent restitution in this case. The ZEDE regime was repealed by Legislative Decrees Nos. 32 and 33, approved by the National Congress of Honduras and with full legal effect confirmed by the Supreme Court of Honduras¹¹⁹³. A

¹¹⁹² Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), art. 35(b).

¹¹⁹³ See Sections II.D.2; II.D.3.

restitution order would require instructing the National Congress to reinstate a specific legislative regime, which exceeds the powers of any arbitral tribunal and is incompatible with the elementary principles of separation of powers and legislative sovereignty.

628. International arbitral jurisprudence has consistently rejected restitution when its implementation requires future action by the legislator or sovereign regulatory bodies¹¹⁹⁴. The clearest formulation is that of *LG&E v. Argentina*, in response to a request for reinstatement of the tariff regulatory framework repealed during the Argentine crisis: the required legal restitution would imply “the modification of the current legal situation through the annulment or enactment of legislative and administrative measures”, something that the tribunal could not impose on the State “without interfering in its sovereignty”; the only alternative was, therefore, quantifying and ordering compensation¹¹⁹⁵.
629. In this regard, in *Occidental v. Ecuador (II)*,¹¹⁹⁶ the tribunal specified that imposing the reinstatement of the investor’s concession “would constitute a disproportionate reparation in the face of its interference with the sovereignty of the State compared to monetary compensation”. In those cases, the conclusion was that monetary compensation was the appropriate remedy. The same applies here: the Claimants themselves estimate that USD 1.63 billion is sufficient monetary compensation to repair their damages, which Honduras categorically rejects, but this figure confirms that monetary reparation is, at the very least, a

¹¹⁹⁴ *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Award (16 May 2018) (**CLA-0155**), ¶¶ 558-563 (“Ordering Respondent to reinstate its pre-breach legislative and regulatory framework would involve a disproportionate burden compared to the benefit it potentially yields to Claimant”—expressly linking the refusal to Article 35(b) of the ILC Articles); *Watkins Holdings S.à r.l. and others v. Kingdom of Spain*, ICSID Case No. ARB/15/44, Award (21 January 2020) (**CLA-0149**), ¶ 674 (“restitution is an inappropriate remedy because the Respondent has a sovereign right to take appropriate legislative and regulatory measures to meet public interests”); *CMS Gas Transmission Company v. Republic of Argentina*, ICSID Case No. ARB/01/8, Award (12 May 2005) (**CLA-0153**), ¶ 406 (“it would be utterly unrealistic for the Tribunal to order to turn back to the regulatory framework existing before the emergency measures were adopted”); *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36, Award (4 May 2017) (**RLA-0229-ENG**), ¶ 425.

¹¹⁹⁵ *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Republic of Argentina*, ICSID Case No. ARB/02/1, Award (July 25, 2007) (**RLA-0167-ENG**), ¶¶ 79-91.

¹¹⁹⁶ *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Award (October 5, 2012) (**RLA-0195-ENG**), ¶ 696.

sufficient substitute for any form of restitution. There is no additional benefit derivable from restitution that justifies the sovereign burden that it would impose.

630. *Second*, the Claimants also request restitution “in the event that such means of reparation is still viable on the date of the award”, conditioning their request on a future and uncertain circumstance¹¹⁹⁷. This type of conditional remedy is not recognized in international arbitral practice. Arbitral awards must be final, certain, and enforceable at the time they are issued¹¹⁹⁸.

631. The most relevant authority is again *LG&E v. Argentina*¹¹⁹⁹. In that case, the claimants proposed that the tribunal “invite” Argentina to formally commit to restoring the tariff regime, leaving the structure of the award pending that future sovereign response¹²⁰⁰. The tribunal rejected this formulation and refused to structure the award in terms of a possible future response from the State.¹²⁰¹

632. In short, the Claimants’ request for restitution fails at all levels.

B. THE CLAIMANTS ALSO DO NOT MEET THE GENERAL CRITERIA REQUIRED TO ORDER MONETARY COMPENSATION

633. The Claimants contend that Honduras’ various measures caused them damages that amount to USD 1.63 billion¹²⁰² plus USD 1 million for moral damages¹²⁰³ and post-award interest compounded at SOFR +4%¹²⁰⁴; tax-free¹²⁰⁵. The extraordinary magnitude of the claim contrasts with an investment that never reached the operational stage, whose execution

¹¹⁹⁷ Claimants’ Memorial, ¶ 542.

¹¹⁹⁸ ICSID Convention, Rules and Regulations (April 2006) (RLA-0009-SPA), arts. 48(3), 53(1) and 54(1); Arbitration Rule 47.

¹¹⁹⁹ *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Republic of Argentina*, ICSID Case No. ARB/02/1, Award (July 25, 2007) (RLA-0167-ENG), ¶¶ 79-91.

¹²⁰⁰ *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Award (July 25, 2007) (RLA-0167-ENG), ¶¶ 79-87.

¹²⁰¹ *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Award (July 25, 2007) (RLA-0167-ENG), ¶¶ 79-87.

¹²⁰² Claimants’ Memorial, ¶ 603(d), § V.C.

¹²⁰³ Claimants’ Memorial, ¶ 603(e), § V.D.

¹²⁰⁴ Claimants’ Memorial, ¶ 603(g), § V.F.

¹²⁰⁵ Claimants’ Memorial, § V.E.

depended on multiple contingencies, and whose alleged value rests almost exclusively on private projections of the Claimants themselves.

634. In view of the foregoing, Honduras will demonstrate in this section that **(B.1)** the Claimants have failed to correctly apply the principles of full reparation and apply it incorrectly; **(B.2)** that they have not proven any compensable damage, nor **(B.3)** the causal link between the measures and the damages claimed

1. The Claimants adopt a partial interpretation of the full reparation standard and apply it incorrectly

635. The Claimants invoke full reparation to try to justify the totality of the *quantum* claimed¹²⁰⁶, but omit that the principle operates within the limits of the Treaty. Article 10.22 of the CAFTA-DR provides that the Tribunal “shall decide the matters in dispute in accordance with this Treaty and the applicable rules of international law.”¹²⁰⁷ Article 10.7 contains specific rules on compensation for expropriation¹²⁰⁸. Article 10.7.4 expressly regulates the way in which this value must be calculated¹²⁰⁹. The existence of these provisions confirms that the Contracting Parties recognized that certain violations have their own rules.
636. The Claimants invoke Article 10.7.2 to demand their compensation for expropriation¹²¹⁰, but in quantifying it they abandon the Treaty’s framework and maintain that the calculation of damages is the same for all violations of the CAFTA-DR.¹²¹¹ This is a central flaw. A possible expropriation violation, a possible violation of the minimum standard of treatment or a possible violation of the LSA do not necessarily produce the same economic consequences. Investment tribunals have distinguished between damages arising from

¹²⁰⁶ Claimants’ Memorial, ¶¶ 33, 426, 533, 538, 544, 553, 568, 569, 597.

¹²⁰⁷ CAFTA-DR (CLA-0002) art. 10.22.

¹²⁰⁸ CAFTA-DR (CLA-0002) art. 10.7.2.

¹²⁰⁹ CAFTA-DR (CLA-0002) art. 10.7.4.

¹²¹⁰ Claimants’ Memorial, ¶ 471.

¹²¹¹ Claimants’ Memorial, ¶ 551.

expropriations and other violations, adjusting compensation to the nature of the breach¹²¹². The Claimants, on the other hand, assign the same *quantum* to legally different claims, without proving that they cause the same damage¹²¹³.

637. Accordingly, even if the Tribunal were to conclude that Honduras committed a violation, before quantifying their damages, the Claimants would have to demonstrate what harm results from each violation, what the applicable standard of relief is, and what portion of the harm is attributable to that conduct (and to which Claimant¹²¹⁴).

2. The Claimants have not proved that they have suffered actual damage, which is certain and not merely speculative

a. Speculative or conjectural damages are not compensable under international law

638. Honduras agrees that international law requires full reparation for the damage caused by an internationally wrongful act¹²¹⁵. However, full reparation presupposes certain and proven damage and does not permit damage to be assumed so as to proceed directly to its quantification, as the Claimants do. In that sense, and as explained by tribunals such as those in *Amoco v. Iran*¹²¹⁶ and *BG Group v. Argentina*,¹²¹⁷ the loss cannot be hypothetical or speculative.

639. As demonstrated *infra*, far from suffering a loss, the Claimants have realized a gain.

b. The alleged damage to the Claimants' assets is uncertain, contingent or merely speculative

640. The Claimants structure their claim based on two categories of assets. First, tangible assets,

¹²¹² See, e.g. *Marvin Feldman v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award (December 16, 2002) (RLA-0149-ENG), ¶ 194; *Azurix Corp. v. Republic of Argentina*, ICSID Case No. ARB/01/12, Award (July 14, 2006) (RLA-0161-ENG), ¶ 424; *Enron Creditors Recovery Corporation and Ponderosa Assets, L.P. v. Republic of Argentina*, ICSID Case No. ARB/01/3, Award (May 22, 2007) (CLA-0156), ¶ 363.

¹²¹³ Claimants' Memorial, ¶ 603(a). This is particularly problematic because its own expropriation claim is conditional, which precludes the assumption that its economic effects are identical to those of the other alleged violations.

¹²¹⁴ See Section V.B.2.c.

¹²¹⁵ Claimants' Memorial, ¶ 533.

¹²¹⁶ *Amoco International Finance Corporation v. Iran*, IUSCT Case No. 56, Partial Award (July 14, 1987) (RLA-0134-ENG), ¶ 238.

¹²¹⁷ *BG Group Plc. v. Republic of Argentina*, UNCITRAL, Award (24 December 2007) (CLA-0186), ¶ 428.

which BRG defines as “capital investments required for the physical development of land and infrastructure to support the settlement of ZEDE residents and business owners”.¹²¹⁸ Second, intangible assets, which they define as “the rights and authorizations granted under the ZEDE legal framework”.¹²¹⁹

641. With respect to tangible assets, the Claimants’ own evidence acknowledges that they have not lost the value of their physical investment. Their unaudited financial statements¹²²⁰ and BRG’s actual scenario¹²²¹, even assuming that they reflect the real value of such assets (*quod non*),¹²²² show that the land, buildings, and improvements retain a value of more than USD 63.7 million. This is incompatible with a total or substantial loss of physical assets.
642. The flaws run even deeper with respect to the alleged intangible assets. As BRG acknowledges, at the time of the repeal of the ZEDE regime in April 2022, Próspera was an early-stage project¹²²³. Honduras’ expert, Quadrant, identified that, at that time, the Claimants had only invested approximately USD 18 million and had committed to purchase Pristine Bay, while the financial arrangements, construction costs, and land purchases of the project occurred afterwards¹²²⁴.
643. In addition, what the Claimants call “intangible assets” is, in reality, a series of future business expectations whose materialization depended on an extraordinarily extensive chain of uncertain events, most of them completely unrelated to the conduct of Honduras, in addition to the permanence of the ZEDE regime for decades, such as: the attraction of thousands of residents and investors, the development of additional infrastructure, the

¹²¹⁸ BRG-I, ¶ 73.

¹²¹⁹ BRG-I, ¶ 66.

¹²²⁰ BRG-I, ¶ 223(c) citing 2022-2023 Unaudited Consolidated Financial Statements, Honduras Próspera Inc., p. 5 (BRG-0008); 2023-2024 Unaudited Consolidated Financial Statements, Honduras Próspera Inc., pp. 5-6 (BRG-0009); Q1 2025 Unaudited Consolidated Financial Statements, Honduras Próspera Inc., pp. 5-6 (BRG-0010).

¹²²¹ BRG-I, ¶ 224 and Table 15; BRG Damage Model, “Tables” tab (BRG-0003).

¹²²² With the same inputs, Quadrant quantifies this value at US\$ 354.3 million. Q1 2025 Unaudited Consolidated Financial Statements, Honduras Próspera Inc., pp. 5-6 (BRG-0010); Quadrant-I, ¶ 52.

¹²²³ BRG-I, ¶¶ 15, 179.

¹²²⁴ Quadrant-I, ¶ 52.

consolidation of private regulatory and administrative services, and the creation of economic activity capable of sustaining own models' projections¹²²⁵. None of these milestones had occurred at the time of the alleged violations, nor was there any certainty that they would occur; in fact, Quadrant shows that they were highly speculative. Aware of this difficulty, BRG maintains that it reduces the speculative nature of its calculation by using a model that weighs success and failure scenarios¹²²⁶. But applying probabilities to an uncertain expectation does not render a certain loss¹²²⁷.

644. Consequently, the Claimants have failed to demonstrate an actual, certain, and non-speculative damage.

c. The individual claims of each Claimant must be examined and rejected separately

645. The Claimants are three distinct entities (HPI, SJBDC, and PAC), and they submitted their claims to this arbitration as such¹²²⁸. As a matter of principle, the existence of damage, causation, and quantification of compensation must be analyzed for each claimant. International law does not presume that a loss allegedly suffered by one entity belonging to a corporate group is automatically transferable to others¹²²⁹. Each Claimant bears the burden of proving the harm it claims to have suffered.
646. Neither the Memorial on the Merits nor BRG's report clearly explain the corporate structure linking the three Claimants, the ownership of the affected assets, the distribution of the group's economic rights or the methodology for allocating losses to each entity¹²³⁰. That absence makes it impossible to verify whether the damages claimed actually correspond to the claimant who invokes them and serve to compensate for a specific loss actually suffered

¹²²⁵ Quadrant-I, ¶¶ 9, 81-110.

¹²²⁶ BRG-I, ¶ 181.

¹²²⁷ Quadrant-I, ¶ 57.

¹²²⁸ Request for Arbitration, ¶ 1.

¹²²⁹ *Gemplus S.A. et al. v. United Mexican States*, ICSID Cases Nos. ARB (AF)/04/3 and ARB (AF)/04/4, Award (June 16, 2010) (RLA-0180-ENG), ¶¶ 12-56.

¹²³⁰ BRG-I, ¶ 226 and footnote 196.

by it or whether there is a risk of double counting, overlapping, or incorrect attribution¹²³¹.

3. The Claimants have failed to prove the existence of the requisite causal link between the alleged violations and the damages claimed

647. Even if they had established certain loss (*quod non*), the Claimants' claim would fail for an additional and independent reason: the absence of the causal link required by international law. **The Memorial on the Merits omits any analysis in this regard**, implicitly assuming that any difference between the *but-for* scenario and the actual one is attributable to the conduct of Honduras. Causality is not presumed; it must be proven.

a. International law requires Claimants to establish a sufficient causal link

648. It is a fundamental principle of international law that a State is liable only for the damage caused by its internationally wrongful act, as recognized in Article 31(2) of the ILC Articles¹²³² and confirmed by doctrine and investment tribunals¹²³³.

649. Causality comprises two complementary dimensions: factual causality and legal causality¹²³⁴. Both must be accredited for compensation to be appropriate. The commentary on Article 31 of the ILC Articles explains this distinction¹²³⁵.

¹²³¹ The situation of PAC illustrates the problem. The Claimants themselves acknowledge that this entity is not seeking monetary compensation, but restitution and declarations of alleged violations of the Treaty and of the LSA. If PAC does not claim compensable economic damage, it is difficult to see on what basis it could participate in a distribution of the *quantum* claimed by the other Claimants. This reveals the lack of clarity in the overall presentation of damages and requires a particularly rigorous examination of the attribution of losses. Memorandum of Claim, footnote No. 1332. Given this omission and that of other relevant details related to the corporate structure of the Claimants, Honduras reserves the right to request the corresponding documentation at the stage of documentary discovery, as well as to develop its arguments of conformity.

¹²³² This aligns with the *dictum* in the *Chorzów Factory* case, which states that the objective of reparation is “[to] wipe out all the **consequences** of the illegal act [...]” without exceeding its direct effects, *Chorzów Factory*, Merits, PCIJ, Serie A, No. 17 (September 13, 1928) (CLA-0218), p. 47; International Law Commission. Articles on Responsibility of States for Internationally Wrongful Acts (CLA-00216), art. 31(2) (emphasis added).

¹²³³ See, e.g. Ripinsky, S & K. Williams, K. “Damages In International Investment Law”, British Institute of International and Comparative Law (2008) (RLA-0171-ENG), p. 135; *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008) (CLA-0068), ¶¶ 803-806; *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/05, Award (November 21, 2007) (RLA-0170-ENG), ¶ 282.

¹²³⁴ Ripinsky, S & K. Williams, K. “Damages in International Investment Law”, British Institute of International and Comparative Law (2008) (RLA-0171-ENG), p. 135.

¹²³⁵ Articles of the International Law Commission. Articles on Responsibility of States for Internationally Wrongful Acts (CLA-0216), art. 31, Commentary 10 (“[C]ausality in fact is a necessary but not a sufficient condition for reparation. There is a further element, associated with the exclusion of injury that is too “remote”

650. Factual causality is usually expressed through a *but-for* analysis, which examines whether the damage would have occurred in the absence of the wrongful act¹²³⁶. But even a basic causal connection is not sufficient to legally attribute the damage to the State¹²³⁷. Legal causation requires further examination as to whether the challenged conduct is **a sufficiently proximate, adequate, direct or foreseeable cause** of the loss¹²³⁸. Its purpose is to limit state liability to consequences reasonably attributable to the wrongful conduct and to exclude remote or indirect damage¹²³⁹.
651. It follows that a State is not liable for damage whose proximate cause lies in factors other than its conduct¹²⁴⁰. The jurisprudence recognizes that the victim's own conduct—including business decisions—, market conditions, risks inherent in the business or events attributable to third parties, may constitute concurrent or intervening causes capable of breaking the causal link or making the connection between the challenged measures and the damage too remote¹²⁴¹.

or “consequential” to be the subject of reparation. In some cases, the criterion of “directness” may be used, in others “foreseeability” or “proximity.” [...] The notion of a sufficient causal link which is not too remote is embodied in the general requirement in article 31 that the injury should be in consequence of the wrongful act.”).

¹²³⁶ Ripinsky, S, & K. Williams, K. “Damages in International Investment Law”, British Institute of International and Comparative Law (2008) (**RLA-0171-ENG**), p. 135.

¹²³⁷ *Westwater Resources Inc. v. Republic of Turkey*, ICSID Case No. ARB/18/46, Award (March 3, 2023) (**RLA-0276-ENG**), ¶¶ 323-324.

¹²³⁸ *AMCO Asia Corporation et al. v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award (20 November 1984) (**CLA-0239**), ¶ 268; *Elliott Associates, L.P. v. Republic of Korea* (**Elliott v. Korea, Award**) PCA Case No. 2018-51, Award (June 20, 2023) (**RLA-0280-ENG**), ¶ 815.

¹²³⁹ *Elliott v. Korea*, Award (**RLA-0280-ENG**), ¶ 815.

¹²⁴⁰ In *Ronald S. Lauder v. Czech Republic*, for example, the Czech Republic was found to have breached its obligation to refrain from arbitrary and discriminatory conduct, but, in considering whether the breach resulted in damages being paid to the claimant, the tribunal noted that “[e]ven if the breach therefore constitute[d] one of several ‘sine qua non’ acts, this alone is not sufficient. In order to come to a finding of a compensable damage it is also necessary that there existed no intervening cause for the damage.” Thus, the tribunal concluded that the claimant had not met this threshold because the subsequent acts of a third party were “the real cause for the damage which apparently ha[d] been inflicted,” so the violation was “too remote to qualify as a relevant cause for the harm caused.” *Ronald S. Lauder v. Czech Republic*, UNCITRAL, Award (3 September 2001) (**RLA-0143-ENG**), ¶¶ 234-235. See also *Glamis Gold v. USA*, Award (**RLA-0175-ENG**), ¶ 357.

¹²⁴¹ *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (March 28, 2011) (**CLA-0225**), ¶ 163. The plaintiff's conduct that caused the alleged harm can also be addressed through the doctrine of contributory fault. See Marcoux, J.M. & Bjorklund, A.K. “Foreign Investors' Responsibilities And Contributory Fault in Investment Arbitration”, *The International and Comparative Law Quarterly* 4 (2020) (**RLA-0251-ENG**), p. 878; *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award (May 25, 2004) (**RLA-0154-ENG**), ¶ 242.

b. The Claimants have failed to prove the causal link between Honduras' measures and the alleged damages they claim

652. The Claimants have not developed a causation analysis or demonstrated how each measure produced each claimed loss¹²⁴². This prevents Honduras from fully exercising its defense with respect to causation. Notwithstanding this, there are clear indications that the Claimants will not be able to meet their burden, which are summarized below¹²⁴³.
653. *First*, the Claimants have failed to demonstrate factual causation with respect to their main claim: the alleged loss of the “intangible assets”. Such an analysis requires demonstrating that, absent the measures, the projected economic result would have materialized “in all likelihood,” as the BRG itself acknowledges¹²⁴⁴. The Claimants do not meet that burden.
654. BRG’s but-for *scenario* assumes that an early-stage project in April 2022 would have evolved, over the following decades, in accordance with the projections of the models developed by the Claimants themselves. But these projections contemplate extraordinary levels of population growth, real estate development, economic activity and income that were never independently and contemporaneously validated and that, at the time of the measures, were far from materializing¹²⁴⁵.
655. *Second*, the Claimants have also failed to demonstrate causation with respect to the tangible assets. As explained, the land, buildings, and other physical assets remain in their possession and retain a significant value of USD 354.3 million¹²⁴⁶. In fact, BRG’s own actual scenario, which is substantially underestimated, recognizes a value in excess of at least USD 63.7

¹²⁴² See, e.g., *B32-Croatian Courier Coöperatief U.A. v. Republic of Croatia*, ICSID Case No. ARB/15/5, Award (5 April 2019) (RLA-0246-ENG), ¶¶ 1118, 1121; *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008) (CLA-0068), ¶ 807; *Ronald S. Lauder v. Czech Republic*, UNCITRAL, Award (3 September 2001) (RLA-0143-ENG), ¶ 235.

¹²⁴³ Given the lack of articulation of the Claimants' position on causation, Honduras reserves the right to expand or modify its own arguments as necessary, including under the concept of contributory fault.

¹²⁴⁴ BRG-I, ¶ 173; *Nachingwea U.K. Ltd. et al. v. United Republic of Tanzania*, ICSID Case No. ARB/20/38, Award (14 July 2023) (CLA-0196), ¶ 371.

¹²⁴⁵ Quadrant-I, ¶¶ 81-110.

¹²⁴⁶ See Section V.B.2

million¹²⁴⁷. There is no evidence that the measures produced an identifiable decrease in value and, without proven loss, there can be no causal link.

656. In conclusion, the Claimants have failed to demonstrate that the measures are the factual and legal cause of the damages claimed.

c. The Claimants' business decisions interrupt or weaken the alleged causal chain

657. As explained in Section II.A *supra*, Honduras had a well-known history of failed attempts to implement comparable special regimes¹²⁴⁸. Próspera was conceived as a fully developed, unprecedented institutional innovation¹²⁴⁹. As Quadrant concludes, Próspera ZEDE's business model had not been tested as of the date of the measures.¹²⁵⁰ The Claimants therefore decided to invest in a model whose legal, political, and economic viability depended on uncertain and long-term factors¹²⁵¹.
658. The Claimants allege that they maintained operations after the measures to mitigate their damages,¹²⁵² but continuing to develop assets after the repeal of the ZEDE regime does not constitute mitigation, but a conscious decision to act contrary to domestic law. The completion of the Circular Factory (2023) and the Duna Tower (2024) after the repeal of the ZEDE regime are illustrative examples.¹²⁵³
659. International law recognizes that the conscious assumption of risks may affect causation and limit reparation, as reflected in Article 39 of the ILC Articles.¹²⁵⁴ Jurisprudence has consistently applied this principle, as demonstrated in *BAT v. Chile*¹²⁵⁵, *Occidental v.*

¹²⁴⁷ BRG-I, ¶ 224.

¹²⁴⁸ See Section II.A

¹²⁴⁹ See Section II.A

¹²⁵⁰ Quadrant-I, ¶ 11.

¹²⁵¹ Claimants' Memorial, § II.C.6.

¹²⁵² Claimants' Memorial, ¶ 325.

¹²⁵³ BRG-I, ¶ 82.

¹²⁵⁴ Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (CLA-0216), art. 39.

¹²⁵⁵ *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award (May 25, 2004) (RLA-0154-ENG), ¶ 243.

*Ecuador*¹²⁵⁶, *Yukos v. Russia*,¹²⁵⁷ and *Copper Mesa v. Ecuador*¹²⁵⁸.

660. Accordingly, even if the Tribunal were to conclude that liability exists, any causation analysis must account for the fact that the Claimants made business decisions that disrupted the causal link or at least contributed to the damage claimed. Therefore, any damage analysis must exclude investments made after April 2022.

C. BRG’S VALUATION LACKS THE RIGOR NECESSARY TO SUPPORT ANY COMPENSATION

661. It is well established that, pursuant to *onus probandi*, the burden of proving the amount of compensation rests with the claimant¹²⁵⁹, who must do so with “reasonable certainty”.¹²⁶⁰ The Claimants seek to justify the speculation that infects their claim by maintaining that international law does not require a precise calculation¹²⁶¹. While international law allows for some leeway, it does not relieve the claiming party of proving the *quantum* of the damages claimed with reasonable certainty.
662. As set forth below, the Claimants’ valuation does not meet this standard because (C.1) the Valuation Date is inadequate and only seeks to artificially increase the amount claimed; (C.2) the only appropriate methodology for valuing the Claimants’ damages in this case would be sunk costs; and (C.3) BRG’s DCF is not viable.

1. The Claimants’ chosen Valuation Date is an attempt to artificially increase the compensation sought

663. The Claimants set September 30, 2025 as the Valuation Date, more than three years after the

¹²⁵⁶ *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Award (October 5, 2012) (RLA-0195-ENG), ¶ 687.

¹²⁵⁷ *Yukos Universal Limited (Isle of Man) Ltd. v. Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Award (18 July 2014) (CLA-0235), ¶ 1637.

¹²⁵⁸ *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award (March 15, 2016) (RLA-0216-ENG), ¶ 7.30-7.32.

¹²⁵⁹ See, e.g. *Perenco Ecuador Ltd v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Award (September 27, 2019) (RLA-0248-ENG), ¶ 74; *Gemplus S.A. et al. v. United Mexican States*, ICSID Cases Nos. ARB (AF)/04/3 and ARB (AF)/04/4, Award (June 16, 2010) (RLA-0180-ENG), ¶ 12-56; *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (13 November 2000) (RLA-0140-ENG), ¶ 173.

¹²⁶⁰ *Mobil v. Canada*, Liability Decision (RLA-0234-ENG), ¶¶ 437-439; See also *Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award (27 June 1990) (RLA-0136-ENG), ¶ 104.

¹²⁶¹ Claimants’ Memorial, ¶ 537.

measures they consider unlawful (April 2022),¹²⁶² to artificially maximize the *quantum* claimed. This must be rejected for the following reasons.

664. *First*, it contradicts the CAFTA-DR, which requires that compensation be determined by reference to the value of the investment immediately prior to the measures¹²⁶³. The cases cited by the Claimants, concerning the “right to choose” the most convenient date for the amount of their claim¹²⁶⁴, reflect a minority position based on substantially different circumstances¹²⁶⁵ and derived from the principle of *nullus commodum capere de sua injuria propria*, which prevents the Respondent from benefiting from its own violation¹²⁶⁶. Honduras, on the other hand, never took possession of Próspera ZEDE nor did it receive the alleged increase in value that the Claimants seek to capture at a later date. When the investment remains in the hands of the investor, the reparation is achieved with a valuation referring to the relevant moment, without transferring to the State the risks of the subsequent evolution of the investment.
665. *Second*, a date after the challenged measures does not necessarily reduce speculation in a valuation; it may increase it, as is the case here, where BRG applies a probabilistic DCF methodology¹²⁶⁷. This observation is particularly relevant in this case because, as explained in Section V.C.2.b *infra*, BRG seeks to value the alleged damages through the DCF method,

¹²⁶² Claimants’ Memorial, ¶ 553.

¹²⁶³ CAFTA-DR (CLA-0002), art. 10.7.4.

¹²⁶⁴ Claimants’ Memorial, ¶ 553.

¹²⁶⁵ They cite, without analysis, *Yukos*, *Eurus*, *Siemens*, *von Pezold* and *AES*. As an example, *Eurus* was referring to a renewable energy facility in operation. The tribunal adopted the date of the award for valuation because the breaches occurred over several years and the damage evolved over time, so it was not catchable with the date of the first breach. *Eurus Energy Holdings Corporation v. Kingdom of Spain*, ICSID Case No. ARB/16/4, Award (November 14, 2022) (CLA-0236), ¶¶ 105-117. In *Yukos*, the measures fell on a group that had been generating income for years and the tribunal found that the date of the award was justified because the assets had appreciated after the measures and were since then under state control. *Yukos Universal Limited (Isle of Man) Ltd. v. Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Award (18 July 2014) (CLA-0235), ¶ 1763.

¹²⁶⁶ See *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award (October 2, 2006) (CLA-0217), ¶ 496. See also the dissenting opinion of Brigitte Stern in *Quiborax*, which described this approach as an “ultra-minority view” in international arbitration (*Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Dissenting and Partially Concurrent Opinion of Brigitte Stern of the Award (September 16, 2015) (RLA-0212-ENG), p. 44).

¹²⁶⁷ Quadrant-I, ¶ 73.

which is inappropriate in this case, where the only correct approach is sunk costs. In the absence of a going concern with verifiable cash flows, an *ex-post* valuation exaggerates the loss of profits, which tends to be “excessively speculative,” as the *Siemens* tribunal recognized.¹²⁶⁸

666. *Third*, the problem is particularly acute in a pre-operational investment, as is the case with the Claimants. Unlike a going concern with verifiable historical flows, Próspera ZEDE had not demonstrated the viability of its model at the time of the measures. Using a Valuation Date more than three years later attempts to transform an unproven business model and uncertain projections into seemingly historical data and employ *ex-post* information to bolster assumptions that were still highly speculative at the time of the alleged violations in April 2022.
667. Of course, the Claimants’ decision to choose the most convenient date is not random¹²⁶⁹. As Quadrant explains, if BRG were to adopt an *ex-ante* valuation, as the Republic maintains should be the case, and without modifying any of its model’s other assumptions, the valuation would decrease by USD 275 million if their cost of equity—as calculated by BRG—were used as the interest rate, and by USD 547 million if a short-term risk-free rate, such as the one referred to in the Treaty¹²⁷⁰, were used. This alone highlights the real reason behind the Claimants’ decision.
668. *Fourth*, the *ex-post* methodology improperly incorporates post-measure developments and investments, when regulatory risk had already materialized. As explained, this seeks to improperly shift the cost of the Claimants’ business decisions to Honduras¹²⁷¹.

¹²⁶⁸ See *Siemens A.G. v. Republic of Argentina*, ICSID Case No. ARB/02/8, Award (February 6, 2007) (**RLA-0310-ENG**), ¶¶ 379-385; and *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Award (September 27, 2019) (**RLA-0248-ENG**), ¶ 116. In *Perenco*, the tribunal refused to apply an *ex-post* approach because commodity prices were too volatile and future changes too unpredictable. This is consistent with the unpredictability of a model that had never been tested and that had high risks, in addition to being contingent on different circumstances.

¹²⁶⁹ Claimants’ Memorial, ¶ 553.

¹²⁷⁰ Quadrant-I, ¶ 73.

¹²⁷¹ See Section V.B.3

2. The only appropriate methodology for assessing the Claimants' alleged damages is sunk costs

669. The Claimants and BRG assess the alleged damage by means of a DCF. As discussed below, (2.a) the only correct approach under the circumstances of this case is sunk costs; (2.b) the DCF methodology **does not** apply in the case of a pre-operational company with no revenue history, such as Próspera ZEDE; and, (2.c) even if the Tribunal were to ignore this and decide to apply the criteria erroneously proposed by the Claimants for a DCF in a pre-operational business, these criteria are not satisfied either.

a. The correct sunk cost approach demonstrates that the Claimants in fact benefitted from their investment

670. To value a pre-operational project such as Próspera ZEDE, the sunk cost method offers a verifiable and non-speculative measure of the eventual damage, since it quantifies the amounts effectively invested minus what has been recovered or is recoverable¹²⁷². Unlike BRG's exercise based on the DCF, sunk costs do not depend on speculative projections of future flows, but on verifiable historical information, and both doctrine¹²⁷³ and jurisprudence have recognized it as an appropriate method for pre-operational projects¹²⁷⁴.

671. Applied here, the exercise demonstrates that the Claimants did not incur any sunk costs. On the contrary, the recoverable amounts exceed those actually invested, such that they perceived a gain, not a loss¹²⁷⁵.

672. BRG quantifies the Claimants' total nominal investment at USD 168.3 million, based on the capital contributions reported in their financial statements as of March 31, 2025¹²⁷⁶. From this, both the amounts already recovered and those still recoverable through sale, liquidation

¹²⁷² Quadrant-I, ¶¶ 62-63.

¹²⁷³ Quadrant-I, ¶¶ 60-61.

¹²⁷⁴ *Latin American Regional Aviation Holding S. de R.L. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/19/16, Award (February 13, 2024) (RLA-0282-SPA), ¶¶ 1169-1174; *South American Silver Limited v. Bolivia*, CPA Case No. 2013-15, Award (November 22, 2018) (RLA-0237-ENG), ¶ 859.

¹²⁷⁵ Quadrant-I, ¶¶ 64, 70.

¹²⁷⁶ Quadrant-I, ¶ 65, based on the quantification of BRGs as of March 31, 2025.

or continued use of the assets must be deducted¹²⁷⁷. Using the adjusted book value of net assets, which BRG itself uses and recognizes as “carried at fair market value”, the recoverable value amounts to USD 354.3 million as of March 31, 2025¹²⁷⁸. Thus, the required calculation consists of: (i) invested amounts of USD 168.3 million, minus (ii) recoverable amounts of USD 354.3 million, which yields (iii) **a profit of USD 186 million**¹²⁷⁹.

b. The DCF methodology does not appropriate for a pre-operational company with no revenue history

673. It is essential to remember that both the Claimants and BRG admit that Próspera ZEDE was an “at an early stage” project at the time of the measures¹²⁸⁰. The central question for the purposes of damages, therefore, is whether a company at that stage can be valued by means of a DCF without incurring undue speculation. The answer is no.
674. The World Bank Guidelines recommend a DCF only for a “going concern with a proven record of profitability”.¹²⁸¹ The authorities cited by the Claimants confirm as much¹²⁸².
675. Indeed, in *Metalclad v. Mexico*, the tribunal observed that “where a company has not been in business long enough to establish its performance or has not produced profits, future earnings cannot be used to determine current value or fair market value.”¹²⁸³ And in *Gemplus v. Mexico*, a DCF was rejected because the investment did not operate as a going concern and “had therefore no significant or reliable track-record as a business”.¹²⁸⁴
676. As Quadrant demonstrates in its report, the circumstances of this case prove that the use of

¹²⁷⁷ Quadrant-I, ¶ 66.

¹²⁷⁸ Quadrant-I, ¶ 66.

¹²⁷⁹ Quadrant-I, ¶ 67 and Figure 3.

¹²⁸⁰ Claimants’ Memorial, ¶ 559.

¹²⁸¹ World Bank Group. “*Legal framework for the treatment of foreign investment: Vol. II. Report to the Development Committee and guidelines on the treatment of foreign direct investment*” (1992) (RLA-0138-ENG), pp. 26-27, 42.

¹²⁸² Claimants’ Memorial, ¶ 556 and footnote No. 1241.

¹²⁸³ *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (August 30, 2000) (CLA-0171), ¶ 120.

¹²⁸⁴ *Gemplus S.A. et al. v. United Mexican States*, ICSID Cases Nos. ARB (AF)/04/3 and ARB (AF)/04/4, Award (June 16, 2010) (RLA-0180-ENG), ¶¶ 13.70-13.72.

a DCF would be inappropriate¹²⁸⁵. Aware that their project is at an early stage and the difficulty of justifying the DCF, the Claimants argue that “DCF is considered an accepted method of valuation for early-stage investments” provided that, in the absence of the breaches, the “project would have gone forward and become operational and profitable in due course”¹²⁸⁶.

677. The Claimants seek to overcome this impediment to their choice of DCF by relying on *Tethyan* and *CC/Devas*¹²⁸⁷. Both cases are clearly different from the present one.¹²⁸⁸

c. Even applying the criteria wrongly proposed by the Claimants, a DCF in this case remains unjustified

678. Based on a single paragraph of the *Rusoro* case, the Claimants seek to persuade the Tribunal that a DCF could be appropriate for a pre-operational project as long as **a significant part** of six criteria¹²⁸⁹ are met: existing operations (1), reliable projections of future flows (2), prices determinable with reasonable certainty (3), secured financing (4), a reliable discount rate (5) and low regulatory pressure (6). Honduras demonstrates that none of these criteria is satisfied in this case.

679. *First*, the Claimants contend that, by April 2022, Próspera ZEDE already had “active

¹²⁸⁵ Quadrant-I, ¶¶ 56-57.

¹²⁸⁶ Claimants’ Memorial, ¶ 557.

¹²⁸⁷ Claimants’ Memorial, ¶ 557 and footnotes Nos. 1244-1245. The Claimants also cite the Rockhopper and Hydro cases in footnote 1242, but do not provide any analysis of those decisions.

¹²⁸⁸ *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Award (12 July 2019) (CLA-0242), ¶¶ 332, 1224. Unlike Próspera ZEDE, that case involved a project that at least had a feasibility study and that operated in a developed and consolidated industry, with well-established markets, principles and practices. The tribunal found relevant the evidence that the Balochistan authorities contemplated mining activities that were in direct competition with the claimant’s project. *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited and Telcom Devas Mauritius Limited v. Republic of India (I)*, PCA Case No. 2013-09, Quantum Award (October 13, 2020) (CLA-0243), ¶ 539 (awarding \$740 million in damages). For its part, in *CC/Devas* the tribunal identified exceptional factors that, in its opinion, justified the use of the DCF despite the non-operational nature of the project: (i) the “Darwin Model” of 2009, which it described as an unusually reliable source, superior to the DCF of companies without revenue; (ii) the investment of about US\$ 75 million by Deutsche Telekom, a sophisticated strategic investor, which used a DCF methodology to invest; (iii) that Devas had already secured contractual rights, licenses, and exclusive access to essential resources; and (iv) an explosive demand demonstrated by the services offered. In this case, there are no compatible circumstances under any of the above criteria. Quadrant-I, ¶¶ 13-25.

¹²⁸⁹ Claimants’ Memorial, ¶ 556; *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (August 22, 2016) (CLA-0123), ¶ 759.

operations, ongoing real estate projections, and developed urban infrastructure [...]”¹²⁹⁰. But a few paragraphs later they acknowledge that “BRG’s valuation approach assumes that Claimants’ investment is at an early stage”¹²⁹¹; in line with BRG’s repeated admissions in this same sense¹²⁹². The contradiction is palpable: either Próspera ZEDE was a consolidated business with long-term projections, or an early-stage project whose value depended on future expectations. The record confirms the latter.¹²⁹³

680. *Second*, the Claimants maintain that they have “reliable projections of future cash flows” in a business plan prepared *in tempore insuspecto*¹²⁹⁴. That claim does withstand scrutiny. According to *Rusoro*, to be “reliable,” projections must integrate a “*detailed*” business plan and be “*verified by an impartial expert*”¹²⁹⁵. Neither condition is met here. As explained in Section V.3.a. *infra*, the source documents were prepared by the Claimants themselves and were not validated by third parties or their expert in this arbitration.¹²⁹⁶ These are early-stage planning documents that do not include contractor proposals¹²⁹⁷, unlike a feasibility study in mining projects. That these documents were produced before the measures does not demonstrate that their projections were realistic or reliable—rather, they were not¹²⁹⁸. In addition, the forecasted cash flows were not audited contemporaneously by an expert and

¹²⁹⁰ Claimants’ Memorial, ¶ 559.

¹²⁹¹ Claimants’ Memorial, ¶ 559.

¹²⁹² BRG-I, ¶¶ 15, 77, 79, 81, 85, 177(ii), 179-183, 204, 218, 220.

¹²⁹³ Most of the value attributed by BRG to Próspera ZEDE does not come from existing assets or consolidated operations at the time of the measures, but from an expanded project that was several decades away. This is particularly relevant in light of *Rusoro*, which the Claimants cite as the authority to use DCF in a pre-operational project: there the tribunal concluded that “the use of DCF approach” was “inappropriate” because the company did not have “a proven record of financial performance: approximately 75% of the cash flows to be valued derive not from existing facilities, but rather from the yet to be built expansion”.

¹²⁹⁴ Claimants’ Memorial, ¶ 560.

¹²⁹⁵ See *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (August 22, 2016) (CLA-0123), ¶ 759.

¹²⁹⁶ In addition, they are planning documents that do not even include contractor proposals, which, as Quadrant explains, differentiates a pre-feasibility study and a feasibility study in mining projects. Quadrant-I, ¶ 84.

¹²⁹⁷ Quadrant-I, ¶ 57, 78.

¹²⁹⁸ Quadrant-I, ¶ 106.

impartial third party; neither does BRG audit them now.¹²⁹⁹

681. The contrast between projections and results is revealing. By way of example, the plan submitted by the Claimants in 2017 envisaged developing Próspera Village in three years, but by 2021 they had completed less than 0.5% of the development planned for that single phase.¹³⁰⁰ Even in the actual scenario, where the Claimants have continued with the project, they have barely completed around 3% of what was projected.¹³⁰¹ In contrast, BRG’s model assumes that the development of this phase would have been completed by 2028.¹³⁰²
682. *Third*, the Claimants also fail to demonstrate that the prices of their GSP services could be estimated with a reasonable degree of confidence: listing revenue categories and referring to the Charter’s internal rate-setting mechanisms does not establish that future prices were foreseeable, market-sustainable or profitable.¹³⁰³ More fundamentally, Quadrant concludes that neither the GSP service prices nor real estate business prices can be determined with reasonable certainty because they rely on a model riddled with overly optimistic assumptions.¹³⁰⁴
683. *Fourth*, Próspera ZEDE’s business model relied on third-party financing for 96% of real estate development and required about USD 4.4 billion for the Pristine Bay phase alone and another USD 4.2 billion for the remaining phases¹³⁰⁵. Evidence shows that Próspera ZEDE was already facing difficulties in meeting these goals.

¹²⁹⁹ The Claimants attempt to fill both gaps by relying again on *Tethyan*, arguing that, as there, the projections of Próspera ZEDE resulted from “intensive work on the ground”. Claimants’ Memorial, ¶ 560; *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Award (July 12, 2019) (CLA-0242) ¶ 332. But, even assuming that this case weighed here, the situation is not comparable: there the flows came from a feasibility study of several years, shared with the Government, “overseen by both of Claimant’s owners” and in which “numerous outside consultants and companies participated”.

¹³⁰⁰ Quadrant-I, ¶ 106.

¹³⁰¹ Quadrant-I, ¶ 106.

¹³⁰² Quadrant-I, ¶ 105, footnote 281.

¹³⁰³ Quadrant-I, § III.B.

¹³⁰⁴ Quadrant-I, § III.A.

¹³⁰⁵ Quadrant-I, ¶ 170.

684. For example, Series B funding—conducted prior to the measures in August 2021¹³⁰⁶—missed its target, raising only USD 116.3 million against a goal of USD 150 million¹³⁰⁷. Likewise, Quadrant identified that Próspera ZEDE sought to attract high-risk start-ups and that its success would depend, to a large extent, on that of these companies, 62% of which lose money¹³⁰⁸. Finally, although the infrastructure is essential to this business model, the Claimants assumed that it would be developed by third parties, without providing details on how such an objective would be achieved, a point that is completely ignored by BRG.¹³⁰⁹
685. *Fifth*, BRG’s discount rate cannot be meaningfully and reliably calculated on *Rusoro*’s terms. BRG cuts the ZEDE’s exposure to Honduras’ country risk in half without providing any calculations to support that adjustment¹³¹⁰ and based on a source (Damodaran) that, if properly applied, would place the ZEDE’s exposure risk at 1.5 to 1.7 times that of an average Honduran company, adjusting the discount rate of 7.9% (according to BRG).¹³¹¹
686. *Sixth*, the business faced high regulatory pressure. As demonstrated, the ZEDE regime was surrounded by constitutional, political and regulatory controversies from its inception¹³¹². Even before the measures, Próspera ZEDE emerged in a complex regulatory environment.
687. In short, even under the criteria relied on by the Claimants, BRG’s DCF is not justified. Próspera ZEDE was an early-stage project, with no consolidated operations, reliable projections, verifiable prices, secured financing, reasonable discount rate, or low regulatory

¹³⁰⁶ Brimen-I, ¶ 90. Although Mr. Brimen asserts that this was due to “the political challenges that emerged”, the Claimants do not establish that their poor fund-raising performance was due to the measures and not to other market or project causes. In the absence of proof of the causal link, the data cannot be attributed to Honduras and is subject to the burden of proof on the Claimants. The same applies to the Claimants’ assertion that their “ability to raise funds has undoubtedly been seriously impacted as a result of Honduras’s Breaches”, especially when they themselves acknowledge that they have continued to raise resources after the repeal of the ZEDE regime (Claimants’ Memorial ¶ 562).

¹³⁰⁷ Claimants’ Memorial, ¶ 562, § II.D.5.b; Brimen-I, ¶ 91. This paragraph of the witness’s statement does not even refer to the second round of funding, but rather to the alleged support that the project had received from the community in June and August 2019.

¹³⁰⁸ Quadrant-I, ¶¶ 36-40.

¹³⁰⁹ Quadrant-I, ¶ 40.

¹³¹⁰ BRG-I, ¶ 171.

¹³¹¹ Quadrant-I, ¶ 192, Annex B.

¹³¹² See Sections II.A.1, II.B.1, II.D.1.

pressure. Therefore, even if the framework proposed by the Claimants is wrongly accepted, its valuation remains speculative and must be rejected.

3. BRG's DCF is not viable

688. BRG's DCF weighs Próspera ZEDE's Success and Failure Scenarios¹³¹³, assigning probabilities of success to each of these scenarios on the basis of other jurisdictions it considers comparable¹³¹⁴. According to the Claimants, this makes its analysis "even more conservative".¹³¹⁵ Honduras demonstrates the opposite: (a) BRG's inputs lack reliability; (b) BRG's DCF overestimates the Success Scenario; (c) underestimates the Failure Scenario; (d) applies an inadequate probability of success; and (e) underestimates the value of its own investment in the actual scenario. Considered individually or collectively, these premises lead to the same conclusion: the valuation of damages offered in the Memorial does not meet the standard of reasonable certainty.

a. BRG's inputs lack the reliability needed to support a damages valuation

689. BRG's valuation rests primarily on two sets of documents from the Claimants themselves: (i) a Financial Plan and (ii) a Real Estate Financial Model¹³¹⁶. According to the Claimants, those documents, created in early 2020 and mid-2021, respectively, contain projections on land acquisition, population growth, real estate development, economic activity, and the future value of Próspera ZEDE¹³¹⁷'s properties.

690. The March 2020 Financial Plan—the cornerstone of the Claimants' but-for scenario¹³¹⁸—was prepared internally, without being audited by third parties, or validated by sustained operating results or historical background. Contrary to the Claimants' assertions, BRG does not "conducts its own independent assessment of the assumption within these models",¹³¹⁹

¹³¹³ Claimants' Memorial, ¶ 570. BRG-I, ¶¶ 184, 188, 205.

¹³¹⁴ Claimants' Memorial, ¶ 578.

¹³¹⁵ Claimants' Memorial, ¶ 582.

¹³¹⁶ Claimants' Memorial, ¶ 541.

¹³¹⁷ Claimants' Memorial, ¶¶ 175, 547.

¹³¹⁸ BRG-I, ¶ 156.

¹³¹⁹ Claimants' Memorial, ¶ 569.

but adopts them as the starting point for its entire analysis without questioning or verifying their reliability. Prior to BRG's adjustments, this Plan yielded valuations of Próspera by 2030 ranging from USD 500 million to USD 723 billion, incorporated unexplained fixed assumptions for the costs and growth rates of the GSP business, and was fed by sources such as Wikipedia or NerdWallet¹³²⁰.

691. The other documents relied on by the Claimants¹³²¹ face similar limitations. The Real Estate Financial Model 2021-2028 consists of two pages on the financial viability of Pristine Bay over seven years and corresponds to an early planning document that uses broad averages for sales prices, construction costs, total/built area ratios, and percentages of land to be developed, among other things.¹³²² It does not contain proposals from suppliers or contractors.¹³²³ Likewise, the various master plans, white papers, and preparatory documents cited in the Memorial are materials prepared by the Claimants themselves to describe the expected evolution of the project in general terms, not a detailed implementation plan.

b. The DCF overestimates the Success Scenario

692. According to the Claimants, in the Success Scenario, BRG projects future revenues and discounts cash flows as of the Valuation Date at a rate that purportedly reflects industry risks¹³²⁴. On that basis, it concludes that the but-for value of Próspera ZEDE in the Success Scenario amounts to USD 2.7 billion¹³²⁵.
693. At the outset, the Success Scenario presupposes that the Claimants' Financial Plan is a reliable basis for projecting 30 years of evolution. However, as explained above, the plan was developed internally, was not independently audited or validated, and was never contrasted with operational results at the projected scale¹³²⁶. Furthermore, the model ignores

¹³²⁰ Quadrant-I, ¶ 39.

¹³²¹ Claimants' Memorial, ¶ 577.

¹³²² Quadrant-I, ¶ 79.

¹³²³ Quadrant-I, ¶ 79.

¹³²⁴ Claimants' Memorial, ¶ 576.

¹³²⁵ Claimants' Memorial, ¶ 583.

¹³²⁶ See Section V.C.3.

the different risks to which Próspera ZEDE would be exposed, which Quadrant’s report explains in detail¹³²⁷. In its report, Quadrant quantifies the effect of adjusting them. The Tribunal cannot base a billion-dollar sentence on a model whose sensitivity is such that no single assumption can be adjusted without altering the compensation by between 7% and 82%, and whose reasonable combined corrections produce negative values¹³²⁸.

694. Quadrant identifies and quantifies the main flaws of the Success Scenario. The population density targets assume that, in ten years, Próspera Village would reach densities that took Hong Kong, Monaco and Singapore decades: adjusting them Tegucigalpa’s level reduces BRG’s compensation by 63%; assuming half of that density reduces it by 82%.¹³²⁹ The model incorporates expansion phases (Roatán and La Ceiba) on land that had not been acquired or had detailed development plans at the time of the measures: excluding them reduces compensation by up to 51%.¹³³⁰ The profitability of the real estate business rests on three modeling errors—the omission of construction and infrastructure cost premiums, the disregard of the 50% discount with which the Claimants’ own plan assesses development rights, and the treatment of prices expressed in 2024 dollars as if they were 2021—the adjustment of which reduces compensation by 44%.¹³³¹
695. Added to this are: per capita GDP growth rates of 15.5% per year during the first ten years—almost four times the rate projected for Honduras—which, when adjusted according to the

¹³²⁷ Quadrant-I, ¶¶ 39-44. In particular, (i) the success of the business depends on attracting residents and businesses, but the BRG analysis does not identify competitive advantages over other special economic zones; (ii) although its development depends on the financing of third parties, there is no evidence to ensure its participation; (iii) BRG completely dismisses the competitive pressures that would affect Próspera ZEDE, despite acknowledging that “[a]s of 2019, there are nearly 5,400 special economic zones across 147 economies, including almost 500 in Latin America and the Caribbean;” (iv) the model completely ignores the costs of internal infrastructure and minimizes the structural dependence that the project had on external infrastructure controlled by Honduras; (v) the model ignores the risk that neighboring landowners would refuse to sell it for the development of Próspera ZEDE; (vi) reports from consultants such as EY had already identified risks such as political instability and corruption that could alter the ability to attract new business; (vii) it is likely that the initiative did not have access to sufficient skilled labor; and (viii) BRG does not take into account the costs of a system of administration of justice, as well as claims by the residents themselves against Próspera ZEDE.

¹³²⁸ Quadrant-I, ¶ 76 and Figure 5.

¹³²⁹ Quadrant-I, ¶ 85.

¹³³⁰ Quadrant-I, ¶¶ 87, 89-90.

¹³³¹ Quadrant-I, § VI.A.1-VI.A.3.

Charter Cities Institute’s own neutral scenario, reduces compensation by 18%¹³³²; a development schedule refuted by the Claimants’ own track record, which at the Valuation Date had completed only 3% of the model’s construction area, with a cost overrun of 34% (impact of up to 22%)¹³³³; the omission of all infrastructure costs, despite the fact that the Claimants’ plan allocated at least 20% of them to Próspera (impact of 14%)¹³³⁴; a terminal value in perpetuity incompatible with the ten-year liquidation period provided for in the ZEDE legislation itself (impact of 12%)¹³³⁵; and a discount rate of 9.4% that systematically underestimates the risk of the project – corrected for its inputs, the appropriate rate is 17.7% and the compensation falls by 54%.¹³³⁶ All of this is also built on manifestly unsuitable comparators (DIFC, Shenzhen, Hong Kong and Singapore): state projects with fiscal resources, regulatory capacity, and access to markets unparalleled with an experimental ZEDE whose real density in Roatán is 2.2 inhabitants per acre, compared to the 65 to 151 projected by BRG.¹³³⁷

696. In sum, BRG’s DCF model, even accepting that this methodology was applicable in this case, is a modeling exercise built on extraordinary premises, non-comparable sources, and technical errors.

c. The DCF underestimates the Failure Scenario

697. In the Failure Scenario, BRG assumes that the project fails for reasons other than the measures and that the Claimants therefore only recover the distress value of their assets or the sale value in their current state, “assuming that the ZEDE regime remains”.¹³³⁸ BRG values that scenario at USD 354.3 million, using the assets’ book value based on the March

¹³³² Quadrant-I, ¶¶ 102-104.

¹³³³ Quadrant-I, ¶ 110.

¹³³⁴ Quadrant-I, ¶ 111.

¹³³⁵ Quadrant-I, ¶ 112.

¹³³⁶ Quadrant-I, ¶ 114.

¹³³⁷ Quadrant-I, § VI.A.4-VI.A.8 and Annexes A and B.

¹³³⁸ Claimants’ Memorial, ¶ 583.

2025 financial statements and a February 2024 third-party valuation¹³³⁹.

698. This is not a true business failure scenario¹³⁴⁰. BRG's central assumption is that the project fails commercially, but the Claimants never pursue the project and engage in an orderly liquidation as of March 31, 2025, recovering the full value of their assets¹³⁴¹. However, a true failure scenario must reflect the economic consequences of an investment that does not achieve its objectives: that real estate does not achieve the expected occupancy or demand, that losses are incurred during the operation of the GSP business, and that the invested capital is lost.¹³⁴² None of this is adequately reflected in the BRG Failure Scenario.

d. The probability of success adopted by BRG lacks a comparable empirical basis

699. According to BRG, its model assigns a probability to the Success and Failure Scenarios to incorporate the uncertainty of the Claimants' business. BRG estimates a probability of 69.8% for the initial phases (Roatan Initial and La Ceiba) and 48.7% for the expansion of Roatán¹³⁴³. To reach the 69.8%, BRG uses U.S. Bureau of Labor Statistics business survival rates for the Real Estate and Rental and Management of Companies sectors, adjusted with U.S. Census Bureau data on voluntary closures¹³⁴⁴. As the Claimants themselves acknowledge, such an approach is appropriate only to the extent that it presupposes that "Próspera ZEDE has a high degree of stability, like the U.S."¹³⁴⁵. As demonstrated above, this assumption is unreasonable¹³⁴⁶. In any case, the methodology suffers from other defects.

700. *First*, the data used by BRG are not comparable with the project that is the subject of this arbitration. The survival rates of U.S. companies operating in traditional sectors and in one of the most developed economies in the world are not an adequate benchmark for estimating

¹³³⁹ Claimants' Memorial, ¶ 584.

¹³⁴⁰ Quadrant-I, ¶ 116.

¹³⁴¹ Quadrant-I, ¶ 118.

¹³⁴² Quadrant-I, ¶ 118.

¹³⁴³ BRG-I, ¶¶ 208-215.

¹³⁴⁴ Claimants' Memorial, ¶ 585.

¹³⁴⁵ Claimants' Memorial, ¶ 585. BRG-I, ¶¶ 47-49, 66-69.

¹³⁴⁶ See Section V.B.2

the probabilities of success of an experimental special economic zone located in Honduras¹³⁴⁷.

701. The difficulty is particularly visible in the GSP line of business. BRG itself acknowledges that “there is no detailed information on business survival rates in comparable SEZ regimes”.¹³⁴⁸ Quadrant concludes that this is false and that different sources, including BRG’s, demonstrate that a reasonable probability of success would be around 30%.¹³⁴⁹ In any case, Quadrant clarifies that this adjustment alone would be insufficient, since the assumptions in BRG’s model far exceed those of a reasonable success story for a special economic zone¹³⁵⁰.
702. *Second*, BRG does not distinguish between the various possible scenarios in which a company whose survival rate is being evaluated may find itself. Quadrant explains that the survival rate of a growing company is not the same as that of one that is shrinking or simply maintaining its value¹³⁵¹. In fact, Quadrant demonstrates that the return assumed in BRG’s DCF is associated with less than 1% of venture capital transactions, such that its model boasts extraordinary success¹³⁵².
703. *Third*, since the development of the different stages of the project was not simultaneous, but rather the Roatan Expansion was contingent on the success of the Initial Stage, BRG applies a probability of success of 48.7% to this last phase¹³⁵³. However, Quadrant considers that a contingent probability of success should be applied to the later phases of the project insofar as they depended on the success of the earlier phases¹³⁵⁴. On that adjustment, BRG’s compensation figure is reduced by 23%; and together with an adequate probability of success

¹³⁴⁷ Quadrant-I, ¶ 121.

¹³⁴⁸ BRG-I, ¶ 209.

¹³⁴⁹ Quadrant-I, ¶ 132.

¹³⁵⁰ BRG-I, ¶ 209.

¹³⁵¹ Quadrant-I, ¶ 132.

¹³⁵² Quadrant-I, ¶ 132 and Figure 7.

¹³⁵³ BRG-I, ¶ 217.

¹³⁵⁴ Quadrant-I, ¶ 134.

in the order of 30% instead of 70%, the reduction amounts to 74%.¹³⁵⁵

e. BRG underestimates the actual scenario

704. According to BRG, the only remaining value for the Claimants is the liquidation of their assets at their acquisition costs, which it estimates at USD 63.7 million after adjustments¹³⁵⁶. However, as Quadrant explains, the Claimants' own financial statements do not support that amount; on the contrary, they indicate a value of USD 307 million for the same assets¹³⁵⁷. Próspera ZEDE's most significant assets were also subject to valuation by an independent third party even after the measures¹³⁵⁸.
705. Furthermore, BRG baselessly assumes that the Claimants' real estate business will not be developed at all in the actual scenario, but rather that it will develop aggressively in the counterfactual scenario¹³⁵⁹.
706. As Quadrant demonstrates, by adjusting the actual scenario, the Failure Scenario, and the probability of success, with no additional adjustments to the unfounded BRG Success Scenario, the damages drop by 89%.¹³⁶⁰ Quadrant further demonstrates that, in many cases, applying only one additional adjustment to the assumptions of the BRG Success Scenario would yield a negative result.

D. THE REMAINING CLAIMS FOR COMPENSATION AND ANCILLARY CLAIMS MUST ALSO BE REJECTED

707. Even if the Tribunal were to conclude — *quod non* — that the Claimants are entitled to some compensation, their remaining claims for damages and ancillary claims must also be rejected. As set out below, **(D.1)** the claim for moral damages does not satisfy the standard of exceptionality required by arbitral practice; **(D.2)** the interest claimed, both the proposed

¹³⁵⁵ Quadrant-I, ¶ 135.

¹³⁵⁶ BRG-I, ¶ 223.b.

¹³⁵⁷ Quadrant-I, ¶ 137.

¹³⁵⁸ Quadrant-I, ¶ 137.

¹³⁵⁹ Quadrant-I, ¶ 138.

¹³⁶⁰ Quadrant-I, ¶ 140.

rate and margin and for its annual capitalization, is unfounded and would lead to overcompensation; and **(D.3)** there is no legal basis to order that any compensation be net of taxes or to restrict the exercise of Honduras' sovereign taxing powers.

1. The claim for moral damages must be rejected for not meeting the standard of exceptionality required by arbitral practice

708. The Claimants seek USD 1 million in moral damages, invoking the precedents of *Desert Line v. Yemen* and *Border Timbers v. Zimbabwe*. Honduras rejects this claim in its entirety. Arbitral practice has repeatedly insisted that moral damages only apply in truly extraordinary cases, characterized by particularly serious, abusive, coercive or humiliating State conduct, capable of causing damage qualitatively different from the economic consequences normally associated with an investor-State dispute¹³⁶¹. The Claimants have not met the standard that consolidated arbitral practice requires.
709. The Claimants' own cases illustrate how extraordinary the circumstances must be in order to justify this remedy. In *Desert Line*, the compensation for moral damages was awarded after the investor demonstrated physical threats, direct intimidation, state coercion, and arbitrary detentions aimed at forcing the waiver of his contractual rights¹³⁶². In *Border Timbers*, compensation was awarded in a context marked by property invasions, physical threats, acts of violence, forced occupations, and a total absence of state protection against aggressive conduct directed against persons linked to the investment¹³⁶³.
710. Nothing comparable exists in the present case¹³⁶⁴. Nor have the Claimants established the

¹³⁶¹ *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008) (CLA-0101), ¶¶ 289–290; *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (March 28, 2011) (CLA-0225), ¶¶ 333–339.

¹³⁶² *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008) (CLA-0101), ¶¶ 286–290.

¹³⁶³ *Border Timbers Limited, Border Timbers International (Private) Limited and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (28 July 2015) (CLA-0219), ¶¶ 291–293, 909–913, 928–931.

¹³⁶⁴ The Claimants base their claim on public statements by Honduran officials, political debates about the convenience of the ZEDE regime, and the regulatory uncertainties that followed its repeal. Even assuming, *arguendo*, that some of these actions could constitute breaches of the Treaty, this does not automatically

existence of extraordinary damage. Mr. Brimen’s witness statement contains subjective assessments of the impact that the events would have had on him, but they are completely devoid of documentary support¹³⁶⁵. There is no medical, psychological or documentary evidence that proves exceptional affectations.

711. The sum of USD 1 million has been selected by analogy with the amounts awarded in *Desert Line* and *Border Timbers* without any comparative analysis. In both cases, the tribunals considered extraordinary circumstances to be established that went far beyond the prejudices normally associated with an investment dispute. The mere analogy to other awards does not replace the demonstration of the assumptions of origin¹³⁶⁶.

2. The Claimants are not entitled to the interest they claim

712. The Claimants maintain that the payment of interest is “appropriate to ensure full reparation” and ask for interest at the rate of SOFR plus 4%, compounded annually¹³⁶⁷. Honduras does not dispute that interest may be part of full reparation, when appropriate, but the rate and methodology claimed are incompatible with the function that international law attributes to interest and would lead to overcompensation. As Quadrant notes, the Treaty refers exclusively to “a commercially reasonable rate,” but does not define it¹³⁶⁸. In these circumstances, economic theory indicates that a commercial interest rate depends on the risk profile of the financial product that generates the interest¹³⁶⁹.
713. As arbitral tribunals have recognized, interest seeks to place the claimant in the economic position in which it would have been without the wrongful act, compensating for the

transform them into conduct capable of generating moral damage. Regulatory disputes, legislative amendments, political disputes, financing difficulties, public criticism, and business uncertainty are common phenomena in the context of large-scale investment projects and constitute precisely the kind of circumstances that tribunals have found insufficient to justify moral damages.

¹³⁶⁵ Brimen-I, ¶¶ 123-124.

¹³⁶⁶ *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award (September 16, 2015) (CLA-0200), ¶¶ 617-619.

¹³⁶⁷ Claimants’ Memorial, ¶¶ 597-598; BRG-I, ¶ 23.

¹³⁶⁸ Quadrant-I, ¶ 141.

¹³⁶⁹ Quadrant-I, ¶ 141.

temporary unavailability of funds; not to reproduce the returns on a business investment or to transfer to the State commercial risks already incorporated in other components of the valuation¹³⁷⁰. In line with this, the most recent arbitral decisions have favored the use of risk-free rates or passive rates¹³⁷¹. Quadrant proposes a risk-free short-term interest rate consisting of one-year U.S. Treasury bond yields¹³⁷².

714. Moreover, a high commercial rate is particularly problematic under the Claimants' own theory of damages. The Claimants expressly state that they "do not seek an award of pre-award interest"¹³⁷³; however, **a pre-award interest is implicit in the BRG model**. As Quadrant explains, although the BRG model does not formally contain pre-award interest, it applies the industry's cost of equity of between 10.5% and 10.8%, to "update historical cash flows from 2022-2024 to the date of Valuation".¹³⁷⁴ In essence, this serves the same purpose as a pre-award interest and assumes that the amounts recognized in an eventual award would have been subject, between the date on which the damages occurred and the date of payment of the award, to the same business risks of a real estate company, which is false¹³⁷⁵.
715. As for the annual compounding requested by the Claimants, the ILC Articles expressly recognize that "*it cannot be said that an injured [party] has any entitlement to compound interest, in the absence of special circumstances*".¹³⁷⁶ Compound interest is therefore an exceptional measure that must be justified on the basis of specific circumstances. Arbitral

¹³⁷⁰ See, e.g. *RREEF Infrastructure (G.P.) Ltd. and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Award (11 December 2019) (**RLA-0249-ENG**), ¶ 65; *Vestey Group Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award (April 15, 2016) (**RLA-0220-ENG**), ¶ 440; *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award (September 9, 2009) (**CLA-0229**), ¶ 194.

¹³⁷¹ *Odyssey v. Mexico*, Award (**RLA-0290-ENG**), ¶¶ 793-796. *Telefónica S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (November 12, 2024) (**CLA-0118**), ¶ 510. *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award (9 September 2009) (**CLA-0229**), ¶¶ 184-185.

¹³⁷² Quadrant-I, ¶¶ 142, 146.

¹³⁷³ Claimants' Memorial, ¶ 597.

¹³⁷⁴ BRG-I, ¶ 203 and Table 21.

¹³⁷⁵ Quadrant-I, ¶¶ 147-148.

¹³⁷⁶ ILC Articles (**CLA-0216**), art. 38, Commentary 9; see also, United Nations General Assembly, *Third Report on State Responsibility*, prepared by Mr. James Crawford, Special Rapporteur, U.N. Doc. A/CN.4/507 and Add.1-4 (15 June 2000) (**R-0082-SPA**), ¶ 211.

practice reflects this¹³⁷⁷. However, the Claimants have not identified any special circumstances in this case that operate in favor of their claim. In view of the above, the request for interest must be rejected. In the unlikely event that the Tribunal were to conclude that Honduras breached the Treaty and that compensation is due, Honduras respectfully requests that any interest be calculated on a simple, non-compound basis, and at a reasonable risk-free or passive rate that reflects the compensatory function of interest under international law.

3. Any compensation should not be net of taxes, nor is there any legal basis for restricting Honduras' right to collect them

716. In a single paragraph, the Claimants request that any compensation be net of taxes and that the Tribunal order Honduras not to collect taxes¹³⁷⁸. The claim invites the Tribunal to rule on hypothetical tax issues without identifying which tax would be applicable, what its legal basis would be or why the exercise of sovereign taxing powers should be restricted here.
717. The request ignores, first, an elementary principle of international law: states retain the sovereign power to establish and collect taxes within their jurisdiction, as the tribunal observed in *CSOB v. Slovakia*¹³⁷⁹. Nothing in the CAFTA-DR confers on investors general tax immunity with respect to the enforcement or collection of an eventual award.
718. Nor is there a general rule of tax immunity in investment arbitration that authorizes the early prohibition of the exercise of sovereign tax powers.
719. The Claimants contend that BRG calculates damages on a *post-tax* basis and that,

¹³⁷⁷See, e.g., Wälde, T & Sabahi, B. "Compensation, Damage, and Valuation", The Oxford Handbook Of International Investment Law (18 September 2012) (**RLA-0190-ENG**), p. 1107; *Gardabani Holdings B.V. et al. v. Georgia*, SCC Case No. V2018/039, Award (September 9, 2022) (**RLA-0272-ENG**), ¶ 99; *Air Canada v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/17/1, Award (September 13, 2021) (**RLA-0264-ENG**), ¶ 701; *Strabag SE v. Libya*, ICSID Case No. ARB(AF)/15/1, Award (June 29, 2020) (**RLA-0255-ENG**), ¶¶ 962-963; *Role of Tucumán S.A. in bankruptcy v. National State (Argentine Republic)*, ICC Case No. 12364/KGA/CCO/JRF/CA/ASM/JPA, Award (March 5, 2019) (**RLA-0245-SPA**), ¶ 134.

¹³⁷⁸ Claimants' Memorial, ¶ 596.

¹³⁷⁹ *Československá Obchodní Banka, A.S. v. Slovak Republic*, ICSID Case No. ARB/97/4, Award (29 December 2004) (**RLA-0156-ENG**), ¶ 367.

accordingly, “no further tax may be assessed by Honduras on any award of damages”.¹³⁸⁰ Their conclusion does not follow from the premise: that BRG used certain tax assumptions in its model does not demonstrate that an eventual award is automatically exempt from other potentially applicable taxes. The Claimants never explain the legal link between the two assertions.

* * *

VI. REQUEST FOR RELIEF

720. In light of the foregoing, the Republic of Honduras requests the Tribunal to:
- a. Declare its lack of jurisdiction and competence to resolve the claims brought by the Claimants and/or declare them inadmissible;
 - b. Accept the Essential Security Exception invoked by Honduras;
 - c. Dismiss all of the claims submitted by the Claimants;
 - d. Reject the Claimants’ claim for restitution;
 - e. Dismiss the Claimants’ claim for damages; and
 - f. Order the Claimants to bear all costs and expenses of the arbitral proceeding, plus interest from the date of their payment or, failing that, from the date of issuance of the award.

Respectfully submitted on July 12, 2026,



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¹³⁸⁰ Claimants’ Memorial, ¶ 596