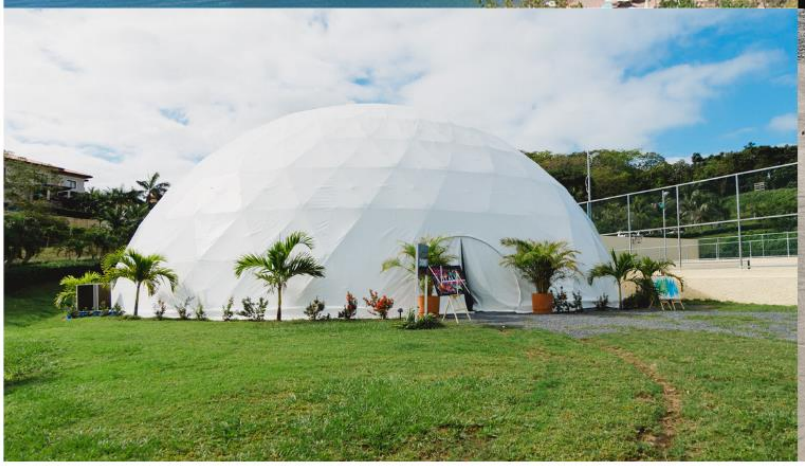
# JOURNAL OF SPECIAL JURISDICTIONS






**Journal of Special Jurisdictions**

**Issue V**
**Volume 1**
**ISSN 2691-5480**

STARTUP SOCIETIES NETWORK

INSTITUTE FOR DECENTRALIZED GOVERNANCE

# Journal of Special Jurisdictions

Issue V ● Volume I ● December 2024 ● ISSN 2691 – 5480



## Journal of Special Jurisdictions

The Journal of Special Jurisdictions is an international peer-reviewed journal founded to advance knowledge of Special Economic Zones and other special jurisdictions. It publishes original papers on the theory, history, regulations and development of special jurisdictions. Research published here can be used to inform policymakers and developers about special jurisdictions. The Journal maintains a non-partisanship approach to its topic. It is led by the team at the Institute for Competitive Governance, the research arm of the Startup Societies Foundation.

Submit to this journal **DONATE TO THE JOURNAL (SSF)**

Available at
https://journalofspecialjurisdictions.com
Journal of Special Jurisdictions

# Letter from the President

**Joseph McKinney**
Startup Societies Foundation &
Institute for Decentralized Governance

Dear Builders,

This issue marks a significant milestone for the *Journal of Special Jurisdictions*: our fifth year of publication. Half a decade ago, we launched this journal as a platform for exploring the evolving field of special jurisdictions. What began as a niche endeavor has grown into an essential resource for academics, policymakers, and innovators. Together, we have navigated uncharted waters, forged new partnerships, and set the foundation for the future of governance.

Over the past five years, the industry has faced its share of obstacles—be it skepticism, regulatory hurdles, antagonistic governments, or challenges in implementation. However, we have also seen remarkable progress that demonstrates the resilience and potential of this movement. From the Southeast United States, where Native American Digital Economic Zones have emerged as trailblazers, to the Middle East, where innovative financial hubs continue to thrive, special jurisdictions are shaping the global conversation. Even in the United States, the movement to create Federal Special Economic Zones reflects a growing recognition of their transformative potential.

This fifth issue is a testament to the field's maturation and growing relevance. The contributions in this edition are as bold as they are diverse, exploring visionary topics such as the Federated Fractal Network-State model and the creation of Brazil's "Lithium Valley." They tackle speculative but thought-provoking ideas, such as Time Travel Special Jurisdictions, and provide balanced insights into real-world initiatives like Honduras's ZEDEs. These works are not just academic exercises—they are blueprints for a future where governance evolves to meet the needs of a dynamic world.

As we reflect on the past five years, I am struck by how far we have come and how much further we can go. The Journal has grown alongside the field itself, becoming a trusted space for discourse and discovery. I am deeply grateful to our contributors, reviewers, and editorial team for their tireless dedication, as well as to you, our readers, for your continued engagement and support.

Looking ahead, we see a bright future where special jurisdictions serve as laboratories for governance, pioneering agile, inclusive, and effective models. Together, we will continue to navigate challenges, celebrate successes, and build

a world where innovative governance fosters prosperity and opportunity for all.

Here's to the next half-decade of progress and innovation. With optimism and gratitude,

Joseph McKinney
President,
Startup Societies Foundation

Available at
https://journalofspecialjurisdictions.com
Journal of Special Jurisdictions

# Letter from the Editor

**Nathalie Mezza-Garcia, PhD**
Startup Societies Foundation &
Institute for Decentralized Governance

Dear Readers,

It is with great pleasure that we present the fifth issue of the *Journal of Special Jurisdictions*, a publication dedicated to advancing the study and development of innovative governance frameworks and their practical applications around the world. Over the years, our journal has become a platform for exploring the possibilities of Special Economic Zones, experimental governance models, and novel regulatory environments. This issue continues to push the boundaries of these conversations, offering fresh insights and bold proposals.

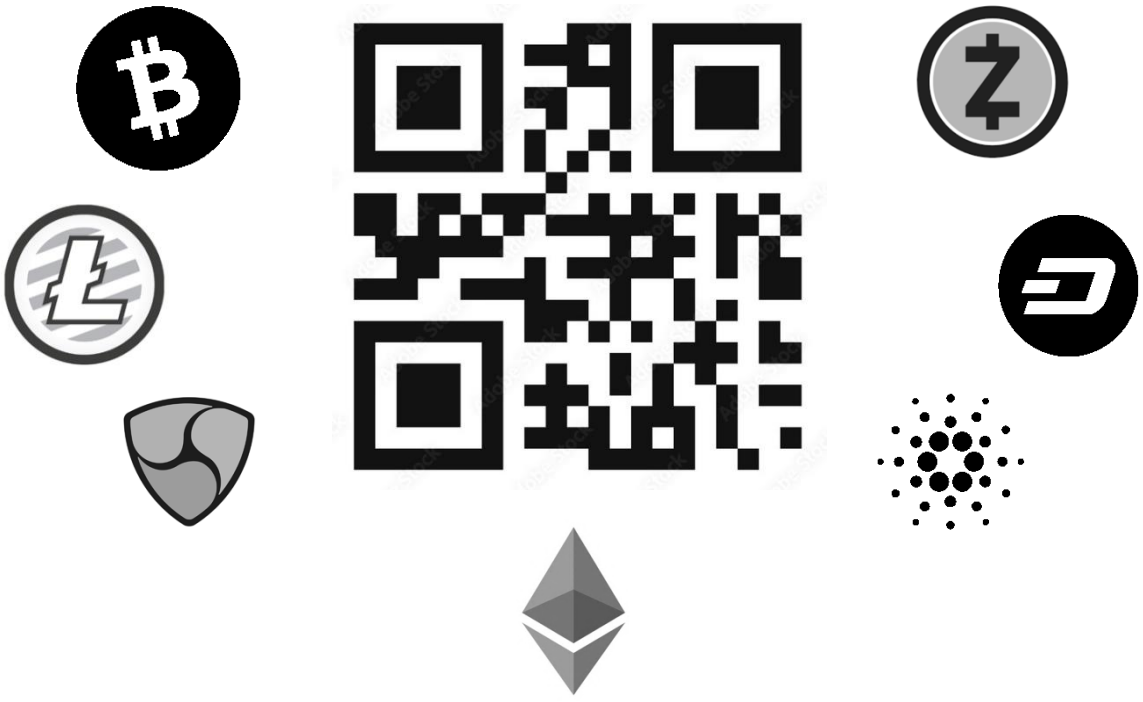
Included in this issue is a thought-provoking exploration of the Federated Fractal Network-State model, which proposes a decentralized governance system inspired by fractal patterns. Similarly, a compelling economic analysis on the concept of a "Lithium Valley" sheds light on the role of special jurisdictions in fostering resource-driven innovation and development in Brazil. There is also a paper on a Time Travel Special Jurisdictions. While speculative, this contribution engages with cutting-edge questions about the governance and challenges of creating a Science Park for time travel research. We are also delighted to feature a rigorous examination of Honduras's Zones for Employment and Economic Development (ZEDEs), which have become a focal point in the global conversation about zones and Startup Societies. As ZEDEs continue to generate debate, this piece offers invaluable perspectives for both supporters and critics of these ambitious projects.

As always, I extend my gratitude to our contributors, the editorial team and this year's reviewers, which include Andrew Morriss, Gary Chartier, Claudio Shikida, Ryan Hagemann, Sebastian Reil, and Peter Eldridge-Smith. Their dedication and expertise make this journal possible.

Dr. Nathalie Mezza-Garcia, PhD.
Managing Editor

## Donate to the Startup Societies Foundation

Help us keep producing content like this one by donating to the Startup Societies Foundation.



We accept tax-deductible donations in all forms of fiat and digital currencies.

JOURNAL OF SPECIAL JURISDICTIONS
Available at
https://journalofspecialjurisdictions.com
Journal of Special Jurisdictions

# Table of Contents

# LEGAL ANALYSIS

Available at
https://journalofspecialjurisdictions.com
Journal of Special Jurisdictions

# Are ZEDEs Unconstitutional?

The Case of Honduran Private Cities

**Carlos Alfonso Fortín Lardizabal**[1]
Bufete Forlar
fortin@bufeteforlar.com
ORCID 0009-0005-3703-4305

**Booklet**
This is the English translation of the booklet: ¿Son Inconstitucionales las ZEDE?
The author tried to make it understandable for both English speakers and those who are not legal professionals.
- Editor.

*It is not enough to tell only the truth,*
*it is more convenient to show the cause of the falsehood.*
*- Aristotle.*

## 1. Introduction

In recent years there has been much debate about the *constitutionality or legality or legitimacy* of the Employment and Economic Development Zones (ZEDE for its Spanish acronym). All these terms have been used to refer to this subject, followed *by treason* and *sale of national territory*. For the purpose of this work, we will label everything as unconstitutionality, since this alleged *unconstitutionality*, if it exists, would be the encompassing of all the criticisms formulated.

I am a Technical Secretary of the ZEDE called Mozarán City. However, I take personal accountability for this work and its content. In it, I will analyze the reasons they others argue that the ZEDE is unconstitutional. For my part, I consider this assertion to be false. The ZEDE are constitutional and constitute an ideal mechanism to develop Honduras in a very short time. Let's dive into this.

It is truly notorious remarkable that there are few issues on which so many sectors have agreed as on the alleged *unconstitutionality* of the ZEDE. Now, to accept that this unconstitutionality is true solely because many people have the same opinion, without examining the issue in depth, is a fallacy, a false reasoning. If generalized opinions were always true, the opinion that the earth was flat would have never changed, because the

[1] To María Antonieta, for always being my inspiration, To Juan Andrés, for filling my life with pride and happiness.

majority thought that way. In logic this fallacy is called *fallacy ad populum*[2]. It is not true that the voice of the people is the voice of God (vox populi, vox Dei). No; the majority of the people in Jerusalem called for the crucifixion of our Lord Jesus Christ. The great majority of ideas are not always true. The development of human ideas proves it.

However, it is interesting to analyze the reasons for this negative majority opinion. I'd classify this opinion into four main variants:

- Some opposed the ZEDE because they understood their economic interests were in danger with such a project. Here I include part of the *maquila* business sector, covered under the special regime of the Zonas Libres (ZOLI). It also included part of the national business sector that feared unfair competition from companies operating within the ZEDE, through trade with the rest of the country. All these competition issues were and still are debatable and can be regulated with relative ease, so lines areas of understanding can be sought out with these business sectors. Lines Areas of understanding that did not exist in the past.
- Then, a large, vast sector of politicians opposes it. Let us remember that the ZEDE constitute an autonomous fiscal and administrative region, which acquires the obligation to provide the resident population with security, health, and education services, among others[3]. Imagine a region in which these services are provided with very few taxes, and moreover, of high quality, while the rest of the population, in the hands of traditional politicians, continues to suffer the lack of such services, despite the fact that the *Honduran government budget consumes a huge portion of the gross domestic product (GDP)*. Here enters another criticism of the ZEDE's, which basically states that they would constitute a "*privileged class*" in the country, because they would live better than the rest of the population. The interesting thing about this reasoning is that given the factual assumption that a region with little taxation would have better security, health and education services, the proposed solution is to eliminate the possibility that this part of the population would have access to an improvement in their standard of living. Evidently, the solution that would promote the development of the country would be to copy the recipe and start converting all of Honduras into a free market with minimal state burden. This brings to mind the FOROS program of TSI and HRN, which took place on

[2] The *ad populum fallacy* claims that an argument is valid because many people believe it to be so. See Introducción a la Lógica. Authors: Irving M. Copi and Carl Cohen; Editorial Limusa SA de CV; 2010, pages 138 and 139.

[3] Education in MORAZAN CITY was projected to be bilingual, and water was projected to be potable.

August 30, 2021, for which economist Richard Rahn, a former member of **CAMP[4], was** invited and was expected to speak ill of the ZEDE project. However, Mr. Rahn stated that the system implemented in the ZEDE**s**, of economic freedom and deregulation, should be implemented throughout the country, as Estonia did, with excellent results and a substantial increase in per capita income. It is true that he spoke out against the way in which the model was implemented in Honduras, but far from criticizing the private development model, he spoke out against Honduran state intervention in its management.

- We also find ideological opposition. In Honduras, as in all countries, there are people imbued with Marxist ideas, even at the highest level of *government*[5]. From the ideological point of view, Marxism holds that *the value* of a commodity, of a product, derives solely and exclusively from the work performed by the workers in the production process. Therefore, for this ideology, every *entrepreneur*, as owner of the means of production, obtains his profits, *robbing* the worker of the fruit of his labor. Thus, for these people, every businessperson is a thief, as much as they affirm that he obtains his wealth by robbing the worker. For them, therefore, for a businessman, an investor, to leave the country is synonymous with getting rid of a thief. That is why they are not worried about the closing of companies.
- Finally, most people who opposed the ZEDE were deceived by one or more of the above-mentioned sectors as they began to tell lies. The most important ones were:
    - That the ZEDE**s** were *selling the national territory*. First of all, I always wondered what they meant by that. In Honduras it is legal, legitimate and also common for foreign citizens to buy private real estate. So, if ZEDE intended to sell real estate to foreign citizens, it would be doing the same thing that is being done every day in this country and in any other country. If on the other hand, that phrase assumes that the territory is being sold to a *foreign power*, to another country, then they are completely lying. In fact, none of the people uttering such a

[4] Spanish acronym for *Committee for the Adoption of Best Practices*, a body responsible for overseeing the ZEDE (Translator's note).

[5] Christian Duarte, Vice Minister Director of the Revenue Administration Service (SAR) accepted that he is a communist in the 30/30 program dated September 17, 2023. In the discourse of many others the same ideological tendency is noticeable.

phrase could point out to which foreign power the national territory was being sold, simply because such an assertion was and is totally false. On the other hand, in the case of Mozaran City it is even more false, since its business model is only leasing, not sale of real estate. We repeat that this statement is completely false, but it greatly influenced the minds of many people.

- That the ZEDE**s** were expropriating land from Hondurans, forcing them to hand over their properties. This assertion is also false. I know for a fact that **MORAZAN CITY** never expropriated anyone, since all the land *within its spatial area of competence* was acquired through purchase and sale contracts, negotiated by mutual agreement with its legitimate owners. I can also state that no person was able to show documents relating to any expropriation in any of the *ZEDE*. While it is true, **Decree 120-2013**, containing the **Organic Law of Employment and Economic Development Zones (**ZEDE**)**, which I will hereinafter refer to simply as ZEDE **Law**, in its Articles 25 and 28 speak of expropriation by the State[6], none of the ZEDE promoted any expropriation and none was carried out. One more lie.

It is obligation to the *transition period* that the same law established and the *acquired rights* of investors, protected by international agreements, are still relevant.

Having said all of the above, the purpose of this piece is to present whether the constitutional reform that gave legal life to the ZEDE was created in contravention of the Constitution of the Republic itself; that is, whether its creation implied a transgression of the Constitution. Let us see.

## 2. On constitutional reform in Honduras

From the point of view of the rigidity with which their norms can be modified, Constitutions can be classified as: *flexible, rigid and set in stone.*

A constitution is considered *flexible* when it can be modified by an ordinary law. This is the case of the United Kingdom. A constitution is considered rigid when its reform **process** is different from that of ordinary laws or when it incorporates processes that make its

[6] The State of Honduras has that eminent right that allows it to expropriate for public utility anywhere in Honduras. The inclusion in the ZEDE **Law** was totally unnecessary and proved to be very detrimental.

modification difficult. This is the case of the Constitution of the United States of America. A constitution is set in stone when it cannot be modified.

In the case of Honduras, a *rigid system with some provisions set in stone was* adopted, since most of its provisions can be modified through a special procedure and a few provisions are non-reformable.

Thus, in accordance with Article 373 of the Constitution of the Republic, the amendment of the Constitution requires a two-thirds (2/3) vote of the totality of its members. The decree must indicate the article or articles to be reformed, and must be ratified by the subsequent ordinary legislature[7], by the same number of votes, in order for it to come into effect. This procedure is considered the rigid part of the Honduran constitutional system.

Meanwhile, Article 374 of the Constitution states that under no circumstance can it be reformed, the *previous article*[8], *the present article*[9], *the legal articles that refer to the form of government*[10], *the national territory*[11], *the presidential term*[12], *the prohibition to be President of the Republic again for a citizen who has served under any title*[13] and *the article referring to those who cannot be President of the Republic for a subsequent term*[14].

Therefore, we have that the articles of the Constitution of the Republic that cannot be reformed by mandate of the Constitution itself are: 1, 2, 4, 9, 10, 11, 11, 12, 13, 14, 19, 237, 239, 240, 373 and 374. All the others can be reformed, as long as the procedure established in the first paragraph of article 373 of the Constitution is followed.

## 3. On the legal instruments that created the ZEDE

The ZEDE were created through a constitutional reform contained in the following decrees:

1) Decree 236-2012, on constitutional reforms, published in La Gaceta[15] # 33,033 dated January 24th, 2013.
2) Decree 9-2013, ratification published in La Gaceta #33,080 dated March 20th, 2013.

[7] By Decree 169-86 dated October 30, 1986, published in the Official Gazette No. 25,097 of December 10, 1986, the *subsequent* expression *(subsiguiente)* should be understood as *the one that immediately follows*.
[8] That is, Article 373.
[9] That is, Article 374 itself.
[10] That is, articles 1, 2 and 4.
[11] That is, articles 9, 10, 11, 12, 13, 14, 19.
[12] That is, Article 237.
[13] That is, Article 239.
[14] That is, Article 240.
[15] Official newspaper of the government of the Republic of Honduras, where laws are officially published in order to become effective (Translator's note).

These decrees formally comply with Article 373 of the Constitution of the Republic, on the manner in which the Constitution must be reformed (more than 2/3 vote of the totality of its members[16] and ratified in the subsequent legislature).

These decrees reformed the articles 294, 303 and 329 of the Constitution of the Republic. Thus, at least from a formal point of view, the constitutional reforms didn't reform any of the articles of the Constitution that cannot be reformed. Of course, in order to establish that these reforms are constitutional, it must be reviewed whether they also do not contradict *the content of the articles of the Constitution*. Let us see.

**Content of the constitutional reform that creates ZEDE:**

The following is a transcription of the constitutional articles that were amended. To facilitate the identification of the changes, I write the additions or amendments in italics.

**Article 294**.- The national territory is divided into departments. Its creation and limits shall be decreed by the National Congress.

The departments are divided into autonomous municipalities administered by corporations elected by the people, in accordance with the law.

> *Notwithstanding the provisions of the two preceding paragraphs, the National Congress may create zones subject to special regimes in accordance with Article 329 of the Constitution.*

**Article 303**.- The power to impart justice emanates from the people and is imparted free of charge in the name of the State, by independent magistrates and judges, subject only to the Constitution and the laws. The Judicial Branch is composed of a Supreme Court of Justice, the Courts of Appeals, the Courts, *courts with exclusive jurisdiction in areas of the country subject to special regimes created by the Constitution of the Republic* and other dependencies established by law.

In no trial there should be more than two instances; the judge or magistrate who has exercised jurisdiction in one of them, may not hear the other, nor in an extraordinary appeal in the same matter, without incurring in liability.

Spouses and relatives within the fourth degree of consanguinity or second degree of affinity may not judge in the same case.

**Article 329.-** The State promotes economic and social development, which must be subject to strategic planning. The Law regulates the planning system and process with the participation of the powers of the State and represents political, economic and social organizations.

[16] In fact, almost all of the members of the National Congress voted in favor of its creation.

*To carry out the function of promoting economic and social development, and to complement the actions of the other agents of this development, the State, with a medium and long term vision, must design, in concert with Honduran society, a plan containing the precise objectives and the means and mechanisms to achieve them.*
*Medium and long-term development plans must include strategic policies and programs that ensure continuity in their implementation from its conception and approval to its completion.*
*The National Plan, the integral development plans and the programs incorporated therein are mandatory for successive governments.*

***Employment and Economic Development Zones***

*The State may establish areas of the country subject to special regimes, which have legal personality, are subject to a special regime, may contract obligations as long as they do not require the endorsement or joint and several guarantee of the State, enter into contracts until the fulfillment of their objectives over time and during several governments and enjoy functional and administrative autonomy that must include the functions, powers and obligations that the Constitution and the laws confer to the municipalities.*

*The creation of a zone subject to a special regime is an exclusive attribution of the National Congress, by qualified majority, after a plebiscite approved by two thirds, in accordance with Article 5 of the Constitution. This requirement is not necessary for regimes created in areas with low population density, those where the number of permanent inhabitants per square kilometer is lower than the average for rural areas calculated by the National Institute of Statistics (INE), which must issue the corresponding opinion.*

*The National Congress, when approving the creation of zones subject to special regimes, must guarantee that the sentence issued by the International Court of Justice of The Hague on September 11th, 1992 and the provisions of articles 10, 11, 12, 13, 15 and 19 of the Constitution of the Republic regarding the territory are respected. These zones are subject to national legislation in all matters related to sovereignty, application of justice, national defense, foreign relations, electoral matters, issuance of identity documents and passports.*

*The Gulf of Fonseca must be subject to a special regime in accordance with International Law, as established in Article 10 of the Constitution and the present Article; the Honduran coasts of the Gulf and the Caribbean Sea shall be subject to the same constitutional provisions.*

*For the creation and operation of these zones, the National Congress must approve an Organic Law, which can only be modified, amended, interpreted or repealed by a two-thirds favorable vote of the members of the National Congress, and a referendum or plebiscite must be held among the inhabitants of the zone subject to the special regime when its*

*population exceeds one hundred thousand inhabitants. The organic law must expressly establish the applicable regulations.*

*The authorities of the zones subject to special regimes have the obligation to adopt the best national and international practices to guarantee the existence and permanence of the adequate social, economic and legal environment to be competitive at the international level.*

*For the solution of conflicts within the areas of the country subject to special regimes, the Judiciary through the Council of the Judiciary must create courts with exclusive and autonomous jurisdiction over them. The judges of the zones subject to special jurisdiction shall be proposed by the spatial zones before the Council of the Judiciary who shall appoint them after a competition from a list proposed by a special commission integrated in the manner indicated by the Organic Law of these regimes. The Law may establish the submission to compulsory arbitration for the solution of conflicts of natural or juridical persons living within the areas covered by these regimes for certain matters. The courts of the areas subject to a special legal regime may adopt legal systems or traditions from other parts of the world as long as they guarantee the same or better constitutional principles of protection of human rights, subject to the approval of the National Congress.*

## 4. Arguments against the constitutional amendments creating the ZEDE

The following is a compilation of the main arguments against the ZEDE and, above all, about the alleged *nullity of origin* in the constitutional creation process, which many claim exists. I will emphasize those arguments, but not on whether the ZEDE represent good public policy, since regarding the latter question effectiveness or inconvenience ineffectiveness anyone can have an opinion; but rather if the content of the constitutional reforms that give life to this design, contradict or not the provisions of the Constitution.

However, it's necessary to circumscribe what it means that a constitutional reform, whatever it may be, does or does not violate the constitution itself. Given the constitutional reform process set forth in Article 373 of the Constitution, if a constitutional reform is approved following said mechanism, the only way that the content of said reform could be deemed unconstitutional would be if literally violates or contravenes any of the articles of the Constitution set in stone. Otherwise, we could not speak of unconstitutionality. This is included in what in law is called *constitutional interpretation*.

But, what is constitutional interpretation?

According to the Spanish jurist Josep Aguiló Regla[17] *asking about the meaning of an article of the constitution calls for an answer that falls squarely in the zone of clarity of the*

[17] Paper "Interpretación Constitucional. Algunas Alternativas Teóricas y una Propuesta". DOXA, Cuadernos de Filosofía del Derecho, 35 (2012) ISSN 0214-8676 pp. 235-258. Specifically page 237.

*notion "constitutional interpretation". It has the advantage that, thus formulated, it allows to eliminate some complications: one asks for the meaning of a text (the object of the interpretation is a text) that has been well trimmed (formally well delimited), an article. Once this delimitation has been made, the interpretation can be presented as a structure correlating three different statements: a "statement to be interpreted", an "interpretative statement" and an "interpreted statement".*

Therefore, in order to denounce a *constitutional text as unconstitutional, it would have to be demonstrated in a logical, coherent and scientific manner that the text of the constitutional reform violates the text of an unreformable article of the Constitution.* Otherwise, we would be facing what has been called *Judicial Activism*, *in the sense* of applying ideology and not the law when judging.

The American jurist Antonin Scalia[18] defends that in the interpretation of the law and the constitution, the *interpreter* should not attribute to the constitutional text a meaning that does not derive from its text. He states that: *the philosophy of interpretation that I have described is known as textualism. In some sophisticated circles it is regarded as naive- "rigid," "unimaginative," or "prosaic." But textualism is nothing of the sort. To be a good textualist one must not be so insensitive as not to perceive the broader social purposes for which a law has been designed or could have been designed; nor so rigid as to be oblivious to the fact that new times call for new laws. It is required to maintain the belief that judges have no authority to introduce these broader purposes, nor to write new laws.*

Therefore, if a Constitutional Court were considering the possibility of declaring the constitutional reforms that give life to ZEDE unconstitutional, it would have to coherently demonstrate that *the text of the reform contradicts the text of an unreformable article.* Otherwise, we would be facing a *judicial activism* that would pretend to give *legislative powers* to the *constitutional court*. And it is clear that the sovereign power to create laws and modify the constitution is the prerogative of the National Congress.

We conclude then that, in order to be able to affirm that the reforms that gave life to the ZEDE are unconstitutional for violating articles of the Constitution, it must be demonstrated that the text of the reforms contradicts the original text of the article of the Constitution in question. For our part, we intend to demonstrate, in this paper, that this is not so, that the text of the constitutional reform that gives legal life to the ZEDE does not violate any constitutional article.

The following is an analysis of the main arguments against the constitutional reform that creates the ZEDE**.**

[18] Una cuestión de Interpretación. Los Tribunales Federales y el Derecho", Palestra Editores, Lima, 2015. See page 39.

**Argument 1: That ZEDE's infringe on sovereignty:**

According to the Diccionario Panhispánico del Español Jurídico[19, 20], *Sovereignty* is understood as: 1. *Const.* supreme and unlimited power, traditionally attributed to the nation, the people or the State to establish its constitution and adopt fundamental political decisions both at the internal and international level. 2. *Int. pub.* Fundamental principle of the international status of the state, consisting in the power to freely adopt its decisions and exercise state powers. It entails the *summa potestas*[21], which means that the State is not subject to any other power for the adoption of its decisions, and the *plenitudo potestatis*[22], which means that it fully exercises its state powers, both domestically and internationally. In the sphere of international relations, it implies independence and equality.

In the Constitution, Articles 1 and 2 speak of sovereignty. Article 1 of the Constitution states that: *Honduras is a State of Law, sovereign, constituted as a free, democratic and independent republic to ensure its inhabitants the enjoyment of justice, freedom, culture and economic and social welfare.*

This constitutional provision seems to speak of sovereignty in the international arena, referring to the fact that it constitutes a *free, democratic, and independent republic* (as opposed to a monarchy). From this point of view, i.e. sovereignty vis-à-vis foreign powers, the ZEDE does not imply cession of sovereignty, since the only state authority recognized by the ZEDE System[23] is precisely that of the State of Honduras.

In this sense, from the literalness of the constitutional reform that gives life to the ZEDE at no time can it be inferred that it is inclined to respond to foreign powers, but rather, at all times, recognizes the sovereignty of our republic and excludes from the competence of the ZEDE issues precisely related to sovereignty: *'These zones are subject to national legislation in all matters related to sovereignty, application of justice, national defense, foreign relations, electoral issues, issuance of identity documents and passports'.*

Therefore, the text of the reform under study expressly recognizes the sovereignty of the Republic of Honduras.

[19] Pan-Hispanic Dictionary of Juridical Spanish (Translator's note).

[20] Real Academia Española, Cumbre Judicial Iberoamericana; Santillana Educación S.L., 2017.

[21] According to the Diccionario Panhispánico del Español Jurídico, the *Summa Potestas* is: *Int. púb.* Element of the sovereignty of the State according to which the State is not subject to any other power for the adoption of its decisions.

[22] According to the Diccionario Panhispánico del Español Jurídico, *Plenitudo potestatis* is: *Int. púb.* 'Totality of Power'. Element of the sovereignty of the State according to which it fully exercises the powers of the State, both internally and in its relations with other international subjects.

[23] I personally refer to the *ZEDE System* as the set of constitutional reforms, secondary laws that regulate the ZEDE, as well as their bodies: Technical Secretariat, CAMP and the ZEDE themselves.

In turn, Article 2 of the Constitution states that: *Sovereignty corresponds to the people from whom emanate all the powers of the State which are exercised by representation. The impersonation of popular sovereignty and the usurpation of the constituted powers are classified as crimes of treason. Responsibility in these cases is imprescriptible and may be inferred ex officio or at the request of any citizen.*

This constitutional provision speaks of sovereignty in the internal order. It states that it lies with the people (meaning that part of the population has the right to vote, since those who cannot vote cannot decide on the authorities, the only real decision that the voter makes). It is the sovereign's decision to issue laws through its elected representatives and, of course, to constitute and repeal legal designs and special regimes such as the ZEDE.

The ZEDE are a product of the will of the Sovereign, through the National Congress. They were created as internal organs of the Republic of Honduras (like the Municipalities) and respond to the Republic of Honduras and for the benefit of the Honduran people.

The repeal of the ZEDE **Law** is the best example, the ultimate demonstration, that its inclusion never meant a diminution of popular sovereignty. Popular sovereignty decided to create them and created them. Popular sovereignty decided to repeal the law and repealed it. No internal or external power could prevent popular sovereignty from being exercised in both cases by the members of the National Congress.[24]

Thus, the best proof that the constitutional reform that gave life to the ZEDE did not and does not violate popular sovereignty lies precisely in the fact that, by exercising such sovereignty, it was able to repeal it. If the ZEDE had compromised the sovereignty of Honduras, it could have, or at least tried to, avoid the derogation and it did not. It could not. It did not have the means to do so.

I must point out that, when the detractors of ZEDE speak of it as compromising sovereignty, they do not elaborate the argument, but only state that fact as *self-evident.* Evidence, however, does not seem so when the issue is examined in depth.

**Argument 2: ZEDE's infringe on National Territory:**

The unconstitutionality of a law must refer to whether the text of the constitutional norm, as it was drafted, compromises or not the national territory. We have already seen that precisely the constitutional norms that refer to the territory are set in stone.

The constitutional reform that creates the ZEDE modifies article 329 of the Constitution and expressly states that:

[24] Of course, given that the State of Honduras, also in the exercise of its sovereignty, voluntarily acquired obligations towards investors from other States, it becomes obliged to respond for such investments, within the framework of international obligations; especially in terms of respect for the **transition period** guaranteed by the ZEDE **Law** itself in the event of derogation. However, this fact does not eliminate the circumstance that, in the exercise of its sovereignty, Honduras had the power to repeal the ZEDE **Law** and did so.

*The National Congress, when approving the creation of zones subject to special regimes, must guarantee that the sentence issued by the International Court of Justice of The Hague on September 11th, 1992 and the provisions of articles 10, 11, 12, 13, 15 and 19 of the Constitution of the Republic regarding the territory are respected. These zones are subject to national legislation in all matters related to sovereignty, application of justice, national defense, foreign relations, electoral matters, issuance of identity documents and passports.*

*The Gulf of Fonseca must be subject to a special regime in accordance with International Law, as established in Article 10 of the Constitution and the present Article; the Honduran coasts of the Gulf and the Caribbean Sea shall be subject to the same constitutional provisions.*

As can be clearly seen from the text under study, the constitutional reform expressly establishes unrestricted respect for the articles of the Constitution that refer to the territory.

Thus, interpreting it otherwise is to go against the very text of the reform and constitutes, not an analysis of the decree itself whose original repeal is requested, but rather an analysis outside the text subject to analysis.

The argument that ZEDE**s** are an attack on national territory has several aspects. The first can be summarized in the phrase: "*they are selling the national territory".* Here I must repeat the argument I outlined in the introduction. That a private party buys a property from another private party is commonplace in Honduras as well as in other countries of the world. Therefore, this sentence cannot refer to it at any time, at the risk of falling into incoherence and superficiality.

Another aspect is that they accuse the ZEDE of responding or obeying a foreign power. On this point, we can state conclusively that the recent history of the repeal of the ZEDE **Law** has shown that no foreign government has sought to intervene or has performed any act on which a claim of sovereignty can be inferred. No document can be exhibited to support that spurious thesis. That side of the argument has no support whatsoever.

Another argument put forward is that the ZEDE**s** seek to become States or pseudo-States, due to their high level of regulatory autonomy. This leads us to the following argument. For the time being, we can state conclusively that the literalness of the constitutional reforms that gave life to the legal design of the ZEDE, do not violate the constitutional rules on the territory, but order their compliance in an express manner. In fact, Article 1 of the ZEDE Law expressly states: *The Employment and Economic Development Zones, hereinafter referred to as ZEDE, are an inalienable part of the State of Honduras, subject to the Constitution of the Republic and the national government in matters related to sovereignty...*

It couldn't be clearer.

**Argument 3: ZEDE's violate the exclusive power of the National Congress to issue laws:**

Let's see what the Regulatory Autonomy of the ZEDE consists of.

According to the amended article 329 of the Constitution, ZEDE may create its own regulations, except in the following matters or subjects: *sovereignty, application of justice, national defense, foreign relations, electoral matters, issuance of identity documents and passports.*

This argument then claims that such autonomy violates Article 205, paragraph 1, which is the power of the *National Congress to create, decree, reform and repeal laws.*

Nevertheless, we must clearly make a distinction between legal norms and laws. It is a relationship of genus and species. Legal norms are the genus and laws are a species of such norms. In fact, legal norms constitute in turn a species of norms in the general sense (which includes as norms: customs, social conventions, technical norms, etc.).

**What other types of legal rules exist in our legal system?**

Legal rules may respond to different classification criteria[25]. For the purposes of this paper we will only list some of them:

a) *According to the system to which they belong: national, foreign, uniform law.*
*b) From the point of view of their source: legislative, customary, jurisprudential.*
*c) From their spatial scope of validity: general and local.*
*d) From the point of view of their hierarchy: constitutional, ordinary, regulatory and individualized.*

There are other classifications that are not relevant to examine. I only wanted to show that a *legal norm* is not synonymous with *law*. What we commonly call law, whose prerogative corresponds to the National Congress, is what could be called in the previous classification (hierarchy), ordinary norms.

**Characteristics of the Ordinary Rules:**

*Ordinary laws* or *regulations* have several characteristics:

1) They are general: they apply to persons within the spatial scope of competence of the State.
2) They are abstract: they apply to persons in a general or indeterminate manner, not to specific persons.

[25] For detailed classifications, please read Chapter VI of the book *'Introducción al Estudio del Derecho'* by Eduardo García Máynez; Editorial Porrúa S.A.; Forty-fourth edition, pages 78 to 96.

3) They are mandatory: they apply to individuals, regardless of the will of the persons to whom they are addressed.
4) They are coercive: the authority can compel compliance.

If any of the above characteristics does not correspond to any *rule*, we can affirm that it is not *ordinary*; that is to say, if a rule, for example, is not *mandatory*, we cannot call it a *law*, in the sense of ordinary law mentioned above.

In the case of the ZEDE rules, they lack *obligatoriness,* since their validity, is insofar as in their scope of *application*[26] completely *voluntary*. This is because the rules that apply the ZEDE must be previously adopted voluntarily by the individuals to whom they are addressed. For a rule adopted by a ZEDE to be applied to an individual, that individual must first voluntarily accept its application.

Therefore, the norms of a ZEDE do not constitute ordinary norms, they do not constitute laws, nor are they those referred to in Article 205 numeral 1 of the Constitution, as an attribution of the National Congress.

Article 10 of the ZEDE Law is clear as to the requirement of adherence of individuals to the rules of a ZEDE, as it establishes the need to subscribe to the *coexisting agreements as a requirement of the scope of validity of application of the rules of a ZEDE.*

Likewise, the ZEDE called Ciudad Mozarán, by way of example, indicated in its *Constitutive Charter*[27], in its section *3.09 (Norms of Morazan),* the need for the consent of the residents by means of the subscription of these *agreements of citizen coexistence.*

**So what are the ZEDE Norms?**

If the rules of a ZEDE are not laws (in the sense of *ordinary legal rules*), what are they?

The modern legal world has identified what English speakers have called soft law, which could be translated to spanish as *derecho* o *normas indicativas*[28].

This type of legal norms does not acquire *validity* by virtue of an authoritative promulgation, but acquire such *validity of application* by virtue of the voluntary acceptance of the persons who submit to them.

These include *technical norms, best procedural practices in arbitration, etc.*[29]

---

[26] I apply the term *scope of validity of application* to the circumstances under which a ZEDE norm may be applied to an individual.

[27] Consult its contents at: "https://www.morazan.city/wp-content/uploads/2021/02/Carta-Constitutiva.pdf"

28 Less common are the spanish terms normas no vinculantes o legislación blanda.

29 Also called soft law are those rules of conduct that the governmental authorities impose on the administered parties as mandatory, without a law that obliges them to adopt such conduct, but which are considered binding by the administered parties. It is not, however, this type of rules that we are talking about as rules adopted by a ZEDE.

In the case at hand, we could point out that the rules of a ZEDE, as constitutionally conceived, constitute a new kind of *soft law*, in the sense that they are rules of conduct that cannot bind anyone unless the party interested in adopting them expressly states its adherence to them, precisely by deciding to become part of a ZEDE.

Therefore, the constitutional reform that gives life to the ZEDE does not violate article 205 numeral 1 of the Constitution, since the rules that apply in the ZEDE are voluntarily and expressly accepted as valid and adopted by consensus by the residents of the ZEDE.

**Argument 4: ZEDEs violate the prerogative of the Supreme Court of Justice (Judicial Council) to appoint judges:**

Those who defend this argument against the ZEDEs point out that the reformed article 329 of the Constitution prescribes that *"for the solution of conflicts within the zones subject to special regimes, the Judicial Power through the Council of the Judiciary (Supreme Court of Justice)*[30] *must create courts with exclusive and autonomous jurisdiction over them. The judges of the zones subject to special jurisdiction must be proposed by the special zones to the Council of the Judiciary, which ought to appoint them after a competition from a list proposed by a special commission integrated in the manner indicated in the Organic Law of these regimes".*

Article 14 of the ZEDE Law establishes that this *special commission* would be the *Committee for the Adoption of Best Practices (CAMP for its acronym in Spanish).*

The argument of those who claim that this is an unconstitutionality of the reformed constitutional article 329 is that, although the appointment would be made by the Supreme Court of Justice, it would have to be made from a list provided by the ZEDE, through the CAMP, questioning that the selection of candidates is predetermined by a commission outside the power that makes the appointment or designation.

Under this premise, if indeed the *commissions* -whether they are called *Proposing Boards, Nominating Boards, CAMP* or otherwise- to establish the suitability of candidates, restrict the ability to appoint or elect officials, the Supreme Court of Justice itself would have been elected under unconstitutional parameters, given that the candidates currently occupying those positions, as well as those prior to the current ones, were elected by the National Congress from a short list provided by entities outside the Legislative Branch itself, constitutionally in charge of making the election.

Therefore, this argument lacks weight, in addition to having in its analysis the defect of not pointing out the constitutional article with which it would allegedly collide.

30 The Judiciary Council and Judicial Career Law (Decree 219-11) was declared unconstitutional and abrogated, by Ruling issued by the Supreme Court of Justice on March 14, 2016, a ruling which, in addition declares that the President of the Supreme Court of Justice again holds the powers granted to him by the Judicial Career Law and its Regulations.

The final decision on the appointment of the judges that would have jurisdiction in the ZEDE is always subject to the Supreme Court of Justice, which may always request a new list if it considers that those nominated are not suitable to hold the position.

It is important to note that the criminal law applicable in the ZEDE is the ordinary Honduran criminal law, until other norms are adopted, *with the prior approval of the National Congress*, as established in Article 41.3 of the ZEDE Law.

Finally, I should point out that the main means of dispute resolution for ZEDE disputes is arbitration, a method that is fully provided for in the Constitution in Article 110 which also already has a rich history at a national level.

**Argument 5: ZEDEs can adopt legal systems or traditions from other parts of the world:**

A similar claim can be made to the criticism or argument that the possibility of *adopting legal systems or traditions from other parts of the world* is unconstitutional. They simply do not point out which are the articles that are considered to be violated by such a provision. In these cases, they speak of *sovereignty* as if any argument could be included under that concept.

Legal traditions are a product of a country's history. However, we are used to conceiving history always as something of the past, even though today's circumstances, today's decisions are part of that history: the current history of our country. Although in the specific case of Mozaran City, we maintained the Honduran legal tradition, with slight changes[31], we believe that the adoption of legal systems other than the traditional one[32] cannot be considered contrary to the articles of the constitution.

Therefore, the adoption of other legal systems does not contradict any of the articles of the Constitution and, consequently, would not give rise to a declaration of unconstitutionality.

**Argument 6: ZEDEs have a special tax system:**

We return to the criticism that we can make, in general, to those who attack the constitutionality of the reformed constitutional article 329, they criticize a certain part

[31] MORAZAN CITY implemented in its dispute resolution system the obligation of arbitral tribunals to establish in their awards what, in the common law system, is called ratio decidendi, which basically consists of expressly stating the reason or decisive criteria that gave rise to the decision. It was also implemented that this ratio decidendi should serve to standardize legal criteria in the dispute resolution system of MORAZAN CITY, in order to achieve the greatest contribution of the Anglo-Saxon system to the world legal world: the predictability of legal decisions.

[32] It is important to note that the *Common Law* system, prevailing in Anglo-Saxon countries, developed an enormous prestige in the administration of justice.

without making reference to which article of the Constitution they consider to have been violated or transgressed.

In Honduras, there have been several *special tax regimes*[33]. Nonetheless, these special regimes do not acquire any obligation in relation to the needs of the population in general, nor to the people who work within the companies. That is to say, they have no duties to provide any type of good or service: neither education, nor health, nor security, nor infrastructure.

The novelty of the ZEDE is not only that they are exempted from paying the traditional tax system, but also that they can create an internal tax regime to cover, within the zone: *education, health, infrastructure and internal security.*

In Mozarán City, the only tax that has been established internally is a 5% Income Tax. No other tax has been implemented in the zone. With these funds, the ZEDE called Mozarán City was to fulfill its obligations to provide education, health, internal security and infrastructure for the benefit of its residents and, in addition, with international quality[34].

In addition, the ZEDE must contribute to the rest of the country, allocating part of their resources to it. Twelve percent (12%) of the tax collection made by the ZEDE, in its spatial scope of competence, must be destined to the creation of one or several trusts distributed in equal proportions and for the following purposes[35]:

a) One fifth (1/5) for the strengthening of the Judiciary, which will include scholarships for the professional training of its staff in world-class universities, infrastructure and equipment.
b) One-fifth (1/5) for a fund for projects at the community and departmental level in accordance with the priorities determined by the Legislative Branch.
c) One fifth (1/5) for a fund for development, infrastructure, security and social projects in accordance with the priorities determined by the Executive Branch.
d) One-fifth (1/5) for a municipal project development fund to be distributed among all municipalities in the country in accordance with their investment plans.
e) One fifth (1/5) for the defense of national sovereignty through the strengthening of the Honduran Armed Forces.

[33] We can include, among others, *Free Zones, Tourist Free Zones*, *Temporary Import Regime.*

[34] Morazan City project includes: bilingual education, potable water and security in an environment of collaboration with the residents, in which the person in Morazan City perceives the authorities in charge of their security as cooperating in their wellbeing.

[35] See Article 44 of the ZEDE Law.

Therefore, the ZEDE supposes not only a source of development in the spatial area of its competence, but also a contribution to the general welfare of the nation, of Honduras, of our homeland.

In another paper we will examine the socio-economic and historical justifications for the establishment of this special tax regime system in Honduras. What we consider important to establish at this point is that those who question the ZEDE as unconstitutional because of its fiscal regime point out that this power is detrimental to the sovereignty of Honduras, but do not indicate the irreformable constitutional text that was violated with such a provision.

In this regard, it seems that they include as a violation of sovereignty everything that bothers them about the ZEDE system, any trace of autonomy.

However, the autonomy provided to the *ZEDE system* is intended to empower the private sector in the development of the country, the generation of employment and as a source of economic and social welfare. They forget that the ZEDE are not foreign entities to Honduras. No. They are part of its constitutional structure, like the municipalities and departments. With autonomy, yes. With self-sufficiency, yes. But always and above all, as an integral part of Honduras. As part of its sovereignty, because its creation was a sovereign act of the National Congress.

**Argument 7: ZEDE's violate the human rights of their residents:**

The amended Article 329 of the Constitution of the Republic, in its final paragraph, establishes that *the courts of the areas subject to a special legal regime may adopt legal systems or traditions from other parts of the world, provided that they guarantee the same or better constitutional principles for the protection of human rights, subject to the approval of the National Congress.*

In other words, the text of the reform expressly establishes the obligation to respect the constitutional principles of human rights protection. Therefore, to state that human rights would not be respected within the ZEDE is to interpret precisely the opposite of the text of the constitutional reform under study.

As a development of this constitutional norm, Article 10 of the ZEDE Law establishes the obligation to respect international human rights instruments.

Article 16 of the ZEDE Law establishes the human rights protection mechanism by stating that:

> *The Employment and Economic Development Zones (ZEDE) will have a Court for the Protection of Individual Rights. The same will protect people within the Employment and Economic Development Zones (ZEDE) against violations of their Fundamental Rights and will be composed of as many people as the Committee for the Adoption of Best Practices decides.*

> *In order for one or more affected parties to be able to resort to international courts for protection against violations of their human rights, a final judgment issued by said Court shall be sufficient, or if, in accordance with international standards for the protection of human rights, a reasonable period of time has elapsed without the appeal being resolved.*
> *The Employment and Economic Development Zones (ZEDE) individually considered are responsible for paying any compensation to which the State of Honduras may be condemned for violations occurring within their spatial sphere of competence, as well as for complying with the recommendations, precautionary measures or provisions issued by international human rights organizations.*

Thus, the ZEDE Law not only establishes the mechanism for the protection of the human rights of residents, but also establishes compliance with international judgments issued by international courts in this area and also designates the ZEDE itself as the party responsible for the violations of human rights that occur within the ZEDE.

We conclude that the amended Article 329 of the Constitution of the Republic and the ZEDE Law establish in their texts the protection of fundamental rights; that is to say, the human rights of the residents of the ZEDE. Any interpretation in a different sense is contrary to the text of the above-mentioned norms.

## 5. On the criminalization of the creation, enforcement and obedience to law

It is my firm conviction, and I have expressed it in these pages, that the constitutional reform that gave life to the ZEDE does not violate any of the unreformable articles of the Constitution of the Republic. Furthermore, since its approval complied with the formal requirements established in Article 373 of the Constitution, it could not be declared unconstitutional.

Of course, the Honduran State, as sovereign over the entire national territory, can change its mind about the convenience of ZEDE and still enjoy the prerogative to expel it from the constitutional text, following the same procedure established in the Constitution[36].

However, it is no less true that, in this context, the State of Honduras has already acquired some obligations:

1) To respect the acquired rights of residents and investors, through the legal stability contracts that have been signed in each ZEDE[37].

[36] It should be noted that the current legislature repealed Decree 120-2013. However, if the ZEDE is not expelled as a constitutional design, there would be no obstacle for the approval of a new law, which would be the product of national consensus.

[37] As prescribed in Article 45 of the ZEDE Law.

2) To respect the transition period referred to in Article 45 of the ZEDE Law, which shall not be less than 10 years, according to the text of said legal provision, as it includes the time established in the legal stability agreements and, which is 50 years, in accordance with **Article 16 of the** "*Agreement between the Government of the State of Kuwait and the Government of the Republic of Honduras for the Promotion and Reciprocal Protection of Investments*"[38].

These are, in addition, international obligations acquired by Honduras in relation to foreign investors, whose compliance may be demanded in international arbitration forums.

However, I have heard some opinions that state that the ZEDE figure design is not only unconstitutional, but also unconstitutional in *origin*, that all the acts derived from it are null and void and that they entail liability:

a) The Deputies who voted for its approval, both in terms of the constitutional reform and its organic law.
b) Judges who issued rulings declaring the constitutionality of the ZEDE.
c) The officials who acted in applying it.
d) All those who acted in obedience to the ZEDE Law and its constitutional reform.

In other words, some of the people who advocate the repeal of the ZEDE system or declare its unconstitutionality also intend to *punish* all those who applied or obeyed the law. They also argue that the magistrates who at a historical moment had a legal opinion different from theirs should be punished.

Such an opinion is signifies the end of the rule of law in Honduras. It would suppose politics as a substitute for the rule of law in the country. Let us see.

We previously established that, through Legislative Decree 236-2012, published in *La Gaceta*, Official Gazette of the Republic of Honduras number 33,033 dated January 24th, 2013 and ratified through Legislative Decree 9-2013, published in *La Gaceta* number 33,080 dated March 20th, 2013, Articles 294, 303 and 329 of the Constitution of the Republic were amended, creating the regime of Employment and Economic Development Zones (ZEDE). This constitutional reform process complies with the formal requirements prescribed by Article 373 of the Constitution.

Article 329, as amended, of the Constitution establishes that for the creation and operation of these zones, the National Congress must approve an Organic Law, which may only be modified, amended, interpreted or repealed by a two-thirds favorable vote of the

38 Applicable to all ZEDE, in accordance with Article 32 of the ZEDE Law.

members of the National Congress. It also establishes the obligation to establish a referendum or plebiscite for the inhabitants of the zone subject to the special regime when its population exceeds one hundred thousand inhabitants.

Legislative Decree 120-2013 created, with the approval of more than two thirds of the members of the National Congress, the *Organic Law of Employment and Economic Development Zones (ZEDE).*

The Supreme Court of Justice, through the Constitutional Chamber, ruled on three Unconstitutionality Appeals that were filed against the constitutional amendments and against the Organic Law, by means of the following rulings:

1) Judgment dated April twenty-ninth (29), two thousand fourteen (2014), in Case SCO-0424-2014, in which the Unconstitutionality Action filed was declared inadmissible.
2) Judgment dated May twenty-six (26), two thousand fourteen (2014), in Case SCO-0030-2014, in which the Unconstitutionality Action filed against Decrees 236-2012 and 120-2013 was declared not sustainable.
3) Judgment dated June ten (10), two thousand fourteen (2014), in Case SCO-0179-2014, in which the Unconstitutionality Action was overruled, because the Supreme Court had ruled in the judgment handed down in Case SCO-0030-2014.

Therefore, anyone could *legitimately* believe that the ZEDE and the legislative acts that gave rise to it were valid and legitimate, as is still my conviction today.

Now, to repeal or declare the constitutional reform unconstitutional and then attempt to criminalize: (i) the legislative acts that created that reform, (ii) the judicial acts that declared its constitutionality; (iii) the acts of officials that applied that law in force in the country and (iv) the acts of citizens and investors in obedience or subjection to the law, would be a clear example of judicial activism -in the sense of judging by applying ideology instead of the law-, which would expel legal certainty from our country. I will now demonstrate this.

Article 96 of the Constitution of the Republic clearly states that the *law does not have retroactive effect, except in criminal matters when the new law favors the offender or defendant.*

Thus, in Honduras, the retroactive application of a law is constitutionally prohibited. Consequently, a legislative repeal cannot have *ex tunc* effects; that is to say, towards the past.

Article 84 of the Constitution of the Republic states that *no one may be arrested or detained except by virtue of a written order from a competent authority, issued in accordance with legal formalities and for a reason previously established by law.*

Evidently, no penal body in Honduras establishes as a crime the setting of a special and autonomous zone in the country. In fact, there are other special zones that have existed

legitimately. What is happening now is that those who handle these thesis, configure the *autonomy of a zone as a violation of sovereignty*. However, this is a meaning or, better said, a conception that is being imposed until only now, without being able to exhibit a single document, legal article or precedent that supports this theory.

I repeat, Honduras has the right, as a sovereign State, to expel the ZEDE from its legal system. However, it must: (i) respect the acquired rights within the zones; (ii) respect the legally established transition periods; (iii) respect the non-retroactivity of the law.

From the point of view of Human Rights, the American Convention on Human Rights, in its Article 9, Principle of Legality and Retroactivity establishes: *No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under the applicable law at the time it was committed.*

It is clear, therefore, that the criminal prosecution of the creation, application or compliance with the ZEDE is contrary to the very text of the above-mentioned constitutional principles and violates the American human rights system.

## 6. Conclusions

In summary, we can conclude the following:

1) The National Congress followed the constitutionally prescribed procedure for the approval of the reform that gave rise to the ZEDE.
2) The Constitutional Chamber of the Supreme Court of Justice issued two rulings declaring the constitutionality of the ZEDE.
3) The State of Honduras applied, through its officials, both the constitutional reform that gave life to the ZEDE and its own organic law.
4) The investors acted in good faith under the belief that they were acting under a legitimate law. The officials and citizens who complied with the law acted under the same premise.
5) There is no legitimacy to argue *the nullity of the origin* of the ZEDE.
6) The constitutionally reformed text that gave rise to the ZEDE concept does not contradict any of the provisions of the Constitution of the Republic.
7) It is neither legitimate nor logically and scientifically sustainable that the *autonomy* of the ZEDE implies a diminution of the *sovereignty* of Honduras. The term *sovereignty* has a very specific meaning that at no time was harmed by the legal figure design of the ZEDE.

Therefore, to the question: are ZEDE**s** unconstitutional, we can answer:

No, ZEDE**s** do not contravene the Constitution of the Republic of Honduras.

## 7. Bibliography

1. Aguiló Reglo, Josep (2012); Ponencia Interpretación Constitucional. Algunas Alternativas Teóricas y una Propuesta; DOXA, Cuadernos de Filosofía del Derecho, 35 (2012) ISSN 0214-8676.
2. Arcos Ramírez, Federico (2014); Rule of Law, Seguridad Jurídica y Justicia; Cuadernos de Filosofía del Derecho Contemporáneo, Colombia; Universidad Autónoma de Occidente.
3. Balaguer, María Luisa (2021); La Seguridad Jurídica; Spain, Thomson Reuters Limited, Editorial Aranzadi S.A.U.
4. Copi, Irving M. and Cohen, Carl (2010); Introducción a la Lógica, México, Editorial Limusa S.A. de C.V.
5. García Máynez, Eduardo (2013); Filosofía del Derecho; México, 17th ed., Editorial Porrúa S.A.
6. García Máynez, Eduardo (1992); Introducción al Estudio del Derecho; México, 44th ed., Editorial Porrúa S.A..
7. Real Academia Española, Cumbre Judicial Iberoamericana (2017); Diccionario Panhispánico del Español Jurídico. Santillana Educación S.L..
8. Scalia, Antonin (2015); Una Cuestión de Interpretación. Los Tribunales Federales y el Derecho, Lima, Palestra Editores.
9. Editors: Westerman Pauline; Hage Jaap; Kirste, Stephan and Mackor Anne Ruth; Legal Validity and Soft Law. Law and Philosophy Library 122. ISBN 978-3-319-77521-0.
10. - Editors: Faira Zamora, Jorge Luis; Núñez Vaquero, Álvaro; Enciclopedia de Filosofía y Teoría del Derecho; Pluralismo Jurídico, Chapter 21, México, UNAM, ISBN: 978-607-02-661.

**Appendixes**

# Decisión de la Corte Suprema sobre las ZEDEs de Honduras (Expediente número SCO-0738-2021)

**La Gaceta**
**Diario Oficial De La República De Honduras**
AÑO CXLVI TEGUCIGALPA, M. D. C., HONDURAS, C. A.
LUNES 25 DE NOVIEMBRE DEL 2024. NUM. 36,698
*Sección A*

**Poder Judicial**

**CERTIFICACIÓN**

El infrascrito, Secretario de la Sala de lo Constitucional de la Corte Suprema de Justicia, CERTIFICA: El Fallo que literalmente dice: "CORTE SUPREMA DE JUSTICIA. Tegucigalpa, municipio del Distrito Central, veinte de septiembre de dos mil veinticuatro. VISTA: Para dictar sentencia en el expediente número SCO-0738-2021 que contiene la garantía de inconstitucionalidad interpuesta por razón de contenido por el Doctor en Medicina, FRANCISCO JOSÉ HERRERA ALVARADO, en su condición de Rector de la Universidad Nacional Autónoma de Honduras, UNAH, contra el artículo 34 del Decreto Legislativo No. 120-2013 que contiene la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), aprobada el doce de junio de dos mil trece por el honorable Congreso Nacional de la República de Honduras y publicado en La Gaceta, Diario Oficial de la República No. 33,222 de fecha seis de septiembre de dos mil trece. ANTECEDENTES PROCESALES. 1. En fecha veintiuno de julio de dos mil veintiuno, el señor FRANCISCO JOSÉ HERRERA ALVARADO compareció ante la Sala de lo Constitucional, actuando en su condición de Rector de la UNIVERSIDAD NACIONAL AUTÓNOMA DE HONDURAS, interponiendo garantía de inconstitucionalidad por vía de acción y por razón de contenido, contra el artículo 34 del Decreto Legislativo No. 120-2013, contentivo de la LEY ORGÁNICA DE LAS ZONAS DE EMPLEO Y DESARROLLO ECONÓMICO (ZEDE), aprobada por el CONGRESO NACIONAL DE LA REPÚBLICA DE HONDURAS, el doce de junio de dos mil trece y publicado en La Gaceta, Diario Oficial de la República No.33,222 del seis de septiembre de dos mil trece, en virtud de que el citado artículo, vulnera los artículos constitucionales 151, 156, 159, 160 y 177 de la Constitución de la República, que se refieren a la educación superior y el ejercicio profesional. 2. Mediante resolución de fecha seis de agosto de dos mil veintiuno, la Sala de lo Constitucional resolvió admitir la garantía de inconstitucionalidad de que se hace referencia y al dirigirse el mismo por razón de contenido contra el mencionado Decreto Legislativo, se dispuso omitir el libramiento de la comunicación al Congreso Nacional de la República; asimismo, se ordena dar vista de los antecedentes al fiscal del despacho por el término de seis días para la emisión de su dictamen. (Folio 52 de la garantía de mérito). 3. En fecha siete de junio de dos mil veintidós, el Ministerio Público emitió su dictamen por medio de la fiscal, Abogada SAGRARIO ROSIBEL GUTIÉRREZ MALDONADO, en el cual concluye que se

declare con lugar la acción de inconstitucionalidad planteada en los términos expresados por esta representación fiscal, por razón de contenido y de manera total. (Folios 73 al 84 de la garantía de mérito). 4. En fecha doce de octubre de dos mil veintidós, se tuvo por presentado el escrito de amicus curiae de parte del Abogado Marlon Osmín Donaire Coello, actuando en forma personal y a favor de la Universidad Olga y Manuel Ayau, LLC (UOMAC) y se tuvo por emitido el dictamen de la fiscalía en tiempo y forma. (Folio 86 de la garantía de mérito). 5. En fecha siete de febrero de dos mil veinticuatro la Sala de lo Constitucional sometió el presente asunto a discusión, votación y fallo, sin alcanzar la unanimidad requerida [1], por lo que se remitió al pleno de la Corte Suprema de Justicia en cumplimiento a lo que dispone el artículo 316 reformado de la Constitución de la República en relación con el 8 de la Ley Sobre Justicia Constitucional, con la finalidad de que se dicte la sentencia definitiva correspondiente. FUNDAMENTACIÓN JURÍDICA. 1. Sobre la garantía de inconstitucionalidad. De conformidad con el artículo 184 de la Constitución de la República, la garantía de inconstitucionalidad podrá ser declarada por razón de forma o de contenido. Asimismo, se dispone que le compete a la Corte Suprema de Justicia, el conocimiento y la resolución originaria y exclusiva de dicha garantía y deberá pronunciarse con los requisitos de las sentencias definitivas. 2. Examen sobre la legitimación activa de quien interpone la garantía de inconstitucionalidad y en este caso especial de la Corte Suprema de Justicia. Para la Sala de lo Constitucional, la Universidad Nacional Autónoma de Honduras detenta la legitimación necesaria para cuestionar la constitucionalidad de la norma citada, debido a que, en este caso en particular, su interés es propio, directo y legítimo. Aunque el artículo 34 impugnado no se encuentra en vigencia, debido a que se encuentra contenido en el ya derogado Decreto Legislativo No. 120-2013 o Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) [2], es importante señalar que para este alto tribunal de justicia, lo anterior no obsta para conocer, dar curso y pronunciarse en relación con la presente acción de inconstitucionalidad por las razones que se explicarán en su momento oportuno de forma más amplia y concienzuda. Por ahora, es suficiente señalar que el objeto de la presente inconstitucionalidad, atañe al contenido irreformable de la Constitución dispuesto en el artículo 374 constitucional; por lo que de conformidad a lo que establece el artículo 375 constitucional, todo ciudadano, sea autoridad o no, ostenta la legitimación activa suficiente y necesaria para exigir que se mantenga o restablezca la efectiva vigencia de la Constitución. De manera que, como es posible constatar a grado de certeza, para este alto tribunal de Justicia el asunto de marras no sólo es la contravención de la norma 34 del Decreto Legislativo No. 120-2013, tal como ha referido el impetrante, sino que abarca a todo un sistema actualmente vigente en la Constitución y que es espurio debido a que nació de actos que suplantaron la voluntad soberana que reside en el Constituyente originario. Como consecuencia de ello, en este asunto en particular cualquier persona está legitimada para interponer y exigir la inconstitucionalidad que restaure el orden constitucional vulnerado. Todo lo anterior queda debidamente explicado, una vez que se advierte que la creación de las zonas de empleo y desarrollo económico atenta contra temas que son indisponibles para el Congreso Nacional, como ser: El territorio y la forma de gobierno, por lo que la Corte Suprema de Justicia debe de oficio en este proceso o a petición de cualquier persona, proceder a restituir el contenido irreformable de la Constitución de la República. Al final, que quede claramente establecido que este examen de constitucionalidad, si bien es cierto ha nacido en virtud de la garantía bajo estudio, no se encuentra limitado al artículo 34 reprochado de inconstitucionalidad, sino que abarca a todo el marco jurídico todavía subsistente que le da origen, o sea, las reformas constitucionales y el resto de normas que violentan la voluntad soberana del Constituyente originario; por lo que procede seguir con el examen de fondo del presente caso. 3. Resumen de los argumentos en que se apoya la UNAH para interponer la garantía de

inconstitucionalidad de mérito. La UNAH interpuso la inconstitucionalidad por razón de contenido del artículo 34 del Decreto Legislativo número 120-2013 que contiene la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), con fundamento en los motivos y argumentos que a continuación se resumen. 3.1. Motivo uno de inconstitucionalidad. Vulneración al artículo 160 de la Constitución de la República. Señala la UNAH que se solicita la declaración de inconstitucionalidad con efectos derogatorios del artículo 34 que literalmente dice: "Artículo 34. Las Zonas de Empleo y Desarrollo Económico (ZEDE) debe establecer sus propias políticas educativas y curriculares en todos los niveles. El ejercicio de las profesiones o grados académicos dentro de las Zonas de Empleo y Desarrollo Económico (ZEDE) no estará condicionado a colegiación o asociación. No obstante, las autoridades de las Zonas de Empleo y Desarrollo Económico (ZEDE) podrán requerir la acreditación académica correspondiente para el ejercicio de determinadas profesiones." Según lo expresa la UNAH por medio de su representante legal, esta disposición vulnera de forma manifiesta el artículo 160 de la Constitución debido a que esta última establece, con carácter mandatorio, que la educación superior y profesional es su atribución exclusiva y, que por esta razón, constitucionalmente se dispone, en el tercer párrafo del artículo vulnerado, que: "… sólo tendrán validez oficialmente los títulos de carácter académico otorgados por la Universidad Nacional Autónoma de Honduras, así como los otorgados por las universidades privadas y extranjeras, reconocidos todos ellos por la Universidad Nacional Autónoma de Honduras…", "es la única facultada para organizar, dirigir y desarrollar la educación superior y resolver sobre las incorporaciones de profesionales egresados de universidades extranjeras". El impetrante señala que, consecuentemente con lo anterior, el párrafo tercero del artículo 160 constitucional, reconoce la creación y funcionamiento de universidades privadas, las cuales deberán operar bajo el marco constitucional que sea el resultado del diseño de la UNAH, quien es la única entidad con esa atribución exclusiva, pues es su responsabilidad la organización, dirección y desarrollo de la educación superior y profesional. Para el censor, el artículo 34 contradice flagrantemente lo dispuesto en el artículo 160 constitucional, porque otorga a las ZEDEs la facultad de, "establecer sus propias políticas educativas y curriculares en todos los niveles". Para el censor entonces, el artículo 34 promueve la disgregación del sistema educativo, distorsionándolo, porque al eliminar el control exclusivo atribuido constitucionalmente a la UNAH, se estimula la formulación de tantas políticas educativas como ZEDEs existan y cada una de ellas con la orientación que decida cada ZEDE, de manera que los profesionales formados en los sistemas educativos de las ZEDEs serán egresados sin conciencia de los problemas nacionales, ni del deber de contribuir a la transformación de la sociedad hondureña. 3.2. Motivo dos de inconstitucionalidad. Vulneración al artículo 151 de la Constitución de la República. El representante de la UNAH transcribe el artículo 151 constitucional, así: "Artículo 151. La educación es función esencial del Estado para la conservación, el fomento y difusión de la cultura, la cual deberá proyectar sus beneficios a la sociedad sin distinción de ninguna naturaleza. La educación nacional será laica y se fundamentará en los principios esenciales de la democracia, inculcará y fomentará en los educandos profundos sentimientos hondureñistas y deberá vinculare directamente con el proceso de desarrollo económico y social del país. Señala el censor que este mandato constitucional concierne a la educación de todos las personas hondureñas y extranjeras que residen en el país; y, que consagra los atributos de la educación hondureña en todos los niveles del sistema educativo, incluido el universitario. Agrega que, la no discriminación en la educación es una condición sine qua non en la prestación del servicio, sea por entidades estatales como privadas; y, que velar porque la educación se imparta sin discriminación de ninguna naturaleza es misión del Estado hondureño. Pero que es su posición que el artículo 34 de la Ley Orgánica de las

ZEDE, vulnera esta disposición constitucional porque atribuye a cada ZEDE la facultad de formular políticas propias en la prestación del servicio de educación, sin la dirección, supervisión y evaluación estatal, que, en el nivel superior y profesional, es responsabilidad de la UNAH. Luego, señala que la educación debe ser laica, para permitir que los educandos de todas las religiones tengan acceso al conocimiento con una visión estrictamente científica, y para garantizar que el sistema educativo no se oriente hacia alguna de las religiones existentes, en perjuicio de los que profesan la fe en religiones distintas. Así explica el impetrante de la presente inconstitucionalidad, el propósito del constituyente al momento de conferir al Estado en general y, en particular a la UNAH la responsabilidad de vigilar el nivel superior y profesional. Señala que la democracia es otro valor que debe promover la enseñanza, para que el educando lo integre al universo de sus valores personales, lo inspire en todos los actos de su vida, públicos o privados. Pero, según el censor, este atributo de la educación sólo puede ser garantizado por una tutela efectiva del Estado, particularmente en esas áreas en donde operarán las ZEDEs. Para el censor, las ZEDEs, no podrán garantizar la vinculación de la educación con el proceso de desarrollo económico y social del país, haciendo alusión a las razones siguientes: "… porque serán áreas separadas de Honduras que operarán independientemente, con un gobierno propio, tribunales especiales, regímenes tributarios y aduanero propio, régimen monetario y financiero propios y seguridad propia. Las dinámicas sociales y económicas de las ZEDE fluirán en interés de éstas exclusivamente, sin vinculación alguna con Honduras. Nada las vinculará, entonces, al desarrollo económico y social de Honduras, por lo que la educación no tendrá entre sus prioridades este atributo exigido por la Constitución". Finaliza, exponiendo que el impedir que la UNAH cumpla con su misión de garantizar la vinculación de la enseñanza con el proceso de desarrollo económico y social de país, es promover la formación de profesionales desprovistos del deber que genera la conciencia de ser parte del proceso del desarrollo del país, contribuyendo al mismo con sus capacidades profesionales. 3.3. Motivo tres de inconstitucionalidad. Vulneración al artículo 329 constitucional porque el artículo 34 lo excede en su texto y en su espíritu. El censor manifiesta que el artículo 329 de la Constitución no atribuye a las ZEDEs facultad alguna en materia de educación y no reformó los artículos 151 y 160 constitucionales, que son los vulnerados por el artículo 34, cuya declaración de inconstitucionalidad e inaplicabilidad, con efectos derogatorios. No obstante, este artículo 34 declara que las ZEDEs deben establecer sus propias políticas educativas y curriculares en todos los niveles. Indica que los artículos 151 y 160 constitucionales, no sufrieron menoscabo alguno, ni en su texto ni en su espíritu con la reforma constitucional del artículo, siendo que, este último desarrolla la ley orgánica de las ZEDES. Por consiguiente, la atribución concedida por el artículo 34 del Decreto Legislativo No. 120-2013, en relación con la educación, transgrede esa reforma, porque exorbita sus límites, atribuyendo a las ZEDES funciones estatales que no menciona expresamente la reforma, vulnerando con ello el mismo artículo 329 y, a la vez, transgrede lo dispuesto en los artículos 151 y 160 porque desconoce el principio de que la educación es función del Estado y el principio de la atribución exclusiva de la UNAH de dirigir, organizar y desarrollar la educación superior y profesional. El censor argumenta que, si el artículo 329 constitucional no menciona expresamente que las ZEDES "podrán establecer sus propias políticas educativas y curriculares en todos los niveles", entonces, el Congreso Nacional carecía de la potestad de incluir en la ley que regulaba dicho artículo, materias que implicaban menoscabar valores, principios y reglas constitucionales, como los contenidos en los artículos 151 y 160. Con la violación al artículo 329 constitucional, por el artículo 34 cuya declaratoria de inconstitucionalidad e inaplicabilidad se solicita, se violan también los artículos 151 y 160 porque restringe sus alcances, impidiendo que el Estado y la UNAH cumplan con su misión constitucional

en materia de educación en determinadas áreas geográficas, en las cuales solamente podrán decidir, en materia de educación, las autoridades de las ZEDES. 3.4. Motivo cuatro de inconstitucionalidad. Vulneración de tratados y convenios internacionales ratificados por Honduras en materia de educación. El artículo 34 del Decreto Legislativo No. 120-2013, también vulnera disposiciones internacionales suscritas y ratificadas por Honduras, que obligan a los Estados Parte a armonizar los procesos de acreditación profesional y de educación superior, al permitir que las ZEDE establezcan sus propias políticas educativas y de acreditación y con ello se separan no sólo del mandato constitucional, sino del internacional y se crea una estructura paralela a la ya existente por mandato constitucional, contraviniendo los artículos 151 y 160. Entre los instrumentos internacionales, quien impetra la garantía, Relaciona al Convenio Regional de Convalidación de Estudios, Títulos y Diplomas de Educación Superior en América Latina y el Caribe de 1974, el cual dispone que se deberá avanzar y dinamizar la movilidad académica para afianzar el acceso a la educación como un derecho humano y un bien público, sin discriminación de ninguna naturaleza. Establece en su artículo 2: "1. Que los Estados contratantes declaran su voluntad de: a) Procurar la utilización común de los recursos disponibles en materia de educación, poniendo sus instituciones de formación al servicio del desarrollo integral de todos los pueblos de la región, para lo cual deberán tomar medidas tendientes a: i) armonizar en lo posible las condiciones de admisión en las instituciones de educación superior de cada uno de los Estados; ii) adoptar una terminología y criterios de evaluación similares con el fin de facilitar la aplicación del sistema de equiparación de estudios: […]; c) promover la cooperación interregional en lo referente al reconocimiento de estudios y títulos: 2. Los Estados contratantes se comprometen a adoptar todas las medidas necesarias, tanto en el plano nacional como internacional, para alcanzar progresivamente estos objetivos, principalmente mediante acuerdos bilaterales, subregionales 6o regionales, así como vía de acuerdos entre instituciones de educación superior y aquellos otros medios que aseguren la cooperación con las organizaciones y organismos internacionales y nacionales competentes:" Posteriormente señala que estos objetivos fueron renovados en la Convención mundial sobre el reconocimiento de las cualificaciones relativas a la educación superior, del año 2019, integrada por representantes de 23 Estados miembros de la UNESCO, entre ellos Honduras, en la cual se definieron compromisos de Estado, entre ellos, facilitar la movilidad académica internacional y promover el derecho de las personas, a que se evalúen sus calificaciones de educación superior de manera justa, transparente y no discriminatoria. Tomando como base los convenios regionales de reconocimiento y fortaleciendo su coordinación, revisiones y logros, se definen como objetivos los siguientes: "Artículo II: 1. promover 3 fortalecer la cooperación internacional en la esfera de la educación superior. […] 4. proporcionar un marco global inclusive para el reconocimiento justo, transparente, consistente, coherente, oportuno y fiable de las cualificaciones relativas a la educación superior, 5. respetar, defender y proteger la autonomía y la diversidad de las instituciones y los sistemas de educación superior; […] 7. promover una cultura de aseguramiento de la calidad en las instituciones y los sistemas de educación superior y desarrollar las capacidades necesarias para lograr la fiabilidad, la consistencia y la complementariedad en materia de aseguramiento de la calidad, marcos de cualificación y reconocimiento de las cualificaciones, a fin de apoyar la movilidad internacional. Para facilitar el reconocimiento de las cualificaciones de educación superior, los Estados partes se comprometen, a aplicar la convención por conducto de los organismos pertinentes, en particular los centros nacionales de información o entidades similares (artículo XIII Estructuras nacionales de aplicación. 1)." Ante esto, el censor indica que dicho compromiso sólo puede garantizarlo el Estado de Honduras por medio de la Universidad Nacional Autónoma de Honduras, a quien se le

ha delegado, por mandato constitucional, la atribución de organizar, dirigir y desarrollar la educación superior del país y resolver sobre las incorporaciones de profesionales egresados tanto de universidades nacionales como extranjeras. Menciona también los compromisos internacionales ratificados con la firma del Convenio Regional de Reconocimiento de Estudios, Títulos y Diplomas de Educación Superior en América Latina y el Caribe del año 2019, que en su artículo II-Objetivos. dice: "Dispone, que los Estados Partes se comprometen a adoptar todas las medidas necesarias para alcanzar progresivamente los objetivos de este convenio, colaborando con los otros Estados Partes de la región mediante acuerdos bilaterales regionales o regionales, orientados a: I [1:3 Promover la armonización de los sistemas de educación superior para el reconocimiento de estudios, títulos y diplomas y facilitar el reconocimiento de títulos profesionales para su uso de acuerdo con las normativas nacionales; 4. Armonizar en lo posible las condiciones de admisión en las instituciones de educación superior autorizadas o reconocidas, para garantizar un acceso con equidad e inclusión y para promover la movilidad académica entre los Estados Partes, [17 Promover la cooperación interregional e intrarregional para facilitar el reconocimiento de estudios, títulos y diplomas […]" Finalmente, señala el Convenio sobre el ejercicio de profesiones universitarias y reconocimiento de estudios universitarios, suscrito por Honduras el 22 de junio de 1962, ratificado mediante Decreto Legislativo número 87 del año 1963 y publicado en La Gaceta, Diario Oficial de la República No. 18,014 del 3 de julio de 1963, el cual promueve la integralidad en cuanto al ejercicio y reconocimiento de estudios universitarios a nivel centroamericano, con base en el cumplimiento de los requisitos y formalidades exigidos por cada uno de los Estado Parte. Según expone el censor, todos estos instrumentos regionales e internacionales obligan al Estado de Honduras a buscar y mantener la armonía en sus políticas y procesos en materia de educación superior y de acreditación profesional, función delegada por mandato constitucional a la Universidad Nacional Autónoma de Honduras, única facultada para organizar, dirigir y desarrollar la educación superior y resolver sobre las incorporaciones de profesionales egresados de cualquier universidad, sea nacional o extranjera. En definitiva, para el impetrante de inconstitucionalidad, el artículo 34 de la Ley Orgánica de las ZEDEs, rompe con la integralidad y armonización de las políticas del país, las cuales se plantean como objetivos y compromisos de Estado en relación con el resto de instituciones de educación superior de la región latinoamericana y del Caribe, al permitir que las ZEDEs establezcan sus propias políticas educativas y de acreditación. 4. Resumen de escrito de amicus curiae presentado por Marlon Osmín Donaire Coello en su condición personal y en beneficio y representación de la Universidad Olga y Manuel Ayau Cordón LLC (UOMAC). Consta en autos el escrito de amicus curiae presentado por Marlon Osmín Donaire Coello en su condición personal y en beneficio y representación de la Universidad Olga y Manuel Ayau Cordón LLC (UOMAC). Dicho escrito tiene como propósito acercar a este alto tribunal de justicia, el análisis elaborado por el Abogado Jorge Constantino Colindres para efectos de demostrar la improcedencia de la presente garantía de inconstitucionalidad, basándose en que al amparo del artículo 329 reformado de la Constitución de la República, no son aplicables dentro del ámbito territorial que ocupan las ZEDEs los artículos 156, 159, 160 y 177 también de la Constitución. Se señala que la presentación de la garantía de inconstitucionalidad de mérito, denota una grave falta de comprensión del funcionamiento del régimen especial denominado ZEDEs y las obligaciones internacionales del Estado hondureño en el marco del Derecho Internacional Público, específicamente con relación a la obligación estatal de garantizar la permanencia del artículo 34 en mención, en virtud de los acuerdos de estabilidad suscritos al amparo de los artículos 12.2 y 45 de la Ley orgánica de las ZEDEs y de los tratados internacionales ratificados por el Estado de Honduras. Adjunto al escrito de amicus curiae, fueron

presentados los documentos siguientes: 1. Opinión jurídica elaborada por el Abogado Jorge Constantino Colindres en calidad de amicus curiae, en relación con la constitucionalidad del artículo 34 de la Ley Orgánica de las ZEDE y la obligación del Estado de Honduras de garantizar su permanencia y vigencia. 2. Certificado de organización de la Universidad Olga y Manuel Ayau Cordón, LLC (UOMAC), certificado del Registro de entidades de próspera ZEDE y demás documentos societarios de la 8 UOMAC, acreditando el origen guatemalteco de los inversores y desarrolladores de la universidad. 3. Convenio de Convivencia con cláusula de estabilidad jurídica suscrito entre el Secretario Técnico de Próspera ZEDE y la Universidad Olga y Manuel Ayau (UOMAC), de conformidad con los arts. 12.2 y 45 de la Ley orgánica de las ZEDE. 4. Reseña informativa sobre UOMAC.4.1. Opinión jurídica elaborada por el Abogado Jorge Constantino Colindres. En dicho documento se señala que la autonomía de las ZEDEs, está delimitada en el artículo 329 constitucional reformado, el cual autoriza el establecimiento de zonas sujetas a un régimen especial diferente al sujeto al resto del territorio nacional. Dicho artículo, prescribe lo siguiente: "Estas zonas están sujetas a la legislación nacional en todos los temas relacionados a soberanía, aplicación de la justicia, defensa nacional, relaciones exteriores, temas electorales, emisión de documentos de identidad y pasaportes". En relación con lo anteriormente transcrito, el autor del documento hace la observación de que el legislador de forma clara y consciente, excluyó de la lista de normas que si están sujetas a las ZEDEs (contenidas en el artículo 329 constitucional), lo relacionado a temas de educación superior. Señala que la intención de la reforma constitucional (artículo 329) es dotar de alto grado de autonomía a ciertas zonas del país sin renunciar a la soberanía. En dicho artículo 329 se ordena que la Ley Orgánica que desarrolle lo referente a las zonas, debe establecer la normativa que será aplicable dentro de las ZEDEs; en virtud de lo cual, el artículo 329 constitucional autoriza al legislador para que incluya dentro de la Ley Orgánica, la normativa aplicable dentro de las ZEDEs, en virtud de esta facultad constitucional concedida es que el artículo 34 no es inconstitucional. En el documento se hace la salvedad de que el término legislación nacional referido en el artículo 329 constitucional, abarca tanto la ley constitucional como la ley ordinaria, de manera que la facultad de reforma está sujeta a las atribuciones del Congreso Nacional comprendidas en el artículo 205 numerales 1 y 10 y 373 de la Constitución de la República. El Congreso Nacional, como poder constituyente derivado, procedió de acuerdo con sus facultades constitucionales a la reforma de los artículos 294, 303 y 329 constitucionales, creando zonas sujetas a un régimen especial en cuyo ámbito espacial de competencia, sólo aplican las normas constitucionales y ordinarias legales que establece el artículo 329 de la Constitución y los artículos 8 y 41 de la Ley Orgánica de las ZEDE, con el objetivo de: "otorgar altos grados de autonomía a ciertas zonas del país, sin que ello implique renunciar a la soberanía". En el documento se menciona que la Sala de lo Constitucional comparte el criterio anteriormente expuesto, tal como fue expuesto por este alto tribunal en un documento oficial presentado en la X Conferencia Iberoamericana de Justicia Constitucional celebrada del 12 al 15 de marzo del 2014, en Santo Domingo, República Dominicana. A la pregunta número 10 que se le formuló a la Sala de lo Constitucional: "¿Existen normas constitucionales de aplicación exclusiva a determinados ámbitos territoriales en el Estado? ¿Cuál es el alcance territorial de la eficacia de la Constitución?" A lo cual la Sala [de lo] Constitucional respondió lo siguiente: "En el título VI de la Constitución en lo referente al régimen económico, se establecen las zonas de empleo y desarrollo económico. Dispone el texto constitucional que el Congreso Nacional al aprobar la creación de zonas sujetas a regímenes especiales, debe garantizar que se respeten en su caso la sentencia emitida por la Corte Internacional de Justicia de La Haya el 11 de septiembre de 1992 y lo dispuesto en los artículos 10, 11, 12, 13, 15 y 19 de la Constitución referentes al territorio. Se establece que estas zonas están

sujetas a la legislación nacional en todos los temas relacionados a soberanía, aplicación de justicia, defensa nacional, relaciones exteriores temas electorales, emisión de documentos de identidad y pasaportes. La Constitución establece que el Golfo de Fonseca debe sujetarse a un régimen especial de conformidad al Derecho Internacional, a lo establecido en el artículo 10 Constitucional y el presente artículo; las costas hondureñas del Golfo y del Mar Caribe quedan sometidas a las mismas disposiciones constitucionales". El compareciente aprovecha a señalar que, según lo expuesto por la misma Sala de lo Constitucional, hay normas constitucionales que aplican sólo en determinadas partes del territorio nacional y que, en el caso de las ZEDE, sólo son aplicables en su ámbito espacial de competencia, las normas constitucionales relativas a la soberanía territorial, aplicación de justicia, relaciones exteriores, temas electorales y emisión de documentos de identidad y pasaportes. De manera que, la legislación nacional en materia de educación superior no es aplicable en las zonas de empleo y desarrollo económico. Esto de conformidad a lo dispuesto por el artículo 329 de la Constitución de la República, por lo que no son aplicables dentro del ámbito espacial de competencia de las ZEDE, los artículos 158, 159, 160 y 167 de la Constitución (relativos a la educación superior), las cuales están sujetas a un régimen especial de gobernanza. El amicus curiae asemeja la autonomía de las ZEDE a la autonomía municipal, delimitadas ambas por la ley. En consecuencia, según esta opinión, la no aplicación de los artículos 156, 159, 160 y 177 de la Constitución, dentro del ámbito espacial de competencia de las ZEDE, como resultado del efecto que provoca el régimen especial habilitado con la reforma constitucional del artículo 329 constitucional, permite que el artículo 34 ahora impugnado, establezca que las zonas especiales están autorizadas y obligadas a establecer sus propias políticas educativas y curriculares en todos los niveles. De manera que, en conclusión, el artículo 34 de la Ley Orgánica de las ZEDE no contraviene los preceptos de la Constitución de la República, en virtud de que su aplicabilidad se circunscribe al ámbito espacial de competencia de las ZEDEs, donde no son aplicables los preceptos constitucionales relativos a la educación superior según lo establece el artículo 329 de la Constitución. Por otra parte, señala el documento que acompaña el amicus curiae que, de conformidad con el artículo 374 de la Constitución, no son artículos pétreos los artículos 156, 159, 160 y 177 de la Constitución, por lo que están sujetos a reforma por el Congreso Nacional. De conformidad con los artículos constitucionales 373 y 210 numeral 10, el Congreso Nacional puede reformarlos, derogarlos o interpretarlos. Otro argumento a favor de la constitucionalidad del artículo 34 de la Ley Orgánica de las ZEDE se basa en que el régimen especial de las ZEDE, forma parte integral del bloque de constitucionalidad del Estado de Honduras, no sólo por estar contemplado en los artículos 294 y 303 de la Constitución, sino además, porque la permanencia de todos y cada uno de los artículos de la Ley Orgánica de las ZEDE es una obligación internacional del Estado de Honduras. El autor del documento que se acompaña es del parecer que el régimen ZEDE forma parte del Derecho Internacional de Inversiones, que obliga al Estado de Honduras a reconocer y tutelar las inversiones realizadas en dicho régimen especial. Menciona que en el presente caso, la Universidad Olga y Manuel Ayau Cordón (UOMAC) es una entidad de capital guatemalteco, domiciliada en la zona de empleo y desarrollo económico denominada "Próspera ZEDE", en St. John's Bay, Roatán, Islas de la Bahía y se dedica a ofrecer oportunidades de educación superior a bajo costo a través de mecanismos innovadores de enseñanza en línea, lo que realiza bajo el amparo jurídico de la normativa interna de Próspera ZEDE y el artículo 34 de la Ley Orgánica de las ZEDE. Agrega que, la República de Guatemala es parte del Tratado de Libre Comercio, entre Centroamérica, los Estados Unidos de América y República Dominicana (CAFTA-DR), lo cual implica un deber del Estado de Honduras de brindar un trato justo y equitativo, así como la protección y seguridad plena de los inversionistas y la inversión. Asimismo,

la Universidad UOMAC goza del trato de nación más favorecida, según el cual el Estado de Honduras está obligado a extender a UOMAC un trato no menos favorable que el trato otorgado, en circunstancias similares, a las inversiones e inversionistas de cualquier otro país. La cláusula de nación más favorecida contemplada en el CAFTA- DR constituye una promesa del Estado de Honduras de que extenderá a los inversionistas de los Estados Parte del CAFTA- DR cualquier garantía o mejor tratamiento que haya ofrecido a los inversionistas de otros Estados que no son parte del CAFTA-DR. En el caso que nos ocupa, la UOMAC es una inversión de capital guatemalteco, y, por tanto, el Estado de Honduras tiene una obligación internacional de extenderle a UOMAC cualquier garantía o beneficio que le haya extendido a los inversionistas de cualquier otro país. El artículo 18 del Tratado de Inversión Bilateral entre Honduras y Kuwait garantiza a los inversionistas de Kuwait una permanencia mínima de 50 años de los artículos 294, 303 y 329 de la Constitución de la República y la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE). Se señala que en el caso de las inversiones realizadas bajo el régimen de ZEDE o las que se encuentren ubicadas en un área del territorio de la República de Honduras que haya sido designada como una ZEDE, la República de Honduras declara que todas las disposiciones previstas en los artículos 294, 303 y 329 de la Constitución de la República de Honduras, los de la Ley Orgánica de ZEDE y todos los derechos, condiciones, procedimientos y protecciones ya sean explícitos o implícitos, incluidos en los mismos respectivamente, se mantendrán como garantía y deben ser garantizados a las inversiones y los inversionistas del Estado de Kuwait por un plazo no menor de cincuenta (50) años. El artículo 10.4 del CAFTA-DR[3] y el artículo 32 de la Ley Orgánica de las ZEDE contemplan el principio de nación más favorecida, mediante el cual se extiende a los inversionistas de Guatemala cualquier mejor tratamiento que el Estado de Honduras haya otorgado a otro socio comercial. En este sentido, la garantía de permanencia mínima de 50 años del régimen ZEDE que el Estado de Honduras ofrece a los inversionistas de Kuwait, se extiende por virtud del CAFTA-DR a los inversionistas de los Estados Unidos de América y las Repúblicas de Guatemala, El Salvador, Nicaragua, Costa Rica y República Dominicana. El artículo 10.4 del CAFTA-DR, literalmente dispone: “Artículo 10.4: Trato de nación más favorecida. 1. Cada Parte otorgará a los inversionistas de otra Parte un trato no menos favorable que el que otorgue, en circunstancias similares, a los inversionistas de cualquier otra Parte o de cualquier país que no sea Parte en lo referente al establecimiento, adquisición, expansión, administración, conducción, operación y venta u otra forma de disposición de inversiones en su territorio. 2. Cada Parte otorgará a las inversiones cubiertas, un trato no menos favorable que el que otorgue en circunstancias similares a las inversiones en su territorio de inversionistas de cualquier otra Parte o de cualquier país que no sea Parte en lo referente al establecimiento, adquisición, expansión, administración, conducción, operación y venta u otra forma de disposición de inversiones”. Se citan los artículos 26[4] y 27[5]de la Convención de Viena sobre el derecho de tratados, según los cuales el Estado de Honduras debe cumplir de buena fe las obligaciones adquiridas en virtud de tratados internacionales, no pudiendo invocar disposiciones de derecho interno para evadir su cumplimiento. Cita también el artículo 2 de la Ley Sobre Justicia Constitucional, que establece como regla de interpretación y aplicación, que sus disposiciones sean interpretadas y aplicadas siempre de manera que aseguren una eficaz protección de los derechos humanos y el adecuado funcionamiento de las defensas del orden jurídico constitucional. Por otra parte, manda a que dicha interpretación y aplicación se haga de conformidad con los instrumentos internacionales sobre derechos humanos vigentes en la República de Honduras, tomando en consideración las interpretaciones que de ellos hagan los tribunales internacionales. Es por ello, que estima que el Estado de Honduras tiene la obligación

internacional de garantizar la permanencia y vigencia de todos y cada uno de los artículos del Decreto Legislativo número 120-2013, incluyendo el 34 cuya inconstitucionalidad se pretende. Se menciona de igual forma, el contrato de estabilidad jurídica, conocido también como cláusula de estabilización, el cual ha permitido el ingreso de diferentes flujos de capitales a Latinoamérica. Explica que antes de este instrumento, los inversionistas estaban sometidos a las directrices gubernamentales, las cuales eran modificadas según el gobierno de turno, generando incertidumbre. Para evitar esa situación varios países[6] lo han adoptado como política pública, de manera que el inversionista tenga la confianza y seguridad de que aquellos incisos, parágrafos o artículos específicos de las leyes o actos administrativos, que sean transcendentales para conformar su decisión de invertir, no le sean modificados en su detrimento. Menciona que el Secretario Técnico de Próspera ZEDE está autorizado por el Congreso Nacional a suscribir contratos de estabilidad jurídica con los inversionistas y habitantes de Próspera ZEDE, de conformidad con lo establecido en los artículos 12.2 y 45 de la Ley Orgánica de las ZEDE. En virtud de ello, el 14 de enero del 2022 la Universidad Olga y Manuel Ayau Cordón (UOMAC) suscribió un contrato de estabilidad jurídica con el Secretario Técnico de Próspera ZEDE, de conformidad a lo autorizado por el Congreso Nacional, donde se le garantiza la estabilidad de la carta de Próspera ZEDE, la Ley Orgánica de las ZEDE, los artículos 294, 303 y 329 de la Constitución y las normativas internas de Próspera ZEDE. De igual forma, el Secretario Técnico de Próspera ZEDE ha suscrito Contratos de estabilidad jurídica con sesenta y siete entidades legales y 201 personas naturales, garantizando la permanencia y estabilidad de la Ley Orgánica de las ZEDE. En consecuencia, en su opinión cualquier acción del Estado de Honduras que implique la denegatoria de la vigencia y aplicación del artículo 34 a los beneficiarios de los contratos de estabilidad jurídica, constituye un agravio a los derechos adquiridos por los inversionistas y habitantes de Próspera ZEDE, incluyendo de su promotor y organizador, Honduras Prospera Inc., agravio que, considera deberá ser indemnizado de conformidad con la Constitución de la República y el derecho internacional de inversiones. Señala que el Estado de Honduras, tiene el compromiso contractual, constitucional e internacional de tutelar los derechos adquiridos por los inversionistas y habitantes de Prospera ZEDE. Este compromiso debe ser honrado de buena fe por el Estado de Honduras e implica garantizar la estabilidad y permanencia del artículo 34 de la Ley Orgánica de las ZEDE, así como todas las demás disposiciones de la ley. Manifiesta que la previsibilidad jurídica es una condición sine qua non para el ejercicio de los derechos humanos. Luego, refiere que la persona humana, fin supremo del Estado, goza de la garantía constitucional de estabilidad legal y seguridad jurídica, para desarrollar sus libertades. Menciona entonces, que el noventa por ciento de las personas empleadas son hondureñas, quienes por medio de su trabajo pueden acceder a mejores oportunidades económicas y alternativas de educación. Menciona que la libertad académica contenida en el citado artículo 34 es fundamental para que las ZEDEs logren sus objetivos, adoptando las mejores prácticas internacionales en materia de educación con la apertura de nuevas e innovadoras instituciones de educación superior como UOMAC. Señala que esto se asemeja a la estrategia adoptada por los Emiratos Árabes Unidos, cuyo gobierno autorizó una zona económica especial similar a Prospera ZEDE, para el desarrollo de la Dubái International Academic City DIAC, la cual está formada por veintisiete mil quinientos estudiantes y ofrece más de quinientos programas académicos en diferentes campos. Posteriormente, se expone sobre la dificultad de adoptar mejoras en los planes de estudio de la educación superior por la excesiva burocracia y anticuados procesos de reconocimiento e incorporación de títulos, razón más por la que el Poder Legislativo instituyó las ZEDEs. Manifiesta que la UOMAC ofrece formación académica en línea para la obtención de licenciaturas que no existían en Honduras o eran de oferta limitada, a la sazón:

a) Licenciatura en ciencias de la sostenibilidad ambiental; b) Licenciatura en ciencias políticas con énfasis en conflictología; c) Licenciatura en ciencias de historia de Mesoamérica; d) Licenciatura en sicopedagogía; y, e) Licenciatura en Sagradas Escrituras; asimismo, manifiesta que ofrece programas lingüísticos para aprender nuevos idiomas, con programas para aprender el inglés y el ruso. 4.2. Reseña informativa sobre la UOMAC. Con relación a las fundadoras de la UOMAC, se informa que son las madres Inés Ayau García. Yvonne Lissette Sommerkamp Steiger y María Concepción Alovera Amistoso, todas de nacionalidad guatemalteca, con residencia en el Monasterio de la Santísima Trinidad Lavra Mambré. Es un monasterio para mujeres bajo la jurisdicción del Patriarcado de Antioquia en Villa Nueva, cerca de Ciudad de Guatemala, el cual a su vez, fue fundado también por la hermana Inés Ayau y la hermana María Amistoso. Se manifiesta que las fundadoras de la UOMAC tienen un compromiso moral con la democratización en el acceso a la educación; y, que desde 1996, las monjas emprendedoras lideran el Hogar Rafael Ayau, el cual ha proveído amparo y educación hasta el nivel del preparatorio a niños desde recién nacidos hasta adolescentes de dieciséis años de edad. El orfanato es el más antiguo y más grande de Guatemala, ha dado en adopción a unos 240 niños y 900 se graduaron del programa escolar. Aunado a lo anterior, la Madre Inés Ayau tuvo un rol fundamental en el desarrollo de la Universidad Galileo en Guatemala, un centro de educación superior de orientación tecnológica. Siendo la primera universidad latinoamericana en ofrecer cursos en la prestigiosa plataforma de educación en línea "edX". Como parte del edX, la Universidad Galileo ha logrado registrar un millón de estudiantes de todo el mundo en sus más de 40 cursos que brinda en las áreas de marketing digital, inteligencia de negocios, eLeaming programación, electrónica, matemática y emprendimiento. Se manifiesta que la UOMAC es una institución privada, apolítica y sin fines de lucro, con base en los principios de libertad, verdad, justicia y armonía, que proporciona educación en línea, básicamente por internet y presencial. Se dan las siguientes estadísticas, con datos actualizados el 15 de enero de 2021. La UOMAC tuvo 326.009 visitas a la página WEB. Además 745 de alumnos inscritos en total y 19 alumnos inscritos en el 2022. Se señala que la UOMAC, con el método de educación en línea, abierto y a distancia (ELAD), amplia las oportunidades de estudio, abre el campus virtual, los espacios académicos y toda la estructura organizativa para promover la educación y ponerla al alcance de todas las personas hispanas que tengan el deseo de continuar sus estudios a nivel de diplomados, licenciaturas u otros. Señala que la UOMAC cuenta con un equipo administrativo y académico internacional multidisciplinario y que está apoyada por los "Amigos de UOMAC", formada por personas o instituciones que comprenden la importancia del programa educativo de UOMAC y sus costos y quieren participar haciendo donaciones en especie o efectivo. También son personas que han acompañado el proceso de formación de esta universidad y han sido gran un apoyo. De esta forma se suman al grupo de Amigos de UOMAC ya sea en forma pública o privada. Se informa que la UOMAC ofrece educación a aquellos ciudadanos que han terminado su educación media, sin importar ubicación, distancias, edad, capacidad financiera, tiempos y horarios. 5. Resumen de la opinión presentada por el Ministerio Público. La fiscal Sagrario Rosibel Gutiérrez Maldonado emitió dictamen en nombre del Ministerio Público en el cual fue del parecer porque se declare CON LUGAR la presente garantía de inconstitucionalidad. En su análisis jurídico determina que se evidencia la existencia de un conflicto entre el artículo 34[7] denunciado con las normas constitucionales que cita el representante legal de la UNAH. Señala la Fiscal que el conflicto entre normas por el otorgamiento de funciones a las ZEDES que son exclusivamente de la UNAH por disposición de la Constitución de la República de Honduras, transgrede el principio de supremacía constitucional, contemplado en el artículo 320 de la ley primaria que dispone: "En caso de incompatibilidad entre una norma

constitucional y una legal ordinaria, se aplicará la primera." Para la Fiscal, la norma transcrita que contiene dicho principio, opera como una garantía institucional y de competencia, asimismo, señala que está sujeta a límites institucionales y funcionales tras la consolidación de un Estado de Derecho. La Fiscal transcribe el texto constitucional que, señala que la UNAH es: "Una institución autónoma del Estado, con personalidad jurídica, que goza de la exclusividad de organizar, dirigir y desarrollar la educación superior y profesional. Contribuirá a la investigación científica, humanística y tecnológica, a la difusión general de la cultura y al estudio de los problemas nacionales. Deberá programar su participación en la transformación de la sociedad hondureña. La ley y sus estatutos fijarán su organización, funcionamiento y atribuciones. Por lo que, en respeto irrestricto de lo establecido en la Constitución de la República…" De dicha norma, la fiscal concluye que la Constitución de la República le ha otorgado a la UNAH, total potestad como institución única encargada de dirigir la educación superior, así como también, la potestad de validar los títulos de carácter académico otorgados por las universidades privadas y extranjeras. Asimismo, admite que tiene la facultad exclusiva para resolver sobre la incorporación de profesionales egresados de universidades extranjeras. La Fiscal asevera que al establecer las ZEDEs sus propias políticas educativas y curriculares, en todos los niveles, sin la dirección, supervisión y evaluación estatal, conllevaría a un incremento significativo de desigualdades en nuestro país. 6. Examen de colisión entre las normas que dan vida a las ZEDEs con la voluntad soberana del Constituyente originario. A continuación, el pleno de la Corte Suprema de Justicia a raíz de que la Sala de lo Constitucional no alcanzó la unanimidad requerida en el caso bajo examen, procede a dictar la presente sentencia. No obstante, a lo planteado por el garantista, quien se limitó a denunciar el artículo 34 de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE)[8], este alto tribunal de justicia estima procedente ampliar ese objeto impugnado y conocer el tema de dichas zonas de forma completa. La ampliación referida se debe a la cláusula imperativa del artículo 375 constitucional, que demanda el cumplimiento obligatorio o deber ciudadano, de confrontar las normas que dan vida a las ZEDEs con la voluntad soberana del Constituyente originario; para lo cual, fueron tomados en consideración los criterios discutidos por dicha Sala, al igual que las alegaciones del impetrante, la documentación agregada a los autos y el parecer de la Agente de Tribunales del Ministerio Público. Con todos estos insumos, la Corte Suprema de Justicia se pronuncia de la manera siguiente: 6.1. Aplicación del efecto extensivo de la inconstitucionalidad. Determinación ex officio del objeto de juzgamiento de la presente sentencia. Este alto tribunal de justicia, luego de analizar el asunto de marras, estima que el reproche de inconstitucionalidad expuesto en la presente garantía, debe extenderse a fortiori a toda la reforma de los artículos 294, 303 y 329 de la Constitución de la República, o sea el contenido total del Decreto Legislativo No. 236-2012 aprobado en fecha veintitrés de enero del dos mil trece por el Congreso Nacional de la República y ratificado mediante Decreto Legislativo No. 9-2013, publicado en La Gaceta, Diario Oficial de la República de Honduras No. 33,080, de fecha veinte de marzo del dos mil trece. Asimismo, este alto tribunal de justicia estima procedente extender el ámbito de juzgamiento de esta sentencia al contenido total del Decreto Legislativo No. 120-2013 o Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), aun cuando ya fue derogado por el honorable Congreso Nacional de la República, mediante el Decreto Legislativo No. 33-2022. Así como también procede incluir dentro de la inconstitucionalidad a los Decretos Nos. 368-2013[9]; 153- 2013[10]; 32-2021[11]; y, 68-2021;[12] y, en general a toda la normativa que se relacione con las Zonas de Empleo y Desarrollo Económico, cualquiera sea su naturaleza o carácter. La razón y fundamento por la que se incluye la inconstitucionalidad del ya antes derogado Decreto Legislativo No. 120-2013 contentivo de la Ley Orgánica de las Zonas de Empleo y

Desarrollo Económico (ZEDE)[13], obedece a que el artículo 375 constitucional obliga al mantenimiento y restablecimiento de la vigencia de la Constitución y en virtud de que dicha ley altera la forma de gobierno y cercena el ejercicio de la Soberanía sobre nuestro territorio, la mencionada ley debe ser declarada nula de origen, todo lo cual se explica a continuación de manera fundada, extensa y adecuada. El fundamento para la aplicación extendida de la inconstitucionalidad, se justifica en que el análisis correspondiente de la garantía de inconstitucionalidad, conlleva forzosamente a tomar en cuenta el hecho de que las zonas de empleo y desarrollo constituyen una violación directa y evidente a lo prescrito por nuestra Constitución en materia de territorio y forma de gobierno, de manera que el estudio del artículo 34 del Decreto Legislativo No. 120-2013 que contiene la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), conduce irremisiblemente a concluir que la razón de su inconstitucionalidad, no es únicamente por las razones expuestas por el garantista, o sea por contravenir de manera expresa los artículos 151, 156, 159, 160 y 177 de la Constitución de la República, sino que dicho artículo 34, tiene como origen disposiciones constitucionales cuya reforma es prohibida tajantemente por nuestra Constitución, debido a que violentan artículos irreformables, comúnmente denominados pétreos. Procesalmente, la Sala de lo Constitucional está facultada para extender la declaratoria de inconstitucionalidad a aquellos preceptos contenidos en la misma ley o en otras leyes que estén relacionadas de manera necesaria y directa[14]. En este sentido el artículo 90 de la Ley Sobre Justicia Constitucional dispone que la sentencia que declare la inconstitucionalidad de un precepto legal, podrá declarar también como inconstitucionales aquellos preceptos de la misma ley o de otra, u otras que tengan una relación directa o necesaria, tal como ocurre sin duda en el presente caso.[15] Pero en este caso, a dicha razón procesalmente válida se suma el deber ineludible que tiene este alto tribunal de justicia de hacer prevalecer la inviolabilidad del territorio y de la forma de gobierno, contra todo ataque que se intente o se realice en contra de lo establecido por el Constituyente originario y recogido en los artículos 373, 374 y 375 de la Constitución de la República. Este deber ineludible, se encuentra dispuesto de manera tajante y sin ambages en el artículo 375 de la Constitución de la República de Honduras, el cual manda de forma absoluta e imperativa y además sin excepción o sin excusa alguna, lo siguiente: "Esta Constitución[16] no pierde su vigencia ni deja de cumplirse por acto de fuerza o cuando fuere supuestamente derogada o modificada por cualquier otro medio y procedimiento distintos del que ella misma dispone. En estos casos, todo ciudadano investido o no de autoridad, tiene el deber de colaborar en el mantenimiento o restablecimiento de su efectiva vigencia. Serán juzgados, según esta misma Constitución y las leyes expedidas en conformidad con ella, los responsables de los hechos[17] señalados en la primera parte del párrafo anterior, los mismos que los principales funcionarios de los gobiernos que se organicen subsecuentemente, si no han contribuido a restablecer inmediatamente[18] el imperio de esta Constitución y a las autoridades constituidas conforme a ella. El Congreso puede decretar con el voto de la mayoría absoluta de sus miembros, la incautación de todo o parte de los bienes de estas mismas personas y de quienes se hayan enriquecido al amparo de la suplantación de la soberanía popular o de la usurpación de los poderes públicos, para resarcir a la República de los perjuicios que se le hayan causado".[19] Por lo que, la Corte Suprema de Justicia, de conformidad con este mandato imperativo e ineludible del Poder Constituyente originario, procede por esta sentencia, a dar estricto cumplimiento a lo expuesto en el artículo 374 que igualmente procede de la voluntad soberana del pueblo hondureño, instituido como Poder Constituyente originario, restituyendo lo que de manera literal, inalterable o pétrea dispone: "Artículo 374. No podrán reformarse, en ningún caso, el artículo anterior, el presente artículo, los artículos constitucionales que se refieren a la forma de gobierno, al territorio

nacional, al período presidencial, a la prohibición para ser nuevamente Presidente de la República, el ciudadano que lo haya desempeñado bajo cualquier título y el referente a quienes no pueden ser presidentes de la República por el período subsiguiente". La relación entre estas normas, constituye la razón o fundamento inexorable para declarar la inconstitucionalidad de todo lo legislado en relación con la creación de las Zonas de Empleo y Desarrollo Económico (ZEDE), especialmente lo relativo a la reforma constitucional operada en los artículos 294[20], 303[21] y 329[22], mediante la promulgación del Decreto Legislativo número 236-2012, ratificado por el Decreto Legislativo No. 9-2013. En conclusión, quedan suficiente y claramente fundamentadas las razones que tiene este alto tribunal de justicia para declarar la inconstitucionalidad de forma extensiva a todo lo relacionado con las Zonas de Empleo y Desarrollo Económico. 6.2. Procedencia de la inconstitucionalidad de origen o efecto de nulidad (ex tunc) en lugar de la inconstitucionalidad con efecto derogatorio o anulatorio (ex nunc). La inconstitucionalidad que procede en contra de la creación y establecimiento de las zonas de empleo y desarrollo económico, produce efectos retroactivos o ex tunc, como caso excepcional y hasta ahora único en la historia judicial de Honduras. Con lo anteriormente expresado, no se está obviando el hecho cierto e indiscutible de que nuestro orden. jurídico reconoce que por razones de seguridad jurídica los actos no tienen carácter retroactivo, salvo en materia penal cuando favorezca al reo, condenado o enjuiciado.[23] Sin embargo, para este alto tribunal de justicia la presente sentencia debe forzosamente tener efectos de nulidad de origen, por cuanto la sola derogación o sea el efecto ex nunc, no basta para satisfacer los altos e intangibles intereses del Estado hondureño; pero claro, teniendo siempre en cuenta la seguridad jurídica de los intereses privados constituidos por las personas naturales y jurídicas, que actuando de buena fe invirtieron en negocios lícitos y que utilizaron capitales de reconocida proveniencia lícita. Además, teniendo en cuenta la misma seguridad jurídica del Estado o a favor de éste, en materia tributaria, arancelara y cualquier otra que nazca del ejercicio natural de Soberanía. Finalmente, también la seguridad jurídica de las personas que hayan sido afectadas en sus derechos, especialmente si se trata de pueblos originarios o tribales. En virtud de lo anterior, se procede a explicar el alcance de los efectos de la presente sentencia. 6.2.1. Una inconstitucionalidad de origen o ex tunc. Como regla general, nuestra Constitución de la República establece en el artículo 185 que la inconstitucionalidad tiene efectos derogatorios o ex nunc, así: "Artículo 185. La declaración de inconstitucionalidad de una ley y su derogación, podrá solicitarse, por quien se considere lesionado en su interés directo, personal y legítimo: 1. Por vía de acción que deberá entablar ante la Corte Suprema de Justicia; 2. Por vía de excepción, que podrá oponer en cualquier procedimiento judicial; y, 3. También el órgano jurisdiccional que conozca en cualquier procedimiento judicial, podrá solicitar de oficio la declaración de inconstitucionalidad de una ley y su derogación antes de dictar resolución. En los casos contemplados en los numerales 2) y 3), se debe elevar las actuaciones a la Corte Suprema de Justicia, siguiéndose el procedimiento hasta el momento de la citación para la sentencia, a partir de lo cual se suspenderá el procedimiento judicial de la cuestión principal en espera de la resolución sobre la inconstitucionalidad". Esta regla general, se dispone también en el numeral 2 del artículo 316 constitucional, que a la letra expresa: "Artículo 316. … La Sala de lo Constitucional tendrá las atribuciones siguientes: 1. … 2. … las sentencias en que se declare la inconstitucionalidad de una norma serán de ejecución inmediata y tendrán efectos genérales y por tanto derogarán la norma inconstitucional, debiendo comunicarse al Congreso Nacional, quien lo hará publicar en el Diario Oficial La Gaceta. Por otra parte, el efecto derogatorio de la declaratoria de inconstitucionalidad, o sea con efectos hacia futuro, se encuentra fundado como antes se mencionó, en el principio de retroactividad, presente en los artículos 96 constitucional, 9 de la Convención Americana Sobre Derechos Humanos,

numeral 2 del artículo 15 del Pacto Internacional de Derechos Civiles y Políticos y 96 de la Ley Sobre Justicia Constitucional. Sin embargo, debe tomarse también en cuenta que la aplicación del efecto retroactivo o ex tunc, no sólo es posible o autorizado en materia penal a favor del procesado o condenado; sino que también debe aplicarse cuando mediante la garantía de amparo se ordena que para restablecer o restituir un derecho fundamental se retrotraigan las actuaciones dejando sin valor y efecto un acto de autoridad, sea administrativo, judicial o de cualquier índole. De lo anterior, se puede colegir que el restablecimiento o restitución de derechos fundamentales, requiere la aplicación con efecto retroactivo para que la decisión sea efectiva y eficaz. Pues, precisamente en el presente caso, nos encontramos ante la necesidad de restablecer o restituir un derecho fundamental para todo Estado, la disposición soberana de su territorio como también el ejercicio soberano de imponer sobre dicho territorio la forma de gobierno dispuesta por el Pueblo hondureño como poder constituyente. Tanto el territorio como la forma de gobierno son junto con la población, elementos primigenios de nuestro Estado. Al respecto, el Doctor Allan Brewer-Carías en sus comentarios a la Ley Sobre Justicia Constitucional[24], explica que el efecto ex tunc o pro pretaerito, es propio de sistemas de control difuso cuando declaran inconstitucionalidades inter partes, o sea que no son erga omnes. Señala que en estos casos la decisión causa nulidad y es retroactiva, considerándose que la norma no ha existido y nunca ha tenido validez. Por el contrario, señala que, en los sistemas de control concentrado, aunque la decisión de inconstitucionalidad opere erga omnes, en principio el efecto será la anulabilidad de la norma, o sea ex nunc o pro futuro, surtiendo efectos en tanto estuvo en vigencia. Sin embargo, el doctor Allan Brewer-Carías reconoce que esta distinción entre efectos ex tunc y ex nunc no es absoluta con respecto a cada sistema. Por ejemplo, explica que, aunque se declare la inconstitucionalidad en un asunto inter partes, ya ningún tribunal podrá aplicar dicha norma.[25] El autor antes citado, señala que Honduras después de la reforma constitucional mediante el Decreto Legislativo 262-2000 dispuso un sistema mixto o integral (difuso y concentrado), por cuanto en el artículo 185 constitucional se manda a que la inconstitucionalidad sea declarada por la Corte Suprema de Justicia (sistema concentrado), pero también en el artículo 320 constitucional adopta el sistema difuso cuando dispone que en caso de incompatibilidad entre una norma constitucional y una legal ordinaria, deberá aplicarse la primera. El sistema de control constitucional hondureño dispuso únicamente de manera expresa, el efecto derogatorio de la declaración de inconstitucionalidad, porque el Soberano como poder constituyente, porque era suficiente disponer en el artículo 374 constitucional, temas intangibles o pétreos para proteger a nuestro país Honduras, como Estado de derecho, soberano, constituido como república libre, democrática e independiente y con una forma de gobierno ejercido por tres poderes complementarios, independientes y sin relaciones de subordinación. Era además suficiente para el Soberano advertir en el párrafo final del artículo 2 constitucional que la suplantación de la soberanía popular se tipifica como delito de traición a la patria y que dicha responsabilidad es imprescriptible y que la acción para su deducción es de carácter oficioso o a petición de parte. En esa misma línea, el Constituyente originario estimó suficiente el efecto derogatorio, porque era impensable que una autoridad constituida se atreviera a conculcar el artículo 19 constitucional que dispone que quien atente contra el territorio patrio, celebrando o ratificando tratados, u otorgando concesiones que lesionen la integridad territorial, la soberanía e independencia de la república, sería juzgado por traición a la patria, advirtiendo una vez que dicha responsabilidad es imprescriptible. Aunque, también debe reconocerse que el Constituyente no impuso como único efecto el derogatorio, sino que también impuso efectos de nulidad, cuando de manera expresa en el artículo 3 constitucional estableció con claridad meridiana, que nadie debe obediencia a quienes (autoridades, en este caso diputados) usen

procedimientos que quebranten o desconozcan lo que la Constitución y las leyes establecen y que los actos verificados por tales autoridades son nulos, todo lo cual va en íntima correspondencia con el capítulo XIII sobre la responsabilidad del Estado y sus servidores, contenido en el título V, artículos del 321 al 327 de la Constitución de la República. Entonces, planteadas tantas advertencias y prohibiciones, parecía imposible que alguien cometería traición a la patria; asimismo que lo hiciera bajo amenaza expresa de que la inviolabilidad de la Constitución tendría de todas maneras como causa inminente y obligada, el actuar decidido de cualquier ciudadano hondureño, investido o no de autoridad, para cumplir el deber de mantener y restablecer la efectiva vigencia de los artículos irreformables, intangibles o pétreos, dispuestos por nuestra Constitución. A pesar de que con todas las previsiones era imposible que ocurriera algo como lo acontecido, el Constituyente originario sabiamente se reservó en la Constitución, la potestad de imponer su carácter inviolable en ciertas materias, y dispuso el deber de restablecerlas, para así mantener el orden constitucional en plena vigencia. Es precisamente la orden de restablecimiento dispuesto en el artículo 375 constitucional, el fundamento para declarar nulo todo lo actuado en contravención a lo que dispone el artículo 374 también constitucional. Sumado a lo anterior, la Corte Suprema de Justicia es el intérprete último y definitivo de las leyes por medio del recurso de casación y de la Constitución de la República mediante las garantías dispuestas para la defensa de los derechos humanos por medio del amparo, del habeas corpus y del habeas data; así como la defensa del Estado, la sociedad y la Constitución misma, por medio de la garantía de inconstitucionalidad. No hay que olvidar que el derecho no se agota en la literalidad de las normas, sino que siempre la realidad, presenta más complejidad que todas las previsiones y supuestos imaginados por el legislador, quien al momento de crear las normas tiene la pretensión de resolver a futuro todas las situaciones posibles, y para este caso en particular, dispuso el artículo 375 constitucional con efectos restablecedores o restitutivos, es decir ex tunc. Por supuesto que, la poderosa prerrogativa de ser el intérprete último y definitivo antes mencionada tiene límites, estos son por una parte el hecho de que no puede ejercer esta potestad si no es en referencia concreta a un caso en particular, que, aunque los efectos sean erga omnes en aquellos casos que declare una inconstitucionalidad, es siempre dentro de los límites que ofrece un caso particular puesto bajo su conocimiento; asimismo, el otro límite es que siempre, toda interpretación debe estar en razón de conservar el orden constitucional (interpretación teleológica y de carácter integrador), y en este sentido puede extender el texto de la norma, al sentido y alcance no expresado en forma literal, pero que va implícita en la voluntad del legislador (mens legislatoris); y más en este caso, la voluntad del Soberano como constituyente originario. 6.2.2. El problema de la aplicación a ultranza del efecto ex nunc o derogatorio, necesidad de ponderar según casos concretos. Defensa del territorio nacional y de la forma de gobierno haciendo valer el artículo 375 constitucional. Antes de analizar lo que corresponde a este tema, cabe advertir que, por seguir a ultranza la literalidad de las disposiciones de la Constitución, es decir, declarar inconstitucionalidad sin más efecto que el derogatorio, Honduras enfrenta varias denuncias ante la Comisión Interamericana de Derechos Humanos o CIDH, en virtud de que la Sala de lo Constitucional, en fecha trece de marzo de 2003, dictó las sentencias RI-1665-2001 y RI-2424- 2001 mediante las cuales declaró con efectos ex nunc la inconstitucionalidad del Decreto Legislativo No. 58-2001.[26] Lo anterior se menciona para ilustrar sobre la necesidad de que este alto tribunal de justicia, pondere en cada caso los efectos de la declaratoria de inconstitucionalidad y decida con puntualidad o en cada caso que conoce, sobre los efectos sean ex nunc o ex tunc, de manera que se preserve el orden jurídico nacional, pero con respeto a los derechos fundamentales de personas naturales y jurídicas. Siguiendo la línea de estas ideas, la Corte Suprema de Justicia establece que, en el presente caso, no basta la

derogación de normas, sino que debe declararse su nulidad retroactiva por cuanto tienen que ver con la integridad del territorio nacional. El mandato de indisponibilidad absoluta del territorio nacional, previsto en el artículo 374 lo demanda, y el artículo 13 constitucional lo complementa al señalar de forma expresa que el dominio que Honduras ejerce como Estado sobre su territorio (normado en el capítulo II del título I de la Constitución) tiene carácter inalienable e imprescriptible. Entonces: ¿Qué sucede si la declaratoria de inconstitucionalidad en materia de territorio sólo se declara con efecto derogatorio o ex nunc, es decir con carácter no retroactivo, o nada más hacia futuro? Ocurriría que leyes o actos de autoridad que comprometan el derecho de dominio, inalienable e imprescriptible del Estado quedarían firmes y sin posibilidad de ser restituidos (o en términos del artículo 185 de nuestra carta fundamental, mantenidos o restablecidos) al orden constitucional dispuesto por nuestro país. Siendo esto un terrible absurdo desde la perspectiva de la imprescriptibilidad, inalienabilidad e intangibilidad del territorio y la irreformabilidad[27] de nuestro sistema constitucional de gobierno. ¿Qué ocurre con el imperium del artículo 375 constitucional en relación con el 374 también de la Constitución? ¿Es acaso simbólico? ¿Podrá decirse que el territorio nacional es inviolable si se respeta a ultranza y sin reflexión alguna, el carácter derogatorio (ex nunc) de la declaratoria de inconstitucionalidad de un acto legislativo que mancilla el derecho de soberanía que Honduras tiene sobre su suelo sagrado, únicamente porque autoridades temporales mediante equivocados o dolosos actos, como los ahora juzgados, debilitan, cercenan o comprometen partes de su territorio? ¿Qué sucede con el deber o principio de equidad intergeneracional que se tiene con relación al futuro de nuestra gente, según concepto introducido por la Sala de lo Constitucional en la sentencia RI-172-2006 de fecha cuatro de octubre de dos mil seis, referido concretamente al deber de velar por los intereses de las futuras generaciones? Definitivamente la respuesta a cada pregunta conmina u obliga a establecer que no puede declararse la inconstitucionalidad con sólo el efecto derogatorio o pro futuro, sino que la Corte Suprema de Justicia deviene en la obligación de interpretar el espíritu con el que nuestro Constituyente declaró el carácter inviolable, perpetuo e imprescriptible de nuestro territorio. Para ello es imprescindible que este alto tribunal de justicia tome y dé vida a lo dispuesto en el artículo 375 constitucional, norma que de manera imperativa demanda la vigencia y cumplimiento irrestricto de la Constitución, cuyo cumplimiento no cede ni pierde vigencia por acto de fuerza[28] o cuando fuere supuestamente derogada o modificada por cualquier otro medio y procedimiento distintos del que ella misma dispone. Siendo un artículo irreformable o pétreo, el que se ha comprometido con los actos legislativos de reforma constitucional y promulgación de leyes, no puede aceptarse por ningún punto que existen dichos actos, sino que deben ser considerados "supuestos", como bien dice el artículo 375 de la Constitución. Se debe partir de la idea que, el objeto de decisión legislativa del Congreso Nacional y de negociación por parte de las autoridades involucradas, en este caso son el territorio y la forma de gobierno, dos objetos totalmente indisponibles para cualquier legislación o negociación, debido a que existe una prohibición absoluta, que hace nulo de pleno derecho todo acto, ley o contrato; esto por cuanto el objeto (territorio y forma de gobierno) es ilícito (prohibido) por disposición expresa del artículo 374 constitucional.[29] De igual manera, la inconstitucionalidad aludida procede en relación con la pretendida e inexistente reforma a la forma de gobierno, tema irreformable de acuerdo con el artículo 374 constitucional. De acuerdo con la reforma constitucional aprobada por los diputados para dar vida a las ZEDEs, el territorio bajo el dominio de dichas zonas, podía ser gobernado por un sistema y por autoridades distintas a las constituidas en el país. Es decir, las ZEDEs tendrían un régimen de autogobierno y autogestión que le volvían territorios autónomos. Por lo que nuevamente se afirma, el efecto ex nunc queda corto y no satisface la necesidad de restituir el

imperio de la Constitución, puesto que no es posible que en nuestro territorio patrio, existan o se le dé validez a gobiernos exógenos o fuera del imperio del Soberano, por lo que está sobradamente legitimada la retroactividad de la declaratoria de inconstitucionalidad. Señalar lo contrario, sería poner en riesgo y contravenir lo que disponen los artículos 373, 374 y 375 de la Constitución de la República. 6.2.3. Los efectos perniciosos de declarar la inconstitucionalidad con efectos derogatorios o ex nunc. Por otra parte, siempre en relación con el territorio y la forma de gobierno, cabe preguntar lo siguiente: Una vez cedido o comprometido el suelo hondureño mediante actos legislativos espurios y contrarios a la Constitución, cómo se puede recobrar el control soberano de ese territorio, si se mantiene la validez de los actos consumados o los derechos adquiridos[30] (no cualquier derecho dominical, sino derechos atentatorios a la soberanía nacional). Primero y para que quede expresamente dispuesto, con relación a las zonas de empleo y desarrollo económico se descarta totalmente el reclamo de derechos adquiridos, porque ninguna sociedad mercantil, ni empresa, alcanzó el status de ZEDE, puesto que ninguna de las actuales personas jurídicas que pretendieron acogerse a dicho régimen cumplieron con todos los requerimientos exigidos por la normativa creada al efecto. El jurista hondureño Doctor Joaquín Mejía Rivera, en una publicación académica[31] explica que para la constitución de una ZEDE es requisito insoslayable de acuerdo con el artículo 329 reformado, la aprobación de dicha zona por el honorable Congreso Nacional, mediante votación calificada y con la previa participación ciudadana en un plebiscito aprobatorio, con un resultado de las dos terceras partes de la población de acuerdo con el artículo 5 constitucional.[32] Dicho jurista destaca 30 Los derechos adquiridos suponen que, durante la vigencia de la primera ley, se alcanzan todos los efectos previstos, quedando constituido el derecho. Por ejemplo, en el caso de marras, una Zede es declarada después de cumplir con todos los trámites y requisitos exigidos, de manera que la derogación o reforma posterior no le puede afectar. Cuando se habla de derechos adquiridos debe descartarse por tales, la adquisición de una facultad o de una expectativa de derecho. Es decir, debe perfeccionarse o consumarse el hecho o acto que constituye el derecho en sí. el carácter exclusivo o indelegable que tiene el Congreso Nacional para aprobar una ZEDE. Hasta la fecha no existe publicación en La Gaceta que disponga la aprobación, constitución o creación de una ZEDE[33] en virtud de lo cual se descarta la existencia de derechos adquiridos originados en la normatividad que se analiza, y que se considera inconstitucional por violentar artículos irreformables o pétreos. Si bien es cierto, en el presente caso las normas que deben ser declaradas inconstitucionales, no han generado derechos adquiridos, es importante que este alto tribunal de justicia siente un precedente a futuro y declare la nulidad y no la derogación de dichas normas. Mal precedente sería, que ante una contravención formal a la inviolabilidad territorial se declaren efectos derogatorios. De raíz debe quedar como stare decisis de este alto tribunal, el señalamiento expreso y claro de que conforme al artículo 375 constitucional no nacieron ni nacerán nunca efectos que pongan en peligro la forma de gobierno y el suelo de la nación. Ahora bien, resulta importante para esta alta corte, reconocer que la teoría relacionada con los derechos adquiridos, si bien es mayoritaria no es la única, sino que existen otras diferentes. Existe quien para conceptualizar el derecho adquirido hace la distinción entre facultad legal y ejercicio, señalando que una facultad legal no ejercitada se debe considerar una simple expectativa, la cual sólo se convierte en derecho mediante el ejercicio; en ese sentido, el ejercicio de la facultad legal, es suficiente para que se materialice o constituya el derecho. Trasladada dicha teoría al caso que nos ocupa, quienes acudieron al llamado de constituir Zedes podrían reclamar el ejercicio de una facultad que tenían, considerando que tienen el derecho de continuar hasta consumarlo. Esta teoría se rechaza, no obstante existe y debe tomarse en cuenta, debiéndose evitar cualquier cercenamiento a nuestro territorio y cambio a su forma de gobierno.[34] Por otra parte, la tesis de

Paul Roubier distingue entre la teoría del efecto retroactivo y el efecto inmediato.[35] Dicho autor entiende el efecto retroactivo de una norma cuando se aplica a: i) hechos consumados bajo el imperio de una ley anterior; y, ii) a situaciones jurídicas en curso, en lo relacionado con los efectos realizados antes de la iniciación de la vigencia de la nueva ley. Explica dicho autor que ocurrido un hecho estando en vigor una ley, y luego entra en vigencia una nueva ley, produciéndose durante la vigencia de esta última las consecuencias de aquel hecho, no existe aplicación retroactiva sino inmediata. Por supuesto, sentencia dicho autor, los hechos que ocurran a futuro o sea bajo la vigencia de la segunda ley deben regirse por ésta. O sea, el planteamiento de Roubier, es lo que se conoce como ultraactividad de la ley, que ocurre cuando los efectos o consecuencias de una ley anterior, se producen estando bajo la vigencia de una ley posterior. Nuevamente, el jurista hondureño Joaquín Mejía Rivera, en un documento denominado "La ultraactividad y los 'injertos constitucionales' a la luz de la nueva sentencia de la Sala de lo Constitucional sobre las ZEDE.", se pregunta, ¿puede existir una norma jurídica derogada?; es decir, ¿tiene una norma derogada efectos de ultraactividad o sea puede ser aplicada a determinados supuestos?. El doctor Mejía Rivera, contesta lo anterior señalando que, aunque hasta ese momento continúan vigentes las reformas operadas a los artículos 294, 303 y 329 constitucionales, el hecho de haberse derogado las leyes secundarias que las desarrollaban, hace que las normas constitucionales no tengan eficacia ni operatividad, en virtud de que, al ser disposiciones institutivas u organizativas, dependen del ulterior desarrollo legislativo. Ahora bien, el doctor Joaquín Mejía Rivera advierte que la figura de las ZEDEs a la fecha existe, sigue vigente y pertenece a nuestro sistema jurídico, por lo que es objeto de control de constitucionalidad, tal como lo determinó el voto mayoritario de la Sala de lo Constitucional. Así mismo el doctor Joaquín Mejía, resalta que de acuerdo con el artículo 45 de la derogada Ley orgánica de las ZEDEs se mantiene en vigencia dicha normativa durante el plazo señalado en la cláusula o contrato de estabilidad jurídica formado con personas naturales o jurídicas que residan o inviertan en las ZEDEs[36]; y que el período de transición no podrá ser menor a diez años, manteniéndose durante ese tiempo, en vigencia los derechos de los habitantes e inversionistas de las ZEDEs. En virtud de lo cual, no cabe duda que la Corte Suprema de Justicia enfrenta en esta sentencia un caso de ultractividad normativa que debe ser resuelto, y que la única forma efectiva y eficazmente correcta para hacerlo, es declarando la inconstitucionalidad bajo el efecto ex tunc de las reformas constitucionales vigentes y las normativas legales derogadas por el Congreso Nacional. 6.2.4. Fundamentos para estimar la inconstitucionalidad de la normativa referida a la creación de las ZEDEs. Es de conocimiento general que el Pueblo hondureño instituido como poder originario o constituyente, al momento de promulgar la Constitución de 1982, actualmente en vigor, y crear los tres poderes constituidos (Judicial, Ejecutivo y Legislativo) concedió a este último, por medio de su órgano institucional el Congreso Nacional las prerrogativas inter alia de a) reforma constitucional; y, b) crear, interpretar, reformar y derogar las leyes de la República. Sin embargo, el Poder Legislativo, como poder constituido que es, se encuentra limitado por el Poder Constituyente, en todo lo referente al contenido del ya citado y transcrito artículo 374 constitucional; el cual, sustrae de su dominio todo lo referente a: a) el procedimiento de reforma constitucional (art. 373); b) el contenido del mismo artículo 374; c) los artículos constitucionales que se refieren a: c1) la forma de gobierno; c2) el territorio nacional; c3) el período presidencial; c4) la reelección a Presidente de la República; c5) la reelección presidencial del ciudadano que haya desempeñado dicho cargo bajo cualquier título; c6) la prohibición a postularse a la presidencia de la República por el período subsiguiente. De tal manera que, en este caso en concreto, las reformas que el legislador derivado promulgó con relación a normas constitucionales, y que, por lo expuesto se subsumen en los temas prohibidos

por el Constituyente originario, son nulos de origen (ex tunc); y, por ende, es un hecho de fuerza por cuanto están totalmente fuera del mundo del Derecho. Se declarados por razón de conculcar artículos pétreos son bajo efectos ex tunc; sino que es posible en ciertos casos, declararse la inconstitucionalidad con efectos ex nunc, [37] porque todo depende del resultado de juzgar caso por caso. En relación con el asunto actualmente bajo estudio, el efecto de la inconstitucionalidad debe ser ex tunc, por cuanto las normas tachadas de inconstitucionalidad atentan dos elementos básicos, primigenios y fundamentales para Honduras como Estado y nación, libre, soberana e independiente. Se aclara para completar los comentarios a lo expresado por el artículo 375 constitucional, que los hechos de fuerza, no necesariamente son violentos, algunas veces pueden darse, como en el caso que nos ocupa, en la forma de actos simulados, forzados en cuanto a legalidad y legitimidad constitucional. Es por ello que esta Corte Suprema de Justicia, reafirma que todo poder constituido, incluyendo el Congreso Nacional, debe ser garante y fiel defensor del territorio nacional, y demás valores intangibles integrados en la Constitución de manera pétrea o irreformable.6.3. Una inconstitucionalidad ampliamente anunciada y denunciada. Es de realzar el hecho de que la reforma constitucional de los artículos 294, 303 y 329 de la Constitución de la República y la consecuente promulgación de la Ley Orgánica de las Zonas de Empleo y Desarrollo aclara que no todos los casos de inconstitucionalidad Económico (ZEDE), constituyen los hechos más evidentes y groseros contra Honduras y su pueblo soberano, violentando su voluntad instituida en la Constitución de la República. Por lo que, desde un inicio, cuando se externó la intención de crear dichas zonas, se elevaron voces que se oponían, advirtiendo que su constitución era una violación de artículos constitucionales de naturaleza irreformable, por lo que no resulta aceptable permitir amenazas al Estado hondureño con consecuencias de tipo económico, proferidas por aquellos que, a pesar del rechazo generalizado y sobre todo del fuerte y válido fundamento constitucional en contra, querrán ahora lucrarse alevosamente, aduciendo conceptos como la seguridad jurídica. Ejemplo del repudio generalizado a la creación de ZEDEs, el Consejo hondureño de la empresa privada o COHEP[38], elevó su voz de protesta en forma pública, a la sazón publicó en diferentes medios de comunicación el comunicado denominado: COHEP ANÁLISIS JURÍDICO DE LAS ZEDE EN HONDURAS con el contenido siguiente: I. ¿Las ZEDE han sido declaradas dentro del marco de la legalidad? II. En qué consisten las reformas aprobadas por el Congreso Nacional. III. Cuestionamientos a las ZEDE. IV. Conclusiones.[39] En dicho comunicado fechado el dos de junio de 2021, el COHEP señala que a pesar de que la Sala de lo Constitucional declaró la constitucionalidad de las ZEDEs mediante la sentencia RI-0030-20 (que como se verá más adelante es cuestionable) concluye que las reformas constitucionales que dan nacimiento legal a las ZEDE y la Ley orgánica de las ZEDE tenían motivos de inconstitucionalidad con relación al territorio y soberanía. En ese sentido, cuestionan que aunque la Sala de lo Constitucional les haya declarado existir conforme a la Constitución son normas que carecen de legitimidad al no haber sido aprobadas mediante un amplio proceso de consulta a la población hondureña y sus distintos sectores (es decir, es materia del Soberano). Por otro lado, el Decreto Legislativo aprobado por el Congreso Nacional, por medio del cual se aprueban las "normas para regular las relaciones fiscales y aduaneras entre las entidades competentes del Estado de Honduras y las ZEDEs)" tiene motivos de inconstitucionalidad, violentando el principio de legalidad que es la piedra angular del Estado de Derecho y por ende el artículo 1 de la Constitución. Con dicho comunicado el COHEP, advierte que las ZEDEs carecen de legitimidad constitucional, entre otras razones por las siguientes: "3) Las ZEDE son una imposición de un nuevo Estado dentro del Estado de Honduras, al brindar atribuciones a estas ZEDEs que las diferencian del Estado hondureño, al tener un territorio diferenciado, una población que debe de registrarse dentro de este

territorio y un poder distinto al del Estado hondureño. 4) El establecer que las ZEDE cuentan con la consideración de extraterritorialidad fiscal y aduanera generará un déficit fiscal a las finanzas públicas y de los gobiernos locales, por lo que este es un tema que puede comprometer los acuerdos suscritos con órganos multilaterales de financiamiento con los cuales el Estado de Honduras se ha comprometido. 5) Es de nuestra consideración que la CAMP ha actuado al margen de la ley, autorizando la aprobación de la creación de las ZEDE al margen de lo establecido en la Constitución de la República y de la Ley orgánica de las ZEDE, ya que la creación de las ZEDE indistintamente de la densidad poblacional es el Congreso Nacional de la República, lo que conlleva un riesgo a las inversiones desarrolladas en las ZEDE, de igual forma un riesgo al Estado de Honduras de enfrentar acciones legales exigiendo el pago de indemnizaciones por los daños y perjuicios ocasionados a inversionistas nacionales y extranjeros. Por lo que concluimos que la forma como se han autorizado las ZEDE, son inversiones de alto riesgo. 6) Las actuaciones de los miembros de la CAMP, que han autorizado la creación de las ZEDE, se encuentran viciadas de nulidad y son objeto de responsabilidad civil, administrativa y penal, pudiendo concluirse que al no haber sido aprobadas las ZEDE por parte del Congreso Nacional, estamos ante un tipo penal de prevaricato administrativo y abuso de autoridad e incumplimiento de los deberes y funciones de los funcionarios públicos. 7) El desarrollo económico y social por medio de la creación de empleos, no puede sujetarse de normas que sean contrarias al Estado de Derecho, siendo principios doctrinarios del COHEP: Velar por el funcionamiento de un Estado democrático, representativo y subsidiario al servicio del hombre y no éste, al servicio del Estado; así como velar por el desarrollo de la libre iniciativa amparada en los derechos que otorga la Constitución y las leyes; La generación de riqueza que asegure la creación de empleos, ingresos y ganancias legítimas a quien asume el riesgo empresarial y al Estado, tributos para su justa y equitativa distribución a los realmente necesitados en la sociedad. 8) Finalmente concluimos que, las ZEDE como modelo de desarrollo e inversión en el país ha sido desnaturalizadas desde todo punto de vista, generando en este momento demasiados riesgos a los inversionistas y el Estado de Honduras por la falta de transparencia y forma como se han venido autorizando. De igual forma este modelo de desarrollo económico y social debe ser ampliamente consultado con los distintos sectores de la sociedad hondureña para contar con legitimidad." De igual manera la Asociación para una sociedad más justa o ASJ[40], en fecha 7 de julio de 2021, divulgó también por los medios de prensa la comunicación denominada: "LAS ZEDES VIOLAN LA CONSTITUCIÓN DE LA REPÚBLICA Y GENERAN CONDICIONES DESIGUALES DE SEGURIDAD CIUDADANA",[41] en el que denuncian que las reformas constitucionales a los artículos 294, 303 y 329 y la normativa que las desarrollan para crear las Zonas de Empleo y Desarrollo Económico (ZEDE), violentan la Constitución de la República y que dicha situación permite realizar el siguiente análisis: "1. Soberanía y forma de gobierno. "La soberanía corresponde al pueblo del cual emanan todos los poderes del Estado que se ejercen por representación. …", así establece el primer párrafo del artículo 2 de la Constitución de la República, complementándose con el primer párrafo del artículo 4 que establece "La forma de gobierno es republicana, democrática y representativa. Se ejerce por tres poderes; Legislativo, Ejecutivo y Judicial, complementarios e independientes sin relaciones de subordinación. …" En ese sentido, la soberanía es el dominio de un Estado sobre todo su territorio y es así que el poder constituyente únicamente estableció de forma originaria la democracia representativa en tres poderes como forma de delegación para ejercer el poder, y de conformidad con la redacción originaria del artículo 294 de la Constitución de la República, se estableció el régimen departamental y municipal como la demarcación territorial del Estado de Honduras para la descentralización del ejercicio del poder local, delimitando la autonomía de los

municipios en el artículo 298 de la Constitución de la República, expresando taxativamente que las corporaciones municipales en el ejercicio de sus funciones serán independientes de los poderes del Estado pero nunca contrarias a la ley y respondiendo ante los tribunales de justicia por los abusos que cometieren, concretando su autonomía funcional administrativa y financiera, pero reafirmando que el Estado es uno sólo y que la labor de los poderes del Estado son independientes, pero ejerciendo su actuación en los municipios que forman parte del Estado de Honduras; Ante tal circunstancias, el constituyente no estableció ninguna otra forma originaria de descentralización funcional y administrativa del poder en el territorio hondureño y por consiguiente el establecimiento de tribunales con competencia exclusiva en estas zonas es totalmente improcedente, razón por la cual la reforma constitucional a los artículos 294, 303 y 329 de la Constitución de la República violentan los postulados correspondientes a la soberanía y a la forma de gobierno. 2. Principio de igualdad. El artículo 60 de la Constitución de la República establece: "Todos los hombres nacen libres e iguales en derechos. En Honduras no hay clases privilegiadas. Todos los hondureños son iguales ante la ley. Se declarará punible toda discriminación por motivo de sexo, raza, clase y cualquier otra lesiva a la dignidad humana. La ley establecerá los delitos y sanciones para el infractor de este precepto." La igualdad en el trato a las personas, es el principio fundamental del Derecho, que va íntimamente ligado al principio de justicia. En los beneficios sociales, económicos, jurídicos, educativos, sanitarios, laborales y culturales entre otros, no pueden constituirse en privilegios o monopolios que creen ventajas para unos en detrimentos de otros. Las reformas constitucionales a los artículos 294, 303 y 329 de la Constitución de la República violan este postulado ya que, genera un régimen desigual con aplicación de una justicia diferente y un régimen administrativo diferente que incluso llega a general libertad de locomoción al resto de los habitantes de la República de Honduras. 3. Principio del debido proceso. El artículo 90 párrafo primero de la Constitución de la República establece que "Nadie puede ser juzgado sino por juez o tribunal competente con las formalidades, derechos y garantías que la ley establece. …", este precepto constitucional se refiere al conjunto de formalidades esenciales que deben observarse en cualquier procedimiento legal, para asegurar o defender los derechos y libertades de toda persona; se le conoce también como "derecho al debido proceso legal". Los artículos 14, 15 y 18 de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) establecen que los tribunales serán autónomos e independientes con competencia exclusiva en todas las instancias sobre las materias que no estén sujetas a arbitraje obligatorio y operarán bajo la tradición de derecho común o anglosajón (common law), u otras de conformidad al artículo 329 de la Constitución de la República y haciendo referencia que los órganos jurisdiccionales de las ZEDE deben fallar en equidad o en derecho según se defina al crearlos y que los juicios en materia penal podrán decidirse por jurados. Asimismo, que los fallos en un caso particular crearan precedente de observancia obligatoria de carácter general y los fallos de naciones extranjeras pueden citarse como precedentes. Lo anterior contraviene lo establecido en el principio del Debido Proceso Legal pues en los tribunales no son autónomos dependen del Poder Judicial, por principio constitucional dependemos de una tradición del derecho continental europeo de origen romano-germánico (derecho escrito, es decir debemos promulgar la ley para hacerla obligatoria) contrario al derecho anglosajón y menos aún poder fallar en base a equidad por medio de jurado por la misma tradición de nuestro sistema en la jurisdicción ordinaria que únicamente permite sentencias fundamentadas en derecho no en equidad, razón por la cual se violenta el principio del debido proceso y por último el arbitraje no puede bajo ninguna medida imponerse o ser obligatorio, siempre ha sido de conformidad se establece en la Ley de conciliación y arbitraje, voluntario, es decir pactado por las partes, porque el arbitraje y sus costos debe ser pagado por ambas partes y en consecuencia debe

ser pactado por convenio o cláusula arbitral pero nunca invertir los principios y declararlo obligatorio, principio que contraviene la gratuidad constitucional de la justicia y lo estipulado en el artículo 110 constitucional referente a la facultad discrecional que tienen las personas naturales de terminar sus asuntos civiles por transacción o arbitramiento. 4. Independencia del Poder Judicial. El artículo 303 constitucional establece en la primera parte de su párrafo primero "La potestad de impartir justicia emana del pueblo y se imparte gratuitamente en nombre del Estado, por magistrados y jueces independientes, únicamente sometidos a la constitución y a las leyes..." y de conformidad al artículo 313 de la Constitución de la República, la Corte Suprema de Justicia tiene la potestad de dirigir al Poder Judicial en la potestad de impartir justicia. Estas atribuciones manifiestan de forma expresa la autonomía e independencia de la Corte Suprema de Justicia en la conducción del Poder Judicial y en la selección de sus jueces y magistrados. Es por ello que esta independencia se ve violentada con las reformas al artículo 329 de la Constitución de la República, ya que se establece en su último párrafo que "… Los jueces de las zonas sujetas a jurisdicción especial serán propuestos por las zonas especiales ante el Consejo de la Judicatura quien lo nombrará previo concurso de un listado propuesto de una comisión especial integrada en la forma que señale la Ley Orgánica de estos regímenes…" es una clara intromisión en un poder del Estado y esta intromisión se ve reflejado en el artículo 14 y 14 de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) y para concluir esa violación, este ordenamiento orgánico en su artículo 16 establece que las Zonas de Empleo y Desarrollo Económico (ZEDE) contarán con un Tribunal de protección de derechos individuales, el cual amparará a las personas que se encuentren en una ZEDE contra las violaciones de derechos fundamentales y su integración será por cuantas personas decida el Comité para la adopción de mejores prácticas, desconociendo al Poder Judicial en la creación de este tribunal y en clara violación a lo que establece la Ley sobre justicia constitucional en materia de instancias para la protección de derechos constitucionales. 5. Autonomía del Ministerio Público. El artículo 232 de la Constitución de la República establece en la parte conducente de su primer párrafo que "El Ministerio Público es el organismo profesional especializado, responsable de la representación, defensa y protección de los intereses de la sociedad, independiente funcionalmente de los poderes del Estado y libre de toda injerencia político sectario. … Corresponde al Ministerio Público el ejercicio oficioso de la acción penal pública. …". Este precepto se refiere al rango constitucional del Misterio Público en cuanto a la potestad de representar los intereses generales de toda la sociedad hondureña sin excepción en cuanto al ejercicio oficioso de la acción penal pública. Situación que lesiona esas potestades del Ministerio Público al expresar el artículo 22 de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) que las ZEDE deben como un imperativo, establecer sus propios órganos de investigación del delito, inteligencia y persecución penal. 6. Principio de unidad de actuación de la Policía Nacional en todo el territorio. La Policía Nacional es una institución profesional permanente del Estado, apolítica en el sentido partidista de naturaleza puramente civil, encargada de velar por la conservación del orden público, la prevención, control y combate al delito, la cual se regirá por legislación especial. Es parte de lo que establece el artículo 293 de la Constitución de la República, donde deja ver claramente que es la institución del Estado destinada a cumplir sus fines en todo el territorio nacional sin excepción, que establece su radio de acción en una legislación especial y el artículo 32 de la Ley Orgánica de la Secretaría de Estado en el Despacho de Seguridad y de la Policía Nacional, establece entre las atribuciones del cuerpo policial entre otras "… 2. Salvaguardar la vida, bienes, derechos y libertades de las personas dentro del territorio nacional; 3. Mantener y promover el orden público interno; … La función policial sólo puede ser desempeñada por miembros activos de la Policía Nacional de Honduras.". Por

consiguiente, tanto lo que establece el texto constitucional como la norma secundaria entra en clara controversia con lo establecido en el artículo 22 de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) al afirmar que las ZEDE "… deben establecer sus propios órganos de seguridad interna con competencia exclusiva en la zona, incluyendo su propia policía, órganos de investigación del delito, inteligencia, persecución penal y sistema penitenciario; así como la vinculación con la estrategia de seguridad del país.", situación que hace imposible que esta norma pueda coexistir al estar en clara controversia con lo establecido en la Constitución de la República y la Ley Orgánica de la Secretaría de Estado en el Despacho de Seguridad y de la Policía Nacional. 7. Violación al principio de jerarquía de las normas jurídicas. De conformidad a este principio fundamental en todo estado constitucional de derecho, lo esencial de la jerarquía normativa consiste en hacer depender la validez de unas normas jurídicas de otras normas jurídicas, de modo que una norma es jerárquicamente superior a otra cuando la validez de ésta depende de aquélla, de manera que la norma inferior debe acatar la superior. La idea de jerarquía normativa está presente en el pensamiento jurídico de Hans Kelsen (1881- 1973) para quién también el elemento decisivo que determina la existencia del Derecho es su validez. Para Kelsen el ordenamiento jurídico se organiza como una pirámide escalonada donde cada rango normativo ocupa un escalón, de modo que la norma del escalón siguiente fundamenta la validez, la existencia, de la del escalón anterior. En esta jerarquía normativa kelseniana la cúspide de la pirámide la ocupa la Constitución; tras ésta en un segundo escalón están las normas generales, en las que Kelsen incluye las leyes; en un tercer escalón se ubican los reglamentos; y así sucesivamente en orden descendente. Pues bien, este orden doctrinario lo acoge nuestra constitución en todo su articulado y otras leyes de carácter general como el Código civil y la Ley General de la Administración Pública específicamente lo establecido en su artículo 7. La superioridad de la Constitución sobre cualquier otra norma jurídica prevalece y se basa en un criterio material, pues la misma contiene los principios fundamentales de la convivencia (superlegalidad material) y por ello está dotada de mecanismos formales de defensa (superlegalidad formal). Establece una superioridad de la norma escrita sobre la costumbre y los principios generales de Derecho, sin perjuicio del carácter informador del ordenamiento jurídico de estos últimos. Este orden lógico se quebranta con lo establecido en los artículos 8 y 41 de la Ley orgánica de las zonas de empleo y desarrollo económico (ZEDE) al afirmar que la jerarquía normativa en esas zonas es totalmente contraria a lo que establece la Constitución de la República y las leyes de carácter general, desaplicando la Constitución de la República en esas zonas y los tratados internacionales suscritos por Honduras al afirmar "…en lo que les sea aplicable;", es decir que en éstas áreas se invierte la jerarquía normativa, pues va de lo particular a lo general en lo que les sea aplicable, dando prioridad a las leyes que rigen en las ZEDE sobre la Constitución o leyes de carácter general, contrario a la doctrina Kelseniana que inspira nuestra constitución. Situación que violenta tajantemente la Constitución de la República. 8. Violación al principio de la libre autodeterminación de los pueblos y a la no intervención. El Convenio número 169 de la OIT sobre pueblos indígenas y tribales, tiene dos postulados básicos: el derecho de los pueblos indígenas a mantener y fortalecer sus culturas, formas de vida e instituciones propias, y su derecho a participar de manera efectiva en las decisiones que les afectan. Estas premisas constituyen la base sobre la cual deben interpretarse las disposiciones del Convenio. El Convenio también garantiza el derecho de los pueblos indígenas y tribales a decidir sus propias prioridades en lo que atañe al proceso de desarrollo, en la medida en que éste afecte sus vidas, creencias, instituciones y bienestar espiritual y a las tierras que ocupan o utilizan de alguna manera, y de controlar, en la medida de lo posible, su propio desarrollo económico, social y cultural. Lo establecido en este convenio colisiona de forma expresa por lo establecido en la reforma al artículo 329 de la Constitución de la República

al establecer que no será necesario el plebiscito aprobatorio para la creación de Zonas de Empleo y Desarrollo Económico (ZEDE) en zonas con baja densidad poblacional. Asimismo, colisiona con lo establecido en el artículo 25 y 26 de la Ley orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) al hacer referencia a que las ZEDE administrarán en nombre del Estado de Honduras la propiedad del suelo, cediendo atribuciones que por ley ostentas otras instituciones estatales fomentando el derecho a la expropiación fuera de los parámetros constitucionales, en detrimento del derecho constitucional a la propiedad privada. Por estas razones claramente se violenta el convenio 169 de la OIT en la reforma constitucional realizada al artículo 329 y los artículos 25 y 26 de Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE). 9. Reforma a artículos irreformables o pétreos. Al reformarse los artículos 294, 303 y 329 de la Constitución de la República, se violentaron normas constitucionales referentes a la división del territorio nacional y a la forma de gobierno que establece el artículo 374 de la Constitución de la República que no podrán reformarse en ningún caso. El Congreso Nacional como poder derivado del Poder Constituyente, tiene la atribución de reformar la Constitución, pero de conformidad a lo que establece el artículo 373 de la Constitución de la República, pero con la limitante del referido artículo 374 antes citado. 10. Armonía de normas constitucionales. Como ya han establecido innumerables estudiosos del derecho constitucional, una norma de la constitución no debe ser interpretada de forma aislada; la constitución constituye una unidad. Las normas constitucionales no pueden estar en una relación de tensión recíproca, deben necesariamente ser armonizadas o puestas en concordancia la una con la otra, de tal modo que no puede haber reformas constitucionales que no guarden armonía con lo establecido por el poder constituyente originario en relación con los artículos 373 y 374 de la Constitución de la República. 11. Derogatoria de las reformas constitucionales y la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE). Debe de proceder el Congreso Nacional a la derogatoria inmediata de las reformas constitucionales realizadas a los artículos 294, 303 y 329 de la Constitución de la República, así como la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) por las razones expuestas en el presente análisis jurídico. Asimismo debe de procederse estructurar mecanismos adecuados de generación de empleo y desarrollo en busca de simplificación administrativa adecuada para fomentar un apropiado clima de negocios y estímulo a la inversión donde todos alcancemos mejores niveles de convivencia y seguridad ciudadana, fortaleciendo los mecanismos de lucha contra la corrupción e impunidad que lesionan el Estado de Derecho y fomentar prácticas transparentes que garanticen la rendición de cuentas permanentes de todos los empleados y funcionarios del Estado." Se suma a estas posiciones dirigidas en contra de las ZEDEs el Consejo Nacional Anticorrupción o CNA, quien en junio de 2021 publicó e hizo circular por todos los medios un documento denominado: "Análisis sobre aspectos jurídicos y económicos en torno a las Zonas de Empleo y Desarrollo Económico (ZEDE)."[42]. El CNA en su extenso análisis denuncia la inconstitucionalidad de las ZEDEs y al final resume sus hallazgos en las conclusiones siguientes: "CONCLUSIONES. a. Pese a que la Constitución de Honduras requiere ser actualizada, para el caso de las ZEDE no operó el contenido normativo sobre la rigidez constitucional, sino que este proyecto es el resultado de un autoritarismo y totalitarismo de las personas que integran los poderes del Estado. b. La autonomía funcional y administrativa; la suplantación de funciones indelegables de los poderes del Estado; el desapego de la jurisdicción ordinaria; la implementación de un sistema de justicia extranjero —desconocido para la mayoría— que será manejado por foráneos; la manipulación de la política de transparencia, el control de órganos de policía e investigación, así como del espectro radioeléctrico; sumado a que dentro de las ZEDE, la aplicación del Código Penal vigente y las disposiciones sobre la extradición, son meramente transitorias, hasta que sus

órganos de gobernanza determinen como regular dichos aspectos, constituye gravemente, un claro panorama de haberse creado el más sólido refugio para «criminales de cuello blanco» que opten por ampararse bajo la legislación y sistemas autónomos que imperan dentro de las ZEDE. c. Específicamente, en lo respecta a la prevención y combate a la corrupción, es evidente que con el fin de generar impunidad para quienes se han visto involucrados en actos de corrupción, utilizarán esta zonas geográficas para refugiarse y evitar que justicia nacional o extranjera proceda en contra de ellos; al mismo tiempo, se identifica que debido a los principios de cosa juzgada muchos de los involucrados en corrupción provocarán que se les inicie procesos bajo los juzgados y tribunales que funcionarán dentro de las ZEDE y dichas resoluciones serán utilizadas como excepciones por cosa juzgada. d. Todo esto, se dio en el marco de manifiestas violaciones a la Constitución, donde los diputados que aprobaron las reformas constitucionales y la Ley Orgánica de las ZEDE, se excedieron en sus funciones atribuyéndose facultades del constituyente para reformar artículos que versan sobre la forma de gobierno y el territorio. Cabe mencionar que dichas aberraciones jurídicas, fueron disfrazadas con la retórica de un discurso y una promesa que el gobierno, no ha sabido cumplir en más de una década por lo que ahora, se ofrece anticipadamente el territorio a cambio de supuestas proyecciones de generación de empleo y el que se haya sentado todo un sistema de separación estatal, habiendo cedido la soberanía. e. En su mayoría, el contenido del funesto Decreto Legislativo n.º 120-2013, no contempla disposiciones encaminadas a determinar métodos, mecanismos o regulaciones con enfoque para generar desarrollo económico en Honduras, los legisladores de manera premeditada, se valieron de sendos artificios para simular la construcción de un muro perimetral constituido en una ley, que principalmente tiene como fin, haber sentado las bases legales para la creación de mini Estados dentro de Honduras, ajustados a los intereses de sus promotores bajo un acto de traición a la Constitución y la patria. f. La Ley de las ZEDE admite un modelo de expropiación que prioriza los intereses de quienes inviertan en estas zonas, por sobre los hondureños que habitan y poseen los territorios, con tal de lograr la expansión indeterminada de dicho proyecto. Aún peor es el caso del territorio con baja densidad poblacional de los municipios ubicados en los departamentos contiguos al Golfo de Fonseca y Mar Caribe, que ya están declarados por defecto dentro del régimen de las ZEDE. Es cuestión de tiempo para pérdida de dicho territorio. g. No siendo suficiente con lo advertido en el Decreto n.º 130-2012 (Ley de las ZEDE), el 15 de junio del 2021, se publicó en el Diario Oficial La Gaceta, el Decreto Legislativo n.º 32-2021 que estableció disposiciones en materia fiscal y aduanera para estas zonas especiales, asimismo, en el quinto artículo del mencionado decreto, se autoriza al Poder Ejecutivo a suscribir contratos de estabilidad legal y fiscal con las Zonas de Empleo y Desarrollo Económico que operan en el país para asegurar dichos compromisos cuando estos se extiendan por más de un período de gobierno. En otras palabras, se intenta consolidar la obligación del Estado de Honduras a garantizar la subsistencia de las ZEDE, aun cuando se dé un cambio de régimen político en el país; estos esfuerzos por blindar los inconsultos proyectos de zonas especiales, también se amparan en el artículo 45 de la Ley Orgánica de estas zonas, donde se manifiesta que aun con la derogación de dicho instrumento, se deberá respetar lo suscrito en los contratos o acuerdos mencionados en el párrafo anterior. h. Las modificaciones a la Constitución que dieron vida a la ley de las ZEDE tienen mayor alcance en materia de autonomía e independencia en comparación a las RED, es decir, las ZEDE transgreden en mayor medida los valores, principios y esencia de la Constitución. i. Los actos de corrupción entorno a estas zonas, están lejos de terminar, pues aún falta su materialización expansiva, que irá restando gradualmente la soberanía del Estado hondureño, para convertirse en amplios paraísos fiscales. j. Con la comisión de actos como las modificaciones realizadas a la Constitución de la República, la aprobación de la ZEDE

y la destitución de magistrados de la Sala Constitucional, se evidenció la manera categórica en que los poderes del Estado pueden actuar en contubernio para garantizar mecanismos que permitan satisfacer las necesidades para mantener el statu quo, aún posterior a su participación como servidores públicos. k. Con el análisis plasmando, resulta factible considerar que las ZEDE originarán desigualdad y podrían aumentar la migración de personas. Al momento de que en estas zonas se instalen empresas con alto nivel tecnológico que requieran de una mano de obra calificada, el acceso al empleo podría verse afectado por parte de la población que habita en estas regiones, ya que al no cumplir con los requisitos para trabajar en estas empresas, algunos residentes y personas aledañas al territorio de las ZEDE tendrían que emigrar para lograr establecerse en otras zonas del país donde puedan tener acceso a nuevas oportunidades de trabajo; como resultado provocará un aumento de las brechas de desigualdad entre la población. l. Las ZEDE no constituyen un componente de evolución económica para el país, ya que en principio se considera su constitución, funcionamiento e impacto dentro de un fragmento de territorio reducido, por lo que de avanzar en seguimiento a lo expresado en los discursos falaces de sus promotores, se deberá expandir abruptamente el modelo de estas zonas por grandes extensiones territoriales; situación que consecuentemente se traduce en una cesión en demasía, del territorio nacional a manos de la inversión extranjera. m. Finalmente, el CNA hace un llamado internacional para reconocer a los mecanismos de gobiernos autoritarios de las ZEDE como refugios para narcotraficantes, lavadores de activos y zonas donde se podrá realizar todo tipo de actos de corrupción sin la vigilancia que actualmente la sociedad La Gaceta civil emprende, y sobre todo sin el control estatal debido." Existen otros documentos y manifestaciones públicas de organizaciones y personas que demuestran que desde un inicio, todo inversionista estuvo advertido del riesgo de crear ZEDEs, en este sentido cabe recordar que nadie puede beneficiarse de actos propios que son sabidamente, ilegales; y es más, en este caso inconstitucionales e incuestionablemente ilegítimos. En este sentido, hubo varias corporaciones municipales que mediante cabildos abiertos, realizados de conformidad con la Ley de Municipalidades, se declararon en sus propias circunscripciones, "libres de ZEDEs", haciendo patente su rechazo a este tipo de inversiones.[43] Se citan otros documentos en los que se exponen razones suficientes para establecer que invertir en las ZEDEs era de alto riesgo por su inconstitucionalidad:[44] • Alexander, E. (2015). ¿Independencia judicial en Honduras? Balance de la situación y principales desafíos. Fundación Friedrich Ebert Stiftung. • Alford-Jones, K., Carasik, L. y Spring, K. (25 de agosto de 2017). Carta dirigida a Mark Lopes y Alex Severens. Concerns about HO-L1191: Support to the Creation of Employment and Economic Development Zones (ZEDES). http://www.ciel.org/wp-content/uploads/2017/11/Memo_Concern_ idb_Honduran_zede_Project.pdf • Alto Comisionado de Naciones Unidas para los Derechos Humanos. (2013). Grave atentado a la democracia en Honduras la destitución de magistrados de la Sala Constitucional. https://newsarchive.ohchr. org/SP/NewsEvents/Pages/DisplayNews. aspx?NewsID=12958&LangID=S • Arias, R., Sánchez, L., Vargas, L., Agüero, O. y Quesada, Y. (2016). Identificación y definición de las zonas especiales de desarrollo (ZED) en Costa Rica. Serie de divulgación económica, IICE-44. • Asociación para una sociedad más justa [ASJ]. (2018). Análisis de la estructuración, contratación y ejecución del contrato de concesión del corredor turístico de Honduras. http://asjhonduras.com/webhn/analisis-de-la- estructuracion-contratacion-y-ejecucion-del- contrato-de-concesion-del-corredor-turistico/ • Banco Interamericano de Desarrollo [BID]. (2006). Política operativa sobre pueblos indígenas (OP-765). http://idbdocs.iadb.org/ wsdocs/getdocument.aspx?docnum=1442306 • Banco Interamericano de Desarrollo [BID]. (2018). HO-l1191: Apoyo a la atracción de inversiones y creación de empleo en Honduras. https://www.iadb.org/es/project/HO-L1191 • Barahona, M.

(2018). Del pacto bipartidista al pacto de impunidad: ingobernabilidad, corrupción y crisis general en Honduras. En C. Villacorta y E. De Gori. (Eds), Golpe electoral y crisis política en Honduras (pp. 37- 46). Consejo Latinoamericano de Ciencias Sociales (CLACSO). • British Broadcasting Corporation (Productor). (2018). Las zede, el polémico proyecto de "ciudades privadas" de Honduras [BBC News Mundo]. https://www.youtube.com/ watch?v=ZU3QkNT_Hgo • Center for International Environmental Law [CIEL]. (2017). Should the Inter- American Development Bank Fund Honduras to Implement Controversial Special Economic Zones? https://www.ciel.org/wp-content/ uploads/2017/12/zedeanalysis.pdf • Chayes, S. (2017). When corruption is the operating system: the case of Honduras. Informe publicado por Carnegie Endowment for International Peace. https:// carnegieendowment.org/files/Chayes_ Corruption_Final_updated.pdf • Congreso Nacional de Honduras. (2013). Decreto Legislativo nro. 120-2013, Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE). https://www.tsc.gob.hn/ biblioteca/index.php/leyes/503-ley-organica- de-las-zonas-de- empleo-y-desarrollo- economico-zede/ A. 37Sección A Acuerdos y Leyes La Gaceta • Consejo de Derechos Humanos de la ONU. (2016). Informe de la Relatora Especial sobre los derechos de los pueblos indígenas sobre su visita a Honduras. http://unsr.vtaulicorpuz. org/site/index.php/es/documentos/country- reports/148-report-honduras • Corea del Sur da visto bueno para la primera zede. (6 de abril de 2015). La Prensa. https://www. laprensa.hn/inicio/828314-417/corea-del-sur- da-visto-bueno-para-construcci%C3%B3n- de-zede alfrente/565722-209/en-sesion-con- inconsistencias-destituyeron-a-magistrados • Extractivo Minero. (03 de agosto de 2016). El modelo «extractivista» en Honduras. https:// movimientom4.org/2016/08/el-modelo- extractivista-en-honduras/ • Dada, C. (20 de abril de 2017). Honduras y su experimento libertario en el golfo de Fonseca. El Faro. https://elfaro.net/ es/201704/centroamerica/20283/Honduras- y-su-experimento-libertario-en-el-golfo-de- Fonseca.htm • Fernández, B. (14 de julio de 2012). Partitioning Honduras: The advent of charter cities. Al Jazeera. https://www.aljazeera.com/indepth/ opinion/2012/07/2012711121224166933.html • García, F. (2014). Las ciudades burbuja: Zonas de Empleo y Desarrollo Económico zede en Honduras. Análisis Político-Jurídico de la Legislación e las ZEDE. Fundación Friedrich Ebert Stiftung. • Geglia, B. (2016). Honduras: Reinventing the Enclave. NACLA report on the Americas. https://www.tandfonline.com/doi/abs/10.1080/10714839.2016.1258278?needAccess=true • Declaran inconstitucional ciudades modelos en Honduras. (15 de agosto de 2013). La Prensa. https://www.laprensa.hn/ honduras/tegucigalpa/330285-98/declaran- inconstitucional-ciudades-modelos-en- honduras • Dixin, X. (1981). China's Special Economic Zones. Beijing Review, (50). http://www. bjreview.com.cn/nation/txt/2009-05/26/ content_197576.htm • En sesión con inconsistencias destituyeron a magistrados. (7 de abril de 2014). El Heraldo. https://www.elheraldo.hn/ • Global Witness. (2017). Honduras: el país más peligroso para defender el planeta. https://www.globalwitness.org/en/campaigns/ environmental-activists/honduras-el-pa • Gordon, T. y Webber, J. R. (2011). Canada and the Honduran COUP. Bulletin of Latin American Research, 30 (3), 328-243. • Instituto Centroamericano de Estudios Fiscales [ICEFI]. (2017). Comunicado de prensa HN- 05-2017: Honduras: ICEFI recomienda al Congreso Nacional no aprobar la propuesta de Ley de Fomento al Turismo. http:// www.icefi.org/sites/default/files/hn-05-2017comunicado_ icefi rechazo _ _ley_ de _ fomento al turismo 24 _ _ _ _jul_20172.pdf • Kee-Cheok, C. y Kim-Leng, G. (2013). Hong Kong as charter city prototype-When concept meets reality. Cities (35), 100-103. • Laínez, V. y Meza, V. (1973). El enclave bananero en Honduras. Nueva Sociedad (6), 21- 43. • MacNeill, T. (2017). Development as Imperialism: Power and the Perpetuation of Poverty in Afro-Indigenous Communities of Coastal Honduras. Humanity &

Society (41), 210- 234. • Malkin, E. (30 de setiembre de 2012). Plan for Charter City to Fight Honduras Poverty Loses Its Initiator. New York Times. https://www. nytimes.com/2012/10/01/world/americas/ charter-city-plan-to-fight-honduras-poverty- loses-initiator.html?_r=0 • Moore, J. (2012). Canada's mining industry & corporate social responsibility. The Community Networks. https://communitynetworks. wordpress.com/2012/10/03/canadas-mining- industry-corporate-social-responsibility-part-l/ • Núñez, S., Herrera, F. y Flores, M. (s.f). Extractivismo y resistencia comunitaria en Honduras. https://www.tni.org/files/ publicationdownloads/extractivismo_y_ resistencia_comunitaria_en_honduras_0.pdf • ofraneh envía carta a presidente del BID por las inconsultas "ciudades modelo". (16 de noviembre de 2017). Criterio. https:// criterio.hn/2017/11/16/ofraneh-envia-carta- presidente-del-bid-las-inconsultas-ciudades- modelo/ • Organización Fraternal Negra Hondureña [OFRANEH]. (2015). El atentado contra Vidal Leiva, y la intervención canadiense en la bahía de Trujillo. https://ofraneh.wordpress. com/2015/12/03/el-atentado-contra-vidal- leiva-y-la-intervencion-canadiense-en-la- bahia-de-trujillo/ • Organización Fraternal Negra Hondureña [OFRANEH]. (2017a). Carta al BID en relación a su proyecto de apoyo a las inconsultas "ciudades modelo" (ZEDE). https://ofraneh. wordpress.com/2017/11/16/carta-al-bid- en-relacion-a-su-proyecto-de-apoyo-a-las- inconsultas-ciudades-modelo-zede/ • Organización Fraternal Negra Hondureña [OFRANEH]. (2017b). Honduras: El BID y su apoyo inconsulto al proyecto neocolonial de las ZEDE. https://www.alainet.org/es/ articulo/186916. • Organización Fraternal Negra Hondureña [OFRANEH]. (2017c). Persiste el Indura Hilton en despojar a la comunidad Garífuna de Barra Vieja. https://ofraneh.wordpress. com/2017/01/26/persiste-el-indura-hilton-en- despojar-a-la-comunidad-garifuna-de-barra- vieja/ • Palmese, L. (13 de julio de 2016). El gobierno hondureño invita a las mineras, pero la casa sigue en desorden [Mensaje de un blog]. https://dplfblog.com/2016/07/13/el-gobierno-hondureno-invita-a-las-mineras-pero-la-casa- sigue-en-desorden/ • Peralta, A. (26 de setiembre de 2014). Revelan infraestructura necesaria para construir las zede's en Honduras. PanAm Post. https:// es.panampost.com/adriana- • Robinson, W. (2012). Latin America in the New Global Capitalism. nacla report on the Americas. https://nacla.org/sites/default/files/ A04502015_6.pdf • Romer, P. (1990). Endogenous Technological Change. The Journal of Political Economy, 98 (5), 71-102. • Romer, P. (27 de enero de 2010). For richer, for poorer. Prospect. http://www. prospectmagazine.co.uk/magazine/for-richer- for-poorer • Romer, P. (3 de marzo de 2010). Technologies, Rules and Progress: The Case for Charter Cities. Center for Global Development. https:// www.cgdev.org/publication/technologies- rules-and-progress-case-charter-cities • Sagar, R. (2016). Are Charter Cities Legitimate? Journal of Political Philosophy (24), 509-529. • Sala declara inconstitucionales ciudades privadas en Honduras. (5 de octubre de 2012). La Nación. https://www.nacion.com/ el-mundo/sala-declarainconstitucionales- c i u d a d e s - p r i v a d a s - e n - h o n d u r a s / ZZEFWSOGDVBDRMPI5NXPPAEI44/ story/ • Sosa, E. (2017). Transformaciones en las élites económicas, Estado y el proceso de democratización y desdemocratización: el caso de Honduras, 1990-2017. Anuario de Estudios Centroamericanos (43), 125-148. • Special economic zones: Political priority, economic gamble. (4 de abril de 2015). The Economist. https://www.economist.com/ finance-and-economics/2015/04/04/political-priority-economic-gamble • Stavenhagen, R. (1981). Sociología y Subdesarrollo. Nuestro Tiempo, 15-84. • Trucchi, G. (2017). Expolio de los territorios garífunas en Honduras: impactos del extractivismo y la expansión turística. Informe de investigación publicado por Alba Sud. http://www.albasud.org/publ/docs/78.pdf • Trucchi, G. (26 de julio de 2016). Ley de Empleo por Hora: uso y abuso en el sector servicios y turismo. Alba Sud. http://www.

albasud.org/noticia/es/897/ley-de-empleo- por-hora-uso-y-abuso-en-el-sector-servicios- y-turismo 40• Villena, S. (2017). Siete tesis equivocadas sobre América Latina: Notas sobre la actualidad de la categoría de "colonialismo interno". Ponencia inédita. • Waxenecker, H. (2016). Honduras: ¿Redes indebidas de poder, impunidad y enriquecimiento? Un bosquejo de una realidad compleja. Informe de investigación publicado por Heinrich Boll Stiftung. https://mx.boell. org/sites/default/files/honduras 21-07-2016 final.pdf. De manera que, lo referido por el amicus curiae carece de fundamento, por cuanto resulta evidente que la defensa de constitucionalidad del artículo 34 del Decreto Legislativo No. 120-2013 tiene como asidero o cimiento un texto constitucional absolutamente espurio, que quebranta en forma directa e incuestionable el contenido del artículo 374 constitucional en lo referente a comprometer partes del territorio patrio a poderes económicos o de cualquier tipo, constituyéndoles en autoridades públicas y facultándoles para instaurar en el ámbito de dichas zonas: legislaciones, regímenes fiscales, educativos, etc. Todas estas manifestaciones de poder, en manos de extranjeros e incluso nacionales, constituidos en autoridades nacidas al margen del imperium de nuestra Constitución, son una negación de los poderes que sólo el poder soberano, originario o constituyente puede conceder. De forma que, el contenido de los artículos de la Constitución, reformados mediante los Decretos Legislativos 236-2012 y 9-2013 son nulos de origen, porque su contenido u objeto de reforma es imposible que sea fruto de un poder constituido, sea de naturaleza Legislativa, Judicial o Ejecutiva. Sobre el caso bajo estudio, la Corte Suprema de Justicia hace patente la diferencia entre la normal delegación de poder que hace el Constituyente en los poderes constituidos, lo que es resultante del también normal ejercicio democrático por representación, a lo que ha ocurrido en el caso de creación de las zonas de empleo y desarrollo económico, porque aquí lo que ha operado es una suplantación del poder soberano por parte de quienes fueron autoridades de turno. 6.4. Previsiones judiciales que garantizan la seguridad jurídica y la protección de los intereses de personas naturales y jurídicas que se acogieron a las ZEDEs.Con todo lo anteriormente expresado, resulta evidente que desde el inicio ha existido un ambiente contrario a la iniciativa de crear zonas autónomas (RED o ZEDE) atentatorias a la soberanía popular pues violentan dos materias sustanciales o elementos primigenios de todo Estado, como ocurre con el territorio y la forma de gobierno. Desde el año 2010, diferentes autoridades en contra de lo que dispone nuestra Constitución, han impulsado modelos económicos de desarrollo que se pueden equiparar a modelos neocoloniales que ahora se les conoce como enclaves extractivistas. También, hasta el momento se ha enfatizado en que toda la normativa relacionada con el establecimiento de las Zonas de Empleo y Desarrollo Económico o ZEDEs es inconstitucional de origen y así mismo es nula de forma retroactiva o sea con efectos ex tunc. Sin embargo, este alto tribunal de justicia está consciente de que existen al menos tres inversiones en el país (Próspera, Morazán y Orquídea)[45] que pese a todo deben ser protegidos en sus derechos e intereses legítimos, esto es seguridad jurídica que garantice sus inversiones y sus aportes a la economía nacional. Por supuesto, siempre y cuando se hayan constituido sin alterar o contravenir el orden jurídico ya establecido previo a la normativa que se declara inconstitucional de origen y que su capital de inicio como negocios o giros sean también lícitos. Igualmente, su asentamiento y origen no afecten derechos de terceros, especialmente si son comunidades tribales o indígenas, o no afecten el medio ambiente y otros derechos fundamentales. En virtud de lo cual, es importante que se establezca de manera expresa y directa que la nulidad de la normativa que crea las ZEDEs, deja en el caso de dichas sociedades o empresas mercantiles, subsistente el marco jurídico regulatorio que es general a todas las inversiones, sociedades y empresas mercantiles, quedando todas ellas bajo su protección jurídica. De manera que el hecho de que se declare la inconstitucionalidad con efectos ex tunc no significa que las sociedades y empresas mercantiles

que pretendían ser ZEDEs caen en un vació jurídico, sino que su constitución y su funcionamiento se entiende comprendido en las normativas normales o regulares que rigen actualmente y desde antes en materia mercantil, arancelaria, tributaria, financiera, etc. 6.5. Algunos otros fundamentos y argumentos que sustentan la inconstitucionalidad de los Decretos Legislativos de reforma constitucional, números 236-2012 y 9-2013 y de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) promulgada mediante el Decreto Legislativo No. 120-2013. Para complementar todo lo hasta aquí señalado por esta sentencia, cabe destacar que si es posible dictar la inconstitucionalidad de artículos contenidos en la Constitución de la República. Lo que parece una contradicción no lo es, si se considera que existe una jerarquía soberana del Poder Constituyente sobre los poderes constituidos, de manera que, estos últimos tienen vedado los puntos o elementos que le son indisponibles por disposición expresa y clara del Soberano. De manera que, en estos casos (artículo 374) el texto original de la Constitución y su sentido, es intangible, por ende inalterable. Siendo una obligación ineludible, restituir siempre el texto original frente a cualquier reforma o acto que pretenda su cambio. En el caso que nos ocupa, los artículos 294, 303 y 329 reformados mediante la ratificación del Decreto Legislativo número 236-2012 con la promulgación del Decreto Legislativo No. 9-2013, atentan contra la voluntad soberana del Constituyente y por ende deben ser expulsados de la Constitución de la República, con la finalidad de conservar su sentido original. Comenzamos con el artículo 329 constitucional que en su versión reformada y contraria a lo que dispone el artículo 374 ya muchas veces citado, dispone: "Artículo 329. El Estado promueve el desarrollo económico y social, que debe estar sujeto a una planificación estratégica. La ley regula el sistema y proceso de planificación con la participación de los poderes del Estado y las organizaciones políticas, económicas y sociales, debidamente representadas. Para realizar la función de promover el desarrollo económico y social y complementar las acciones de los demás agentes de este desarrollo, el Estado con visión a mediano y largo plazo, debe diseñar concertadamente con la sociedad hondureña una planificación contentiva de los objetivos precisos y los medios y mecanismos para alcanzarlos. Los planes de desarrollo de mediano y largo plazo deben incluir políticas y programas estratégicos que garanticen la continuidad de su ejecución desde su concepción y aprobación, hasta su conclusión. El plan de nación, los planes de desarrollo integral y los programas incorporados en los mismos son de obligatorio cumplimiento para los gobiernos sucesivos. ZONAS DE EMPLEO Y DESARROLLO ECONÓMICO. El Estado puede establecer zonas del país sujetos a regímenes especiales, los cuales tienen, personalidad jurídica, están sujetas a un régimen fiscal especial, pueden contraer obligaciones en tanto no requieran para ello la garantía o el aval solidario del Estado, celebrar contratos hasta el cumplimiento de sus objetivos en el tiempo y durante varios gobiernos y gozan de autonomía funcional y administrativa que deben incluir las funciones, facultades y obligaciones que la Constitución y las leyes le confieren a los municipios. La creación de una zona sujeta a un régimen especial es atribución exclusiva del Congreso Nacional, por mayoría calificada, previo plebiscito aprobatorio por las (2/3) dos terceras partes, de conformidad con lo establecido en el artículo 5 de la Constitución. Este requisito no es necesario para regímenes especiales creados en zonas con baja densidad poblacional. Se entiende por zona de baja densidad poblacional, aquellas en donde el número de habitantes permanentes por kilómetro cuadrado sea inferior al promedio para zonas rurales calculado por el Instituto Nacional de Estadísticas (INE) quien debe emitir el correspondiente dictamen. El Congreso Nacional al aprobar la creación de zonas sujetas a regímenes especiales, debe garantizar que se respeten en su caso, la sentencia emitida por la Corte Internacional de Justicia de la Haya el 11 de septiembre de 1992 y lo dispuesto en los artículos 10,11,12,13,15 y 19 de la Constitución de la República referente al territorio. Estas zonas están

sujetas a la legislación nacional en todos los temas relacionados a soberanía, aplicación de la justicia, defensa nacional, relaciones exteriores, temas electorales, emisión de documentos de identidad y pasaportes. El Golfo de Fonseca debe sujetarse a un régimen especial de conformidad al Derecho Internacional, a lo establecido en el artículo 10 constitucional y el presente artículo; las costas hondureñas del golfo y del mar Caribe quedan sometidas a las mismas disposiciones constitucionales. Para la creación y funcionamiento de estas zonas, el Congreso Nacional debe aprobar una Ley Orgánica, la que sólo puede ser modificada, reformada, interpretada o derogada por dos tercios favorables de los miembros del Congreso Nacional, es necesaria además la celebración de un referéndum o plebiscito a las personas que habiten la zona sujeta a régimen especial cuando su población supere los cien mil habitantes. La Ley Orgánica debe establecer expresamente la normativa aplicable. Las autoridades de las zonas sujetas a regímenes especiales tienen la obligación de adoptar las mejoras prácticas nacionales e internacionales para garantizar la existencia y permanencia del entorno social económico y legal adecuado para ser competitivas a nivel internacional. Para la solución de conflictos dentro de las zonas del país sujetas a regímenes especiales, el Poder Judicial por medio del Consejo de la Judicatura debe crear tribunales con competencia exclusiva y autónoma sobre éstos. Los jueces de las zonas sujetas a jurisdicción especial serán propuestos por las zonas especiales ante el Consejo de la Judicatura quien lo nombrará previo concurso de un listado propuesto de una comisión especial integrada en la forma que señale la Ley Orgánica de estos regímenes. La ley puede establecer la sujeción a arbitraje obligatorio para la solución de conflictos de las personas naturales o jurídicas que habiten dentro de las áreas comprendidas por estos regímenes para ciertas materias. Los Tribunales de las zonas sujetas a un régimen jurídico especial podrán adoptar sistemas o tradiciones jurídicas de otras partes del mundo siempre que garanticen igual o mejor los principios constitucionales de protección a los Derechos Humanos previa aprobación del Congreso Nacional". Asimismo, la versión que mantiene el sentido original dispuesto por el Constituyente, dispone: "Artículo 329. El Estado promueve el desarrollo integral de lo económico y social que estará sujeto a una planificación estratégica. La ley regulará el sistema y proceso de planificación con la participación de los poderes del Estado y las organizaciones políticas, económicas y sociales, debidamente representadas. Para realizar la función de promoción del desarrollo económico y social y complementar las acciones de los demás agentes de este desarrollo, el Estado con visión a mediano y largo plazo diseñará concertadamente con la sociedad hondureña una planificación contentiva de los objetivos precisos y los medios y mecanismos para alcanzarlos. Los planes de desarrollo de largo y mediano plazo incluirán políticas y programas estratégicos que garanticen la continuidad de su ejecución desde su concepción y aprobación, hasta su conclusión. El Plan Nación, los planes de desarrollo integral y los programas incorporados en los mismos serán de obligatorio cumplimiento para los gobiernos sucesivos."[46] . Como puede constatarse la reforma constitucional tachada ahora de inconstitucional y contraria a la voluntad soberana del pueblo, consistió en agregar al plan de desarrollo económico del país, lo correspondiente a las Zonas de Empleo y Desarrollo Económico, mejor conocidas como ZEDEs. La Corte Suprema de Justicia, por medio de la presente sentencia declara que dicha reforma es inconstitucional de origen, debido a que dicha reforma inconstitucional sólo es apariencia, pues en el fondo, las ZEDEs tienen como propósito, permitir que en nuestro territorio se instalen y operen sociedades y empresas autogobernadas con sus propias normas y autoridades. De manera que se constituyan en pseudoestados aparte del Estado hondureño. Se estima que, aunque se disponga en el texto reformado el sometimiento de las ZEDEs a la soberanía e imperio de la Constitución y las leyes de la República de Honduras, todo esto queda inutilizado en cuanto dispone de forma no

expresamente reconocida, que dichas zonas se regulen así mismas mediante sus propios órganos gubernativos y judiciales y apliquen sus propias normas y sistemas judiciales. Se apunta como un elemento de especial interés, el impacto de las ZEDES en contra de la soberanía nacional, al limitar la prerrogativa que tiene la Corte Suprema de Justicia (Consejo de la Judicatura) de nombrar libremente a los jueces que deben juzgar y ejecutar lo juzgado dentro del territorio de las ZEDEs, teniéndose que sujetar a la lista de candidatos propuestos por las autoridades de dichas zonas.[47] Por otra parte, facultando a los propietarios de las ZEDEs a estructurar un fuero especial con juzgados y tribunales creados por ellos mismos, quienes además, deberán aplicar sus normas impuestas, orientadas a los fines de dichas zonas. [48] De manera que el poder jurisdiccional y en cuenta el punitivo o sancionador del Estado hondureño, queda mediatizado por virtud de la criticada reforma constitucional, al control de los propietarios de las ZEDEs. Es más, en cuanto a la aplicación de justicia, la reforma que se reprocha de inconstitucional dispone que las normas que rigen dichas zonas deben interpretarse bajo el principio que maneja el texto reformado, es decir, la primacía del principio de la competitividad, pues es esta la razón y fundamento de la reforma y creación de las ZEDEs.[49] Lo que subordina el principio pro persona dispuesto en el artículo 59 constitucional, a dicho principio de competitividad. Así como también, contraviene el equilibrio que debe existir entre el capital y el trabajo de conformidad al artículo 135 de nuestra Constitución. De hecho, la reforma resulta cuestionable a la luz de nuestra Constitución, pues lo que propusieron los diputados con la creación de las ZEDES es que, sus autoridades devienen obligados a adoptar "las mejores prácticas nacionales e internacionales", pero no para garantizar, proteger y respetar los derechos fundamentales o humanos de los habitantes de dichos territorios, sino "para garantizar la existencia y permanencia del entorno social económico y legal adecuado para ser competitivas a nivel internacional". Como evidencia de lo pernicioso que es la introducción de las ZEDES y lo inconstitucional que es la reforma del artículo 329 constitucional bajo escrutinio, es que con esta reforma eleva a rango constitucional, el abuso de forzar a las personas naturales o jurídicas que habiten dentro de las áreas comprendidas por estos regímenes a someterse obligatoriamente al arbitraje para la solución de conflictos. Y para más evidencia de la inconstitucionalidad, la reforma autoriza la adopción dentro de las ZEDEs de sistemas legales ajenos al nuestro, contradiciendo y dejando totalmente fuera de lugar todo lo referido al sometimiento de soberanía, Constitución y leyes hondureñas. Al respecto, Honduras cuenta con todos los elementos necesarios para respetar, garantizar y proteger los derechos humanos de sus habitantes, de manera que no necesita de normas ilusorias que prometan mejores condiciones en ese sentido.[50] Por otra parte, cuando ocurran las violaciones de derechos humanos, las autoridades propietarias de las ZEDEs no podrían ser declaradas responsables de estas, sino que será Honduras quien deba responder ante los sistemas de protección internacional. Como puede constatarse entonces, las ZEDEs en la práctica, no sólo son una cesión física de nuestro territorio, sino que es también una cesión del control gubernativo, legislativo y judicial, es decir, es una forma velada de ceder nuestro territorio.[51] Por lo que la reforma constitucional del artículo 329 violenta directamente los artículos irreformables atinentes a la forma de gobierno y al territorio nacional, por cuanto como tal, se entiende que el Estado hondureño se encuentra conformado por tres poderes complementarios y sin subordinación entre ellos y de nadie más, salvo el poder soberano que reside en el pueblo. Dicha reforma, propone inclusive, tradiciones legales extranjeras que no forman parte de nuestra idiosincrasia. Autoridades que impondrán en esos territorios normas especiales diferentes al resto del país, contraviniendo el ejercicio del imperium[52] sobre estas regiones. Si las autoridades hondureñas no pueden hacer valer sus leyes y su propia Constitución; y, si sus autoridades no tienen "poder" en el ámbito territorial de las ZEDEs, entonces no existe

ejercicio de soberanía, manifestada mediante el concepto de democracia representativa. En ese sentido, aunque la reforma lo afirme, no se puede comparar el gobierno edilicio de las municipalidades, al gobierno de las ZEDEs. Para comenzar, el gobierno municipal nace de la voluntad popular expresada en las urnas, lo que en los territorios de las ZEDEs no es posible, porque son zonas dominadas y gobernadas por las personas naturales y sociedades que inviertan capital. Es así, como en los territorios de las ZEDEs se elimina la democracia como factor de poder, constituyéndose un territorio autónomo respecto del Estado de Honduras, lo que contradice el Estado de Honduras como concepto; y, una manera de negar el precepto constitucional contenido en el artículo 4, que manda, que la forma de gobierno es democrático, republicano y representativo. Como también no se debe soslayar que el territorio municipal no es una negación del principio de integridad o unidad territorial, como si ocurre con el territorio que ocupan las ZEDEs, en donde al profundizar en relación con el principio de integridad territorial, es imperioso tenerle como una condición sine qua non de soberanía. Siendo además, relevante en relación con el principio de autodeterminación de los pueblos. Además de la aplicación de justicia, otra manifestación de soberanía o imperium, característico de todo Estado, es la imposición y cobro tributario; pero, este artículo reformado es la absoluta y total renuncia a tan elemental característica. Por lo que, esa dimisión al ejercicio de poder, dispuesta por la reforma bajo escrutinio, es sin duda una inconstitucionalidad porque contraviene una prerrogativa que es consustancial al poder estatal, la cual debe realizarse en la única forma que el Soberano ha dispuesto. Continuando con el examen de constitucionalidad, el artículo 294 reformado, literalmente dispone: "artículo 294. el territorio nacional se dividirá en departamentos. su creación y límites serán decretados por el Congreso Nacional. Los departamentos se dividen en municipios autónomos administrados por corporaciones electas por el pueblo, de conformidad con la ley. sin perjuicio de lo establecido en los dos párrafos anteriores, el Congreso Nacional puede crear zonas sujetas a regímenes especiales de conformidad con el artículo 329 de eta Constitución." Resulta que la inconstitucionalidad de este artículo se deriva de la propia que concierne al artículo 329 reformado, pues se remite directamente al artículo que ya fue comentado. Lo mismo sucede con el artículo 303 inconstitucionalmente reformado, el cual literalmente dispone: "Artículo 303. La potestad de impartir justicia emana del pueblo y se imparte gratuitamente en nombre del Estado, por magistrados y jueces independientes, únicamente sometidos a la Constitución y las leyes. El Poder Judicial se integra por una Corte Suprema de Justicia, por las cortes de apelaciones, los juzgados, por tribunales con competencia exclusiva en zonas del país sujetas a regímenes especiales creados por la Constitución de la República y demás dependencias que señale la ley. En ningún juicio debe haber más de dos instancias; el juez o magistrado que haya ejercido jurisdicción en una de ellas, no podrá conocer en la otra, ni en recurso extraordinario en el mismo asunto, sin incurrir en responsabilidad. Tampoco pueden juzgar en una misma causa los cónyuges y los parientes dentro del cuarto grado de consanguinidad o segundo de afinidad" Cabe añadir que, aunque en este artículo se pretenda establecer que las autoridades judiciales, nombradas para que ejerzan jurisdicción en las ZEDEs pertenecen al Poder Judicial de Honduras, debe señalarse que, su pertenencia es totalmente formal, por cuanto, el ejercicio de poder, por parte del Consejo de la Judicatura o la Corte Suprema de Justicia, como ya se estableció con anterioridad, queda limitada a la propuesta que hagan los inversionistas propietarios de las ZEDEs. Así mismo, nuestro ordenamiento jurídico será inaplicable en dichos territorios, como inaplicables serán los sistemas judiciales o tradiciones jurídicas nuestras, frente a los foráneos que implementen las ZEDEs. Por todas las razones antedichas es que es inconstitucional de origen la reforma a los artículos constitucionales 294, 303 y 329 contenidos en los Decretos Legislativos números 236-2012 y 9-

2013. En consecuencia, también es inconstitucional de origen la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), promulgada mediante el Decreto Legislativo No. 120-2013; y que fue derogada mediante el Decreto Legislativo No. 33- 2022, el cual en su parte considerativa manifiesta: "CONSIDERANDO: Que la Constitución de Honduras que se encuentra en vigencia desde 1982 estableció que Honduras es un Estado de Derecho, libre, soberano e independiente, cuya forma de gobierno es republicana, democrática y representativa. Que el poder o soberanía sólo corresponde al pueblo, misma que será ejercida de forma representativa y por la decisión libre del pueblo hondureño, por tres (3) poderes: Ejecutivo, Legislativo y Judicial en todo el territorio nacional. Y, que ninguna persona, grupo u otra nación puede suplantar la soberanía popular, ni usurpar los poderes del Estado. CONSIDERANDO: Que el poder constituyente se configura como un poder originario, creador de un orden nuevo, un poder previo, que en el ejercicio de sus facultades soberanas organiza y establece las atribuciones, competencias, potestades, alcances y límites de los tres poderes del Estado o poderes constituidos. Éstos (los poderes constituidos o poderes del Estado) que son un poder derivado, no originario, que actúan como delegado de aquel (del poder constituyente), es un poder subordinado a la legalidad constitucional (a la Constitución). CONSIDERANDO: Que la Constitución de la República impone límites a los poderes constituidos o poderes del Estado. Estos límites que se denominan, formales y materiales. Límites formales que se deducen del establecimiento del proceso de reforma constitucional y del sometimiento a la Constitución de la República que deben estar sometidas leyes ordinarias o secundarias, como lo es esta Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), puesto que la misma Constitución establece qué requisitos formales o procedimentales tendrá que cumplir u observar el Poder Legislativo para poder reformar la Constitución de la República y para poder aprobar leyes ordinarias o secundarias como lo es la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE). Así como que los límites materiales, se observan cuando el poder constituyente establece las cláusulas de intangibilidad o cláusulas pétreas, porque las mismas defienden valores, principios y contenidos o temas específicos que el mismo constituyente decidió proteger, prohibiendo para ello al poder constituido o poderes del Estado su reforma o modificación. Entre estos temas o materias específicas, que el constituyente configuró como artículos intangibles o irreformables se encuentran, la forma de gobierno y el territorio nacional, establecidos en el artículo 374 de la Constitución. Lo que significa que todos aquellos artículos o preceptos de la Constitución que contengan estos temas o materias protegidas son denominados artículos intangibles o irreformables, mejor conocidos como artículos pétreos. Que todas las leyes ordinarias o secundarias, como lo es, la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) debe de someterse al imperio de la Constitución de la República. CONSIDERANDO: Que en fecha 12 de junio del 2013 el Poder Legislativo aprobó Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), mediante DECRETO No. 120-2013 publicado en el Diario Oficial "La Gaceta" en fecha 6 de septiembre del 2013, bajo el número 33,222. Dicha Ley Orgánica que desarrolla la conformación de las Zonas de Empleo y Desarrollo Económico (ZEDE), a partir de una reforma constitucional que las creó y configuró, se violentó con ello, alterando, modificando y lesionando el territorio nacional, la soberanía e independencia de la República, suplantando la soberanía popular y usurpando los tres (3) poderes del estado mediante la configuración de instituciones exclusivas para zonas privadas, de empresas privadas y para otorgar privilegios a un grupo de personas en detrimento de todos los hondureños, creando este régimen de ZEDE e instituciones con funciones, competencias, atribuciones y poderes que constitucionalmente son propios o exclusivos del poder Ejecutivo y Legislativo. Así también, alterando y modificando en estas zonas (ZEDE) el sistema de administración de justicia,

permitiendo que sea suplantado por otros sistemas judiciales o jurisdiccionales de otros países. Poder, que sólo es propio y exclusivo en Honduras del Poder Judicial en todo el territorio nacional. En definitiva, también alterando, violentando y modificando gravemente nuestra forma de gobierno. CONSIDERANDO: Que el constituyente estableció como pétreos o irreformables estos temas específicos de la forma de gobierno y el territorio nacional, entre otros, con el objetivo que las autoridades respeten, protejan y defiendan estos temas, la forma de gobierno y el territorio nacional, frente a situaciones como éstas, es decir, de estas Zonas de Empleo y Desarrollo Económico (ZEDE), de una invasión, de ceder, de vender o de regalar el territorio nacional o, de alterar, o suplantar con cualquier otro nombre, o figura, la forma de gobierno que se establece en los artículos 1, 2 y 4 entre otros artículos de la Constitución de la República, en cuanto a que el poder, que es el pueblo hondureño soberano, se ejercerá en todo el territorio nacional por los tres (3) poderes del Estado establecidos. CONSIDERANDO: Que el Poder Legislativo de la República, lejos de cumplir con la legalidad constitucional, respetar la Constitución y las prohibiciones a los poderes al aprobar y ratificar mediante reforma constitucional la creación de estas Zonas de Empleo y Desarrollo Económico (ZEDE) e incorporarlas al texto constitucional y mediante la aprobación de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) así como cualquier otra normativa que exista y se deriven de ella, son nulas de pleno derecho, carecen de validez jurídica, porque su creación se hizo al margen de la Constitución, sin facultades para crear este tipo de leyes ordinarias o secundarias y vulnerando o traspasando los límites formales y materiales impuestos por el constituyente al legislador y a los poderes constituidos o poderes del Estado; teniendo una prohibición taxativa en el artículo 374 de la Constitución de la República, para no reformar los artículos 294, 303, 304 y 329 y para aprobar dicha Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), traspasó y violentó los límites formales, de procedimiento y materiales, de contenido, como lo es, la forma de gobierno y el territorio nacional. De igual manera, como en la jerarquía del derecho la reforma constitucional o ley de reforma, la Ley Orgánica o ley secundaria u ordinaria tienen un rango de ley inferior a la Constitución original, sobre todo frente a las cláusulas de intangibilidad o artículos pétreos, el Poder Legislativo de períodos anteriores al traspasar y violentar los límites mencionados en el párrafo anterior, produjo a la reforma constitucional y a la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) una nulidad de origen constitucional, por lo que su aprobación y ratificación carece de validez jurídica, por encontrarse al margen de la Constitución de la República. En consecuencia, la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) y todas aquellas normas jurídicas que se deriven, de la reforma constitucional y, de dicha ley orgánica, como ser, otras leyes, reglamentos, resoluciones, así como cualquier disposición, contratos, concesiones o toda normativa y/o decisión etc., relacionada con las Zonas de Empleo y Desarrollo Económico (ZEDE) carecen de validez jurídica. Puesto que ninguna autoridad tiene facultades para crear este tipo decisión o leyes secundarias, violando o traspasando los límites formales y materiales impuestos por el constituyente a los poderes del Estado, que protegen nuestro territorio nacional y forma de gobierno, además de valores materiales que trascienden de lo formal, como la soberanía e independencia del pueblo hondureño. Porque la legalidad constitucional responde a unos valores y principios que el poder constituyente protege a través de estas cláusulas intangibles o pétreas, para mantener el orden constitucional, la soberanía y el sistema democrático. CONSIDERANDO: Que de conformidad a los artículos 321, 323 y 374 de la Constitución, este Congreso Nacional 2022-2026 no reconoce ninguna sentencia, dictamen o resolución de la Sala de lo Constitucional de la Corte Suprema de Justicia y de la Corte Suprema de Justicia en pleno en favor de estas Zonas de Empleo y Desarrollo Económico (ZEDE). Puesto que, es de amplio conocimiento que cualquier

sentencia o cualquier decisión judicial que violente los artículos pétreos carece validez jurídica, ya que ha quedado claro que los poderes constituidos, entre ellos, el Poder Judicial no tienen la facultad para reformar (vía jurisprudencia), modificar o alterar y violentar los artículos pétreos de nuestra Constitución (artículo 374 de la Constitución). Ya que el poder constituyente le impuso límites a los tres poderes del Estado, eso incluye al Poder Judicial. Límites que la Sala de lo Constitucional de la Corte Suprema de Justicia y la misma Corte Suprema de Justicia al emitir sentencias y decisiones judiciales en favor de estas Zonas de Empleo y Desarrollo Económico (ZEDE) también los violentó en cuanto a la prohibición de reformar, por cualquier otro medio, o de cualquier modo y en ningún caso, los artículos protegidos, pétreos o irreformables, que afecten, modifiquen o alteren la forma de gobierno y el territorio nacional de Honduras, artículo 374. CONSIDERANDO: Que la revocación de cualquier disposición, contrato, concesión etc., vinculados, emitidos o dictados en favor de las Zonas de Empleo y Desarrollo Económico (ZEDE) no generará indemnizaciones de ningún tipo, a ninguna persona natural, a ninguna empresa y a ningún inversionista. Ya que ninguna persona natural, empresa o inversionista tiene derechos a reclamar sobre un negocio ilícito, proveniente de esta excesiva violación a nuestra Constitución, a la soberanía y a la dignidad a todos los hondureños. Ya que aun y cuando Honduras hace suyos los principios y prácticas del derecho internacional, artículo 15 de la Constitución, ningún tratado o convenio internacional se encuentra por encima de la Constitución, artículo 17 de la Constitución, ni ninguna Ley Orgánica se encuentra por encima de la Constitución, artículo 320 de la Constitución. La Constitución es categórica en cuanto a que, para que un tratado o convenio internacional que afecta una disposición constitucional, peor aún, afecta y produce una violación tan grave, como lo es, en este caso, los artículos pétreos, intangibles o irreformables y así se vuelva el tratado parte del derecho interno de Honduras, es decir, que sea de obligatorio cumplimiento para el Estado de Honduras, tiene que cumplir con los requisitos constitucionales, uno de ellos es, que el tratado internacional debe de ser aprobado por el procedimiento que rige la reforma constitucional y simultáneamente el artículo constitucional afectado por el tratado debe de ser modificado en el mismo sentido, antes de que sea ratificado por el Estado de Honduras dicho tratado, artículo 17 de la Constitución. Sin embargo, todo se hizo con ilegalidad constitucional o al margen de lo establecido en la Constitución. Puesto que, de un lado, no se hizo el procedimiento para modificar el artículo constitucional afectado, que son los artículos pétreos, éstos, de conformidad con la Constitución, sólo procede modificarlos mediante un plebiscito o referéndum o una Asamblea Nacional Constituyente, y ello no se hizo así. Otro es, tener la facultad constitucional para aprobar y ratificar dicha reforma constitucional; que no se tuvo, por la prohibición taxativa constitucional a los poderes del Estado de modificar o alterar los artículos intangibles o pétreos, artículo 374 de la Constitución. Por el contrario, el Poder Legislativo de periodos anteriores, al aprobar y ratificar la creación de estas Zonas de Empleo y Desarrollo Económico (ZEDE) e incorporarlas a la Constitución y aprobar esta Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), violentaron los límites formales (de procedimiento) y materiales (de contenido, que es grave), como lo es, la forma de gobierno y el territorio nacional. CONSIDERANDO: Que debido a este reconocimiento que hace la Constitución en cuanto a la separación y límites impuestos por el poder constituyente al poder constituido o poderes del Estado, en donde se señala que las leyes constitucionales o leyes de reforma o reformas constitucionales, esta Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) como ley secundaria u ordinaria se encuentran bajo límites claros y precisos (procedimiento de reforma constitucional y las cláusulas de intangibilidad) y, que éstas no se encuentran en el mismo plano de la Constitución original, se considera, que no sólo es una atribución, facultad o potestad

del Poder Legislativo, sino también que se torna en una obligación para este poder del Estado de conformidad con su mandato constitucional, artículos 205.1, 323, 374 de la Constitución, el derogar la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) porque vulnera los límites formales o materiales establecidos en la Constitución, como lo son las cláusulas de intangibilidad, irreformables o pétreas. CONSIDERANDO: Que este Congreso Nacional 2022-2026, no permitirá que se violente, afecte, lesione, modifiquen o alteren la forma de gobierno y el territorio nacional de Honduras, tampoco permitirá que se violente la soberanía del pueblo, a través de esta Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) o ley ordinaria o secundaria, que traspasó los límites impuestos por el poder constituyente en la Constitución a los poderes constituidos o poderes del Estado; puesto que, "proceder de otra manera significaría destruir la lógica del Estado constitucional, otorgando a un poder jurídicamente limitado, … (…) … las atribuciones del poder soberano.". Por cierto, luego de analizar la parte considerativa arriba transcrita del Decreto Legislativo No. 33-2022, este alto tribunal de justicia declara que hace suyos todos los conceptos allí establecidos, en virtud de que acompañan y complementan las argumentaciones que sustentan la presente sentencia. 6.6. Cambio de jurisprudencia de la Corte Suprema de Justicia. Las Zonas de Empleo y Desarrollo Económico o ZEDEs tienen como precedente lo que en su momento se llamó, estatuto constitucional de las REGIONES ESPECIALES DE DESARROLLO (RED), mejor conocidas como "ciudades modelo". Las entonces "ciudades modelo" nacieron con la reforma constitucional a los artículos 304 y 329 de la Constitución de la República que fueron promulgadas mediante el Decreto Legislativo No. 283-2010 publicado en La Gaceta número 32,443 del quince de febrero del dos mil once, que luego fue ratificado por el Decreto Legislativo número 4-2011, publicado en La Gaceta número 32,460 del siete de marzo del dos mil once. Asimismo, contra el Decreto Legislativo número 123-2011, publicado en La Gaceta número 32,601 del veintitrés de agosto del dos mil once que contenía el Estatuto constitucional de las Regiones especiales de desarrollo.[53] Todos los anteriores Decretos Legislativos que dieron nacimiento a las "ciudades modelo", fueron declarados inconstitucionales por el pleno de la Corte Suprema de Justicia, mediante la sentencia RI- CSJ-0769-2011 dictada el diecisiete de octubre de dos mil doce.[54] Cabe resaltar que la declaratoria de inconstitucionalidad fue motivo para que el Congreso Nacional, en represalia, depusiera a cuatro magistrados de la Sala de lo Constitucional (2009-2016).[55] Como también es de destacar que, el Estado de Honduras recientemente fue condenada por la Corte Interamericana de Derechos Humanos en virtud de dicha destitución de magistrados.[56] Nuevamente se presentaron garantías de inconstitucionalidad en contra de las ahora ZEDEs, pero en esta ocasión no hubo oposición por parte de la Sala de lo Constitucional (2009-2016), conformada por nuevos magistrados, elegidos por el Congreso Nacional en sustitución de los que declararon la inconstitucionalidad de las ciudades modelo. Las sentencias que declararon sin lugar las inconstitucionalidades son: a) RI-0030-2014 de fecha veintiséis de mayo de dos mil catorce; b) RI-0174-2014 de fecha doce de agosto de dos mil catorce; c) RI-0179-2014 de fecha diez de junio de dos mil catorce; y, d) RI-0424-2014 dictada en fecha veintinueve de abril de dos mil catorce. Cabe mencionar que todas estas sentencias se dictaron por unanimidad de votos.[57] A continuación, la Corte Suprema de Justicia, procede a referirse a estos precedentes jurisprudenciales, dictados por la Sala de lo Constitucional (2009-2016). Para de inicio señalar que ninguna de estas sentencias se encuentran ajustadas a lo que disponen de manera imperiosa e ineludible los artículos 374 y 375 de la Constitución, tanto en razón de todo lo que ya se expuso con anterioridad y las acotaciones que a continuación se detallan. 6.6.1. La Sala de lo Constitucional (2009-2016) justifica la sentencia RI-0030-2014 señalando que la creación de las Zonas de Empleo y Desarrollo Económico obedece a:"… aliviar las precarias condiciones

económicas en que se debate la mayoría del pueblo hondureño, con su creación nuestro legislador pretende de forma loable que tales zonas sean verdaderos polos de desarrollo mediante la captación e inversión de capital tanto extranjero como nacional a fin de poder brindarle a una buena parte de nuestra población desempleada, la oportunidad de tener un trabajo digno y así mejorar sus condiciones de vida.". Seguidamente señala que no comparte la tesis de que las reformas constitucionales sometidas a escrutinio, son violatorias de artículos irreformables, en relación con el territorio lo explica en el párrafo que a continuación se transcribe y el cual es de imposible comprensión, así[58]: "…entendemos que la tenencia de la tierra se define como una parte importante de las estructuras sociales, políticas y económicas; la cual reviste un carácter multidimensional, al entrar en juego aspectos sociales, técnicos, económicos, institucionales, jurídicos y políticos que indudablemente deberán tomarse en cuenta; en ese sentido también entendemos que las reglas sobre la tenencia de la tierra definen de qué manera pueden asignarse dentro de la sociedad los derechos de propiedad de la tierra, definen como se otorga el acceso a los derechos de utilizar, controlar y transferir la tierra, así como las pertinentes responsabilidades y limitaciones; aspectos todos los cuales parten de un concepto dominical eminente por parte del Estado, como atributo esencial del Estado;…". Luego, señala que no considera que la reforma al artículo 329 de la Constitución sea inconstitucional, en virtud de que en su texto se dispone que el Congreso Nacional al aprobar la creación de las zonas sujetas a regímenes especiales debe garantizar lo dispuesto en: "… los artículos 10, 11, 12, 13, 15 y 19 de la Constitución de la República referente al territorio. Estas zonas están sujetas a la legislación nacional en todos los temas relacionados a soberanía, aplicación de la justicia, defensa nacional, relaciones exteriores, temas electorales, emisión de documentos de identidad y pasaportes". De manera que esta Corte Suprema de Justicia (2023-2030) al examinar la decisión anterior dictada por la Sala de lo Constitucional (2009-2016), toma en cuenta en su análisis que la inconstitucionalidad reprochada entonces, fue rechazada en aquel momento mediante un argumento muy simplista, porque refutó el reproche limitándose a indicar que el texto cuestionado es constitucional porque el mismo texto cuestionado así lo dice. El análisis de la Sala de lo Constitucional (2009-2016), no es jurídicamente y constitucionalmente correcto, en lugar de quedarse en la exposición literal de la normativa bajo escrutinio, debió trascender y superar lo meramente formal; porque de hecho, de haber estudiado los efectos materiales del texto reformado, se habría dado cuenta que, aunque dicho texto de manera expresa consigne su respeto a la Constitución, soberanía, defensa nacional, etc., esto no es cierto, tal como ya se analizó extensamente con esta sentencia. Es decir, el hecho de que una norma disponga que se encuentra de conformidad con lo que dispone la Constitución de la República, no la hace per se constitucional. En otro aparte, la Sala de lo Constitucional (2009-2016) en la sentencia dictada en el año 2014, toma como justificado el régimen fiscal especial[59] que dispone la reforma constitucional del artículo 329, señalando literalmente lo siguiente[60]:"… tal normativa es lo suficientemente clara en cuanto al régimen fiscal y financiero que rige esas zonas especiales, situación que no es contraria a nuestra norma fundamental, toda vez que entendemos que tal régimen fiscal especial es concedido por el poder derivado que el pueblo hondureño ha depositado en el Congreso Nacional de la República, razón más que suficiente para estimar que no se produce la inconstitucionalidad invocada por la recurrente". La Sala de lo Constitucional (2009-2016) en aquella sentencia, cometió el error (o abuso) de considerar que el poder derivado o Congreso Nacional, se encuentra en situación jerárquica superior en relación con el Soberano, quien detenta el poder originario. No tomó en cuenta, que una de las manifestaciones más rigurosas de poder, es precisamente lo atinente a la facultad de imponer cargas tributarias; y que este es uno de los elementos más significativos de soberanía. Por lo que dicha disposición es inconstitucional

en razón de atentar contra del sentido de pertenencia soberano de un territorio, como elemento físico donde se ejerce autoridad y control, imponiendo entre otras, la obligación de tributar. Seguidamente la Sala de lo Constitucional (2009-2016) en el considerando 13 de la sentencia dictada en el año 2014, dispuso que la reforma de los artículos ya mencionados, no atenta contra la soberanía nacional en virtud de lo que a continuación se transcribe:"… es pertinente señalar por parte nuestra, que el poder político en el marco de un Estado unificado, se ejerce de forma excluyente en una comunidad política en el marco de un territorio. Así tenemos que el Estado se organiza en una serie de instituciones u órganos especializados para ejercer tal poder, lo cual conlleva la coerción, misma que tiene su derivación del Poder político unificado y superior del Estado.". De este farragoso e ininteligible argumento, pasa a señalar lo siguiente, redactado también de forma igualmente incomprensible; el cual en todo caso, no alcanza a justificar el hecho de que el Congreso Nacional suplantó en el caso bajo estudio, el poder del Constituyente originario: "… la soberanía de un Estado en el ámbito internacional deriva de su independencia, aun y cuando en un mundo cada vez más globalizado e interdependiente definir el ámbito real de independencia es cada día más difícil; pero no por ello debemos olvidar que la misma definición de Estado está íntimamente ligada con la independencia jurídica; en su dimensión interior debe precisarse quien ejerce esa soberanía, situación esta, que ha sido objeto de debate a lo largo de los dos últimos siglos, ahora bien con el nacimiento de los Estados democráticos se ha construido la idea de soberanía interior sobre la base de que sólo el pueblo en su conjunto expresaba la voluntad de la nación, en otras palabras al subordinar la legitimidad de la soberanía estatal al predominio de la soberanía social, esta última se ha impuesto como elemento central de referencia, jurídicamente tal situación en el caso nuestro se ha traducido en la aprobación por nuestros constituyentes de la Constitución de la República, de la cual se deriva la legitimidad de los poderes constituidos y con ello se ha construido el concepto de poder constituyente." Finalmente, la Sala de lo Constitucional de aquel entonces, justifica la facultad de reformar la Constitución que tiene el Poder Legislativo; sin embargo, soslaya a propósito la existencia de normas que son irreformables o pétreas. En el decurso de la presente sentencia, se han ido dando argumentos que demuestran que el contenido de las reformas bajo estudio es inconstitucional, porque contraviene el contenido protegido del artículo 374 constitucional. En el considerando 14 de la sentencia dictada en el año 2014, la Sala de lo Constitucional (2009-2016) dispuso desestimar el motivo de inconstitucionalidad mediante el cual se denunciaba la vulneración del artículo 374 de la Constitución de la República, por quebrantar la forma de gobierno. En ese entonces la Sala de lo Constitucional se limitó a argumentar lo siguiente: "… esta Sala estima que teniendo cada poder del Estado definida las atribuciones que le corresponden, así como analizadas las reformas constitucionales impugnadas y la ley que rige las ZEDE, no encontramos que las mismas se opongan a la forma de gobierno establecida por nuestra carta magna toda vez que precisamente las referidas zonas tienen como normativa jerárquica aplicable en primer lugar la Constitución de la República, en segundo lugar los tratados internacionales celebrados por el Estado de Honduras en lo que sean 5aplicables; en tercer lugar la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE); en cuarto lugar las leyes señaladas en las disposiciones finales de la referida ley y finalmente la normativa interna que emane de las autoridades de las referidas zonas." Con la anterior argumentación, la Sala de lo Constitucional (2009-2016), niega rotundamente que una reforma constitucional pueda contrariar a la misma Constitución, lo que si es posible, tal como ya fue explicado en esta sentencia. La Sala de lo Constitucional (2009-2016), obvió en aquel momento, cuestionar todo lo referente a la autonomía que el Congreso Nacional de entonces, le cedió a los inversionistas sobre los territorios constituidos en ZEDEs, permitiéndoles crear y aplicar normas legales especiales; y

juzgar a los habitantes de dichas zonas de conformidad, no a las leyes hondureñas, sino a las propias, incluyendo extranjeras; y, ni siquiera conforme a nuestro sistema judicial, sino sistemas ad hoc, administrado por jueces nombrados por nuestra Corte Suprema de Justicia, pero escogidos por los gobiernos de las ZEDEs. La Sala de lo Constitucional (2009-2016) conformada por los nuevos magistrados, precisamente los mismos que sustituyeron a los que fueron destituidos por haber declarado la inconstitucionalidad de las "ciudades modelo", se refirió al motivo de inconstitucionalidad consistente en la violación a normas de naturaleza irreformable en sentido restrictivo[61] , señalando dicha Sala que, al confrontar el objetivo de las reformas constitucionales, observa que la ley orgánica impugnada y que regula las referidas zonas, establece en su artículo 9 lo siguiente: "Todas las personas en las Zonas de Empleo y Desarrollo Económico (ZEDE), son iguales en derechos y deberes, sin discriminación de ninguna naturaleza, salvo las disposiciones señaladas en la Constitución de la República o en la presente Ley Orgánica que reserven a hondureños o a residentes en las Zonas de Empleo y Desarrollo Económico (ZEDE)." Por lo que, al tenor de lo antes expuesto, dicha Sala (2009-2016) desestimó el reproche de violación al derecho a la igualdad que le asiste a los ciudadanos de este país con la creación de las referidas zonas de desarrollo. Posteriormente la Sala de lo Constitucional (2009-2016) en la sentencia que pronunció en el año 2014, con relación a la libertad de locomoción, dispuso que no existe violación al artículo 81 de la Constitución de la República. Esto lo explicó señalando que dicho derecho está contenido en el artículo 13 de la Declaración universal de derechos humanos, haciendo referencia a cuatro derechos claramente diferenciados y complementarios entre sí, como son: "1) El derecho a la libre circulación de los nacionales de un determinado Estado dentro de su Estado y de los extranjeros que se hallen en el legalmente. 2) El derecho que tienen los nacionales de un Estado y los extranjeros que se hallen en él legalmente a escoger su residencia dentro del Estado. 3) El derecho a salir libremente de cualquier Estado, incluso del que el ciudadano es nacional. 4) El derecho a retornar a un Estado. Este último derecho comprende el de retorno de los nacionales y el derecho a la reinmigración para los extranjeros residentes." Asimismo, dicha Sala (2009-2016) explicó que: "La formulación del principio general de la libre circulación de las personas tiene dos vertientes bien diferenciadas: a) La estatal o derecho a poder residir y moverse dentro de las fronteras de un determinado Estado; y, b) La internacional que hace referencia al derecho a poder salir de un Estado del que no se es nacional, el derecho a volver a él, o el derecho a pedir asilo. Para luego señalar, que al contrastar el derecho a la libre circulación y de residencia, analizados a la luz de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), decide que dicha ley no restringe el derecho constitucional mencionado porque cuando un ciudadano decide voluntariamente habitar en una ZEDE, es indudable que para él, se establecen unas condiciones y límites específicos, que no se dan respecto de aquellos ciudadanos que se encuentran fuera de las referidas zonas; y que, tales límites o restricciones, operan tanto para residentes como para aquellos que no lo son, sometiéndose a la Constitución y las leyes vigentes, por lo que no existe vulneración a la referida garantía.[62] Al analizar la razón de rechazo descrito ut supra, se percibe que no es una respuesta que satisfaga el deber de motivación clara y suficiente, debido a que lo que el impetrante reprocha es la inaccesibilidad de los no residentes a las ZEDEs, queriendo señalar que es como entrar a otro país, en virtud de que dichas zonas están sometidas a otra legislación y autoridades distintas a las del resto del país. Cuestionamiento que no abordó este alto tribunal de justicia en aquel momento, o sea no dio puntual respuesta al reproche. También en dicha sentencia, se pretendió dar respuesta al reproche de que la creación de las ZEDEs, violenta el artículo 102 constitucional, el cual prohíbe la expatriación o entrega de personas de nacionalidad hondureña a autoridades de un Estado extranjero. En ese momento la Sala (2009-2016), dispuso que no eran de

recibo los argumentos de la recurrente, puesto que las ZEDEs, no constituyen un estado extranjero y que tampoco el territorio ocupado por las mismas puede considerarse como tal, ya que sigue siendo parte inalienable del territorio nacional. Al analizar nuevamente el tema, se cuestiona que, en aquella oportunidad, este alto tribunal de justicia, no brindó una respuesta satisfactoria al problema, al contestar el asunto dando por hecho una cuestión que suscita más bien, más inquietudes y dudas que certezas y seguridades. Es decir, se responde bajo la afirmación de que el territorio de las ZEDEs sigue siendo territorio hondureño; pero sin abordar y aplacar las dudas que existen, sobre si dichos territorios se encuentran más allá de la mera formalidad bajo la real y material jurisdicción hondureña. Esto último, como interrogante bien fundada en el hecho concreto de la casi absoluta autonomía cedida a favor de los inversionistas, quienes como ya se expuso antes, tendrían absoluta libertad para legislar, nombrar autoridades, escoger jueces, imponer sistemas de juzgamiento foráneos y juzgar finalmente a quienes se encuentren en dichos territorios según sus propias leyes. 6.6.2. La sentencia RI- 0174-2014, se dictó por unanimidad de votos[63] desestimando la garantía de inconstitucionalidad. En esta sentencia se reproduce el contenido de la sentencia RI-0030-2014 anteriormente expuesta, insertándola desde el considerando 65 hasta el considerando 16, para reiterar al final su decisión y confirmando sus argumentos.[64] 6.6.3. La sentencia RI-0179- 2014 dictada en fecha diez de junio de dos mil catorce[65] , nuevamente reitera la decisión y argumentos de la sentencia RI-0030-2014, transcribiéndola al igual que en la anterior. 6.7.4. La sentencia RI-0424-2014 de fecha veintinueve de abril de dos mil catorce fue declarada inadmisible tras considerar que los ciudadanos Jorge Nelson Ávila Gutiérrez y Edwin Antonio Sandoval Lagos, actuando en su condición personal, no cumplieron con la previsión establecida en el numeral 5 del artículo 79 de la Ley Sobre Justicia Constitucional, que impone al recurrente la obligación de indicar en forma clara y precisa el interés directo, personal y legítimo que motiva su acción. Finalmente, la Corte Suprema de Justicia concluye señalando que la presente sentencia constituye por sí misma una variación en la línea jurisprudencial que había seguido este alto tribunal de justicia con las sentencias anteriores: RI-0030-2014, RI-0174-2014, RI-0179-2014 y RI-0424-2014. La argumentación que explica el cambio jurisprudencial, se encuentra ampliamente expuesta en la parte que fundamenta el fallo de esta sentencia, debiéndose reparar especialmente en el carácter impositivo e ineludible del artículo 375 constitucional en relación con el artículo 374, debiéndose en ese sentido tomar esta sentencia, como el restablecimiento ex officio del imperio de nuestra Constitución violentada en sus elementos irreformables de territorio y forma de gobierno, con la creación de las Zonas de Empleo y Desarrollo o ZEDEs, mediante el Decreto Legislativo No. 236-2012, el cual fue ratificado mediante el Decreto No. 9-2013, ambos contentivos de la reforma a los artículos 294, 303 y 329 de la Constitución de la República. PARTE DISPOSITIVA O FALLO POR TANTO: La Corte Suprema de Justicia, como intérprete último y definitivo de la Constitución de la República, teniendo en cuenta la opinión del Ministerio Público, con el VOTO MAYORITARIO de los honorables magistrados: Rebeca Lizette Ráquel Obando (Presidenta), Milton Danilo Jiménez Puerto, Mario Rolando Díaz Flores, Rubenia Esperanza Galeano Barralaga, Roy Pineda Castro, José Ricardo Pineda Medina, Felipe René Speer Laínez y Aída Patricia Martínez Linares; emitiendo su voto particular los honorables magistrados: Gaudy Alejandra Bustillo Martínez, Anny Belinda Ochoa Medrano, Odalis Aleyda Nájera Medina, Nelson Danilo Mairena Franco, Walter Raúl Miranda Sabio, Marvin Rigoberto Espinal Pinel y Luis Alonso Discua Cerrato, en nombre del Estado de Honduras y con fundamento en los artículos 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 19, 184, 185 303, 304, 308, 313 No. 5, 316 No. 1, 321, 323, 324, 325, 326, 327, 329, 374 y 375 de la Constitución de la República; 1, 3 No. 3, 4, 5, 8, 74, 75, 76, 77, 78, 79, 89 92 de la Ley Sobre Justicia Constitucional; y con el objeto de mantener y restablecer

el imperio y supremacía de esta Constitución, en relación con la forma de gobierno y la soberanía que ejerce el Pueblo hondureño sobre la integridad absoluta de su territorio, FALLA: 1. Declarando POR MANDATO IMPERATIVO E INELUDIBLE del artículo 375 de la Constitución de la República de Honduras, la inconstitucionalidad total y de origen o ex tunc del Decreto Legislativo No. 236-2012 aprobado en fecha veintitrés de enero del dos mil trece por el Congreso Nacional de la República, y ratificado mediante Decreto Legislativo No. 9-2013, publicado en La Gaceta, Diario Oficial de la República de Honduras No. 33,080, de fecha veinte de marzo del dos mil trece, que contiene la reforma a los artículos 294, 303 y 329 de la Constitución de la República, mediante la cual se autorizó la creación de las ZONAS DE EMPLEO Y DESARROLLO (ZEDE). 2. Se declara POR MANDATO IMPERATIVO E INELUDIBLE del artículo 375 de la Constitución de la República de Honduras, la inconstitucionalidad total y de origen o ex tunc de los Decretos Legislativos siguientes: a) el Decreto Legislativo No. 120-2013 que contiene la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), aprobada el doce de junio de dos mil trece por el honorable Congreso Nacional de la República de Honduras y publicado en el Diario Oficial La Gaceta No. 33,222 de fecha seis de septiembre de dos mil trece; b) el Decreto Legislativo No. 368-2013, publicado en La Gaceta, Diario Oficial de la República de Honduras No. 33,352 de fecha once de febrero de dos mil catorce, contentivo de la ratificación del nombramiento de los miembros del Comité para la adopción de mejores prácticas (CAMP), el cual fue nombrado mediante Acuerdo Ejecutivo No. 003-2014, aprobado el 14 de enero de 2014 y publicado en el Diario Oficial La Gaceta No. 33,342 el 30 de enero de 2014; c) el Decreto Legislativo 153-2013, publicado en La Gaceta, Diario Oficial de la República de Honduras No. 33,194 de fecha cinco de agosto de dos mil trece, que contiene el Programa para el establecimiento de las Zonas de Empleo y Desarrollo Económico (ZEDE); d) el Decreto Legislativo No. 32-2021, publicado en La Gaceta, Diario Oficial de la República de Honduras No. 35,628 de fecha quince de junio de dos mil veintiuno, relacionado con el impuesto que grava las ventas sobre los bienes y servicios que las ZEDE o las empresas efectúan en el mercado hondureño; e) la reforma del Decreto Legislativo No. 32-2021, aprobada mediante Decreto Legislativo No. 68-2021, publicado en La Gaceta, Diario Oficial de la República de Honduras No. 35,699 de fecha veintiséis de agosto de dos mil veintiuno; f) y toda otra normativa o acto jurídico relacionado con las ZEDES que atente contra la potestad ineludible. En consecuencia: 1. Para el mantenimiento incólume e íntegro de nuestro territorio nacional y de la única forma de gobierno que reconoce nuestro país, se restablece y mantiene la vigencia de la Constitución de la República en la versión compatible con los temas perpetuos, irreformables o pétreos contenidos en el artículo 374 constitucional. En virtud de lo cual, las reformas de los artículos 294, 303 y 329 de la Constitución de la República, declaradas inconstitucionales mediante la presente sentencia, son nulas; quedando restablecidos dichos artículos a la literalidad que es acorde al orden constitucional que fue quebrantado con la violación de disposiciones cuyo contenido irreformable sólo es disponible en forma exclusiva y única al Pueblo hondureño, como Poder Constituyente y originario. 2. Los artículos 294, 303 y 329 de la Constitución de la República, quedan por ende de la manera siguiente: 2.1. El artículo 294 constitucional dispone[66]: "El territorio nacional se dividirá en departamentos. Su creación y límites serán decretados por el Congreso Nacional. Los departamentos se dividirán en municipios autónomos administrados por corporaciones electas por el pueblo de conformidad con la ley." 2.2. El artículo 303 constitucional dispone[67]: "La potestad de impartir justicia emana del pueblo y se imparte gratuitamente en nombre del Estado de Honduras, por magistrados y jueces independientes, únicamente sometidos a la Constitución y las leyes. El Poder Judicial se integra por una Corte Suprema de Justicia, por las cortes de apelaciones, los juzgados y demás

dependencias que señale la ley. La potestad de impartir justicia en materia electoral y consultas ciudadanas corresponde al Tribunal de Justicia Electoral, creado en esta Constitución en los casos y con las limitaciones que señala la ley. En ningún juicio habrá más de dos instancias; el juez o magistrado que haya ejercido jurisdicción en una de ellas, no podrá conocer en la otra, ni en recurso extraordinario en el mismo asunto, sin incurrir en responsabilidad. Tampoco podrán juzgar en una misma causa los cónyuges y los parientes dentro del cuarto grado de consanguinidad o segundo de afinidad." 2.3. El artículo 329 constitucional dispone[68]: "El Estado promueve el desarrollo integral de lo económico y social que estará sujeto a una planificación estratégica. La ley regulará el sistema y proceso de planificación con la participación de los poderes del Estado y las organizaciones políticas, económicas y sociales, debidamente representadas. Para realizar la función de promoción del desarrollo económico y social y complementar las acciones de los demás agentes de este desarrollo, el Estado con visión a mediano y largo plazo diseñará concertadamente con la sociedad hondureña una planificación contentiva de los objetivos precisos y los medios y mecanismos para alcanzarlos. Los planes de desarrollo de largo y mediano plazo incluirán políticas y programas estratégicos que garanticen la continuidad de su ejecución desde su concepción y aprobación, hasta su conclusión. El Plan Nación, los planes de desarrollo integral y los programas incorporados en los mismos serán de obligatorio cumplimiento para los gobiernos sucesivos." 3. Queda expulsado del orden normativo nacional, toda disposición interna o internacional que haya tenido como propósito crear las REGIONES ESPECIALES DE DESARROLLO (RED), mejor conocidas como "ciudades modelo" y las ZONAS DE EMPLEO Y DESARROLLO ECONÓMICO (ZEDEs). 4. Se declara protegida la inversión de las sociedades o empresas constituidas de buena fe que pretendían convertirse en zonas de empleo y desarrollo económico, así como su propiedad, adquirida de buena fe y de conformidad a nuestras leyes y disposiciones constitucionales. Dichas sociedades o empresas quedan sujetas a la normativa y protección (seguridad) jurídica vigente en el tiempo previo de las normas declaradas inconstitucionales con esta sentencia. Por lo que dichas sociedades y empresas tienen a su disposición, toda la legislación y los procedimientos civiles, mercantiles, fiscales, administrativos, etc., para legalizar y regularizar su condición, para así continuar operando en Honduras bajo el régimen económico constitucionalmente dispuesto, siempre y cuando hayan actuado de buena fe y sus giros, negocios y transacciones sean transparentes y lícitos de acuerdo con la legislación nacional e internacional. Y MANDA: 1. Que la presente sentencia número RI-CSJ-0738-2021, sea notificada y certificada, quedando los Decretos declarados inconstitucionales nulos y expulsados del orden normativo de la República, así como toda normativa legal o de cualquier otra índole. 2. Que se publique la presente sentencia en La Gaceta, Diario oficial de la República de Honduras, para los efectos legales consiguientes. 3. En virtud de que hasta la fecha no se ha dado cumplimiento a la orden dictada por este alto tribunal de justicia, se ratifica la orden proferida en la sentencia RI- CSJ-0769-2011 de publicarla en La Gaceta, Diario Oficial de la República de Honduras, para los efectos legales consiguientes. 4. Se ordena a la Secretaría del Despacho que proceda al archivo de las presentes diligencias. Redactó el Magistrado integrante permanente José Ricardo Pineda Medina. NOTIFÍQUESE. FIRMAS Y SELLO. REBECA LIZETTE RÁQUEL OBANDO, MAGISTRADA PRESIDENTA.- GAUDY ALEJANDRA BUSTILLO MARTÍNEZ, MAGISTRADA.- MILTON DANILO La Gaceta JIMÉNEZ PUERTO, MAGISTRADO.- MARIO ROLANDO DÍAZ FLORES, MAGISTRADO.- ANNY BELINDA OCHOA MEDRANO, MAGISTRADA.- ODALIS ALEYDA NÁJERA MEDINA, MAGISTRADA.- RUBENIA ESPERANZA GALEANO BARRALAGA, MAGISTRADA.- NELSON DANILO MAIRENA FRANCO, MAGISTRADO.- REBECA LIZETTE RÁQUEL OBANDO, POR EL

MAGISTRADO ROY PINEDA CASTRO. WALTER RAÚL MIRANDA SABIO, MAGISTRADO.- MARVIN RIGOBERTO ESPINAL PINEL, MAGISTRADO INTEGRANTE.- FELIPE RENÉ SPEER LAÍNEZ, MAGISTRADO INTEGRANTE.- JOSÉ RICARDO PINEDA MEDINA, MAGISTRADO INTEGRANTE.- LUIS ALONSO DISCUA CERRATO, MAGISTRADO INTEGRANTE.- AIDA PATRICIA MARTINEZ LINARES, MAGISTRADA INTEGRANTE. FIRMA Y SELLO. IRIS BERNARDA CASTELLANOS ALVARADO, SECRETARIA GENERAL". Y para ser enviada al CONGRESO NACIONAL DE LA REPÚBLICA DE HONDURAS, se extiende en la ciudad de Tegucigalpa, municipio del Distrito Central, a los veinte días del mes de noviembre del dos mil veinticuatro, certificación del Fallo emitido por el Pleno de la Corte Suprema de Justicia de fecha veinte de septiembre del dos mil veinticuatro, recaída en el Recurso de Inconstitucionalidad registrado en este Tribunal con el número SCO-0738-2021. _____ CARLOS ALBERTO ALMENDAREZ CALIX SECRETARIO SALA CONSTITUCIONAL

[1]Votaron el proyecto de sentencia de manera mayoritaria los honorables magistrados: Sonia Marlina Dubón Villeda (ponente y presidenta de la Sala), Wagner Vallecillo Paredes y Francisca Villela Zavala a favor de la declaratoria de inconstitucionalidad, siendo el fallo de la siguiente manera: "FALLA: 1. Declarando CON LUGAR ex tunc o de origen la garantía de inconstitucionalidad interpuesta por razón de contenido por el Doctor FRANCISCO JOSÉ HERRERA ALVARADO, en su condición de Rector de la Universidad Nacional Autónoma de Honduras, UNAH, contra el artículo 34 del Decreto Legislativo No. 120-2013 que contiene la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), aprobada el doce de junio de dos mil trece por el honorable Congreso Nacional de la República de Honduras y publicado en el Diario Oficial La Gaceta No. 33,222 de fecha seis de septiembre de dos mil trece. 2. Declarando DE OFICIO Y POR MANDATO IMPERIOSO E INELUDIBLE del artículo 375 de la Constitución de la República de Honduras, la inconstitucionalidad total y de origen o ex tunc del Decreto Legislativo No. 236-2012 aprobado en fecha veintitrés de enero del dos mil trece por el Congreso Nacional de la República, y ratificado mediante Decreto Legislativo No. 9-2013, publicado en La Gaceta, Diario Oficial de la República de Honduras No. 33,080, de fecha veinte de marzo del dos mil trece, que contiene la reforma a los artículos 294, 303 y 329 de la Constitución de la República, mediante la cual se autoriza la creación de las ZONAS DE EMPLEO Y DESARROLLO (ZEDE); y, el resto para completar la totalidad del Decreto Legislativo No. 120-2013, emitido por el Congreso Nacional de la República, en fecha doce de junio del dos mil trece y publicado en La Gaceta, Diario Oficial de la República No. 33,222, de fecha seis de septiembre del dos mil trece, que contiene la LEY ORGÁNICA PARA LA IMPLEMENTACIÓN DE LAS ZONAS DE EMPLEO Y DESARROLLO ECONÓMICO (ZEDE) y en aplicación del artículo 90 de la Ley Sobre Justicia Constitucional. En consecuencia: ÚNICO: Se restituye el texto de la Constitución de la República en su versión previa a las reformas de los artículos 294, 303 y 329 de la Constitución de la República que, han tenido como propósito crear las REGIONES ESPECIALES DE DESARROLLO (red), mejor conocidas como "ciudades modelo" y las ZONAS DE EMPLEO Y DESARROLLO (ZEDEs). Y MANDA: 1. Que en virtud de no existir unanimidad en el presente asunto se proceda de conformidad a lo establecido por el artículo 316 de la Constitución de la República y el artículo 8 de la Ley Sobre Justicia Constitucional, remitiendo los antecedentes a la Presidencia de este Poder del Estado para los efectos legales consiguientes. Redactó la Magistrada Sonia Marlina Dubón Villeda. NOTIFÍQUESE." Disintieron los honorables magistrados: Luis Fernando Padilla Castellanos e Isbela Bustillo Hernández, quienes votaron el proyecto cuya parte resolutiva dice así: "Somos del parecer porque se declare SIN LUGAR EL RECURSO DE INCONS- TITUCIONALIDAD por las razones antes expuestas, interpuesto por el señor Francisco José Herrera Alvarado, en contra del artículo 34 de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), Decreto Legislativo 120-2013".

[2]Dicha norma fue derogada el veintiséis de abril de dos mil veintidós mediante el Decreto Legislativo No. 33-2022.

[3] Vid. Artículo 10.4 "Trato de nación más favorecida" del CAFTA-DR. Ver también artículo 22 de la Ley Orgánica de las ZEDE, "Las personas naturales y jurídicas que operen dentro de las Zonas de Empleo y Desarrollo Económico (ZEDE) recibirán trato en base al principio de nación más favorecida (NMF), para lo

cual obtendrán la extensión automática de cualquier mejor tratamiento que se conceda o se haya concedido a las demás partes en un acuerdo de comercio internacional suscrito por el Estado de Honduras.
[4] Vid. "Artículo 26. PACTA SUNT SERVANDA. Todo tratado en vigor obliga a las partes y debe ser cumplido por ellas de buena fe".
[5] Vid. "Artículo 27. EL DERECHO INTERNO Y LA OBSERVANCIA DE LOS TRATADOS. Una parte no podrá invocar las disposiciones de su derecho interno como justificación del incumplimiento de un tratado. Esta norma se en- tenderá sin perjuicio de lo dispuesto en el artículo 46".
[6] Honduras, Chile, Perú, Colombia, Panamá, Ecuador, El Salvador y Venezuela, entre otros.
[7] Vid. "Artículo 34. Las Zonas de Empleo y Desarrollo Económico (ZEDE) de- ben establecer sus propias políticas educativas y curriculares en todos los niveles. El ejercicio de las profesiones o grados académicos dentro de las Zonas de Empleo y Desarrollo Económico (ZEDE) no estará condicionado a colegiación o asociación. No obstante, las autoridades de las Zonas de Empleo y Desarrollo Económico (ZEDE) podrán requerir la acreditación académica correspondiente para el ejercicio de determinadas profesiones".
[8] El objeto de reproche en la garantía de inconstitucionalidad interpuesta por vía de acción y por razón de contenido, se dirigió específicamente en contra del artículo 34 del Decreto Legislativo No. 120-2013 que contiene la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), tras considerarse que vulnera los artículos constitucionales 151, 156, 159, 160 y 177 de la Constitución de la República, que se refieren a la educación superior y el ejercicio profesional.
[9] Publicado en La Gaceta, Diario Oficial de la República de Honduras No. 33,352, el 11 de febrero de 2014. Mediante este Decreto se ratifica el nombra- miento del Comité para la Adopción de Mejores Prácticas (CAMP), hecho por el Presidente de la República en el Acuerdo Ejecutivo No.003-2014 de fecha 14 de enero de 2014, de conformidad al penúltimo párrafo del artículo 11 de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE).
[10] Mediante este Decreto Legislativo publicado en La Gaceta, Diario Oficial de la República de Honduras el cinco de agosto de 2013, se crea el Programa para el establecimiento de las Zonas de Empleo y Desarrollo Económico (ZEDE), el cual estará integrado por las personas que el Presidente de la República designe. Dicho programa Zonas de Empleo y Desarrollo Económico asumirá temporal- mente las funciones de la Secretaría Técnica y del Comité para la Adopción de Mejores Prácticas (CAMP) hasta el nombramiento del primer miembro de la Secretaría Técnica y de los primeros doce (12) miembros del Comité para la Adopción de Mejores Prácticas (CAMP).
[11] El Decreto Legislativo No. 32-2021 fue publicado en La Gaceta, Diario oficial de la República de Honduras No. 35,628 de fecha quince de junio de dos mil veintiuno. Sólo estuvo en vigencia poco más de dos meses.
[12] Publicado en La Gaceta, Diario Oficial de la República del jueves veintiséis de agosto de 2021 No. 35,699. Con este Decreto se deroga el Decreto Legislativo No. 32-2021
[13] Mediante el Decreto Legislativo No. 33-2022 el veintiséis de abril de dos mil veintidós.
[14] Se hace la acotación siguiente: De inicio, quien hace la vinculación del artículo 34 de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico con el artículo 329 constitucional fue el impetrante, rector Francisco José Herrera Alvarado; asimismo el Abogado Jorge Constantino Colindres en su análisis escrito, contenido en el documento de amicus curiae presentado por Marlon Osmín Donaire Coello en su condición personal y en beneficio y representación de la Universidad Olga y Manuel Ayau Cordón LLC (UOMAC).
[15] Existe jurisprudencia consolidada en cuanto a declarar de manera oficiosa disposiciones relacionadas con normas reprochadas de inconstitucionalidad, a manera de ejemplo: La RI-0172-2006 de fecha cuatro de octubre de dos mil seis; la RI-0271-2007 de fecha catorce de diciembre de dos mil siete; la RI- 1165-2014 de fecha veintitrés días del mes de junio del año dos mil diecisiete; la RI-1343-2014/0243-2015 de fecha veintidós de abril de dos mil quince; la RI-0696-2012 de fecha catorce de marzo del dos mil dieciséis; y, RI-0709-14 de fecha nueve de diciembre de dos mil catorce.
[16] La Constitución de la República de Honduras jurada por la Asamblea Nacional Constituyente en sesión pública y solemne, reunida en el hemiciclo del Congreso Nacional el veinte de enero de 1982. Contenida en el Decreto Legislativo número 131 del once de enero de 1982, publicado en La Gaceta. Diario Oficial de la República de Honduras, miércoles 20 de enero de 1982, número 23,612.
[17] Responsabilidad por acción.
[18] Responsabilidad por omisión.
[19] Vid. Artículo 375 de la Constitución de la República de Honduras.

[20] Vid. "Artículo 294. El territorio nacional se dividirá en departamentos. Su creación y límites serán decretados por el Congreso Nacional. Los departamentos se dividen en municipios autónomos administrados por corporaciones electas por el pueblo, de conformidad con la ley. Sin perjuicio de lo establecido en los dos párrafos anteriores, el Congreso Nacional puede crear zonas sujetas a regímenes especiales de conformidad con el artículo 329 de eta Constitución".
[21] Vid. "Artículo 303. La potestad de impartir justicia emana del pueblo y se imparte gratuitamente en nombre del Estado, por magistrados y jueces independientes, únicamente sometidos a la Constitución y las leyes. El Poder Judicial se integra por una Corte Suprema de Justicia, por las cortes de apelaciones, los juzgados, por tribunales con competencia exclusiva en zonas del país sujetas a regímenes especiales creados por la Constitución de la República y demás de- pendencias que señale la ley. En ningún juicio debe haber más de dos instancias; el juez o magistrado que haya ejercido jurisdicción en una de ellas, no podrá conocer en la otra, ni en recurso extraordinario en el mismo asunto, sin incurrir en responsabilidad. Tampoco pueden juzgar en una misma causa los cónyuges y los parientes dentro del cuarto grado de consanguinidad o segundo de afinidad.
[22] Vid. "Artículo 329. El Estado promueve el desarrollo económico y social, que debe estar sujeto a una planificación estratégica. La ley regula el sistema y proceso de planificación con la participación de los Poderes del Estado y las organizaciones políticas, económicas y sociales, debidamente representadas. Para realizar la función de promover el desarrollo económico y social y complementar las acciones de los demás agentes de este desarrollo, el Estado con visión a mediano y largo plazo, debe diseñar concertadamente con la sociedad hondureña una planificación contentiva de los objetivos precisos y los medios y mecanismos para alcanzarlos. Los planes de desarrollo de mediano y largo plazo deben incluir políticas y programas estratégicos que garanticen la continuidad de su ejecución desde su concepción y aprobación, hasta su conclusión. El plan de nación, los planes de desarrollo integral y los programas incorporados en los mismos son de obligatorio cumplimiento para los gobiernos sucesivos. ZONAS DE EMPLEO Y DESARROLLO ECONÓMICO. El Estado puede establecer zonas del país sujetos a regímenes especiales, los cuales tienen, personalidad jurídica, están sujetas a un régimen fiscal especial, pueden contraer obligacio- nes en tanto no requieran para ello la garantía o el aval solidario del Estado, celebrar contratos hasta el cumplimiento de sus objetivos en el tiempo y durante varios gobiernos y gozan de autonomía funcional y administrativa que deben incluir las funciones, facultades y obligaciones que la Constitución y las leyes le confieren a los municipios. La creación de una zona sujeta a un régimen especial es atribución exclusiva del Congreso Nacional, por mayoría calificada, previo plebiscito aprobatorio por las (2/3) dos terceras partes, de conformidad con lo establecido en el artículo 5 de la Constitución. Este requisito no es necesario para regímenes especiales creados en zonas con baja densidad poblacional. Se entiende por zona de baja densidad poblacional, aquellas en donde el número de habitantes permanentes por kilómetro cuadrado sea inferior al promedio para zonas rurales calculado por el Instituto Nacional de Estadísticas (INE) quien debe emitir el correspondiente dictamen. El Congreso Nacional al aprobar la creación de zonas sujetas a regímenes especiales, debe garantizar que se respe- ten en su caso, la sentencia emitida por la Corte Internacional de Justicia de La Haya el 11 de septiembre de 1992 y lo dispuesto en los artículos 10,11,12,13,15 y 19 de la Constitución de la República referente al territorio. Estas zonas están sujetas a la legislación nacional en todos los temas relacionados a soberanía, aplicación de la justicia, defensa nacional, relaciones exteriores, temas electora- les, emisión de documentos de identidad y pasaportes. El Golfo de Fonseca debe sujetarse a un régimen especial de conformidad al Derecho Internacional, a lo establecido en el artículo 10 constitucional y el presente artículo; las costas hondureñas del golfo y del mar Caribe quedan sometidas a las mismas disposiciones constitucionales. Para la creación y funcionamiento de estas zonas, el Congreso Nacional debe aprobar una ley orgánica, la que sólo puede ser modificada, re- formada, interpretada o derogada por dos tercios favorables de los miembros del Congreso Nacional, es necesaria además la celebración de un referéndum o plebiscito a las personas que habiten la zona sujeta a régimen especial cuando su población supere los cien mil habitantes. La ley orgánica debe establecer expresamente la normativa aplicable. Las autoridades de las zonas sujetas a regímenes especiales tienen la obligación de adoptar las mejoras prácticas nacionales e internacionales para garantizar la existencia y permanencia del entorno social económico y legal adecuado para ser competitivas a nivel internacional. Para la solución de conflictos dentro de las zonas del país sujetas a regímenes especiales, el Poder Judicial por medio del Consejo de la Judicatura debe crear tribunales con competencia exclusiva y autónoma sobre éstos. Los jueces de las zonas sujetas a jurisdicción especial serán propuestos por las zonas especiales ante el Consejo de la Judicatura quien lo nombrará previo concurso de un listado propuesto de una comisión especial integrada en la forma que señale la ley orgánica de

estos regímenes. La ley puede establecer la sujeción a arbitraje obligatorio para la solución de conflictos de las personas naturales o jurídicas que habiten dentro de las áreas comprendidas por estos regímenes para ciertas materias. Los Tribunales de las zonas sujetas a un régimen jurídico especial podrán adoptar sistemas o tradiciones jurídicas de otras partes del mundo siempre que garanticen igual o mejor los principios constitucionales de protección a los Derechos Humanos previa aprobación del Congreso Nacional"

[23] Pareciera que el principio de irretroactividad sólo está dispuesto para las normas legales, de acuerdo con la literalidad del artículo 96 constitucional, el artículo 9 de la Convención americana sobre derechos humanos y numeral 2 del artículo 15 del Pacto Internacional de Derechos Civiles y Políticos. Sin embargo, dicho principio es aplicable a toda norma o acto de autoridad; o más bien a casi toda norma o acto de autoridad, porque debe tomarse en cuenta cuando sea necesario la restitución o restablecimiento de derechos fundamentales o en este caso determinado el territorio nacional y la forma de gobierno.

[24] Cfr. BREWER-CARÍAS, Allan R. "Comentarios a la Ley Sobre Justicia Constitucional, Ley Sobre Justicia Constitucional, Decreto No. 244-2003 y Ley de Amparo, Decreto No. 9 (1936)". Editorial OIM, edición 2023, págs. 9 y 10.

[25] Esto ocurre en el caso de los EEUU, basta que un tribunal estatal declare en un caso concreto la inconstitucionalidad, para que a partir de entonces dicha norma deje de ser aplicada.

[26] Cfr. CIDH. INFORME No. 76/14. Petición 639-06. Informe de admisibilidad caso Marcelo Ramón Aguilera Aguilar contra Honduras, 15 de agosto de 2014. Véase también, CIDH, Informe No. 57/14. Petición 775-03 caso Juan González y otros contra Honduras, 21 de julio de 2014.

[27] La imprescriptibilidad, intangibilidad e irrevocabilidad son términos absolutos, por lo que cualquier reducción o limitación supone su violación.

[28] La fuerza no sólo implica violencia o intimidación. En este caso particular, las autoridades involucradas en la creación de las ZEDEs han forzado la voluntad del Soberano, mediante el ejercicio ultra vires de sus funciones.

[29] Haciendo un paralelo con la nulidad absoluta reglada en el Código Civil, se verá que la nulidad absoluta procede 1. cuando falta alguna de las condiciones esenciales para su formación o para su existencia (en este caso lo que falta es legitimidad constitucional). 2. Cuando falta algún requisito o formalidad que la ley exige para el valor de ciertos actos o contratos (en el caso del acto legislativo la licitud del objeto, en este caso es ilícito porque existe prohibición constitucional), en consideración a la naturaleza del acto o contrato y no a la calidad o Estado de la persona que en ellos interviene. 3. cuando se ejecutan o celebran por personas absolutamente incapaces (en este caso los legisladores carecen de facultad absoluta con relación a temas protegidos por artículos pétreos). La nulidad absoluta puede alegarse por todo el que tenga interés en ella, y debe, cuando conste de autos, declararse de oficio, aunque las partes no la aleguen; y no puede subsanarse por la confirmación o ratificación de las partes.

[31] MEJÍA RIVERA, Joaquín A. "Apuntes para la reflexión sobre las reclamaciones internacionales derivadas de la derogación de las ZEDE". Revista Envío- Honduras. Año 21. No. 73. ERIC-SJ. Tegucigalpa, Honduras. Abril de 2023, pp. 22-29.

[32] El plebiscito no será necesario, según dispone el artículo 329 reformado de la Constitución, si la ZEDE se pretende en un lugar con baja densidad poblacional, declarado así por el Instituto Nacional de Estadística INE, indicando además que se considera baja tasa poblacionales cuando el número de habitantes permanentes por kilómetro cuadrado sea inferior al promedio para zonas rurales, calculado por el INE.

[33] Razón por la que además, o sea en adición, ninguna sociedad o empresa podía comportarse como ZEDE, de tal suerte que los compromisos asumidos mediante simulación de ostentar este carácter con terceros de buena fe, deben ser asumidos totalmente por la misma empresa o sociedad mercantil.

[34] Tesis de Baudry-Lacantinerie y Bouques Fourcade. Cit. GARCÍA MAYNEZ, Eduardo. Introducción al estudio del Derecho. Editorial Porrúa, S.A. trigésima octava edición. México, 1986. Pág. 390.

[35] Ídem. Pág. 392.

[36] Al respecto, el artículo 329 reformado por el decreto a declarar inconstitucional, dispone que: "Para la creación y funcionamiento de estas zonas, el Congreso Nacional debe aprobar una ley orgánica, la que sólo puede ser modificada, reformada, interpretada o derogada por dos tercios favorables de los miembros del Congreso Nacional, es necesaria además la celebración de un referéndum o plebiscito cundo su población supere los cien mil habitantes."

[37] Ejemplo de ello es la sentencia RI-0271-2007 de fecha catorce de diciembre de dos mil siete (caso Micheletti), mediante la cual se declaró con lugar la garantía de inconstitucionalidad interpuesta por razón de forma y por vía de acción, en contra de la reforma de la parte final del numeral 1 del artículo 240 de la Constitución de la República, en consecuencia se derogó parcialmente el Decreto Legislativo No. 412-02 del 13 de noviembre de 2002, ratificado mediante Decreto 154-03 del 23 de septiembre de 2003; y por extensión los decretos 268-02 de fecha 17 de enero de 2002, ratificado por decreto 02-02 del 25 de enero de 2002; decreto 374-02 de fecha 13 de noviembre de 2002, ratificado mediante decreto 153-03 del 22 de septiembre de 2003; específicamente la reforma establecida en el párrafo primero del artículo 240 numeral 1 constitucional en su parte final, que contiene la prohibición para que el Presidente del Congreso Nacional y el Presi- dente de la Corte Suprema de Justicia sean candidatos a la presidencia de la Re- pública, en el período constitucional siguiente al que fue elegido. En este caso se consideró violentado un artículo pétreo y la normativa declarada inconstitucional se hizo bajo efectos a futuro, de conformidad a la locución latina "ex nunc".

[38] El Consejo Hondureño de la Empresa Privada o COHEP es una institución sin fines de lucro fundada en 1967 con el objetivo de proporcionar las condiciones macroeconómicas, legales e institucionales más adecuadas para fomentar la creación de riqueza y el desarrollo socioeconómico de Honduras, sustentados en el sistema de libre empresa y responsabilidad social. Sus objetivos son fomentar, unificar, concretar y promover las acciones conjuntas de la iniciativa privada nacional, orientadas hacia la integración empresarial, representando los intereses generales de la libre empresa en Honduras en contribución al desarrollo integral del país. Es la organización empresarial de más alto grado de representatividad en nuestro país; aglutina 70 organizaciones representantes de todos los sectores productivos. El COHEP se autodenomina como el brazo técnico-político del sector empresarial de Honduras. Como principio filosófico, sustenta que la iniciativa privada a través de la inversión, la generación de empleo y de riqueza, es el pilar básico del desarrollo económico de nuestro país, y es importante soporte del sis- tema democrático. (Obtenido del portal de la institución en La Internet).

[39] Vid. https://cohep.org/wp-content/uploads/2021/06/ANALISIS-JURIDICO- DE-LAS-ZEDE-EN-HONDURAS-FINAL.pdf y https://cohep.org/wp-content/ uploads/2021/06/Certificacion-analisis-zede.pdf

[40] La Asociación para una sociedad más justa (ASJ) es una organización gubernamental, sin fines de lucro.

[41] Vid. https://asjhonduras.com/webhn/wp-content/uploads/2021/07/Analisis-Juridico-ZEDES_-ASJ.pdf (Obtenido de La Internet).

[42] Vid. https://www.cna.hn/wp-content/uploads/2021/10/Informe-Los-pecados- capitales-de-las-ZEDE.pdf (Obtenido en La Internet). Dicho documento consta de 90 páginas e hizo acopio de la siguiente bibliografía: American Psychological Association. (2020). Publication manual of the American Psychological Asso- ciation (7th ed.). https://doi.org/10.1037/0000165000/ Anónimo. (24 de enero de 2013). Honduras: aprueban ciudades modelo en el Congreso Nacional. La Pren- sa.https://www.laprensa.hn/honduras/tegucigalpa/331319-98/honduras-aprue- banciudades-modelo-en-el-congreso-nacional Anónimo. (24 de mayo de 2021). Sectores alzan la voz contra las ZEDE en Honduras. Proceso Digital. https://pro- ceso.hn/sectores-alzan-la-voz-contra-las-zedes-en-honduras/ Anónimo. (3 de ju- nio de 2021). Las ZEDE reeditan historia de concesiones bananeras en Honduras, alerta sociólogo. Proceso Digital. https://proceso.hn/las-zede-reeditanhistoria- de-concesiones-bananeras-en-honduras-alerta-sociologo/ Anónimo. (14 de junio de 2021). Expresidente Lobo Sosa dice que «de la lengua» sacarán a quienes bus- quen protegerse en las ZEDE. Proceso Digital. https://proceso.hn/expresidente- lobo-sosa-dice-que-de-la-lengua-sacaran-a-quienes-busquen-protegerseen-zede/ Anónimo. (22 de junio de 2021). Las ZEDE no generarían ni 15 mil empleos en Honduras, según el Fosdeh. Proceso Digital. https://proceso.hn/las-zedes-no-ge- nerarianni-15-mil-empleos-en-honduras-segun-el-fosdeh/ Bravo, E. (S. f.). 250 conectores textuales. Travesías filosóficas. http://www.iesseneca.net/iesseneca/IMG/pdf/Conectores_textuales.pdf Canal CNGoTv. (21 de junio de 2021). Ebal Díaz dice que peleará para que se creen ZEDE en Francisco Morazán. [Archivo de vídeo]. Youtube. https://www.youtube.com/watch?v=B50tAzl7xFw info@cna.hn www.cna.hn cnahnoficial cnahonduras cnahonduras Consejo Na- cional Anticorrupción 89 Los pecados capitales de las ZEDE Constitución Po- lítica de la República de Honduras, Publicada en La Gaceta No. 23,612 del 20 de enero 1982. Congreso Nacional de Honduras. (Consultado en junio de 2021). Página oficial. http://www.congresonacional.hn/ Geglia, B. (12 de octubre de 2020). Esto es lo que aprendí sobre secretividad como extranjera investigando las ZEDE en Honduras. Contra Corriente. https://contracorriente. red/2020/10/12/ esto-es-lo-que-aprendi-sobre-secretividad-como-extranjerainvestigando-las- zede-en-honduras/ Escobedo, I. (18 de marzo de 2021). Honduras: ¿soberanía a cambio de desarrollo económico? DW. https://www.dw.com/es/honduras- soberan%C3%ADa-a-cambio-

dedesarrollo-con%C3%B3mico/a-56916122 M. A. (22 de junio de 2021). Pepe Lobo: «Yo sancioné la ley de las ZEDE y se hablaba de referéndum y plebiscito». La Tribuna. https://www.latribuna. hn/2021/06/22/pepe-loboyo-sancione-ley-de-zede-y-se-hablaba-de-referen- dum-y-plebiscito/ Medina, M. (17 de mayo de 2021). Nasralla sobre las ZEDE en Honduras: Ebal Díaz «es un vende Patria»; «a Salvador le falta hombría», responde el funcionario. Tu Nota. https://www.tunota.com/nasralla-sobre-las- zede-en-honduras-ebal-diaz-es-un-vendepatria-a-salvador-le-falta-hombria- responde-el-funcionario Ley sobre Justicia Constitucional, Corte Suprema de Justicia, República de Honduras, C. A. 2019. Ley Marco del Sector de Telecomu- nicaciones Decreto 185-95 Del 5 de diciembre de 1995 y Actualización de la Ley Marco del Sector de Telecomunicaciones Decreto 118-97 del 25 de octubre de 1997. 90 Consejo Nacional Anticorrupción info@cna.hn www.cna.hn cnahnofi- cial cnahonduras cnahonduras Los pecados capitales de las ZEDE Reglamento Especial de Organización y Funcionamiento de la Dirección General de Fiscalía, Acuerdo FRG-011-2016, publicado en el Diario Oficial La Gaceta n.º 34,028 19 de mayo del 2016. Recurso de Inconstitucionalidad número SCO 0030-2014, con el objeto de declarar la inconstitucionalidad del Decreto número 236-2012, ratificado mediante Decreto número 9-2013 y contra el Decreto número 120-2013, emitidos por el Congreso Nacional de la República de Honduras. Secretaría de Finanzas (Sefin). (Consultado en mayo/junio de 2021). Página oficial. https://www.sefin.gob.hn/ Wallace, A. (23 de noviembre de 2017). ¿Qué son las ZEDE?, los polémicos territorios con los que Honduras quiere convertirse en el Hong Kong de América Latina que marcan las elecciones en el país centroamericano. BBC News Mundo. https://www.bbc.com/ mundo/noticias-america-latina-4203085

[43] Por ejemplo, los municipios de Puerto Cortés, Yamaranguila, La Ceiba, Tocoa, Namasigüe, Esparta, Intibucá, San José, Colomoncagua, Chinacla, Choloma, etc.

[44] Lista obtenida del documento: Las Zonas de Empleo y Desarrollo Económico (ZEDE), y el perfeccionamiento de los mecanismos de despojo en Honduras. Zones for Employment and Economic Development (ZEDE), and the improvement of dispossession mechanisms in Honduras, escrito por Daniel Torres Sandí daniel.torressandi@ucr.ac.cr. Universidad de Costa Rica, Costa Rica. Revista de Ciencias Sociales (Cr), núm. 167, 2020 Universidad de Costa Rica. Recepción: 17 de enero de 2019. Aprobación: 7 de octubre de 2019. Encontrado en La Inter- net: https://www.redalyc.org/journal/153/15363782007/html/

[46] El artículo 329 constitucional debe restablecerse a la reforma vigente contenida en el Decreto Legislativo No. 175-2004 publicado en La Gaceta, Diario Oficial de la República de Honduras No.30,586 del 3 de enero de 2005, ratificado por el Decreto Legislativo No. 373-2005, publicado en La Gaceta, Diario Oficial de la República de Honduras No.30,910 del 24 de enero de 2006.

[47] Al respecto la reforma señala: “Los jueces de las zonas sujetas a jurisdicción especial serán propuestos por las zonas especiales ante el Consejo de la Judicatura quien lo nombrará previo concurso de un listado propuesto de una comisión especial integrada en la forma que señale la ley orgánica de estos regímenes.”

[48] Al respecto la reforma señala: “Para la solución de conflictos dentro de las zonas del país sujetas a regímenes especiales, el Poder Judicial por medio del Consejo de la Judicatura debe crear tribunales con competencia exclusiva y autónoma sobre éstos”.

[49] Al respecto la reforma señala: “Las autoridades de las zonas sujetas a regí- menes especiales tienen la obligación de adoptar las mejoras prácticas nacionales e internacionales para garantizar la existencia y permanencia del entorno social económico y legal adecuado para ser competitivas a nivel internacional”.

[50] Al respecto la reforma señala: “Los Tribunales de las zonas sujetas a un régimen jurídico especial podrán adoptar sistemas o tradiciones jurídicas de otras partes del mundo siempre que garanticen igual o mejor los principios constitucionales de protección a los Derechos Humanos previa aprobación del Congreso Nacional”.

[51] El territorio es nuestro, únicamente en la medida que quede sometido al poder público nuestro (normas y autoridades).

[52] Expresión que en este contexto pretende señalar el “poder o dominio público.” Inclusive el ejercicio mismo de soberanía puesta de manifiesto en el sometimiento de las personas a una Constitución, ley y autoridad determinada.

[53] El artífice de dichos Decretos Legislativos fue el Congreso Nacional presidido por Juan Orlando Hernández Alvarado durante el gobierno del Presidente de la República José Porfirio Lobo Sosa.

[54] Debido a que la decisión judicial de la Sala de lo Constitucional no obtuvo la unanimidad requerida por la Constitución, el asunto pasó al conocimiento del pleno de quince magistrados de la Corte Suprema de Justicia, quienes al final declararon por mayoría de votos la inconstitucionalidad de los Decretos Legislativos ya

indicados. Votaron a favor de la inconstitucionalidad los magistrados José Tomás Arita Valle, Rosalinda Cruz Sequeira de Williams, Raúl Antonio Henríquez Interiano, Víctor Manuel Martínez Silva, Rosa de Lourdes Paz Haslam, José Francisco Ruiz Gaeckel, José Antonio Gutiérrez Navas, Jaco- bo Antonio Cálix Vallecillo, Marco Vinicio Zúniga Medrano, Gustavo Enrique Bustillo Palma, Edith María López Rivera y María Luisa Ramos. Votaron a favor de la constitucionalidad de los Decretos los magistrados Óscar Fernando Chinchilla Banegas y Jorge Alberto Rivera Avilés, este último Presidente de la Corte Suprema de Justicia.

[55] Los magistrados de la Sala de lo Constitucional que fueron destituidos el once de noviembre de dos mil once, son: José Francisco Ruiz Gaekel, Rosalinda Cruz Sequeira, José Antonio Gutiérrez Navas y Gustavo Enrique Bustillo Palma. El único magistrado que no fue removido fue Óscar Fernando Chinchilla Bane- gas debido a que votó a favor de la constitucionalidad de los Decretos impugna- dos y quien posteriormente fue elegido Fiscal General de la República, durante los dos periodos presidenciales de Juan Orlando Hernández.

[56] Cfr. Corte IDH. Caso Gutiérrez Navas y otros Vs. Honduras. Fondo, Reparaciones y Costas. Sentencia de 29 de noviembre de 2023. Serie C No. 514.

[57] Votaron los magistrados Silvia Trinidad Santos Moncada (Presidenta). Víctor Manuel Lozano Urbina. German Vicente García García. José Elmer Lizardo Carranza. Lidia Estela Cardona Padilla, todos ellos elegidos por el Congreso Nacio- nal después de haber destituido a los que se declararon la inconstitucionalidad de las ciudades modelo o redes.

[58] Ver considerando 11 de la sentencia.

[59] En complemento, el artículo 4 de la ley secundaria contenida en el Decreto Legislativo número 120-2013 que desarrolla le referidas zonas, regula lo atinente al régimen fiscal de las mismas al disponer "El régimen fiscal especial de las Zonas de Empleo y Desarrollo Económico (ZEDE), las autoriza a crear su propio presupuesto, el derecho a recaudar y administrar sus tributos, a determinar las tasas que cobran por los servicios que prestan, a celebrar todo tipo de convenios o contratos hasta el cumplimiento de sus objetivos en el tiempo, aun cuando fuera a lo largo de varios periodos de gobierno." Y que en ese mismo sentido el artículo 23 de la citada ley establece: "Las Zonas de Empleo y Desarrollo Económico (ZEDE), tiene un régimen financiero independiente, están autoriza- das a utilizar sus ingresos financieros exclusivamente para sus propios fines, y transferirán recursos a las autoridades del resto del país en la forma en que se señale en esta ley…"

[60] Ver considerando 12 de la sentencia.

[61] Refiriéndose a temas relacionados con: a) La libertad e igualdad ante la ley (artículo 60); b) La no aplicabilidad de leyes y disposiciones gubernativas o de cualquier otro orden, que regulen el ejercicio de las declaraciones, derechos y garantías establecidas en la Constitución, si los disminuyen, restringen o tergiversan (artículo 64); c) derecho a la libre circulación (artículo 81); d) Derecho a no ser expatriado (artículo 102); y, e) Las leyes que regulan las relaciones laborales son de orden público, e implica la nulidad de los actos o convenios que implique renuncia, disminución o restricción de los mismos (artículo 128); en relación con los artículos 1, 10 y 24 de la Declaración universal de los derechos humanos, y lo preceptuado en los artículos 3, 14 y 26 del Pacto Internacional de Derechos Civiles y Políticos

[62] En realidad, este apartado de la sentencia se encuentra redactado de manera farragosa o poco comprensible, de manera que aquí se resume, intentando captar lo mejor posible, su sentido y alcance.

[63] La decisión fue tomada por los magistrados Silvia Trinidad Santos Moncada (Presidenta). Víctor Manuel Lozano Urbina. German Vicente García García. José Elmer Lizardo Carranza. Lidia Estela Cardona Padilla.

[64] Sentencia de fecha doce de agosto de dos mil catorce, dictada en la garantía de inconstitucionalidad interpuesta por vía de acción por Nahum Efraín La- lin Güity por la ORGANIZACIÓN FRATERNAL NEGRA DE HONDURAS (OFRANEH); Bertha Cáceres por COPINH; Jessica Yamileth Trinidad por la RED DE DEFENSORAS DE DERECHOS HUMANOS DE HONDURAS; Ana Suyapa Ortega por la MESA DE MUJERES PROGRESISTAS; Luis Alberto Méndez por el PROYECTO CULTURAL Y POLÍTICO CASA DE LOS PUE- BLOS; Carmen Gabriela Diaz Sánchez por el CENTRO DE DERECHOS DE MUJERES; Kevin Armando Galo por el FRENTE REVOLUCIONARIO AR- TÍSTICO CONTRACULTURAL; Donaldo Hernández Palma por el CEHPRO- DEC; Denia Xiomara Mejía por el INEHSCO; Fredin Funez por el PARTIDO SOCIALISTA DE LOS TRABAJADORES; Juan Almendares por el COMITÉ HONDUREÑO ACCIÓN POR LA PAZ; Lorena Margarita Zelaya por INSURRECTAS AUTÓNOMAS; Sandra Marybel Sánchez y Óscar Tábora Leiva. Acción interpuesta en contra del Decreto Legislativo No. 236-2012 ratificado con el Decreto No. 9-2013, en cuanto crean las Zonas de Empleo y Desarrollo Económico, y el Decreto No. 120-2013, contentivo de la Ley Orgánica de las Zonas de Empleo y Desarrollo Económico, por violentar

artículos 294, 303, 329 y 374 de la Constitución de la República, esta última contentiva de disposiciones irreformables como los relativo a la soberanía, al territorio nacional y a la forma de gobierno.

[65] Esta sentencia desestima la acción de inconstitucionalidad promovida por Jari Dixon Herrera Hernández, Juan Alberto Barahona, Pedro Rafael Alegría Moncada, Darwin Enrique Barahona, Juan Alexander Barahona y Nelson Enri- que colindres, miembros del FRENTE NACIONAL DE RESISTENCIA PO- PULAR (FNRP).

[66] El artículo 294 constitucional conserva su versión original, tal como lo dispuso la Asamblea Nacional Constituyente en el Decreto No. 131 de fecha 11 de enero de 1982, publicado en La Gaceta, Diario Oficial de la República No. 23,612 del 20 de enero de 1982.

[67] El artículo 303 constitucional se restablece a las reformas vigentes que son: a) El Decreto Legislativo No. 200-2018 publicado en La Gaceta, Diario Oficial de la República de Honduras No.34,856 del lunes 28 de enero de 2019, ratificado por el Decreto Legislativo No. 2-2019, publicado en La Gaceta, Diario Oficial de la República de Honduras No.34,864 del 6 de febrero de 2019 (posterior a la reforma declarada inconstitucional por esta sentencia; y, b) el Decreto Legislativo No. 262-2000 publicado en La Gaceta, Diario Oficial de la república de Honduras No.29,414 del lunes 26 de febrero de 2001, ratificado por el decreto legislativo No. 38-2001, publicado en La Gaceta, Diario Oficial de la República de Honduras No.29,489 del lunes 29 de mayo de 2001.

[68] El artículo 329 constitucional se restablece a la reforma vigente contenida en el Decreto Legislativo No. 175-2004 publicado en La Gaceta, Diario Oficial de la República de Honduras No.30,586 del 3 de enero de 2005, ratificado por el Decreto Legislativo No. 373-2005, publicado en La Gaceta, Diario Oficial de la República de Honduras No.30,910 del 24 de enero de 2006.

Original Spanish and Unofficial English Translation

The original Spanish version of this document, available here.
Spanish from the original. Unofficial English translation by DeepL.com. Non-substantive edits by David A. Rojas. Red Lex Consulting S.A.S.

# English Translation of the Supreme Court Decision Concerning the Honduran ZEDEs (File number SCO-0738-2021)

**La Gaceta**
**Official Journal Of The Republic Of Honduras**
YEAR CXLVI TEGUCIGALPA, M. D. C. C., HONDURAS, C. A.
MONDAY, NOVEMBER 25, 2024. NUM. 36,698
*Section A*

**Judiciary**

**CERTIFICATION**

The undersigned, Secretary of the Constitutional Chamber of the Supreme Court of Justice, CERTIFIES: The Judgment which literally reads: "SUPREME COURT OF JUSTICE. Tegucigalpa, municipality of the Central District, September twentieth, two thousand twenty-four. VISTA: To render judgment in case number SCO-0738-2021 containing the action of unconstitutionality filed on substantive grounds by the Doctor of Medicine, FRANCISCO JOSÉ HERRERA ALVARADO, in his capacity as Rector of the National Autonomous University of Honduras, UNAH, against Article 34 of Legislative Decree No. 120-2013 which contains the Organic Law of Employment and Economic Development Zones (ZEDE), approved on June twelve, two thousand thirteen by the honorable National Congress of the Republic of Honduras and published in La Gaceta, Diario Oficial de la República No. 33,222 dated September six, two thousand thirteen. 1. On July twenty-first, two thousand and twenty-one, Mr. FRANCISCO JOSÉ HERRERA ALVARADO appeared before the Constitutional Chamber, acting in his capacity as Rector of the NATIONAL AUTONOMOUS UNIVERSITY OF HONDURAS, filing the action of unconstitutionality by way of action and on substantive grounds, against Article 34 of Legislative Decree No. 120-2013, which contains the Law of the Republic of Honduras. 120-2013, which contains the ORGANIC LAW OF THE EMPLOYMENT AND ECONOMIC DEVELOPMENT ZONES (ZEDE), approved by the NATIONAL CONGRESS OF THE REPUBLIC OF HONDURAS, on June twelve, two thousand thirteen and published in La Gaceta, Official

Gazette of the Republic No.33,222 of September six, two thousand thirteen, considering that said article violates constitutional articles 151, 156, 159, 160 and 177 of the Constitution of the Republic, which refer to higher education and professional practice. By resolution dated August six, two thousand twenty-one, the Constitutional Chamber resolved to admit the action of unconstitutionality referred to and since the same is directed on reasonable grounds against the mentioned Legislative Decree, it was ordered to omit the delivery of the communication to the National Congress of the Republic; likewise, it was ordered to submit the background information to the prosecutor of the office for a term of six days for the issuance of his opinion. (Folio 52 of the action of merit). 3. On June seventh, two thousand twenty two, the Public Prosecutor's Office issued its opinion through the prosecutor, Attorney SAGRARIO ROSIBEL GUTIÉRREZ MALDONADO, in which it concludes that the action of unconstitutionality filed in the terms expressed by this prosecutor's office, on reasonable grounds and in its entirety, is declared admissible. (Folios 73 to 84 of the action of merit). 4. On October twelfth, two thousand and twenty two, the amicus curiae brief of Attorney Marlon Osmín Donaire Coello, acting personally and in favor of the University Olga and Manuel Ayau, LLC (UOMAC) was considered as filed and the opinion of the prosecution was considered as issued in due time and form. (Folio 86 of the action of merit). On February 7, 24, the Constitutional Chamber submitted this matter for discussion, vote and ruling, without reaching the required unanimity [1], and therefore it was referred to the plenary of the Supreme Court of Justice in compliance with the provisions of Article 316 of the Constitution of the Republic in relation to Article 8 of the Law on Constitutional Justice, in order to issue the corresponding final judgment. LEGAL BASIS 1. On the action of unconstitutionality. Pursuant to Article 184 of the Constitution of the Republic, the action of unconstitutionality may be declared for reasons of form or content. Likewise, it is provided that the Supreme Court of Justice is competent to hear and rule on said action and it must pronounce with the requirements of the final judgments. 2. Examination of the active standing of the person filing the action of unconstitutionality and in this special case of the Supreme Court of Justice. For the Constitutional Chamber, the National Autonomous University of Honduras has the necessary standing to question the constitutionality of the cited norm, due to the fact that, in this particular case, its interest is proper, direct and legitimate. Although the challenged Article 34 is not in force, due to the fact that it is contained in the already repealed Legislative Decree No. 120-2013 or Organic Law of the Employment and Economic Development Zones (ZEDE) [2], it is important to point out that for this high court of justice, the foregoing does not hinder to know, give course and pronounce in relation to the present unconstitutionality action for the reasons that will be explained in due time in a broader and more conscientious manner. For now, it is sufficient to point out that the object of the present unconstitutionality action concerns the irreformable content of the Constitution provided in article 374 of the Constitution; therefore, in accordance with the provisions of article 375 of the Constitution, every citizen, whether an

authority or not, has sufficient and necessary legal standing to demand that the effective validity of the Constitution be maintained or reestablished. Therefore, as it is possible to state with certainty, for this high court of Justice the matter at hand is not only the contravention of rule 34 of Legislative Decree No. 120-2013, as the petitioner has referred to, but it encompasses a whole system currently in force in the Constitution and which is spurious because it was born from acts that supplanted the sovereign will that resides in the original Constituent. As a consequence, in this particular matter, any person is entitled to file and demand the unconstitutionality to restore the violated constitutional order. All of the above is duly explained, once it is noticed that the creation of the employment and economic development zones attempts against subjects that are unavailable to the National Congress, such as: The territory and the form of government, for which reason the Supreme Court of Justice must ex officio in this process or at the request of any person, proceed to reinstate the irreformable content of the Constitution of the Republic. Finally, let it be clearly established that this review of constitutionality, although it is true that it has arisen pursuant to the action under study, is not limited to Article 34 accused of unconstitutionality, but covers the entire legal framework still subsisting that gives rise to it, that is, the constitutional reforms and the rest of the norms that violate the sovereign will of the original Constituent; therefore, it is appropriate to continue with the examination of the merits of the present case. Summary of the arguments on which the UNAH relies to interpose the action of unconstitutionality of merit. The UNAH filed the unconstitutionality on the grounds of content of Article 34 of Legislative Decree number 120-2013, which contains the Organic Law of the Employment and Economic Development Zones (ZEDE), based on the grounds and arguments summarized below. 3.1. Ground one of unconstitutionality. Infringement of Article 160 of the Constitution of the Republic. The UNAH states that it is requesting the declaration of unconstitutionality with derogatory effects of Article 34, which literally states: "Article 34. The Employment and Economic Development Zones (ZEDE) must establish their own educational and curricular policies at all levels. The practice of a profession or the performance of professional activities under an academic degree within the Employment and Economic Development Zones (ZEDE) shall not be conditioned to membership or association. However, the authorities of the Employment and Economic Development Zones (ZEDE) may require the corresponding academic accreditation for the exercise of certain professions". As expressed by the UNAH through its legal representative, this provision manifestly violates Article 160 of the Constitution due to the fact that the latter mandatorily establishes that higher and professional education is its exclusive attribution and, for this reason, constitutionally provides, in the third paragraph of the violated article, that: "... only degrees of an academic nature granted by the National Autonomous University of Honduras, as well as those granted by private and foreign universities, all of which are recognized by the National Autonomous University of Honduras...", "shall be officially valid...", "it is the only one empowered to organize, direct and develop higher education and resolve on the

incorporation of professionals graduated from foreign universities". The petitioner points out that, consequently, the third paragraph of Article 160 of the Constitution recognizes the creation and operation of private universities, which must operate under the constitutional framework that is the result of the design of the UNAH, which is the only entity with that exclusive attribution, since it is its responsibility to organize, direct and develop higher and professional education. For the petitioner, Article 34 flagrantly contradicts the provisions of Article 160 of the Constitution, because it grants the ZEDEs the power to "establish their own educational and curricular policies at all levels". For the petitioner then, Article 34 promotes the disintegration of the educational system, distorting it, because by eliminating the exclusive control attributed constitutionally to the UNAH, it stimulates the formulation of as many educational policies as there are ZEDEs and each one of them with the orientation decided by each ZEDE, so that the professionals trained in the educational systems of the ZEDEs will be graduates without awareness of the national problems, nor of the duty to contribute to the transformation of the Honduran society. 3.2. Ground two of unconstitutionality. Infringement of Article 151 of the Constitution of the Republic. The representative of the UNAH transcribes Article 151 of the Constitution as follows: "Article 151. Education is an essential function of the State for the preservation, promotion and dissemination of culture, which shall project its benefits to society without distinction of any nature. National education shall be secular and shall be based on the essential principles of democracy, shall inculcate and foster in the students deep Honduran feelings and shall be directly linked to the process of economic and social development of the country. The petitioner points out that this constitutional mandate concerns the education of all Honduran and foreign persons residing in the country; and, that it consecrates the attributes of Honduran education at all levels of the educational system, including the university. It adds that non-discrimination in education is a sine qua non condition in the provision of the service, whether by state or private entities; and, that ensuring that education is provided without discrimination of any nature is the mission of the Honduran State. But it is his position that Article 34 of the Organic Law of the ZEDE, violates this constitutional provision because it attributes to each ZEDE the power to formulate its own policies in the provision of educational services, without the direction, supervision and evaluation of the State, which, at the higher and professional level, is the responsibility of the UNAH. Then, it points out that education should be secular, to allow students of all religions to have access to knowledge with a strictly scientific vision, and to ensure that the education system is not oriented towards any of the existing religions, to the detriment of those who profess faith in different religions. Thus explains the petitioner of the present unconstitutionality, the purpose of the constituent at the time of conferring to the State in general and in particular to the UNAH the responsibility of overseeing the higher and professional level. He points out that democracy is another value that should be promoted by education, so that the student integrates it to the universe of his personal values, inspiring it in all acts of his life, public or private. But,

according to the petitioner, this attribute of education can only be guaranteed by an effective protection of the State, particularly in those areas where the ZEDEs will operate. For the petitioner, the ZEDEs will not be able to guarantee the linkage of education with the process of economic and social development of the country, referring to the following reasons: "... because they will be separate areas of Honduras that will operate independently, with their own government, special courts, their own tax and customs regimes, their own monetary and financial regime and their own security. The social and economic dynamics of the ZEDE will flow exclusively in the interest of the ZEDE, without any link to Honduras. Nothing will link them, then, to the economic and social development of Honduras, so that education will not have among its priorities this attribute required by the Constitution". It concludes by stating that preventing the UNAH from fulfilling its mission of guaranteeing the linkage of education with the process of economic and social development of the country, is to promote the formation of professionals devoid of the duty that generates the awareness of being part of the process of development of the country, contributing to it with their professional skills. 3.3. Ground three of unconstitutionality. Infringement of article 329 of the Constitution because article 34 exceeds it in its text and spirit. The petitioner states that article 329 of the Constitution does not grant the ZEDEs any power in matters of education and did not reform articles 151 and 160 of the Constitution, which are the ones violated by article 34, whose declaration of unconstitutionality and inapplicability, with derogatory effects. However, this article 34 declares that the ZEDEs must establish their own educational and curricular policies at all levels. It indicates that constitutional articles 151 and 160, did not suffer any impairment, neither in their text nor in their spirit with the constitutional reform of the article, being that, the latter develops the organic law of the ZEDES. Consequently, the attribution granted by Article 34 of Legislative Decree No. 120-2013, in relation to education, transgresses that reform, because it exorbs its limits, attributing to the ZEDES state functions that are not expressly mentioned in the reform, thus violating Article 329 itself and, at the same time, transgresses the provisions of Articles 151 and 160 because it ignores the principle that education is a function of the State and the principle of the exclusive attribution of the UNAH to direct, organize and develop higher and professional education. The petitioner argues that, if article 329 of the Constitution does not expressly mention that the ZEDES "may establish their own educational and curricular policies at all levels", then the National Congress lacked the power to include in the law regulating said article, matters that implied undermining constitutional values, principles and rules, such as those contained in articles 151 and 160. With the violation of Article 329 of the Constitution, by Article 34 whose declaration of unconstitutionality and inapplicability is requested, Articles 151 and 160 are also violated because it restricts their scope, preventing the State and the UNAH from fulfilling their constitutional mission in education in certain geographic areas, in which only the authorities of the ZEDES may decide, in matters of education. 3.4. Ground four of unconstitutionality. Infringement of international treaties and conventions ratified by

Honduras in the field of education. Article 34 of Legislative Decree No. 120-2013, also violates international provisions subscribed and ratified by Honduras, which oblige the State Parties to harmonize the processes of professional accreditation and higher education, by allowing the ZEDEs to establish their own educational and accreditation policies and thereby separating themselves not only from the constitutional mandate, but also from the international mandate and creating a parallel structure to the already existing one by constitutional mandate, in contravention of Articles 151 and 160. Among the international instruments, who impugns the guarantee, relates to the Regional Convention on the Recognition of Studies, Degrees and Diplomas in Higher Education in Latin America and the Caribbean of 1974, which provides that academic mobility should be advanced and energized to strengthen access to education as a human right and a public good, without discrimination of any nature. Article 2 states: "1. That the Contracting States declare their will to: a) Strive for the common use of the resources available in the field of education, placing their educational institutions at the service of the integral development of all the peoples of the region, for which purpose they shall take measures tending to: (i) harmonize as far as possible the conditions of admission to institutions of higher education in each of the States; (ii) adopt similar terminology and evaluation criteria in order to facilitate the application of the system of equalization of studies: [...]; (c) promote interregional cooperation in regard to the recognition of studies and degrees: 2. The Contracting States undertake to take all necessary measures, at both the national and international levels, to achieve these objectives progressively, principally through bilateral, sub-regional or regional agreements, as well as through agreements between institutions of higher education and such other means as will ensure cooperation with competent international and national organizations and agencies:"It subsequently notes that these objectives were renewed at the Global Convention on the Recognition of Qualifications concerning Higher Education, 2019, composed of representatives of 23 Member States of UNESCO, including Honduras, in which State commitments were defined, including facilitating international academic mobility and promoting the right of individuals, to have their higher education qualifications assessed in a fair, transparent and non-discriminatory manner. Based on the regional recognition agreements and strengthening their coordination, revisions and achievements, the following objectives are defined: "Article II: 1. to promote and strengthen international cooperation in the field of higher education. [...] 4. to provide an inclusive global framework for the fair, transparent, consistent, coherent, timely and reliable recognition of qualifications related to higher education, 5. to respect, defend and protect the autonomy and diversity of institutions of higher education and systems; [...] 7. promote a culture of quality assurance in institutions of higher education and systems and develop the necessary capacities to achieve reliability, consistency and complementarity in quality assurance, qualifications frameworks and recognition of qualifications in order to support international mobility. In order to facilitate the recognition of higher education qualifications, States Parties undertake, through the

relevant bodies, in particular national information centers or similar entities, to implement the Convention (Article XIII National implementation structures. 1)." In view of this, the petitioner indicates that such commitment can only be guaranteed by the State of Honduras through the National Autonomous University of Honduras, which has been delegated, by constitutional mandate, the power to organize, direct and develop higher education in the country and to decide on the incorporation of professionals graduated from both national and foreign universities. It also mentions the international commitments ratified with the signing of the 2019 Regional Convention on the Recognition of Studies, Degrees and Diplomas in Higher Education in Latin America and the Caribbean, which in its Article II-Objectives. states: "Provides, that the States Parties undertake to adopt all necessary measures to progressively achieve the objectives of this convention, collaborating with the other States Parties of the region through regional or regional bilateral agreements, aimed at: I [1:3 Promote the harmonization of higher education systems for the recognition of studies, degrees and diplomas and facilitate the recognition of professional qualifications for use in accordance with national regulations; 4. Harmonize as far as possible the conditions for admission to authorized or recognized institutions of higher education, to ensure access with equity and inclusion and to promote academic mobility among the States Parties, [17 Promote interregional and intraregional cooperation to facilitate the recognition of studies, degrees and diplomas [...]." Finally, he points out the Agreement on the exercise of university professions and recognition of university studies, signed by Honduras on June 22, 1962, ratified by Legislative Decree number 87 of 1963 and published in La Gaceta, Diario Oficial de la República No. 18,014 of July 3, 1963, which promotes integrality in the exercise and recognition of university studies at the Central American level, based on the fulfillment of the requirements and formalities demanded by each one of the State Parties. According to the petitioner, all these regional and international instruments oblige the State of Honduras to seek and maintain harmony in its policies and processes regarding higher education and professional accreditation, a function delegated by constitutional mandate to the National Autonomous University of Honduras, the only one empowered to organize, direct and develop higher education and to decide on the incorporation of professionals graduated from any university, whether national or foreign. In short, for the petitioner of unconstitutionality, Article 34 of the Organic Law of the ZEDEs, breaks with the integrity and harmonization of the country's policies, which are set as objectives and commitments of the State in relation to the rest of institutions of higher education in the Latin American and Caribbean region, by allowing the ZEDEs to establish their own educational and accreditation policies. Summary of the amicus curiae brief filed by Marlon Osmín Donaire Coello in his personal capacity and on behalf of Universidad Olga y Manuel Ayau Cordón LLC (UOMAC). The amicus curiae brief filed by Marlon Osmín Donaire Coello in his personal capacity and for the benefit and on behalf of Universidad Olga y Manuel Ayau Cordón LLC (UOMAC). The purpose of said brief is to bring before this high court of justice, the analysis prepared by Attorney Jorge

Constantino Colindres for purposes of demonstrating the inadmissibility of the present action of unconstitutionality, based on the fact that under the amended Article 329 of the Constitution of the Republic, Articles 156, 159, 160 and 177 of the Constitution are not applicable within the territorial scope occupied by the ZEDEs. It is pointed out that the presentation of the action of unconstitutionality of merit, denotes a serious lack of understanding of the functioning of the special regime called ZEDEs and the international obligations of the Honduran State in the framework of Public International Law, specifically in relation to the State obligation to guarantee the permanence of Article 34 in mention, in accordance with the stability agreements signed under Articles 12.2 and 45 of the Organic Law of the ZEDEs and the international treaties ratified by the State of Honduras. Attached to the amicus curiae brief, the following documents were submitted: 1. Legal opinion prepared by Attorney Jorge Constantino Colindres as amicus curiae, in relation to the constitutionality of Article 34 of the ZEDE Organic Law and the obligation of the State of Honduras to guarantee its permanence and validity. 2. Certificate of organization of the Universidad Olga y Manuel Ayau Cordón, LLC (UOMAC), certificate of the Registry of entities of prosperous ZEDE and other corporate documents of UOMAC, accrediting the Guatemalan origin of the investors and developers of the university. 3. Coexistence Agreement with legal stability clause signed between the Technical Secretary of Prospera ZEDE and the Olga and Manuel Ayau University (UOMAC), in accordance with articles 12.2 and 45 of the Organic Law of the ZEDE. 4. Information on UOMAC.4.1. Legal opinion prepared by Attorney Jorge Constantino Colindres. In said document it is stated that the autonomy of the ZEDEs is delimited in the reformed article 329 of the Constitution, which authorizes the establishment of zones subject to a special regime different from the one applicable to the rest of the national territory. Said article prescribes the following: "These zones are subject to national legislation in all matters related to sovereignty, application of justice, national defense, foreign relations, electoral matters, issuance of identity documents and passports". In relation to the above transcribed, the author of the document makes the observation that the legislator clearly and consciously excluded from the list of norms that are subject to the ZEDEs (contained in article 329 of the Constitution), those related to higher education. He points out that the intention of the constitutional reform (article 329) is to provide a high degree of autonomy to certain areas of the country without giving up sovereignty. In said article 329 it is ordered that the Organic Law that develops what refers to the zones, must establish the regulations that will be applicable within the ZEDEs; pursuant to which, article 329 of the Constitution authorizes the legislator to include within the Organic Law, the regulations applicable within the ZEDEs, in accordance with this constitutional power granted is that article 34 is not unconstitutional. The document makes the exception that the term national legislation referred to in article 329 of the Constitution covers both constitutional law and ordinary law, so that the power of reform is subject to the powers of the National Congress included in article 205 paragraphs 1 and 10 and 373 of the

Constitution of the Republic. The National Congress, as a derived constituent power, proceeded in accordance with its constitutional powers to reform articles 294, 303 and 329 of the Constitution, creating zones subject to a special regime in whose spatial scope of competence, only the constitutional and ordinary legal norms established in article 329 of the Constitution and articles 8 and 41 of the Organic Law of the ZEDE apply, with the purpose of: "granting high degrees of autonomy to certain zones of the country, without this implying the relinquishment of sovereignty". The document mentions that the Constitutional Chamber shares the above criteria, as stated by this high court in an official document presented at the X Ibero-American Conference of Constitutional Justice held from March 12 to 15, 2014, in Santo Domingo, Dominican Republic. To question number 10 posed to the Constitutional Chamber: "Are there constitutional norms of exclusive application to certain territorial areas in the State? What is the territorial scope of the effectiveness of the Constitution?" To which the Constitutional [Chamber] answered as follows: "In Title VI of the Constitution regarding the economic regime, the zones of employment and economic development are established. The constitutional text provides that the National Congress, when approving the creation of zones subject to special regimes, must guarantee that the sentence issued by the International Court of Justice of The Hague on September 11, 1992 and the provisions of articles 10, 11, 12, 13, 15 and 19 of the Constitution referring to the territory are respected. It is established that these zones are subject to national legislation in all matters related to sovereignty, application of justice, national defense, foreign relations, electoral matters, issuance of identity documents and passports. The Constitution establishes that the Gulf of Fonseca must be subject to a special regime in accordance with International Law, as established in Article 10 of the Constitution and the present article; the Honduran coasts of the Gulf and the Caribbean Sea are subject to the same constitutional dispositions". The petitioner takes the opportunity to point out that, as stated by the same Constitutional Chamber, there are constitutional norms that apply only in certain parts of the national territory and that, in the case of the ZEDE, only the constitutional norms related to territorial sovereignty, application of justice, foreign relations, electoral matters and issuance of identity documents and passports are applicable in their spatial scope of competence. Thus, the national legislation on higher education is not applicable in the employment and economic development zones. This is in accordance with the provisions of Article 329 of the Constitution of the Republic, so that Articles 158, 159, 160 and 167 of the Constitution (relating to higher education), which are subject to a special regime of governance, are not applicable within the spatial scope of competence of the ZEDE. The amicus curiae likens the autonomy of the ZEDE to municipal autonomy, both delimited by law. Consequently, according to this opinion, the non-application of articles 156, 159, 160 and 177 of the Constitution, within the spatial scope of competence of the ZEDE, as a result of the effect caused by the special regime enabled with the constitutional reform of article 329 of the Constitution, allows article 34, now challenged, to establish that the special zones are authorized and obliged to establish their own

educational and curricular policies at all levels. Therefore, in conclusion, Article 34 of the Organic Law of the ZEDEs does not contravene the precepts of the Constitution of the Republic, since its applicability is limited to the spatial scope of competence of the ZEDEs, where the constitutional precepts related to higher education are not applicable, as established in Article 329 of the Constitution. On the other hand, the document accompanying the amicus curiae brief states that, in accordance with Article 374 of the Constitution, Articles 156, 159, 160 and 177 of the Constitution are not articles of the Constitution and are therefore subject to reform by the National Congress. According to constitutional articles 373 and 210 numeral 10, the National Congress may reform, repeal or interpret them. Another argument in favor of the constitutionality of Article 34 of the Organic Law of the ZEDE is based on the fact that the special regime of the ZEDE is an integral part of the constitutional block of the State of Honduras, not only because it is contemplated in Articles 294 and 303 of the Constitution, but also because the permanence of each and every one of the articles of the Organic Law of the ZEDE is an international obligation of the State of Honduras. The author of the attached document is of the opinion that the ZEDE regime is part of the International Investment Law, which obliges the State of Honduras to recognize and protect the investments made under said special regime. It mentions that in the present case, the Universidad Olga y Manuel Ayau Cordón (UOMAC) is a Guatemalan-owned entity, domiciled in the zone of employment and economic development called "Próspera ZEDE", in St. John's Bay, Roatán, Bay Islands and is dedicated to offer opportunities for higher education at low cost through innovative online teaching mechanisms, which it does under the legal protection of the internal regulations of Próspera ZEDE and Article 34 of the Organic Law of the ZEDE. It adds that the Republic of Guatemala is part of the Free Trade Agreement between Central America, the United States of America and the Dominican Republic (CAFTA-DR), which implies a duty of the State of Honduras to provide fair and equitable treatment, as well as full protection and security for investors and investment. Likewise, UOMAC University enjoys most favored nation treatment, according to which the State of Honduras is obliged to extend to UOMAC treatment no less favorable than the treatment granted, in similar circumstances, to investments and investors of any other country. The most-favored-nation clause in CAFTA-DR constitutes a promise by the State of Honduras that it will extend to investors of CAFTA-DR States Parties any guarantees or better treatment that it has offered to investors of other States that are not parties to CAFTA-DR. In the case at hand, UOMAC is an investment of Guatemalan capital, and, therefore, the State of Honduras has an international obligation to extend to UOMAC any guarantee or benefit that it has extended to investors of any other country. Article 18 of the Bilateral Investment Treaty between Honduras and Kuwait guarantees investors from Kuwait a minimum permanence of 50 years of Articles 294, 303 and 329 of the Constitution of the Republic and the Organic Law of the Employment and Economic Development Zones (ZEDE). It is noted that in the case of investments made under the ZEDE regime or those located in an area of the territory of the Republic of Honduras that

has been designated as a ZEDE, the Republic of Honduras declares that all the provisions provided for in Articles 294, 303 and 329 of the Constitution of the Republic of Honduras, those of the Organic Law of ZEDE and all rights, conditions, procedures and protections whether explicit or implicit, included therein respectively, shall be maintained as a guarantee and must be guaranteed to the investments and investors of the State of Kuwait for a term of not less than fifty (50) years. Article 10.4 of CAFTA-DR[3] and Article 32 of the ZEDE Organic Law contemplate the most favored nation principle, through which any better treatment that the State of Honduras has granted to another commercial partner is extended to Guatemalan investors. In this sense, the 50-year minimum permanence guarantee of the ZEDE regime that the State of Honduras offers to investors from Kuwait is extended by virtue of CAFTA-DR to investors from the United States of America and the Republics of Guatemala, El Salvador, Nicaragua, Costa Rica and the Dominican Republic. Article 10.4 of CAFTA-DR literally provides: "Article 10.4: Most-Favored-Nation Treatment. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. Each Party shall accord to covered investments treatment no less favorable than that it accords in like circumstances to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments". Articles 26[4] and 27[5] of the Vienna Convention on the Law of Treaties are cited, according to which the State of Honduras must comply in good faith with its obligations under international treaties, and may not invoke domestic law provisions to avoid compliance. It also cites Article 2 of the Law on Constitutional Justice, which establishes as a rule of interpretation and application, that its provisions shall always be interpreted and applied in a manner that ensures effective protection of human rights and the proper functioning of the defenses of the constitutional legal order . On the other hand, it mandates that such interpretation and application be made in accordance with the international human rights instruments in force in the Republic of Honduras, taking into consideration the interpretations made of them by the international courts. Therefore, it considers that the State of Honduras has the international obligation to guarantee the permanence and validity of each and every one of the articles of Legislative Decree number 120-2013, including article 34 whose unconstitutionality is sought. It also mentions the legal stability contract, also known as stabilization clause, which has allowed the entry of different capital flows to Latin America. It explains that before this instrument, investors were subject to governmental guidelines, which were modified according to the government of the day, generating uncertainty. To avoid this situation, several countries[6] have adopted it as public policy, so that the investor has the confidence and security that those paragraphs, paragraphs or specific articles of the laws or administrative acts, which are transcendental to shape their decision to

invest, are not modified to their detriment. It mentions that the Technical Secretary of Prospera ZEDE is authorized by the National Congress to sign legal stability contracts with the investors and inhabitants of Prospera ZEDE, in accordance with the provisions of articles 12.2 and 45 of the Organic Law of the ZEDE. By virtue of this, on January 14, 2022, the Universidad Olga y Manuel Ayau Cordón (UOMAC) signed a legal stability contract with the Technical Secretary of Próspera ZEDE, as authorized by the National Congress, which guarantees the stability of the charter of Próspera ZEDE, the Organic Law of the ZEDE, articles 294, 303 and 329 of the Constitution and the internal regulations of Próspera ZEDE. Likewise, the Technical Secretary of Próspera ZEDE has signed legal stability contracts with sixty-seven legal entities and 201 natural persons, guaranteeing the permanence and stability of the Organic Law of the ZEDE. Consequently, in its opinion, any action of the State of Honduras that implies the denial of the validity and application of Article 34 to the beneficiaries of the legal stability contracts, constitutes a violation of the rights acquired by the investors and inhabitants of Prospera ZEDE, including its promoter and organizer, Honduras Prospera Inc., a violation that, in its opinion, should be compensated in accordance with the Constitution of the Republic and international investment law. It points out that the State of Honduras has a contractual, constitutional and international commitment to protect the rights acquired by the investors and inhabitants of Prospera ZEDE. This commitment must be honored in good faith by the State of Honduras and implies guaranteeing the stability and permanence of Article 34 of the ZEDE Organic Law, as well as all other provisions of the law. It states that legal predictability is a sine qua non condition for the exercise of human rights. Then, he refers that the human person, supreme purpose of the State, enjoys the constitutional guarantee of legal stability and legal certainty, in order to develop his freedoms. It then mentions that ninety percent of the people employed are Hondurans, who through their work can access better economic opportunities and educational alternatives. He mentions that the academic freedom contained in the aforementioned article 34 is fundamental for the ZEDEs to achieve their objectives, adopting the best international practices in education with the opening of new and innovative institutions of higher education such as UOMAC. He points out that this is similar to the strategy adopted by the United Arab Emirates, whose government authorized a special economic zone similar to Prospera ZEDE, for the development of the Dubai International Academic City DIAC, which is made up of twenty-seven thousand five hundred students and offers more than five hundred academic programs in different fields. Subsequently, it explains the difficulty of adopting improvements in higher education study plans due to excessive bureaucracy and antiquated processes of recognition and incorporation of degrees, another reason why the Legislative Power instituted the ZEDEs. It states that UOMAC offers online academic training to obtain degrees that did not exist in Honduras or were of limited offer at that time: a) Bachelor's degree in environmental sustainability sciences; b) Bachelor's degree in political sciences with emphasis on conflictology; c) Bachelor's degree in Mesoamerican history sciences; d)

Bachelor's degree in psycho-pedagogy; and, e) Bachelor's degree in Sacred Scriptures; it also states that it offers linguistic programs to learn new languages, with programs to learn English and Russian. 4.2. Information on UOMAC. Regarding the founders of UOMAC, it is reported that they are mothers Inés Ayau García. Yvonne Lissette Sommerkamp Steiger and María Concepción Alovera Amistoso, all of Guatemalan nationality, with residence in the Monastery of the Holy Trinity Lavra Mambré. It is a monastery for women under the jurisdiction of the Patriarchate of Antioch in Villa Nueva, near Guatemala City, which in turn, was also founded by Sister Inés Ayau and Sister María Amistoso. It is stated that the founders of UOMAC have a moral commitment to democratizing access to education; and, that since 1996, the enterprising nuns have led the Hogar Rafael Ayau, which has provided shelter and education up to the high school level to children from newborns to sixteen year olds. The orphanage is the oldest and largest in Guatemala, has given up 240 children for adoption and 900 have graduated from the school program. In addition, Mother Inés Ayau played a key role in the development of the Universidad Galileo in Guatemala, a technology-oriented higher education center. It was the first Latin American university to offer courses on the prestigious online education platform "edX". As part of edX, Universidad Galileo has registered one million students from all over the world in its more than 40 courses offered in the areas of digital marketing, business intelligence, e-learning, programming, electronics, mathematics and entrepreneurship. It is stated that UOMAC is a private, apolitical and non-profit institution, based on the principles of freedom, truth, justice and harmony, which provides online education, basically through the Internet and face-to-face. The following statistics are given, with data updated on January 15, 2021. UOMAC had 326,009 visits to the WEB page. In addition, 745 students enrolled in total and 19 students enrolled in 2022. It is noted that UOMAC, with the online, open and distance education method (ELAD), broadens study opportunities, opens the virtual campus, academic spaces and the entire organizational structure to promote education and make it available to all Hispanic people who have the desire to continue their studies at the diploma, degree or other levels. He points out that UOMAC has with a multidisciplinary international administrative and academic team and that it is supported by the "Friends of UOMAC", formed by people or institutions that understand the importance of UOMAC's educational program and its costs and want to participate by making donations in kind or in cash. They are also people who have accompanied the formation process of this university and have been a great support. In this way they join the group of Friends of UOMAC either publicly or privately. It is reported that UOMAC offers education to those citizens who have completed their high school education, regardless of location, distance, age, financial capacity, time and schedules. Summary of the opinion presented by the Public Prosecutor's Office. Prosecutor Sagrario Rosibel Gutiérrez Maldonado issued an opinion on behalf of the Public Prosecutor's Office in which she was of the opinion that the present action of unconstitutionality should be declared IN PLACE. In her legal analysis she determines that there is evidence of a conflict between article 34[7]

denounced with the constitutional norms cited by the legal representative of the UNAH. The Prosecutor points out that the conflict between regulations for the granting of functions to the ZEDES that are exclusively of the UNAH by provision of the Constitution of the Republic of Honduras, transgresses the principle of constitutional supremacy, contemplated in Article 320 of the primary law that provides: "In case of incompatibility between a constitutional norm and an ordinary legal norm, the former shall apply." For the Prosecutor, the transcribed norm containing said principle, operates as an institutional and competence guarantee, likewise, she points out that it is subject to institutional and functional limits following the consolidation of a Rule of Law. The Prosecutor transcribes the constitutional text which states that the UNAH is: "An autonomous institution of the State, with legal personality, which enjoys the exclusive right to organize, direct and develop higher and professional education. It shall contribute to scientific, humanistic and technological research, to the general dissemination of culture and the study of national problems. It shall program its participation in the transformation of Honduran society. The law and its statutes shall establish its organization, operation and attributions. Therefore, in unrestricted respect for the provisions of the Constitution of the Republic....". From said norm, the prosecutor concludes that the Constitution of the Republic has granted the UNAH, total power as the only institution in charge of directing higher education, as well as the power to validate academic degrees granted by private and foreign universities. Likewise, it admits that it has the exclusive power to decide on the incorporation of professionals graduated from foreign universities. The Prosecutor asserts that the ZEDEs establishing their own educational and curricular policies, at all levels, without the direction, supervision and evaluation of the State, would lead to a significant increase of inequalities in our country. 6. Examination of the collision between the norms that give life to the ZEDEs and the sovereign will of the original Constituent. Next, the plenary of the Supreme Court of Justice, as a result of the fact that the Constitutional Chamber did not reach the unanimity required in the case under examination, proceeds to issue the present judgment. Notwithstanding, in view of what was raised by the petitioner, who limited himself to denounce Article 34 of the Organic Law of the Employment and Economic Development Zones (ZEDE)[8], this high court of justice considers it appropriate to broaden the challenged object and to hear the issue of such zones in a complete manner. The extension referred to is due to the imperative clause of Article 375 of the Constitution, which demands the mandatory compliance or citizen duty to confront the rules that give life to the ZEDEs with the sovereign will of the original Constituent; for which purpose, the criteria discussed by said Chamber were taken into consideration, as well as the allegations of the petitioner, the documentation added to the case file and the opinion of the Agent of the Courts of the Public Prosecutor's Office. With all these inputs, the Supreme Court of Justice pronounces as follows: 6.1. Application of the extensive effect of unconstitutionality. Ex officio determination of the object of judgment of the present sentence. This high court of justice, after analyzing the matter at hand, considers that the reproach of unconstitutionality

set forth in the present action, must be extended a fortiori to the entire reform of Articles 294, 303 and 329 of the Constitution of the Republic, that is, the total content of Legislative Decree No. 236-2012 approved on the twenty-fifth day of December, 2012, which is to say, the total content of Legislative Decree No. 236-2012 approved on the twenty-fifth day of December, 2012. 236-2012 approved on January twenty-third, two thousand thirteen by the National Congress of the Republic and ratified by Legislative Decree No. 9-2013, published in La Gaceta, Official Gazette of the Republic of Honduras No. 33,080, dated March twentieth, two thousand thirteen. Likewise, this high court of justice deems it appropriate to extend the scope of judgment of this sentence to the total content of Legislative Decree No. 120-2013 or Organic Law of the Employment and Economic Development Zones (ZEDE), even though it was already repealed by the honorable National Congress of the Republic, through Legislative Decree No. 33-2022. Likewise, Decrees Nos. 368-2013[9]; 153-2013[10]; 32-2021[11]; and, 68-2021;[12] and, in general, all regulations related to the Employment and Economic Development Zones, regardless of their nature or character, should also be included within the unconstitutionality. The reason and basis for including the unconstitutionality of the previously repealed Legislative Decree No. 120-2013 containing the Organic Law on Employment and Economic Development Zones. 120-2013 containing the Organic Law of the Employment and Economic Development Zones (ZEDE)[13], is due to the fact that Article 375 of the Constitution requires the maintenance and reestablishment of the validity of the Constitution and considering that said law alters the form of government and restricts the exercise of Sovereignty over our territory, said law must be declared null and void, all of which is explained below in a founded, extensive and adequate manner. The basis for the extended application of unconstitutionality, is justified in that the corresponding analysis of the action of unconstitutionality, necessarily entails to take into account the fact that the employment and development zones constitute a direct and evident violation to what is prescribed by our Constitution in matters of territory and form of government, so that the study of Article 34 of Legislative Decree No. 120-2013 which contains the Organic Law of the Zones of Employment and Economic Development (ZEDE), leads irremissibly to conclude that the reason for its unconstitutionality is not only for the reasons stated by the guarantor, that is, for expressly contravening Articles 151, 156, 159, 160 and 177 of the Constitution of the Republic, but that said Article 34, has as its origin constitutional provisions whose reform is strictly prohibited by our Constitution, because they violate irreformable articles, commonly known as stony. Procedurally, the Constitutional Chamber is empowered to extend the declaration of unconstitutionality to those precepts contained in the same law or in other laws that are necessarily and directly related[14]. In this sense, Article 90 of the Law on Constitutional Justice provides that the judgment declaring the unconstitutionality of a legal precept may also declare as unconstitutional those precepts of the same law or of another law, or others that have a direct or necessary relationship, as is undoubtedly the case here.[15] But in this case, in addition to this procedurally valid reason,

there is the inescapable duty of this high court of justice to make the inviolability of the territory and the form of government prevail, against any attack that is attempted or carried out against what was established by the original Constituent and contained in Articles 373, 374 and 375 of the Constitution of the Republic. This inescapable duty is set forth in a clear and unambiguous manner in Article 375 of the Constitution of the Republic of Honduras, which absolutely and imperatively and without exception or excuse whatsoever, provides as follows: "This Constitution[16] shall not lose its validity or cease to be enforced by an act of force or when it is supposedly repealed or modified by any means and procedure other than that provided for therein. In such cases, every citizen, whether or not vested with authority, has the duty to collaborate in the maintenance or reestablishment of its effective validity. Those responsible for the acts[17] indicated in the first part of the preceding paragraph shall be tried according to this Constitution and the laws issued in conformity with it, as shall the principal officials of the governments that are subsequently organized, if they have not contributed to the immediate reestablishment[18] of the rule of this Constitution and the authorities constituted in accordance with it. Congress may decree, with the vote of the absolute majority of its members, the seizure of all or part of the assets of these same persons and of those who have enriched themselves under the protection of the supplanting of popular sovereignty or the usurpation of public powers, in order to compensate the Republic for the damages that have been caused to it."[19] Therefore, the Supreme Court of Justice, in accordance with this imperative and unavoidable mandate of the original Constituent Power, proceeds by this judgment to strictly comply with the provisions of Article 374, which also comes from the sovereign will of the Honduran people, instituted as the original Constituent Power, restoring what is literally, unalterable or stony: "Article 374. The previous article, the present article, the constitutional articles that refer to the form of government, the national territory, the presidential period, the prohibition to be President of the Republic again, the citizen who has served under any title and the one referring to those who cannot be President of the Republic for the subsequent period, may not be reformed in any case". The relationship between these norms constitutes the inexorable reason or basis for declaring the unconstitutionality of everything legislated in relation to the creation of the Employment and Economic Development Zones (ZEDE), especially in relation to the constitutional reform operated in Articles 294[20], 303[21] and 329[22], through the enactment of Legislative Decree No. 236-2012, ratified by Legislative Decree No. 9-2013. In conclusion, the reasons that this high court of justice has for declaring the unconstitutionality extensively to everything related to the Employment and Economic Development Zones are sufficiently and clearly grounded. 6.2. Proceeding of the unconstitutionality of origin or effect of nullity (ex tunc) instead of the unconstitutionality with derogatory or annulling effect (ex nunc). The unconstitutionality that proceeds against the creation and establishment of the employment and economic development zones, produces retroactive or ex tunc effects, as an exceptional and so far unique case in the judicial history of Honduras. The foregoing does not obviate the

certain and indisputable fact that our legal system recognizes that for reasons of legal certainty, acts are not retroactive, except in criminal matters when it favors the defendant, convicted or prosecuted.[23] However, for this high court of justice, the present judgment must necessarily have the effect of nullity of origin, since the mere derogation or ex nunc effect is not enough to satisfy the high and intangible interests of the Honduran State; but of course, always taking into account the legal security of private interests constituted by natural and legal persons who, acting in good faith, invested in lawful business and used capital of recognized lawful origin. In addition, taking into account the same legal security of the State or in favor of it, in tax, customs and any other matter arising from the natural exercise of sovereignty. Finally, also the legal security of the persons whose rights have been affected, especially if they are native or tribal peoples. Pursuant to the foregoing, we proceed to explain the scope of the effects of this judgment. 6.2.1. An unconstitutionality of origin or ex tunc. As a general rule, our Constitution of the Republic establishes in Article 185 that unconstitutionality has derogatory or ex nunc effects, as follows: "Article 185. The declaration of unconstitutionality of a law and its repeal may be requested by whoever considers himself injured in his direct, personal and legitimate interest: 1. By way of an action to be brought before the Supreme Court of Justice; 2. By way of exception, which may be filed in any judicial proceeding; and, 3. Also the jurisdictional body hearing any judicial proceeding may request ex officio the declaration of unconstitutionality of a law and its repeal before issuing a decision. In the cases contemplated in paragraphs 2) and 3), the proceedings must be submitted to the Supreme Court of Justice, following the procedure until the time of the citation for the judgment, after which the judicial proceeding of the main issue will be suspended pending the resolution on the unconstitutionality". This general rule is also provided for in numeral 2 of article 316 of the Constitution, which states: "Article 316. ... The Constitutional Chamber shall have the following powers: 1... 2... judgments declaring the unconstitutionality of a norm shall be of immediate execution and shall have general effects and therefore shall repeal the unconstitutional norm, and shall be communicated to the National Congress, which shall publish it in the Official Gazette La Gaceta. On the other hand, the derogatory effect of the declaration of unconstitutionality, that is, with effects towards the future, is based, as previously mentioned, on the principle of retroactivity, present in Articles 96 of the Constitution, 9 of the American Convention on Human Rights, numeral 2 of Article 15 of the International Covenant on Civil and Political Rights and 96 of the Law on Constitutional Justice. However, it must also be taken into account that the application of the retroactive or ex tunc effect is not only possible or authorized in criminal matters in favor of the accused or convicted person; but it must also be applied when, through the guarantee of amparo, it is ordered that in order to reestablish or restore a fundamental right, the actions be taken backwards, leaving without value and effect an act of authority, whether administrative, judicial or of any other nature. From the above , it can be inferred that the reestablishment or restitution of fundamental rights requires the application with retroactive

effect for the decision to be effective and efficient. For, precisely in the present case, we are faced with the need to reestablish or restore a fundamental right for every State, the sovereign disposition of its territory as well as the sovereign exercise of imposing on said territory the form of government established by the Honduran People as constituent power. Both the territory and the form of government are, together with the population, primordial elements of our State. In this regard, Dr. Allan Brewer-Carías, in his comments on the Law on Constitutional Justice[24], explains that the ex tunc or pro pretaerito effect is typical of diffuse control systems when they declare unconstitutionalities inter partes, i.e., not erga omnes. He points out that in these cases the decision causes nullity and is retroactive, considering that the norm has not existed and has never been valid. On the contrary, he points out that, in systems of concentrated control, although the decision of unconstitutionality operates erga omnes, in principle the effect will be the annulment of the rule, that is, ex nunc or pro futuro, taking effect as long as it was in force. However, Dr. Allan Brewer-Carías recognizes that this distinction between ex tunc and ex nunc effects is not absolute with respect to each system. For example, he explains that, even if unconstitutionality is declared in an inter partes matter, no court may apply said norm.[25] The aforementioned author notes that Honduras, after the constitutional reform by Legislative Decree 262-2000, established a mixed or comprehensive system (diffuse and concentrated), in that Article 185 of the Constitution requires that unconstitutionality be declared by the Supreme Court of Justice (concentrated system), but Article 320 of the Constitution also adopts the diffuse system when it provides that in the event of incompatibility between a constitutional provision and an ordinary legal provision, the former must be applied. The Honduran constitutional control system only expressly provided for the derogatory effect of the declaration of unconstitutionality, because the Sovereign as constituent power, because it was sufficient to provide in Article 374 of the Constitution, intangible or stony subjects to protect our country Honduras, as a State of law, sovereign, constituted as a free, democratic and independent republic and with a form of government exercised by three complementary powers, independent and without relations of subordination. It was also sufficient for the Sovereign to warn in the final paragraph of Article 2 of the Constitution that the impersonation of popular sovereignty is typified as a crime of treason and that such liability is imprescriptible and that the action for its deduction is of an informal nature or at the request of a party. In the same line, the original Constituent deemed the derogatory effect sufficient, because it was unthinkable that a constituted authority would dare to violate Article 19 of the Constitution, which provides that whoever attempts against the national territory, entering into or ratifying treaties, or granting concessions that harm the territorial integrity, sovereignty and independence of the republic, would be tried for treason, warning once that such liability is imprescriptible. Although, it must also be recognized that the Constituent did not impose as the only effect the derogatory effect, but also imposed effects of nullity, when expressly in article 3 of the Constitution, it was established with meridian clarity, that no one must obey

those who (authorities, in this case deputies) use procedures that break or disregard what the Constitution and the laws establish and that the acts verified by such authorities are null and void, all of which is in close correspondence with Chapter XIII on the responsibility of the State and its servants, contained in Title V, Articles 321 to 327 of the Constitution of the Republic. Then, with so many warnings and prohibitions, it seemed impossible that anyone would commit treason to the homeland; likewise that he would do so under the express threat that the inviolability of the Constitution would have in any case as an imminent and obligatory cause, the determined action of any Honduran citizen, invested or not with authority, to fulfill the duty of maintaining and restoring the effective validity of the irreformable, intangible or stony articles, provided by our Constitution. Despite the fact that with all the provisions it was impossible for something like what happened to occur, the original Constituent wisely reserved in the Constitution the power to impose its inviolable nature in certain matters, and provided for the duty to reestablish them, in order to maintain the constitutional order in full force and effect. It is precisely the order of reestablishment provided for in Article 375 of the Constitution, the basis for declaring null and void all actions taken in contravention of the provisions of Article 374 of the Constitution. In addition to the above, the Supreme Court of Justice is the final and definitive interpreter of the laws through the appeal for cassation and of the Constitution of the Republic through the guarantees provided for the defense of human rights by means of amparo, habeas corpus and habeas data; as well as the defense of the State, society and the Constitution itself, through the action of unconstitutionality. It must not be forgotten that the law is not exhausted in the literalness of the rules, but that reality always presents more complexity than all the forecasts and assumptions imagined by the legislator, who at the moment of creating the rules has the pretension of solving in the future all possible situations, and for this particular case, article 375 of the Constitution provided for reestablishing or restitutive effects, that is to say ex tunc. Of course, the powerful prerogative of being the final and definitive interpreter mentioned above has limits, these are on the one hand the fact that it cannot exercise this power if it is not in concrete reference to a particular case, that, although the effects are erga omnes in those cases in which it declares an unconstitutionality, it is always within the limits offered by a particular case brought under its knowledge; Likewise, the other limit is that all interpretation must always be in reason of preserving the constitutional order (teleological interpretation and of an integrating nature), and in this sense it can extend the text of the norm, to the sense and scope not expressed literally, but which is implicit in the will of the legislator (mens legislatoris); and more in this case, the will of the Sovereign as the original constituent. 6.2.2. The problem of the application at all costs of the ex nunc or derogatory effect, need to weigh according to specific cases. Defense of the national territory and of the form of government by asserting article 375 of the Constitution. Before analyzing what corresponds to this issue, it should be noted that, by following the literalness of the provisions of the Constitution, i.e., declaring unconstitutionality with no effect other than derogatory,

Honduras faces several complaints before the Inter-American Commission on Human Rights or IACHR, since the Constitutional Chamber, on March 13, 2003, issued sentences RI-1665-2001 and RI-2424-2001 by which it declared with ex nunc effects the unconstitutionality of Legislative Decree No. 58-2001.[26] The Constitutional Chamber, on March 13, 2003, issued sentences RI-1665-2001 and RI-2424-2001 by which it declared the unconstitutionality of Legislative Decree No. 58-2001 with ex nunc effects. 58-2001.[26] The above is mentioned to illustrate the need for this high court of justice to weigh in each case the effects of the declaration of unconstitutionality and decide in a timely manner or in each case it hears, on the effects whether ex nunc or ex tunc, so as to preserve the national legal order, but with respect for the fundamental rights of natural and legal persons. Following the line of these ideas, the Supreme Court of Justice establishes that, in the present case, the repeal of norms is not enough, but their retroactive nullity must be declared, since they have to do with the integrity of the national territory. The mandate of absolute unavailability of the national territory, provided in Article 374 demands it, and Article 13 of the Constitution complements it by expressly stating that the dominion that Honduras exercises as a State over its territory (regulated in Chapter II of Title I of the Constitution) is inalienable and imprescriptible. So: What happens if the declaration of unconstitutionality in matters of territory is only declared with derogatory effect or ex nunc, that is to say, not retroactive, or nothing more towards the future? It would happen that laws or acts of authority that compromise the inalienable and imprescriptible right of dominion of the State would remain firm and without the possibility of being restored (or in terms of article 185 of our fundamental letter, maintained or reestablished) to the constitutional order established by our country. This being a terrible absurdity from the perspective of the imprescriptibility, inalienability and intangibility of the territory and the irreformability[27] of our constitutional system of government. What happens with the imperium of article 375 of the Constitution in relation to article 374 of the Constitution? Is it perhaps symbolic? Can it be said that the national territory is inviolable if the derogatory nature (ex nunc) of the declaration of unconstitutionality of a legislative act that sullies the right of sovereignty that Honduras has over its sacred soil is respected at all costs and without any reflection, only because temporary authorities by means of mistaken or malicious acts, such as those now being judged, weaken, cut off or compromise parts of its territory? What happens with the duty or principle of intergenerational equity in relation to the future of our people, according to the concept introduced by the Constitutional Chamber in sentence RI-172-2006 dated October 4, 2006, referring specifically to the duty to look after the interests of future generations? Definitely, the answer to each question compels or obliges to establish that the unconstitutionality cannot be declared with only the derogatory or pro futuro effect, but that the Supreme Court of Justice becomes the obligation to interpret the spirit with which our Constituent declared the inviolable, perpetual and imprescriptible character of our territory. To this end, it is essential that this high court of justice take and give life to the provisions of Article 375 of the Constitution, a rule that

imperatively demands the validity and unrestricted compliance with the Constitution, whose compliance does not yield or lose validity by act of force[28] or when it is supposedly repealed or modified by any other means and procedure other than that which it itself provides. Being an irreformable or stony article, the one that has been committed to the legislative acts of constitutional reform and enactment of laws, it cannot be accepted by any point that such acts exist, but must be considered "alleged", as well said in article 375 of the Constitution. The starting point must be the idea that the object of legislative decision of the National Congress and of negotiation by the authorities involved, in this case, are the territory and the form of government, two objects that are totally unavailable for any legislation or negotiation, due to the existence of an absolute prohibition, which makes any act, law or contract null and void; this because the object (territory and form of government) is unlawful (prohibited) by express provision of article 374 of the Constitution.[29] Similarly, the aforementioned unconstitutionality proceeds in relation to the alleged and nonexistent reform to the form of government, an unreformable subject in accordance with Article 374 of the Constitution. According to the constitutional reform approved by the deputies to give life to the ZEDEs, the territory under the domain of such zones could be governed by a system and by authorities different from those constituted in the country. In other words, the ZEDEs would have a regime of self-government and self-management that would make them autonomous territories. Therefore, once again, the ex nunc effect falls short and does not satisfy the need to restore the rule of the Constitution, since it is not possible for exogenous governments or governments outside the rule of the Sovereign to exist or be given validity in our national territory, and therefore the retroactivity of the declaration of unconstitutionality is more than legitimized. To indicate the contrary would be to jeopardize and contravene the provisions of Articles 373, 374 and 375 of the Constitution of the Republic. The pernicious effects of declaring unconstitutionality with derogatory or ex nunc effects. On the other hand, still in relation to the territory and the form of government, it is worth asking the following question: Once Honduran soil has been ceded or compromised through spurious legislative acts contrary to the Constitution, how can sovereign control of that territory be regained, if the validity of consummated acts or acquired rights[30] (not any dominion rights, but rights infringing on national sovereignty) is maintained. First and for the sake of completeness, in relation to the employment and economic development zones, the claim of acquired rights is totally ruled out, because no commercial company, nor enterprise, reached the status of ZEDE, since none of the current legal entities that sought to avail themselves of said regime complied with all the requirements demanded by the regulations created for such purpose. Honduran jurist Doctor Joaquín Mejía Rivera, in an academic publication[31] explains that for the constitution of a ZEDE, according to the reformed Article 329, the approval of such zone by the honorable National Congress, through a qualified vote and with the prior participation of citizens in an approving plebiscite, with a result of two thirds of the population in accordance with Article 5 of the Constitution, is an unavoidable

requirement.[32] Said jurist emphasizes 30 Acquired rights assume that, during the validity of the first law, all the foreseen effects are reached, and the right is constituted. For example, in the case at hand, a Zede is declared after complying with all the procedures and requirements, so that subsequent repeal or reform cannot affect it. When speaking of acquired rights, the acquisition of a power or an expectation of a right must be ruled out as such. That is to say, the fact or act that constitutes the right itself must be perfected or consummated. the exclusive or non-delegable character that the National Congress has 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], which rules out the existence of acquired rights originating in the legislation under analysis, which is considered unconstitutional for violating unreformable or stony articles. Although it is true that in the present case the norms to be declared unconstitutional have not generated acquired rights, it is important that this high court of justice sets a precedent for the future and declares the nullity and not the repeal of such norms. It would be a bad precedent if, in the face of a formal contravention of territorial inviolability, derogatory effects were to be declared. As a stare decisis of this high court, it should be expressly and clearly stated that in accordance with article 375 of the Constitution, no effects that endanger the form of government and the soil of the nation were or will ever be born. Now, it is important for this high court to recognize that the theory related to acquired rights, although it is the majority, is not the only one, but there are other different theories. There are those who, in order to conceptualize the acquired right, make the distinction between legal power and exercise, pointing out that a legal power not exercised must be considered a simple expectation, which only becomes a right through the exercise; in this sense, the exercise of the legal power is sufficient for the right to materialize or be constituted. Transferring this theory to the case at hand, those who went to the call to constitute Zedes could claim the exercise of a power they had, considering that they have the right to continue until it is consummated. This theory is rejected, but it nevertheless exists and must be taken into account, and any encroachment on our territory and change to its form of government must be avoided.[34] On the other hand, Paul Roubier's thesis distinguishes between the theory of retroactive effect and immediate effect.[35] He understands the retroactive effect of a norm when it applies to: i) acts consummated under the rule of a previous law; and, ii) to legal situations in progress, in relation to the effects carried out before the new law came into force. This author explains that if an event occurs while a law is in force, and then a new law enters into force, and the consequences of that event are produced during the validity of the latter, there is no retroactive application, but immediate application. Of course, according to this author, the facts that occur in the future, that is to say, under the validity of the second law, must be governed by the latter. In other words, Roubier's approach is what is known as ultraactivity of the law, which occurs when the effects or consequences of a previous law are produced under the validity of a subsequent law. Again, the Honduran jurist Joaquín Mejía Rivera, in a document called "The ultraactivity and the 'constitutional grafts' in the light of

the new sentence of the Constitutional Chamber on the ZEDE", asks himself, can a repealed legal norm exist; that is to say, does a repealed norm have ultraactivity effects or can it be applied to certain cases? Dr. Mejía Rivera answers the above by pointing out that, although up to that moment the amendments to articles 294, 303 and 329 of the Constitution are still in force, the fact that the secondary laws that developed them have been repealed means that the constitutional norms are not effective or operative, since, being institutional or organizational provisions, they depend on the subsequent legislative development. Now then, Dr. Joaquín Mejía Rivera warns that the figure of the ZEDEs to date exists, is still in force and belongs to our legal system, therefore it is subject to control of constitutionality, as determined by the majority vote of the Constitutional Chamber. Likewise, Dr. Joaquín Mejía emphasizes that according to Article 45 of the repealed Organic Law on ZEDEs, such regulations remain in force during the term indicated in the legal stability clause or contract entered into with natural or legal persons residing or investing in the ZEDEs[36]; and that the transition period may not be less than ten years, maintaining the rights of the inhabitants and investors of the ZEDEs in force during that time. By virtue of which, there is no doubt that the Supreme Court of Justice faces in this judgment a case of normative ultractivity that must be resolved, and that the only effective and efficiently correct way to do so is by declaring the unconstitutionality under the ex tunc effect of the constitutional reforms in force and the legal regulations repealed by the National Congress. 6.2.4. Grounds for considering the unconstitutionality of the regulations referring to the creation of the ZEDEs. It is generally known that the Honduran people, instituted as the original or constituent power, at the time of promulgating the Constitution of 1982, currently in force, and creating the three constituted powers (Judicial, Executive and Legislative) granted the latter, through its institutional body the National Congress, the prerogatives inter alia of a) constitutional reform; and, b) creating, interpreting, reforming and repealing the laws of the Republic. However, the Legislative Power, as the constituted power that it is, is limited by the Constituent Power, in all that refers to the content of the aforementioned and transcribed constitutional article 374; which, subtracts from its domain all that refers to: a) the procedure of constitutional reform (art. 373); b) the content of the constitutional reform (art. 374); c) the content of the constitutional reform (art. 374); d) the constitutional reform procedure (art. 374). 373); b) the content of the same article 374; c) the constitutional articles that refer to: c1) the form of government; c2) the national territory; c3) the presidential period; c4) the reelection to President of the Republic; c5) the presidential reelection of the citizen who has held such position under any title; c6) the prohibition to run for the presidency of the Republic for the subsequent period. Therefore, in this specific case, the reforms that the derived legislator enacted in relation to constitutional norms, and that, for the above mentioned, are subsumed in the subjects prohibited by the original Constituent, are null and void (ex tunc); and, therefore, it is a fact of force because they are totally outside the world of Law. If declared on the grounds of violating articles of the Constitution, they are declared ex tunc;

rather, it is possible in certain cases to declare unconstitutionality with ex nunc effects, [37] because everything depends on the result of judging on a case-by-case basis. In relation to the matter currently under study, the effect of the unconstitutionality must be ex tunc, since the rules challenged as unconstitutional violate two basic, primordial and fundamental elements for Honduras as a free, sovereign and independent State and nation. It is clarified to complete the comments to what is expressed in article 375 of the Constitution, that the acts of force are not necessarily violent, sometimes they can occur, as in the present case, in the form of simulated acts, forced in terms of legality and constitutional legitimacy. That is why this Supreme Court of Justice reaffirms that all constituted power, including the National Congress, must be the guarantor and faithful defender of the national territory, and other intangible values integrated in the Constitution in a stony or irreformable manner.6.3. It is important to highlight the fact that the constitutional reform of articles 294, 303 and 329 of the Constitution of the Republic and the consequent promulgation of the Organic Law of the Employment and Development Zones clarifies that not all cases of Economic unconstitutionality (ZEDE), constitute the most evident and gross facts against Honduras and its sovereign people, violating its will instituted in the Constitution of the Republic. Therefore, from the beginning, when the intention to create such zones was expressed, voices were raised in opposition, warning that its constitution was a violation of constitutional articles of unreformable nature, so it is not acceptable to allow threats to the Honduran State with economic consequences, issued by those who, despite the widespread rejection and especially the strong and valid constitutional basis against, now want to profit treacherously, claiming concepts such as legal certainty. As an example of the generalized repudiation of the creation of ZEDEs, the Honduran Council of Private Enterprise or COHEP[38], raised its voice of protest in public, at the time published in different media the communiqué entitled: COHEP LEGAL ANALYSIS OF THE ZEDEs IN HONDURAS with the following content: I. Have the ZEDE been declared within the framework of legality? II. What do the reforms approved by the National Congress consist of? III. Questions to the ZEDE. IV. Conclusions[39] In said communiqué dated June 2, 2021, COHEP points out that despite the fact that the Constitutional Chamber declared the ZEDEs constitutional by means of sentence RI-0030-20 (which as will be seen below is questionable), it concludes that the constitutional reforms that give legal birth to the ZEDEs and the Organic Law of the ZEDEs had grounds of unconstitutionality in relation to territory and sovereignty. In this sense, they question that although the Constitutional Chamber has declared them to exist in accordance with the Constitution, they are norms that lack legitimacy since they have not been approved through a broad consultation process with the Honduran population and its different sectors (i.e., it is a matter of the Sovereign). On the other hand, the Legislative Decree approved by the National Congress, by means of which the "norms to regulate the fiscal and customs relations between the competent entities of the State of Honduras and the ZEDEs" are approved, has reasons of unconstitutionality, violating the principle of legality which is the cornerstone of

the Rule of Law and therefore Article 1 of the Constitution. With said communiqué COHEP, warns that the ZEDEs lack constitutional legitimacy, among other reasons for the following: "3) The ZEDEs are an imposition of a new State within the State of Honduras, by providing attributions to these ZEDEs that differentiate them from the Honduran State, by having a differentiated territory, a population that must be registered within this territory and a power different from that of the Honduran State. 4) Establishing that the ZEDEs have the consideration of fiscal and customs extraterritoriality will generate a fiscal deficit to public finances and local governments, so this is an issue that may compromise the agreements signed with multilateral financing bodies to which the State of Honduras has committed. 5) It is of our consideration that the CAMP has acted outside the law, authorizing the approval of the creation of the ZEDE outside the provisions of the Constitution of the Republic and the Organic Law of the ZEDE, since the creation of the ZEDE regardless of the population density is the National Congress of the Republic, This entails a risk to the investments developed in the ZEDE, as well as a risk for the State of Honduras to face legal actions demanding the payment of indemnifications for damages and damages caused to national and foreign investors. Therefore, we conclude that the way in which the ZEDE have been authorized are high risk investments. 6) The actions of the members of the CAMP, who have authorized the creation of the ZEDE, are vitiated by nullity and are subject to civil, administrative and criminal liability, and it can be concluded that since the ZEDE have not been approved by the National Congress, we are facing a criminal type of administrative prevarication and abuse of authority and breach of duties and functions of public officials. 7) Economic and social development through job creation cannot be subject to regulations that are contrary to the rule of law, being doctrinal principles of COHEP: To watch over the functioning of a democratic, representative and subsidiary State at the service of man and not man, at the service of the State; as well as to watch over the development of free initiative protected by the rights granted by the Constitution and the laws; The generation of wealth that ensures the creation of jobs, income and legitimate profits to whoever assumes the entrepreneurial risk and to the State, taxes for its fair and equitable distribution to those really in need in society. 8) Finally, we conclude that the ZEDE as a model of development and investment in the country has been denaturalized from every point of view, generating at this moment too many risks to investors and the State of Honduras due to the lack of transparency and the way they have been authorized. Likewise, this economic and social development model must be widely consulted with the different sectors of the Honduran society in order to have legitimacy". Similarly, the Association for a More Just Society or ASJ[40], on July 7, 2021, also disclosed through the press media the communication entitled: "THE ZEDES VIOLATE THE CONSTITUTION OF THE REPUBLIC AND GENERATE UNEQUAL CONDITIONS OF CITIZEN SECURITY",[41] in which they denounce that the constitutional reforms to Articles 294, 303 and 329 and the regulations that develop them to create the Employment and Economic Development Zones (ZEDE), violate the Constitution

of the Republic and that such situation allows for the following analysis: "1. Sovereignty and form of government. "Sovereignty corresponds to the people from whom emanate all the powers of the State, which are exercised by representation. ...", as established in the first paragraph of Article 2 of the Constitution of the Republic, complemented by the first paragraph of Article 4 which states "The form of government is republican, democratic and representative. It is exercised by three powers; Legislative, Executive and Judicial, complementary and independent without relations of subordination. ..." In this sense, sovereignty is the dominion of a State over its entire territory and it is thus that the constituent power only originally established representative democracy in three powers as a form of delegation to exercise power, and in accordance with the original wording of Article 294 of the Constitution of the Republic, the departmental and municipal regime was established as the territorial demarcation of the State of Honduras for the decentralization of the exercise of local power, delimiting the autonomy of the municipalities in Article 298 of the Constitution of the Republic, expressing specifically that the municipal corporations in the exercise of their functions will be independent of the powers of the State but never contrary to the law and responding before the courts of justice for the abuses they commit, specifying their administrative and financial functional autonomy, but reaffirming that the State is only one and that the work of the powers of the State are independent, but exercising their actions in the municipalities that are part of the State of Honduras; Under these circumstances, the constituent did not establish any other original form of functional and administrative decentralization of power in the Honduran territory and therefore the establishment of courts with exclusive jurisdiction in these areas is totally inappropriate, which is why the constitutional reform to Articles 294, 303 and 329 of the Constitution of the Republic violate the postulates corresponding to sovereignty and the form of government. Principle of equality. Article 60 of the Constitution of the Republic establishes: "All men are born free and equal in rights. In Honduras there are no privileged classes. All Hondurans are equal before the law. All discrimination on grounds of sex, race, class and any other harmful to human dignity shall be declared punishable. The law shall establish the offenses and penalties for the violator of this precept." Equality in the treatment of persons is the fundamental principle of Law, which is closely linked to the principle of justice. Social, economic, legal, educational, health, labor and cultural benefits, among others, cannot become privileges or monopolies that create advantages for some to the detriment of others. The constitutional reforms to articles 294, 303 and 329 of the Constitution of the Republic violate this postulate since it generates an unequal regime with application of a different justice and a different administrative regime that even reaches to general freedom of movement to the rest of the inhabitants of the Republic of Honduras. Principle of due process. The first paragraph of Article 90 of the Constitution of the Republic establishes that "No one may be tried except by a competent judge or court with the formalities, rights and guarantees established by law ...". ...", this constitutional precept refers to the set of essential formalities that must be

observed in any legal proceeding, to ensure or defend the rights and freedoms of every person; it is also known as the "right to due process of law". Articles 14, 15 and 18 of the Organic Law of the Employment and Economic Development Zones (ZEDE) establish that the courts will be autonomous and independent with exclusive jurisdiction in all instances on matters not subject to mandatory arbitration and will operate under the common law tradition, or others in accordance with Article 329 of the Constitution of the Republic and making reference that the jurisdictional organs of the ZEDE must rule in equity or in law as defined when they are created and that criminal trials may be decided by juries. Likewise, the rulings in a particular case will create a precedent of general mandatory observance and the rulings of foreign nations may be cited as precedents. The above contravenes the provisions of the principle of Due Process of Law because the courts are not autonomous, they depend on the Judicial Power, by constitutional principle we depend on a tradition of European continental law of Roman-Germanic origin (written law, i.e. we must enact the law to make it mandatory) contrary to common law and even less to rule on the basis of equity through a jury by the same tradition of our system in the ordinary jurisdiction that only allows judgments based on law not equity, Finally, arbitration cannot under any circumstances be imposed or be mandatory, it has always been voluntary, that is to say, agreed by the parties, in accordance with the Conciliation and Arbitration Law, , because arbitration and its costs must be paid by both parties and therefore must be agreed by agreement or arbitration clause but never reverse the principles and declare it mandatory, a principle that contravenes the constitutional gratuity of justice and the provisions of Article 110 of the Constitution regarding the discretionary power of natural persons to terminate their civil matters by settlement or arbitration. Independence of the Judiciary. Article 303 of the Constitution establishes in the first part of its first paragraph "The power to impart justice emanates from the people and is imparted free of charge in the name of the State, by independent magistrates and judges, subject only to the Constitution and the laws..." and in accordance with Article 313 of the Constitution of the Republic, the Supreme Court of Justice has the power to direct the Judicial Power in the power to impart justice. These attributions expressly manifest the autonomy and independence of the Supreme Court of Justice in the conduction of the Judicial Branch and in the selection of its judges and magistrates. It is for this reason that this independence is violated with the reforms to Article 329 of the Constitution of the Republic, since it is established in its last paragraph that "... The judges of the zones subject to special jurisdiction will be proposed by the special zones to the Council of the Judiciary who will appoint them after a competition from a list proposed by a special commission integrated in the manner indicated by the Organic Law of these regimes..." is a clear interference in the jurisdiction of the Supreme Court."This is a clear interference in a power of the State and this interference is reflected in articles 14 and 14 of the Organic Law of the Zones of Employment and Economic Development (ZEDE) and to conclude this violation, this organic ordinance in its article 16 establishes that the Zones of Employment and Economic Development (ZEDE)

will have a Court for the protection of individual rights, which will protect the persons who are in a ZEDE against violations of fundamental rights and its composition will be made up of as many persons as the Committee for the adoption of best practices decides, ignoring the Judicial Power in the creation of this court and in clear violation of the provisions of the Law on Constitutional Justice in matters of instances for the protection of constitutional rights. Autonomy of the Public Prosecutor's Office. Article 232 of the Constitution of the Republic establishes in the relevant part of its first paragraph that "The Public Prosecutor's Office is the specialized professional body responsible for the representation, defense and protection of the interests of society, functionally independent of the powers of the State and free from all political and sectarian interference. ... The Public Prosecutor's Office is responsible for the informal exercise of public criminal action. ...". This precept refers to the constitutional rank of the Public Prosecutor's Office in terms of the power to represent the general interests of the entire Honduran society without exception in the informal exercise of the public criminal action. This situation harms the powers of the Public Prosecutor's Office when Article 22 of the Organic Law of the Employment and Economic Development Zones (ZEDE) states that the ZEDE must, as an imperative, establish their own crime investigation, intelligence and criminal prosecution bodies. Principle of unity of action of the National Police throughout the territory. The National Police is a permanent professional institution of the State, apolitical in the partisan sense of a purely civilian nature, responsible for the preservation of public order, prevention, control and combat of crime , which will be governed by special legislation. It is part of what is established in Article 293 of the Constitution of the Republic, where it is clearly stated that it is the institution of the State destined to fulfill its purposes throughout the national territory without exception, which establishes its scope of action in a special legislation and Article 32 of the Organic Law of the Secretariat of State in the Office of Security and the National Police, establishes among the attributions of the police force among others "... 2. To safeguard the life, property, rights and liberties of persons within the national territory; 3. To maintain and promote internal public order; ... The police function can only be performed by active members of the National Police of Honduras". Consequently, both what is established in the constitutional text and the secondary norm enters into clear controversy with what is established in Article 22 of the Organic Law of the Employment and Economic Development Zones (ZEDE) when it states that the ZEDE "... must establish their own internal security bodies with exclusive competence in the zone, including their own police, crime investigation bodies, intelligence, criminal prosecution and penitentiary system; as well as the linkage with the country's security strategy."This situation makes it impossible for this norm to coexist since it is in clear controversy with the provisions of the Constitution of the Republic and the Organic Law of the Secretariat of State in the Office of Security and the National Police. 7. Violation of the principle of hierarchy of legal norms. According to this fundamental principle in every constitutional state of law, the essence of the hierarchy of norms consists in making the

validity of some legal norms depend on other legal norms, so that a norm is hierarchically superior to another when the validity of the latter depends on the former, so that the inferior norm must abide by the superior one. The idea of normative hierarchy is present in the legal thought of Hans Kelsen (1881-1973), for whom the decisive element determining the existence of law is also its validity. For Kelsen the legal system is organized as a stepped pyramid in which each normative rank occupies a step, so that the rule of the next step underlies the validity, the existence, of the rule of the previous step. In this Kelsenian normative hierarchy, the top of the pyramid is occupied by the Constitution; after it, on a second step, are the general norms, in which Kelsen includes the laws; on a third step are the regulations; and so on in descending order. The superiority of the Constitution over any other legal rule prevails and is based on a material criterion, since it contains the fundamental principles of coexistence (material super-legality) and therefore is endowed with formal defense mechanisms (formal super-legality). It establishes a superiority of the written rule over custom and the general principles of law, without prejudice to the informing character of the legal system of the latter. This logical order is broken with the provisions of Articles 8 and 41 of the Organic Law of the Employment and Economic Development Zones (ZEDE) by stating that the hierarchy of norms in these zones is totally contrary to the provisions of the Constitution of the Republic and the laws of a general nature, disapplying the Constitution of the Republic in these zones and the international treaties signed by Honduras by stating "....in what is applicable to them;", that is to say that in these areas the normative hierarchy is inverted, since it goes from the particular to the general in what is applicable to them, giving priority to the laws that govern in the ZEDE over the Constitution or laws of general character, contrary to the Kelsenian doctrine that inspires our constitution. This situation is in clear violation of the Constitution of the Republic. 8. Violation of the principle of free self-determination of peoples and non-intervention. ILO Convention 169 on indigenous and tribal peoples has two basic postulates: the right of indigenous peoples to maintain and strengthen their own cultures, ways of life and institutions, and their right to participate effectively in the decisions that affect them. These premises constitute the basis on which the provisions of the Convention must be interpreted. The Convention also guarantees the right of indigenous and tribal peoples to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to control, as far as possible, their own economic, social and cultural development. The provisions of this agreement expressly collide with the provisions of the amendment to Article 329 of the Constitution of the Republic, which establishes that an approval plebiscite will not be necessary for the creation of Employment and Economic Development Zones (ZEDE) in areas with low population density. Likewise, it collides with the provisions of Articles 25 and 26 of the Organic Law of the Employment and Economic Development Zones (ZEDE) by making reference to the fact that the ZEDE will administer on behalf of the State of Honduras the ownership of the land, ceding powers that by law are

held by other state institutions, promoting the right to expropriation outside the constitutional parameters, to the detriment of the constitutional right to private property. For these reasons, ILO Convention 169 is clearly violated in the constitutional reform made to Article 329 and Articles 25 and 26 of the Organic Law of the Employment and Economic Development Zones (ZEDE). 9. Reform of irreformable or stony articles. By reforming Articles 294, 303 and 329 of the Constitution of the Republic, constitutional norms referring to the division of the national territory and the form of government established in Article 374 of the Constitution of the Republic were violated, which cannot be reformed in any case. The National Congress, as a power derived from the Constituent Power, has the power to reform the Constitution, but in accordance with the provisions of Article 373 of the Constitution of the Republic, but with the limitation of the aforementioned Article 374. 10. Harmony of constitutional norms. As has already been established by countless constitutional law scholars, a rule of the constitution should not be interpreted in isolation; the constitution constitutes a unit. Constitutional norms cannot be in a relationship of reciprocal tension, they must necessarily be harmonized or put in concordance with each other, in such a way that there cannot be constitutional reforms that are not in harmony with what was established by the original constituent power in relation to articles 373 and 374 of the Constitution of the Republic. 11. Repeal of the constitutional reforms and the Organic Law of the Employment and Economic Development Zones (ZEDE). The National Congress should proceed to the immediate repeal of the constitutional reforms made to Articles 294, 303 and 329 of the Constitution of the Republic, as well as the Organic Law of the Employment and Economic Development Zones (ZEDE) for the reasons set forth in this legal analysis. Likewise, it should proceed to structure adequate mechanisms for the generation of employment and development in search of adequate administrative simplification to promote an appropriate business climate and investment stimulus where we all reach better levels of coexistence and citizen security, strengthening the mechanisms to fight against corruption and impunity that damage the Rule of Law and promote transparent practices that guarantee the permanent accountability of all employees and officials of the State". Adding to these positions directed against the ZEDEs is the National Anticorruption Council or CNA, who in June 2021 published and circulated through all media a document entitled: "Analysis on legal and economic aspects surrounding the Employment and Economic Development Zones (ZEDE)."[42]. The ANC in its extensive analysis denounces the unconstitutionality of the ZEDEs and at the end summarizes its findings in the following conclusions: "CONCLUSIONS. a. Despite the fact that the Constitution of Honduras needs to be updated, for the case of the ZEDEs the normative content did not operate on constitutional rigidity, but rather this project is the result of authoritarianism and totalitarianism of the people who integrate the powers of the State. b. The functional and administrative autonomy; the supplanting of non-delegable functions of the powers of the State; the detachment of the ordinary jurisdiction; the implementation of a foreign justice system -unknown to the majority- that will be managed by outsiders; the

manipulation of the transparency policy, the control of police and investigation bodies, as well as of the radio electric spectrum; added to the fact that within the ZEDE, the application of the Penal Code in force and the provisions on extradition are merely transitory, until their governance bodies determine how to regulate such aspects, constitutes a clear panorama of having created the most solid refuge for "white collar criminals" who choose to shelter under the legislation and autonomous systems that prevail within the ZEDE. c. Specifically, with respect to the prevention and fight against corruption, it is evident that in order to generate impunity for those who have been involved in acts of corruption, they will use these geographic zones to take refuge and prevent national or foreign justice from proceeding against them; at the same time, it is identified that due to the principles of res judicata many of those involved in corruption will be prosecuted under the courts and tribunals that will operate within the ZEDE and such resolutions will be used as exceptions due to res judicata. d. All this occurred within the framework of manifest violations to the Constitution, where the deputies who approved the constitutional reforms and the Organic Law of the ZEDE, exceeded their functions, taking on the powers of the constituent to reform articles that deal with the form of government and the territory. It is worth mentioning that such legal aberrations were disguised with the rhetoric of a speech and a promise that the government has not been able to fulfill in more than a decade, so that now, the territory is offered in advance in exchange for supposed projections of employment generation and the fact that a whole system of state separation has been established, having ceded sovereignty. e. For the most part, the content of the disastrous Legislative Decree No. 120-2013, does not contemplate provisions aimed at determining methods, mechanisms or regulations focused on generating economic development in Honduras, the legislators in a premeditated manner, used artifices to simulate the construction of a perimeter wall constituted in a law, which mainly aims to have laid the legal foundations for the creation of mini States within Honduras, adjusted to the interests of its promoters under an act of treason to the Constitution and the homeland. f. The ZEDE Law admits an expropriation model that prioritizes the interests of those who invest in these zones, over the Hondurans who inhabit and own the territories, in order to achieve the undetermined expansion of the project. Even worse is the case of the low population density territory of the municipalities located in the departments adjacent to the Gulf of Fonseca and the Caribbean Sea, which are already declared by default within the ZEDE regime. It is a matter of time for the loss of such territory. g. Not being enough with the provisions of Decree No. 130-2012 (ZEDE Law), on June 15, 2021, was published in the Official Gazette La Gaceta, the Legislative Decree No. 32-2021 which established provisions in the ZEDE Law.No. 32-2021, which established provisions on tax and customs matters for these special zones, was published in the Official Gazette La Gaceta. Also, in the fifth article of said decree, the Executive Branch is authorized to enter into legal and tax stability contracts with the Employment and Economic Development Zones operating in the country to ensure such commitments when they extend for more than one term of

government. In other words, an attempt is made to consolidate the obligation of the State of Honduras to guarantee the subsistence of the ZEDE, even when there is a change of political regime in the country; these efforts to shield the unconsulted projects of special zones, are also protected by Article 45 of the Organic Law of these zones, which states that even with the repeal of such instrument, what is subscribed in the contracts or agreements mentioned in the previous paragraph must be respected. h. The amendments to the Constitution that gave rise to the ZEDE law have greater scope in terms of autonomy and independence than the RED, i.e., the ZEDE transgress to a greater extent the values, principles and essence of the Constitution. i. The acts of corruption surrounding these zones are far from over, since their expansive materialization is still pending, which will gradually subtract the sovereignty of the Honduran State, to become extensive tax havens. j. With the commission of acts such as the modifications made to the Constitution of the Republic, the approval of the ZEDE and the dismissal of magistrates of the Constitutional Chamber, the categorical manner in which the powers of the State can act in conspiracy to guarantee mechanisms to satisfy the needs to maintain the status quo, even after their participation as public servants, was evidenced. k. With the above analysis, it is feasible to consider that the ZEDE will originate inequality and could increase the migration of people. When high-tech companies that require skilled labor are installed in these zones, access to employment could be affected by part of the population living in these regions, since by not meeting the requirements to work in these companies, some residents and people neighboring the ZEDE territory would have to emigrate to settle in other areas of the country where they can have access to new job opportunities; as a result, inequality gaps between the population will increase. l. The ZEDE do not constitute a component of economic evolution for the country, since in principle their constitution, operation and impact are considered within a reduced fragment of territory, so that if the model of these zones is followed up as expressed in the fallacious speeches of their promoters, it should be abruptly expanded by large territorial extensions; a situation that consequently translates into an excessive cession of national territory to the hands of foreign investment. m. Finally, the ANC makes an international call to recognize the mechanisms of authoritarian governments of the ZEDE as refuges for drug traffickers, money launderers and areas where all kinds of acts of corruption can be carried out without the vigilance that the civil society currently undertakes, and above all without due state control". There are other documents and public manifestations of organizations and individuals that demonstrate that from the beginning, every investor was warned of the risk of creating ZEDEs, in this sense it is worth remembering that no one can benefit from their own acts that are knowingly, illegal; and what is more, in this case unconstitutional and unquestionably illegitimate. In this sense, there were several municipal corporations that through open town meetings, held in accordance with the Law of Municipalities, declared in their own districts, "free of ZEDEs", making clear their rejection of this type of investment.[43] Other documents are cited in which sufficient reasons are given to establish that investing in ZEDEs was of high risk due

to their unconstitutionality:[44] - Alexander, E. (2015). Judicial independence in Honduras? Taking stock of the situation and main challenges. Friedrich Ebert Stiftung Foundation. - Alford-Jones, K., Carasik, L. and Spring, K. (August 25, 2017). Letter to Mark Lopes and Alex Severens. Concerns about HO-L1191: Support to the Creation of Employment and Economic Development Zones (ZEDES). http://www.ciel.org/wp-content/uploads/2017/11/Memo_Concern_ idb_Honduran_zede_Project.pdf - United Nations High Commissioner for Human Rights. (2013). Serious attack on democracy in Honduras the dismissal of judges of the Constitutional Chamber. https://newsarchive.ohchr. org/SP/NewsEvents/Pages/DisplayNews. aspx?NewsID=12958&LangID=S - Arias, R., Sánchez, L., Vargas, L., Agüero, O. and Quesada, Y. (2016). Identification and definition of special development zones (ZED) in Costa Rica. Serie de divulgación económica, IICE-44. - Association for a more just society [ASJ] (2018). Analysis of the structuring, contracting, and execution of the concession contract for the tourism corridor in Honduras. http://asjhonduras.com/webhn/analisis-de-la- estructuracion-contratacion-y-ejecucion-del-contrato-de-concesion-del-corredor-turistico/ - Inter-American Development Bank [IDB]. (2006). Operational Policy on Indigenous Peoples (OP-765). http://idbdocs.iadb.org/ wsdocs/getdocument.aspx?docnum=1442306 - Inter-American Development Bank [IDB]. (2018). HO-l1191: Supporting investment attraction and job creation in Honduras. https://www.iadb.org/es/project/HO-L1191 - Barahona, M. (2018). From the bipartisan pact to the impunity pact: ungovernability, corruption and general crisis in Honduras. In C. Villacorta and E. De Gori. (Eds), Electoral coup and political crisis in Honduras (pp. 37- 46). Latin American Council of Social Sciences (CLACSO). - British Broadcasting Corporation (Producer). (2018). Las zede, Honduras' controversial "private cities" project [BBC News World]. https://www.youtube.com/ watch?v=ZU3QkNT_Hgo - Center for International Environmental Law [CIEL]. (2017). Should the Inter- American Development Bank Fund Honduras to Implement Controversial Special Economic Zones? https://www.ciel.org/wp-content/ uploads/2017/12/zedeanalysis.pdf - Chayes, S. (2017). When corruption is the operating system: the case of Honduras. Report published by Carnegie Endowment for International Peace. https:// carnegieendowment.org/files/Chayes_ Corruption_Final_updated.pdf - National Congress of Honduras. (2013). Decreto Legislativo nro. 120-2013, Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE). https://www.tsc.gob.hn/ biblioteca/index.php/leyes/503-ley-organica- de-las-zonas-de-empleo-y-desarrollo- economico-zede/ A. 37Sección A Acuerdos y Leyes La Gaceta - UN Human Rights Council. (2016). Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras. http://unsr.vtaulicorpuz. org/site/index.php/en/documentos/country- reports/148-report-honduras - South Korea gives go-ahead for first zede. (April 6, 2015). La Prensa. https://www. laprensa.hn/inicio/828314-417/corea-del-sur- da-visto-bueno-para-construcci%C3%B3n- de-zede alfrente/565722-209/en-sesion-con- inconsistencias-destituyeron-a-magistrados - Extractivo Minero. (August

03, 2016). The "extractivist" model in Honduras. https:// movimientom4.org/2016/08/el-modelo- extractivista-en-honduras/ - Dada, C. (April 20, 2017). Honduras and its libertarian experiment in the Gulf of Fonseca. El Faro. https://elfaro.net/ en/201704/centroamerica/20283/Honduras- y-su-experimento-libertario-en-el-golfo-de-Fonseca.htm - Fernández, B. (July 14, 2012). Partitioning Honduras: The advent of charter cities. Al Jazeera. https://www.aljazeera.com/indepth/ opinion/2012/07/2012711121224166933.html - García, F. (2014). Bubble cities: Zones of Employment and Economic Development zede in Honduras. Análisis Político-Jurídico de la Legislación e las ZEDE. Friedrich Ebert Stiftung Foundation. - Geglia, B. (2016). Honduras: Reinventing the Enclave. NACLA report on the Americas. https://www.tandfonline.com/doi/abs/10.108 0/10714839.2016.1258278?needAccess=true - Declaran inconstitucional ciudades modelos en Honduras. (August 15, 2013). La Prensa. https://www.laprensa.hn/ honduras/tegucigalpa/330285-98/declaran-constitucional-ciudades-modelos-en- honduras - Dixin, X. (1981). China's Special Economic Zones. Beijing Review, (50). http://www. bjreview.com.cnation/txt/2009-05/26/ content_197576.htm - En sesión con inconsistencias destituyeron a magistrados. (April 7, 2014). El Heraldo. https://www.elheraldo.hn/ - Global Witness. (2017). Honduras: the most dangerous country to defend the planet. https://www.globalwitness.org/en/campaigns/ environmental-activists/honduras-el-pa - Gordon, T. and Webber, J. R. (2011). Canada and the Honduran COUP. Bulletin of Latin American Research, 30 (3), 328-243. - Central American Institute for Fiscal Studies [ICEFI] (2017). Press Release HN- 05-2017: Honduras: ICEFI recommends to the National Congress not to approve the proposed Tourism Development Law. http:// www.icefi.org/sites/default/files/hn-05- 2017comunicado_ icefi rechazo _ _ley_ de _ fomento al _ turismo 24 _ _ _ _ _jul_20172.pdf - Kee-Cheok, C. and Kim-Leng, G. (2013). Hong Kong as charter city prototype-When concept meets reality. Cities (35), 100-103. - Laínez, V. and Meza, V. (1973). The banana enclave in Honduras. Nueva Sociedad (6), 21- 43. - MacNeill, T. (2017). Development as Imperialism: Power and the Perpetuation of Poverty in Afro-Indigenous Communities of Coastal Honduras. Humanity & Society (41), 210- 234. - Malkin, E. (September 30, 2012). Plan for Charter City to Fight Honduras Poverty Loses Its Initiator. New York Times. https://www. nytimes.com/2012/10/01/world/americas/ charter-city-plan-to-fight-honduras-poverty- loses-initiator.html?_r=0 - Moore, J. (2012). Canada's mining industry & corporate social responsibility. The Community Networks. https://communitynetworks. wordpress.com/2012/10/03/canadas-mining-industry-corporate-social-responsibility-part-l/ - Núñez, S., Herrera, F. and Flores, M. (n.d). Extractivismo y resistencia comunitaria en Honduras. https://www.tni.org/files/ publicationdownloads/extractivismo_y_ resistencia_comunitaria_en_honduras_0.pdf - ofraneh envía carta a presidente del BID por las inconsultas "ciudades modelo". (Nov. 16, 2017). Criterio. https:// criterio.hn/2017/11/16/ofraneh-envia-carta- presidente-del-bid-las-inconsultas-ciudades- modelo/ - Honduran Black Fraternal Organization [OFRANEH].

(2015). El atentado contra Vidal Leiva, y la intervención canadiense en la bahía de Trujillo. https://ofraneh.wordpress. com/2015/12/03/el-atentado-contra-vidal- leiva-y-la-tervencion-canadiense-en-la- bahia-de-trujillo/ - Organización Fraternal Negra Hondureña [OFRANEH]. (2017a). Letter to the IDB regarding their project to support the unconsultant "model cities" (ZEDE). https://ofraneh. wordpress.com/2017/11/16/letter-to-the-IDB-regarding-their-project-to-support-their-unconsultant-model-cities-zede/ - Organización Fraternal Negra Hondureña [OFRANEH]. (2017b). Honduras: The IDB and its unconsulted support for the neocolonial ZEDE project. https://www.alainet.org/es/ articulo/186916. - Honduran Black Fraternal Organization [OFRANEH] (2017c). Indura Hilton persists in dispossessing the Garifuna community of Barra Vieja. https://ofraneh.wordpress. com/2017/01/26/persiste-el-indura-hilton-en-despojar-a-la-comunidad-garifuna-de-barra-vieja/ - Palmese, L. (July 13, 2016). Honduran government invites mining companies, but the house is still in disarray [Blog post]. https://dplfblog.com/2016/07/13/el-gobierno-hondureno-invita-a-las-mineras-pero-la-casa- sigue-en-desorden/ - Peralta, A. (September 26, 2014). Infrastructure needed to build zede's in Honduras revealed. PanAm Post. https:// en.panampost.com/adriana- - Robinson, W. (2012). Latin America in the New Global Capitalism. nacla report on the Americas. https://nacla.org/sites/default/files/ A04502015_6.pdf - Romer, P. (1990). Endogenous Technological Change. The Journal of Political Economy, 98 (5), 71-102. - Romer, P. (January 27, 2010). For richer, for poorer. Prospect. http://www. prospectmagazine.co.uk/magazine/for-richer- for-poorer - Romer, P. (March 3, 2010). Technologies, Rules and Progress: The Case for Charter Cities. Center for Global Development. https:// www.cgdev.org/publication/technologies- rules-and-progress-case-charter-cities - Sagar, R. (2016). Are Charter Cities Legitimate? Journal of Political Philosophy (24), 509-529. - Chamber declares private cities unconstitutional in Honduras (October 5, 2012). La Nación. https://www.nacion.com/ el-mundo/sala-declarainconstitucionales- c i u d a t e s - p r i v a t e d - e n - h o n d u r a s / ZZEFWSOGDVBDRMPMPI5NXPPAEI44/ story/ - Sosa, E. (2017). Transformations in economic elites, state and the process of democratization and de-democratization: the case of Honduras, 1990-2017. Anuario de Estudios Centroamericanos (43), 125-148. - Special economic zones: Political priority, economic gamble. (April 4, 2015). The Economist. https://www.economist.com/ finance-and-economics/2015/04/04/04/political-priority-economic-gamble - Stavenhagen, R. (1981). Sociology and Underdevelopment. Our Time, 15-84. - Trucchi, G. (2017). Despoilment of Garifuna territories in Honduras: impacts of extractivism and tourism expansion. Research report published by Alba Sud. http://www.albasud.org/publ/docs/78.pdf - Trucchi, G. (July 26, 2016). Hourly Employment Law: use and abuse in the service and tourism sector. Alba Sud. http://www. albasud.org/noticia/en/897/ ley-de-empleo- por-hora- uso-y-abuso-en-el-sector-servicios- y-turismo 40- Villena, S. (2017). Seven mistaken theses on Latin America: Notes on the topicality of the category of "internal colonialism". Unpublished paper. - Waxenecker, H.

(2016). Honduras: Undue networks of power, impunity and enrichment? A sketch of a complex reality. Research report published by Heinrich Boll Stiftung. https://mx.boell. org/sites/default/files/honduras 21-07-2016 final.pdf. Thus, what is referred by the amicus curiae is unfounded, since it is evident that the defense of constitutionality of Article 34 of Legislative Decree No. 120-2013 is based on an absolutely spurious constitutional text, which directly and unquestionably violates the content of Article 374 of the Constitution with respect to committing parts of the national territory to economic powers or powers of any kind, constituting them as public authorities and empowering them to establish legislation, tax regimes, education, etc. within the scope of such areas. All these manifestations of power, in the hands of foreigners and even nationals, constituted as authorities born outside the imperium of our Constitution, are a denial of the powers that only the sovereign, original or constituent power can grant. Therefore, the content of the articles of the Constitution, reformed by Legislative Decrees 236-2012 and 9-2013 are null and void, because its content or object of reform is impossible to be the result of a constituted power, whether of a Legislative, Judicial or Executive nature. Regarding the case under study, the Supreme Court of Justice makes clear the difference between the normal delegation of power made by the Constituent in the constituted powers, which is also a result of the normal democratic exercise by representation, and what has occurred in the case of the creation of the employment and economic development zones, because here what has operated is a supplanting of the sovereign power by those who were authorities in office. 6.4. Judicial provisions that guarantee legal certainty and the protection of the interests of natural and legal persons that have been granted ZEDEs.With all of the above, it is evident that from the beginning there has been an atmosphere contrary to the initiative to create autonomous zones (RED or ZEDE) that violate popular sovereignty because they violate two substantial matters or primordial elements of any State, such as the territory and the form of government. Since 2010, different authorities, contrary to the provisions of our Constitution, have promoted economic development models that can be compared to neocolonial models now known as extractivist enclaves. Also, so far it has been emphasized that all regulations related to the establishment of the Employment and Economic Development Zones or ZEDEs are unconstitutional in origin and are null and void retroactively, that is, with ex tunc effects. However, this high court of justice is aware that there are at least three investments in the country (Próspera, Morazán and Orquídea)[45] that in spite of everything must be protected in their rights and legitimate interests, that is, legal security that guarantees their investments and their contributions to the national economy. Of course, as long as they have been constituted without altering or contravening the legal order already established prior to the regulation that is declared unconstitutional in origin and that their initial capital as business or business are also lawful. Likewise, their settlement and origin do not affect the rights of third parties, especially if they are tribal or indigenous communities, or do not affect the environment and other fundamental rights. By virtue of which, it is important to expressly and directly

establish that the nullity of the regulations that create the ZEDEs, leaves in the case of such corporations or commercial companies, the legal regulatory framework that is general to all investments, corporations and commercial companies subsisting, leaving all of them under its legal protection. Therefore, the fact that the unconstitutionality is declared with ex tunc effects does not mean that the companies and commercial enterprises that pretended to be ZEDEs fall into a legal void, but rather that their incorporation and operation is understood to be included in the normal or regular regulations that currently and previously govern commercial, tariff, tax, financial, etc. matters. 6.5. Some other grounds and arguments that support the unconstitutionality of the Legislative Decrees of constitutional reform, numbers 236-2012 and 9-2013 and of the Organic Law of the Employment and Economic Development Zones (ZEDE) enacted by Legislative Decree No. 120-2013. To complement everything so far stated by this judgment, it should be noted that it is possible to dictate the unconstitutionality of articles contained in the Constitution of the Republic. What seems a contradiction is not, if it is considered that there is a sovereign hierarchy of the Constituent Power over the constituted powers, so that the latter are forbidden the points or elements that are unavailable by express and clear disposition of the Sovereign. Therefore, in these cases (article 374) the original text of the Constitution and its meaning is intangible and therefore unalterable. It is an unavoidable obligation to always restore the original text in the face of any reform or act that seeks to change it. In the case at hand, Articles 294, 303 and 329 reformed through the ratification of Legislative Decree No. 236-2012 with the enactment of Legislative Decree No. 9-2013, violate the sovereign will of the Constituent and therefore must be expelled from the Constitution of the Republic, in order to preserve its original meaning. We begin with Article 329 of the Constitution, which in its amended version and contrary to the provisions of Article 374 already mentioned many times, provides: "Article 329. The State promotes economic and social development, which must be subject to strategic planning. The law regulates the planning system and process with the participation of the powers of the State and the duly represented political, economic and social organizations. To carry out the function of promoting economic and social development and complement the actions of the other agents of this development, the State, with a medium and long term vision, must design, in concert with the Honduran society, a planning containing the precise objectives and the means and mechanisms to achieve them. The medium and long term development plans must include strategic policies and programs that guarantee the continuity of their execution from their conception and approval to their conclusion. The nation's plan, the comprehensive development plans and the programs incorporated therein are mandatory for successive governments. EMPLOYMENT AND DEVELOPMENT ZONES ECONOMIC. The State may establish zones of the country subject to special regimes, which have legal personality, are subject to a special tax regime, may contract obligations as long as they do not require the guarantee or joint and several guarantee of the State, enter into contracts until the fulfillment of their objectives in time and

during several governments and enjoy functional and administrative autonomy which must include the functions, faculties and obligations that the Constitution and the laws confer to the municipalities. The creation of an area subject to a special regime is an exclusive attribution of the National Congress, by qualified majority, after a plebiscite approved by (2/3) two thirds, in accordance with the provisions of Article 5 of the Constitution. This requirement is not necessary for special regimes created in areas with low population density. Low population density zones are understood as those where the number of permanent inhabitants per square kilometer is lower than the average for rural zones calculated by the National Institute of Statistics (INE), which must issue the corresponding opinion. The National Congress, when approving the creation of zones subject to special regimes, must guarantee that the sentence issued by the International Court of Justice of the Hague on September 11, 1992 and the provisions of articles 10, 11, 12, 13, 15 and 19 of the Constitution of the Republic regarding the territory are respected. These zones are subject to national legislation in all matters related to sovereignty, application of justice, national defense, foreign relations, electoral matters, issuance of identity documents and passports. The Gulf of Fonseca must be subject to a special regime in accordance with International Law, as established in Article 10 of the Constitution and the present article; the Honduran coasts of the Gulf and the Caribbean Sea are subject to the same constitutional provisions. For the creation and operation of these zones, the National Congress must approve an Organic Law, which can only be modified, reformed, interpreted or repealed by two thirds in favor of the members of the National Congress; it is also necessary to hold a referendum or plebiscite of the people who inhabit the zone subject to the special regime when its population exceeds one hundred thousand inhabitants. The Organic Law must expressly establish the applicable regulations. The authorities of the zones subject to special regimes have the obligation to adopt the best national and international practices to guarantee the existence and permanence of the adequate social, economic and legal environment to be competitive at an international level. For the solution of conflicts within the zones of the country subject to special regimes, the Judicial Power through the Council of the Judiciary must create courts with exclusive and autonomous jurisdiction over them. The judges of the zones subject to special jurisdiction shall be proposed by the special zones to the Council of the Judiciary who shall appoint them after a competition from a list proposed by a special commission composed in the manner indicated by the Organic Law of these regimes. The law may establish the submission to compulsory arbitration for the solution of conflicts of natural or juridical persons living within the areas included in these regimes for certain matters. The Courts of the areas subject to a special legal regime may adopt legal systems or traditions from other parts of the world as long as they guarantee the same or better constitutional principles for the protection of human rights, subject to the approval of the National Congress". Likewise, the version, which maintains the original meaning established by the Constituent, provides: "Article 329. The State promotes the integral economic and social development, which shall be subject to

strategic planning. The law shall regulate the planning system and process with the participation of the powers of the State and the duly represented political, economic and social organizations. In order to carry out the function of promoting economic and social development and to complement the actions of the other agents of this development, the State, with a medium and long term vision, shall design, in concert with Honduran society, a plan containing the precise objectives and the means and mechanisms to achieve them. The long and medium term development plans shall include strategic policies and programs that guarantee the continuity of their execution from their conception and approval until their conclusion. The National Plan, the comprehensive development plans and the programs incorporated therein shall be mandatory for successive governments."[46] . As can be seen, the constitutional reform now accused of being unconstitutional and contrary to the sovereign will of the people, consisted in adding to the country's economic development plan, that which corresponds to the Employment and Economic Development Zones, better known as ZEDEs. The Supreme Court of Justice, by means of the present sentence declares that said reform is unconstitutional in origin, due to the fact that said unconstitutional reform is only an appearance, because in essence, the ZEDEs have the purpose of allowing that in our territory, self-governed companies and enterprises with their own rules and authorities be installed and operate. In such a way that they become pseudo-states apart from the Honduran State. It is considered that, although the reformed text provides for the submission of the ZEDEs to the sovereignty and rule of the Constitution and the laws of the Republic of Honduras, all this is rendered useless insofar as it provides, in a manner not expressly recognized, that such zones regulate themselves through their own governmental and judicial bodies and apply their own rules and judicial systems. One element of particular interest is the impact of the ZEDES on national sovereignty by limiting the prerogative of the Supreme Court of Justice (Council of the Judiciary) to freely appoint judges to judge and enforce judgments within the territory of the ZEDEs, which must be subject to the list of candidates proposed by the authorities of said zones.[47] On the other hand, empowering the owners of the ZEDEs to structure a special jurisdiction with courts and tribunals created by themselves, who, in addition, must apply their imposed rules, oriented to the purposes of such zones. [48] Thus, the jurisdictional power and, in particular, the punitive or sanctioning power of the Honduran State is, by virtue of the criticized constitutional reform, transferred to the control of the owners of the ZEDEs. Moreover, with respect to the application of justice, the reform that is reproached as unconstitutional provides that the rules governing such zones must be interpreted under the principle that the reformed text handles, that is, the primacy of the principle of competitiveness, since this is the reason and basis for the reform and creation of the ZEDEs.[49] This subordinates the pro persona principle set forth in Article 59 of the Constitution to the said principle of competitiveness. It also contravenes the balance that should exist between capital and labor in accordance with Article 135 of our Constitution. In fact, the reform is questionable in the light of our Constitution, since what proposed by the

deputies with the creation of the ZEDES is that their authorities become obliged to adopt "the best national and international practices", but not to guarantee, protect and respect the fundamental or human rights of the inhabitants of such territories, but "to guarantee the existence and permanence of the adequate economic and legal social environment to be competitive at an international level". As evidence of how pernicious is the introduction of the ZEDES and how unconstitutional is the reform of Article 329 of the Constitution under scrutiny, is that this reform raises to constitutional rank, the abuse of forcing natural or legal persons living within the areas covered by these regimes to compulsorily submit to arbitration for the settlement of disputes. And for further evidence of unconstitutionality, the reform authorizes the adoption within the ZEDEs of legal systems foreign to ours, contradicting and leaving completely out of place everything related to the submission of sovereignty, Constitution and Honduran laws. In this regard, Honduras has all the necessary elements to respect, guarantee and protect the human rights of its inhabitants, so it does not need illusory norms that promise better conditions in this regard. 50] On the other hand, when human rights violations occur, the authorities that own the ZEDEs could not be held responsible for them, but it will be Honduras that must respond before the international protection systems. As can be seen then, in practice, the ZEDEs are not only a physical cession of our territory, but also a cession of governmental, legislative and judicial control, that is, it is a veiled form of ceding our territory.[51] Therefore, the constitutional reform of Article 329 directly violates the irreformable articles related to the form of government and the national territory, since as such, it is understood that the Honduran State is made up of three complementary powers that are not subordinate to each other or to anyone else, except the sovereign power that resides in the people. This reform even proposes foreign legal traditions that are not part of our idiosyncrasy. Authorities that will impose in these territories special norms different from the rest of the country, contravening the exercise of imperium[52] over these regions. If the Honduran authorities cannot enforce their laws and their own Constitution; and, if their authorities do not have "power" in the territorial scope of the ZEDEs, then there is no exercise of sovereignty, manifested through the concept of representative democracy. In this sense, although the reform affirms it, it is not possible to compare the municipal government of the municipalities to the government of the ZEDEs. To begin with, the municipal government is born of the popular will expressed in the ballot box, which is not possible in the territories of the ZEDEs, because they are areas dominated and governed by the natural persons and companies that invest capital. Thus, in the territories of the ZEDEs democracy is eliminated as a factor of power, constituting an autonomous territory with respect to the State of Honduras, which contradicts the State of Honduras as a concept; and a way to deny the constitutional precept contained in Article 4, which mandates that the form of government is democratic, republican and representative. It should also not be overlooked that the municipal territory is not a negation of the principle of territorial integrity or unity, as it is the case with the territory occupied by the ZEDEs, where, when delving deeper into the principle of

territorial integrity, it is imperative to have it as a sine qua non condition of sovereignty. It is also relevant in relation to the principle of self-determination of peoples. In addition to the application of justice, another manifestation of sovereignty or imperium, characteristic of every State, is the imposition and collection of taxes; but, this reformed article is the absolute and total renunciation of such elementary characteristic. Therefore, this resignation to the exercise of power, provided by the reform under scrutiny, is undoubtedly unconstitutional because it contravenes a prerogative that is consubstantial to the State power, which must be carried out in the only way that the Sovereign has provided. Continuing with the examination of constitutionality, the reformed article 294 literally provides: "article 294. the national territory shall be divided into departments. their creation and limits shall be decreed by the National Congress. The departments shall be divided into autonomous municipalities administered by corporations elected by the people, in accordance with the law. Without prejudice to the provisions of the two preceding paragraphs, the National Congress may create zones subject to special regimes in accordance with article 329 of eta Constitution." It turns out that the unconstitutionality of this article derives from the very one that concerns the reformed article 329, since it refers directly to the article that was already commented. The same happens with the unconstitutionally reformed article 303, which literally provides: "Article 303. The power to impart justice emanates from the people and is imparted free of charge in the name of the State, by independent magistrates and judges, subject only to the Constitution and the laws. The Judicial Branch is composed of a Supreme Court of Justice, courts of appeals, courts of law, courts with exclusive jurisdiction in areas of the country subject to special regimes created by the Constitution of the Republic and other dependencies established by law. In no trial may there be more than two instances; the judge or magistrate who has exercised jurisdiction in one of them may not hear in the other, nor in an extraordinary appeal in the same matter, without incurring liability. It should be added that, although this article intends to establish that the judicial authorities appointed to exercise jurisdiction in the ZEDEs belong to the Judicial Power of Honduras, it should be noted that their membership is completely formal, since the exercise of power by the Judiciary Council or the Supreme Court of Justice, as previously established, is limited to the proposal made by the investors who own the ZEDEs. Likewise, our legal system will be inapplicable in such territories, just as our judicial systems or legal traditions will be inapplicable to foreigners implementing the ZEDEs. For all the aforementioned reasons, the amendment to constitutional articles 294, 303 and 329 contained in Legislative Decrees numbers 236-2012 and 9-2013 is unconstitutional by origin. Consequently, the Organic Law of Employment and Economic Development Zones (ZEDE), enacted by Legislative Decree No. 120-2013, which was repealed by Legislative Decree No. 33-2022, is also unconstitutional in origin, which in its preamble states: "WHEREAS: The Constitution of Honduras, in force since 1982, established that Honduras is a State of Law, free, sovereign and independent, whose form of government is republican, democratic and representative. That the power or sovereignty

corresponds only to the people, which shall be exercised in a representative manner and by the free decision of the Honduran people, by three (3) powers: Executive, Legislative and Judicial throughout the national territory. And, that no person, group or other nation may supplant popular sovereignty, nor usurp the powers of the State. WHEREAS: The constituent power is configured as an original power, creator of a new order, a previous power, which in the exercise of its sovereign powers organizes and establishes the attributions, competences, powers, scope and limits of the three powers of the State or constituted powers. These (the constituted powers or powers of the State) which are a derived power, not an original power, acting as a delegate of that (of the constituent power), is a power subordinated to the constitutional legality (to the Constitution). WHEREAS: The Constitution of the Republic imposes limits to the constituted powers or powers of the State. These limits are called formal and material. Formal limits are deduced from the establishment of the constitutional reform process and the submission of ordinary or secondary laws to the Constitution of the Republic, such as this Organic Law of the Employment and Economic Development Zones (ZEDE), since the Constitution itself establishes the formal or procedural requirements that the Legislative Power must comply with or observe to be able to reform the Constitution of the Republic and to be able to approve ordinary or secondary laws such as the Organic Law of the Employment and Economic Development Zones (ZEDE). As well as the material limits are observed when the constituent power establishes the intangibility clauses or stony clauses, because they defend values, principles and contents or specific subjects that the same constituent power decided to protect, prohibiting the constituted power or powers of the State to reform or modify them. Among these specific subjects or matters, which the constituent configured as intangible or non-reformable articles are the form of government and the national territory, established in article 374 of the Constitution. This means that all those articles or precepts of the Constitution that contain these protected subjects or matters are called intangible or non-reformable articles, better known as stone articles. That all ordinary or secondary laws, such as the Organic Law of the Employment and Economic Development Zones (ZEDE) must be subject to the rule of the Constitution of the Republic. WHEREAS: That on June 12, 2013 the Legislative Power approved Organic Law of the Employment and Economic Development Zones (ZEDE), through DECREE No. 120-2013 published in the Official Gazette "La Gaceta" on September 6, 2013, under number 33,222. Said Organic Law that develops the conformation of the Employment and Economic Development Zones (ZEDE), from a constitutional reform that created and configured them, was thereby violated, altering, modifying and injuring the national territory, the sovereignty and independence of the Republic, supplanting the popular sovereignty and usurping the three (3) powers of the state through the configuration of exclusive institutions for private zones, private companies and to grant privileges to a group of people to the detriment of all Hondurans, creating this regime of ZEDE and institutions with functions, competences, attributions and powers that constitutionally are proper or exclusive of the Executive and Legislative powers. Also,

altering and modifying in these zones (ZEDE) the system of administration of justice, allowing it to be supplanted by other judicial or jurisdictional systems of other countries. Power, which is only proper and exclusive in Honduras of the Judiciary throughout the national territory. In short, also altering, violating and seriously modifying our form of government. CONSIDERING: That the constituent established as stony or unreformable these specific issues of the form of government and the national territory, among others, with the objective that the authorities respect, protect and defend these issues, the form of government and the national territory, in the face of situations such as these, that is to say, of these Zones of Employment and Economic Development (ZEDE), of an invasion, of ceding, selling or giving away the national territory or, of altering, or supplanting with any other name, or figure, the form of government that is established in Articles 1, 2 and 4 among other articles of the Constitution of the Republic, as to which the power, which is the sovereign Honduran people, shall be exercised throughout the national territory by the three (3) established powers of the State. WHEREAS: That the Legislative Power of the Republic, far from complying with constitutional legality, respecting the Constitution and the prohibitions to the powers by approving and ratifying through constitutional reform the creation of these Employment and Economic Development Zones (ZEDE) and incorporating them to the constitutional text and through the approval of the Organic Law of the Employment and Economic Development Zones (ZEDE) as well as any other regulations that exist and are derived from it, are null and void, lacking legal validity, because their creation was made outside the Constitution, without powers to create this type of ordinary or secondary laws and violating or exceeding the formal and material limits imposed by the constituent to the legislator and the constituted powers or powers of the State; having a strict prohibition in Article 374 of the Constitution of the Republic, not to reform Articles 294, 303, 304 and 329 and to approve said Organic Law of the Zones of Employment and Economic Development (ZEDE), it trespassed and violated the formal, procedural and material limits, of content, such as the form of government and the national territory. Likewise, as in the hierarchy of law, the constitutional reform or reform law, the Organic Law or secondary or ordinary law have a lower rank of law than the original Constitution, especially in the face of the intangibility clauses or stone articles, the Legislative Power of previous periods, by trespassing and violating the limits mentioned in the preceding paragraph, produced to the constitutional reform and to the Organic Law of the Employment and Economic Development Zones (ZEDE) a nullity of constitutional origin, for which reason its approval and ratification lacks legal validity, since it is outside the Constitution of the Republic. Consequently, the Organic Law of the Employment and Economic Development Zones (ZEDE) and all those legal norms derived from the constitutional reform and said organic law, such as other laws, regulations, resolutions, as well as any provision, contracts, concessions or any regulation and/or decision, etc., related to the Employment and Economic Development Zones (ZEDE) lack legal validity. Since no authority has the authority to create this type of decision or

secondary laws, violating or going beyond the formal and material limits imposed by the constituent to the powers of the State, which protect our national territory and form of government, as well as material values that transcend the formal, such as sovereignty and independence of the Honduran people. Because the constitutional legality responds to values and principles that the constituent power protects through these intangible or stony clauses, to maintain the constitutional order, sovereignty and the democratic system. CONSIDERING: That in accordance with articles 321, 323 and 374 of the Constitution, this National Congress 2022-2026 does not recognize any sentence, ruling or resolution of the Constitutional Chamber of the Supreme Court of Justice and of the Supreme Court of Justice in full in favor of these Employment and Economic Development Zones (ZEDE). Since, it is widely known that any sentence or any judicial decision that violates the articles of the Constitution lacks legal validity, since it has been made clear that the constituted powers, among them, the Judicial Power does not have the power to reform (via jurisprudence), modify or alter and violate the articles of our Constitution (article 374 of the Constitution). Since the constituent power imposed limits to the three branches of government, this includes the Judiciary. Limits that the Constitutional Chamber of the Supreme Court of Justice and the same Supreme Court of Justice when issuing sentences and judicial decisions in favor of these Employment and Economic Development Zones (ZEDE) also violated them in terms of the prohibition to reform, by any other means, or in any way and in any case, the protected, stony or unreformable articles, which affect, modify or alter the form of government and the national territory of Honduras, article 374. WHEREAS: That the revocation of any provision, contract, concession etc., linked, issued or dictated in favor of the Employment and Economic Development Zones (ZEDE) shall not generate indemnifications of any type, to any natural person, to any company and to any investor. Since no natural person, company or investor has the right to claim on an illicit business, coming from this excessive violation to our Constitution, to the sovereignty and dignity of all Hondurans. Even though Honduras endorses the principles and practices of international law, Article 15 of the Constitution, no international treaty or convention is above the Constitution, Article 17 of the Constitution, nor is any Organic Law above the Constitution, Article 320 of the Constitution. The Constitution is categorical in that, in order for a treaty or international agreement that affects a constitutional provision, even worse, affects and produces such a serious violation, as it is, in this case, the stony, intangible or irreformable articles and thus the treaty becomes part of the internal law of Honduras, that is to say, that it is mandatory for the State of Honduras, One of them is that the international treaty must be approved by the procedure that governs the constitutional reform and simultaneously the constitutional article affected by the treaty must be modified in the same sense, before it is ratified by the State of Honduras, article 17 of the Constitution. However, everything was done with constitutional illegality or outside the provisions of the Constitution. Since, on the one hand, the procedure to modify the affected constitutional article was not carried out, which are the stone articles, these,

according to the Constitution, can only be modified by means of a plebiscite or referendum or a National Constituent Assembly, and this was not done. Another is to have the constitutional power to approve and ratify said constitutional reform; which was not done, due to the constitutional prohibition to the powers of the State to modify or alter the intangible or stony articles , article 374 of the Constitution. On the contrary, the Legislative Power of previous periods, when approving and ratifying the creation of these Zones of Employment and Economic Development (ZEDE) and incorporating them to the Constitution and approving this Organic Law of the Zones of Employment and Economic Development (ZEDE), violated the formal (procedural) and material (of content, which is serious) limits, as it is, the form of government and the national territory. WHEREAS: That due to this recognition made by the Constitution regarding the separation and limits imposed by the constituent power to the constituted power or powers of the State, where it is stated that the constitutional laws or reform laws or constitutional reforms, this Organic Law of the Employment and Economic Development Zones (ZEDE) as a secondary or ordinary law are under clear and precise limits (constitutional reform procedure and the intangibility clauses) and, that these are not on the same level of the original Constitution, it is considered that it is not only an attribution, faculty or power of the Legislative Power, but also that it becomes an obligation for this power of the State in accordance with its constitutional mandate, articles 205.1, 323, 374 of the Constitution, to repeal the Organic Law of the Employment and Economic Development Zones (ZEDE) because it violates the formal or material limits established in the Constitution, such as the intangibility, irreformable or stony clauses. WHEREAS: That this National Congress 2022-2026, will not allow the form of government and the national territory of Honduras to be violated, affected, injured, modified or altered, nor will it allow the sovereignty of the people to be violated, through this Organic Law of the Employment and Economic Development Zones (ZEDE) or ordinary or secondary law, which trespassed the limits imposed by the constituent power in the Constitution to the constituted powers or powers of the State; since, "to proceed otherwise would mean to destroy the logic of the constitutional State, granting a legally limited power, .... (...) ... the attributions of the sovereign power.". Incidentally, after analyzing the above-transcribed recitative part of Legislative Decree No. 33-2022, this high court of justice declares that it endorses all the concepts set forth therein, considering that they accompany and complement the arguments that support the present judgment. 6.6. Change of jurisprudence of the Supreme Court of Justice. The Employment and Economic Development Zones or ZEDEs have as a precedent what at the time was called the constitutional statute of the SPECIAL DEVELOPMENT REGIONS (RED), better known as "model cities". The then "model cities" were born with the constitutional reform to Articles 304 and 329 of the Constitution of the Republic that were enacted by Legislative Decree No. 283-2010 published in La Gaceta number 32,443 of February fifteenth, two thousand eleven, which was later ratified by Legislative Decree number 4-2011, published in La Gaceta number 32,460 of March

seventh, two thousand eleven. Likewise, against Legislative Decree number 123-2011, published in La Gaceta number 32,601 of August twenty-third, two thousand eleven, which contained the Constitutional Statute of the Special Development Regions.[53] All the previous Legislative Decrees that gave birth to the "model cities", were declared unconstitutional by the plenary of the Supreme Court of Justice, through sentence RI- CSJ-0769-2011 issued on October seventeenth, two thousand twelve.[54] It is worth noting that the declaration of unconstitutionality was reason for the National Congress, in retaliation, to depose four magistrates of the Constitutional Chamber (2009-2016).[55] It is also noteworthy that the State of Honduras was recently condemned by the Inter-American Court of Human Rights due to the dismissal of the magistrates. 56] Again, guarantees of unconstitutionality were presented against the now ZEDEs, but this time there was no opposition from the Constitutional Chamber (2009-2016), formed by new magistrates, elected by the National Congress to replace those who declared the unconstitutionality of the model cities. The rulings that declared the unconstitutionalities are: a) RI-0030-2014 dated May twenty-six, two thousand fourteen; b) RI-0174-2014 dated August twelve, two thousand fourteen; c) RI-0179-2014 dated June ten, two thousand fourteen; and, d) RI-0424-2014 issued on April twenty-nine, two thousand fourteen. It is worth mentioning that all these rulings were issued by unanimous vote.[57] The Supreme Court of Justice then proceeds to refer to these jurisprudential precedents issued by the Constitutional Chamber (2009-2016). To begin with, it must be pointed out that none of these rulings are in accordance with the imperative and unavoidable provisions of Articles 374 and 375 of the Constitution, both because of all that has been previously stated and the comments detailed below. 6.6.1. The Constitutional Chamber (2009-2016) justifies sentence RI-0030-2014 stating that the creation of the Employment and Economic Development Zones obeys to: "... alleviate the precarious economic conditions in which the majority of the Honduran people are struggling, with its creation our legislator laudably intends that such zones be true poles of development by attracting and investing both foreign and domestic capital in order to provide a good part of our unemployed population, the opportunity to have a decent job and thus improve their living conditions". He then points out that he does not share the thesis that the constitutional reforms submitted to scrutiny, are in violation of unreformable articles, in relation to the territory he explains it in the paragraph transcribed below and which is impossible to understand, as follows[58]: "...we understand that land tenure is defined as an important part of the social, political and economic structures; which has a multidimensional character, as social, technical, economic, institutional, legal and political aspects come into play, which undoubtedly must be taken into account; In this sense, we also understand that the rules on land tenure define how land ownership rights can be assigned within society, define how access to the rights to use, control and transfer land is granted, as well as the relevant responsibilities and limitations; all of which aspects are based on an eminent dominion concept by the State, as an essential attribute of the State;....". Then, he points out that he

does not consider that the amendment to article 329 of the Constitution is unconstitutional, since its text provides that the National Congress, when approving the creation of the zones subject to special regimes, must guarantee the provisions of: "... articles 10, 11, 12, 13, 15 and 19 of the Constitution of the Republic referring to the territory. These zones are subject to national legislation in all matters related to sovereignty, application of justice, national defense, foreign relations, electoral matters, issuance of identity documents and passports". So this Court Supreme Court of Justice (2023-2030) when examining the previous decision issued by the Constitutional Chamber (2009-2016), takes into account in its analysis that the unconstitutionality reproached then, was rejected at that time through a very simplistic argument, because it refuted the reproach limiting itself to indicate that the questioned text is constitutional because the same questioned text says so. The analysis of the Constitutional Chamber (2009-2016), is not legally and constitutionally correct, instead of remaining in the literal exposition of the regulation under scrutiny, it should have transcended and overcome the merely formal; because in fact, had it studied the material effects of the reformed text, it would have realized that, although said text expressly consigns its respect to the Constitution, sovereignty, national defense, etc., this is not true, as it was already extensively analyzed with this judgment. That is to say, the fact that a norm states that it is in accordance with the provisions of the Constitution of the Republic, does not make it constitutional per se. In another aside, the Constitutional Chamber (2009-2016) in the judgment issued in 2014, takes as justified the special tax regime[59] provided by the constitutional reform of Article 329, literally stating the following[60]:"... such regulation is sufficiently clear as to the fiscal and financial regime governing those special zones, a situation that is not contrary to our fundamental norm, since we understand that such special fiscal regime is granted by the derivative power that the Honduran people have deposited in the National Congress of the Republic, more than enough reason to estimate that the unconstitutionality invoked by the appellant does not occur." The Constitutional Chamber (2009-2016) in that judgement, made the mistake (or abuse) of considering that the derived power or National Congress, is in a superior hierarchical situation in relation to the Sovereign, who holds the original power. It did not take into account that one of the most rigorous manifestations of power is precisely the power to impose tax burdens; and that this is one of the most significant elements of sovereignty. Therefore, such provision is unconstitutional because it attempts against the sense of sovereign belonging of a territory, as a physical element where authority and control is exercised, imposing, among others, the obligation to pay taxes. Subsequently, the Constitutional Chamber (2009-2016) in recital 13 of the judgment issued in 2014, ruled that the reform of the aforementioned articles, does not infringe on national sovereignty by virtue of what is transcribed below: "... it is pertinent to point out that political power in the framework of a unified State, is exercised exclusively in a political community in the framework of a territory. Thus we have that the State is organized in a series of institutions or specialized organs to exercise such power, which entails coercion, which is derived from

the unified and superior political power of the State". From this rambling and unintelligible argument, it goes on to point out the following, also worded in an equally incomprehensible manner; which in any case, does not suffice to justify the fact that the National Congress supplanted in the case under study, the power of the original Constituent: "... the sovereignty of a State in the international sphere derives from its independence, even though in an increasingly globalized and interdependent world, defining the real scope of independence is more difficult every day; but we must not forget that the very definition of State is intimately linked to juridical independence; in its internal dimension, it must be specified who exercises that sovereignty, a situation that has been the subject of debate over the last two centuries, but with the birth of democratic states, the idea of internal sovereignty has been built on the basis that only the people as a whole expressed the will of the nation, in other words, by subordinating the legitimacy of state sovereignty to the predominance of social sovereignty, the latter has been imposed as a central element of reference, legally such situation in our case has resulted in the approval by our constituents of the Constitution of the Republic, from which the legitimacy of the constituted powers is derived and with it the concept of constituent power has been built." Finally, the Constitutional Chamber of that time, justifies the power to reform the Constitution that the Legislative Power has; however, it purposely eludes the existence of norms that are irreformable or stony. In the course of the present judgment, arguments have been made that demonstrate that the content of the reforms under study is unconstitutional, because it contravenes the protected content of article 374 of the Constitution. In recital 14 of the judgment issued in 2014, the Constitutional Chamber (2009-2016) dismissed the ground of unconstitutionality through which the violation of Article 374 of the Constitution of the Republic was denounced, for violating the form of government. At that time the Constitutional Chamber merely argued the following: "... this Chamber considers that having each power of the State defined the attributions that correspond to it, as well as having analyzed the challenged constitutional reforms and the law that governs the ZEDE, we do not find that the same are opposed to the form of government established by our magna carta since precisely the referred zones have as hierarchical regulations applicable in first place the Constitution of the Republic, in second place the international treaties celebrated by the State of Honduras as far as they are applicable; thirdly, the Organic Law of the Employment and Economic Development Zones (ZEDE); fourthly, the laws indicated in the final provisions of the referred law and finally, the internal regulations emanating from the authorities of the referred zones." With the above argumentation, the Constitutional Chamber (2009-2016), flatly denies that a constitutional reform can contradict the Constitution itself, which is possible, as already explained in this judgment. The Constitutional Chamber (2009-2016), failed at that time, to question everything related to the autonomy that the National Congress of that time, granted to investors over the territories constituted in ZEDEs, allowing them to create and apply special legal norms; and to judge the inhabitants of such zones in accordance, not to Honduran laws, but to their own laws,

including foreign ones; and, not even according to our judicial system, but ad hoc systems, administered by judges appointed by our Supreme Court of Justice, but chosen by the governments of the ZEDEs. The Constitutional Chamber (2009-2016) formed by the new magistrates, precisely the same ones who replaced those who were dismissed for having declared the unconstitutionality of the "model cities", referred to the ground of unconstitutionality consisting of the violation of norms of an unreformable nature in a restrictive sense[61] , stating that, upon confronting the objective of the constitutional reforms, it observes that the challenged organic law and which regulates the referred zones, establishes in its article 9 the following: "All persons in the Employment and Economic Development Zones (ZEDE), are equal in rights and duties, without discrimination of any nature, except for the provisions indicated in the Constitution of the Republic or in the present Organic Law that reserve to Hondurans or residents in the Employment and Economic Development Zones (ZEDE)." Therefore, in light of the foregoing, said Chamber (2009-2016) dismissed the reproach of violation of the right to equality to which the citizens of this country are entitled with the creation of the referred development zones. Subsequently, the Constitutional Chamber (2009-2016) in the sentence pronounced in 2014, in relation to the freedom of locomotion, ruled that there is no violation of Article 81 of the Constitution of the Republic. It explained this by pointing out that said right is contained in Article 13 of the Universal Declaration of Human Rights, referring to four clearly differentiated and complementary rights, such as: "1) The right to free movement of nationals of a given State within its State and of foreigners who are legally in the State. 2) The right of nationals of a State and aliens lawfully present therein to choose their residence within the State. 3) The right to leave freely any State, including the State of which the citizen is a national. 4) The right to return to a State. This last right includes the right of return for nationals and the right to re-immigration for resident aliens." Likewise, said Chamber (2009-2016) explained that: "The formulation of the general principle of free movement of persons has two distinct aspects: a) The state or right to reside and move within the borders of a given State; and, b) The international one that refers to the right to leave a State of which one is not a national, the right to return to it, or the right to seek asylum. To then point out that when contrasting the right to free movement and residence, analyzed in the light of the Organic Law of the Zones of Employment and Economic Development (ZEDE), it decides that said law does not restrict the constitutional right mentioned because when a citizen voluntarily decides to live in a ZEDE, it is unquestionable that for him, specific conditions and limits are established, which are not given with respect to those citizens who are outside the referred zones; And that such limits or restrictions operate both for residents and non-residents, subject to the Constitution and the laws in force, so that there is no violation of the aforementioned guarantee.[62] Upon analyzing the reason for rejection described ut supra, it is clear that it is not a response that satisfies the duty of clear and sufficient motivation, since what the petitioner reproaches is the inaccessibility of non-residents to the ZEDEs, pointing out that it

is like entering another country, since such zones are subject to other legislation and authorities different from those of the rest of the country. This question was not addressed by this high court of justice at that time, that is to say, it did not give a timely response to the reproach. Also in that sentence, it was intended to respond to the claim that the creation of the ZEDEs violates Article 102 of the Constitution, which prohibits the expatriation or delivery of persons of Honduran nationality to the authorities of a foreign state. At that time, the Chamber (2009-2016), ruled that the arguments of the appellant were not acceptable, since the ZEDEs do not constitute a foreign state and that the territory occupied by the same cannot be considered as such, since it continues to be an inalienable part of the national territory. Upon analyzing the issue again, it is questioned that, on that occasion, this high court of justice did not provide a satisfactory answer to the problem , by answering the matter taking for granted an issue that raises more concerns and doubts than certainties and assurances. That is to say, it responds under the affirmation that the territory of the ZEDEs continues to be Honduran territory; but without addressing and placating the doubts that exist as to whether said territories are beyond mere formality under the real and material Honduran jurisdiction. The latter, as a question well founded in the concrete fact of the almost absolute autonomy ceded in favor of the investors, who as already exposed before, would have absolute freedom to legislate, appoint authorities, choose judges, impose foreign systems of judgment and finally judge those who are in said territories according to their own laws. 6.6.2. Ruling RI- 0174-2014, was issued by unanimous vote[63] dismissing the action of unconstitutionality. This judgment reproduces the content of judgment RI-0030-2014 previously stated, inserting it from recital 65 to recital 16, to reiterate at the end its decision and confirming its arguments.[64] 6.6.3. Ruling RI-0179- 2014 issued on June tenth, two thousand fourteen[65] , again reiterates the decision and arguments of Ruling RI-0030-2014, transcribing it as in the previous one. 6.7.4. Ruling RI-0424-2014 dated April twenty-ninth, two thousand fourteen was declared inadmissible after considering that the citizens Jorge Nelson Ávila Gutiérrez and Edwin Antonio Sandoval Lagos, acting in their personal capacity, did not comply with the provision established in numeral 5 of Article 79 of the Law on Constitutional Justice, which imposes on the appellant the obligation to clearly and precisely indicate the direct, personal and legitimate interest that motivates his action. Finally, the Supreme Court of Justice concludes by pointing out that the present judgment constitutes by itself a variation in the jurisprudential line that had been followed by this high court of justice with the previous judgments: RI-0030-2014, RI-0174-2014, RI-0179-2014 and RI-0424-2014. The argumentation that explains the jurisprudential change, is widely exposed in the part that bases the judgment of this sentence, having to repair especially in the imposing and inescapable character of article 375 constitutional in relation to article 374, having to be taken in that sense this sentence, as the reestablishment ex officio of the rule of our Constitution violated in its irreformable elements of territory and form of government, with the creation of the Employment and Development Zones or ZEDEs, through Legislative Decree no. 236-

2012, which was ratified by means of Decree No. 9-2013, both containing the reform to Articles 294, 303 and 329 of the Constitution of the Republic. DISPOSITIVE PART OR RULING THEREFORE: The Supreme Court of Justice, as final and definitive interpreter of the Constitution of the Republic, taking into account the opinion of the Public Ministry, with the MAJORITY VOTE of the honorable magistrates: Rebeca Lizette Ráquel Obando (President), Milton Danilo Jiménez Puerto, Mario Rolando Díaz Flores, Rubenia Esperanza Galeano Barralaga, Roy Pineda Castro, José Ricardo Pineda Medina, Felipe René Speer Laínez and Aída Patricia Martínez Linares; casting their individual vote the honorable magistrates: Gaudy Alejandra Bustillo Martínez, Anny Belinda Ochoa Medrano, Odalis Aleyda Nájera Medina, Nelson Danilo Mairena Franco, Walter Raúl Miranda Sabio, Marvin Rigoberto Espinal Pinel and Luis Alonso Discua Cerrato, on behalf of the State of Honduras and based on Articles 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 19, 184, 185 303, 304, 304, 308, 313 No. 5, 316 No. 1, 321, 323, 323, 324, 325, 326, 327, 329, 374, and 375 of the Constitution of the Republic; 1, 3 No. 3, 4, 5, 8, 74, 75, 76, 77, 78, 79, 89 92 of the Law on Constitutional Justice; and in order to maintain and reestablish the rule and supremacy of this Constitution, in relation to the form of government and the sovereignty exercised by the Honduran People over the absolute integrity of its territory, RULES: 1. Declaring BY IMPERATIVE AND INELUDIBLE MANDATE of Article 375 of the Constitution of the Republic of Honduras, the total and original or ex tunc unconstitutionality of Legislative Decree no. 236-2012 approved on January twenty-third, two thousand thirteen by the National Congress of the Republic, and ratified by Legislative Decree No. 9-2013, published in La Gaceta, Official Gazette of the Republic of Honduras No. 33,080, dated March twentieth, two thousand thirteen, which contains the amendment to Articles 294, 303 and 329 of the Constitution of the Republic, by which the creation of the EMPLOYMENT AND DEVELOPMENT ZONES (ZEDE) was authorized. It is hereby declared BY IMPERATIVE AND INELUDIBLE MANDATE of Article 375 of the Constitution of the Republic of Honduras, the total and original or ex tunc unconstitutionality of the following Legislative Decrees: a) Legislative Decree No. 120-2013 containing the Organic Law of the Zones of Employment and Economic Development (ZEDE), approved on June twelve, two thousand thirteen by the honorable National Congress of the Republic of Honduras and published in the Official Gazette La Gaceta No. 33,222 dated September six, 2013, by the National Congress of the Republic of Honduras and published in the Official Gazette No. 33,222 dated September six, 2013. 33,222 dated September six, two thousand thirteen; b) Legislative Decree No. 368-2013, published in La Gaceta, Diario Oficial de la República de Honduras No. 33,352 dated February eleven, two thousand fourteen, containing the ratification of the appointment of the members of the Committee for the Adoption of Best Practices (CAMP), which was appointed by Executive Agreement No. 003-2014, approved on January 14, 2014 and published in the Official Gazette La Gaceta No. 33,342 on January 30, 2014; c) Legislative Decree 153-2013, published in La Gaceta, Diario Oficial de la República de Honduras No. 33,194 dated August

five, two thousand thirteen, which contains the Program for the establishment of the Employment and Economic Development Zones (ZEDE); d) Legislative Decree No. 32-2021, published in La Gaceta, Diario Oficial de la República de Honduras No. 35,628 dated June fifteenth, two thousand twenty-one, related to the tax levied on sales of goods and services that ZEDEs or companies make in the Honduran market; e) the amendment of Legislative Decree No. 32-2021, approved through Legislative Decree No. 68-2021, published in La Gaceta, Official Gazette of the Republic of Honduras No. 68-2021, published in La Gaceta, Official Gazette of the Republic of Honduras No. 68-2021. 68-2021, published in La Gaceta, Diario Oficial de la República de Honduras No. 35,699 dated August twenty-sixth, two thousand twenty-one; f) and any other regulation or legal act related to the ZEDES that infringes on the inescapable power. Consequently: 1. For the maintenance of our national territory and the only form of government recognized by our country, the Constitution of the Republic in the version compatible with the perpetual, irreformable or stony subjects contained in article 374 of the Constitution is reestablished and maintained in force. By virtue of which, the reforms of Articles 294, 303 and 329 of the Constitution of the Republic, declared unconstitutional by means of the present judgment, are null and void; being reestablished said articles to the literal version that is in accordance with the constitutional order that was broken with the violation of provisions whose irreformable content is only available exclusively and solely to the Honduran People, as Constituent and original Power. 2. Articles 294, 303 and 329 of the Constitution of the Republic, are therefore as follows: 2.1. Article 294 of the Constitution provides[66]: "The national territory shall be divided into departments. Their creation and limits shall be decreed by the National Congress. The departments shall be divided into autonomous municipalities administered by corporations elected by the people in accordance with the law." 2.2. Article 303 of the Constitution provides[67]: "The power to impart justice emanates from the people and is imparted free of charge in the name of the State of Honduras, by independent magistrates and judges, subject only to the Constitution and the laws. The Judicial Branch is composed of a Supreme Court of Justice, the courts of appeals, the courts and other agencies established by law. The power to impart justice in electoral matters and citizen consultations corresponds to the Court of Electoral Justice, created in this Constitution in the cases and with the limitations established by law. In no trial shall there be more than two instances; the judge or magistrate who has exercised jurisdiction in one of them, may not hear in the other, nor in an extraordinary appeal in the same matter, without incurring liability. Neither may spouses and relatives within the fourth degree of consanguinity or second degree of affinity judge in the same case." 2.3. Article 329 of the Constitution provides[68]: "The State promotes comprehensive economic and social development, which shall be subject to strategic planning. The law shall regulate the planning system and process with the participation of the powers of the State and the duly represented political, economic and social organizations. In order to carry out the function of promoting economic and social development and to complement the actions of the other

agents of this development, the State, with a medium and long term vision, shall design, in concert with Honduran society, a plan containing the precise objectives and the means and mechanisms to achieve them. The long and medium term development plans shall include strategic policies and programs that guarantee the continuity of their execution from their conception and approval until their conclusion. The National Plan, the comprehensive development plans and the programs incorporated therein shall be mandatory for successive governments." 3. Any internal or international provision that has had the purpose of creating the SPECIAL DEVELOPMENT REGIONS (RED), better known as "model cities" and the EMPLOYMENT AND ECONOMIC DEVELOPMENT ZONES (ZEDEs), is hereby expelled from the national normative order. 4. The investment of the companies or enterprises constituted in good faith that were intended to become employment and economic development zones, as well as their property, acquired in good faith and in accordance with our laws and constitutional provisions, are declared protected. Said companies or enterprises are subject to the regulations and legal protection (security) in force at the time prior to the norms declared unconstitutional with this ruling. Therefore, said companies and enterprises have at their disposal, all the legislation and civil, mercantile, fiscal, administrative procedures, etc., to legalize and regularize their condition, in order to continue operating in Honduras under the economic regime constitutionally provided, as long as they have acted in good faith and their business and transactions are transparent and lawful in accordance with national and international legislation. That the present sentence number RI-CSJ-0738-2021, be notified and certified, declaring the Decrees declared unconstitutional null and void and expelled from the normative order of the Republic, as well as all legal regulations or of any other nature. 2. That the present sentence be published in La Gaceta, Official Gazette of the Republic of Honduras, for the consequent legal effects. Considering that to date the order issued by this high court of justice has not been complied with, the order issued in sentence RI- CSJ-0769-2011 is ratified, to publish it in La Gaceta, Official Gazette of the Republic of Honduras, for the subsequent legal effects. 4. The Clerk's Office is ordered to proceed to file the present proceedings. Drafted by permanent member Magistrate José Ricardo Pineda Medina. NOTIFY. SIGNATURES AND SEAL. REBECA LIZETTE RÁQUEL OBANDO, PRESIDENT MAGISTRATE.- GAUDY ALEJANDRA BUSTILLO MARTÍNEZ, MAGISTRATE.- MILTON DANILO La Gaceta JIMÉNEZ PUERTO, MAGISTRATE.- MARIO ROLANDO DÍAZ FLORES, MAGISTRATE.- ANNY BELINDA OCHOA MEDRANO, MAGISTRATE. ODALIS ALEYDA NÁJERA MEDINA, MAGISTRADA.- RUBENIA ESPERANZA GALEANO BARRALAGA, MAGISTRADA.- NELSON DANILO MAIRENA FRANCO, MAGISTRADO.- REBECA LIZETTE RÁQUEL OBANDO, FOR MAGISTRADO ROY PINEDA CASTRO. WALTER RAÚL MIRANDA SABIO, MAGISTRADO.- MARVIN RIGOBERTO ESPINAL PINEL, MAGISTRADO INTEGRANTE.- FELIPE RENÉ SPEER LAÍNEZ, MAGISTRADO INTEGRANTE.- JOSÉ RICARDO PINEDA MEDINA, MAGISTRADO INTEGRANTE.- LUIS ALONSO

DISCUA CERRATO, MAGISTRADO INTEGRANTE.- AIDA PATRICIA MARTINEZ LINARES, MAGISTRADA INTEGRANTE. SIGNATURE AND SEAL. IRIS BERNARDA CASTELLANOS ALVARADO, SECRETARY GENERAL". And to be sent to the NATIONAL CONGRESS OF THE REPUBLIC OF HONDURAS, this is hereby issued in the city of Tegucigalpa, municipality of the Central District, on the twentieth day of the month of November of the year two thousand twenty-four, certification of the Judgment issued by the Plenary of the Supreme Court of Justice dated September twentieth of the year two thousand twenty-four, in the Appeal of Unconstitutionality registered in this Court under number SCO-0738-2021. _____ CARLOS ALBERTO ALMENDAREZ CALIX SECRETARY CONSTITUTIONAL CHAMBER

[1]The draft judgment was voted by a majority of the honorable magistrates: Sonia Marlina Dubón Villeda (rapporteur and president of the Chamber), Wagner Vallecillo Paredes and Francisca Villela Zavala in favor of the declaration of unconstitutionality, the ruling being as follows: "RULING: 1. Declaring ADMISSABLE ex tunc or from the start, the action of unconstitutionality filed on reasonable grounds by Doctor FRANCISCO JOSÉ HERRERA ALVARADO, in his capacity as Rector of the National Autonomous University of Honduras, UNAH, against Article 34 of Legislative Decree No. 120-2013 which contains the Organic Law of the National Autonomous University of Honduras, UNAH, against Article 34 of Legislative Decree No. 120-2013 which contains the Organic Law of the National Autonomous University of Honduras, UNAH. 120-2013 which contains the Organic Law of the Employment and Economic Development Zones (ZEDE), approved on June twelve, two thousand thirteen by the honorable National Congress of the Republic of Honduras and published in the Official Gazette La Gaceta No. 33,222 dated September six, two thousand thirteen. Declaring EX OFFICIO AND BY IMPERIOUS AND INELUDIBLE MANDATE of Article 375 of the Constitution of the Republic of Honduras, the total unconstitutionality and of origin or ex tunc of Legislative Decree No. 236-2012 approved on January twenty-third of two thousand thirteen by the National Congress of the Republic, and ratified through Legislative Decree No. 9-2013, published in La Gaceta, Diario Oficial de la República de Honduras No. 33,080, dated January twenty-third of the year two thousand thirteen by the honorable National Congress of the Republic of Honduras, and ratified through Legislative Decree No. 9-2013, published in La Gaceta, Diario Oficial de la República de Honduras No. 33,080, dated September twenty-third of the year two thousand thirteen. 33,080, dated March twentieth, two thousand thirteen, which contains the amendment to Articles 294, 303 and 329 of the Constitution of the Republic, by which the creation of the ZONES OF EMPLOYMENT AND DEVELOPMENT (ZEDE) is authorized; and, the rest to complete the totality of Legislative Decree No. 120-2013, issued by the National Congress. 120-2013, issued by the National Congress of the Republic on June twelfth, two thousand thirteen and

published in La Gaceta, Diario Oficial de la República No. 33,222, dated September sixth, two thousand thirteen, which contains the ORGANIC LAW FOR THE IMPLEMENTATION OF EMPLOYMENT AND ECONOMIC DEVELOPMENT ZONES (ZEDE) and in application of Article 90 of the Law on Constitutional Justice. Consequently: SOLE: The text of the Constitution of the Republic in its version prior to the reforms of Articles 294, 303 and 329 of the Constitution of the Republic, which have had the purpose of creating the SPECIAL DEVELOPMENT REGIONS (red), better known as "model cities" and the EMPLOYMENT AND DEVELOPMENT ZONES (ZEDEs), is hereby reinstated. And ORDERED: 1. That pursuant to the lack of unanimity in the present matter, it be proceeded in accordance with the provisions of Article 316 of the Constitution of the Republic and Article 8 of the Law on Constitutional Justice, remitting the background information to the Presidency of this State Power for the consequent legal effects. Drafted by Magistrate Sonia Marlina Dubón Villeda. NOTIFY." The honorable magistrates Luis Fernando Padilla Castellanos and Isbela Bustillo Hernández dissented, who voted on the bill, the operative part of which reads as follows: "We are of the opinion that the Recourse of Unconstitutionality filed by Mr. Francisco José Herrera Alvarado, against Article 34 of the Organic Law of the Zones of Employment and Economic Development (ZEDE), Legislative Decree 120-2013, be declared without cause".

[2]Said norm was repealed on April twenty-sixth, two thousand twenty-two by Legislative Decree No. 33-2022.

[3] See Article 10.4 "Most favored nation treatment" of CAFTA-DR. See also Article 22 of the Organic Law of the ZEDE, "Natural and legal persons operating within the Employment and Economic Development Zones (ZEDE) shall receive treatment based on 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 other parties to an international trade agreement signed by the State of Honduras.

[Article 26. PACTA SUNT SERVANDA. Every treaty in force is binding upon the parties and must be performed by them in good faith".

[5] Vid. "Article 27. DOMESTIC LAW AND OBSERVANCE OF TREATIES. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to the provisions of article 46".

[6] Honduras, Chile, Peru, Colombia, Panama, Ecuador, El Salvador and Venezuela, among others.

[7] Vid. “Article 34. The Employment and Economic Development Zones (ZEDE) shall establish their own educational and curricular policies at all levels. The practice of a profession or the performance of professional activities under an academic degree within the Employment and Economic Development Zones (ZEDE) shall not be conditioned to membership or association. However, the authorities of the Employment and Economic Development Zones (ZEDE) may require the corresponding academic accreditation for the exercise of certain professions.”

[8] The object of the complaint of unconstitutionality filed by way of action and on reasonable grounds was specifically directed against Article 34 of Legislative Decree No. 120-2013, which contains the Organic Law on Employment and Economic Development Zones (ZEDE), after considering that it violates constitutional articles 151, 156, 159, 160 and 177 of the Constitution of the Republic, which refer to higher education and professional practice.

[9] Published in La Gaceta, Diario Oficial de la República de Honduras No. 33,352, on February 11, 2014. This Decree ratifies the appointment of the Committee for the Adoption of Best Practices (CAMP), made by the President of the Republic in Executive Agreement No.003-2014 dated January 14, 2014, pursuant to the penultimate paragraph of Article 11 of the Organic Law of the Employment and Economic Development Zones (ZEDE).

[10] This Legislative Decree published in La Gaceta, Diario Oficial de la República de Honduras on August 5, 2013, creates the Program for the Establishment of Employment and Economic Development Zones (ZEDE), which will be composed of the persons designated by the President of the Republic. This program will temporarily assume the functions of the Technical Secretariat and the Committee for the Adoption of Best Practices (CAMP) until the appointment of the first member of the Technical Secretariat and the first twelve (12) members of the Committee for the Adoption of Best Practices (CAMP).

[11] Legislative Decree No. 32-2021 was published in La Gaceta, Official Gazette of the Republic of Honduras No. 35,628 dated June fifteenth, two thousand twenty-one. It was only in effect for a little more than two months.

[12] Published in La Gaceta, Diario Oficial de la República of the Republic of Honduras, dated Thursday, August 26, 2021 No. 35,699. With this Decree Legislative Decree No. 32-2021 is repealed.

[13] By means of Legislative Decree No. 33-2022 on April twenty-six, two thousand and twenty-two.

[14] The following remark is made: At the outset, who makes the linkage of Article 34 of the Organic Law of Employment and Economic Development Zones with Article 329 of the Constitution was the petitioner, Rector Francisco José Herrera Alvarado; likewise Attorney Jorge Constantino Colindres in his written analysis, contained in the amicus curiae brief filed by Marlon Osmín Donaire Coello in his personal capacity and for the benefit and on behalf of the Universidad Olga y Manuel Ayau Cordón LLC (UOMAC).

[15] There is consolidated jurisprudence in terms of declaring ex officio provisions related to rules challenged as unconstitutional, by way of example: RI-0172-2006 dated October four, two thousand six; RI-0271-2007 dated December fourteen, two thousand seven; RI- 1165-2014 dated June twenty-third day of two thousand seventeen; RI-1343-2014/0243-2015 dated April twenty-two, two thousand fifteen; RI-0696-2012 dated March fourteen, two thousand sixteen; and, RI-0709-14 dated December nine, two thousand fourteen.

[16] The Constitution of the Republic of Honduras sworn by the National Constituent Assembly in public and solemn session, gathered in the hemicycle of the National Congress on January 20, 1982. Contained in Legislative Decree number 131 of January eleventh, 1982, published in La Gaceta. Official Gazette of the Republic of Honduras, Wednesday, January 20, 1982, number 23,612.
[17] Liability for action.
[18] Liability for omission.
[19] Vid. Article 375 of the Constitution of the Republic of Honduras.
[20] Vid. "Article 294. The national territory shall be divided into departments. Their creation and limits shall be decreed by the National Congress. The departments shall be divided into autonomous municipalities administered by corporations elected by the people, in accordance with the law. Without prejudice to the provisions of the two preceding paragraphs, the National Congress may create zones subject to special regimes in accordance with Article 329 of this Constitution".
[21] Vid. "Article 303. The power to impart justice emanates from the people and is imparted free of charge in the name of the State, by independent magistrates and judges, subject only to the Constitution and the laws. The Judicial Branch is composed of a Supreme Court of Justice, courts of appeals, courts of law, courts with exclusive jurisdiction in areas of the country subject to special regimes created by the Constitution of the Republic and such other powers as may be established by law. In no trial may there be more than two instances; the judge or magistrate who has exercised jurisdiction in one of them may not hear in the other, nor in an extraordinary appeal in the same matter, without incurring liability. Spouses and relatives within the fourth degree of consanguinity or second degree of affinity may not judge in the same case.
[22] Vid "Article 329. The State promotes economic and social development, which must be subject to strategic planning. The law regulates the planning system and process with the participation of the powers of the State and the duly represented political, economic and social organizations. To carry out the function of promoting economic and social development and complement the actions of the other agents of this development, the State, with a medium and long term vision, must design, in concert with the Honduran society, a plan containing the precise objectives and the means and mechanisms to achieve them. The medium and long term development plans must include strategic policies and programs that guarantee the continuity of their execution from their conception and approval to their conclusion. The nation's plan, the comprehensive development plans and the programs incorporated therein are mandatory for successive governments. EMPLOYMENT AND ECONOMIC DEVELOPMENT ZONES. The State may establish zones of the country subject to special regimes, which have legal personality, are subject to a special fiscal regime, may contract obligations as long as they do not require the guarantee or joint and several guarantee of the State, enter into contracts until the fulfillment of their objectives in time and

during several governments and enjoy functional and administrative autonomy which must include the functions, powers and obligations that the Constitution and the laws confer to the municipalities. The creation of an area subject to a special regime is an exclusive attribution of the National Congress, by qualified majority, after a plebiscite approved by (2/3) two thirds, in accordance with the provisions of Article 5 of the Constitution. This requirement is not necessary for special regimes created in areas with low population density. Low population density zones are understood as those where the number of permanent inhabitants per square kilometer is lower than the average for rural zones calculated by the National Institute of Statistics (INE), which must issue the corresponding opinion. The National Congress, when approving the creation of zones subject to special regimes, must guarantee that the sentence issued by the International Court of Justice of The Hague on September 11, 1992 and the provisions of articles 10, 11, 12, 13, 15 and 19 of the Constitution of the Republic regarding the territory are respected. These zones are subject to national legislation in all matters related to sovereignty, application of justice, national defense, foreign relations, electoral matters, issuance of identity documents and passports. The Gulf of Fonseca must be subject to a special regime in accordance with International Law, as established in Article 10 of the Constitution and the present article; the Honduran coasts of the Gulf and the Caribbean Sea are subject to the same constitutional dispositions. For the creation and operation of these zones, the National Congress must approve an organic law, which can only be modified, re-formed, interpreted or repealed by two thirds in favor of the members of the National Congress; it is also necessary to hold a referendum or plebiscite of the people who inhabit the zone subject to the special regime when its population exceeds one hundred thousand inhabitants. The organic law must expressly establish the applicable regulations. The authorities of the zones subject to special regimes have the obligation to adopt the best national and international practices to guarantee the existence and permanence of the adequate social, economic and legal environment to be competitive at an international level. For the solution of conflicts within the zones of the country subject to special regimes, the Judicial Power through the Council of the Judiciary must create courts with exclusive and autonomous jurisdiction over them. The judges of the zones subject to special jurisdiction will be proposed by the special zones to the Judiciary Council who will appoint them after a competition from a list proposed by a special commission integrated in the manner indicated by the organic law of these regimes. The law may establish the submission to compulsory arbitration for the solution of conflicts of natural or juridical persons living within the areas included in these regimes for certain matters. The Courts of the areas subject to a special legal regime may adopt legal systems or traditions from other parts of the world as long as they guarantee the same or better constitutional principles of protection of Human Rights with the prior approval of the National Congress".

[23] It would seem that the principle of non-retroactivity is only provided for legal norms, according to the wording of Article 96 of the Constitution, Article 9 of the American

Convention on Human Rights and numeral 2 of Article 15 of the International Covenant on Civil and Political Rights. However, said principle is applicable to every norm or act of authority; or rather to almost every norm or act of authority, because it must be taken into account when it is necessary the restitution or reestablishment of fundamental rights or in this case determined the national territory and the form of government.

[24] Cf. BREWER-CARÍAS, Allan R. "Comentarios a la Ley Sobre Justicia Constitucional, Ley Sobre Justicia Constitucional, Decreto No. 244-2003 y Ley de Amparo, Decreto No. 9 (1936)". Editorial OIM, edition 2023, pp. 9 and 10.

[25] This happens in the case of the USA, it is sufficient for a state court to declare unconstitutionality in a specific case, so that from then on such rule ceases to be applied.

[26] Cfr. IACHR. REPORT No. 76/14. Petition 639-06. Admissibility report in the case of Marcelo Ramón Aguilera Aguilar v. Honduras, August 15, 2014. See also, IACHR, Report No. 57/14. Petition 775-03 case Juan González et al. v. Honduras, July 21, 2014.

[27] Imprescriptibility, intangibility and irrevocability are absolute terms, so that any reduction or limitation implies their violation.

[28] Force does not only imply violence or intimidation. In this particular case, the authorities involved in the creation of the ZEDEs have forced the will of the Sovereign, through the ultra vires exercise of their functions.

[29] Drawing a parallel with the absolute nullity regulated in the Civil Code, it will be seen that absolute nullity proceeds 1. when any of the essential conditions for its formation or existence is lacking (in this case what is lacking is constitutional legitimacy). 2. When some requirement or formality that the law demands for the value of certain acts or contracts is missing (in the case of the legislative act the lawfulness of the object, in this case it is unlawful because there is a constitutional prohibition), in consideration of the nature of the act or contract and not the quality or status of the person who takes part in them. 3. when they are executed or celebrated by absolutely incapable persons (in this case the legislators lack absolute power in relation to subjects protected by articles of the Constitution). Absolute nullity can be alleged by anyone who has an interest in it, and must, when it is on record, be declared ex officio, even if the parties do not allege it; and it cannot be cured by the confirmation or ratification of the parties.

[30] Acquired rights mean that, during the validity of the first law, all the foreseen effects are reached, and the right is constituted. For example, in the case at hand, a Zede is declared after complying with all of the procedures and requirements, so that a subsequent repeal or amendment cannot affect it. When we speak of vested rights, we must discuss as such, the acquisition of a power or expectation of a right. When we speak of acquired rights, we must discard the acquisition of a faculty or an expectation of a right. In other words, the fact or act that constitutes the right itself must be perfected or consummated.

[31] MEJÍA RIVERA, Joaquín A. "Apuntes para la reflexión sobre las reclamaciones internacionales derivadas de la derogación de las ZEDE". Envío- Honduras Magazine. Year 21. No. 73. ERIC-SJ. Tegucigalpa, Honduras. April 2023, pp. 22-29.
[32] The plebiscite will not be necessary, according to the amended Article 329 of the Constitution, if the ZEDE is intended to be located in a place with low population density, as declared by the National Statistics Institute (INE), indicating that a low population rate is considered low when the number of permanent inhabitants per square kilometer is lower than the average for rural areas, as calculated by the INE.
[33] For this reason, in addition, no company or enterprise could behave as a ZEDE, so that the commitments assumed through simulation of this character with third parties in good faith, must be fully assumed by the same company or commercial enterprise.
[34] Thesis of Baudry-Lacantinerie and Bouques Fourcade. Cit. GARCÍA MAYNEZ, Eduardo. Introduction to the Study of Law. Editorial Porrúa, S.A. Thirty-eighth edition. Mexico, 1986. Pág. 390.
[35] Idem. P. 392.
[36] In this regard, Article 329, as amended by the decree to be declared unconstitutional, provides that: "For the creation and operation of these zones, the National Congress must approve an organic law, which can only be modified, amended, interpreted or repealed by a two-thirds majority of the members of the National Congress, and a referendum or plebiscite must be held when the population exceeds one hundred thousand inhabitants".
[37] An example of this is Ruling RI-0271-2007 dated December fourteen, two thousand seven (Micheletti case), in which the action of unconstitutionality filed for reasons of form and by way of action against the reform of the final part of numeral 1 of Article 240 of the Constitution of the Republic was declared admissible, and consequently Legislative Decree No. 412-02 of November 13, 2002, ratified by Decree 154-03 of September 23, 2003, was partially repealed. 412-02 dated November 13, 2002, ratified by Decree 154-03 dated September 23, 2003; and by extension Decrees 268-02 dated January 17, 2002, ratified by Decree 02-02 dated January 25, 2002; Decree 374-02 dated November 13, 2002, ratified by Decree 153-03 dated September 22, 2003; specifically the reform established in the first paragraph of article 240 numeral 1 of the Constitution in its final part, which contains the prohibition for the President of the National Congress and the President of the Supreme Court of Justice to be candidates to the presidency of the Republic, in the constitutional period following the one in which they were elected. In this case, it was considered that an article of a permanent nature had been violated and the regulation declared unconstitutional was made under future effects, in accordance with the Latin locution "ex nunc".
[38] The Honduran Council of Private Enterprise or COHEP is a non-profit institution founded in 1967 with the objective of providing the most appropriate macroeconomic, legal and institutional conditions to promote wealth creation and socioeconomic development in Honduras, based on the system of free enterprise and social responsibility. Its objectives are

to encourage, unify, concretize and promote the joint actions of the national private initiative, oriented towards business integration, representing the general interests of free enterprise in Honduras in contribution to the integral development of the country. It is the business organization with the highest degree of representativeness in our country; it brings together 70 organizations representing all productive sectors. COHEP calls itself the technical-political arm of the Honduran business sector. As a philosophical principle, it sustains that private initiative through investment, employment and wealth generation, is the basic pillar of the economic development of our country, and is an important support of the democratic system. (Obtained from the institution's website on the Internet).

[39] Vid. https://cohep.org/wp-content/uploads/2021/06/ANALISIS-JURIDICO- DE-LAS-ZEDE-EN-HONDURAS-FINAL.pdf and https://cohep.org/wp-content/ uploads/2021/06/Certificacion-analisis-zede.pdf

[40] The Association for a More Just Society (ASJ) is a non-profit, governmental organization.

[41] Vid. https://asjhonduras.com/webhn/wp-content/uploads/2021/07/Analisis-Juridico-ZEDES_-ASJ.pdf (Retrieved from The Internet).

[42] Vid. https://www.cna.hn/wp-content/uploads/2021/10/Informe-Los-pecados- capitales-de-las-ZEDE.pdf (Retrieved from the Internet). This document is 90 pages long and includes the following bibliography: American Psychological Association (2020). Publication manual of the American Psychological Association (7th ed.). https://doi.org/10.1037/0000165000/ Anonymous. (January 24, 2013). Honduras: model cities approved in the National Congress. La Pren- sa.https://www.laprensa.hn/honduras/tegucigalpa/331319-98/honduras-aprue-banciudades-modelo-en-el-congreso-nacional Anonymous. (May 24, 2021). Sectors raise their voices against ZEDE in Honduras. Proceso Digital. https://pro- ceso.hn/sectores-alzan-la-voz-contra-las-zedes-en-honduras/ Anónimo. (3 de ju- nio de 2021). Las ZEDE reeditan historia de concesiones bananeras en Honduras, alerta sociólogo. Proceso Digital. https://proceso.hn/las-zede-reeditanhistoria- de-concesiones-bananeras-en-honduras-alerta-sociologo/ Anonymous. (June 14, 2021). Ex-President Lobo Sosa dice que "de la lengua" sacarán a quienes bus- quen protegerse en las ZEDE. Proceso Digital. https://proceso.hn/ expresidente- lobo-sosa-dice-que-de-la-lengua-sacaran-a-quienes-busquen-protegerseen-zede/ Anonymous. (June 22, 2021). Las ZEDE no generían ni 15 mil empleos en Honduras, según el Fosdeh. Proceso Digital. https://proceso.hn/las-zedes-no-ge- nerarianni-15-mil-empleos-en-honduras-segun-el-fosdeh/ Bravo, E. (S. f.). 250 textual connectors. Travesías filosóficas. http://www.iesseneca.net/iesseneca/ IMG/pdf/Cononectores_textuales.pdf Canal CNGoTv. (June 21, 2021). Ebal Díaz says he will fight for the creation of ZEDE in Francisco Morazán. [Video file]. Youtube. https://www.youtube.com/ watch?v=B50tAzl7xFw info@cna.hn www.cna.hn cnahnoficial cnahonduras cnahonduras Consejo Na- cional Anticorrupción 89 Los pecados capitales de las ZEDE Constitución Po- lítica de la República de Honduras, Published in La Gaceta No. 23,612 of January 20, 1982. National Congress of

Honduras (Accessed June 2021). Official website. http://www.congresonacional.hn/ Geglia, B. (October 12, 2020). This is what I learned about secrecy as a foreigner investigating ZEDE's in Honduras. Contra Corriente. https://contracorriente. red/2020/10/12/ esto-es-lo-lo-que-aprendi- sobre-secretividad-as-extranjerainvestigando-las- zede-en-honduras/ Escobedo, I. (March 18, 2021). Honduras: sovereignty in exchange for economic development? DW. https://www.dw.com/es/honduras- soberan%C3%ADa-a-cambio-dedesarrollo-con%C3%B3mico/a-56916122 M. A. (June 22, 2021). Pepe Lobo: "Yo sancioné la ley de las ZEDE y se hablaba de referéndum y plebiscito". La Tribuna. https://www.latribuna. hn/2021/06/22/pepepe-loboyo-sancione-ley-de-zede-and-there-was-talk-of-referendum-and-plebiscite/ Medina, M. (May 17, 2021). Nasralla sobre las ZEDE en Honduras: Ebal Díaz "es un vende Patria"; "a Salvador le falta hombría", responde el funcionario. Tu Nota. https://www.tunota.com/nasralla-sobre-las- zede-en-honduras-ebal-diaz-es-un-vendepatria-a-salvador-le-falta-hombria- responde-el-funcionario Law on Constitutional Justice, Supreme Court of Justice, Republic of Honduras, C. A. 2019. Ley Marco del Sector de Telecomu- nicaciones Decreto 185-95 Del 5 de diciembre de 1995 y Actualización de la Ley Marco del Sector de Telecomunicaciones Decreto 118-97 del 25 de octubre de 1997. 90 National Anticorruption Council info@cna.hn www.cna.hn cnahnofi-cial cnahonduras cnahonduras Los pecados capitales de las ZEDE Special Regulation of Organization and Functioning of the General Directorate of Public Prosecutions, Agreement FRG-011-2016, published in the Official Gazette La Gaceta n.º 34,028 May 19, 2016. Appeal of Unconstitutionality number SCO 0030-2014, in order to declare the unconstitutionality of Decree number 236-2012, ratified by Decree number 9-2013 and against Decree number 120-2013, issued by the National Congress of the Republic of Honduras. Ministry of Finance (Sefin). (Accessed May/June 2021). Official website. https://www.sefin.gob.hn/ Wallace, A. (November 23, 2017). 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 News Mundo. https://www.bbc.com/ mundo/noticias-america-latina-4203085

[43] For example, the municipalities of Puerto Cortés, Yamaranguila, La Ceiba, Tocoa, Namasigüe, Esparta, Intibucá, San José, Colomoncagua, Chinacla, Choloma, etc.

[44] List obtained from the document: Zones for Employment and Economic Development (ZEDE), and the improvement of dispossession mechanisms in Honduras. Zones for Employment and Economic Development (ZEDE), and the improvement of dispossession mechanisms in Honduras, written by Daniel Torres Sandí daniel.torressandi@ucr.ac.cr. Universidad de Costa Rica, Costa Rica. Revista de Ciencias Sociales (Cr), No. 167, 2020 Universidad de Costa Rica. Received: January 17, 2019. Approval: October 7, 2019. Found at La Inter- net: https://www.redalyc.org/journal/153/15363782007/html/.

[45] For the record, as previously expressed, no company or commercial enterprise was declared as ZEDE by the National Congress of Honduras.

[46] Article 329 of the Constitution must be reinstated as amended by Legislative Decree No. 175-2004 published in La Gaceta, Diario Oficial de la República de Honduras No.30,586 of January 3, 2005, ratified by Legislative Decree No. 373-2005, published in La Gaceta, Diario Oficial de la República de Honduras No.30,910 of January 24, 2006.
[47] In this regard, the reform states: "The judges of the zones subject to special jurisdiction shall be proposed by the special zones to the Council of the Judiciary, which shall appoint them after a competition from a list proposed by a special commission composed in the manner established by the organic law of these regimes".
[48] In this regard, the reform states: "For the resolution of conflicts within the areas of the country subject to special regimes, the Judicial Branch, through the Judiciary Council, must create courts with exclusive and autonomous jurisdiction over them.
[49] In this regard, the reform states: "The authorities of the zones subject to special regimes have the obligation to adopt the best national and international practices to guarantee the existence and permanence of the adequate social, economic and legal environment to be competitive at the international level.
[50] In this regard, the reform states: "The courts in areas subject to a special legal regime may adopt legal systems or traditions from other parts of the world provided that they guarantee the same or better constitutional principles for the protection of human rights, subject to prior approval by the National Congress.
[51] The territory is ours, only to the extent that it is subject to our public power (rules and authorities).
[52] An expression that in this context is intended to indicate "public power or dominion." Including the very exercise of sovereignty made manifest in the submission of persons to a Constitution, law and determined authority.
[53] The architect of these Legislative Decrees was the National Congress presided over by Juan Orlando Hernández Alvarado during the administration of President José Porfirio Lobo Sosa.
[54] Since the judicial decision of the Constitutional Chamber did not obtain the unanimity required by the Constitution, the matter was referred to the plenary of fifteen justices of the Supreme Court of Justice, who in the end declared by majority vote the unconstitutionality of the aforementioned Legislative Decrees. Voting in favor of the unconstitutionality were Justices José Tomás Arita Valle, Rosalinda Cruz Sequeira de Williams, Raúl Antonio Henríquez Interiano, Víctor Manuel Martínez Silva, Rosa de Lourdes Paz Haslam, José Francisco Ruiz Gaeckel, José Antonio Gutiérrez Navas, Jaco- bo Antonio Cálix Vallecillo, Marco Vinicio Zúniga Medrano, Gustavo Enrique Bustillo Palma, Edith María López Rivera and María Luisa Ramos. Voting in favor of the constitutionality of the Decrees were Justices Óscar Fernando Chinchilla Banegas and Jorge Alberto Rivera Avilés, the latter being the President of the Supreme Court of Justice.

[55] The judges of the Constitutional Chamber who were removed on November eleventh, two thousand eleven, are: José Francisco Ruiz Gaekel, Rosalinda Cruz Sequeira, José Antonio Gutiérrez Navas and Gustavo Enrique Bustillo Palma. The only magistrate who was not removed was Óscar Fernando Chinchilla Bane- gas because he voted in favor of the constitutionality of the challenged Decrees and who was later elected Attorney General of the Republic, during the two presidential terms of Juan Orlando Hernández.

[56] Cf. I/A Court H.R., Case of Gutiérrez Navas et al. v. Honduras. Case of Gutiérrez Navas et al. v. Honduras. Merits, Reparations and Costs. Judgment of November 29, 2023. Series C No. 514.

[57] Justices Silvia Trinidad Santos Moncada (President) and Víctor Manuel Lozano Urbina (Vice President) voted. Víctor Manuel Lozano Urbina. German Vicente García García. José Elmer Lizardo Carranza. Lidia Estela Cardona Padilla, all of them elected by the National Congress after having dismissed those who declared the unconstitutionality of the model cities or networks.

[58] See recital 11 of the judgment.

[59] In addition, Article 4 of the secondary law contained in Legislative Decree No. 120-2013, which develops the aforementioned zones, regulates the fiscal regime of the zones by providing that "The special fiscal regime of the Employment and Economic Development Zones (ZEDE), authorizes them to create their own budget, the right to collect and administer their taxes, to determine the rates they charge for the services they provide, to enter into all types of agreements or contracts until the fulfillment of their objectives over time, even if it is over several periods of government." And that in the same sense, Article 23 of the aforementioned law establishes: "The Employment and Economic Development Zones (ZEDE), have an independent financial regime, are authorized to use their financial income exclusively for their own purposes, and shall transfer resources to the authorities of the rest of the country in the manner indicated in this law..."

[60] See recital 12 of the judgment.

[61] Referring to issues related to: (a) Freedom and equality before the law (Article 60); (b) Non-applicability of laws and governmental provisions or of any other order, which regulate the exercise of the declarations, rights and guarantees established in the Constitution, if they diminish, restrict or distort them (Article 64); (c) Right to free movement (Article 81); (d) Right not to be expatriated (Article 102); and, e) The laws that regulate labor relations are of public order, and imply the nullity of acts or agreements that imply the waiver, diminution or restriction thereof (article 128); in relation to articles 1, 10 and 24 of the Universal Declaration of Human Rights, and the provisions of articles 3, 14 and 26 of the International Covenant on Civil and Political Rights.

[62] In reality, this section of the judgment is written in a rambling or incomprehensible manner, so it is summarized here, in an attempt to capture its meaning and scope as best as possible.

[63] The decision was made by Justices Silvia Trinidad Santos Moncada (President). Víctor Manuel Lozano Urbina. German Vicente García García. José Elmer Lizardo Carranza. Lidia Estela Cardona Padilla.
[64] Judgment dated August 12, 2014, handed down in the constitutional challenge brought by Nahum Efraín La- lin Güity for the ORGANIZACION FRATERNAL NEGRA NEGRA DE HONDURAS (OFRANEH); Bertha Cáceres for COPINH; Jessica Yamileth Trinidad for the RED DE DEFENSORAS DE DERECHOS HUMANOS DE HONDURAS; Ana Suyapa Ortega for the MESA DE MUJERES PROGRESISTAS; Luis Alberto Méndez for the PROYECTO CULTURAL Y POLÍTICO CASA DE LOS PUE- BLOS; Carmen Gabriela Diaz Sánchez for the CENTRO DE DERECHOS DE MUJERES; Kevin Armando Galo for the FRENTE REVOLUCIONARIO AR- TÍSTICO CONTRACULTURAL; Donaldo Hernández Palma for CEHPRO- DEC; Denia Xiomara Mejía for INEHSCO; Fredin Funez for the PARTIDO SOCIALISTA DE LOS TRABAJADORES; Juan Almendares for the COMITÉ HONDUREÑO ACCIÓN POR LA PAZ; Lorena Margarita Zelaya for INSURRECTAS AUTÓNOMAS; Sandra Marybel Sánchez and Óscar Tábora Leiva. Action filed against Legislative Decree No. 236-2012 ratified with Decree No. 9-2013, as it creates the Employment and Economic Development Zones, and Decree No. 120-2013, containing the Organic Law of the Employment and Economic Development Zones, for violating articles 294, 303, 329 and 374 of the Constitution of the Republic, the latter containing irreformable provisions such as those related to sovereignty, national territory and the form of government.
[65] This sentence dismisses the unconstitutionality action brought by Jari Dixon Herrera Hernández, Juan Alberto Barahona, Pedro Rafael Alegría Moncada, Darwin Enrique Barahona, Juan Alexander Barahona and Nelson Enri- que Colindres, members of the FRENTE NACIONAL DE RESISTENCIA PO- PULAR (FNRP).
[66] Article 294 of the Constitution retains its original version, as established by the National Constituent Assembly in Decree No. 131 of January 11, 1982, published in La Gaceta, Diario Oficial de la República No. 23,612 of January 20, 1982.
[67] Article 303 of the Constitution is restored to the reforms in force which are: a) Legislative Decree No. 200-2018 published in La Gaceta, Diario Oficial de la República de Honduras No.34,856 of Monday, January 28, 2019, ratified by Legislative Decree No. 2-2019, published in La Gaceta, Diario Oficial de la República de Honduras No.34,864 of February 6, 2019 (subsequent to the reform declared unconstitutional by this judgment; and, b) Legislative Decree No. 262-2000 published in La Gaceta, Diario Oficial de la Republica de Honduras No.29,414 of Monday, February 26, 2001, ratified by Legislative Decree No. 38-2001, published in La Gaceta, Diario Oficial de la Republica de Honduras No.29,489 of Monday, May 29, 2001.
[68] Article 329 of the Constitution is restored to the current reform contained in Legislative Decree No. 175-2004 published in La Gaceta, Diario Oficial de la República de Honduras

No.30,586 of January 3, 2005, ratified by Legislative Decree No. 373-2005, published in La Gaceta, Diario Oficial de la República de Honduras No.30,910 of January 24, 2006.

# ACADEMIC PUBLICATIONS

Available at
https://journalofspecialjurisdictions.com
Journal of Special Jurisdictions

# You Will Own Everything and Be Free: A Federated Fractal Network-State Architecture

**Sevan Chorluyan**
Global Regulatory Affairs
sevanchorluyan@gmail.com
ORCID 0009-0007-5153-0684

**Abstract**:
In this paper, I present a "Federated Fractal Network-State" architecture, which introduces a decentralized governance model inspired by the resilience and adaptability of the Armenian people. This model distributes authority across multiple layers. "Fractal" describes the self-similar patterns at each level—individual, community, state, and federation. "Federated" refers to the voluntary associations between these layers, enabling entities to operate autonomously while cooperating within a broader network. Together, this structure empowers individuals and communities. A key innovation here is the concept of a "receipt-token," a cryptographic identifier that confirms membership, tracks contributions, and grants voting rights and access to services within this ecosystem. In this model, tokenized governance ensures secure and scalable coordination, allowing the system to flexibly evolve. This architecture reduces barriers to adoption while fostering resilience, security, and innovation. It offers an alternative to traditional *nation*-states, enhancing global coordination, protecting against corruption, and remaining adaptable in an unpredictable world.

**Keywords:** Network-State Architecture, Federated Fractal Network, Decentralized Governance, Fractal Governance, Autonomous Communities, Network-State Implementation, Decentralized Autonomous Organizations (DAOs), Tokenized Governance, Armenian Diaspora Governance, Armenian Network State.

**Resumen:**

En este artículo presento una arquitectura de «red-estado fractal federada», que introduce un modelo de gobernanza descentralizada inspirado en la resistencia y adaptabilidad del pueblo armenio. Este modelo distribuye la autoridad en múltiples capas. El término «fractal» hace referencia a los patrones autosimilares de cada nivel: individual, comunitario, estatal y federal. «Federado» se refiere a las asociaciones voluntarias entre estos niveles, que permiten a las entidades operar de forma autónoma y cooperar dentro de una red más amplia. En conjunto, esta estructura capacita a individuos y comunidades. Una innovación clave es el concepto de «recibo-token», un identificador criptográfico que confirma la pertenencia, rastrea las contribuciones y otorga derechos de voto y acceso a los servicios dentro de este ecosistema. En este modelo, la gobernanza mediante tokens garantiza una coordinación segura y escalable, y permite que el sistema evolucione con flexibilidad. Esta arquitectura reduce las barreras de adopción y fomenta la resistencia, la seguridad y la innovación. Ofrece una alternativa a los estados-nación tradicionales, mejorando la coordinación global, protegiendo contra la corrupción y manteniéndose adaptable en un mundo impredecible.

**Palabras clave**: Arquitectura Red-Estado, Red Fractal Federada, Gobernanza Descentralizada, Gobernanza Fractal, Comunidades Autónomas, Implementación Red-Estado, Organizaciones Autónomas Descentralizadas (DAOs), Gobernanza Tokenizada, Gobernanza de la Diáspora Armenia, Red-Estado Armenia.

## 1. Introduction to the Network-State Concept

According to Balaji Srinivasan (2022), “a network state is a highly aligned online community with a capacity for collective action that crowdfunds territory around the world and

eventually gains diplomatic recognition from pre-existing states." The model proposed in this paper is aligned with this definition of a network-state. A network-state is a decentralized, digital-native entity that operates mostly through digital networks rather than physical geography-bound territories. Unlike traditional states, which are defined by geographical borders and centralized governance, network-states are characterized by their reliance on technology, decentralized decision-making, and a global, distributed community of citizens.

Understanding the architecture of a network-state requires a shift in perspective from the physical and centralized paradigms of *nation*-states to the digital and decentralized paradigm of network-states. As we delve into the specific components and mechanisms that make up the proposed Federated Fractal Network-State architecture, we will explore how decentralization works from the perspective of each major network-state participant and their relation to one another. For instance, the network-state empowers individuals through voluntary contributions and decentralized decision-making but must address collective action challenges. But federation and subsidiarity localize decision-making, promoting participation, accountability, and resilience. Mechanisms like the dominant assurance contract (Tabarrok, 1998) encourage public good contributions, while stakeholder voting aligns participant interests with broader community benefits, boosting asset value when public goods are provided.

## 2. Federated Fractal Network-State Architecture Overview

The proposed Federated Fractal Network-State architecture is a novel structure for a network-state system consisting of four layers–an individual layer, a network-*community* layer, a network-*state* layer, and a network-*state federation* layer.

Fractal Network-State is a new term to describe the similar relationship between the participants within each layer. If one understands the relationship between individuals and network-*communities*, one also understands the relationship between network-*communities* and network-*states*, which is the same as the relationship between network-*states* and network-*state federations*.

Federated Network-State is another new term, which describes that network participants are voluntary federations of underlying participants in the network. A network-*community* is a federation of individuals. A network-*state* is a federation of network-*communities*. This Federated Network-State model is in contrast with monolithic network-state models that are characteristic of the earliest implementations and writings on the network-state concept. A monolithic network-state groups all its members together, governed by the same rule set, whereas in a Federated Network-State architecture each network-*community*, network-*state*, and network-*state federation* is capable of different forms of self-governance.

### 2.1. Summary of the Federated Fractal Network-State structure

To imagine the proposed Federated Fractal Network-State architecture, visualize an inverted, striated pyramid. Each network layer (the Individual layer, the Network-*community* layer, etc.) has a unique focus. These layers address different issues, and are composed of different participants.

Today's most common governance technology is the *nation*-state, which can perhaps be best thought of as an upright pyramid. The masses sit at the bottom of the pyramid and the few elites that run society are on top. Decision making power in the nation-state coalesces at the

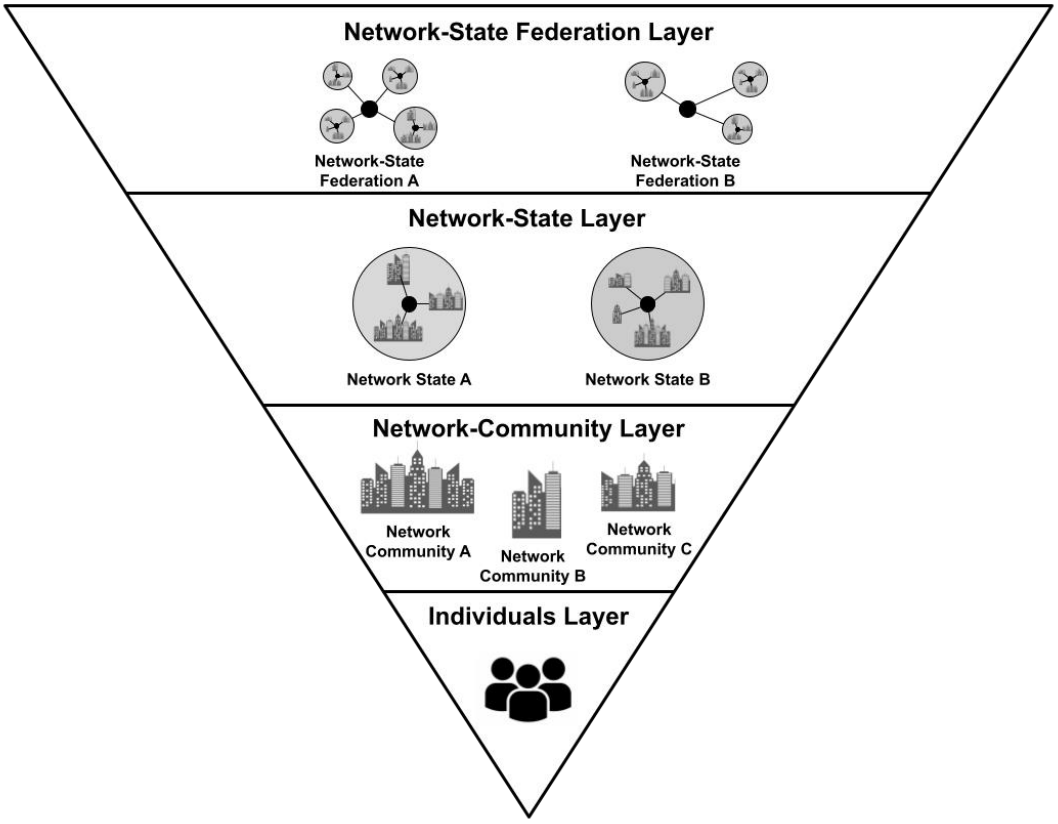



Figure 1: Network State Architecture Diagram

Source: Author

pyramid's peak. The most powerful entities, like coalitions of states govern the base of the pyramid, those with the least power. This pyramid iconography is incorporated into the design of the Great Seal of the United States and is prominently featured on the U.S. dollar bill.

As the hegemonic nation-state of the 21st century, the Great Seal of the U.S significantly contains the latin expression "E Pluribus Unum" which translates to "Out of many, one." The standard explanation of this expression is that it signifies the 13 former colonies coming together to form a single nation. It is notable the base unit expressed is the state (the colonies). This iconography overtly represents a centralizing force (National Archives, 2023).

From a structural perspective, the network-state in many ways represents an inversion of this governance status quo. In a network-state, it is the individual who decides which larger forms of organization have power through the voluntary contributions of their capital. The pyramid inverts. Accordingly, an update to the latin motto may be useful. "Ex Uno Plures"- "From one, many" accurately represents the individual and their role within the decentralized network.

## 3. Components of a Federated Fractal Network-State

This network-state architecture has a fractal design. Let's explore each layer.

### 3.1. Individual layer

The base layer of the Federated Fractal Network-State architecture is the individual layer, composed of individuals. This layer focuses on the individual's personal needs - one's wants and desires. The individual layer is where private property exists. It is from this layer that all rights are derived (Locke, 1689).

#### *Characteristics of the individual layer*

For some, like hermits or extreme prepper-survivalists, the individual layer alone is sufficient. However, survival alone is not the goal of human civilization, nor should it be the goal of a network-state. A more appropriate focus is on prosperity and human flourishing (Davidson, 2023). Achieving this requires additional levels of cooperation, including that of a community and a state.

Today, individuals can, in many cases, choose which city, state, or country to live in. Expats, refugees, and migrant workers are examples of individuals in the current *nation*-state paradigm actively choosing which government and society to live in. There comes with this movement often high costs and friction related to cultural adaptation, legal barriers, and economic challenges. Migrating and immigrating are difficult, which makes choosing governance a challenge as well.

Within a network-state ecosystem, an individual can freely choose which network-*community(s)* to associate with. Provided their freedom of movement isn't otherwise

constrained by a *nation*-state and the individual meets whatever criteria the network-*community* imposes, they can physically live in this network-*community*.

The costs of entering a network-*community* are prescribed by the governance protocol and rules of each network-*community*. This cost is borne as a membership fee.\

### 3.2. Receipt-token definition and characteristics

To the nation-state, an individual is made visible through the issuance of a social security number, picture ID, and the collection of biometric data. Even the relatively recent invention of last names was a means to improve legibility for a state's administrative records, allowing authorities to differentiate individuals and establish clear genealogical ties for the purposes of taxation (Scott, 1998).

The Federated Fractal Network-State model introduces a unique mechanism for legibility called the "receipt-token." To be recognized by the network an individual must possess and control receipt-tokens issued by that specific network-*community*. Members of a network-*community* will be those who hold sufficient receipt-tokens to meet its membership requirements. Similarly, network-*communities* that hold receipt-tokens issued by a network-*state* are recognized and made legible to that network-*state*.

A token is a digital representation of an asset or utility that exists on a cryptocurrency blockchain. Tokens can serve various purposes, ranging from representing physical assets (security tokens) to providing access to specific services (utility tokens) within a blockchain ecosystem. A receipt-token can have characteristics of both security and utility tokens, representing the collective physical assets of a network-*community* and granting access to membership perks. The receipt-token, as its name suggests, accounts for the receipt of a member's payment to the network.

Each network-*community*, network-*state*, and network-*state federation* issues unique receipt-tokens based on their governance rules. These tokens, which track contributions made in various forms (e.g., fiat, cryptocurrencies, time), serve as identifiers for membership conferring voting rights, dividend allocation, and services within the network. The type and value of contributions, as well as the issuance conditions, are determined by each entity.

The various network-communities, *states,* and *federations* issue distinct tokens, allowing for a decentralized, interoperable system where membership and affiliation are confirmed through cryptographic signatures. Despite using various platforms to issue such tokens, the system remains coherent to members through a wallet that consolidates tokens, dividends, and governance communications.

The governance protocol of each entity decides the specific attributes of its receipt-tokens, including acceptance of payments, expiration, weight, and conditions for issuance. These attributes impact network security, as bad actors might attempt to manipulate governance by acquiring large quantities of tokens. To mitigate such risks, the protocol can

adjust token properties accordingly. Membership eligibility and voting rights may also vary, with some entities favoring recent contributions or a certain percentage of top holders, allowing customization to meet a community's needs.

### 3.3. Network-*community* layer

The network-*community* layer of the Federated Fractal Network-State architecture consists of independent network-*communities*. Each of these network-communities are self-governed by their own members and their own governance protocol.

#### *Understanding the network-community*

A network-*community* is similar to how one might think of a town. It is composed of individuals who choose to associate with the network-*community* as investors, residents, and/or beneficiaries of the community. A member of a network-*community* is a person who meets the membership requirements prescribed by the network-*community's* governance protocol.

Unlike a town, a network-*community* can be in one location or many locations. A network-*community* can be as small as one room in a building, or multiple cities spread out across the globe.

A network-*community* is focused on the local day-to-day needs of its community. Infrastructure like roads, and social services like garbage collection and policing, can potentially be offered by a network-*community*. Leadership of a network-*community* addresses the collective needs of their specific community by determining which services are offered. The needs of a community in a big city will likely differ from those of a rural hamlet. The different demographics and needs of each network-*community's* member base will manifest in differences in how each network-*community* is structured and operates.

#### *Network-community layer dynamics*

Network-*communities* are in competition for individuals to join their community. There exists a marketplace of ideas on how to best structure the offerings of a network-*community* to meet the needs of its residents and members to attract growth. The network-*communities* with the best combination of rules making up their governance protocol, services they offer, physical environment of their community, and value pricing of membership will grow and prosper. Network-*communities* that offer too little or too much at the wrong price will be outcompeted and will need to adapt or go under.

Over time through practice and the aggregate preference of their members, we'd expect network-*communities* to adopt a series of best practices that work to provide the maximum value for the specific niche they are serving. The communities that have the most

stable and prosperous communities as a result of their network-*community* configuration will be the most copied and emulated by other network-*communities*. It is out of the scope of this white paper to speculate on the optimal network-*community* protocol and service configurations. The range of possibilities are vast and must first be tested to be discussed with any level of certainty.

***Network-community services***

Network-*communities* can choose to offer as part of their membership various services to its members, residents and lease holders. These services can include public safety (police, firefighters), education (public schools, libraries), healthcare (clinics, public health programs), infrastructure (roads, sewage, water), welfare services, and transportation.

In the early days of a network-*community*, the social services would be quite minimal to account for the small size of the community and the related budgetary constraints. Private companies will be encouraged to develop services such as private security, trash collection, healthcare clinics, etc. Other services can start off with informal arrangements such as homeschooling groups.

In the opinion of the author, the ideal scenario is for most social services to be offered by private companies that lease network-*community* property and offer network-*community* members discounted rates for their services. Such an arrangement would be contractually stipulated as part of the lease.

The benefit in this scenario is that market dynamics, rather than political considerations, will primarily determine the quality and quantity of the services rendered. Switching costs in terms of the ease and speed of change would be relatively lower compared to changing the administrative structure and personnel of a network-*community* administered service. For example instead of a monolithic community service administered by a network-*community* itself, network-*communities* can choose to lease to multiple competing service providers ensuring even greater competition and choice for its members (Frey & Eichenberger, 1999).

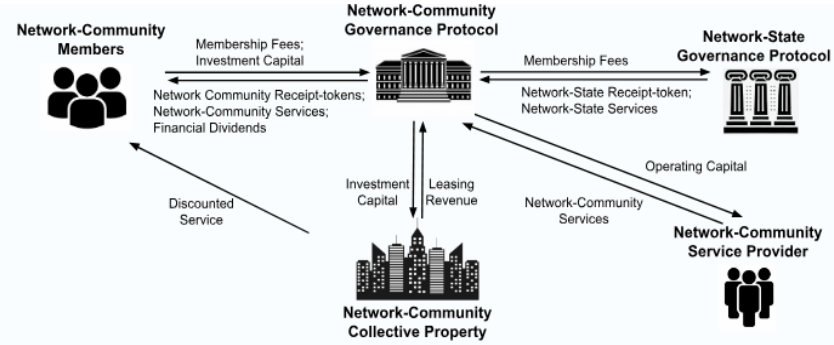



**Figure 2: Network-Community Resource Flow Diagram**

Source: Author

### 3.4. Network-*state* layer

The network-*state* layer consists of independent network-*states*. Each of these network-*states* is self-governed by its own members and its own governance protocol.

***Understanding the network-state***

A network-*state* is made up of member network-*communities*. Just as individuals join a network-*community*, network-*communities* can join a network-*state* by meeting the network-*state's* membership requirements and paying the membership fee.

A network-*state* can be viewed as a service network, similar to airline rewards programs like those from Delta or United, which coordinate with hotels, car rental companies, and other partners to offer a range of services and benefits to their members. Like payment networks, healthcare networks, or hotel and transportation networks, a network-*state* involves collaboration and communication among its members to deliver efficient and tailored services based on individual needs and preferences.

Network-*states* address issues that cross multiple network-*communities*, problems that often require scale or a distributed geographic presence to address. Network-*communities*, like traditional communities, have constraints on the level of coordination and resources they can contribute to issues that exist outside their borders (Ostrom, 1990). For these cases, they delegate this responsibility to one or more network-*states*.

Network-*states* can provide services like network protection, development of trade routes, global diplomacy, and resolving legal disputes between network-*communities*

***Network-state layer dynamics***

It may be the case that specialized network-*states* emerge focused on single issues, or it may be the case that large network-*states* instead address a broad range of issues. Ultimately, the composition of the network-*state* layer will be determined by the market demand for network-*state* services by network-*communities*. The axes that these network-*state* compete on are vision and execution.

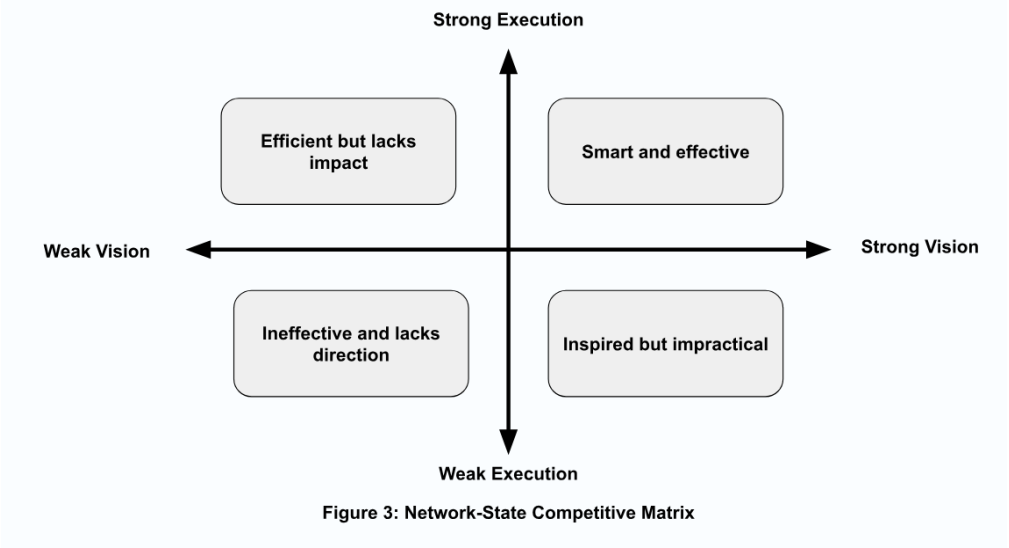



**Figure 3: Network-State Competitive Matrix**

Source: Author

Network-*community* members will freely contribute to the network-*states* depending on the competency and vision on display. The network-*states* that offer the greatest amount of perceived value to the network-*communities* in accomplishing their larger, more expansive goals, will outcompete and supplant the others.

### *Network-state assets*

As Balaji describes in his book, the network state is a digital-first community that achieves sufficient coherence and scale to function like a state, but without the necessity of a contiguous physical territory. Unlike a network-*community*, the network-*state* is unlikely a defined place. In lean times, with the most minimal of funding, a network-*state* could be as small as a single individual acting as an agent for two or more network-*communities* on some interest. A network-*state* could also grow, given sufficient demand, to resemble a modern-day *nation*-state with its many buildings, agencies, and warships.

A key advantage of the network-state concept is the low switching costs for member network-communities. To maintain this flexibility, network-*states* can be structured to allow network-*communities* to leave or switch affiliations without risking significant invested capital. One architectural approach that facilitates this is for network-*states* to lease property

from member network-*communities* rather than directly owning physical assets. This arrangement simplifies transitions, as *communities* retain control of their capital investments and can disengage without triggering complex liquidation processes.

Alternatively, some network-*states* may opt for direct ownership of property as part of a more centralized model. This demonstrates the flexibility of this network-state architecture: they can either lease or own assets depending on their operational preferences and strategic goals. Theoretically, funding services and leasing physical assets offers an adaptable solution that aligns with the network-state's aim to support fluid membership changes and choice. Thus, the network-*states* primary assets are its treasury, service providers, and leased physical assets. See figure 4 for a visual representation.

***Network-state dividends and growth***

The network-*state*, like a network-*community*, earns revenue through their membership fees and services provided. This revenue is paid out to member network-*communities* in the form of a receipt-token dividend minus the network-*state's* operational costs.

This is the fractal nature of this architecture. The relationship between the individual members of network-*community* and the network-*community*, is nearly identical to that of the network-*state* members (the network-*communities*) and the network-*state*. The mechanisms that delineate these relationships are the same via the receipt-token concept.


**Figure 4: Fractal Federated Network-State Relational Diagram**

Source: Author

Network-state *voting rights and governance*

Network-*states*, like network-*communities*, can have vastly different governance protocols. Network-*state* governance protocols' define membership requirements, service acquisition, voting procedures, and many other things necessary for the network-*state* to fulfill its mission. Through voting and participating in the governance mechanism of the network-*state*, members directly and indirectly control the direction of the network-*state*.

Through voting, delegates can be chosen to manage the internal functions of the network-*state*, contractors can be hired, business plans can be evaluated, and so on. As with the network-*communities*, this leadership structure would likely resemble a series of

committees, though any governance model can be prescribed by the network-*state's* governance protocol as agreed to by its members.

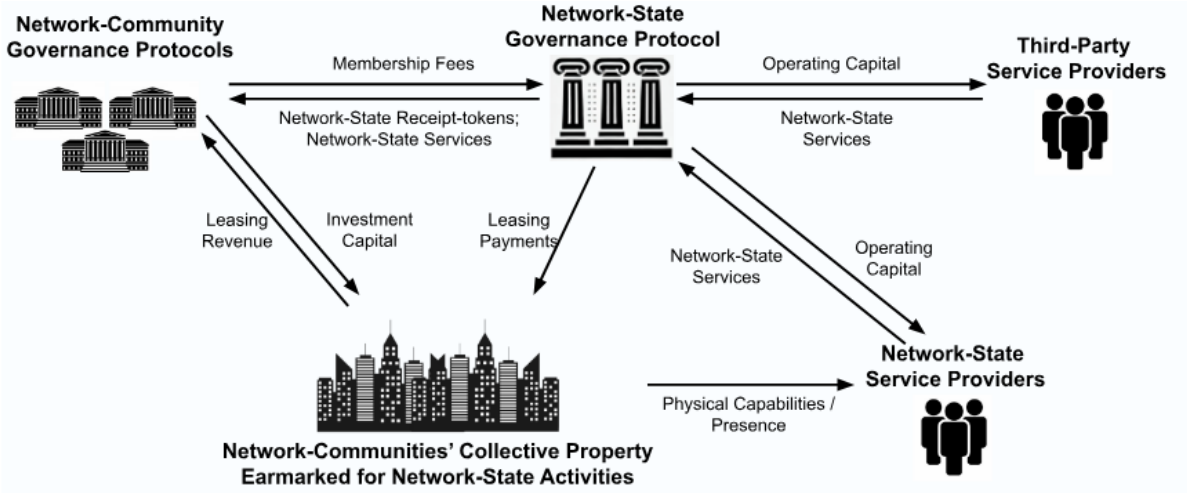



**Figure 5: Network-State Resource Flow Diagram**

Source: Author

### 3.5. Network-*state federation* layer

This layer consists of independent network-*state federations*. Each network-*state federation* within this layer is self-governed by its own members and its own governance protocol.

#### *Understanding the network-state federation*

A network-*state federation* is composed of member network-*states*. The process by which individuals join a network-*community*, and a network-*community* joins a network-*state* is the same that applies for a network-*state* joining a network-*state federation*.

The network-*state federation* is analogous to a federation of *nation*-states like the United Nations, the World Health Organization (WHO), North American Treaty Organization (NATO), etc. These are international organizations that seek to tackle the broadest of problems that affect all nations of people. Wars, famine, disease are issues that impact every nation and every person on earth. These organizations represent the largest coordinated grouping of humanity directed at solving humanity's most pressing problems. Likewise, network-*state federations* address these global level collective issues that require coordination across many different network-*states* that otherwise may not have a lot in common.

Network-*state federations* can offer services tackling global issues like environmental concerns, human trafficking, belligerent warring nations, corrupted financial networks, and extreme poverty. Through coordinated efforts of member network-*states* and the services

provided by the network-*state federation*, standards and initiatives can be created to address these global concerns.

### *Network-state federation dynamics*

While the problems addressed by network-*state federations* are generally global in nature, there may not be a globally accepted solution to the problem. There also may be disagreements on how to best implement such solutions. Network-*state* members would support the network-*state federations* that propose solutions they most believe in. For this reason, we'd expect to form a competitive marketplace of network-*state federations* implementing various initiatives.

As with the lower levels of the Federated Fractal Network-*State* architecture, the network-*state federations* that are the most successful at accomplishing their objectives will grow in prominence. Over-time it is plausible there would only be a handful of network-*state federations* tasked with addressing the large, well-known concerns of humanity. It is also plausible that network-*state federations* will be specialized like the World Health Organization's stated focus on health and disease. If this plays out, we'd expect quite a few network-*state federations* each dedicated to tackling a narrow set of global problems.

The fractal characteristics of this network architecture suggests that property, dividends, governance protocols, voting rights, growth, and service offerings will be similar, if not identical, for network-*state federations* as it is with network-*states*. I see no reason why this would not be the case. The market-based decision making and the independence in crafting the governance protocols and rules that make up the network-*state federations* operating procedures provides the necessary flexibility to address a wide range of our biggest challenges.

As an example highlighting a global problem inadequately being addressed in the *nation*-state era, let's consider the blight of child sex-trafficking. It is strange that in our highly technologically surveilled and policed world child sex-traffickers operate with so little fear of repercussions (UNODC, 2019). There are organizations at local and international levels ineffectively addressing this issue today hamstrung by the incentive structure (Cooley & Ron, 2002; Deserranno & Qian, 2022).

This international catastrophe could in theory be addressed by one or more network-*state federations*. Imagine a dedicated entity such as the Child Protective Services network-*state federation* receiving funding from the Network-*states* of the world to track down and bring to justice the perpetrators of sexual crimes against minors. The range of possible solutions on how to do this is only constrained by one's imagination.

For instance it is plausible to produce a bounty that financially rewards the informants, property rights enforcement agencies, and judges that bring to justice the perpetrators of such crimes. Wielding the vast wealth and resources of the member network-

*states* and their network-*communities*, dedicated *federation* task forces (service operators) can be formed internally or contracted out to find and crush child traffickers wherever they may operate.

Like with all institutions within the Federated Fractal Network-state architecture, if over-time the Child Protective Services network-*state federation* were to become corrupted in any way, the transparency of the funding and reporting mechanism, along with the competitive nature of the *federation*-services marketplace, would make this plainly evident to those funding it. Upstart and competitor network-*state federations* focused on solving the same problem would widely broadcast the corruption they see in order to garner more support for their own efforts. Given the low costs and ease of transferring support and funding from one network-*state federation* to the next, the efficient and timely movement of capital to conform to the changing network-*state* and network-*state federation* landscape seems highly likely andpreferable to the opaque multi-decade collapse of corrupted legacy institutions.

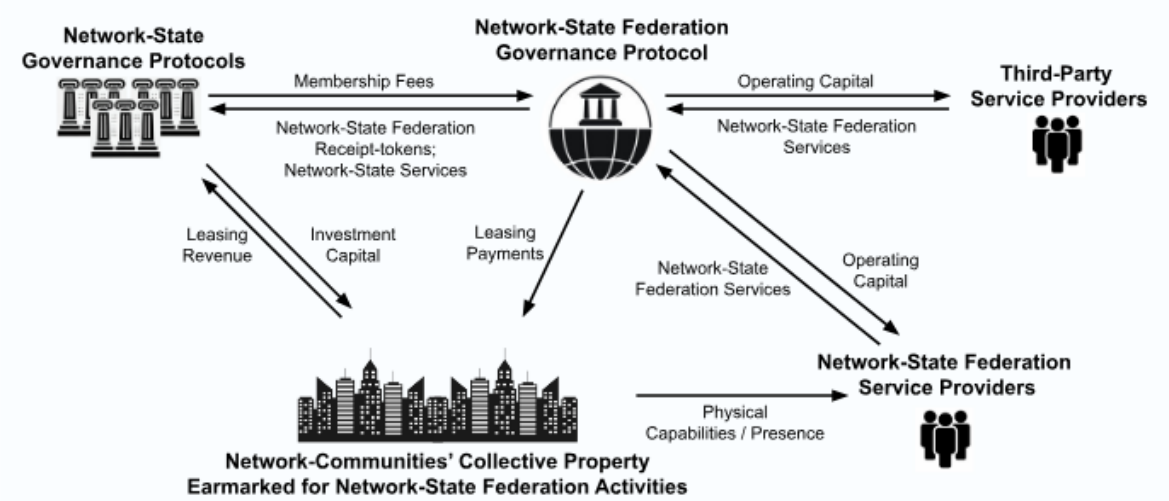



**Figure 6: Network-State Federation Resource Flow Diagram**

Source: Author

### *Summarizing the Federated Fractal Network-State architecture*

We've now covered the four layers that make up the Federated Fractal Network-*State* architecture including their composition, responsibilities, and relationships with one another. While the specific details of how each individual person, entity, organization, *community*, network-*state*, and *federation* can operate in such a system is incredibly complex, the structure of this architecture is actually rather simple and intuitive. Given its fractal nature, if you understand one relational component (for instance the relationship between an individual and a network-*community*) you understand the entire system.

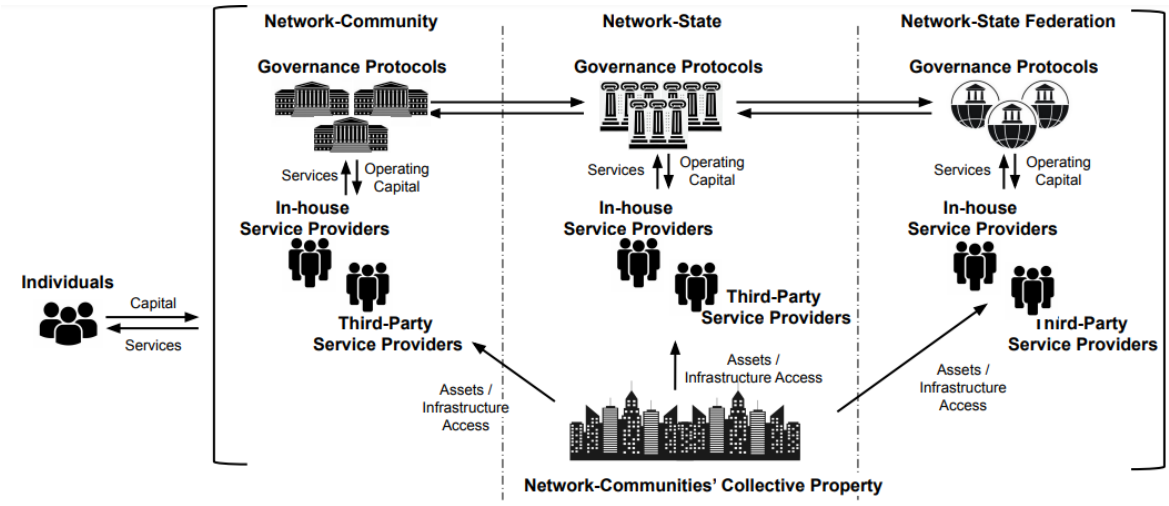



**Figure 7: Network-State Architecture Relational Graph**

Source: Author

## 4. Benefits of the Federated Fractal Network-State Model

If this network-state architecture proves to be as scalable, transparent, and practical as I believe it to be, it could unleash a capacity-building explosion in communities with significant untapped potential. We will now explore the structural and practical benefits that arise from the Federated Fractal Network-State architecture.

### 4.1. Membership perks

In a network-*community*, network-*state*, or network-*state federation*, members contribute capital in exchange for benefits. These benefits can be indirect, such as supporting ocean cleanup through a Clean Ocean network-state federation, where the impact alone sustains the entity's goals. While this may suffice in some cases, most members would expect direct, tangible perks, like discounted rates from fisheries benefiting from cleaner oceans or gamified rewards acknowledging their contribution. At scale, the perks of a highly integrated network-community would resemble a blend of traditional nation-state services and common service-networks. These services offerings would produce familiar benefits in a new governance model, with novel perks emerging from the untapped potential of the network-state model.

### 4.2. Enhanced voice and exit

The political concept of "voice and exit," introduced by economist Albert O. Hirschman (1970), describes two primary ways individuals respond to dissatisfaction within a system: leaving the system ("exit") or attempting to change it from within ("voice"). A resurgence of silencing political dissent in the name of unity or fighting misinformation grips both the East and West at the present time. Critics describe this online censorship often as having a chilling effect on democracy (Tucker, 2021).

In the post-covid era, it is not only voice under attack but also exit. Pandora's box of lock-downs has been opened, normalizing the nation-state's restrictions on movement of people to an extent not seen before. The modern passport system was only invented in the second half of the 19th century (Torpey, 2000). With the lockdowns and wartime culture proliferating at an alarming rate, exit too is increasingly being restricted.

Ease of entry into and exit out of network-*communities*, *states*, and *federations* is a hallmark of the network-state concept. The freedom to choose which networks to participate in is a core value that illustrates the importance of the individual and their choice. The voluntary relationship, rather than an authoritarian paternal or tyrannical relationship, is what

defines the relational difference between the two governance systems and those being governed.

The cryptographic networks underpinning the technological architecture of the network-*communities*, *states*, and *federations* is censorship proof at the protocol level. Provided the cryptographic network is secure, no one is capable of preventing this flow of information from the source. At the application level, such as within a wallet, censorship is possible, but that's optional and can be circumvented.

As a tokenized-stakeholder governance system, the Federated Fractal Network-State architecture relies on the direct voices of those most committed to the network. The network-*community* member has a meaningful voice through their ability to vote, backstopped by their freedom to exit whenever conditions within a network become unbearable.

Public choice theory is an economic approach to understanding political behavior, treating politicians, bureaucrats, and voters as self-interested actors who make decisions based on incentives, much like participants in markets. It analyzes how these individual incentives shape collective outcomes in governance, often highlighting inefficiencies and the potential for corruption within traditional political systems (Buchanan & Tullock, 1962).

Relating this to the concept of a network state, "Network-Choice Theory" could extend public choice theory by applying its principles to decentralized, digitally-native communities where governance structures are fluid and shaped by the preferences of individual members. In a network-state, individuals would have more direct options to "exit" or "voice" within the digital infrastructure, selecting or influencing governance models that best align with their interests. This concept emphasizes the role of technology in enhancing personal agency in matters of governance (Buterin, 2022).

### 4.3. System legibility for all

The Peace of Westphalia in 1648 is often cited as the beginning of the modern *nation*-state era. In *Seeing Like a State,* James C. Scott discusses how modern states increased legibility to enhance control over their populations.

Scott argues that states strive to make society more "legible" or understandable to the state by simplifying and standardizing complex local practices. This process often involves transforming diverse local customs, measurements, languages, and landscapes into standardized forms that are easier to monitor, tax, and control.

While *nation*-states and network-*states* differ significantly, they do share a need for legibility when interfacing with the world. The primary legibility mechanism described in the Federated Fractal Network-*State* architecture is the receipt-token concept.

Network-communities, network-*states*, and network-*state federations* identify members according to who possesses and controls an adequate amount of their particular

receipt-tokens. These receipt-tokens are the gateway to entering and participating in the governance protocol of these entities.

Without a functioning form of legibility to identify members from non-members, these decentralized organizations run the very real risk of being corrupted and/or disrupted by hostile outsiders. A trustworthy and auditable mechanism like receipt-tokens is needed to ensure the appropriate votes and voices are being recorded by the network.

For more complex governance arrangements like a household registration within a network-*community*, additional layers of legibility are required. Fortunately, a key feature of this network-*state* architecture is that it is federated. Highly complex legibility requirements can be dealt with at a local, more personal level. Rather than a single centralized entity tracking the location and composition of households across the world, it would be much safer, more accurate, and easier to implement such a registry within network-*communities*.

It is at this local level that trust can remain personal. Trust scales poorly to a global level. It would be much more difficult to cheat in a local setting where members know each other and would recognize a deviance in the membership registries.

In a voluntary association like that between an individual and network-*community*, it is very important that the system is legible for all participants, especially the members. For individuals to voluntarily contribute and join the membership of these entities, they first must somewhat understand what the entity is and, more or less, how it functions.

In understanding the network-*state* system the average person benefits by recognizing the similarities between network-*state* entities and their *nation*-state analogs. Most people already live in a community of some kind, they live in a state, and they are vaguely aware of what the various international intergovernmental organizations purport to do. The network-state does not represent a revolution so much as an evolution in this regard. Things should remain largely recognizable during the network-state era.

In the proposed network-state model there are two additional elements that will facilitate the average person's understanding of the system. The first is that these networks can, and likely should, be configured to be highly transparent. The technical transparency on offer allows members and journalists to see into the system, make sense of it, and even audit it without reliance on a central authority.

The second element supporting an individual's understanding of the network is the fractal relationships between the layers of the network. Individuals will have personal experience interacting with their network-*community* with which to equate the interactions their network-*community* has with the network-*state*, and the interactions the network-*state* has with the *federation*. By understanding the role they, individually, play in the system, they then understand how the entire system structurally operates. This lack of structural complexity means the learning curve is rather shallow, making the model accessible and more likely to be adopted.

A responsible implementation of the Federated Fractal Network-State architecture, in most cases, will be presented in an extremely non-technical manner. Participants need to understand the general function, composition, and rationale for the structure and the relationships that make up the network. Unless the network-*state* is geared towards providing services to a technical subset of individuals there is no justifiable expectation that everyone participating in the network will become an expert in game theory, blockchain technology, open-source protocols, and the other numerous complex concepts that underpin this system.

### 4.4. Scalability without sacrifice

In networks, scaling introduces trade-offs between functionality, structure, security, cost, and complexity. Common challenges include balancing decentralization with efficiency, as more nodes can slow decision-making. Increased complexity also makes the network harder to manage and optimize. These factors must be carefully balanced to maintain functionality and scalability (Nakamoto, 2008).

The first generation of network-*state* models such as Cabin (Cabin, 2023), CityDAO (CityDAO, 2022), Afropolitan (Afropolitan, 2023), and Praxis (Praxis, 2023), are primarily focused on either building a large global network of individuals or maintaining a local focus that only abstractly scales to deliver value to participants in other locales. I am unaware of a network-state implementation that adequately addresses how it is to function at both a small scale and a global scale. The Federated Fractal Network-State architecture does this through a scaling mechanism that is structurally essential and fundamental to its performance.

The network structure scales as problems scale. Small problems are dealt with at a local level of the network architecture. Global problems are dealt with at the highest levels of the network. This structure provides a clear separation of roles and responsibilities and a coherent flow of capital through the network. Build out of the upper levels of the network architecture are not needed for members of network-*communities* to enjoy immediate benefits from participating in the system. The network can generate value even when immature or in the case of wide-spread network disruption or reorganization.

This network-state architecture provides a scaffolding for complex coordination between network participants without the risk of losing sovereignty or invested capital. The lower levels of the network (individuals, network-*communitie*s) maintain control and can adjust their participation with higher-levels of the network as needed. This flexible structure prevents the network from becoming rigid, allowing it to scale effectively without getting stuck, as might happen in less advanced network models.

### 4.5. Ease of implementation

The high level of legibility and scalability of this model makes real-world implementation easier. There are barriers to forming a network-*state*. Fear, uncertainty, and doubt surround a

new governance system. Failure can be inconsequential for a network that never gets off the ground, or catastrophic for a community that has fully transitioned its resources and infrastructure to a failed implementation.

A Federated Fractal Network-State is highly flexible and can be developed incrementally. Initially, a vanguard of individuals might experiment by forming new partitioned communities to test network-*state* components, starting with a network-*community*. As the network-*state* ecosystem matures, service providers join, either newly created for the network-*state* or adapting existing institutions. Finally, the network-*state* model may be fully embraced, with partners adopting innovative, technology-driven business models and governance structures, potentially evolving into decentralized autonomous organizations (DAOs) or decentralized applications (dApps).

The gradual, piecemeal development of a Federated Fractal Network-State is supported by the absence of inherent technical dependencies for participants. Unlike first-generation network-*states* with a single token, like Bitnation's Pangea Arbitration Token, participants can freely choose which currencies to use and which cryptocurrency networks to issue tokens on (Bitnation, 2018). This flexibility reduces the need for consensus on a single economic system and lowers perceived risks, making it easier to onboard new participants and reducing overall implementation costs.

This is a useful place to mention that the implementation of network-states does not imply the dissolution of the nation-state. Network-states are supranational. They can exist above the nation-states at first. They are not inherently in conflict and can co-exist. In the future there will still be nation-states, same as there are currently still kingdoms. The ratio of nation-states, network-states, and other forms of governance technology deployed at any given time will be a reflection of the environment, organizations, and individuals of the time. Nation-states that fail to provide value will be challenged by other nation-states and by network-states that can provide value. Adoption of any such governance technology shall be through an emergent order.

### 4.6. Unlocking technological innovation

Technology unlocks the benefits the network-state offers over legacy governance systems, providing governance, communication, and financial capabilities. Governance protocols for network-*communities*, *states*, and *federations* are deployed on programmable cryptocurrency networks like Ethereum. While the specific technologies used aren't the focus here, the system’s flexibility is key. The Federated Fractal Network-State is agnostic to which technology is deployed, as long as different systems are interoperable. For example, technologies exist like Wrapped Bitcoin (WBTC) and cross-chain bridges like the Avalanche-Ethereum Bridge that allow for seamless interaction between different networks (WBTC, n.d.; Avalanche, n.d.).

This flexibility allows for continuous experimentation and avoids the pitfalls of lock-in to a single network or protocol, ensuring that the best technology can be used as it evolves. As technology providers compete on various fronts—cost, scalability, and user experience—the network-state's infrastructure will improve. From the perspective of network members, the backend technology is largely hidden, with the user experience mediated through apps that allow participation in governance, communication, voting, and financial transactions.

### 4.7. Network security benefits

One way to gauge a network's security is by assessing its resistance to corruption. Research indicates that corruption is more prevalent in centralized systems, where concentrated power often leads to abuses, bribery, and nepotism, undermining the system's integrity (Klitgaard, 1988; Rose-Ackerman, 1999). In contrast, decentralized systems distribute power, creating multiple layers of oversight and accountability, which makes corruption more difficult to conceal. Studies show that decentralized governance structures curb corruption by empowering local actors, increasing public scrutiny, and enabling direct citizen participation (Fisman & Gatti, 2002; Treisman, 2000). The competition among decentralized units further encourages better governance, reducing corruption risks (Enikolopov & Zhuravskaya, 2007).

The Federated Fractal Network-State Architecture exemplifies this decentralization, with transparent relationships and voting processes. Local nodes (network-*communities*) have close ties with members, making identity fraud difficult. If corruption is detected, higher levels of the network (network-*states* or *federations*) can take decisive action, isolating the problem without disrupting the entire system. This resilience is bolstered by the ease with which network-*states* can dissociate from a corrupt *federation*.

However, decentralized networks face specific security challenges, such as Sybil attacks, 51% attacks, and smart contract vulnerabilities. A Sybil attack involves an attacker creating numerous fake identities to disrupt the network's consensus process (Douceur, 2002). A 51% attack occurs when an entity controls more than half of the network's computational power, allowing it to manipulate the blockchain (Nakamoto, 2008). Smart contract vulnerabilities can also be exploited if not properly audited (Atzei, Bartoletti, & Cimoli, 2017).

The decentralized architecture allows for experimentation and reduces the impact of security vulnerabilities, as these issues can be contained within smaller segments of the network. The competitive marketplace of technology providers ensures continuous improvement in network security.

### 4.8. Member security benefits

For individual members, this system offers greater security through diversification. Unlike the *nation*-state model, where investments and residency are typically tied to a single jurisdiction, network-state members can rather easily spread their involvement across

multiple communities, reducing risk. This flexibility is crucial during destabilizing events, for instance in the case of a disruptive military invasion, where those diversified across jurisdictions are better protected and readily able to leave. This reasoning leads some people to pursue multiple passports, a strategy known as “Flag Theory.” The idea is to "plant flags" in various countries for purposes like residence, business, banking, and citizenship, which helps to diversify and reduce reliance on the laws and tax systems of any single nation (Henderson, 2021).

The network-state model offers the flexibility to relocate as situations change, without the need to start over from scratch. Mainstreaming this adaptability alone justifies adopting such a model. Similar to the appeal of Bitcoin—where one could imagine distressed ancestors safely transporting wealth with a memorized seed phrase—the network-state advances this concept by actively protecting members.

Through residency, physical protection, income, and other network benefits, members can more safely switch jurisdictions with less friction. Participation in multiple network-communities, spread across different locations, builds redundancy and resilience. If one community fails, members have fallback options. Network-communities may also operate in multiple jurisdictions, offering these security benefits to their members.

Network-states could address humanitarian needs during crises like wars or famines, coordinating efforts to relocate and resettle members and non-members alike. This governance system empowers individuals with the flexibility and support to confront destabilizing situations, providing a network that can decide whether to fight or flee, and offering assistance as needed.

### 4.9. Power distributed to communities and individuals

In tokenized-stakeholder governance systems those with the most invested have the most voting power. This weighted voting system likely to be used by network-communities, network-states, and federations aligns incentives by giving the greatest influence and stewardship to those most invested in the network— those holding the largest number of receipt-tokens. Instead of having an opaque system where it is not clear where power lies and only a select few elite power-brokers can navigate, the transparent and rules based power distribution of the proposed network provides a legible, highly aligned, and relatively simple to understand system.

The network-state model is flexible to accommodate all sorts of voting systems. Participation in these networks are voluntary. Those concerned by the less than egalitarian stake-holder voting mechanism can choose to not participate in such entities.

According to the principle of subsidiarity, which prioritizes delegating power to the smallest and most local units capable of handling it, the network-state structure allows for more effective and context-sensitive governance by empowering local entities over central

authorities. This level of autonomy empowers members of the network-state ecosystem to build their own communities, tackle the problems they face, and ultimately shape their own destinies.

### 4.10. Financial autonomy

As power becomes more distributed to individuals, finance and banking are likely to transform in the network-state era. A shift away from traditional corporate financial services toward community-driven models is expected. These decentralized financial systems offer increased autonomy, resilience, and the generation of community wealth. By allowing communities to control their own financial infrastructure, such models enhance financial sovereignty, reduce reliance on centralized institutions, and promote sustainable economic growth within the network.

Decentralized finance (DeFi) platforms empower communities by providing access to financial services without the need for traditional intermediaries, thus enhancing financial sovereignty and reducing dependency on large, centralized institutions (Buterin, 2017).

The interest and value generated within these decentralized systems are captured and reinvested by the community itself, rather than being extracted by external corporate entities. This model ensures that the wealth generated stays within the community, fostering local economic growth and allowing for reinvestment in communal projects and initiatives, thereby promoting long-term sustainability and economic growth within the network state (Schär, 2021). Compounded over-time, such a change has massive ramifications for the power dynamics relative to the current established order.

### 4.11. Coordination and trust between parties

In any group, whether newly formed or well-established, coordination issues arise that must be addressed by a network-state*'s* governance protocol. Distrust, which increases with the size of the network, can hinder coordination.

Network-states built on cryptocurrency networks are designed to function in distrustful environments, as seen in the Bitcoin miner network's game theoretical model (Satoshi, 2008). However, human interactions are more complex than those of mining nodes, requiring the network-state to coordinate diverse parties effectively.

Decentralized networks have an advantage over centralized ones in addressing these challenges. Centralized systems often require coercion to achieve compliance, whereas decentralized networks are voluntary and rely on the collective being attractive enough to gain participation and compliance. Unlike centralized systems, where trust is essential for legitimacy, decentralized networks can operate without universal trust through a federated structure guided by subsidiarity.

In decentralized governance, competition and disunity do not lead to dysfunction. Unlike zero-sum *nation*-state voting, where one side must lose, a network-state allows multiple ideas to coexist, competing for support and producing value for their supporters. The market of members ultimately decides the best choices based on ideas, implementations, and outcomes.

### 4.12. Strengthens property rights

Western democracies often claim strong property rights, yet state-actions like taxation, military conscription, civil forfeiture, etc. frequently infringe upon them. While individuals are protected from extortion, a majority can vote to take a percentage of one's property, something illegal for an individual but permissible for a collective.

Consequentialist arguments suggest taxation's collective power outweighs strict property rights (Friedman, 1962; Hayek, 1960). Others argue living under a nation-state implies consent to surrender some rights (Locke, 1689). Rousseau's concept that "whoever refuses to obey the general will shall be compelled to do so by the whole body; which means nothing less than that he will be forced to be free" illustrates this conflict.

In the network-state, force is not required to be free.

The network-state replaces the implicit social contract with explicit agreements between members, their network-*community*, and the network-*state*. While personal property rights are clearly defined and protected, participation with the collective is voluntary. Members contribute financially and abide by rules as long as they receive the benefits they value; if dissatisfied, they can exit and join another network. For shared resources, like infrastructure, network members agree on contributions rather than being subjected to mandatory taxation, addressing the territorial nature of certain goods while preserving choice and flexibility.

If it is true that, like today, an annual taxation of ~50% of income is the best way of producing collective power sufficient to survive and thrive, such a standard will naturally emerge in which network members will agree to voluntarily make such payments in order to remain in the network and receive said benefits.

Unlike in traditional cities, where residents are encouraged to take a figurative responsibility for their surroundings, network-community members have literal ownership of their city. This shift from metaphorical to explicit ownership reduces ambiguity and conflict. Clear property rights allow disputes to be resolved by those with the most invested, while those dissatisfied with the outcome can leave to join another network.

## 5. Threats to the Federated Fractal Network-State Model

The network-state structurally has quite a lot going for it that makes it resilient and responsive to adversarial threats (Srinivasan, 2022; Ravikant, 2020). Based on my research and my

experience interacting with DAOs over the past 8 years, I will highlight some of the threats that these networks will likely face. A full analysis of all possible threats and the ways to preempt them or mitigate their harm are out of scope of this paper.

### 5.1 Media is the king-maker

In a properly configured DAO, network activities are transparent and the constraint on knowledge dissemination is the amount of time it takes to monitor the network. People end up outsourcing this responsibility to journalists in a best case, or as is often the case social media influencers.

Such a situation creates incentives for a captured media that distorts the truth and ultimately obscures an otherwise transparent network. Through social engineering and heavily moderated "gated information-gardens" the situation often arises where certain members of the network are protected or propped up at the expense of others by a select few who have accumulated an unacceptable and dangerous amount of power.

### 5.2 Tokenomics matters

If a network is bleeding value, it is unlikely the customers fault. In almost all cases, these early networks are created by technology experts and economic amateurs. In the big picture this is not a problem for the network-state concept because the market determines which networks have valuable economic fundamentals and these networks grow and become important.

A significant threat is being part of a network with poor token economics that does not recognize this deficiency and instead sets out recklessly to solve their poor price action through addressing unrelated problems. This is extremely common and can cause the retardation or even destruction of a community stuck in this loop.

Even worse, sometimes tokenomics are set up maliciously from the start in order to defraud network participants. This happens far too often, especially with novel or highly complex DAO formulations. Other times, a network will start off with decent tokenomics but a poor distribution of power and entrenched interests will vote themselves an unacceptable amount of power or resources.

### 5.3 Treasuries are dangerous

You'd think a treasury would be a good thing but for a DAO the treasury can be viewed as a source of wealth that produces a lot of bad behavior.

To operate efficiently, the market needs to provide input into the governance protocol and governance decisions of a DAO. Good ideas should make money rather than relying on an internal treasury funding source. A treasury system, by replacing a market-mechanism

with a political one, quickly resembles a communist planning bureau where voters come up with ideas endlessly funded by the treasury in lieu of producing sustainable revenue or value.

Rather than putting money where one's mouth is, like with the receipt-token funding mechanism described above, the treasury is viewed as a source of free money, creating a disconnect from market feedback. The DAO becomes tasked with investing, which is difficult, and with service creation which is also difficult. The end result is often suboptimal.

Treasuries fuel the misconception that it is better to produce all services and technology in-house instead of going to the market and buying what is available. This generates huge sunk cost risks.

Treasuries paradoxically also generate an insular and counter-productive environment within a DAO because there is now an anticompetitive incentive by current participants to dissuade new participants from entering and competing for funding. Furthermore, when people don't receive the funding they've requested for an idea they think is good, they often rage quit the network. Whereas in a more market-driven system they might try it anyway and see if they can get customers to prove the concept has merit. These proposal owners don't like seeing their competitors being directly paid by the network when they are not. So instead of growing their ecosystem, DAO treasuries often have the opposite effect.

If you must have a treasury it may be best to structure it as a bounty that pays for outcomes, not intentions.

### 5.4 Intelligence and wealth are not causally linked

The network should not assume that the token holders who own the most tokens, and are therefore individually the most powerful in the network, are necessarily smart. The voting system gives them power, but the network should be humble enough to defer to experts whenever possible. This means creating sense making mechanisms accessible to the network through hiring or creating services like think tanks whenever appropriate.

### 5.5 Nation-state attacks

A network-state aiming to match a *nation*-state must be secure against such adversaries. For this, a proof of work (POW) consensus mechanism may be preferable over proof of stake (POS). While POS networks (like Etheruem) are feature-rich, once an attacker with enough stake captures them, the network is permanently compromised. In contrast, a POW network (like Bitcoin) requires attackers to continuously expend resources, making it infinitely costly to maintain control. While both POS and POW attacks can be extraordinarily expensive, a POW network imposes ongoing costs, potentially bankrupting even a *nation*-state with the power of the money printing press, unlike a POS network, which requires only a one-time investment.

### 5.6 Community fragmentation

Community fragmentation is generally viewed negatively because it leads to divisions that are inefficient and represents a lack of cohesive progress within a network. Initially, I saw this in the context of Bitcoin and its various forks, comparing it unfavorably to the Dash DAO's voting mechanism, which preempts such splits. Dash's approach seemed more efficient, as disagreements were most often resolved without fragmenting the network.

I've come to see that fragmentation can actually be a strength. In a hard-forking situation, even though the community splits, the various groups continue to work within the broader ecosystem, allowing for greater experimentation. Different versions of the network can develop independently, testing new ideas with real participants and resources, which enables the market, rather than a small group of voters, to determine the most effective solutions. Additionally, fragmentation mitigates the risk of stagnation, where early coin holders' interests may not align with those of new or future holders, potentially hindering innovation. By allowing different communities to pursue their own paths, the network as a whole benefits from diverse approaches and solutions.

## 6. Conclusion

The vanguard peoples that employ network-state governance technology will lead in this coming era akin to those nations quickest to adopt gunpowder, the printing press, radio, and television. It is not inconceivable that the efficiencies, moral and utilitarian superiority, and flexibility of the network-state model will challenge and eventually outcompete the *nation*-state model in prominence.

Once maturely deployed, the supposed efficacy of the network-state concept will be on full display. If this governance model translates to a better life for individuals and humanity more generally I suspect we will see a rapid adoption of this governance technology across society in both expected and unpredictable ways.

The Federated Fractal Network-State architecture leans into the fundamental benefits of a network-state at the structural level. Through the values of transparency, subsidiarity, accountability, competition, interoperability, agency, autonomy, and sovereignty this network model demonstrates a clear path forward that will transition us from the network-state concept to the network-state reality.

The building blocks for this reality are mostly available and ready. The technology, service providers, communities, properties, and leaders necessary to bring this into existence are already among us. Now that there is a coherent framework to relate all these items through this newly presented architecture, we can get to the hard work of banding together to form network-*communities*, network-*states*, and even network-*state federations* to address the problems of our times.

It is my sincere hope this architecture plays a role in the creation of such a reality and I will be doing my part for my community. If you are so inclined please reach out to collaborate with me.

## Appendix

### A Hypothetical Example of an Armenian Network-*State*

The concept of the Federated Fractal Network-State architecture emerged from the ambition to apply the foundational principles of Bitcoin and the network-state to the Armenian people, who are both well-positioned for and in need of innovative governance technology.

Though I've been thinking through this problem for the better part of ten years, it was not until I viewed the network from the perspective of a network-*community* member did the pieces fall into place and the resolution of the idea have the necessary fidelity to write down and share. What follows is the hypothetical ecosystem that spawned this paper's architecture concept.

I am developing the following network-community configuration for implementation and testing as an independent extension of the Tennessee Hyeland Project.

#### Private property in a network-*community*

Let's imagine a network-*community* composed of Armenian-Americans and their collaborators in the Upper Cumberland region of Tennessee in the newly formed town of Ani (Maranci, 2001). The protocol that governs Ani begins with an individual's property rights. A Network-*community* covenant attached to the property deeds within Ani governs the bounds and types of property rights that are permitted.

People, including owners of private property in Ani, will have the choice to be a fee paying member of this network-*community*. Members of Ani will receive benefits such as voting rights, social services, priority investment opportunities, and network-*community* dividends.

Each year, a baseline membership fee is established by the governance protocol of Ani. For example it can be that $1000 worth of AniTokens (this network-*community's* receipt-token) need to be purchased per registered household to become or maintain membership to Ani. The network-*community* creates new receipt-tokens to be purchased for this purpose. This fee can be paid out-of-pocket, or deducted from the network-*community* dividends earned by the receipt-token holders.

The first class of property in Ani is privately owned dwellings - houses, apartments, etc. These are non-commercial homes, though short and long-term renting would be permissible. Private property in Ani has very strong property rights. Unless specified in the deed through a buy-back clause of some kind, the concept of eminent domain is nonexistent.

Likewise, property taxes, to whatever extent it is legally possible in the larger jurisdiction of the county or state, will not be imposed on the property. The network-*community* membership fee, unlike property taxes, is entirely voluntary and has no impact on ownership rights of private property.

**Network-*community* property**

The second class of property in Ani is collective network-*community* property. All commercial real estate within Ani will be owned and leased out by the Ani network-*community*. The network-*community* will decide what sort of commerce it wants within its network. Properties are acquired and developed upon the recommendation of network-*community* members or delegates (such as a development council). Capital is raised and a commiserate amount of receipt-tokens are issued. For instance, to build a $10 million dollar hotel in Ani, would require $10 million dollars of assets (USD, BCH, ETH, etc.) to be raised from the membership base of Ani. In return, these members would receive $10 million dollars worth of receipt-tokens.

AniToken holders will get to define the feel of their city by determining what sorts of business and services they want offered in their community. In this way, unless it is the wish of the community, you will not have a situation where you have a junk yard next to a hotel. This is analogous to the current permitting process for current towns and cities. The difference is that the network-*community* members are the investors, owners, and regulators of these physical assets. They do not abdicate the property rights to large international corporations or to elected officials and unelected bureaucrats. The network-*community* members fundamentally remain in control of Ani. You can think of this as a giant co-op structure (Kasmir, 1996).

To counterbalance this centralizing force within the network-*community*, community assets are leased out to private individuals or private/public companies for the planned purpose of the property. The network-*community* does not act like the Communist State Planning Committee, dictating the management and day to day operations of the commercial interests within Ani. The network-*community* will not for instance be running a coffee shop in the town square. Rather, the network-*community* or more likely its elected delegates, will develop leases with a coffee shop operator who will be responsible for running the shop for his own profit and providing value to his customers, the people in Ani and visitors.

The network-*community* will periodically review the leases, change prices as necessary, and evaluate if the operator of the asset is producing a good service or product. If not, or if better alternatives exist, the lease will be changed and the leasing process will restart. The members of the network-*community* and their delegates tasked with leasing contracts are incentivized to source the most valuable and well-aligned service operators for

their properties as they are both the customers of these businesses as well as the so-called landlords.

### Network-*community* dividends & growth

The network-*community* earns revenue through the leases they issue. This revenue is paid out to members as a receipt-token dividend less the network-*community* operational costs. Operational costs would include payments to delegates for their service in various councils, in-house network-*community* service delivery costs, network-*state* membership fees, and possibly an emergency treasury fund. In this way, the AniToken can be thought of as a revenue producing asset-backed receipt-token or a tokenized REIT (Herweijer & Pineda, 2020).

In Ani there is a single receipt-token type that is acquired through direct investment and/or membership dues. This receipt-token is backed by all the property owned by this one network-*community*.

Members of Ani receive dividends proportional to the amount of receipt-tokens they hold. A member who holds 10% of all AniTokens will receive 10% of the dividend payouts. Members receiving dividends can choose to hold them as unrealized gains, re-invest in future capital raises, cover their membership dues, or realize their gains. These payments will be made via a monetary cryptocurrency like Bitcoin Cash to member's wallets (Antonopoulos, 2017). This same wallet also holds member's receipt-tokens by which they are identified by the network and are able to vote and otherwise interact with the network-*community* as defined by Ani's governance protocol.

It is interesting to extrapolate how this funding mechanism would grow such a network-*community* over time. Compounding fees and investments made to the network-*community* should theoretically increase its value and dividend yields. Supposing these dividends are reinvested and/or the network-*community* is successfully able to attract additional capital, one can imagine prolonged growth of the network-*community's* influence and appeal.

There will likely be an equilibrium point reached between the asset-holdings, new investments, and the services being provided by the network-*community* at which point further investment yields negligible marginal utility to the network-*community*. This point will be determined by a great number of factors including the network-*community's* demographics, its physical location and constraints, the global and regional economic situation, as well as many other variables.

### Network-*community* voting rights and governance

Ani has a governance protocol that stipulates that AniToken holders can vote on changes to the governance protocol and on what investments the network-*community* will raise capital

for. This tokenized-stakeholder governance has been implemented with success by a number of high-profile decentralized organizations including the accountless exchange *ShapeShift* (ShapeShift, 2022) founded by Erik Voorhees. There are a vast number of ways for a network-*community* or network-*state* to configure their voting process. Frequency of votes, vote weightage, delegation of votes, and vote passage thresholds are just some of the many variables that make up the voting process of a network-*community/state*.

In Ani, there will be an annual vote where the AniToken holders decide on proposed governance rule changes and elect members to serve various committee and leadership roles. There are also ad hoc votes throughout the year whenever there is an emergency or a specific investment opportunity whose capital raise must be voted on. As Ani grows, the number of committees and required delegation would likely increase. A planning and leasing committee seems likely to form early on.

One would also expect a committee to form to interface with the outside world such as with the local or regional *nation*-state government(s) in which the network-*community* operates. Such a committee would also interface with the network-*state(s)* they are members of. Other plausible committees would be a public relations and/or marketing committee. All services provided by the network-*community* also would likely be governed by a corresponding committee. Network-*communities* that come to offer a full-suite of community services would have a highly complex series of committees responsible for the administration and delivery of these services more or less resembling the current structure of a local municipality.

In Ani, one receipt token equals one vote. Those that have invested the most into the network and those who have contributed the longest to Ani, will have the greatest say in how the community is governed and what the network-*community* invests in. This voting system is less egalitarian than one person one vote as is most common in western *nation*-state democracy. The benefit of moving to weighted voting is it closely aligns the capital investment of the community with its governance. Those that have invested the most in Ani, contribute the most to the decision making. This minimizes the need for wasteful lobbying or vote-buying by entrenched interests like in today's system of governance.

People who favor the more egalitarian models fortunately have choices. They can choose to join another network-*community* that uses a one person one vote voting model. In Ani, which won't, they can lobby large receipt-token holders to delegate their voting power to them. They too have the option to live in Ani but choose not to pay the membership fee and not accrue additional voting power. They can take this one step further and sell whatever existing receipt-tokens they may have as a way of exiting the governance system of Ani completely.

**The case for competing Armenian network-*states***

While the network-*community* of Ani is tasked with dealing with the needs of its members in most day to day matters, there are issues that extend beyond their local community that matter to their members.

Suppose Ani wants to protect Armenians worldwide from the risk of genocide and ethnic cleansing. Since this concern goes beyond Ani's borders and affects many Armenian network-*communities*, it could lead to the formation of a network-*state* focused on protecting Armenians from such threats.

An Armenian Protection network-*state* would use all the available tools to deter genocide and protect Armenians. These measures could include diplomatic and legal support, physical security, economic hybrid warfare, relocation assistance, humanitarian aid, and a host of other measures prepared for such contingencies by the network-*state* and its membership base of network-*communities*.

There are many such plausible network-*states* that could form, transforming the pent-up potential energy of the Armenian community into action. Given the disagreeable nature of Armenians, we'd expect many competing network-*states* approaching similar issues with different solutions and philosophies.

To illustrate this one could imagine a stratification of Armenian society along the Marxist lines of "Capitalists" and "Socialists" as a remnant of the cold-war educational systems of the Armenian Soviet Socialist Republic and the West. While this taxonomy is in many ways nondescript and needlessly divisive it remains a persistent mental model nonetheless.

Emanating from the capitalist segment of Armenian society, one would expect network-*states* focused primarily on member's property rights. From the socialist segment of Armenian society, there would be network-*states* focused primarily on equity. These network-*states* would be competing against each other on the direction they wish to take Armenian society and on how successful they are at accomplishing their goals.

**Detailed network-*state* example**

Imagine an Armenian Merchant Marines network-*state* that serves Armenian society by establishing protected trade routes and fostering diplomatic and economic opportunities, similar to a modern-day East India Company and the historic Armenian Madras Traders (Aslanian, 2011). While the Armenian Merchant Marines network-*state* may resemble a corporation in some ways, its primary focus is not profit-making but the collective goals and shared interests of its members. The East India Company in particular is a fitting example as it is often described as functioning like a nation in its own right (Dalrymple, 2019).

The administrators of the Armenian Merchant Marine network-*state* will raise capital from interested Armenian and allied network-*communities*, thus creating its membership

base. This capital will flow into the network-*states* treasury to fund the operations of the merchant marine force.

Having already established a leadership structure and vision sufficient to raise an initial round of capital, the next step is for this network-*state* to build its capacity to deliver on promises made to its members. This will require, generally, two things: merchant marine operators to provide the service, and merchant marine vessels- the leased physical ships and associated hardware.

It may be decided that it is best to hire established third-party merchant marine outfits to operate on the behalf of the Merchant Marine network-*state*. These merchant marine contractors could have their own well-equipped vessels and crews, and perhaps even established trade routes. The network-*state* would provide operating capital to these contractors' operations and in return would get specific trade routes, preferred shipping rates, or a share of the contractor's profits, depending on the specifics of the arrangement.

This contractor model would require minimal startup costs and be the quickest and easiest to implement. Additionally, the network-*state* could hire multiple contractors and continue only with those providing adequate service. Leveraging the existing competitive landscape of merchant marine operators could increase the likelihood of success.

The downside of the contractor model is that it could become costly over time, as third-party operators expect to earn a profit. Additionally, the network-*state* would have less direct control over the service delivery, as it would be executed by an external organization that may not align with or be part of Armenian society.

The leadership of the Armenian Merchant Marine network-*state* could for these reasons instead decide to grow the capacity to operate a merchant marine force internally. This would entail the deployment of human capital necessary to operate the fleet and physical capital of the ships.

Given my view that direct ownership of ships by the network-*state* is undesirable due to the inflexibility it creates in the system, a better approach is for member network-*communities* to independently raise the capital to purchase and own the ships and then lease the ships to the network-*state* for operation. This way, the merchant marine force is owned by the network-*state* participants. If they lose confidence in the network-*state's* objectives or leadership, they can withdraw support, lease the ship to another entity, or sell it to recover their investment.

After leasing ships from their network-*community* members, the network-*state* would decide whether to operate the ships directly or through third-party operators. Funding for the leases and operations would come from membership fees and/or revenue generated by their merchant marine services. Employing and managing service providers directly within the network-*state*, especially from the larger Armenian community, would likely ensure closer alignment with member network-*communities*. A hierarchical command structure could

oversee these operators, promoting dedication and reliability. This would be crucial during times of turmoil, fear, or uncertainty when third-party providers might not be as dependable.

Compounded over time, the profitability and sustainability of a network-*state* lease holder model is preferable to the contractor model supposing the initial setup hurdles (expertise, market fit, experimentation) can be overcome. It perhaps may be best to start with a hybrid approach where the contractor model is used to deliver immediate benefits to the member network-*communities* while in parallel the network-*state* lease holder model is operationalized. Once fully implemented, this network-*state* lease holder model would be expected to yield increased lasting gains for the network-*state* members.

In summary, the Armenian Merchant Marine network-*state* could offer significant benefits by fostering economic collaboration, enhancing community control, and protecting shared interests. It provides a sustainable model that aligns with the values of its members while promoting long-term growth, security, and resilience for the Armenian community. Through a flexible and inclusive approach, this network-*state* has the potential to generate lasting value and strengthen the collective power of its participants.

The ideas in this paper, as well as a more literary justification for the adoption of a network-state by the Armenians will be published in a forthcoming book available for free in the library section of haykakancryptodprots.com.

## Conclusion

The Federated Fractal Network-State architecture offers a transformative governance model that emphasizes decentralization, transparency, and individual agency. By structuring governance across self-similar layers—individual, network-community, network-state, and network-state federation—this model promotes scalable and resilient systems capable of addressing local and global challenges. The introduction of receipt-tokens ensures secure membership and participation, aligning incentives and enabling flexible contributions to shared goals. Ultimately, this architecture provides a practical framework for advancing beyond the nation-state, fostering innovation, cooperation, and adaptability in a rapidly evolving world. If implemented responsibly, it has the potential to unlock untapped opportunities, empowering communities to address the most pressing issues of our time.

## 9. References

1. Afropolitan. (2023). Afropolitan: The digital nation for the African diaspora. Retrieved from https://www.afropolitan.io/
2. Aslanian, S. D. (2011). From the Indian Ocean to the Mediterranean: The global trade networks of Armenian merchants from New Julfa. University of California Press.
3. Antonopoulos, A. M. (2017). Mastering Bitcoin: Unlocking digital cryptocurrencies (2nd ed.). O'Reilly Media.

4. Atzei, N., Bartoletti, M., & Cimoli, T. (2017). A survey of attacks on Ethereum smart contracts (SoK). Proceedings of the 6th International Conference on Principles of Security and Trust, 164-186.
5. Avalanche. (n.d.). Cross-chain bridge utility. Avalanche Documentation. Retrieved [insert today's date], from https://docs.avax.network/subnets/add-utility/cross-chain-bridge
6. BITNATION. (2018). BITNATION Pangea whitepaper. Retrieved from https://github.com/Bit-Nation/Pangea-Docs/blob/master/BITNATION%20Pangea%20Whitepaper%202018.pdf
7. Buchanan, J. M., & Tullock, G. (1962). The calculus of consent: Logical foundations of constitutional democracy. University of Michigan Press.
8. Buterin, V. (2022). "Crypto Governance: Network States and the Future of Decision-Making."
9. Buterin, V. (2017). The meaning of decentralization. Medium. https://medium.com/@VitalikButerin/the-meaning-of-decentralization-a0c92b76a274
10. Cabin. (2023). Cabin: Building decentralized communities. Retrieved from https://www.cabin.city/
11. CityDAO. (2022). CityDAO: A blockchain-based city. Retrieved from https://www.citydao.io/
12. Cooley, A., & Ron, J. (2002). The NGO scramble: Organizational insecurity and the political economy of transnational action. International Security, 27(1), 5-39.
13. Dalrymple, W. (2019). The anarchy: The East India Company, corporate violence, and the pillage of an empire. Bloomsbury Publishing.
14. Davidson, E. (2023). Network States and the Pursuit of Human Flourishing: A New Paradigm for Governance in the Digital Age. Journal of Network Society Studies, 12(3), 45-67.
15. Deserranno, E., & Qian, N. (2022). Why well-meaning NGOs sometimes do more harm than good. Kellogg School of Management.
16. Douceur, J. R. (2002). The Sybil attack. International Workshop on Peer-to-Peer Systems, 251-260.
17. Enikolopov, R., & Zhuravskaya, E. (2007). Decentralization and political institutions. Journal of Public Economics, 91(11-12), 2261-2290.
18. Fisman, R., & Gatti, R. (2002). Decentralization and corruption: Evidence across countries. Journal of Public Economics, 83(3), 325-345.
19. Frey, B. S., & Eichenberger, R. (1999). *The New Democratic Federalism for Europe: Functional, Overlapping, and Competing Jurisdictions*. Edward Elgar Publishing.
20. Friedman, M. (1962). Capitalism and freedom. University of Chicago Press.
21. Hayek, F. A. (1960). The constitution of liberty. University of Chicago Press.

22. Henderson, A. (2021). Nomad Capitalist: Reclaim Your Freedom with Flag Theory and Offshore Finance. Nomad Capitalist Press.
23. Herweijer, M., & Pineda, E. (2020). Tokenizing Real Estate: The Future of Fractional Ownership?. World Economic Forum.
24. Hirschman, A. O. (1970). Exit, voice, and loyalty: Responses to decline in firms, organizations, and states. Harvard University Press.
25. Kasmir, S. (1996). The Myth of Mondragon: Cooperatives, Politics, and Working-Class Life in a Basque Town. SUNY Press.
26. Klitgaard, R. (1988). Controlling corruption. University of California Press.
27. Locke, J. (1689). Two treatises of government.
28. Maranci, C. (2001). Medieval Armenian architecture: Constructions of race and nation. Peeters Publishers.
29. Nakamoto, S. (2008). Bitcoin: A peer-to-peer electronic cash system. https://bitcoin.org/bitcoin.pdf
30. National Archives. (2023). Original design of the Great Seal of the United States (1782). Retrieved from https://www.archives.gov
31. Ostrom, E. (1990). Governing the commons: The evolution of institutions for collective action. Cambridge University Press.
32. Praxis. (2023). Praxis: Building the city of the future. Retrieved from https://www.praxis.city/
33. Ravikant, N. (2020). The networked state. In The Tim Ferriss Show (Episode #473).
34. Rose-Ackerman, S. (1999). Corruption and government: Causes, consequences, and reform. Cambridge University Press.
35. Rousseau, J.-J. (1762). The social contract. Marc-Michel Rey.
36. Schär, F. (2021). Decentralized finance: On blockchain- and smart contract-based financial markets. Federal Reserve Bank of St. Louis Review, 103(2), 153-174.
37. Scott, J. C. (1998). Seeing like a state: How certain schemes to improve the human condition have failed. Yale University Press.
38. ShapeShift. (2022, June 9). The ShapeShift DAO at one year: Our progress toward decentralization. ShapeShift. https://shapeshift.com/blog/the-shapeshift-dao-at-one-year-our-progress-toward-decentralization
39. Srinivasan, B. (2022). The network state: How to start a new country.
40. Tabarrok, A. (1998). The private provision of public goods via dominant assurance contracts. *Public Choice, 96*(3-4), 345-362.
41. Torpey, J. (2000). The invention of the passport: Surveillance, citizenship, and the state. Cambridge University Press.
42. Treisman, D. (2000). The causes of corruption: A cross-national study. Journal of Public Economics, 76(3), 399-457.
43. Tucker, J. A. (2021). Liberty or lockdown. American Institute for Economic Research.

44. United Nations Office on Drugs and Crime. (2019). Trafficking in Persons & Smuggling of Migrants Module 14: Key Issues. Retrieved from https://www.unodc.org
45. WBTC. (n.d.). WBTC: Wrapped Bitcoin. Retrieved August 20th 2024, from https://wbtc.ne

Available at
https://journalofspecialjurisdictions.com
Journal of Special Jurisdictions

# The Economic Theory of Special Jurisdictions and the Possibilities of the Lithium Valley

**Claudio Shikida[1*] † & Isabella Christo[2**] ††**

1. IBMEC

2. Foundation for Economic Education*

claudio.shikida@professores.ibmec.edu.br

** isabelachristo@gmail.com

† 0000-0002-8305-3022

†† 0000-0001-7207-5309

**Abstract:**
This article analyzes a theoretical case for cost-benefit analysis of a local elite accepting the implementation of a special jurisdiction (such as a Special Economic Zone or a Charter City), in which the choice is divided between benefiting from economic prosperity (through revenue) and rent-seeking. A brief economic diagnosis of entrepreneurship and employment is made for the Lithium Valley, a region located in the north of the state of Minas Gerais, to support a discussion based on evidence about the possible creation of a special jurisdiction in the region. The paper concludes that effective implementation of SEZs or similar jurisdictions could stimulate regional development by aligning elite incentives toward economic growth rather than rent-seeking. However, achieving long-term institutional transformation requires policies that foster externalities, improve governance, and align local elites' preferences with broader economic goals.

**Keywords:** Special Jurisdictions, Special Economic Zones, Lithium Valley, Entrepreneurship.

**Resumen:**
Este artículo analiza un caso teórico de análisis coste-beneficio de una élite local que acepta la implantación de una jurisdicción especial (como una Zona Económica Especial o una Ciudad Autónoma), en el que la elección se divide entre beneficiarse de la prosperidad económica (a través de los ingresos) y la búsqueda de rentas. Se realiza un breve diagnóstico económico del espíritu empresarial y el empleo en el Valle del Litio, una región situada en el norte del estado de Minas Gerais, para apoyar un debate basado en pruebas sobre la posible creación de una jurisdicción especial en la región.
El documento concluye que la aplicación efectiva de las ZEE o jurisdicciones similares podría estimular el desarrollo regional al alinear los incentivos de las élites hacia el crecimiento económico en lugar de la búsqueda de rentas. Sin embargo, la transformación institucional a largo plazo requiere políticas que fomenten las externalidades, mejoren la gobernanza y alineen las preferencias de las élites locales con objetivos económicos más amplios.
**Palabras clave**: Jurisdicciones Especiales, Zonas Económicas Especiales, Valle del Litio, Espíritu Empresarial.

## 1. Introduction

Relocating between different institutional arrangements has proven to be beneficial throughout history in multiple settings. Private, public, and company-managed colonies existed simultaneously in the early colonization of what we now call the United States of America, providing colonists and the British Crown with the possibility of rich institutional experimentation (Mueller, 2006). The reference to important figures in the history, such as Johan Gutenberg and William Tyndale, emphasizes how institutional diversity in Europe allowed for innovation and the flourishing of ideas in various fields, including printing and literatures (Ridley, 2023). Common in these stories is the possibility of individuals relocating when there is institutional diversity at their disposal. This also applies to today. Institutional diversity can be in aspects such as governance, educational, and even in environmental management models, etc.

Institutional diversity can emerge naturally or, in a sense, be provoked. In the above-mentioned historical examples, provoked diversity emerged due to the English government's multiple colonial arrangements. But it mixed with 'natural' diversity, in the sense that there was no central authority determining the diversity of institutional arrangements in locally, nor in Europe at the time.[1]

Can institutional diversity be created and stimulated? This was the question that led Paul Romer, in 2010, to propose the so-called Charter Cities, a bold experiment in institutional change in which, in the original proposal, a country would create a city with completely distinct legal institutions in uninhabited land. This would provide citizens and residents with possibilities that were only feasible if they emigrated there. The proposal encountered several obstacles and critics to its implementation. For example, Kurtis Lockchart, executive director of the Charter City Institute, says that the model once proposed by Paul Romer, known as the 'foreign guarantor model', is impractical and potentially neo-colonial (Lockhart, 2024), but has generated interesting derivations over the years. Currently, Charter Cities are one of the possibilities within what has become known as special jurisdictions.

In this theoretical work we seek to understand how institutional experimentation and diversity can be applied to developing the region known as the "Vale do Lítio" (Lithium Valley) by changing the incentives for the local elite. The use of a theoretical framework (in other words, an economic model) serves to logically organize the various elements that play a part in implementing a special jurisdiction in the region.

The work is organized as follows: the following section conceptualizes and briefly comments on the three most common types of special jurisdiction. Subsequently, a simple

[1] The example by Tiebout (1956) is perhaps the most famous.

model of political economy is presented to detail the cost-benefit problems faced by a local elite faced with the choice of implementing a special jurisdiction in its territory. We then present and analyze what is known as the Lithium Valley is analyzed, particularly based on indicators of entrepreneurship, companies presence, and jobs. Finally, the last section concludes by saying that the success of a special jurisdiction in Lithium Valley depends on aligning local elite incentives toward economic growth through policies that enhance governance and foster sustainable development.

## 2. Models of Special Jurisdictions

Special jurisdictions are land extensions where a legal regime operates that is distinct from the rest of the original jurisdiction. The distinction can be in terms of specific regulations for particular areas or industries or the adoption of a completely different legal framework or code (either pre-existing or created for the specific purposes of the jurisdiction).[2]

In this sense, a 'special jurisdiction' is a kind of 'institution' created following specific economic development incentives. The term can be understood also in terms of the "formal or informal rules that govern the activities of an area." Being the result of a collective initiative involving private, public, or public-private partners, a special jurisdiction can be shaped by its managers as it evolves.

An easy way to understand what a special jurisdiction is is to understand it as a regulatory sandboxes. According to Noda (2023), a regulatory sandbox is[3]:

> "(...) a regulatory instrument of promotion, based on regulatory incentive, through structured experimentation, which has as its inductive pillar temporary normative-regulatory exemption." (Noda, 2023: 131)

Using a sandbox allows for flexibility in testing new regulatory models for innovations, reducing the cost of regulations. Large institutions that have big areas to regulate, specially in financial market industries, such as the Securities and Exchange Commission (CVM), the Central Bank of Brazil, and the Superintendence of Private Insurance (Susep), use of this tool (Noda, 2023).[4]

Special Economic Zones (SEZs) are also a type of special jurisdiction. Without delving into the complexity of why, they encompass territories (physical or virtual) and adopt

[2] Currently, even virtual environments can fit here. Even before the publication of *The Network State* by Balaji Srinivasan in 2022, discussions around virtual communities functioning as special virtual jurisdictions were gaining some traction on social media.

[3] Translated from the original by the authors.

[4] In Cooter and Schafer (2017), the authors highlight the role of law as a driver of economic development. The relationship is not simple and is not always positive. However, with agile regulation, such as that provided by the regulatory sandbox, the likelihood of the relationship being virtuous increases.

distinct incentives, including tax exemptions, tariffs, and regulatory reforms. In Shikida et al. (2022), it is observed that the definition of SEZs can vary. For example, for UNCTAD, industrial districts, technology parks, and duty-free establishments do not qualify as SEZs, as they do not require specific regulations. For the Facility for Investment Climate Advisory Services (FIAS), on the other hand, the following would be considered SEZs:

> • Free trade areas, which correspond to enclosed duty-free areas that offer infrastructure for storage, warehousing, and distribution of goods.
> • Export Processing Zones (EPZs), which focus on foreign markets, and are formed by a single independent manufacturing unit regardless of its location.
> • Business zones, which focus on revitalizing degraded urban areas through the granting of fiscal and financial incentives.
> • Freeports which usually encompass larger areas that accommodate all types of activities (including tourism and retail sales), and can even have residents.
> • Special zones such as technology parks, petrochemical zones, logistics parks, and airport-based zones, for example." (Shikida et al., 2022, pp. 47–48).

Successful cases of SEZ would improve economic indexes such as foreign direct investment (FDI), employment, etc. Moberg and Tarko (2021) show that SEZs can be useful tools in long-term economic projects such as economic liberalization, a reform that is often not the result from strong and centralized leadership. Under certain conditions, the implementation of SEZs have the potential to generate externalities (spillovers) in neighboring regions, which in turn can cause the benefits of liberalization to outweigh the gains resulting from rent-seeking, resulting in a positive effect on regional well-being and encourage the expansion of the model in the rest of the country.[5][6]

But besides Special Economic Zones, there are also Charter Cities. Originally conceived by Paul Romer, they are cities built from scratch in a territory with their own legal system, as stated above. The distinctiveness of Charter Cities relies on how that legal system is brought from another country– to allow for 'controlled' institutional competition, among

[5] Many SEZs (Special Economic Zones) are based solely on favoring certain groups through tax incentives, which is why many, rightfully, do not believe in their potential as generators of well-being, as they would merely be 'concentrating benefits and dispersing costs,' resembling inefficient projects such as those described in Weingast, Shepsle, and Johnsen (1983). It is clear, then, that the legal design of an SEZ matters. This will be discussed further in the next section.

[6] The local elite, in the model, faces a trade-off between receiving resources through taxation or via the redistribution generated by rent-seeking. The model will be presented below.

other things. That being said, competition as a goal is not always well seen, specially by established groups who criticize it by calling these pursues 'neocolonial.' [7]

In recent years, new models of Charter Cities have emerged. They are often confused with SEZs that emphasize on regulatory innovations instead of the adoption of distinct legal systems. Some of the very recent implementations include Próspera, on the island of Roatán, Honduras, and, in a sense, the Catawba Digital Economic Zone), an Indigenous SEZ, in South and North Carolina, United States (US).[8][9]

Taxonomies can be categorized based on the degree of innovation brought by each institutional change tool, and they can vary. But it is worth highlighting a few points: (a) the application of models like these depends on the broader objective of the policy being implemented, and (b) some costs and benefits are not only economic but also political, which can generate distortions and undermine the implementation of innovation, as well as its spillover effects; (c) it is possible to imagine intermediate cases between sandboxes, SEZs, and Charter Cities. Sandboxes, for example, are adopted in Brazil at all federative levels, which expands the possibilities for implementing innovations.[10]

Now let us move on to the theoretical model. Here we present a slightly modified version of the one developed by Moberg and Tarko (2021) to explain the tradeoffs that local elites face when deciding whether or not to be part of a policy that creates a special jurisdiction in their territory. The model is therefore more suitable for the case of SEZs and Charter Cities than for regulatory sandboxes, although the reader can, with some effort, adapt the arguments to any type of special jurisdiction.

What are the opportunity costs faced by the local elite in the face of the prospect of creating an SEZ? In other words, when is it worthwhile for the local elite to accept an institutional change that favors the business environment in their region? This question was answered in a stylized way by Moberg and Tarko (2011) as a maximization problem in which the local elite of the region (understood to be composed of politicians and local interest groups) is faced with two possible sources of revenue: (a) tax revenue derived from the implementation of the SEZ or; (b) rents derived from their rent-seeking activity.

[7] For example, an expensive and slow judiciary, already established, will not look favorably upon competition from one that is cheaper and more efficient, and will likely act to defend itself by seeking to eliminate the competition.

[8] See, for example, the publications from the Charter Cities Institute (https://chartercitiesinstitute.org/) or the journal Journal of Special Jurisdictions (https://journalofspecialjurisdictions.com/index.php/jsj). The recent World Bank publication on private cities (Li; Rama (2023)) illustrates the importance of a derivation of the same theme.

[9] Both can be found, respectively, at: https://www.prospera.co/ and https://catawbadigital.zone/.

[10] In Chapter 2 of Shikida et al. (2022), some of these problems are highlighted. Political distortions in economic policies have been studied for over 50 years in the tradition of Public Choice. A good introduction to this literature is Mueller (2003).

The version presented here has only one change in the specification of the objective function used by the authors to obtain additional insights into the role of taxation and rent-seeking in the decisions of local elites. Thus, here we use a utility function of the local elite given by[11]: $U(T,R) = A[\delta T^{-\kappa} + (1-\delta)R^{-\kappa}]^{-1/\kappa}$.

In this specification, A, which represents technology, is an exogenous parameter (A>0), T is the potential government (tax) revenue, and R is the potential revenue from rent-seeking activity. The parameter measures the weight of T in preference[12] and $\kappa$ is the degree of substitutability between the sources of revenue T and R[13]. The original idea that there is a revenue possibilities frontier is maintained, which, for simplifying purposes, is linear and represented by r $B = \tau T + \rho R$. In other words, the local elite has revenue from two sources: rent extraction (rent-seeking) and/or tax revenue.

According to (1), the local elite seeks maximum well-being subject to its revenue constraint.

$$L(T,R,\lambda) = A[\delta T^{-\kappa} + (1-\delta)R^{-\kappa}]^{-1/\kappa} + \lambda(B - \tau T - \rho R) \qquad (1)$$

Assuming that R and T can only take positive values, then (1) can be solved using the Lagrangian method, resulting in (2) and (3), which express T and R in their maximum values (denoted by T* and R*). These are, therefore, the expressions of the elite's demands for T and R.

$$T^*(B,\tau,\rho,\kappa) = \frac{\left(\frac{\delta}{\tau}\right)^{\frac{1}{1+\kappa}}}{(\delta\tau^{\kappa})^{\frac{1}{1+\kappa}} + \left((1-\delta)\rho^{\kappa}\right)^{\frac{1}{1+\kappa}}} B \qquad (2)$$

$$R^*(B,\tau,\rho,\kappa) = \frac{\left(\frac{(1-\delta)}{\rho}\right)^{\frac{1}{1+\kappa}}}{(\delta\tau^{\kappa})^{\frac{1}{1+\kappa}} + \left((1-\delta)\rho^{\kappa}\right)^{\frac{1}{1+\kappa}}} B \qquad (3)$$

Unlike the Cobb-Douglas specification used by the authors, in the CES specification there is the possibility of analyzing the cross-impact of the costs of activities T and R. To study it, we simplify the notation, so that now (2) and (3) are rewritten as (2') and (3').

$$T^*(B,\tau,\rho,\kappa) = H_{\tau} B \qquad (2')$$

$$R^*(B,\tau,\rho,\kappa) = H_{\rho} B \qquad (3')$$

[11] Another interesting approach is that of Congleton and Lee (2009).

[12] As in the original model by Moberg and Tarko (2021), there are constant returns to scale since the sum of the weights between T and R equals one.

[13] For details on the CES function, see Brems (1968), Henderson and Quandt (1980), and Klump et al. (2011).

After tedious calculations, we can obtain the price elasticities for T and R:

$$\frac{\partial T^*}{\partial \tau}\frac{\tau}{T^*} = -\frac{1+\kappa H_\tau \tau}{1+\kappa} \quad (4)$$

$$\frac{\partial R^*}{\partial \rho}\frac{\rho}{R^*} = -\frac{1+\kappa H_\rho \rho}{1+\kappa} \quad (5)$$

$$\frac{\partial T^*}{\partial \rho}\frac{\rho}{T^*} = -\frac{\kappa}{1+\kappa} H_\rho \rho \quad (6)$$

$$\frac{\partial R^*}{\partial \tau}\frac{\tau}{R^*} = -\frac{\kappa}{1+\kappa} H_\tau \tau \quad (7)$$

For the analysis of (4)~(7), with some calculation, it can be seen that $0 < H_\rho \rho, H_\tau \tau < 1$. This means that local elites have well-behaved (negatively sloped) demands, according to (4) and (5). Furthermore, in the case where $-1 < \kappa < 0$, they are elastic and, when $\kappa > 0$, inelastic. In addition, another important parameter of this model is the elasticitity of substitution between R and T, denoted by σ. The higher the value of σ, the greater the "substitutability" between R and T. It can be shown that, in our function, $\sigma = 1/(1+\kappa)$ and, the elasticity of substitution between R and T is constant.

The flexibility of the CES function generates interesting scenarios. For example, it can be conjectured that local elites would present different substitution configurations between T and R depending on the parameter $\kappa$. More institutionally sclerotic societies could be characterized by a low value of $\delta$ combined with $\kappa$ a close to -1. An illustration of possibilities is given in Table 1 below.

Another result is the possibility that the cross-effects (equations (6) and (7)) differ depending on the range of values of the parameter $\kappa$. When $(-1 < \kappa < 0)$, an increase in the cost of R leads to a significant increase in T (and vice versa); that is, T and R are strongly substitutable activities. In this case, the elite is satisfied with using only R or T, or even a combination of both.

T and R are perfect substitutes in the limiting case where $\kappa \to -1$, which means that the elites use either R or T with a constant opportunity cost. In other words, the configuration of society oscillates between a completely sclerotic one,[14] in which rent-seeking activity predominates, to a society in which taxes are the main source of gains for the elite. This is illustrated in the first row of Table 1 below. The extreme case of perfect substitutes is in the second row of Table 1.

When $(\kappa > 0)$, which is the case in the third line of Table 1, T and R would be weak substitutes. Note that in this case, "weak substitute" means that there is also weak complementarity between T and R. Considering, for example, the elasticity of revenue in relation to the cost of rent-seeking activity (equation (6)), it can be seen that an increase

[14] See Olson (1984).

(decrease) in the elite's opportunity cost of taxing the local economy leads to a decrease (increase) in rent-seeking activity by the same elite. This is a case where the income effect outweighs the substitution effect.

Finally, in the fourth line of Table 1, we have the case where $\kappa \to +\infty$, and T and R become perfect complements[15], meaning that the elite would tend to use both sources of revenue in a fixed proportion.

Just like in the original model, it is assumed that the externalities in creating a special economic zone are interpreted in terms of the parameter δ. Assuming, for simplicity, that there are only two cities when the creation of an SEZ in the city "i" generates a marginal change in the elite's well-being in another city "k," ($\Delta\delta_i = U_{ik}\,\Delta\delta_k$), two types of externalities can occur: (a) a liberalizing externality ($0 < U_{ik} < 1$) and (b) an anti-liberalizing externality ($-1 < U_{ik} < 0$) [16]. Thus, for example, in the case where the externality is of the first type, the SEZ would generate a pro-liberal reform impact in the neighboring city.

Table 1 - Taxation and Rent-Seeking in the model

| | $\delta \sim 0$ | $\delta \sim 0.5$ | $\delta \sim 1$ |
|---|---|---|---|
| $-1 < \kappa < 0$ | Institutional sclerosis[17][18]<br>R >> T | T and R imperfect substitutes<br>T > 0 and R = 0, R > 0 and T = 0 or R, T > 0 | Cornered Leviathan[19]<br>T >> R |

[15] As a point of interest, the function converts to a Cobb-Douglas when $\kappa \to 0$.

[16] The creation of an app that reduces transportation costs for people constitutes a technological shock that seems to fit the case of a liberalizing externality, as its efficiency leads to increased usage, encouraging its spread to an increasingly wider geographic area. This dissemination forces regulators to improve the regulatory framework related to urban mobility, and these improvements also spill over into other regions (Friedman and Taylor (2011) and Henderson and Churi (2019)).

[17] This term refers to the entrenchment of rent-seeking behaviors within a society's institutional framework, where elites prioritize extracting economic rents over fostering productive activities. This rigidity inhibits institutional adaptability and economic dynamism, resulting in a stagnant system that perpetuates inefficiency and limits the potential for sustained development.

[18] *Institutional sclerosis* is a condition where institutional habits, structures, and traditions become rigid and resistant to change, thereby impeding adaptation and innovation. Over time, these institutional features become solidified, locking the organization into inflexible patterns of behavior. (Pocock,1998)

[19] This concept describes an institutional arrangement where elites derive the majority of their revenues from taxation linked to productive economic activity, rather than rent-seeking. While this configuration promotes economic growth through a focus on maintaining a conducive business environment, it may also exhibit structural rigidity, constraining innovative or alternative governance approaches.

| | | | |
|---|---|---|---|
| $\kappa \to -1$ | Institutional sclerosis<br>R >> T | T and R are perfect substitutes<br>T > 0 and R = 0 or R > 0 and T = 0 | Cornered Leviathan<br>T >> R |
| $\kappa > 0$ | T and R weak substitutes (weak complements)<br>T, R > 0 | | |
| $\kappa \to +\infty$ | T and R perfect complements (Leviathan-Leontief)<br>T, R > 0 and used in a fixed proportion | | |

Source: Authors.

One question is whether it is possible, in Table 1, to move from one cell to another, either horizontally or vertically. In the first case, it is assumed that κ is a constant, but δ varies, which means that there is some exogenous change that increases the weight of T in the local elite's preferences. In the second, it is assumed that κ varies, but δ remains constant, implying that some exogenous factor could cause the change. Either way, this is a question of *institutional transition*. This is not a simple exercise since both parameters are part of the local elite's preferences, and preferences do not change easily. The necessary assumption here is that both κ and δ can be affected by institutional changes that alter the technology of the combination of revenue collection and rent-seeking inherent in the local elite's preferences.[20]

Some insights from the literature on the determinants of institutional change can be used to analyze some possibilities for institutional reconfiguration. Consider the following (somewhat extensive) excerpt from North apud Salama (2011) concerning the creation of joint-stock companies in England.

> *The creation of this type of company, at first, would have served only the elite. With the legal institution of joint-stock companies, the state began to guarantee not only the ownership of shares (and the right to property over companies) but also limited the liability of shareholders to the amount of subscribed capital in the event of bankruptcy. However, the value of shares depends on the possibility of selling them to third parties: the larger the group of potential buyers of these shares, the greater their value. Hence the convenience of defining shares legally in an impersonal way so that any individual can buy them – and not just dukes, counts, or landowners.*
> *From this, North concludes that the creation of impersonally defined property rights over shares served to make these shares more valuable to elites. At the same time, and*

[20] This author presents for the reader's critique the hypothesis (based solely on intuition) that, likely, changes in κ are less difficult than in δ.

> *in an epiphenomenal (that is, secondary and unplanned) way, this movement ended up expanding the property right over shares. Examples like this would then illustrate how the impersonal definition of property rights and, therefore, the expansion of the rule of law beyond elites would have been a condition for the opening of the social order in historical circumstances in which this opening was advantageous to elites". (Salama, 2011, p. 412)*[21]

The example of the creation of joint-stock companies in England illustrates that only when it becomes advantageous for the group holding power to include other groups does sustainable change occur. In terms of the model, this inclusion could be seen as a progression from a stagnant society to one where the business environment is improved for all, in other words, moving from left to right in Figure 1.

Another example would be a government committed to improving the business environment, which can pass an Economic Freedom Law (EFL)[22], changing in the short term the opportunity cost - $\tau/\rho$ - for local elites who now see it as more advantageous to gain from economic growth rather than rent-seeking. In the long term, with the maintenance of the EFL, it is possible that the substitution elasticity, $\kappa$, itself may be altered, solidifying the improved business environment $(\kappa \to -1)$. This could be the path to transforming the Lithium Valley. It can become just another area of mineral exploitation or a vector of prosperity for the region. Let us then examine the characteristics of the municipalities in this region.

## 3. Brief Characterization of the Lithium Valley

Consider the Sebrae[23] Local Development Index, or Isdel initially. It is measured from 0 to 1 and classified into five ranges: very low (0 to 0.150), low (0.151 to 0.310), medium (0.311 to 0.470), high (0.471 to 0.630), and very high (0.631 to 1). In the case of the Lithium Valley, there are four municipalities with low economic development (Coronel Murta, Rubelita, Virgem da Lapa, and Itinga). All the others have a medium level.

*Table 1: Sebrae Local Development Index (Isdel) - Lithium Valley (MG)*

| Municipality | Isdel |
|---|---|
| Coronel Murta | 0,2405 |

[21] Translated from the original by the authors.

[22] Economic Freedom Law, or, in Portuguese, "Lei de Liberdade Econômica", is a law that reduce the bureaucracy for small enterprises. The federal version of this law is from 2019. Since then, many subnational governments has passed similar laws.

[23] *Sebrae* is a Brazilian non-profit private entity with the mission of promoting the sustainable and competitive development of small businesses. (See, for details: https://sebrae.com.br/sites/PortalSebrae/canais_adicionais/sebrae_english ).

| | |
|---|---|
| Rubelita | 0,2498 |
| Virgem da Lapa | 0,2582 |
| Itinga | 0,2965 |
| Malacacheta | 0,3122 |
| Minas Novas | 0,3137 |
| Itaobim | 0,3251 |
| Pedra Azul | 0,3259 |
| Turmalina | 0,3347 |
| Medina | 0,3561 |
| Araçuaí | 0,3617 |
| Capelinha | 0,3728 |
| Salinas | 0,4003 |
| Teófilo Otoni | 0,4284 |

Source: Sebrae.

Let us examine the situation of municipalities in Lithium Valley, particularly focusing on their proximity to the "border" with Belo Horizonte, which has the highest Isdel value among them. Belo Horizonte, the capital, is represented on the left side of Table 2.

On the right side of the table, the column labeled EFL indicates whether a municipality has approved the Economic Freedom Law (EFL), with a value of 1 if approved by the local government and 0 otherwise. Additionally, the table includes the respective dates of EFL approval for each municipality.[24]

Table 2 warrants some observations. Most municipalities fall significantly behind Belo Horizonte in local development, as measured by their Isdel scores. Among these, Teófilo Otoni, which has the highest Human Development Index (HDI) in the region, also ranks the highest in Isdel. Interestingly, it is the only municipality among the top performers in Isdel that has not approved the Economic Freedom Law (EFL).

Regarding the EFL, only nine out of the 14 municipalities have approved it at the local level. Of these, six implemented the law in the second half of 2023. Consequently, the impact of these legislative changes on the local business environment is still recent, and their effects will require time to materialize.

*Table 2: Local development and business environment*

| Municipality | Distance from the border | *Distance ranking* | EFL | EFL approval date |
|---|---|---|---|---|
| Teófilo Otoni | -0,2053 | 101 | 0 | |
| Salinas | -0,2334 | 148 | 1 | 8/12/2021 |
| Capelinha | -0,2610 | 208 | 1 | 20/3/2024 |

[24] The data comes from the survey conducted by the *Instituto Liberal de São Paulo* (ILSP).

| | | | | |
|---|---|---|---|---|
| Araçuaí | -0,2721 | 240 | 1 | 11/3/2024 |
| Medina | -0,2777 | 254 | 1 | 6/10/2022 |
| Turmalina | -0,2991 | 326 | 1 | 16/7/2021 |
| Pedra Azul | -0,3078 | 354 | 0 | |
| Itaobim | -0,3086 | 357 | 0 | |
| Minas Novas | -0,3200 | 394 | 1 | 8/12/2023 |
| Malacacheta | -0,3216 | 402 | 1 | 10/7/2023 |
| Itinga | -0,3373 | 462 | 1 | 1/3/2024 |
| Virgem da Lapa | -0,3755 | 637 | 0 | |
| Rubelita | -0,3840 | 683 | 1 | 4/7/2023 |
| Coronel Murta | -0,3932 | 731 | 0 | |

Source: Sebrae, ILSP.
Note: Author's calculations.

We will now analyze the Brazilian cities in the Lithium Valley using the Sebrae Local Development Index (Isdel). As outlined in the Isdel methodology, the index is composed of five dimensions - entrepreneurial capital, business fabric, governance for development, productive organization and competitive insertion - broken down into 16 sub-dimensions. After an initial analysis of the index, we now turn to a detailed discussion of these dimensions, which are summarized in Table 3.[25]

The "Entrepreneurial Capital" dimension includes three sub-dimensions: Education, Entrepreneurial Education, and Business Conditions. As shown in Table 2, the municipality closest to first place in this dimension (Perdigão) is Capelinha (highlighted in blue), while Pedra Azul ranks the lowest. Notably, the best placement achieved within this dimension is 233rd, indicating significant deficiencies across the region.

The "Business Fabric" dimension consists of two sub-dimensions: Business Networks and Solidarity Values. In this category, Teófilo Otoni stands out positively, while Virgem da Lapa is the lowest-ranked municipality. Even within this dimension, the highest ranking achieved is below the 100th position. At the state level, Contagem is the municipality with the best performance.

These are the two dimensions most directly linked to entrepreneurship in Isdel. Among the five dimensions, these have a performance that can be classified as "average", considering that the average of each of them, for the sample, classifies them as 3rd and 2nd.

*Table 3: The five dimensions of the Sebrae Local Development Index (Isdel)*

| Municipality | Entrepreneurial Capital Distance | *Ranking* | Business Fabric Distance | *Ranking* | Governance for Development Distance | *Ranking* | Productive Organization Distance | *Ranking* | Competitive Insertion Distance | *Ranking* |
|---|---|---|---|---|---|---|---|---|---|---|

[25] For the data, see: https://www.isdel-sebrae.com/acervo.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Araçuaí | -0,3353 | 545 | -0,2893 | 497 | -0,1938 | 164 | -0,5525 | 269 | -0,3969 | 221 |
| Capelinha | -0,2782 | 233 | -0,2803 | 461 | -0,1953 | 168 | -0,5179 | 122 | -0,4408 | 301 |
| Coronel Murta | -0,3853 | 734 | -0,3628 | 718 | -0,4885 | 729 | -0,6169 | 576 | -0,5199 | 449 |
| Itaobim | -0,3485 | 603 | -0,3239 | 609 | -0,2115 | 206 | -0,5594 | 304 | -0,5073 | 411 |
| Itinga | -0,3770 | 707 | -0,3402 | 659 | -0,3723 | 449 | -0,6363 | 656 | -0,3680 | 183 |
| Malacacheta | -0,3275 | 499 | -0,2520 | 360 | -0,4123 | 503 | -0,5743 | 375 | -0,4494 | 316 |
| Medina | -0,3648 | 662 | -0,3322 | 636 | -0,1267 | 55 | -0,5562 | 290 | -0,4161 | 252 |
| Minas Novas | -0,3378 | 557 | -0,2921 | 508 | -0,1826 | 141 | -0,6504 | 707 | -0,5445 | 517 |
| Pedra Azul | -0,3879 | 738 | -0,3624 | 714 | -0,1967 | 170 | -0,5565 | 292 | -0,4430 | 306 |
| Rubelita | -0,3716 | 689 | -0,4145 | 816 | -0,3313 | 390 | -0,6657 | 766 | -0,5443 | 516 |
| Salinas | -0,2978 | 339 | -0,3044 | 557 | -0,1323 | 60 | -0,5271 | 154 | -0,3131 | 149 |
| Teófilo Otoni | -0,3084 | 402 | -0,1638 | 109 | -0,1908 | 156 | -0,4969 | 57 | -0,2742 | 125 |
| Turmalina | -0,2917 | 303 | -0,3090 | 566 | -0,2796 | 313 | -0,5428 | 222 | -0,4798 | 357 |
| Virgem da Lapa | -0,3496 | 607 | -0,3847 | 758 | -0,4413 | 575 | -0,6477 | 698 | -0,4618 | 335 |

Source: Sebrae.
Note: Authors' calculations.

The third dimension, "Governance for Development," includes four sub-dimensions: Articulation, Participation and Social Control, Fiscal Management, and Planning. At the state level, Contagem holds the best position in this dimension. Within Lithium Valley, Salinas stands out positively, ranking 60th in the state, a much higher placement compared to most other Isdel dimensions. Conversely, Coronel Murta ranks the lowest in this dimension.

Notably, this dimension is where Lithium Valley performs relatively better, with the municipalities' average ranking being the least negative among the five dimensions. Governance can be further understood through its sub-dimensions, as it may theoretically complement private action (crowding in) or substitute it (crowding out).[26]

"Productive Organization" is a dimension that encompasses diverse themes. They are Productive Structure, Consumption and Credit Potential, Sanitation, Innovation, and Environmental Impact. It is noted that there are elements of both demand and supply in this dimension. The reference, in this dimension, is Belo Horizonte and, regarding the Lithium Valley, Teófilo Otoni is once again highlighted, ranking 57th, while Rubelita, at 766th, is the worst placed. This is also the dimension in which the Lithium Valley has the lowest average.

Finally, the dimension "Competitive Insertion" is composed of: International Trade, Tourism and Creative Economy, Connectivity, and Complexity. It is a kind of proxy for the

[26] For example, see Fernandez et al. (2017). The authors find evidence of a virtuous relationship between government consumption and private investment.

economic relations of the municipality with other municipalities or even countries. In this dimension, Teófilo Otoni stands out again in the 125th position, and Minas Novas is the worst placed. This is the second worst dimension for the Lithium Valley. The reference municipality, in this case, is Confins.

Some additional points can be highlighted. First, the prominence of Teófilo Otoni in Isdel, or in three of its five dimensions, is consistent with other socioeconomic indicators raised by the Coordination of Social Indicators of the Statistics and Information Directorate of the João Pinheiro Foundation (CIS-Direi/FJP-MG). Secondly, it is concerning that the worst dimension is "Competitive Insertion." Interestingly, this is a dimension in which there is plenty of room for improvement. The intention of the Lithium Valley to increase the state's insertion in international trade through the electric vehicle production chain deserves increased attention from the state public administration.

Finally, the two dimensions most directly linked to entrepreneurship, "Entrepreneurial Capital" and "Business Fabric", can benefit from the implementation of EFL in all municipalities. It can be speculated that, in fact, EFL is a positive input for the other dimensions.

Once we analyze the potential for entrepreneurship in the region, it is opportune to verify what the current data on jobs and companies tell us. For example, it is interesting to see if the creation of companies is also, to some extent, related to net job creation.[27]

Table 4 presents the difference between companies created and closed each year from 2018 to May 2024. Despite the challenges of the pandemic, the Lithium Valley showed an increasing trend in net company growth until 2022, when the series experienced a slowdown.

*Table 4: Company Balance - 2018-2024*

| Municipalities | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 (Jan-May) |
|---|---|---|---|---|---|---|---|
| Araçuaí | -30 | 85 | 202 | 189 | 142 | 166 | 85 |
| Capelinha | 151 | 111 | 289 | 360 | 301 | 304 | 111 |
| Coronel Murta | 1 | 7 | 38 | 43 | 39 | 10 | 7 |
| Itaobim | 9 | 25 | 140 | 158 | 70 | 108 | 25 |
| Itinga | 1 | 17 | 29 | 46 | 26 | 42 | 17 |
| Malacacheta | 29 | 47 | 137 | 146 | 68 | 52 | 47 |
| Medina | 18 | 30 | 102 | 93 | 21 | 63 | 30 |

[27] Despite the diversity in production technologies—some labor-intensive and others capital-intensive—the fact remains that any enterprise involves at least two major assets: physical capital and labor. Society enjoys greater well-being when these technologies are used most efficiently. A more labor-intensive technology is not necessarily the best solution for the local economy.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Minas Novas | 9 | 25 | 95 | 147 | 59 | 97 | 25 |
| Pedra Azul | -49 | 31 | 108 | 94 | 73 | 67 | 31 |
| Rubelita | 1 | 7 | 11 | 16 | 13 | 10 | 7 |
| Salinas | 90 | 69 | 308 | 314 | 242 | 231 | 69 |
| Teófilo Otoni | 203 | 370 | 1346 | 1430 | 1120 | 852 | 370 |
| Turmalina | 38 | 51 | 181 | 165 | 163 | 140 | 51 |
| Virgem da Lapa | 55 | 12 | 101 | 34 | 51 | 55 | 12 |
| **Lithium Valley** | 526 | 887 | 3087 | 3235 | 2388 | 2197 | 887 |
| MG | 50336 | 207623 | 237536 | 260333 | 208041 | 169941 | 71758 |
| Brazil | 199366 | 1972866 | 2288039 | 2573897 | 1769258 | 1701991 | 733796 |

Source: *Painéis do Mapa de Empresas* (Map of Companies Dashboards) [28].

It is also noteworthy that there was a change in the level of lithium in Lithium Valley from 2020 onwards. Compared to the previous year, the region shows a remarkable increase in the balance: 248%, which is much higher than the growth of the balance in the state, 14.4% in the state or 16% in Brazil. Among the municipalities, some highlights: Araçuaí and Pedra Azul had a decrease in the company balance in 2018. In fact, these are the only negative balances of companies in Lithium Valley in the analyzed period.

Do companies in Lithium Valley have any economic pattern? We know, from a recent study by Fundação João Pinheiro, that:[29]

> "1. All municipalities stand out in activities related to public services, including administration, defense, education, public health, and social security, as well as in the grouping that includes all other services except commerce.
> 2. In the composition of the most important activities, extractive industry occupies the third position in Medina and Pedra Azul (...), as well as in Itinga and Coronel Murta (..).
> 3. Forestry, fishing, and aquaculture play a crucial role in the economy of Turmalina and occupy the third position in Capelinha, Minas Novas, and Rubelita.
> 4. Commercial activities play a significant role in the economies of Virgem da Lapa, Malacacheta, Itaobim, Salinas, and Teófilo Otoni (...).
> 5. Construction is the third most important activity in Araçuaí (...). [Source: Fundação João Pinheiro (2024), emphasis mine]."

[28] Available on: https://www.gov.br/empresas-e-negocios/pt-br/mapa-de-empresas/painel-mapa-de-empresas.
[29] Available on:: https://fundacaojoaopinheiro.github.io/litio/economia.html .

Table 5 below illustrates how the portrait of companies relates to another crucial variable: jobs. Specifically, it presents job balances for the period. It is important to note that the data for 2018 and 2019 were obtained from the General Employment Registry (Caged), while data from 2020 onwards come from the New Caged. Due to changes in methodology, the two sub-periods are not directly comparable. However, they provide an overall view of employment trends over time. After relative stability in 2018 and 2019, job balances showed growth starting in 2020.

*Table 5: Job Balance - 2018-2024 (*)*

| Municipalities | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 (Jan-May) |
|---|---|---|---|---|---|---|---|
| Araçuaí | -79 | 161 | 461 | 266 | 244 | 309 | 117 |
| Capelinha | 346 | -82 | 87 | 106 | 152 | 165 | 78 |
| Coronel Murta | -8 | -6 | -13 | -15 | -15 | -7 | -8 |
| Itaobim | 39 | 111 | -8 | 11 | 33 | 67 | -97 |
| Itinga | -21 | 10 | -54 | -49 | -32 | -24 | 249 |
| Malacacheta | 28 | 31 | 22 | 11 | -2 | 13 | 98 |
| Medina | -37 | -47 | -12 | -7 | 11 | 13 | 20 |
| Minas Novas | 110 | -44 | 29 | 64 | 120 | 177 | -11 |
| Pedra Azul | 51 | 21 | 37 | 55 | 45 | 72 | 31 |
| Rubelita | -9 | 15 | -7 | 2 | 10 | 14 | -1 |
| Salinas | 20 | 237 | -2 | 122 | 127 | 248 | 858 |
| Teófilo Otoni | 552 | 366 | -178 | -143 | 89 | 476 | 905 |
| Turmalina | 126 | 182 | 192 | 237 | 230 | 291 | 138 |
| Virgem da Lapa | -70 | 49 | -53 | -21 | -21 | 11 | 142 |
| **Lithium Valley** | 1048 | 1004 | 501 | 639 | 991 | 1825 | 2519 |
| MG | 84012 | 97720 | 2,648 | 320,352 | 176,987 | 138,330 | 71758 |
| Brazil | 546445 | 644079 | -190626 | 2781059 | 2013875 | 1460109 | 733796 |

Source: until 2019, Caged. From 2020 onwards: New Caged.

Observing the period from 2020 onwards, a significant increase in the size of the job balance can be noted, notably in Araçuaí and Turmalina, as well as Capelinha and Salinas. Virgem da Lapa is a municipality where the balance oscillates between positive and negative values. Coronel Murta and Itinga also stand out for their negative balance in several years. Explanations for these oscillations would require a more detailed study of local economic dynamics.

A joint analysis of company balances and jobs in Lithium Valley shows that they generally move in the same direction every year, except for 2020 and 2021, where the correlations were negative (respectively: -0.31 and -0.34). The correlation between the two is positive for the other years, with varying intensities[30]. As mentioned earlier, there is no *a priori* 'desirable' behavior from an economic point of view: more companies can be created with either more capital-intensive or labor-intensive technologies. The economic result expressed in the municipality's GDP would be the best indicator to assess the impact of these movements of companies and jobs in the region, but this data is not available for the period 2022-2024.[31]

Specifically considering the year 2024, Table 6 provides a summary of the companies in the region.

*Table 6: Summary of Companies in Lithium Valley*

| Companies - Lithium Valley Jan-May/24 | | | | | |
|---|---|---|---|---|---|
| Municipalities | Opened | Closed | Active = (1) + (2) | Matrix (1) | Branches (2) |
| Araçuaí | 172 | 87 | 2653 | 2527 | 126 |
| Capelinha | 282 | 171 | 3843 | 3721 | 122 |
| Coronel Murta | 17 | 10 | 406 | 376 | 30 |
| Itaobim | 96 | 71 | 1677 | 1582 | 95 |
| Itinga | 47 | 30 | 618 | 560 | 58 |
| Malacacheta | 101 | 54 | 1245 | 1208 | 37 |
| Medina | 65 | 35 | 1262 | 1210 | 52 |
| Minas Novas | 71 | 46 | 1376 | 1291 | 85 |
| Pedra Azul | 73 | 42 | 1326 | 1254 | 72 |
| Rubelita | 15 | 8 | 193 | 165 | 28 |
| Salinas | 238 | 169 | 4164 | 3964 | 200 |
| Teófilo Otoni | 962 | 592 | 13597 | 13082 | 515 |
| Turmalina | 148 | 97 | 2080 | 1946 | 134 |
| Virgem da Lapa | 47 | 35 | 821 | 790 | 31 |
| **Lithium Valley** | **2334** | **1447** | **35261** | **33676** | **1585** |
| MG | 191051 | 119293 | 2345489 | 2250518 | 94971 |
| Brazil | 1808248 | 1074452 | 21943590 | 21012836 | 930754 |

Source: Map of Companies Panels

[30] The highest values occur in 2018 (0.83) and 2023 (0.82).

[31] Obviously, it is important to remember other significant factors such as exogenous shocks (e.g., tax increases, commodity price shocks, etc.). Unfortunately, the latest municipal GDP data is from 2021, which prevents a more up-to-date analysis. The GDP data can be found in Fundação (2024).

The three columns on the right show us that the Lithium Valley represents 1.5% of the total number of companies in the state. On the left side of the table, we obtain the balance of companies (open minus closed), which gives us an indication of the local business environment. The balance is positive for all cities, and, again, this balance is also around 1% of the state balance (which, in turn, represents 9.7% of the country's balance).It is also possible, from the total number of active companies in each municipality, to know a little more about their areas of activity. Table 7 shows that, for example, Araçuaí has, in the period in question, 2653 active companies that are divided into 366 economic categories. It is also seen that 50% of them are in 34 categories, which gives an idea of the economic diversification in the municipality. Another way to see diversification is through the Hirschman-Herfindahl Index (HHI). In this case, all municipalities show low HHI values, indicating that there is no concentration in a single sector.

*Table 7: Economic Diversity*

| Companies - Lithium Valley Jan-May/24 | | | | |
|---|---|---|---|---|
| Municipalities | Number of economic categories | 50% of the categories | HHI | Active Companies |
| Araçuaí | 366 | 34 | 0.015 | 2653 |
| Capelinha | 414 | 30 | 0.016 | 3843 |
| Coronel Murta | 139 | 20 | 0.023 | 406 |
| Itaobim | 285 | 26 | 0.016 | 1677 |
| Itinga | 166 | 21 | 0.023 | 618 |
| Malacacheta | 255 | 21 | 0.022 | 1245 |
| Medina | 235 | 22 | 0.020 | 1262 |
| Minas Novas | 256 | 26 | 0.018 | 1376 |
| Pedra Azul | 258 | 30 | 0.016 | 1326 |
| Rubelita | 85 | 15 | 0.029 | 193 |
| Salinas | 421 | 34 | 0.014 | 4164 |
| Teófilo Otoni | 583 | 33 | 0.013 | 13597 |
| Turmalina | 321 | 31 | 0.016 | 2080 |
| Virgem da Lapa | 187 | 18 | 0.030 | 821 |

Source: Map of Companies Dashboards.

To complement this analysis, Table 8 shows the three main economic categories of each municipality in the Lithium Valley. Most companies belong to the retail sector. Only in Itinga does mining stand out as one of these activities. It is worth noting that this is not an exclusive characteristic of the region.

*Table 8: The three economic categories with the most companies*[32]

| Lithium Valley Jan-May/24 | | |
|---|---|---|
| Municipalities | Three main economic categories | Number of establishments |
| Araçuaí | Retail trade of clothing and accessories | 197 |
| | Hairdressers, manicures, and pedicures | 112 |
| | Masonry works | 103 |
| Capelinha | Retail trade of clothing and accessories | 236 |
| | Hairdressers, manicures, and pedicures | 187 |
| | Road transport of cargo, except dangerous goods and removals, inter-municipal, interstate, and international. | 161 |
| Coronel Murta | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 37 |
| | Retail trade of clothing and accessories | 21 |
| | Masonry works | 20 |
| Itaobim | Retail trade of clothing and accessories | 103 |
| | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 64 |
| | Masonry works | 60 |
| Itinga | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 51 |
| | Retail trade of clothing and accessories | 45 |
| | Extraction of granite and associated processing | 29 |
| Malacacheta | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 92 |
| | Retail trade of clothing and accessories | 90 |
| | Masonry works | 70 |
| Medina | Retail trade of clothing and accessories | 96 |
| | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 64 |
| | Hairdressers, manicures, and pedicures | 63 |
| Minas Novas | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 87 |
| | Masonry works | 82 |

[32] Prepared by DIREI/FJP.

| | | |
|---|---|---|
| | Retail trade of clothing and accessories | 58 |
| Pedra Azul | Retail trade of clothing and accessories | 92 |
| | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 56 |
| | Hairdressers, manicures, and pedicures | 53 |
| Rubelita | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 18 |
| | Taxi service | 14 |
| | Retail trade of clothing and accessories | 10 |
| Salinas | Retail trade of clothing and accessories | 245 |
| | Retail trade of general merchandise, with a predominance of food products - minimarkets, grocery stores, and warehouses | 192 |
| | Hairdressers, manicures, and pedicures | 170 |
| Teófilo Otoni | Retail trade of clothing and accessories | 744 |
| | Hairdressers, manicures, and pedicures | 556 |
| | Masonry works | 445 |
| Turmalina | Masonry works | 123 |
| | Retail trade of clothing and accessories | 115 |
| | Hairdressers, manicures, and pedicures | 97 |
| Virgem da Lapa | Retail trade of clothing and accessories | 101 |
| | Masonry works | 54 |
| | Hairdressers, manicures, and pedicures | 38 |

Source: Map of Companies Dashboards.

In Minas Gerais, the three categories with the highest number of establishments are the retail trade of clothing and accessories; hairdressers, manicures, and pedicures; and masonry works, and this is not a peculiarity of the state. For Brazil, we have the following three main categories: retail trade of clothing and accessories, hairdressers, manicures, and pedicures; and sales promotion.

## 4. Conclusion

Economic history shows that institutional experimentation has always been present, both in cases of success and failure. Studies in the field over the past years have demonstrated that some institutions positively impact economic development. Even inequalities can be affected by institutional shocks.

Since Paul Romer introduced the concept of Charter Cities in 2009, there has been an expansion of research on alternative regulatory arrangements that can accelerate local

development. The more general term for these and other similar arrangements is special jurisdictions. Implementing special jurisdictions that fulfill their function of generating prosperity (and not merely redistributing resources to specific interest groups) is not a trivial task.

The model presented here highlights the dilemma faced by local elites, who must choose between enriching themselves through a more prosperous business environment or through rent-seeking activities. In the short term, this choice can be influenced by incentives that make rent-seeking less attractive compared to the revenue generated by economic growth. In the long term, it is conceivable that changes in the parameters of their preferences could be stimulated by institutional reforms.

One point that deserves attention is the externalities generated by the special jurisdiction intended for implementation. In previous sections, entrepreneurship in the Lithium Valley was examined, revealing an increase in the number of companies in the region in recent years. However, this growth is heterogeneous and is not always accompanied by an increase in jobs, possibly due to the installation of companies operating with capital-intensive technologies. It was also observed that the Economic Freedom Law (EFL) has not been adopted in all municipalities in the region, and significant differences exist among municipalities regarding the ISDEL (Sebrae Local Development Index) pillars identified as drivers of local economic development. Data from the João Pinheiro Foundation similarly highlight heterogeneities in other indicators.

To gain further insights from the model, it would be valuable to consider the degree of heterogeneity among local elites and its origins. Aligning the interests of these elites in favor of economic reforms that foster institutional evolution toward a better business environment would likely stem from their perception that stimulating economic activity (generating more tax revenue) yields greater benefits than rent-seeking activities. However, this could be the focus of another paper.

## 5. References


1. Brems, H. (1968). *Quantitative economic theory*. New York: John Wiley & Sons, Ltd.
2. Congleton, R. D., & Lee, S. (2009). Efficient mercantilism? Revenue-maximizing monopoly policies as Ramsey taxation. *European Journal of Political Economy, 25*(1), 102–114. Elsevier B.V.
3. Cooter, R. D., & Schafer, H. B. (2017). *O nó de Salomão: Como o direito pode erradicar a pobreza das nações*. Editora CRV.
4. Friedman, P., & Taylor, B. R. (2020). Entry barriers and competitive governance. *Journal of Special Jurisdictions, 1*(1), 51–82.
5. Fundação João Pinheiro. (n.d.). Exploração do lítio no Vale do Jequitinhonha – características demográficas e sociais dos municípios potenciais. Retrieved June 28, 2024, from https://fundacaojoaopinheiro.github.io/litio/

6. Governo de Minas. (2023, May 9). Realiza lançamento mundial do projeto Vale do Lítio. *Agência Minas*. Retrieved June 30, 2024.
7. Henderson, J. M., & Quandt, R. E. (1980). *Microeconomic theory: A mathematical approach* (3rd ed.). McGraw-Hill.
8. Henderson, M. T., & Churi, S. (2019). *The trust revolution: How the digitization of trust will revolutionize business and government*. Cambridge University Press.
9. ILSP. (n.d.). Liberdade para trabalhar. Retrieved June 15, 2024, from https://liberdadeparatrabalhar.com.br/
10. Klump, R., McAdam, P., & Willman, A. (2011). The normalized CES production function - Theory and empirics. *European Central Bank*, Working Paper No. 1294.
11. Li, Y., & Rama, M. (2023). *Private cities: Outstanding examples from developing countries and their implications for urban policy*. Washington, DC: [s.n.].
12. Lockhart, K. (2024, March 8). *The promise and challenges of charter cities* [Interview transcript]. Ideas Untrapped. https://www.ideasuntrapped.com/p/the-promise-and-challenges-of-charter
13. Moberg, L. (2017). *The political economy of special economic zones: Concentrating economic development*. Routledge.
14. Moberg, L., & Tarko, V. (2021). Special economic zones and liberalization avalanches. *Journal of Entrepreneurship and Public Policy, 10*(1), 120–139.
15. Mueller, B. (2006). A evolução histórica dos direitos de propriedade sobre terras no Brasil e nos EUA. *História Econômica & História de Empresas, 9*(1), 23–54.
16. Mueller, D. C. (2003). *Public choice III*. Cambridge: Cambridge University Press.
17. Noda, J. M. (2023). *Sandbox regulatório*. Coleção Universidade Católica de Brasília, Editora Almedina.
18. North, D. C. (1992). Institutions and economic theory. *The American Economist, 36*(1), 3–6.
19. Olson, M. (1984). *The rise and decline of nations: Economic growth, stagflation, and social rigidities*. Yale University Press.
20. Ridley, M. (2023). *Como surgem as inovações*. Faro Editorial.
21. Salama, B. M. (2011). Sete enigmas do desenvolvimento em Douglass North. *Economic Analysis of Law Review, 2*(2), 404–428.
22. Shikida, C. D., Christo, I. G. C., Cavalcante, L. R., Fernández, D., & Dirkmaat, O. (2022). Charter cities: Arranjos institucionais, potenciais, vulnerabilidades e impactos futuros. *Escola Nacional de Administração Pública*, Brasília.
23. Srinivasan, B. (2022). *The network state*. Retrieved June 6, 2024, from https://thenetworkstate.com/

24. Weingast, B. R., Shepsle, K. A., & Johnsen, C. (1981). The political-economy of benefits and costs: A neoclassical approach to distributive politics. *Journal of Political Economy, 89*(4), 642–66.