



THE CORPORATE ASSAULT ON HONDURAS

Mafia-style investments and
the Honduran people's struggle
for democracy and dignity



Institute for
Policy Studies

Honduras
Solidarity
Network



Terra
Justa

The Corporate Assault on Honduras:

M a f a - s t y l e i n v e s t m e n t s a n d t h e
s t r u g g l e f o r d e m o c r a c y a n d

A c k n o w l e d g m e n t s

The research team would like to thank all the individuals, communities, organizations, movements and public officials who participated. Our special thanks to the Alternativa de Reivindicación Comunitaria y Ambientalista (ARCAH); the Comité Municipal de Defensa de los Bienes Comunes y Públicos, Tocoa (CMDBCP); Carlos H. Reyes; the communities of C the Civic Council of Popular and Indigenous Or Bufete Justicia para los Pueblos; the Common Equipo de Reflexión, Investigación y Comunicación Democracia (CESPAD); women in resistance to the toll booths that formed part of the tourist corridor, El Progreso; Movimiento Amplio por la Dignidad y la Justicia (MADJ) and Bufete Estudios para la Dignidad (BED); Mo Tegucigalpa; Organización Fraternal Negra Hondu de Residencial Castaños de Choloma; Plataforma de Derechos Humanos (RADDH); and leaders from Their reflections, input and feedback have been report. Any errors or inaccuracies are our own.

This report was written and published by a team of researchers from the Institute for Policy Studies - Mining and Trade Project TerraJusta and the Honduras Solidarity Network Aldo Orellana Lopez, Karen Spring and Manuel Pe With contributions from Bettina Müller, Javier Milá.

Editing and proofreading in Spanish: Iraima Mog

Editing and proofreading in English: Mads Ryle

Design: Sarah Gertler

September 2024

The contents of this report may be quoted or reproduced for non-commercial purposes provided that the source is acknowledged. Our t or a link to the text in which this document is

Index

Executive Summary	7
Introduction	9
1. Methodology and framework for analyzing manufacturing	12
1.1. Sources for Data Collection	12
1.2. Conceptual framework	12
2. Deepening of neoliberalism and emergence of	14
2.1. Construction and deepening of neoliberal	14
2.2. Changes after the coup d'état	23
2.2.1. Law for the Promotion of Public-Private	25
2.2.2. Energy sector reform package (2010-2012)	27
2.2.2.1. Massive approval of solar energy	29
2.2.3 Reforms to facilitate ZEDEs (2012 to	
3. Extraordinary privileges for investors: Four	38
Honduran people	
3.1. Investor-State Dispute Settlement Mechanism (ISDS)	41
3.1.1. First legal instrument: bilateral investment	44
3.1.2. Second legal instrument: free trade	45
3.1.2.1. CAFTA-DR and implementing legis	47
3.1.2.2. Resistance to CAFTA-DR	48
3.1.2.3. The Central America-Panama Free	
the elites	50
3.1.3. Third legal instrument: Law for the	
Investments	52
3.1.4. Fourth legal instrument: Contracts	53
4. Supranational arbitration claims and	55
4.1. Legal basis, origins and economic sector	55
4.1.1. Treaty claims	56
4.1.2. Claims based on contracts and the Law	
of Investments	56
4.1.3. Origins of investors making claims	57
4.1.4. Economic sectors in which claims are	59

4. 2.	Early claims	60
4. 2. 1.	Astaldi: unfinished works and	60
4. 2. 2.	Elsamex: Hurricane Mitch and road	62
4. 2. 3.	Gabourel Family Trust: direct	63
4. 3.	Mafia-style investments and claims	64
4. 3. 1.	Rosenthal lawsuit and dispute	65
4. 3. 2.	ZEDE Próspera's claim: fagras	69
4. 3. 2. 1.	New ZEDE legislation	69
4. 3. 2. 2.	Próspera's ZEDE claim: a	70
4. 3. 2. 3.	Próspera's hidden intentions	72
4. 3. 2. 4.	Resistance and opposition	74
4. 3. 2. 5.	Debate on the legal and	78
4. 3. 3.	Claims over the renegotiation	80
4. 3. 3. 1.	Claim from Scatec ASA, Norfund	81
4. 3. 3. 2.	Claim from Inversiones	87
4. 3. 3. 3.	Claim from Fernando Paiz Andrad	88
4. 3. 3. 4.	Claim from Eléctricosa S. de	89
4. 3. 3. 5.	Claim from X Elío Energy	93
4. 3. 3. 6.	Claim from Victor Miguel	93
4. 3. 4.	Claims over Public-Private Partnersh	94
4. 3. 4. 1.	Claim from Autopistas	94
4. 3. 4. 2.	Claim from Palmerola Internatio	100
4. 3. 4. 3.	Claims from International Cont	102
4. 3. 5.	Claim from Argüello brothers and the	103
4. 3. 5. 1.	The investors	104
4. 3. 5. 2.	The deceptions	106
4. 3. 6.	Claim from JLL Capital: influence	109
4. 4.	The chilling effect in evidence	110
4. 4. 1.	Chilling effect of ZEDE claims	111
4. 4. 2.	Chilling effect of energy se	111
4. 4. 3.	Chilling effect of mining se	112

4.5.	Conclusions on mafa-style demands	117
4.5.1.	The investment protection system: just	118
4.5.2.	Mafa-style demands	119

5.	Exiting from the transnational investment pr	122
5.1.	Successful strategies to revise the syst	122
5.1.1.	Ecuador: Comprehensive Audit Commiss	
	the Arbitration System	123
5.1.2.	South Africa: termination of IS Ts	123
5.1.3.	Brazil and India: development of the	124
5.1.4.	El Salvador: modification or revocatio	
	and transparency regarding claims	125
5.2.	Recommendations for a sovereign f ure wi	127

Table:	Investor-state arbitration clai	130	against
--------	---------------------------------	-----	---------

List of acronyms	133
------------------	-----

Executive Summary

- Between 2023 and 2024, Honduras was the recipient of 10 investment claims, making it the second most sued country (after Mexico). All of these lawsuits have been filed under the International Centre for Settlement of Investment Disputes (ICSID), which handles international investment claims, four were filed in August 2024 alone - the highest number of Honduras from ICSID, announced by the Government in February 2024, became official.
- Honduras has four legal avenues that allow foreign investors to bring claims: eight bilateral investment treaties (BITs), twelve free trade agreements (FTAs - including the Free Trade Agreement between the United States, Central America and the Dominican Republic known as CAFTA-DR), the American Declaration on the Protection of Investments of 2011, and contracts entered into by the State with foreign and domestic investors.
- Since 1999, Honduras has faced a total of 19 such lawsuits, 15 of which are still pending; three were settled in favor of the investor and one was settled outside of arbitration. On ten occasions the sources of claims were state-owned entities, in three instances they have come via the National System of Arbitration via contracts. In nine of the 19 claims, the claimant is a foreign investor, the White & Carter case.
- We resort to the term “mafia-style” to describe these claims, which are by companies whose investments were made in an irregular manner during the period known as the narco-dictatorship in Honduras. In general, they have been plagued by irregularities and corrupt administration, were imposed against the will of local populations or harmful to the public interest, and were carried out in the context of the repressive policies of the Hernandez (2014-2022). In many instances, investment claims have links to criminal networks.
- The most expensive claim against Honduras has been filed by a foreign investor against the current administration's efforts to dismantle the regulatory framework of the Employment and Economic Development Zones (ZEDE) that was introduced in 2011.

following the coup d'état. U.S.-based consortium equivalent to almost three times the approved Public Investment Plan for Honduras for 2024.

- Seven claims have been filed against the Honduran government to renegotiate contracts on the cost of electricity and as part of efforts to rescue the National Electricity Company (ENEE). Five of these claims total nearly US\$1.3 billion from Honduras.
- At least three claims have been filed based on expropriation, including one of the cases in the energy sector and two other claims totaling US\$190 million and raising conditions highly detrimental to the public trust.
- More than a third of the claims filed since 2015 have generated resistance from the most affected populations, beginning with the community resistance aroused by the ZEDE on the island of Roatán, as well as at the national level (entire country). There has also been persistent protests in response to electricity distribution and the collection of payments by Empresa Energía Honduras (EEH); an uprising from Sula and El Progreso against toll booth payments on local highways; and the struggle of residents of the gated community known as La Esperanza for control of the administration of their lives and property.
- The potential cost to the country of these claims is economic but also political, given that they look to have a “deterrent effect” on the government and to, for example, slow down efforts by the government to dismantle the legal concept of the ZEDE, to reform the Company, and to retake control of airport infrastructure. This is an obstacle for the Honduran government to provide an effective response to the demands of affected communities who reject the energy and mining projects that threaten them.
- Being part of ICSID is not necessary to promote investment. The Government of Honduras to leave ICSID is a mistake. It is important to move forward on reviewing trade treaties, investment protection treaties, the 2011 Investment Law, as well as

Introduction

Honduras has received a total of 19 international arbitration claims from foreign and domestic investors. Up to 2018 the country had seen an escalation and, in that year alone, it was the first country to be sued in that year against a Latin American country, after the case against Mexico in 2024. This new wave is concerning, coming just after a period of twelve years of crisis initiated by the 2009 coup d'état against President Manuel Zelaya, which was followed by the narco-dictatorship led by former President and Vice President Juan Orlando Hernández (JOH), who remained in power from 2010 to 2022.

The 2009 coup d'état against President Manuel Zelaya, which was followed by the governments of the United States and Canada, was marked by the deepening of the unjust global neoliberal economic model in Honduras. During the implementation of the 2010-2022 National Plan, a series of international trade agreements and that economic model were introduced - such as the Free Trade Agreement with the United States (2006); Private Partnership (2010); a package of laws further privatizing the generation and distribution of electric power (2010-2014); and the Law of Special Investment and Economic Development Zones (ZEDE Law, 2013).

In the 1990s, Honduras had begun to sign free trade agreements (FTAs) and bilateral investment treaties (BITs). This created an international legal framework that served as the basis for post-coup governments to, at the same time as signing new treaties, launch campaigns to attract international investment. The conference 'Honduras Is Open for Business', organized by the World Bank, points as an infamous strategy for selling off and surrendering the country that needs to be examined. At this event, the Law for the Promotion of Investment (2011) was announced. This law went beyond FTA provisions and granted them extraordinary privilege, regardless of whether or not they had a specific treaty with Honduras.

Taking advantage of these reforms, international and national capital interested in profiting from financial, mining, energy generation and other sectors turned their eyes and chequebooks to Honduras. The most significant and unavoidable fact: the social regression.

governments, and the imposition of a narco-state in Honduras that was promoting extractive, corrupt and irregular investments in Honduras. Resistance to corrupt governments, extractivism and neoliberalism did not arise in Honduras only after the 2009 coup. Movements such as national coalitions, indigenous organizations, food sovereignty movements, trade unions, and various agricultural and peasant movements have opposed FTAs – such as the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) – and their negative impacts. However, few Honduran people were involved in a resurgence of widespread resistance behaviors of the national elite, backed as it was by financial institutions and transnational capital. Instead, elites and entities, instead of developing the country for the benefit of the people, profits for themselves, dispossess and evict communities, privatize water services, rivers, energy generation and so on.

The avalanche of lawsuits that are the subject of analysis in this study takes place squarely within the framework of this unjust global economic order that has deepened its roots not only in Honduras, but across Latin America. The purpose of this report is to understand this avalanche of arbitration claims against Honduras in the post-coup political, social and economic context, to expose the mechanisms that make possible this assault on the democracy and dignity of the Honduran people, and to consider the challenge of undoing the tentacles of this system.

We argue that the fifteen active claims against Honduras in this report serve as a term to express the illegitimacy of post-coup neoliberalism, a state that involved doing business, in one way or another, with actors linked to criminal networks. Furthermore, for us, this term 'mafia' is a useful concept, like the concept of "odious debt", a concept within the framework of social justice movement which argues that peoples should not assume debts acquired under authoritarian, repressive and corrupt regimes.

The report begins by describing our methodology and the analytical framework put in place that resulted in labelling these post-cou section outlines the deepening of Honduras' ne the relevant legislation that was passed after an overview of the four legal instruments that investors can use to sue Honduras, that is, FTAs, BITs, the Law for the Promoti contracts. Fourthly, the report describes the p active lawsuits against Honduras and details how and why they should be characterized as mafa-style. The ffth section explains how Ho attempts by investors to sue the country, including what can be learned from other countries with similar experiences in Latin Ame some conclusions and recommendations.



Protest against the government of Juan Orlando Hernández. Source: Radio Progreso

1. Methodology and framework for analyzing mafa-style investments

1.1. Sources for data collection

The primary basis for this study is approximately 20 interviews with community organizations, civil society groups, human rights entities and experts, and government officials in Honduras. Research was conducted via Zoom between May and June 2024 or in person during a trip to Honduras in May 12-25, 2024, to visit and meet with communities affected by the projects and investments analyzed, as well as gain first-hand experience. The researcher's experience includes years of study of the FTA protection system, socio-environmental struggles in the post-coup context. The review of Honduran news, journals, academic literature and analytical work from Honduran organizations and individuals.

In addition, the databases of the United Nations (UNCTAD), the International Centre for Settlement of Investment Disputes (ICSID), and specialized arbitration journals were used to construct data on investor claims against Honduras.

1.2. Conceptual framework

In our analysis, we use the term "mafa-style" to describe investments that are: (1) plagued by irregularities and corrupt activity; imposed against the will of the people or harmful to the public interest; carried out in a manner that is not in the public interest; and often with direct or indirect support from the government; and (2) our decision to use the term "mafa-style" is in part shaped by the 2009 coup d'état, a situation that has affected domestic investors.

To arrive at our concept of "mafia-style debts", we have identified these are debts contracted against the innocent often negotiated by a government seeking to strengthen its despotic regime, repress its population and the "mafia-style debt" has been used by governments in Nicaragua, the Philippines, Haiti, South Africa and other governments facing incurred debts have accused of looting state funds for personal gain or to restrict freedoms and use violence against their own citizens. In the 1920s, Alexander Sack defined odious debt as one that lacks the consent of the people at the time it was contracted, if it does not demonstrate benefit, and if the creditor or lender is in a position to know.

Based on the concept of odious debt as meaning illegitimately incurred, we developed our characterization of "mafia-style investment" as an investment considered "mafia-style" if they meet most of the following characteristics: Irregular. The contracts, investment commitments, and the subject of the lawsuits did not follow due process because either the creation of the legal framework, or the contracts for each party were irregular. Odious. The investments did not have the consent of the Honduran people and were signed in the authoritarian regime. In addition, the creditor or investor decided to proceed in spite of it.

Linked to criminal networks. Investments may be made by criminal organizations or individuals coordinated with them.

Against this backdrop the report outlines, particularly in section 4, how the investments meet the characteristics of being "mafia-style".

-
- 1 Howse, R. (July 2007). The concept of odious debt in public international law. *UNCTAD Discussion papers* (85). <https://unctad.org/system/files/official-document/osgdp20070701.pdf>
 - 2 Mandal, S. (2006). *Hateful lending: Debt relief as if morals matter*. New Economics Foundation. <https://neweconomics.org/2006/09/odious-lending>

2. Deepening of neoliberalism and emergence of the narco-state

In this section we describe how the neoliberal economic model took deep root in Honduras. We refer to the relevant legislation actions of the governments installed after the emergence of the narco-state.

2.1 Construction and deepening of neoliberalism

Honduras' economy, based primarily on the export of agricultural products, changed dramatically from the 1990s, when neoliberal governments took power throughout most of Central America. Shortly after the imposition of the International Monetary Fund (IMF) structural adjustment programs in the late 1980s and early 1990s,³ a new economic model emerged in Honduras under Callejas (1990 to 1994) with the passage of the Economic Modernization Law (1990). The legislation promoted the privatization of financial institutions and the U.S. Treasury known as the Washington Consensus. In many other countries where the Consensus was also imposed, Honduras devalued its currency, eliminated local protectionism, opened the economy to international investors and increased the costs of public services such as water, electricity and telecommunications, among other policies.

With the dispossession of land in rural areas, the Economic Modernization and Development of the Agricultural Sector in 1992 and the signing of several international investment and free trade agreements, Honduras diversified its traditional exports (bananas, sugar, minerals, etc.). From 1990 and 2010 they diversified to include industrial processing zones (duty-free factories), tourism, and free trade and industrial service zones. Free trade and industrial processing zones were established, accompanied by economic incentives such as the elimination of tariffs and tax exemptions. These changes translated into profound social transformations.

³ International Civil Society Network for Participatory Review of Structural Adjustment Policies (2002). *Structural Adjustment Policies at the Roots of Economic Crisis and Poverty: A Multi-National Participatory Assessment of Structural Adjustment*. Saprin. http://www.saprin.org/SAPRI_N_Exec_Summ

⁴ Central American Institute for Economic and Social Studies (2005). *Free trade and industrial service zones: Expression of the power of Central American elites*. ICEFI. https://mail.icefi.org/sites/default/files/politica_centroamericanas.pdf

1984

1990 Late 1980s / 1990s: World Bank Structural Adjustments Programs



Hurricane Mitch, Source: Radio Progreso

Hurricane Mitch (1998)

2000

CAFTA-DR (2006)

Coup d'état (2009)

2010 Government of Porfirio "Pepín" Ubilla (2009 - 2010)

Two governments of Juan Orlando Hernández
First period (2014 - 2018)

Second period (2018 - 2022)

2020 Inauguration of the Xiomara Castro government (2021 - 2024)



Protest against the coup d'état, Source: Radio Progreso

2024



Protest against the government of Juan Orlando Hernández (JOH), Source: Radio Progreso



The repressive contest of the narcodictatorship, Source: Radio Progreso

According to the work of Honduran sociologist E of the major impacts of this period or of the the establishment of what is now known as the Honduran oligarchy or economic elite and its subsequent economic business groups. Th themselves in specific sectors such as maquila energy and finance. Today, these families hold Honduras, with a "de facto political veto power further perpetuates their dominance but also f

The most powerful economic groups in Honduras

Some of the most powerful groups are Grupo F Grupo Financiero Atlántida linked to the Gold Terra presided over by Fredy Antonio Nasser; C Kafatti; and Corporación Químicas Dinant de Miguel Facussé Barjum.

Prior to the seizure of their assets in 2015, the Rosenthal family with their company Grupo Continental was also part of th a lot of power in the country.

Almost all of these families and economic g operate in other Central American countries,

In the context of the New Economic Model, power the state at the service of their interests. Th candidates, and with the increased power of oli the New Economic Model, the participation of el

5 Sosa, E. (2017). Transformations in economic elites, state and the process of democratization and de - democr at the case of Honduras 1990 - 2017. *Revista de Estudios Centroamericanos*, 43 (January - December) // www.scielo.sa.cr/scielo.php?script=sci_abstract&pid=1136-1808&i=43&n=1&f=false

6 United States of America vs. James Earl Ray, et al. No. 17-1117. 2017. <https://www.justice.gov/usao-sdny/file/781866/d1>
United States of America vs. Jeffrey D. Epstein, et al. No. 17-1117. 2017. <https://www.justice.gov/usao-sdny/pr-congressman-and-businessman-sentenced-36-months-money-la>

criminal groups in politics has increased. Cables were published by Wikileaks, and cases fled by U.S. officials and some of their family members have reinforced oligarchy and the political class to drug trafficking.

It was in such a context that Manuel "Mel" Zelaya won Honduran presidential elections in 2005, assuming the Honduran presidency, was part of the oligarchy. In his presidency he made an unexpected political turn and changes that benefited Honduras' poor and excluded from the political process for decades. His reforms posed no real threat to the conservative and anti-democratic elite, closely linked to the United States, refused to tolerate the slightest hint of change and overthrew him in a coup d'état. The coup facilitated a further weakening of institutions and democracy in the country, while expanding the power of the military in public institutions.

In response, international organizations such as the Organization of American States (OAS) and the European Union (EU) publicly denounced the coup. The coup was likewise rejected by the people through protests that were severely repressed by the regime. Peasant groups participated in a broad national resistance (FNRP), which was formed after the coup leaders would implement policies against their interests and undermine territorial and anti-extractivist struggles.

7 See: Diplomatic cables were leaked by WikiLeaks "Darkusgabner on report by Miami Herald, Honduras, submitted to the U.S. Embassy in Tegucigalpa, Honduras, on March 20, 2004. Embassy in Tegucigalpa, Honduras, <https://wikileaks.org/plusd/cables/04TEGUCIGA> (Oct 2, 2017) WikiLeaks. URL: <https://www.thenation.com/article/archive/wikileaks-honduras-us>. Spring, K. (November 5, 2020). The marriage of drug money and neoliberal development in Honduras. *NACLA*, 52 (4) <https://www.tandfonline.com/doi/full/10.1080/10714>

8 Sosa, E. Ob. cit.
9 See: Erard, K. (2018). *Honduras: The aftermath of the coup*. Haymarket Books, <https://www.haymarketbooks.org/books/honduran-night>
Shiple, T. (2017). *Ottawa and empire: Canada and the military coup in Honduras*. *Between the Lines*, <https://btlibooks.com/book/ottawa-and-empire>



Protest against the coup d'état, Source: Jen Moore

The coup drastically increased human rights violations in Honduras became one of the most dangerous countries in the world for its homicide rate, and was named by the UK organization Global Witness as one of the most dangerous countries in the world¹⁰. Part of the danger was due to the environmental impact and high levels of impunity that had characterized Honduras for decades, but the actions of the security forces against social movements and human rights activists in the twelve years following the coup saw the operation of drug trafficking networks and organized crime, in addition to the fact that the security forces collaborated closely with gangs, criminal organizations and, in the case of the Aguán Valley, with paramilitary groups.

Five months after the coup, elections were held despite doubts about the possibility of holding a democratic vote in that context. The government (2014) was installed following elections plagued by fraud, and was characterized by impunity and increased political violence and human rights violations. The National Congress, led by the then president of the two-term president of Honduras, Juan Orlando Hernández Alvarado (JOH) – sought to promote a pro-business climate in Honduras as a way to overcome the political and economic crisis generated by the coup.

10 Global Witness. (January 31, 2017). Honduras: the most dangerous country in the world for environmental activism. <https://www.globalwitness.org/en/campaigns/environmental-activism/honduras-el-pais-los-10-paises-peligrosos-del-mundo-para-el-activismo-ambiental/>

A member of the same National Party as Lobo, JOH made allegations of irregularities and the militarization of the country as a means to crush all opposition to his government and the neoliberal policies it promoted. When his government wanted, JOH moved to control all branches of government or simply eliminate those that resisted. In 2014, four judges of the Supreme Court were illegally removed from office by the Party-controlled Congress. Their removal allowed the ZEDE law, and gave the green light for JOH

In 2017, JOH ran for a second term despite widespread opposition and a constitutional ban on re-election. Once again, and more intensely than in 2013 elections, the 2017 elections were marked by serious allegations of fraud, sparking nationwide protests. For months Hondurans demanded an end to electoral fraud, with at least thirty people killed and injured by state security forces, and hundreds during military curfews and in protest

As he had done in his first term, JOH continued to use state services and, along with members of his government, created a series of sophisticated financial instruments and non-governmental organizations in the pockets of his political allies. Before and during his term, JOH coordinated narcotics shipments, along with his brother, former Congressman Juan Antonio 'Tony' Hernández, and other drug traffickers, to move drugs from drug cartels in exchange for protection, and to secure government posts.

11 See: Torres, L. (November 25, 2013). Honduras: Zelaya announces 'theft' of elections to Xiomara Castro. La Prensa, <https://www.laprensa.hn/honduras/honduras-zelaya-xiomara-castro-NBLP428353#image-1>
 The New York Times (December 10, 2013). Honduran Elections: Another Chapter of the Ongoing Elections. https://www.youtube.com/watch?v=eQ07ZZaSq_Q#t=28
 Center for International Policy (December 12, 2013). Honduras' Flawed Election: The Case of El Paraíso. <https://cepr.net/honduras-flawed-election-the-case-of-el-paraiso>

12 Padiella, D. (December 17, 2017). A delictuosa elección en Honduras. Criterio. <https://criterio.hn/41067/>
 Deutsche Welle (December 17, 2017). Honduras: Die Wahl ist ungerecht. <https://www.dw.com/es/exigen-justicia-para-los-38-muertos-en-honduras/a-46880442>
 United Nations Human Rights Council (June 20, 2018). Human rights violations in the context of the 2017 elections in Honduras. <https://oacnudh.hn/oacnudh-presenta-informe-por-los-38-muertos-en-honduras>

13 This case is a criminal case against the defendant Juan Antonio Hernández (file 15-cr-00379) presided by Judge Carlos A. J. Orosario. See the court's decision from February 24, 2024. It was an indictment of a fact that is not a crime. For daily summaries of the trial and the arguments presented by the prosecution see: Honduras Now. <https://www.hondurasnow.org/category/daily-trial-summaries>

Meanwhile back in 2011, Porfirio "Pepe" Lobo had "Open for Business". He and his government began to work with drug cartels and other organized crime groups and cartels to set up legitimate businesses in the country in order to receive contracts from state institutions to help provide services. He also worked with notaries, private sector investors, politicians and their families, military and police officers involved in drug trafficking or corruption to help use organized crime's penetration of the state.

In the years following the 2009 coup, Honduran governments approved a series of policies that welcomed international investment, which inevitably complemented and mixed with the interests of organized crime. The lack of denunciations of the coup and its outcomes by international bodies – along with the profound human rights crisis, recognized networks of corruption within the state, and the widespread belief that the government has links to organized crime and drug cartels – investors during this period must have known about the despotic and repressive as well as criminal context into which they were placed.

As early as 2015 one of the main Honduran banks, registered in Panama and owned by the Rosenthal family (which has fled an arbitration case you will see below), was publicly designated by the US Treasury Department for engaging in illicit activities.¹⁵ The Rosenthals reportedly had ties to money laundering and business dealings with the powerful Los Cachiros. They were sanctioned in 2013 by the US Treasury's Office of Foreign Assets Control as individuals involved in drug trafficking and their properties and many of their legitimate or "clean" assets were seized after they were named by OFAC. Mining, investment in

14 Bue A (Oct 8 2012) Narcopolitics: evidencia financiera del narcotráfico en Honduras. <https://v1.cespad.org.hn/2020/10/politica-el-caso-que-pone-en-evidencia-el-financiamiento-honduras/>

15 Sprink (Nov 5 2012) Marriodromo y desarrollo en Honduras. NACLA. <https://www.tandfonline.com/doi/abs/10.1080/10714839.2012.706112>

16 U. Department of Treasury Sanctions Rosenthal Money Laundering Organization. <https://home.treasury.gov/news/press-releases/j102013>

17 La Prensa (October 12, 2015). Business dealings with Los Cachiros sank Los Rosenthal. <https://www.laprensa.hn/honduras/negocios-con-los-cachiros-hundieron>

18 U. Department of Treasury Targets "Los Cachiros" Organization in Honduras. <https://home.treasury.gov/news/press-releases/j102013>

generation and tourism companies, some of which had active contracts or concessions with the Honduran government, ~~with the Cachimero~~ ~~turned over~~ were also linked to Fabio Lobo, President Lobo's officers, trafficked drugs to the US and is now in prison. In 2016, a year before JOH ran for an illegal second term, he was forced to come out publicly and deny ties to the drug trade. He alleged he was transporting narcotics from Colombia. JOH's second term was marked by scandals linking himself and his brother to drug trafficking and money laundering. In 2019, his brother was convicted in New York of racketeering and money laundering. Involvement in the scandals piled up against him, the cost of running the Liberty and Reform Party became too high for the U.S. In addition, the U.S. became increasingly aligned against the continuation of the narco-dictatorship, paving the way for the victory of the Liberty and Reform Party (Spanish word for "free"), led by former President Xiomara Castro Sarmiento, presidential candidate in the 2021 election.

- 18 Gagnon, M. (March 2017). A war on corruption is underway in Honduras. *Insight Crime*. <https://insightcrime.org/es/noticias/analisis-narcotraficantes-honduras-muestra-corrupcion-ciclica>
- 19 Riese, M. (May 2015). A report on drug trafficking in Honduras. *Insight Crime*. <https://insightcrime.org/es/noticias/noticias-del-crimen/narcotrafico/>
- 20 La Prensa (October 13, 2016). Tony Hernández denies links to illegal activities. <https://www.laprensa.hn/honduras/tony-herandez-niega-vinculos-con-actividades>
- 21 Padilla, E. (May 25, 2022). Corrupción de gobierno de Juan Orlando Hernández arrastró a periodistas y su cúpula. *Criterio*. <https://criterio.hn/corrupcion-de-gobierno-arrastro-a-periodistas-y-su-cupula/>
- CNN. (June 25, 2015). Juan Orlando Hernández rejects accusations of nepotism. <https://cnnespanol.cnn.com/2015/06/25/juan-orlando-herandez-en-conclusiones/>
- Revistazo (June 2018). Pandora case. <http://revistazo.com/ajedrez/casos/pandora.html>
- La Prensa (September 13, 2018). IHSS: The largest embezzlement in the history of Honduras. <https://www.laprensa.hn/honduras/ihss-desfalco-honduras-corrupcion>
- 22 U.S. Attorney Jeffrey S. Butcher (March 2021). Former Honduran Congressman Tony Hernandez Sentenced To Life In Prison And Ordered To Forfeit \$138.5 Million For Distributing 185 Tons Of Cocaine And Related Firearms And False Statements Offenses. <https://www.justice.gov/usdoj-sdny/pr/former-honduran-congressman-tony-herandez-sentenced-to-life-in-prison-and-ordered-to-forfeit-1385-million-for-distributing-185-tons-of-cocaine-and-related-firearms-and-false-statements-offenses>



Demonstration during hearing against JOH in New York; Source: Karen Spring

Xiomara Castro is the first woman president of party and her government pledged to re-found Honduras and reverse many of the policies implemented by the narco-dictatorship the years following the coup. However, this has to the weakness of the government and its own limitations, but also due to the strong opposition to even the slightest attempt to roll back the policies implemented by the post-coup governments. In addition, not only a control of organized crime interests or opposition parties, but the narco-dictatorship left the country in economic chaos. The economic lawsuits pending against the Honduran state and threats of more cases to come should the government attempt to shift the commitments made to companies under the narco-dictatorship.

2.2. Changes following the coup d'état

After the coup d'état against Manuel Zelaya in 2009, the government was illegitimized. To this end, the coup government created the development and investment strategy between 2010 and 2022, 'Plan de Nación' was written in neutral and "ideology" based on a neoliberal development framework that was primarily aimed to also serve to attract the support of international organizations like the World Bank, which require countries in the global South to have national development plans to ensure that loans and aid are provided for development vision.



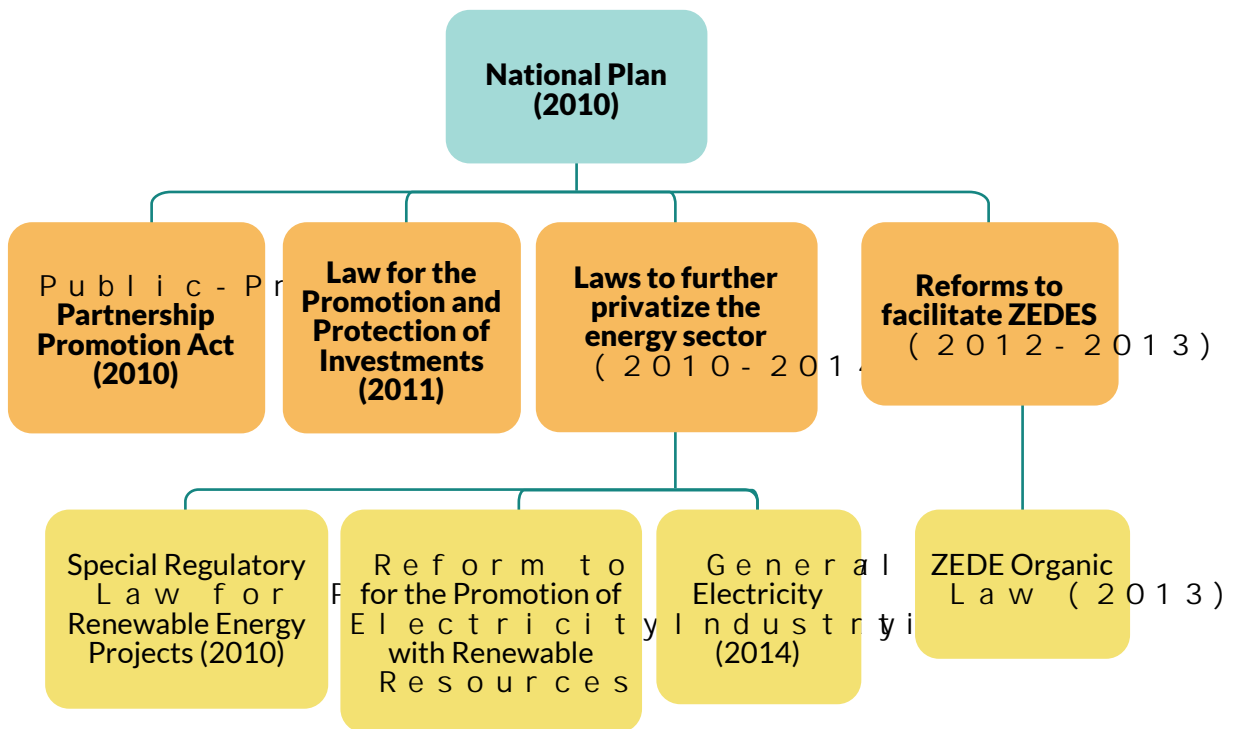
The National Plan constitutes a pro-business framework in which a series of laws and contracts would substitute the previous strategic guidelines, with fifty-eight sectoral plans proposed to lay the foundations for the economic and social construction of the "Honduras of the future", with the year 2022 as the short term and 2038 for the long term. Citing this plan:

"The legal framework must be harmonized and the institutions with direct responsibilities for the administration of natural resources and the environment must be consolidated, developing processes of institutional modernization, administrative facilitation, decentralization, de-concentration and budgetary adjustment."

23 Global Partnership for Effective Cooperation (October 26, 2022). *Honduras' National Development Vision and Plans*. <https://www.effectivecooperation.org/honduras-national-development-vision-and-plans>

24 National Congress (January 2010). *Visión de País 2010-2038 y Plan de Nación 2010-2022*. <https://www.tsc.gob.hn/web/leyes/plan-de-nacion.pdf>

The National Plan demonstrated the economic vision in practice, was accepted and supported by its establishing means for the insertion of Honduras into the exploitation of natural resources (water, soil) as a pillar for the consolidation of Central American leadership in terms of agri-food production, ecotourism and electricity generation from renewable sources, for which the implementation of public-private investment



25 For example, the Inter-American Development Bank (IDB) in 2012 will enter into a loan agreement with Honduras to "improve the business climate in Honduras; increase foreign and domestic investment through public-private partnerships." Inter-American Development Bank, "Honduras: Inter-American Development Bank Approves US\$202 Million in Financial Support for Honduras," <https://www.imf.org/es/News/Articles/2015/09/14/01/49/pr10374>

Inter-American Development Bank (IDB) in 2014 will enter into a loan agreement with Honduras to "improve the business climate in Honduras; increase foreign and domestic investment through public-private partnerships." Inter-American Development Bank, "Honduras: Inter-American Development Bank Approves US\$202 Million in Financial Support for Honduras," <https://www.iadb.org/en/project/HO-L1070>

IDB Board of Directors. "Honduras: Inter-American Development Bank Approves US\$202 Million in Financial Support for Honduras." *Inter-American Development Bank*. (November 27, 2017). Honduras: OFRANEH sends letter to IDB president for the inconsistent "model cities". https://www.biodiversidadla.org/Documentos/Honduras_OFRANEH_por_las_inconsultas_ciudades_modelo

Given that the country was going through a political transition, the various sectors of Honduran society in order to remain in power. Thus, the National Plan was imposed from above.

The laws presented below were drafted based on most of the concessions and contracts that are the basis for the ongoing supranational arbitration claims. In addition, the plan and its implementation provided for organized crime structures to increase their power and legitimacy, ultimately leading to the construction of a narco-state.

2.2.1. Law for the Promotion of Public-Private Partnerships

The Law for the Promotion of Public-Private Partnerships (COALIANZA) as a collaboration scheme between the public and private, national and international sectors that adopts multiple models and distributes the risk among the parties involved (private sector and State). The law created the Private Partnerships (COALIANZA), the decentralised entities promoting, entering into PPP contracts. At least three ongoing lawsuits arise from PPP contracts: Autopistas del Atlántico S. A. de C. V., Eléctricas de Medellín Ingeniería

26 The National Plan was orchestrated by one of the most notorious and controversial business negotiators of the transition: Arturo Corrales. A politician who went through different parties and governments, this character represents the most unscrupulous mode of doing politics in Honduras - a model of the "business" politics. <https://www.resumenlatinoamericano.org/2020/03/01/honduras-lluvia-para-mi/>

27 Law for the Promotion of Public-Private Partnerships (COALIANZA) (Ley No. 20 de Promoción de la Alianza Pública-Privada). La Gaceta No. 32317. <https://www.tsc.gob.hn/web/leyes/Ley%20de%20Promocion%20de%20la%20Alianza%20Publico-privada.pdf>

28 See Article 3 of the Law for the Promotion of Public-Private Partnerships, which defines the functions and responsibilities of COALIANZA, <https://www.tsc.gob.hn/web/leyes/Promocion%20de%20la%20Alianza%20Publico-privada.pdf>



Some of COALIANZA's activities would be declared National Congress passed the Law for the Classification of National Security and Defense (known as the Secret Law) and operations of COALIANZA and thirteen other entities were classified for national and international reasons. For years, national and international agencies, including the Inter-American Development Bank, have expressed concern about the limited auditing and oversight of COALIANZA and its management (commissioners) were believed to be closely controlled by President JOHNSON.²⁹

At the time, it was believed that one of the reasons for the lack of transparency and accountability in COALIANZA was the way in which its activities were not included in the national budget and the way it operated under the State Contracting Law (2001) and subsequent amendments. Private sector partners were suspected of exploiting the system for gain and Honduran private banks were even reluctant to include PPP projects in their portfolios and the Honduran Council of Private Enterprise (COHEP) called COALIANZA a "nest of corruption".³⁰

29 Padilla, E. (July 10, 2017). Secrecy law is a shield for the corrupt. *Criterio*. <https://criterio.hn/secretos-escudo-los-corruptos/>

30 Chayes, S. (2017). When corruption is the operating system: The case of Honduras. *Carnegie Endowment for International Peace*. https://carnegieendowment.org/files/Chayes_updated.pdf

31 For example, the COALIANZA Board of Directors was composed of representatives from the private sector, including the Honduran Council of Private Enterprise (COHEP).
32 Chayes, S. Ob. cit.

33 Notibomba (March 8, 2019). COHEP says Coalianza is a nest of corruption. <https://notibomba.com/cohep-dice-que-coalianza-es-un-nido-de-corrupcion/>

In 2019, probably in response to national and international allegations about its corrupt practices, COALIANZA's offices in Tegucigalpa were raided by the Criminal Investigation Agency (CIC) and the Attorney General's Office (CIG) was dismantled.

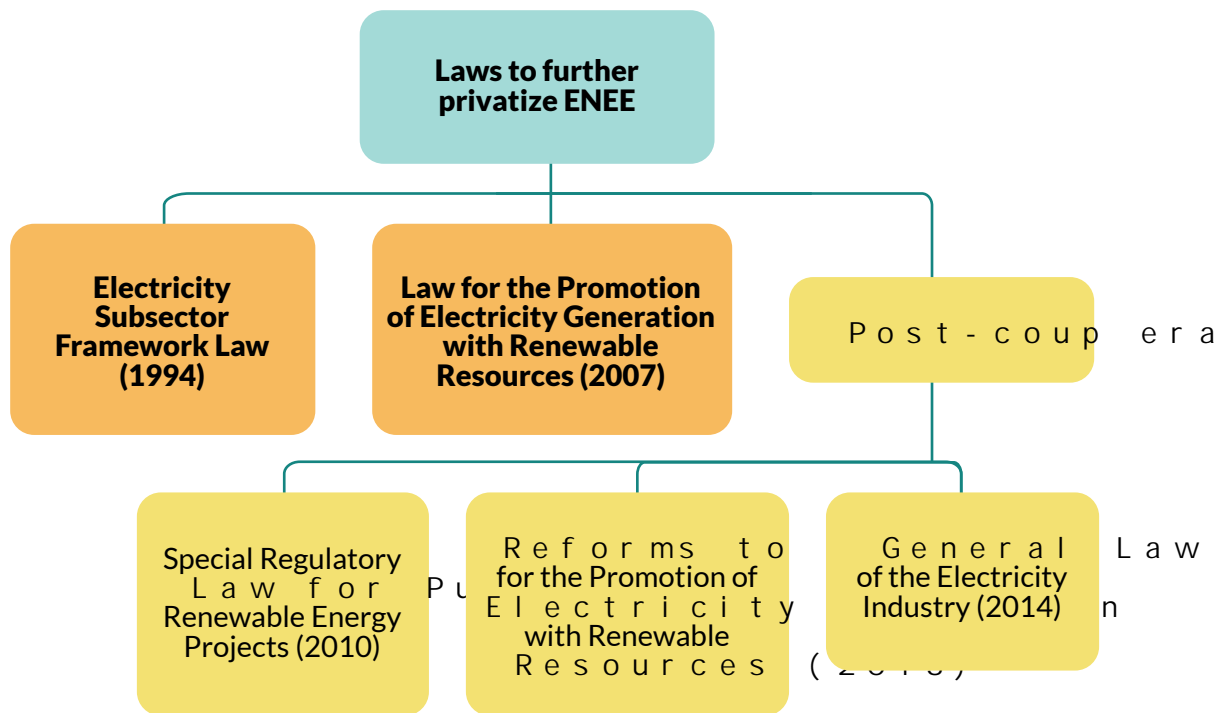
Arbitration claims arising from the Public Works Law (Ley de Obras Públicas) involving Autopistas del Atlántico S.A. and other companies, including Palmerola International Airport S.A. and Eléctricas de Medellín Ingeniería y Servicios S.A.

2.2.2. Energy sector reform package (2010-2014)

Since the 1990s, national and international actors have been interested in privatizing the National Electric Energy Company of Honduras (ENEE). This was done through various laws, such as the Framework Law for the Privatization of Electricity (1994) and the Law for the Promotion of Electricity Generation (2009). After the 2009 coup, a package of laws for the privatization of electricity generation and distribution deepened this process, with the Law for the Promotion of Renewable Energy Projects (2010), reforms to the Law for the Promotion of Electricity Generation with Renewable Resources (2013), and the Law for the Promotion of the Energy Industry (2014).

Seven of the ongoing lawsuits against Honduras are in response to this reform package and the efforts of Xiomara Castro's government to attract foreign investments. They are being brought by: Fernando de León de País; Inversiones y Desarrollos Energéticos S.A.; Scatec ASA; Eléctricas de Medellín Ingeniería y Servicios S.L.; and Víctor Miguel Silhy Zacarías.

³⁴ La Prensa (January 31, 2019). ATIC seizes documentation in Coalianza Tegucigalpa. <https://www.laprensa.hn/honduras/la-at-ic-secuestra-documentacion-de-tegucigalpa-1CLP1254963#image-1>



The reforms to the General Law of the Electric complete privatization of the energy sector in Honduras, as well as regulating the import and export of energy and allowing the mixed capital actors in the generation and comm proposed dividing ENEE into three companies: one and system operation, and one for distribution roundly rejected by the civil society organizations that formed the Popular Bloc in 1999, when efforts to privatize energy distribution w

The 2014 reform laid the groundwork for the Public-Private Partnership (PPP) contract to be signed in 2016 between ENEE and Empresa management of energy distribution, which is now against the State, according to sources from the same law mentions the need to encourage investments in renewable energies given the interest and financial contributions of mult as the Export-Import Bank of the United States, (IFC) of the World Bank and the FMO bank of Hol

35 Amendments to the Law for the Promotion of Electric Energy Generation with Renewable Resources - 2013 (August 2013) by the Honduran Congress. https://www.tsc.gob.hn/web/leyes/Ref_art_2_ley_promocion_energia_electrica_2013.pdf

Also relevant to ongoing claims is the Special Energy Projects (2010) which was justified by the National Energy Plan, which stated that by 2022 70% of the country's energy will come from renewable resources. This could be a reasonable expectation for a country suffering an energy crisis and relies heavily on thermal power generation produced by private generators. In 2008, the National Energy Plan, Congress passed the 2007 Law for the Promotion of Electricity from Renewable Energy Generation a "national priority" and offering a number of tax exemptions and the payment of an additional base price of energy.

Seven claims resulting from energy sector reforms

Fernando País Andrade & Anabella Schloesse
 Inversiones y Desarrollos Energéticos
 Norfund & KLP Norfund Investments AS
 Scatec ASA
 Eléctricas de Medellín Ingeniería y Servicios
 X-Elio Energy S.L.
 Víctor Miguel Silhy Zacarías

2.2.2.1. Massive approval of solar energy contracts

In January 2014, only five months after the reforms were published in the Official Gazette, Congress approved in a single session more than one hundred renewable energy projects; twenty-three of these contracts corresponded to solar energy and were

This legislative session is known as the “legis riddled with irregularities and corruption for

1. The twenty-three contracts were approved on January 20, 2014 in the small hours of the morning, one day after the closing of Moreover, it was the same day that JOH, then president of Congress, ended his term before entering the Presidential House bidding process.
2. Each of the twenty-one companies that received the twenty-three contracts were new and had been created, on average, nine months before the requirements established in the State Contract Law. Seventeen of those twenty-one companies were state-owned. After obtaining the contracts, suggesting that was later discovered that some of the owners were linked to JOH’s drug-trafficking associates (‘renegotiation of electricity contracts’).
3. The contracts obligated the State to pay an amount of energy for a period of twenty years. In the range of 10 to 15 cents per kWh compared to the Latin American average of 5 to 6 cents. This generated enormous concern about ENEE’s growth, as the state would pay to private solar power generators

The congressional session that led to this ‘legis riddled with irregularities and corruption and neoliberal legislation that brought by the energy sector. The efforts of ENEE to mitigate and renegotiate the terms set by the narco-dictatorship in policies that benefited the Honduran elite, foreign companies upset those who benefited economically from the

36 Padilla (November 2012) and some of the decrees are also called “Parliamentary Robo” <https://criterio.hn/conozca-los-decretos-aprobados-en-el-denominado-robo-parlamentario-de>

37 Partnership for a More Just Society. (November 1, 2018). *Research 1: Burned The solar energy bargain.* https://revistazo.com/docs/Investigacion_Quemados.pdf

38 Ibid.

introduction of the Special Law to Guarantee El National Security and a Human Right of Economic Electric Energy Law, 2022) triggered the avalanche the possibility of more in the near future.



April 24, 2015, No to the privatization of ENEE, Source: Karen Spring

2.2.3. Reforms to facilitate ZEDs (2012 to 2015)

The Employment and Economic Development Zones in Honduras, also known as “model cities”, “charter cities” or Special Development first debut in 2011, were created, according to attracting foreign investment and fostering economic created exclusively for that purpose.

ZEDs are territories that enjoy a maximum degree and administrative regulation due to the fact that, according to their promoters, this helps attract private investment and promotes a sense, ZEDs have rules that differ from the general the borders of the state, ³⁹ These projects have been the subject of great debate and controversy in Honduras, as they involve a cession of sovereignty.

39 According to the report by the International Labour Office (ILO) and the Inter-American Commission on Human Rights (IACHR), the ZEDs are a form of economic enclaves that have been created in Honduras. The ILO and IACHR have expressed concern about the impact of ZEDs on the Honduran economy and society. The ILO has stated that ZEDs are a form of economic enclaves that have been created in Honduras. The IACHR has stated that ZEDs are a form of economic enclaves that have been created in Honduras. The ILO and IACHR have expressed concern about the impact of ZEDs on the Honduran economy and society.

“ The ZEDEs are an extended and profound neo-liberalism that arise from a corporate rather than a nation-state concept, although with the backing of some governments of countries in Latin America, they mix neoliberal concepts of privatization with the reach the libertarian thesis of the state’s decentralization of new administrative concepts of territories.”

- Fernando García, presidential commissioner, conversation, July 22, 2024.

Various social, trade, business, academic and human rights organizations and governments (municipalities) in Honduras argue that the ZEDEs violate the Constitution because they imply a territorial exception to the form of government in these territories, which in fact implies a loss of national sovereignty.⁴⁰ ZEDEs are also criticized because their implementation has implied the transgression of human rights due to the displacement of communities and environmental destruction.⁴¹ Thus, although several ZEDEs have been proposed since their approval in 2013, their implementation and progress have been in different locations.⁴²

40 CESPAD. (2021). *Coyuntura desde los territorios | El papel de los gobiernos locales en la lucha contra las ZEDEs*. <https://v1.cespad.org.hn/2021/07/14/coyuntura-desde-gobiernos-locales-en-la-lucha-contras-zedes/>
PBI Honduras. (2021). *Honduras no se ZEDE*. <https://pbi-honduras.org/es/news/2021-07-14-honduras-no-se-zede/>

41 BBC News. (2021). *Honduran Parliament repeals the controversial Zede as it considers that they violate the country’s sovereignty*. <https://www.bbc.com/mundo/noticias-61184299>
García, Fernando. (2021). *La única opción para las ZEDEs que se declare constitucional es: la declaración de nulidad*. Criterio. <https://criterio.hn/la-unica-opcion-para-las-zedes-declaradas-inconstitucionales-edmundo-orellana/>

41 United Nations. (June 8, 2021). *ZEDes could pose serious risks to the guarantee of human rights by the State of Honduras*. <https://honduras.un.org/es/130598-las-zede-podrian-poner-riesgos-para-la-garantia-de-los-derechos-humanos-por-una-declaracion-de-nulidad>
Browne, Emma. (2021). *How the ZEDEs threaten the sovereignty and environmental and cultural biodiversity of the department of Atlántida*. <https://madj.org/2021/06/18/las-zedes-atentan-contrala-cultural-del-departamento-de-atlantida/>

42 Burdick, David. (2021). *ZEDEs provoke displacement of people and environmental damage*. <https://criterio.hn/las-zedes-provocaran-desplazamiento-forzado-y-migracion>

42 CESPAD. (2021). *Coyuntura desde los territorios | El papel de los gobiernos locales en la lucha contra las ZEDEs*. <https://v1.cespad.org.hn/2021/07/14/coyuntura-desde-gobiernos-locales-en-la-lucha-contras-zedes/>
PBI Honduras. (2021). *Honduras no se ZEDE*. <https://pbi-honduras.org/es/news/2021-07-14-honduras-no-se-zede/>

National Lawyers Guild. (September 2021). *Report of the National Lawyers Guild Delegation Investigation of the Zones of Economic Development and Employment in Honduras*. https://www.nlginternational.org/report/Final_NLG_ZEDE_Report.pdf.



Protest against ZEDEs, which are sometimes also referred to as model cities. Source: Karen Spring

“What characterizes the ZEDE is the creation of a territory on another territory, the creation of a new police force. ZEDE must be understood in the framework of a new wager in international economic dynamics – for negating the State, and for a libertarian resetting of the economy.”

- Lucía Vijil, in interview, May 9, 2024.

The creation of the ZEDE was only possible through a constitutional reform approved by the National Congress on January 25, 2013 just through Legislative Decree No. 294, the Constitution. Subsequently, on March 13, 2013, the Legislative Decree following the regulation that requires reforms to be ratified in the following legislative period, before the Republic.

43 Amendment 294, Decree 294 - 2013 and 303, Decree 303 - 2013. https://www.tsc.gob.hn/web/leyes/Reformar_art_294_303

44 Constitution of Honduras and the creation of ZEDEs require separate legislative periods.

45 Ratification Decree 294 - 2013 and 303 - 2013, Decree 294 - 2013 and 303 - 2013. <http://www.aduanas.gob.hn/wp-content/uploads/2020/11/DECRETO-No.-9-2013.pdf>

In July 2013, Decree No. 153-2013 created the Employment and Economic Development Zones (ZEDE) to be in charge of "the multidisciplinary technical procedures that are indispensable for the successful implementation⁴⁶ of said Project".

Another fundamental aspect is that the reform of creation and operation of the ZEDE⁴⁷. This was approved in 2013 through Law No. 148 Among other provisions, this new ZEDE Organic Law creates the Committee (CAMP), through Decree No. 368-2013, approved is an administrative body that cannot itself create a ZEDE, as this is an attribution of the Nation⁴⁸. The CAMP, composed of twenty-one persons appointed by the President, is in charge of the operation appointment of the technical secretary of each ZEDE, to establish the general guidelines for internal policy and transparency of the ZEDE, to approve the regulations proposed by the technical secretary, etc.

All these constitutional and legislative regulations related to the creation and implementation of the ZEDes were approved during National Congress, in a process of questionable by irregularities. In the first place because JOR tried to promote the creation of "model cities of Special Development Regions (RED). The National 283-2010, published in the February 2011, amended Article the Constitution, creating a favorable framework February 28, 2011, through Decree the following 4-2011 and March 7.

However, in October 2012, the Constitutional Chamber of the Supreme Court of Justice declared the REDs unconstitutional for violating the principle of popular sovereignty,⁵⁰

46 Decree No. 153-2013 (La Gaceta No. 33,322) of October 1, 2013, 194

47 Mejía (November 2012) Quick look at the current legal situation of the ZEDE. <https://eric-sj.org/noticias/una-mirada-rapida-a-la-situacion-juridica-actual>

48 Organic Law of Employment and Non-Drive Jobs Decree No. 368-2013 (September 6, 2013). La Gaceta no. 33,322. https://www.tsc.gob.hn/web/leyes/Ley_zonas_employment.pdf

49 See Mejía (2012) for a reference to the international dimensions of the ZEDE. <https://drive.google.com/file/d/1bFBjwODDeON5-1I>

50 Ibid.

stating that Congress did not have the power to grant concessions that infringed on the territorial integrity, sovereignty and independence.⁵¹ Despite this initial defeat, JOH insisted on h Congress illegally dismissed four magistrates who opposed the REDs, without any right to defense. A month later, in January 20 constitutional reform to create the ZEDEs, as a Law was declared Constitutional by the new Constitutional Court of Justice, which was composed in part of magistrates who replaced those who had initially opposed t² In September of the same year, Congress approved the ZEDE Organic Law⁵³ through

The constitutional reform process to enable the ZEDEs was marred by irregularities, given that the JOH-led Congress had dismissed the four magistrates who had determined that the RED initiative was unconstitutional without the right to defend themselves. Some critics called the dismissal of the magistrates who opposed RED were dismissed, but not the magistrate who said that RED was constitutional. After these events president of the Constitutional Chamber and subsequently appointed attorney general by the National Congress⁵⁴ in an unusual procedure. On the other hand, the dismissal of the four magistrates by the Inter-American Court of Human Rights (IACHR), which declared the State of Honduras internationally responsible for this event that Congress dismissed the magistrates while the building was surrounded by military and police; that the magistrates had not even been dismissed and their motions were rejected; and that the dismissal was carried out by an authority that lacked competence, which signifi

51 "Constitutional Chamber. SCO RI- 769-11 Sentencia del 17 de octubre de 2012, considerando 19 y 28. <https://hn.vlex.com/vid/cioteyleid-a20232869>

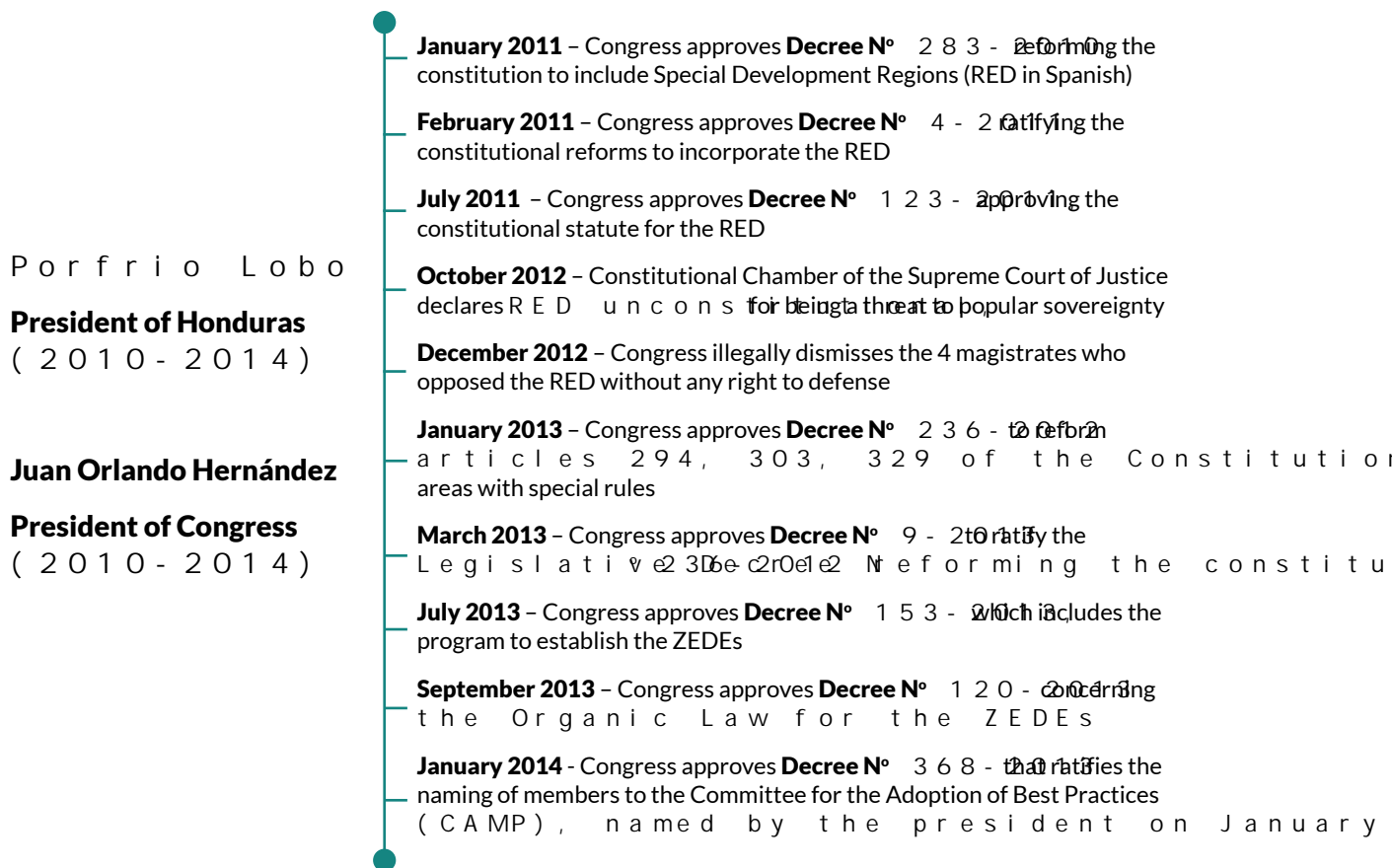
52 See Mej J (a2023).

53 Orga n a l o f E m p l o y m e n t a n d D e v e l o p m e n t O I C I E .

54 See Garbí (2018). b. CII et Política-Legal Analysis of the Legislation of Employment and Economic Development Zones (ZEDE) in Honduras. Análisis, 9. <https://library.fes.de/pdf-fesamcentral/16510.pdf>

55 Inter - A m e r i c a n R i g h t s C o u r t o f H o n d u r a s i s i n t e r n a t i o n a l l y r e s p o n s i b l e f o r t h e a r b i t r a r y d i s m i s s a l o f t h r e e m a g i s t r a t e s a n d a m a g i s t r a t e o f t h e C o n s t i t u t i o n a l C h a m b e r a n d t h e S u p r e m e C o u r t o f J u s t i c e o f H o n d u r a s . https://www.corteidh.or.cr/docs/comunicados/cp_2

Graphic 1. Chronology of the handover of sovereignty from Honduras to ZEDEs



The chart shows the basic chronology of the creation of CAMP, which we noted above was created through the appointment of its members on January 14, 2014, by then President Juan Orlando Hernández. A few days before the end of the JOH's term, the JOH assumed the presidency. With this regulatory framework, the committee modify its members without⁵⁶ its twenty-one members were mostly foreigners with different profiles, including four Hondurans, including former President Ricardo Maduro Joest, those investigated for corruption, Ebal Jair Díaz and Ricardo León. On October 21, 2014, the JOH issued Decree No. 32-2014,

⁵⁶ See Garfalo, cit.

⁵⁷ Perdón (OAGU, 2012). El Poderío por el año a la coccacquistad usenra do sigilamente se reducen los tiempos: <http://criterio.hn/zede-prospeccion-anarcocapitalista-que-se-ha-aduenado-a-bogor-durante-del-3>

approved, regarding the sales tax levied on goods performed in Honduras, which was reformed in August 2011.

Currently, the monumental lawsuit for almost 11 billion dollars in ICSID – brought by the North American group Honduras Próspera Development Company LLC and Próspera Arbitration Center LLC v. Honduras – is in response to pressure from the Honduran people and the corresponding reforms of the current administration to dismantle the regulatory framework that, in an irregular and illegitimate manner, brought about the ZEDEs.

Fernando Garcia reports that these actions by the State are in response to demands of civil society and more than seventy local governments (municipalities) in Honduras, which have been actively rejecting ZEDEs since 2011, and which have been taken up by the executive branch. However, the cost promises are high, not only because of the current arbitration claim for ZEDE Próspera, but also because this may encourage other ZEDEs to sue the State, such as ZEDE Ciudad Morazán, which has also threatened to bring a lawsuit.

58 Honduras Próspera Development Company LLC and Próspera Arbitration Center LLC v. Honduras, ICSID No. ARB/21/30, ICSID Convention Arbitration (February 3, 2023). <https://icsid.worldbank.org/cases/case-database/>

59 García, *Próspera: el compromiso con la inversión extranjera y el desarrollo* (Zona Libre de Comercio Municipal) 2024.

60 *Eliber (Malicia) 2024 Italian threatens President Castro if she orders closure of ZEDE Próspera.* <https://eliberador.hn/2024/03/11/italiano-amenaza-zede-prospera/>

3. Extraordinary privileges for investors: four legal instruments against the people.

In May 2011, the government of Porfirio Lobo Siles presented to a national and international audience its plan to promote private investment. According to media outlet La Prensa, it would be an event that “will change the history of the country” in the same way that the neoliberal period in Honduras and Hurricane Mitch in 1998 was used to deepen neoliberal policies. In the event, the Government invited investments in 149 projects across forestry, tourism, energy, agribusiness, railroads and services, valued at \$3 billion. It was also the platform to announce the approval of the Law for the Promotion and Protection of Investments, which grants investors of their country of origin, to sue Honduras in the event that it carried out measures that could affect their investment.



The approval of the Law for the Promotion and Protection of Investments on the official website of the Congress of Honduras on May 15, 2011⁶⁴ (analyzed in more detail in section 3.1.3: “Law for the Promotion and Protection of Investments”) changes promoted to favor private investment, “aiming to make Honduras one of the most attractive countries in Latin America”⁶⁵ Critics of the investment policy.

61 Central American Data (January 2011) “Honduras is open for business” https://www.centralamericadata.com/es/article/home/Honduras_is_open_

62 Montenegro, G. A. (2011) Honduras as a business destination: the country. La Prensa. <https://www.laprensa.hn/honduras/honduras-is-open-f-pais-HELP542621>

63 La Prensa (May 2011) “Honduras is open for business” <https://www.laprensa.hn/honduras/lo-mejor-del-honduras> Observatorio de multinacionales business - HBLP e América Latina (September 10, 2011). Honduras as a destination for foreign direct investment. <https://omal.info/spip.php?article700>.

64 Law for the Promotion and Protection of Investments. December 2011. Ley 52011. Gaceta N° 32,568. <https://honduras.regulaciones.org/media/Ley%20par%20proteccion%20de%20inversiones.pdf>

65 La Prensa (April 28, 2011). Congreso Nacional aprobará ley de inversiones. <https://www.laprensa.hn/honduras/congreso-nacional-aprobara-ley-de-inversiones-P>

such as trade unionist Carlos H. Reyes, saw it as a
and "continue destroy i⁶⁶The Black Fraternal Organization producer
of Honduras (OFRANEH) in Honduras ups to p et the f or t a B
event foresaw:

"The Law for the Promotion of Investments will
of cases that are being heard in national and international courts against the
State of Honduras for non-compliance with its
regulars at the International Centre for Settlement of Investment Disputes,
known as ICSID, where those invited to the investor symposium will seek
protection."

Outside the event site were, among other organi
of Popular and Indigenous Organizations of Ho
communiqué opposing Porfirio Lobo's plan:

"It is nothing more than the consolidation of colonialism and capitalist
plundering, even worse than the signed FTAs, with which the regime intends
to accelerate even further the delivery of the country to foreign transnationals
for the usufruct and exploitation of natural
tax haven in which drug trafficking would have

The demonstrators were tear gassed and subjected
were arrested, among them three members of COP
organization Los Necios.

66 Reyes, May 2011. The development of the country is dependent on business.
Alainet. <https://www.alainet.org/es/active/46301>

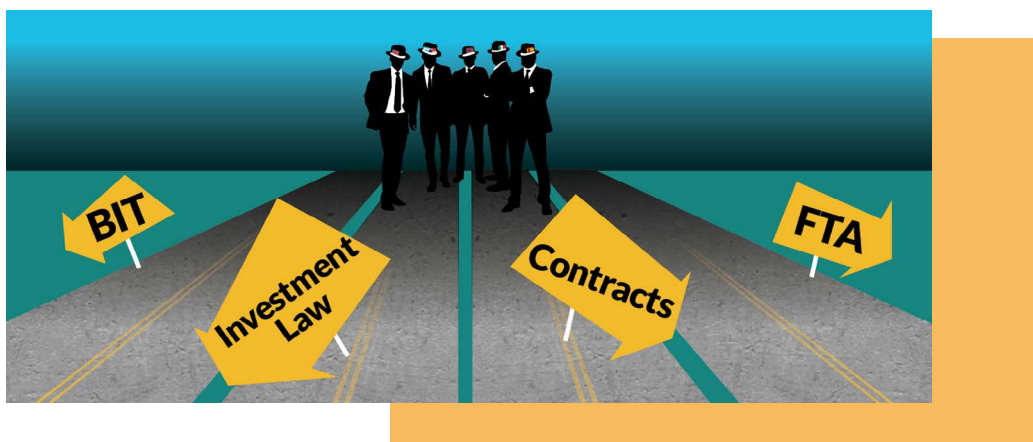
67 OFRANEH. (May 5, 2011). Honduras Open for Business: banana republic auction. https://movimientos.org/es/honduras/show_text.php?3Fkey%3D19275

68 COPINH. (May 6, 2011) Stop colonialism, stop selling out Honduras! Urgent press release. <https://hondurashumanrights.wordpress.com/2011/05/06/regime-cont-honduras/>

The main objective of the Honduras Investment and Promotion Law and the international legal architecture being announced was to provide total security to national and foreign capital, especially in the economic sectors established as a priority by the National Plan. This has not only happened in Honduras since the 1990s, countries agreed to sign a series of treaties for the protection of foreign investments, while at the same time reforming their legal apparatus (laws and even constitutions) to include clauses that would give total freedom to capital (legal, exchange, customs and tax) and reduce the regulatory capacity of states in defense of human rights.

In the case of Honduras, a combination of four regulatory instruments, while granting the Honduran state to act in favor of the people. These four instruments directly attack the possibility of the state to act in favor of the people. These four instruments are frameworks that protect capital in situations of economic, social or environmental crisis that may modify the expected profitability of investments, guaranteeing corporate profit at the expense of the well-being of populations, are comprised of the following:

- 1 . Bilateral treaties for the protection and promotion of foreign investments (BITs);
- 2 . Free trade agreements (FTAs) that include investment protection and arbitration;
- 3 . The Investment Promotion and Protection Law;
- 4 . Contracts between the State and companies, especially in the extractive sector.



The four legal instruments incorporate arbitration to sue the State in case their investment is affected by changes in laws, contracts or by any State regulation. Their ammunition is the ISDS mechanism – the mechanism that gives the investor the ability to resort to international arbitration against the public authority, bypassing national courts.

3.1. Investor - State Dispute Settlement

The ISDS mechanism allows foreign investors to bypass national courts and submit their claims against the State before an international arbitration tribunal. For this reason, arbitration is considered a “supra-national” system of “parallel justice” at the international level, distinct from national justice⁶⁹ systems.

The World Bank’s ICSID is the most widely used arbitration center, but there are others such as the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce Arbitration at the Hague, among many others. ICSID is the most used institution, but other arbitration centers exist. When we look beyond the ISDS problem, the real problem is the substantive clauses, i.e., the clauses in a set of clauses in FTAs, BITs and investment laws and contracts that grant them preferential treatment.

Honduras and its “reservations” on joining ICSID: An unresolved problem of legal sovereignty

The history of Honduras as a member of ICSID is complex. In April 2023, the Government of Xiomara Castro issued a resolution from the Commission for the Defense of Sovereignty and Territory, which issued a

⁶⁹ A clear case of disregard of national justice by an arbitration tribunal is the Chevron II vs. Ecuador case, where the tribunal ruled in favor of the company indicating that there is overwhelming evidence that the material presented by the victims in the Lago Agrio region against Chevron was fraudulent. See: <https://isds-americalatina.org/perfiles-de-paises/ecuador>

communiqué assuring that “ICSID has ignored the legal reservation registered by the State of Honduras with respect to proceeding to the Decree No. 41-88 published in the official gazette that investors are obliged to exhaust domestic resorting to ICSID and that arbitration would be available.”⁷⁰ However, the ICSID Secretariat has not registered part of its files and, in practice so far, the ongoing claims against Honduras (JLL Capital) and the arbitration panel has rejected the State’s reservation pursuing these cases based on its reservation.⁷¹

What is the arbitration process like? Claims are referred to the investors to an arbitration center selected and formed especially for each case. The panels, or panels of highly paid corporate lawyers (who in this case serve as arbitrators) who generally meet without witnesses and are not accountable to anyone.



70 Rome F (oJ, u2n2e0 2 B) d n d usraayS Sã D t "efdr a u d u m e h t l y n l l a w s u d b l l a r
 Bloomberg Line. <https://www.bloomberglinea.com/2023/06/02/honduras-forma-fraudulenta-en-demanda-multi-millonaria/>

71 Dec r4e1e 8 8 u g4u1s9t8 B 6 a c n o 2 7 , 4 3 1 .

72 Boh m l e (A p 5 2 0 2 4) C S t D i b r u n j a H o n d u r a s u n t e n n a t a m n i f e s t l y
 I a t e g n a l d u t e o n v e s t a d r i t ' o s x o n a l u o s t a e l m e <https://www.iareporter.com/articles/icsid-tribunal-declines-to-decide-honduras-exhaustion-proceedings/>

Bo h m l e (D e c e 2 0 2 2) C S t D i b u i n s a n h i R s u s 4 e s b j e c t i n a m s e r a v d i c e p u t e
 with Honduras. <https://www.iareporter.com/articles/icsid-financial-services-dispute-with-honduras/>

This type of tribunal is nothing like a national justice system, since the requirements made of arbitrators are much less. Each case is an unique, each panel determines the costs to be paid by the arbitration panels for each case, there are "decisions") that are often contradictory when of the same nature (for example, a state policy of an economic crisis). This level of inconsistency "super-powerful beings" who define the fate of an investor's anticipated profits. For this reason, an arbitrator and member of a US law firm, states:

" Why do I call arbitration the Wild West of international law? It really no hard and fast rules. Briefs, motions, trials are nothing like what you see in federal court."

Arbitration panels are not obliged to consider the human rights of peoples affected by investments, but rather rule on violations of (human rights and privileges) violated by public policies are summarized in these clauses, included in all BITs and FTAs with investment protection:

- Direct expropriation and indirect expropriation: direct expropriation of property, as well as state action that reduces the investor's expected return. This includes measures taken by host governments for enforcing environmental, health or other public interest laws or measures arising from democratic or judicial processes, and even from economic, political and health crises, such as the COVID-19 pandemic.
- Fair and equitable treatment: This is understood as the investor with due process, "fair", "impartial" and "transparent" treatment. It also includes the avoidance of actions that frustrate "legitimate expectations". This standard is a controversial standard included in most treaties; in fact, it is present in almost 95% of investment treaties.

73 Olivet, C. and Ghiotto, L. (2021). Parallel Justice: How the investment protection system puts the independence of the Judiciary at risk in Latin America, *Transnational Institute*. https://isds-americalat.org/wp-content/uploads/2023/04/justicia_paralela_esp.pdf

74 George K. Geis (2018) *The Wild West of International Arbitration*. In: *Investment Arbitration: A Guide to the Law and Practice*. Cambridge University Press. <https://d20qsj1r5k97qe.cloudfront.net/news-articles/Wild-West-of-International-Law-and-Arbitration.pdf>

of investment treaties and almost 83% of all claims have involved claims⁷⁵. No precise definition. Consequently, tribunals when interpreting the provision, increasingly over time, regardless of the diverse histories, cultures and value systems of a given country.

- National treatment and most-favored-nation treatment: to treat foreign investors no less favorably than domestic investors and those from a third country. While this is presented as a possibility for governments to apply national economic strategies to stimulate or protect domestic economic activities.
- Full protection and security: This standard applies whether from physical or legal acts, which may be allegedly from the action or lack of action by the State or third parties, which could include communities or workers standing up against violations of their rights. claims where an investor invokes this standard, demanding that the State guarantee the protection of its investment in the face of protests by local people affected by its projects.

3.1.1. First legal instrument: bilateral investment treaties

The first instrument comes in the form of the BITs mentioned above, which protect foreign investors and allow them to resort to international arbitration. BITs are short treaties compared to those signed by Honduras with other BITs. All BITs were conceived to protect foreign capital, so they provide a set of privileges for investors, while tying the hands of states in terms of their regulatory capacity.

⁷⁵ Sarmiento F. and Nikiema S. (November 2022). Fair and Equitable Treatment: Why it is important and what can be done. *International Institute for Sustainable Development*. <https://www.iisd.org/system/files/2022-11/fair-equitable-treatment-es.pdf>

⁷⁶ Moore, E. and Moore, J. (September 18, 2020). When Police Repression is Not Enough: A U.S. Corporation is Suing Guatemala to Crush Local Mining Opposition. *Inequality*. <https://inequality.org/research/mining-corporation-suing-guatemala/>

Both BITs and the provisions of the investment chapters in FTAs have been used by foreign investors to sue the Honduran State, although there has been a tendency towards the greater use of FTAs for this purpose.

The interesting thing about BITs is that, even if a country decides to terminate one of these treaties, upon termination a sunset clause is activated which means the treaty remains in force for 5, 10, 15 or even 20 more “zombie clause”, because even if an attempt is made to terminate the treaty, giving continued coverage to investors for a period of time.

The BITs signed by Honduras have been invoked concerning the BIT with Spain and the United States.

3.1.2. Second legal instrument: free trade agreements

FTAs go far beyond trade, as they deal with issues such as intellectual property rights, services, government procurement and, of course, investment protection. An investment protection clause can be seen as a BIT within an FTA, since it is a BIT that incorporates the ISDS mechanism that enables investors to sue the state.

Honduras currently has twelve FTAs in force. At the turn of the millennium it has begun to sign new ones. Xiomara Castro has mentioned some interest in renegotiating the CAFTA, but this has not materialized. At the moment, Honduras is negotiating an FTA with South Korea and negotiations⁷⁷ for an FTA with China.

⁷⁷ Hondudiario (May 9, 2022). *Honduras seeks to renegotiate CAFTA: “The ability to compete has been lost”*. <https://www.bilaterals.org/?honduras-busca-renegociar-cafta>. La Tribuna (November 26, 2023). *Honduras starts FTA negotiations with South Korea and China*. <https://www.bilaterals.org/?honduras-arrancan-rondas-de-negociacion-con-sud-corea-y-china>.

Table 1. BITs signed with Honduras currently in force

Country	Effective date	Sunset period ("Zombie Clause")
Initial period nearly over, can be te		
Chile	10/01/2002	15 years
United States	11/07/2001	10 years
France	08/03/2001	15 years
Germany	27/05/1998	20 years
Great Britain	08/03/1995	20 years
Initial period ended, automatically re		
Netherlands	01/09/2002	15 years
Spain	23/05/1996	10 years
Switzerland	31/08/1994	10 years

Source: Authors' own elaboration based on data from UNCTAD's Investment Policy Hub.

Table 2. Trade agreements with investment protection chapters

Trade agreement	Year came into force
FTA between Central America and the United States	2021
FTA between Central America and South Korea	2019
FTA with Peru	2017
FTA with Canada	2014
Central America - Mexico FTA	2012
FTA between Colombia, El Salvador, Guatemala and Honduras	2009
Treaty on investment and trade in services between Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua	2008
FTA between El Salvador, Honduras and Taiwan	2008
CAFTA-DR	2006
FTA between Central America and Panama	2009 ⁷⁸
FTA between Central America and Chile	2002
FTA between Central America and the Dominican Republic	2001

Source: Authors' own elaboration based on data from UNCTAD's Investment Policy Hub.

78 This treaty was signed by different countries over several years, in the case of Honduras it was signed in 2007 and entered into force in 2009: <http://www.sice.oas.org/trade/>

FTAs have been invoked eight times by investors: CAFTA-DR; twice through the Central America-Panama FTA; and twice through the Central America - Mexico FTA.

3.1.2.1. CAFTA-DR and its implementation laws

CAFTA-DR was an initiative of the U.S. government. The laws that were completed in 2003; it was signed in 2004 by Honduras and other countries in 2005, despite the opposition of the middle classes.

CAFTA-DR includes a Chapter 10 on investment that obliges Central American countries in international arbitration to insist that CAFTA-DR include so-called "implementation laws" that require signatory countries of the treaty to adapt their domestic legislation in the areas of services, telecommunications and intellectual property. In Honduras, laws were laid out in Decree No. 16-2006, which eliminated "any possible contradiction that could exist between the law for investors, since such adjustments would improve "the business climate, establishing clear rules and legal certainty for all economic agents, enhancing the opportunities of the region.⁸⁰ This opened the door for the commercial and investment interests of U.S. corporations, and their allies among economic agents in the region.

In the case of Honduras the implementation laws consisted mainly of signing and ratifying a series of international intellectual property conventions, including the controversial International Convention for the Protection of Intellectual Property that denies peasant communities the right to protect their biodiversity and native seeds, among other things.⁸¹ Honduras also had to sign other international treaties related

79 The Central American Socialist (November 9, 2015). *Chronology of the Popular Protest against the FTA (2002-2006)*.

<https://elsoca.org/index.php/americas-central/centroamerica/protesta-popular-contra-el-tlc-2002-2006>

80 Law for the Implementation of the Free Trade Agreement, Dominican Republic, Central America, United States (March 24, 2006). Decree 16-2006 La Gaceta N.º 30,961. [https://www.tsc.gob.hn/web/leyes/Ley%20de%20Implementacion%20de%20Tratado%20de%20Libre%20Comercio%20\(07\).pdf](https://www.tsc.gob.hn/web/leyes/Ley%20de%20Implementacion%20de%20Tratado%20de%20Libre%20Comercio%20(07).pdf)

81 Gaia/Grain (June 21, 1998). *Ten reasons to say NO to UPOV*. <https://grain.org/es/article/diez-razones-para-decir-no-a-upov>

to the protection of intellectual property⁸² that negatively impact small producers and traders and benefit transnational corporations.

3.1.2.2. Resistance to CAFTA-DR

In Honduras, as in the rest of the countries that negotiated CAFTA-DR, social organizations were excluded from the process. Only neoliberal organizations were consulted in the negotiations. For their part, social movements organized among themselves to resist the signing of the treaty. In Honduras, social movements learned from the effects of the North American Free Trade Agreement (NAFTA) on campesinos and workers.

Few previous social protest events in Central America had the characteristics of the mobilizations against CAFTA-DR. For five years, Honduras had experienced a climate of political conflict, with social movements reaching a climax in 2003. One of the characteristics of the mobilizations against CAFTA-DR in Honduras is that they were mainly carried out by unions. CAFTA-DR was perceived as a threat to the interests of workers in the central unions and in campesino, teacher, indigenous, Afro-descendant and other organizations, integrated as they were in the National Coordinating Committee of Popular Resistance. Social movements showed full frontal opposition to the treaty, considering it "an instrument of domination by transnational corporations⁸⁴ and the oligarchies.

In 2003, the Popular Bloc, COPINH, OFRANEH, and other organizations formed the National Coordinating Committee of Popular Resistance (CNRP), which came together at the continental level in the Central American Alliance. These organizations opposed the FTAs and the development of non-governmental organizations (NGOs).

82 Other international treaties that Honduras had to sign: Patent Cooperation Treaty, as revised and amended (1979); a protocol to the Patent Cooperation Treaty (1984); the Paris Convention for the Protection of Industrial Property (1967); the Convention on the Grant of European Patents (1973); the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958); the Convention on the International Registration of Marks (1989).

83 Abarca, Nove (2006). *El año del colapso: la política social en Honduras 2002-2006*. *The Central American Socialist*. <https://elsoca.org/index.php/america-centroamerica-cronologia-de-la-protesta-popular-contra-e>

84 Brown, A (2001). *El año del colapso: la política social en Honduras 2002-2006*. *The Central American Socialist*. https://issuu.com/doctoradoccssgd/docs/tesisvirgiliobrown13102016__2_

85 Hemispheric Social Alliance (January 2003). *El ALCA al desnudo: Críticas al texto borrador del Área de Libre Comercio de las Américas de noviembre de 2002 (The FTAA in the Buff: Criticisms of the November 2002 draft text of the Free Trade Area of the Americas)*. <https://www.iatp.org/sites/default/files/El.pdf>

alliances with regional networks such as the Honduran Coalition for Citizen Action (CHAAC by its initials in Spanish), Central America for Dialogue (CAD), and hemispheric initiatives such as the Latin American Association and the Mesoamerican Initiative for Trade, Integration and Sustainable Development (CI⁸⁶D).

On March 2, 2005, 57 civic organizations who were in Congress signed a statement against the treaty. The Honduran people condemned approval of CAFTA. On May 13, 2005, hundreds of indigenous Lenca protested in front of the US embassy. On May 31 in Intibucá. Subsequently, indigenous people took to the streets in front of the US embassy. On June 28, 2005, CHAAC assumed a leadership role in a Campaign against the Free⁸⁷ Trade Area of the Americas.

" More popular mobilizations are coming. CAFTA is for the poor."

- Salvador Zúñiga,⁸⁸ indigenous leader, 2005.

In the face of protests, a campaign of contempt and criminalization of social movements began. The efforts of social organizations were to block CAFTA-DR in all the party countries. The negotiators were against the vast majority of congresspeople. In the end, the agenda was set to the agenda of big business. The negotiators were blackmailing the population by saying that without CAFTA-DR there would be fewer

86 The organization wants to propose a new model of trade agreements. See also the Brief for the World Trade Organization, a new initiative to CAFTA-DR. The new initiative is to create a fairer agreement.

87 Abarca (2015), see note no.50.

88 Cuevas, F. (March 7, 2005). Highway blockade in Honduras in protest against CAFTA. *LMT Online*. <https://www.lmtonline.com/lmtenespanol/article/Bloqueo-10268815.php>

jobs and more. Today we see that the situation,⁹⁰ particularly in Honduras, Guatemala and El Salvador, has been the opposite since the entry into force of CAFTA-DR.

3.1.2.3. The Central America - Panama Free Trade

The FTA between Central America and Panama was signed by Honduras by then President Manuel Zelaya in 2007, prior⁹¹ to the c. The treaty consolidated "the presence of branches in the Honduran market, including the insurance and reinsurance sector for risks related to maritime transport"⁹² At the same time, it has allowed some Honduran elites to sue the country.

As Insight Crime describes, "The traditional elites that rule in places like Guatemala, El Salvador and Honduras, mostly due to the country's economy dominated by multinational corporations. Instead, the country's most powerful elites are from the service, banking, media and telecommunications sectors. They are called transnational elites because many are first-generation immigrants from the Middle East and Eastern Europe and rely on international business to accumulate capital."

89 On the promises made by governments when negotiating and signing FTAs, see: Ghiotto, L. (2020). *Some snares of a trade liberalization agenda: 25 years of trade and investment treaties in Latin America: analysis and critical perspectives*. E Col e r t o i s v a o x e m b a o g d <https://www.fgep.org/wp-content/uploads/2022/02/25-anos-de-tratados-de-libre-comercio>

90 With CAFTA-DR in force, the Central American Free Trade Network is operating, comprising the Central American Free Trade Network (CAFTA-DR) and the Central American Community Trade Network (RENICC) and the National Liaison Commission (CNE) of Costa Rica. This network produced several studies until the last decade. See: Red Centroamericana de Monitoreo del Comercio Exterior - CAMEX - C A E T A e g a c i o n a c i o n a l s i g e n t a l <https://omal.info/spip.php?article558>.

91 La Estrella de Panamá (October 10, 2009). *FTA between Panama and Honduras is in force*. <https://www.laestrella.com.pa/economia/tlc-panama-vigencia-honduras>

92 Ministry of Commerce and Industries, Commercial and Investment Relations with Panama (February 9, 2021). *Country Profile*: <https://hidrutelscom.gob.pa/doc/otros/Fichas>

93 Dudley A. Hayes (2010). *Honduras Elites and Organized Crime*. <https://insightcrime.org/investigations/honduras-elites-and-organized-crime-intro>

Unlike in other parts of Central America there is a certain class of Honduran elite with long standing transnational connections. The ousted Grupo Continental ⁹⁴ who have dominated the financial sector in Honduras, structured their investments in a country known for being a tax haven and a business.

Others, such as Lenir Pérez and his wife Ana Fajardo was known as one of the richest men in Honduras⁹⁵), have organized their investments in the mining sector through companies registered in Panama Holdings Inc. which has operated from Panama in a deal with the US steel company Nucor, although its deal with the company has led to conflicts in the municipality of Tocoa over the Guapón⁹⁷.

The disclosure of the Panama ⁹⁶ revealed links between offshore companies in Panama with politicians such as former Honduran president Rafael Ángel Fournier and his wife,⁹⁸ as well as Nasry Asfura and Ricardo Alvarez. The company Potencia y Energía de Mesoamérica in Panama,¹⁰⁰ of which David Castillo was previously president and director¹⁰¹ – a man who is now under arrest for his role in the murder of Honduran environmental leader Berta Cáceres. This company invested in solar projects that were transferred to Scatec and Norfund, who are now

94 Avijl Ber mld. R. and eM. 6 Oct 3 2021 A tale of two Tegucigalpa mayors and their offshore companies in Panama. <https://contracorriente.red/en/2021/10/03/tegucigalpa-and-their-offshores-in-panama/islands/>

95 Taxus Niet on kPanama. <https://taxjustice.net/country-profiles/panama/>

96 Wilkinson, T. (June 23, 2015). Miguel Facusse dies at 90; colorful, ruthless Honduran tycoon. LA Times. <https://www.latimes.com/local/obituaries/la-me-miguel-facusse-20150623-story.html>

97 Avijl an Mac k B. y, Sept e 1 2021 The hidden connection of a U.S. steelmaker to the controversial Los Pinares mine in Honduras. <https://www.elclip.org/la-conexion-siderurgica-de-ee-uu-con-la-palapa-se-ni-lcan-gm-enra-de-los-pinares/>

98 Avijl Bæ, r mld R. and eM. 6 Oct 3 2021 Pepe Lobo's secret offshore companies. <https://contracorriente.red/en/2021/10/03/pepe-lobos-secret-offshores-in-panama/>

99 Avijl Bæ, r mld R. and eM. 6 Oct 3 2021 A tale of two Tegucigalpa mayors and their offshore companies in Panama. <https://contracorriente.red/en/2021/10/03/tegucigalpa-and-their-offshores-in-panama/islands/>

100 Opencor p. 2021 Potencia y Energía de Mesoamérica S.A. <https://opencorporates.com/companies/pa/719303>

101 Ibid.

102 Per d m (May 2 02 B) mpr ensoa su é g a d a s c a s t y l b c a c h i e m a n d a n a H o n d u r a s e l A B I e C t p i n h i t e r i p o s : // c r i t e r i o . h n / e m p r e s a s - n o r u e g c a s t i l l o - y - l o s - c a c h i r o s - d e m a n d a n - a - h o n d u r a s - a n t e - e l - c i a d

A key advantage explaining why these and other have a foothold in Panama is that they can use the Central America-Panama FTA to sue their own country through ISDS arbitration, just as Inversiones Continental (Panamá) S. A. and Inversiones y Desarrollos Energéticos

3.1.3. Third legal instrument: Law for the Promotion and Protection of Investments

The Law for the Promotion and Protection of Investments provides extra coverage for legal security under both national law and international treaties signed in the previous

In its Title I, Article 1 explicitly states that foreign, who acquire assets in Honduras while international treaties are negotiated bilaterally or by groups of countries, with a view to the conditions granted to each, in this law these privileges are granted to investors from all countries equally. That is to say, any advantage of the benefits of the law, whether or with that country.

The central elements of the law are:

- Any movement of capital is understood as an investment, “any kind of transfer to national territory” (Article 2.5);
- It provides guarantees against direct and indirect expropriation, understood that an expropriation is “any unilateral act, omission, undermines the value of an investment”;
- It provides national treatment for foreign investors, not discriminated against because it is foreign, or receive less favorable treatment than a national investor (Article 4.1);
- It enables investors to freely transfer money without restrictions (Article 4.3);

103 Law for the Promotion and Protection of Investments, Article 1.

- It grants stability contracts for investments (public-private partnerships), which provides security for the investor since it guarantees that tax conditions will not be modified by the host government (Articles 19 and 20);
- It enables all foreign investors to initiate claims in international arbitration, both for private investments and in contracts between states and private entities. These claims may be brought at ICSID or at any other national or foreign arbitration or conciliation center (Articles 25 and 26).

So far, Honduras has received three investor claims: *Scatec ASA v. Honduras*, *Norfund KLP Investments AS v. Honduras*, and *Container Terminal Services Inc. v. Honduras* in August 2024.

In short, as long as this law exists, any investor can sue Honduras in any international arbitral tribunal. This is a departure from ICSID or if the Government decides to denounce investment treaties.

3.1.4. Fourth legal instrument: Contracts

Contracts between states and companies are documents that, despite being signed by governments, are not usually made public. This is the case of contracts between a state-owned corporation controlled by the state and a foreign company, which is why they are presented as “contracts between private parties.”

Contracts usually have special conditions depending on the sector in which they are signed. For example, some sectors are considered strategic and might grant better conditions for a particular investor. This often happens in the hydrocarbon sector, in the extraction of minerals, or in certain infrastructure. The opacity and imbalance between large companies and small countries often makes these contracts difficult to challenge. For example, in February 2024, renowned arbitrator Professor Christoph Schreier of the International Court of Arbitration of the International Chamber of Commerce, stated that developing countries with little negotiating capacity usually enter into these contracts with powerful multinational companies, in addition to cases of corruption that also jeopardize the contracts¹⁰⁴ being negotiated.

¹⁰⁴ AFTI (2024) *Public-Private Partnerships in Honduras: A Guide for Investors*. Available at <https://www.bilaterals.org/?international-commer ce-49848&lang=en>.

In recent years, state-company contracts have begun to include the ISDS mechanism, including without congressional approval or public participation. About 10% of arbitration claims against states worldwide derive from contractual agreements.¹⁰⁵

In the case of Honduras:

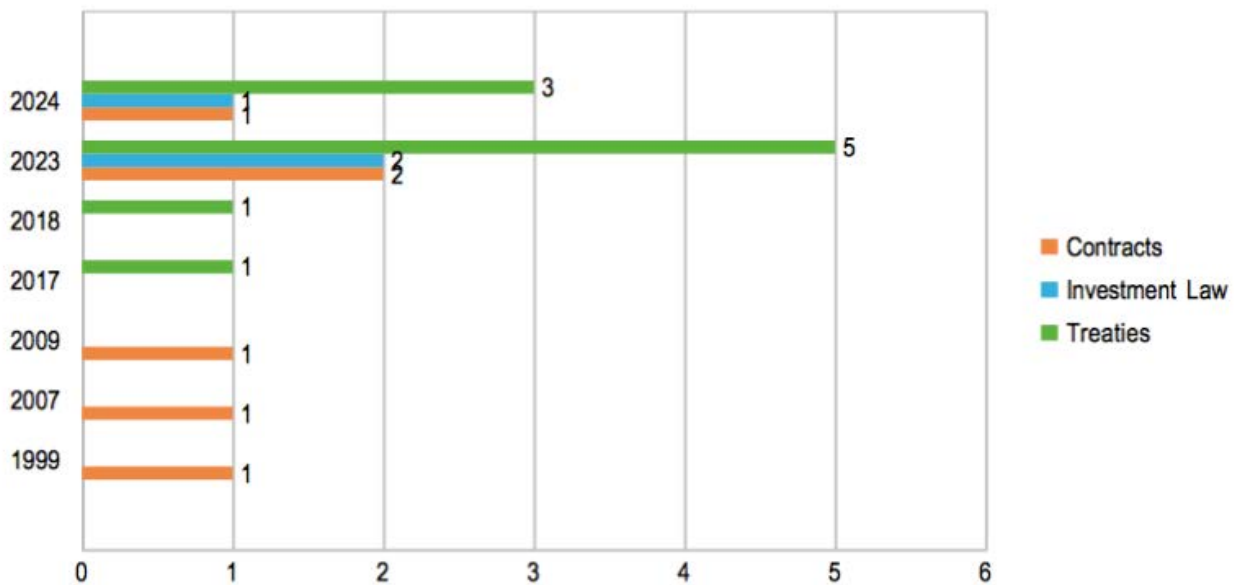
- Roughly a third of the claims it faces have invoked contracts (6 out of 19);
- Three claims were filed before the coup d'état: Elsamex;
- Of the claims filed after the coup d'état, all services and infrastructure: electric power construction, transportation and airport management;
- The contracts of Autopistas del Atlántico and Palmerola International Airport have been criticized for being highly unfavorable to the public treasury and there have been strong protests by the affected populations in the cases of Autopistas del Atlántico and Eléctricas de Medellín Ingeniería;
- In at least three of the public-private partnerships, there is evidence of non-compliance, irregularities and accusations of corruption (Autopistas del Atlántico, Palmerola International Airport, and Eléctricas S.A.S.);
- The claim from Operadora Portuarias Centroamericana was filed in August 2024 before Honduras's decision to withdraw from the ISDS mechanism.

105 AFTINET. Ibid.

4. Supranational arbitration claims and Maf a - s t y l e i n v e s t m e n t s

Honduras was the second most sued country in Mexico during 2023. Until then it had faced very between 1999 and 2018. But it received nine claim in the first half of 2024 and then four more in August 2024. There are currently 19 international

Figure 1. Lawsuits against Honduras by year, in



Source: Authors' own elaboration based on data from UNCTAD Investment Policy Hub, ICSID and journalistic sources.

4.1. Legal basis, countries of economic sectors of the claims

Of the 19 ISDS claims received by Honduras to date, ten were based on treaties involving investment protection, six based on contracts of investors and three based on the Investment Protection

106 ICSID (2024) Mexico and Honduras, the countries most sued in ICSID in 2023. <https://ciarglobal.com/mexico-y-honduras-los-estados-mas-demanda>

107 This number is at least double the number of cases filed in the investment protection tribunals based on the investment protection treaties in any other country.

All claims were registered with ICSID (except where a choice of forum was ever made) and the majority of investors bringing claims are from industrialized countries.

4.1.1. Treaty-based claims

As of the end of 2023, of the ten treaty claims filed in 2017 by the Gabourel Family Trust, remained pending. The plaintiffs were seeking more than US\$250 million for land that had illegally expropriated and intended for the development of Utila, was discontinued in 2019 by an agreement. The agreement reached is not public, but according to media reports the matter was resolved to “mutual satisfaction”.¹⁰⁸

Regarding the nine pending treaty-based claims, the amount claimed by investors totals US\$13.115 billion, which represents more than 10% of the total amount allocated for public investment in 2024. It should be noted that we do not know the amounts claimed in the last two lawsuits filed in 2024.

4.1.2. Claims based on contracts and the Law for the Promotion and Protection of Investments

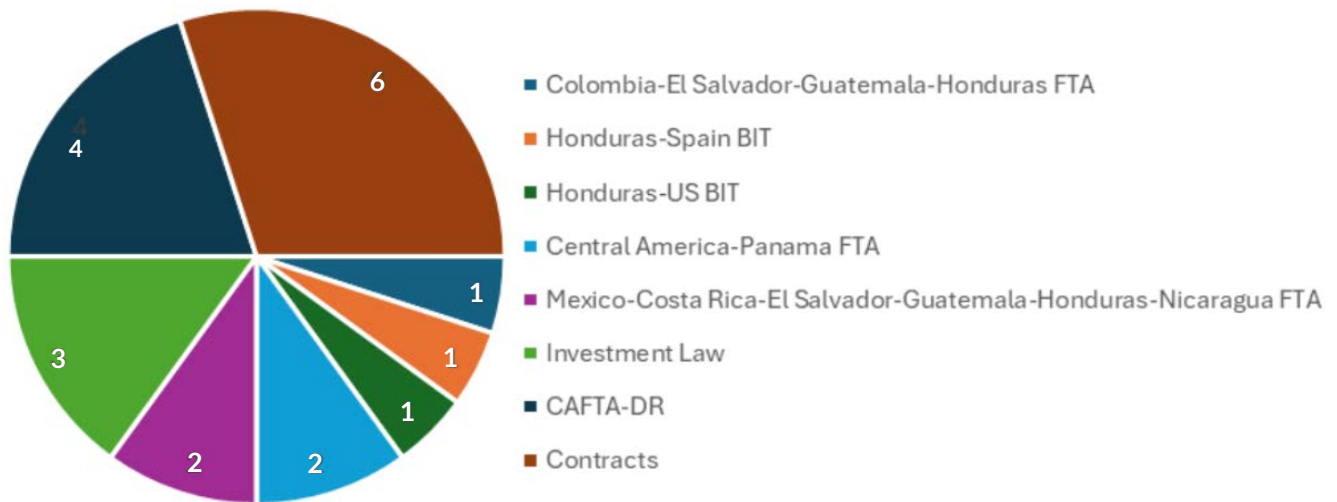
Of the nine claims based on contracts and the Law for the Promotion and Protection of Investments of 2011, three have already been resolved. In two of these claims the amount awarded to the investor is known, and totals more than US\$13.3 million. The amounts claimed by the investors in the remaining claim total US\$589 million, according to information available. It should be noted that of the last two claims that invoked a contract and the investment law in August 2024, the amounts claimed have not yet been resolved.

It is worth remembering that, in each of the claims, the State often has to pay the costs of the tribunal and its legal defense, in addition to the amount awarded if the claim is found in favor of the investor. On average,

108 Bohme (December 2021) *Central America Round-up: A Update on Investment Disputes* involving Guatemala, Honduras, Nicaragua and Costa Rica. *IA Reporter*. <https://www.iareporter.com/articles/central-america-round-up-an-update-on-investment-disputes-involving-guatemala-honduras-nicaragua-and-costa-rica/>

109 Honduras *Presupuesto Inversión Pública 2024*. The budget for public investment in 2024 is US\$1.1 billion, which represents 1.5% of GDP. *Presupuesto Inversión Pública 2024*. <https://hondurasinversiones.gob.hn/presupuestoinversionpublica>

Figure 2. Legal instruments used to sue Honduras

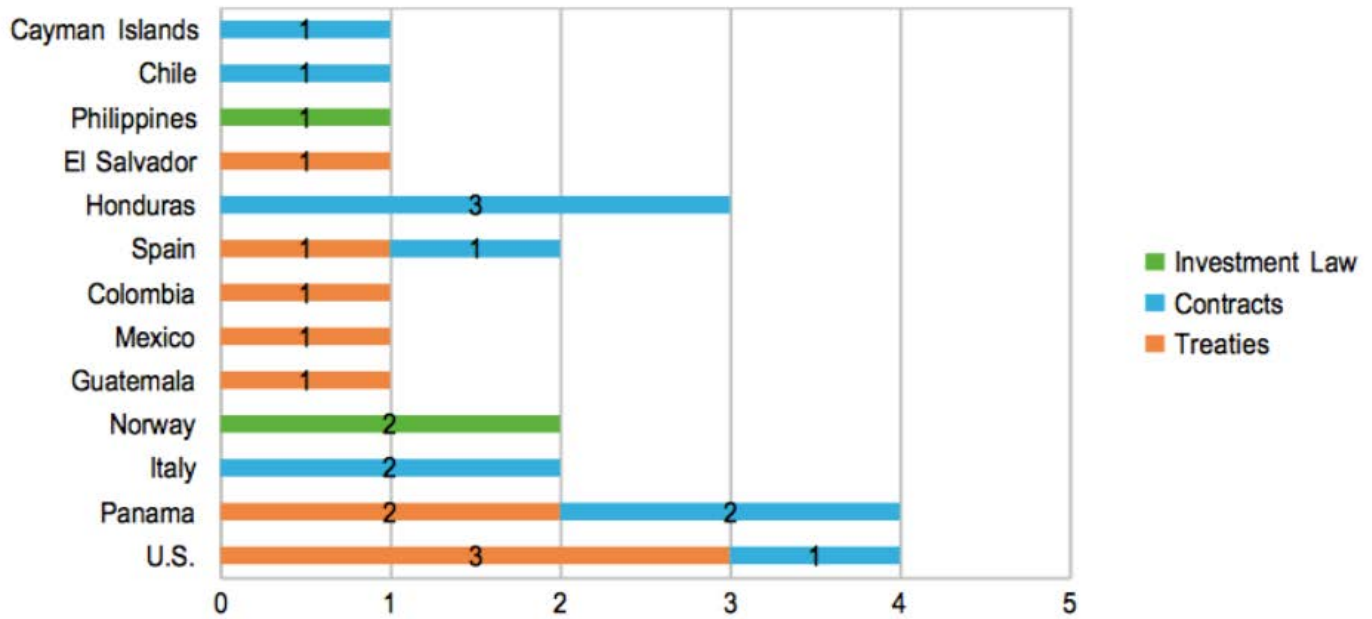


Source: Authors' own elaboration based on data from UNCTAD Investment Policy Hub, ICSID and journalistic sources.

4.1.3. Countries of origin of investors bringing claims

Most of the lawsuits against Honduras were filed in the United States and by Latin American investors. If we only consider those investors that have sued Honduras are principally from the United States, Europe and neighboring countries such as Panama, Guatemala, Mexico and Central America, we will review the characteristics of these parties, some of whom are Hondurans who have structured their businesses through these countries, which offer greater legal flexibility for companies. We will also review the countries of origin of the investors taking into account that, in some cases, more than one investor from different countries of origin are part of the same lawsuit. As a result, the total number of claims brought against Honduras is 17.

Figure 3. Countries of origin of Investors, in



Source: Authors' own elaboration based on data from UNCTAD Investment Policy Hub, ICSID and journalistic sources.

A relevant fact is that the firms advising investors are generally the same ones: firm White & Case is a contract-based claims; Clifford Chance on one treaty-based and two contract-based claims; and Cremades & Associates on one treaty. The Honduran state, for its part, has relied on and Dorsey & Whitney.

As we can see, White & Case provides legal counsel filed against Honduras; it has a particular presence in the energy sector, in relation to ZEDE Prosperity port operators. This is no coincidence, since the legal situation in Honduras and the recent measures in 2024, White & Case lawyers published an article

investors of Honduras leaving ICSID. In the art by the Government of Xiomara Castro as a return as they created uncertainty and erosion of the

“Investors affected by the conduct and policies of Honduras should take active steps to assess and protect their legal and c

4.1.4. Economic sectors in which claims are registered

The sectors in which claims were received are activities, construction, electricity and gas s all claims in the transportation sector were in

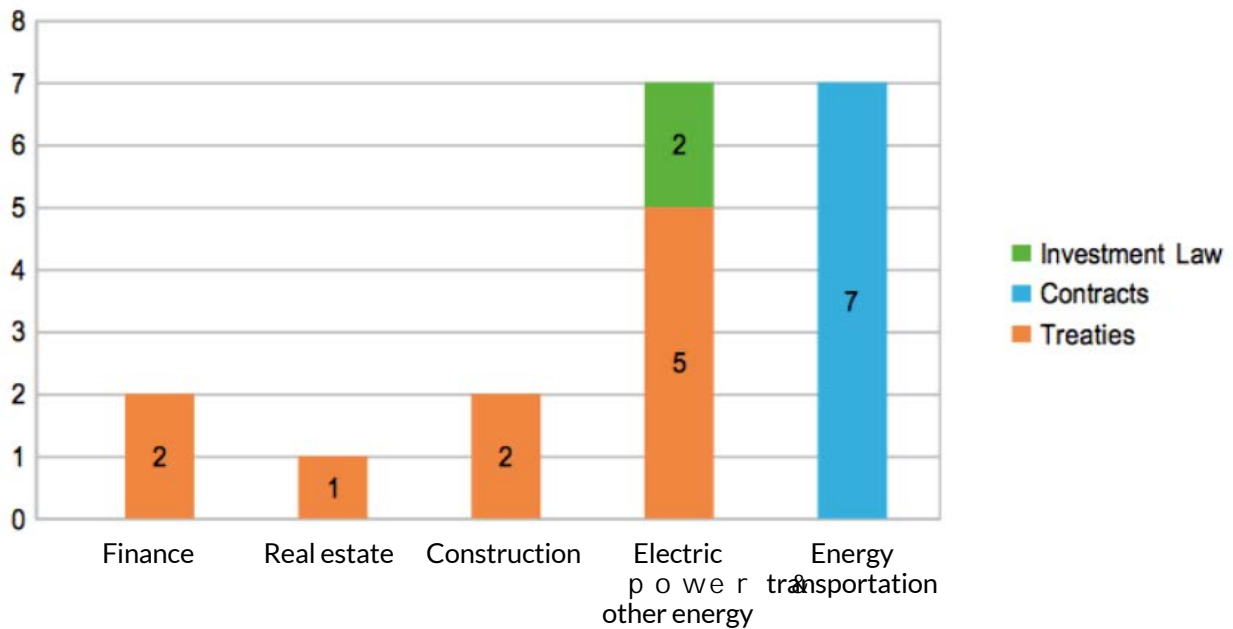
With respect to the energy sector, the seven claims registered have to do with reforms

in this sector under the government of Xiomara price at which the state is purchasing electric have had to renegotiate their contracts, and mo to a reform bill in the National Congress aime between the State and power generators. Some a Castro administration prefers t¹¹⁰ submit dispute

110 Marc S. Santae. J. F. Am. J. Hu. d. r. Mar 15, 2024. Honduras Denunciation and Implications for Foreign Investors. White & Case. <https://www.whitecase.com/insight-icsid-denunciation-and-implications-foreign-investors?s=>

111 CI AGR o b a h n 1 2 r O y 2 Fabián Villeda: In Honduras, the State has a growing debt with energy companies. <https://ciarglobal.com/fabian-villeda-en-honduras-e-las-energeticas/>

Figure 4. Claims by sector



Source: Authors' own elaboration based on data from UNCTAD Investment Policy Hub, ICSID and journalistic sources.

4.2. The early claims

Honduras was hit late by the avalanche of lawsuits since the late 1990s, having received only three cases in order to highlight the background context arrive as of 2023.

4.2.1. Astaldi: unfinished works and disregard

The Italian construction company Astaldi was the Together with the Panamanian company Columbus L. ICSID in 1999 for breach of a contract for the based on the contract between the State and the the contract over which the lawsuit was filed because we know the exact result of the lawsuit. The op

This first case has some peculiarities. For example, of three Honduran nationals, an extremely unusual award, issued in October 2000, was never made public and to this day it remains confidential, probably due to an agreement between known with certainty what the tribunal's decision was favorable¹¹² to the investors.

Astaldi also filed a second lawsuit in December. The motive for the claim was that Honduras altered the contract with the company, which led to Astaldi's improvement of the CA5-North highway. There were increases in the cost of materials and technical labor, the increase in the national minimum wage. The company represented a modification of its profit expectations. In fact, Astaldi refused to pay the wage increase arguing that the State "introduced in the Contract (illegitimately and illegally) an important limitation to the mechanism for recognizing the Contractor's right to price re-adjustment."

Astaldi claimed US\$5.5 million. The sole arbitrator (Costa Rica), found the government liable in seven of the eight claims presented by the company. The only claim he dismissed was for cost increase in the national minimum wage. Although we do see the power that corporations have in this system, so much so that they can bring international arbitration to challenge a change in labor conditions favorable to workers, even in a country that between 2002 and 2007 was considered to have a "mini minimum wage"¹¹⁴.

Ultimately the arbitration tribunal ordered Honduras to pay with interest adding another US\$730,000, in addition to the costs, which amounted to US\$6,371,195.10, totalling US\$6,371,195.10.

But the story between Astaldi and Honduras does not end there. The contract for the construction of the El Chaparral

112 Astaldi S.p.A. v. Honduras, ICSID Case No. ARB/00/10, Award of October 1, 2001, <https://www.italaw.com/cases/3579>.

113 Astaldi S.p.A. v. Honduras, ICSID Case No. ARB/00/10, Award of October 1, 2001.

114 Delgado (2018) 'El salario mínimo en Honduras: un análisis de su evolución y su impacto en el sector privado'. https://www.researchgate.net/publication/334620561_El_salario_minimo/

Commission that coordinated the project decided to pay 28.7 million for the total value of the contract, even though the company only completed 38% of the work. This was to prevent the company from receiving the amount paid, an "additional payment of 28.7 million as a benefit" to avoid it¹¹⁵ according to the words of Mauricio Funes, former president of the Commission.

This payment was made even against the opinions of the lawyers hired to advise the Commission, who suggested letting Astaldi file a lawsuit and should only pay for the executed works, not for the works that were not done. Funes was aware of problems on the right bank of the mountain and had mismanaged the dyke where the dam megaproject would be located. In fact, even in international arbitration Honduras might have won. However, the lawyers, Funes stated: "If we went to arbitration, the country would be higher; we found the best solution for the project and avoided lawsuits against the State".

This case resulted in a criminal proceeding initiated in January 2019 when the Attorney General's Office prosecuted the case. According to the report, Funes misrepresented the value of its goods and services at El Chaparral in order that the Commission disburse more money than was due. This was done to accuse Funes and other officials of receiving 28.7 million dollars in Panama.

4.2.2. Elsamex: Hurricane Mitch and road failures

In 2009, the Spanish construction company Elsamex was hired by Honduras in relation to its repair work on the road damaged by Hurricane Mitch in 1998. Elsamex received 11.5 million for the rehabilitation of the road under the 1998-2000 Honduran-Hispanic Financial Cooperation Program and the other 11.5 million for the rehabilitation of the road¹¹⁶.

115 Second Round. Idem. <https://segundavueltasv.wordpress.com/2015/09/24/cel-pa-sugirieron-arbitraje/>

116 Second Round. Idem.

117 Lemus, F. (2010). El Chaparral: el pago de 11.5 millones a El Faro. https://elfaro.net/es/202002/el_salvador/23816/El-termin%C3%B3-en-el-spa-de-Ada-Mitchell-Guzm%C3%A1n.htm

118 Superior Court of Accounts (Tribunal Superior de Cuentas) (June 30, 2010). *Public Works Audit Report, Project "Rehabilitation of the Tegucigalpa-Danlí Highway, CA-6"* <https://www.tsc.gob.hn/wp-content/uploads/003-2010-DASP.pdf>

After signing the construction contract, the company conducted studies on the condition of the roads, which led to the conclusion that the original route was inadequate due to a thin asphalt layer and ¹¹⁹ This was communicated to the government of Honduras in March 2004. However, the order was not completed until it was finished, the quality of the road was not up to par. The company alleged a breach of contract and sought to enforce it. The ICSID tribunal hearing the case was composed of three arbitrators, including Pinzón (Colombia), who in 2012 ruled that Honduras was liable for breaching several clauses of the contract, and that the asphalt was not of adequate quality. According to the arbitrator, the company had only partially breached its contractual responsibility regarding the clearing of rights-of-way, culverts, ditches and drains during the works and, therefore, a deduction of US\$5 million was made from Honduras, on the other hand, had to pay US\$8 million in costs.

Interestingly, Honduras asked ICSID to set up a new road, arguing, among other things, that what Elsam was doing was not an investment, since that would involve the construction of a new road and not the repair of an existing one. However, relying on other awards, the arbitrator ruled that both new and rehabilitated roads can contribute to the economic development of a country and be considered an investment.¹²⁰

4.2.3. Gabourel Family Trust: Direct expropriation of land

Another lawsuit brought against Honduras, which does not fall under our analysis of mafa-style investments and lawsuits during the 2000s, was the lawsuit brought by the Gabourel family trust in 2017, for direct expropriation of the airport on Utila Island.

Filed by the group's trustees under the Bilateral Investment Treaty between the United States and Honduras, they claimed compensation of US\$25 million, but by the end of 2019 the State of Honduras had reached a settlement for an unknown amount with the Gabourels.¹²¹

119 Andriotti, S. (2013). *Investment arbitration in Honduras*. *Revista de Derecho*, Vol. 44(1). <https://camjol.info/index.php/LRD/article/view/17147>

120 Ibidem

121 *Williz (2018)*. *Investment arbitration in Honduras: A case of expropriation*. Unpublished ICSID award by the ICSID tribunal. [www.iareporter.com/articles/tribunal-of-escobar-alexander-uncitral-bit-claim-brought-by-us-investors-](https://www.iareporter.com/articles/tribunal-of-escobar-alexander-uncitral-bit-claim-brought-by-us-investors/)

122 Bohmer, C. (2017). *Investment arbitration in Honduras: A case of expropriation*. Unpublished ICSID award by the ICSID tribunal.

4.3. Mafa-style investments and po

Since the coup d'état, Honduras has been the arbitration claims. Much information about the notices of arbitration, procedural decisions, and other communications between the parties have not been published. However, based the features of a claim initiated in 2018 for \$ Grupo Continental - belonging to the Honduran R investments and claims in this case as "mafa-li section 1 (Section 1.2. "Conceptual framework")



Soldiers confront protests after the coup d'état;

4.3.1. Rosenthal lawsuit and disputes with

Applicant	Inversiones Continental (Panama) S.A.
Project	Inversiones Continental (Panama) is Continental, a conglomerate operating in Honduras with subsidiaries in the banking, real estate, livestock, property management and cement sectors.
Legal basis	FTA between Central America and Panama (2009)
Initiation of lawsuit	April 12, 2023
Reason for request	The company's claim is for the seizure and liquidation by the Government of Honduras (administration) of Banco Continental Continental conglomerate, for alleged connections with money laundering and drug trafficking. The company also placed other companies belonging to different industrial branches of the Group under
Amount claimed	US\$1 billion

In 2018, Inversiones Continental (Panama) filed a lawsuit under the Central America - Panama Free Trade Agreement. The company is a shareholder of Grupo Continental, a conglomerate in insurance, construction, media and telecommunications. Continental is owned by the wealthy Rosenthal family. When assets were seized, the group was headed by the late Jaime Rosenthal (senior) and his adult children, including Yani Rosenthal, a presidential candidate in elections and current president of the Liberal Party.

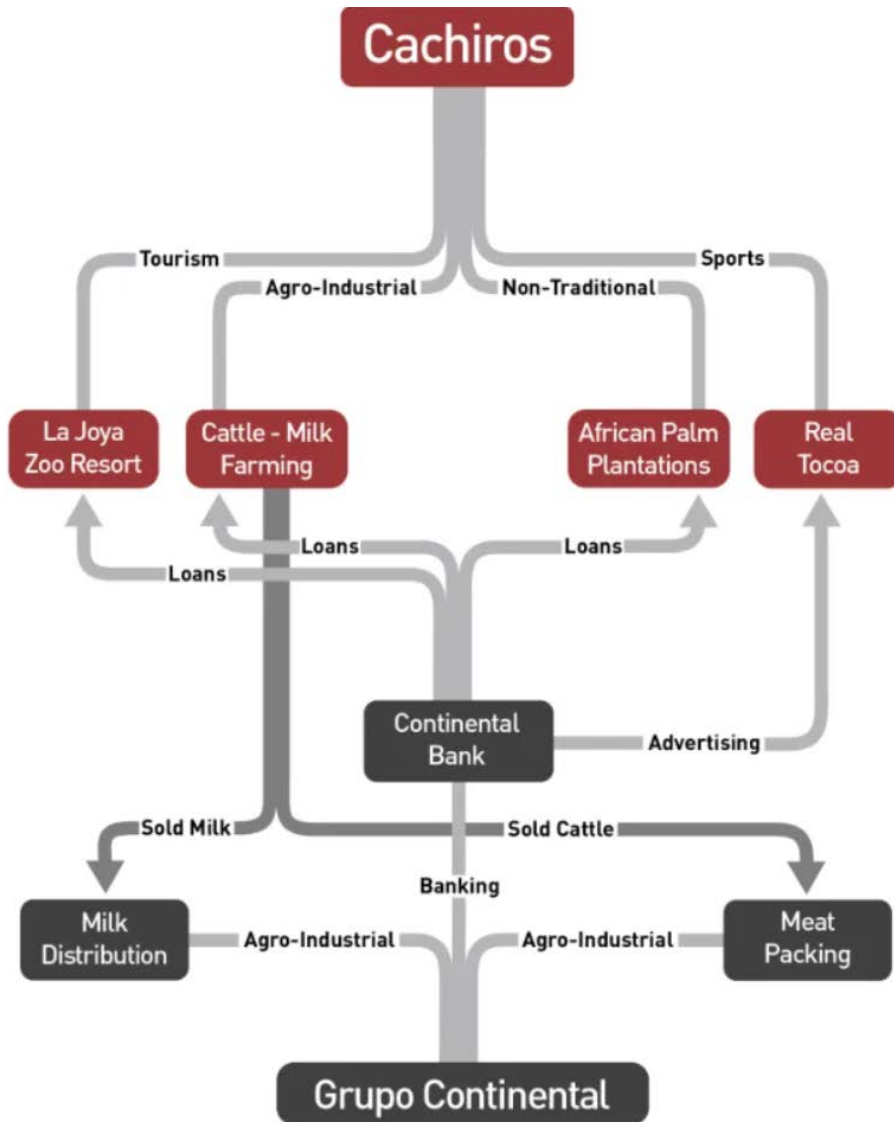
On October 7, 2015, OFAC designated seven Honduran companies and three Honduran entrepreneurs - Jaime, Yani and Yankel (Jaime's son) - as Specially Designated Nationals and Blocked Persons under the Foreign Narcotics Kingpin Designation Act. This designation blocked all financial transactions of companies and individuals, effectively ending its ability to operate in the country.

The designation was due to the Rosenthals' involvement in providing services and support to multiple Central American governments.

123 Inversiones Continental (Panama), S.A. v. Republic of Honduras (ICSID Case No. ARB/18/40).

<https://investmentpolicy.unctad.org/investment-dispute-settlement/v-honduras>

and individuals, including Athletes and sometimes, Yankel Rosenthal was arrested at Miami airport and, along with Yankel, by US prosecutors with the intent of bringing them into the country on October 28, 2015 and Yankel pleaded guilty to money laundering transactions with assets derived from drug trafficking.



Interactions between businesses with La Joya Zoo Resort
 Source: InSight Crime

InSight Crime
 Centro de Investigación de Crimen Organizado

124 U. Department of the Treasury (Oct 2015) "A Summary of the Money Laundering Organization." <https://home.treasury.gov/press-releases/2015/10/20151020> designating the Cachiros family as a money laundering organization, associated with Rosenthal and Yankel, and their involvement in the Cachiros family.

125 U. Attorney General Eric Holder (Oct 7 2015) "Manhattan U.S. attorney announces charges against four prominent Honduran businessmen for laundering the proceeds of narcotics and bribery offenses through accounts located in the United States." <https://www.justice.gov/usao-manhattan-us-attorney-announces-charges-against-four-prominent-honduran-businessmen-for-laundering-the-proceeds-of-narcotics-and-bribery-offenses-through-accounts-located-in-the-united-states>

126 U. Attorney General Eric Holder (May 14 2017) "Former Honduran cabinet official pleads guilty to money laundering." <https://www.justice.gov/sdny/pr/former-honduran-cabinet-official-pleads-guilty-money-laundering>

The strongest evidence against the Rosenthals was their business relationship with the Cachiros drug cartel, led by brothers Leonel and Maradiago Devis and were central figures in Honduras' drug trafficking shipments in coordination with Fabio Lobo, son of Tony Hernandez, a congressional deputy and brother of former President Juan Orlando Hernandez; and JOH as part of their money laundering operation, Los Cachiros and their associates a money with the Honduran government, as advised and suggested by former presidents Lobo and Hernández in private meetings or through

Narco - State



Devis Leonel Rivera Maradiago
Ex-leader of the Los Cachiros
confessed narco-trafficker

" [President Pepe Lobo] advised to set up companies because he was going to award us contracts from the government to pay us in exchange for the bribe given him for his campaign... He son of President Lobo] was going to award contracts through the government companies in exchange for a bribe that was for the contracts, which was from 10 percent to 20 percent per contract... Since his dad had won the elections, [he] was looking to award contracts, roadway contracts, and several government contracts... to launder

127 For a summary of the relationship between Los Cachiros and the Rosenthals and the political context, see *El Heraldo* (November 10, 2019). *Los Cachiros se enfrentan a la justicia*. Submission. <https://www.revistaenvio.org/articulo/5115>

128 Santiaza Ziegler G. (February 28, 2024). *El ex-líder de los Cachiros se enfrenta a la justicia*. *El Español*. <https://cnn.espanol.com/2024/02/28/exlider-cartel-cachiros-expresidente-honduras.html>

129 *El Heraldo* (October 11, 2019). *Cachiros claims to have recorded with a watch an encounter with Tony Hernández*. <https://www.elheraldo.hn/honduras/juicio-tony-hernandez-restaurant-honduras-CUEH1325777>

Spring K. (November 5, 2020). *The marriage of drug money and neoliberal development in Honduras*. *NACLA*. 52 (439-40). <https://www.tandfonline.com/doi/abs/10.1080/10717802.2020.1811111>

Within weeks of the OFAC designation, Honduran authorities in the JOH government began seizing dozens of Rosenthal family business to lawyers representing the Rosentals, the seizure of all of their properties, including some that were not on the OFAC list, and the subsequent sale (or disappearance) of their assets did not follow the correct legal process of the Rosentals' properties and assets were confiscated by the state institution the Seized Property Administration.

Multiple scandals¹³³ are linked to the way the institution has administered seized assets and corruption. Its director, Jorge González, has no data or record of what happened to Grupo Continental. However, it is known that \$108 million asset portfolio was auctioned to Banrural, a Guatemalan company, during his administration, since the seizure of properties in Honduras, some of its more than 25,000 employees have sued the Rosentals for labor rights violation¹³⁴ after losing

Inversiones Continental's \$1 billion lawsuit against the state to disputes over how its assets were confiscated. Yanis and Yankel Rosenthal spent time in prison for money laundering, the family hopes to recover what is left. In return to Honduras after serving his sentence in the United States, OFAC removed Grupo Continental from its list of sanctioned entities in international trade.

130 CNUNEZ (February 21, 2019). Lawyer points out that Honduras could not only lose Rosenthal lawsuit, but by thousands. *Radioamerica.hn*. <https://www.radioamerica.hn/abogado-h-rosenthal-miles/>

131 El Heraldo (December 2, 2019). Honduran Congress will create rules to regulate OABI's substitute, says director. <https://www.elheraldo.hn/honduras/congreso-honduras-sustituta-oabi-dice-director-jorge-gonzalez-LE11519763>

132 La Tribuna (April 22, 2019). ABI: "Los Rosenthal tienen interpuesta demanda contra el Estado por la desaparición de sus bienes incautados." [Video]. YouTube. <https://www.facebook.com/Latribunahonduras/posts/el-director-de-la-oficina-administrativa-de-abi-gonzalez-712999516784768/>

133 La Prensa (September 10, 2019). Guatemala's Banrural will begin operating in Honduras in the coming months. <https://www.laprensa.hn/honduras/banrural-de-guatemala-a-proximos-meses-FGLP743745>

134 Escobedo (October 22, 2019). Banrural's \$1.08 billion. *Prensa Libre*. <https://www.prensalibre.com/economia/banrural-adquis108-millones/>

135 El Heraldo (February 21, 2019). Hernandez knows Banrural scheme. <https://www.elheraldo.hn/honduras/hernandez-conoce-esquema-de-banrural-LKeh702854>

136 Burgo (September 2, 2019). Demand filed against Rosenthal's company. <https://www.criterio.hn/corte-ordena-a-fa-prestaciones-de-183-exempleados-de-diario-tiempo/>

137 U.S. Department of the Treasury. OFAC's 2020 Report on the Designation, Designations Removals, and Designation Update. <https://ofac.treasury.gov/actions/20200825>

with other members of his family, sued the State. In 2024 a Court of Appeals ordered the restitution of real estate, vehicles, bank accounts and cash seized from the Rosenthal family.

The harshness and abusiveness with which the JUSC has seized the Rosenthals' assets is noteworthy. In similar cases, Juan José Ardón and Tony Hernández have been arrested by the JUSC and their assets were not (or were only partially) protected. In the case of Ardón, his assets were seized during his trial in New York, US prison, in dealing with his drug trafficking allies and enemies. In Honduras, it is suspected that the JUSC is acting harshly against the Rosenthals because they are one of the most powerful and wealthy families in the country who, among other things, did not support the 2009 coup and were not part of the ruling party.

4.3.2. ZEDE Próspera: blatant cession of sovereignty

4.3.2.1. New ZEDE legislation

The creation of Employment and Economic Development Zones in Honduras was made possible by constitutional and legislative reform in 2001, section 2.2.3. However, under the new administration of Xiomara Castro, in keeping with her electoral promise, in April 2022, Congress decided to unanimously approve Decree 100-2022. The first of these repealed the constitutional article that created the ZEDEs and repealed the Organic ZEDE Law along with all the precepts public or declared in reserve, confederated in the Organic ZEDE Law.

Despite the presence of the political will to end the ZEDEs, some problems arose in the process. The most important drawback was that the new law, ratified by Congress in 2023, as indicated by the JUSC, is not a case of constitutional reforms. Without the ratification of the law, whether the ZEDE figure continues to exist or not remains an open question and in the national debate. In other words, an attempt to fully do away with ZEDEs in Honduran law.

On the other hand, Legislative Decree No. 33-2013 of the ZEDE Organic Law does not require subsequent constitutional reforms do. This means that the ZEDEs are not required to regulate their implementation. Experts in the field of international law exist in the Honduran constitution, they lack the power to repeal the Organic ZEDE Law is predicted to sue Honduras at ICSID.

4.3.2.2. Próspera's ZEDE claim at ICSID

Applicant	Honduras Próspera Inc. (USA), St. John's Development Company LLC (USA), Próspera Arbitration. These companies are known as Grupo Próspera.
Project	ZEDE Próspera ¹³⁸ : Real estate projects, insurance services
Legal basis	CAFTA-DR Investment Agreement (Legal Stability and Investment Protection Agreement, "LSA")
Initiation of lawsuit	February 3, 2023
Reason for request	Repeal of Legislative Decree No. 120-2013 (which repeals the Organic Law, approved in 2013). The decision repeals the Organic Law, but since this decision was not entered into force, the Organic Law remains in force.
Amount claimed	US\$ 10.775 billion dollars

136 See Mejía (November 2013) and Uilcoqui et al. (2013). It is a ZEDE Equipo de Reflexión, Investigación y Comunicación - Compañía de Ideas y Usos. <http://www.reflexion-compania.org/la-situacion-juridica-actual-de-las-zede/>

137 For chronology of the case at ICSID see Honduran Próspera vs. St. John's Development Company LLC and Próspera Arbitration v. Republic of Honduras. February 3, 2023 ICSID No. ARB/23/2 <https://icsid.worldbank.org/cases/details?CaseNo=ARB/23/2>

138 The ZEDE is regulated by the Honduran Constitution, the Department of International Law, the Honduran Arbitration Law, and the Organic Law of the ZEDE. In the event of a dispute, the ZEDE is subject to arbitration.

The company Honduras Próspera Inc. (USA), from Próspera, located on the island of Roatán, in the Honduran Caribbean, presented¹³⁹ a claim against the country in ICSID for \$10.775 that the National Congress' elimination of the with CAFTA-DR and the Agreement for Legal Stability registered this claim on February 3, 2023, accepted. The ICSID arbitration panel hearing this case with the arbitrators, David Rivkin (USA), was appointed by Próspera and the other two, Juan Fernández - Armesto (Argentina - Spain) and Raúl E. General Sotelo¹⁴¹ are arbitrators with extensive arbitration who have made public statements in favor of the continuity of arbitration for investor - State claims.

While the lawsuit is being settled in an arbitration panel in Washington DC, civil society in Honduras is debating the exorbitant amount Government (almost a third of the GDP of Honduras) there is heated debate on the legality of the ZEDEs, since the regulations that enabled its creation are tainted by the irregular procedure followed by the Congress under the presidency of JOH. One of the questions often a jurisdiction for protecting investments set up in Honduras in an illegal and illegitimate manner, under the national¹⁴² dictatorship regime.

139 The claim is filed against Honduras Próspera Inc. and Prospera Development LLC (USA) (Prospera Development LLC (USA)).

140 Some provisions of the Decree that created the ZEDEs are not within the jurisdiction of ICSID, but the arbitration panel has jurisdiction over the claims.

141 During the arbitration process, the Honduran government refused to participate in the process that was opened. They refused to appoint an arbitrator in defense of the Honduran State. Pousset C. (August 9, 2023), *Honduras does not recognize ICSID's jurisdiction, how will it defend itself against six millionaire international lawsuits*. Contracorriente. <https://contracorriente.red/2023/08/09/honduras-no-reconoce-jurisdiccion-icsid-6-demandas-internacionales-millonarias/>

142 See Mejía (2023) on the effects of the ZEDEs on the national economy. *Submission*. <https://drive.google.com/file/d/1bLlwfBSXOgbYQq9ODJjQ/view>

4.3.2.3. Prospera's Hidden Intentions

"For Próspera it's not so much about getting probably couldn't afford it anyway. It is more their own commitments, laws and contracts that the government has to understand that you can't just because they don't like the government that p
- Matthias Holland Lenz, legal director of Ho

In 2022, alarm bells went off in the US government about the new policies of Xiomara Castro's government. In October 2022, one Democrat) demanded that Secretary of State Anthony Blinken act against the Honduran government for a¹⁴⁴ A few months earlier, the State Department had issued its own condemnation of ZEDEs, and implied that the government might be in violation of two trade agreements, CAFTA-DR and the U.S. - Honduras BIT. The statement said, "The (Honduran) government has exposed it and has fueled concerns about the government's la¹⁴⁵."

Indeed, Honduras' decision to terminate the ZED attracted international attention, not only because of the high amount claimed by the company, but also because the lawsuit itself Honduran government and Congress to back down on its sovereign decision to ban ZEDs. In general the companies that have sued Honduras in ICSID, including Próspera, are seeking to buy time and wait for an eventual change from the current government to one with which they could negotiate their permanence in the country.

143 See Matthias Babsan (November 2022) "Steuerfreiheit - Monaco-100.html - Modell Demokratie mit dem WDR." <https://www1.wdr.de/radio/wdr5/sendungen/dok5/feature-steuerfreiheit-monaco-100.html>

144 Perdomo (October 2021) "Creparensigutele. So mprepe ZED." Criterio. <https://criterio.hn/umenta-presion-desde-ee-uu-para->

145 U. Department (2022) "Investment Climate Statements: Honduras." <https://www.state.gov/reports/2022-investment-climate-statements/hon>

Some criticism of the arbitration claim arose in the United States, where a campaign was mounted by both Congress and civil society for matter. In 2023, thirty-three senators sent a action against Próspera, and to terminate U.S. ISDS dispute resolution mechanism.

“Próspera has repeatedly threatened to initiate ISDS arbitration under CAFTA-DR to bully the Honduran government into allowing them to continue operating under the abolished ZEDE framework. [December 2022] will force the government of H millions of dollars to defending itself for responding to the will of its people and asserting its sovereignty over these special government jurisdictions operating i 146 r i t a d s t e r t l o e t y t e r .

Another worrying aspect of Próspera’s claim has to do with the pr set, not only because it may encourage other companies invested in other ZEDEs to sue the State, but also because the cou Due to y’s sover the very nature of the ZEDEs, which involves a international arbitration case that deals centr

“With this antecedent, companies will be able to sue States for cession of [territorial] sovereignty, beyond the contrac Lucila Vijil, CESPAD, May 9, 2024.

Another company also considering suing Honduras is ZEDE Ciudad Morazán, in the municipality of Choloma. In March 2024, Massir controversial ZEDE, threatened the government s and face interna 147 tional consequences.”

146 Congress of the United States (May 2, 2023). *Letter from 33 Senators to President Joe Biden*. <https://www.warren.senate.gov/imo/media/doc/2023.05.02%20Letter%20elimination%20of%20ISDS.pdf>

147 E ILiber (M a r c h 2 0 2 4) l i a n t h r e a t e n s P r e s i d e n t C a s t r o i f s h e o r d e r s c l o s u r e o f Z E D E P r ó s p e r a . <https://eliberador.hn/2024/03/11/italiano-amenaza-zede-prospera/>

4.3.2.4. Resistance and opposition to ZEDEs

The creation of ZEDEs has always been questioned by broad sectors of Honduran civil society, from the first mention of the idea of themselves. The communities where attempts have expressed their opposition. Such is the case with lands that form part of the village of Crawfish consider ZEDE Próspera both a dispossession of land and a source of environmental degradation.

The Honduran press reports that ZEDE Próspera island,¹⁴⁸ which measures 83 square kilometers. In Honduras Próspera Inc. has restricted access that prevent the free movement ¹⁴⁹ whose main economic activities are fishing and carpentry, intention was to convert the entire island of Roatán into a ZEDE, says a community leader from Crawfish Rock.

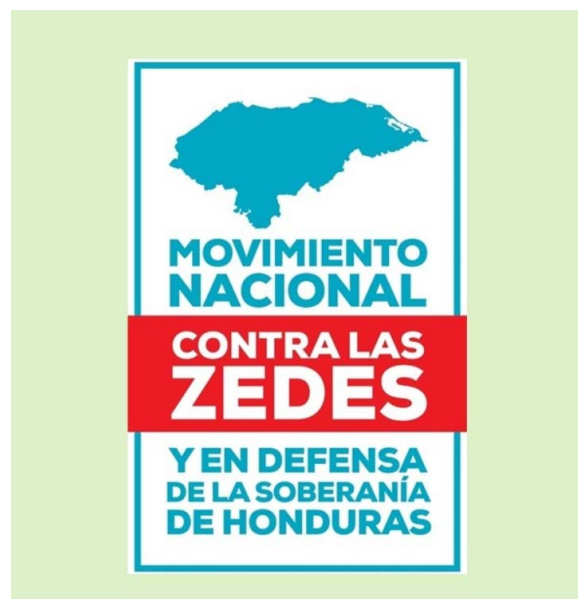
"I believe that former President Juan Orlando into a ZEDE. At first the community didn't know the first things they did was to try to enclose guards on the road, supposedly because there were many assaults in the street, and they started collecting signatures supposedly for the security of the community. When we realized this, we stood up. Other consequences of ZEDEs are mental health and environmental damage; it is not pleasant to live in a place where happen. We may be at risk of losing our homes continue as a ZEDE. Deforestation is also quite many negative consequences."

- Venessa Cárdenas, teacher and resident of C

148 Per d m (o A u g 2 0 2 3) E D E r ó s p r o s p e r a y a o a c o c a p i t a l i s t a d u s e t r a d o s i g i l a d o s e n e s t a r h o r e d u c e n o l e t i m o s : <https://criterio.hn/zede-prospe-anarcocapitalista-que-se-ha-aduenado-en-roatan-ahora>
149 Ibid.

The company not only tried to limit the free movement next to ZEDE Próspera, but at times increased to a suspicious wave of assaults that had never been seen before in the area, and which the company used, oddly, as an excuse. For Cárdenas co-opt and divide the community while it continues

Something that differentiates the opposition to ZEDEs from other arbitration claims against Honduras, is the widespread national rejection of the idea of creating a private and autonomous enclave that threatens national Honduran society and international bodies have spoken out against the ZEDEs, including the Honduran Bar Association, the National Autonomous Honduran Council of Private Enterprise, OFRANEH, the Study of Democracy (CESPAD), among many others. These organizations formed a coalition called the National Movement Against ZEDEs to coordinate actions at the national level. In general, it has organized itself in dozens of demonstrations throughout the country, as well as in sit-ins and public statements from 2011 to the present. The mobilization in the year on May 1, June 28 and September 15 stand out. In 2012, the presentation of the Citizens' Law Initiative, backed by more than 22,000 signatures, which had the participation of multiple social organizations and prior to repeal of the ZEDE Organic Law.



The movement against the ZEDES has held several in the city of Siguatepeque, Department of Comayagua. The 'Meeting of the Resistance against ZEDES' and other organizations denounced the fact that ZEDES have something that is usually only a function of set out by the ZEDES, based on the Organic Law, in organizations in resistance to ZEDES who state that no lawsuit or arbitration claim will succeed in taking away their territories, and that. These organizations have likewise denounced threats and attacks by the ZEDE on those defending their territories, demanding that the government legally ratify the annulment of the constitutional reform¹⁵⁰ that permitted ZE

" Honduran social movements have an agenda. ZEDES, but there are other issues as well, so to unite in a common agenda. We need to continue and deepen consciousness-raising. Honduras must [that permit ISDS]. "

-Common Front against ZEDES, ¹⁵¹La Ceiba, in interview

Not only have ZEDES, particularly ZEDE Próspera but up to eight legal complaints have been filed against ZEDES. In 2021, the National Anti-Corruption Commission congressional deputies for treason ¹⁵²The current government of President Castro, through the Secretary of Finance, has called the ZEDES " an act of ¹⁵³At the same time, Honduran media have reported that ZEDES were created as a way to accuse of drug trafficking to ¹⁵⁴It has also been in the c

150 See Arcadio Arcadio (November 2023) Popular Declaration in a movement for the Meeting of the Resistance against ZEDES in Colombia. <https://twitter.com/Arcadio/status/172011469093356957/photo/1>

151 Interview with Movimiento against ZEDES Tegucigalpa, 32.02.24.

152 Maldonado, F. (June 29, 2021). The ANC denounces to the Attorney General approved the ZEDE. <https://www.elheraldo.hn/honduras/cna-denuncia-t-zede-congreso-nacional-DWEH1474326>

153 ZEDE is a complete public-private (June 2023) criterion. <https://criterio.hn/zede-son-un-completo-acto-de-corrupcion-publico-privado/>

154 DÍAZ M. [Notif June 2022] Extradition in the ZEDE. Facebook. <https://www.facebook.com/watch/?v=203994418271247>

Tiñe U2022, 02.11.2022 Honduras: In ZEDES extradition would not be applicable, according to analyst.

reported that at least one official close to former President Ebal Díaz, who was ZEDE Próspera is still receiving CAADP for his position. Hernández's US for drug trafficking, Díaz left Honduras for since. Díaz is currently facing serious corruption Prosecutor's Office.

Regarding the legal procedure for the creation point out some procedures that were not followed must be created in Congress by a qualified majority congresspeople. A second element is that two thirds a ZEDE is to be created must approve its creation through a public plebiscite, unless they are towns with low population density as of the Institute of Statistics (INE). A third element (in which it calculates and declares that an area is of low population density), and the decree of creation of a ZEDE by the National Congress government newspaper La Gaceta to take effect. In the these requirements were not met.

According to Joaquín Mejía, an expert on the subject Reflection, Research and Communication- Companion (Spanish):

“The legality of the investment is a key issue to be addressed in ICSID proceedings, as it affects both investments that were obtained fraudulently or corruptly, as well as investments that, in their establishment or acquisition, failed to comply with important requirements

155 According to BIAN, NUIA. February 12, 2021. Private Moves Forward. [NACLA. https://nacla.org/news/2021/02/12/private-g-prospera](https://nacla.org/news/2021/02/12/private-g-prospera).

156 Perdon (October 2, 2021). [Perdon \(October 2, 2021\). https://criterio.hn/desde-nicaragua-regulando-las-zede-y-lucrandose-del-territorio-hondureno](https://criterio.hn/desde-nicaragua-regulando-las-zede-y-lucrandose-del-territorio-hondureno)

157 Public Office (October 2, 2021). [Public Office \(October 2, 2021\). https://www.mp.hn/publicaciones/requerimiento-fiscal-proyecto-residencial-morazan-con-el-cual-se-defraudo-al](https://www.mp.hn/publicaciones/requerimiento-fiscal-proyecto-residencial-morazan-con-el-cual-se-defraudo-al)

158 See Mejía (2020).

In other words, if it is considered that ZEDE is not legal under the law and without full compliance with the regulations, the ICSID claim should not proceed. However, despite protests, legal compliance, creation procedure, and even the ICSID suit and award in 2023, the company Honduras Próspera has not stopped. On the contrary, it has acquired more land while continuing construction and logging in the areas it occupies. Meanwhile, the Rastafarian community faces dispossession of their territories and the degradation of fragile local ecosystems on the island of Roátan.

4.3.2.5. Debate on the current status of ZEDEs

Since ZEDEs were introduced in Honduras, a debate has raged about their legality and legitimacy, and more recently about their expansion. This is especially true about the continued operations of three of them (largely after Congress repealed the law regulating them). As such, there is doubt about whether Honduras Próspera and others can really be considered a ZEDE as such, since they do not meet the requirements to be one.

Debate aside, what is certain is that the ZEDEs – that of Próspera as well as Ciudad Morazán and Orquídea – continue to operate under ZEDEs and, even worse, they are expanding. For Honduras Próspera obtained a piece of land known as Puerco on the Caribbean coast. Over time, their expansion has become a local imagination.

“In Satuyé people talk about the ZEDE as if it were natural, it is being normalized. This is something that is going on in comparison to what they are doing in Satuyé as a distraction. They are building day and night. This has to be understood on a different level. What they’re interested in is promoting this ideology with the hope to consolidate the ZEDEs.”

- Common Front against ZEDEs in La Ceiba, in

For Crawfish Rock residents living next to ZEDE

“The company wants to stay; the lawsuit is a way to pressure, to weaken the struggle and to establish [their project] on stay or we leave rich”. They stay and take poor millionaires. I personally feel that the government, the national government nor the municipality, has come down, but it doesn't. The company continues to stay.

- Venessa Cárdenas, resident of Crawfish Rock,

Given the ambiguity about the legality of ZEDE, the Honduran government has highlighted at least three proposals to address the issue of ZEDEs in general and the case of the Próspera lawsuit at ICSID in particular (according to impressions gathered from interviews conducted with various stakeholders). Firstly, the government should close all ZEDEs for lack of a legal framework to regulate them. Secondly, in relation to the ICSID claim, the arbitration panel should review whether the legal procedures to establish a ZEDE were followed. Thirdly, the government should publish a government publication in the Official Gazette of the Republic of Honduras, La Gaceta Oficial, that states that ZEDEs lack legal validity and should not operate, something that ICSID should consider in its decision. It is emphasized that the Government should be transparent and provide all documents presented to ICSID in the arbitration claim – both of Próspera and of the Attorney General's Office – since none of the documents is currently available. A final aspect related to the previous proposals is the need to implement the constitutional reforms that first enabled ZEDEs. The government will likely continue to exist in the constitutional framework and will likely solidate their operations locally. In the meantime, the government should pressure the government to backtrack on its decision regarding the Próspera lawsuit at ICSID, plus the threat of new lawsuits such as that of ZEDE Ciudad Morazán, to pressure the government to backtrack on its decision.

159. As stated in the ZEDE Ordinance, the approval of the ZEDE Ordinance is a matter of internal government affairs and is not subject to public consultation. The Honduran government has published the ZEDE Ordinance in the Official Gazette, La Gaceta Oficial, on March 2, 2017. What is the status of ZEDEs in Honduras and what is their status? <https://cespad.org/hn/que-ha-pasado-con-cual-es-su-estatus/#:~:text=Referencia%20que%20el%20art%C3%A1culo%20decir%2086%20votos>.

lawsuit: to dissuade the government from getting the only possible explanation for ZEDE Próspera suit almost US\$11 billion.



Protest against ZEDEs; Source: [ContraCorriente](#)

4.3.3. Claims over the renegotiation of electricity contracts

In October 2022, the National Congress approved the Government of Xiomara Castro. This law aimed to allow the Energy Company and renegotiate the terms of contracts for electricity generation with private companies, seeking to improve the rates at which the state purchases electricity from them. The high energy prices that ENEE has imposed on producers contributed¹⁶⁰ to putting it in dire straits.

Among these private companies are Scatec ASA, Inversiones y Desarrollos Energéticos SA, and Schloesser de Paiz, which have sued the State of Honduras after the approval of the aforementioned law. X-Elio Energy SL and Víctor

¹⁶⁰ Burgalá, August 2022. *Defensa marginalizada por productores en contratos lesivos cedan a renegociación.* Criterio. <https://criterio.hn/reforma-energetica-lesivos-cedan-a-renegociacion/>

in response to approval of the law more recently in ICSID, in August 2024. Being very recent claim information about them.

In addition, government action over issues of non-compliance in the contract with the Honduras Electric Company (Empresa Eléctrica de Honduras) has led to an additional claim from the energy sector, from Eléctricas d

4.3.3.1. Claim by Scatec ASA, Norfund and KLP N

Applicant	Two separate lawsuits related to the same solar power generation projects <ul style="list-style-type: none"> • Scatec ASA (Norway) • Norfund (Norwegian Investment Fund Countries, owned by the Norwegian Affairs) • KLP Norfund Investments AS (Norway)
Project	<ul style="list-style-type: none"> • Agua Fria Solar Energy Park in Vall • Los Prados Solar Energy Park in Ch
Legal basis	Law for the Promotion and Protection
Initiation of lawsuit	April 21, ¹⁶¹ 2023 (both)
Reason for request	According to some media reports, these companies submitted notifications of their intention to go to discriminatory treatment, non-payment of invoices and fear of expropriation after the approval ¹⁶² of the
Amount claimed	US\$ 200 million dollars each

The session known as the 'legislative diarrhea' approval of 23 contracts. Five of them - Fotovol (FOTOSUR), Generaciones Energéticas S.A. (GENER S.A. (Enersol) - were awarded to Liana María Bu

161 See *Scatec ASA v. Republic of Honduras*, ICSID No. ARB/23/12 and *Norfund v. Republic of Honduras*, ICSID No. ARB/23/13.

162 See *CSG IDO v. Republic of Honduras*, ICSID No. ARB/23/10 *Two Norwegian Renewable Companies Sue Honduras in ICSID*.

<https://ciarglobal.com/dos-companias-noruegas-de-renovab>

163 Information compiled from the report of the Office of the

Bueso Majano had links to several corrupt entities.¹⁶⁴ She was a congressional candidate for the National Congress. She was employed from 2010 to 2012 in the government institute for infrastructure and transportation formerly known as SOPTRAVI, which was involved in awarding government contracts to launder drug money. She was also legal representative and coordinator of COALIANZA from approximately 2011 to 2014. In addition, she was legal representative of Los Cachiros and later confiscated when the company was liquidated by OFAC.

Bueso Majano and Muñoz Gómez sold the five contracts, earning US\$1.9 million per contract.

Another contract approved during the legislative period was originally awarded to the company PRODERSSA, with the participation of shareholders Roberto A. Mejía and Roberto David. Both shareholders have been implicated in fraudulent practices, corruption networks and drug trafficking. Roberto A. Mejía was an assistant secretary in Congress in 2014 and a lawyer for Los Cachiros. He subsequently sold his shares in PRODERSSA. Another individual also involved in receiving contracts during the aforementioned congressional session.

David Castillo Mejía was an employee of ENEC. He was involved in the case "Fraud in Gualcarque" for using his position to obtain contracts and licenses in favor of a hydroelectric project opposed by indigenous leader Berta Cáceres and the organization Mesjía.

164 Association for a More Just Society (November 21, 2018). *Research 1: Quemados, el negociazo de la energía eléctrica*. https://revistazo.com/docs/Investigacion_Quemados

165 Si IFV(a, a n 2 5 2 9 2 4) . c t d e a o s n f i n t h e r s q u e r e r i f i c a d o b r a L e n e r r e z e v i u o p o s i a m p e l i d e l i a o n n c e C o n t r a c o r r i e n t e . <https://contracorriente.red/2024/01/25/victimas-de-conficto-minero-esperan-reque>
[a-una-posible-ampliacion-de-la-concesion/](https://contracorriente.red/2024/01/25/victimas-de-conficto-minero-esperan-reque-a-una-posible-ampliacion-de-la-concesion/)

Association for a More Just Society (November 21, 2018). *Research 1: Quemados, el negociazo de la energía eléctrica*. https://revistazo.com/docs/Investigacion_Quemados.pdf

166 Ibid.

167 Ibid.

168 Ibid.

169 COPINH. (March 23, 2023). *Communiqué: Those guilty of the corruption that assassinated Berta Cáceres must be condemned*. <https://copinh.org/2023/03/comunicado-los-cul>
[asesino-a-berta-caceres-deben-ser-condenados/](https://copinh.org/2023/03/comunicado-los-cul-asesino-a-berta-caceres-deben-ser-condenados/)

is currently in prison awaiting two sentences, one for his role in the murder of Berta Cáceres and another for ¹⁷⁰fraud in said corruption



" Norwegian companies with links to David Castillo, sue the state of Honduras"; Source: copinh.org

In 2018, PRODERSSA was seized by the Honduran A to Los ¹⁷¹Ca Ah company that remains linked to Castillo shareholder in the ¹⁷²A Agoad Fngat pro C P C NH, PEMSA' Panama were used to receive a \$1 million payment to pay the hitmen who broke ¹⁷³into her home on Ma

In 2019, following David Castillo's arrest, PRO the transfer of Castillo's and other companies'

170 Per d m o Ma 3 y 2 0 2 0 C u i t h y e e c u i s f e r d a u s e t h e q u a l c a r q u e i n c u l c a d o i n g p e r p e t r a t o r e s d e B e r t a C á c e r e s t <https://criterio.hn/culpables-tr-caso-fraude-sobre-el-gualcarque-incluido-coautor-del-ase>

171 P u b l i c a c i o n e s d e C o p i n h (2 0 1 8) e x e c u t e s a r r e s t s a n d 5 8 a s s e t s e i z u r e s o f p e o p l e l i n k e d t o t h e R i v e r a M a r a d i a g a b r o t h e r s i n O p e r a t i o n A p o l o . <https://www.mp.hn/publicaciones/mp-e-y-58-aseguramientos-de-bienes-a-personas-vinculadas-a-lo-apollo/>

172 S c a t e c (n . d .) . S c a t e c : H o n d u r a s . <https://scatec.com/locations/honduras/#a>

173 C O P I N H (A . p . 8 2 0 2 1) . N e w s l e t t e r i n t e r i a g l a i d r a s t a s t h e d i g i t a l e v i d e n c e l i n k s i n t h e <https://copinh.org/2021/04/newsletter-n-15-trial-evidence-links-daniel-atala/>

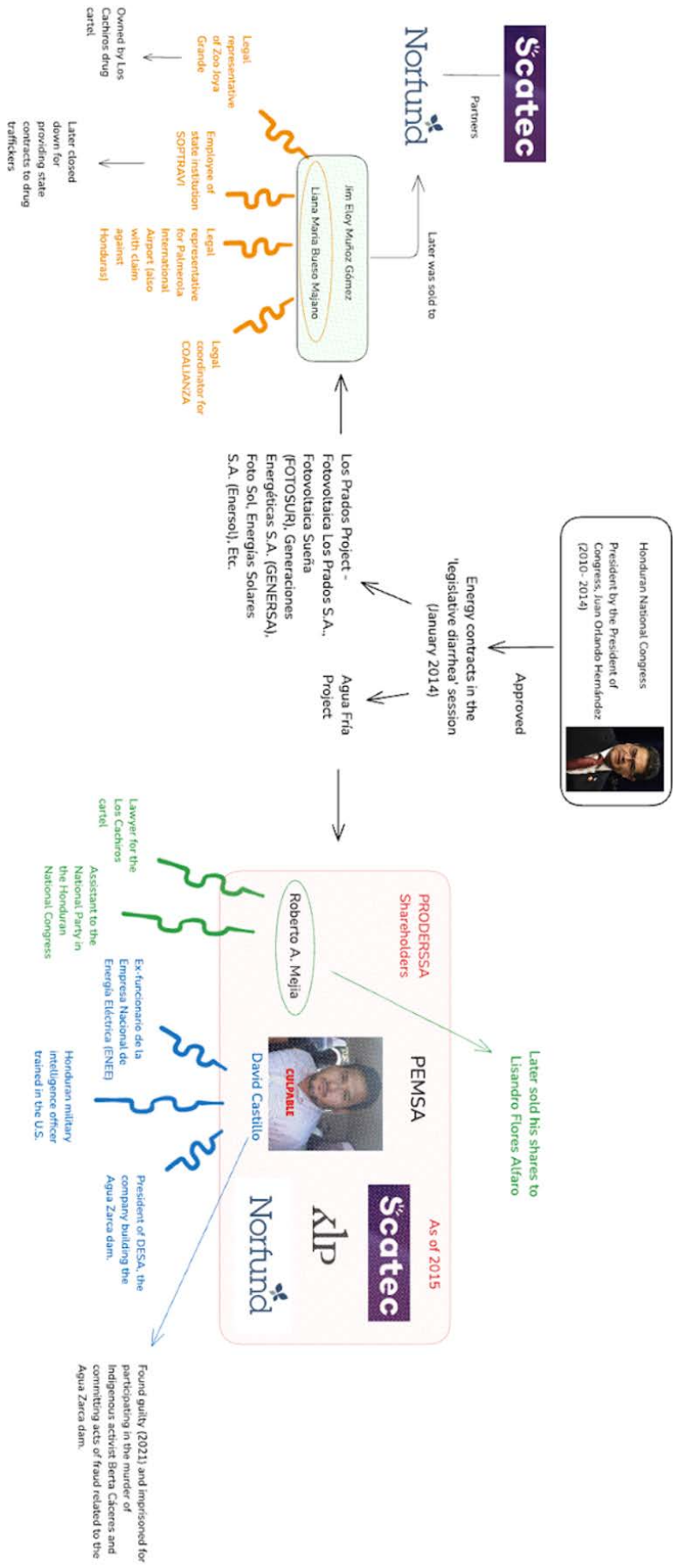
“ With this action the Norwegian companies, demonstrate their criminality. Not only did businessmen, but now they expect the Honduran “ losses ” by reaffirming the lie that they are - Berta Cáceres Flores, general coordinator of the (assassination)

In May 2015, Scatec Solar and PRODERSA signed a contract for the operation of the Agua Fría solar project, and in October, Scatec purchase rights to build the Los Prados solar project in Choluteca.

Los Prados was rejected by the local population of Los Prados I and II, Costa Azul, Guameró, La Unión, and La Unión, leading to the displacement of the local population. The Network of Women Human Rights Defenders (REDH) (initials in Spanish) said, in an interview in 2024, that together with affected communities against public officials for irregularities in the process of the project before the Special Prosecutor's Unit against Corruption (UNEP) (initials in Spanish), a dependency of the Public Ministry, the decree approved during the legislative session arguing that it should be declared unconstitutional. Local communities, women's organizations,¹⁷⁵ have already paid a high cost for the project. Community leaders have faced persecution and criminalization for years, leading to negative impacts on their economic wellbeing and their lives. Some have been criminalized while others have had to accept conditions such as to not participate in protests in order to resolve their legal situation. In the context of the project, Scatec Solar and Norfund continued with

174 COPINH. (April 26, 2023). Norwegian companies linked to David Castillo, SCATEC and NORFUND, sue the State of Honduras. <https://copinh.org/2023/04/empresas-noruegas-vi-y-norfund-demandan-al-estado-de-honduras/>

175 The organization is a part of the Red de Defensoras Humanas (REDH), MA SSVI and Red de Defensoras Humanas (REDH).



“The criminalization started in 2015, in the
 were horrified by the clearing of old trees
 because a lot of machinery arrived to clear
 informed, nobody gave information as to what
 - Red de Abogadas Defensoras de Derechos Human
 23, 2024

In addition to the judicial harassment, criminalization and social division caused by solar
 projects and companies, local communities complain of environmental damage and
 restricted access to their mel am e and crops due t



Namasigüe votes no to solar energy projects; Source: Criterio Hn



Namasigüe votes no to solar energy pr
 Source: Criterio Hn

“The water contamination from the project affected us because our water sources dried up and we don’t have the water a well there before and she would go [to fetch water] but we didn’t have to pay for water. We didn’t have to drink, but now we have to pay for water because [the utility and energy companies] buried the water sources that was the hardest thing for us because there is not enough water to bathe with all the heat here.”

A woman affected by the Scatec and Norfund meeting, May 23, 2024

The two claims brought by the Norwegian companies under the 2022 Electricity Law promoted by the current government reports,¹⁷⁶ Scatec, Norfund and KLP have been using the threat of a \$200 million¹⁷⁷ to pressure the State during the renegotiation of power generation contracts. The companies would be willing to withdraw their multi-million dollar claims if the Honduran government satisfies certain unspecified conditions related to the Los Prados project see the arbitration proceedings for the approval for the expansion of the solar project.

4.3.3.2. Claim by Inversiones y Desarrollos Energéticos

Applicant	Inversiones y Desarrollos Energéticos
Project	No information
Legal basis	Central America-Panama Free Trade Agreement
Initiation of lawsuit	August 30, 2023
Reason for request	The renegotiation of power generation contracts under the 2022 Electricity Law.
Amount claimed	US\$ 200 million ¹⁷⁸

176 Habla Como Habla (HCH), interview with Representative Chele Castro (May 12, 2024) <https://x.com/HCHTeleDigital/status/1793106261837246633>

177 Information provided by the author to the author of the report.

178 See InverSider's report on the case filed with the Arbitration Tribunal of the ICSID. ARB/23/40. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/40>

179 Information provided by the author to the author of the report.

There is little information publicly available about Inversiones y Desarrollos Energéticos, S. A., a company registered in the name of Fernando Paíz Andrade, an elite, is known to have invested in several power generation projects in the country and is listed as the company's general manager.

4.3.3.3. Claim by Fernando Paíz Andrade & Anabella Schloesser de León de Paíz

Applicant	<ul style="list-style-type: none"> • Fernando Paíz Andrade (Guatemala) • Anabella Schloesser de León de Paíz
Project	Pacific Solar Energy, Valle, Honduras
Legal basis	CAFTA-DR
Initiation of lawsuit	September 13, 2023
Reason for request	The renegotiation of power generation contracts under the 2022 Electricity Law.
Amount claimed	US\$160 million

Like the three previous claims, this one responds to renegotiate high prices for solar power generation, originally laid out under the narcodictatorship, and the bailout of ENEE.

Pacific Solar Energy is another company that obtained during the legislative diarrhoea session of Flores Alfaro, son-in-law of former President R

180 Opencorporates (n.d.). *Inversiones y desarrollos energéticos S.A. (IDESA)*. INVERSIONES Y DESARROLLOS ENERGÉTICOS S.A. (IDESA). <https://opencorporates.com/companies/pa>

181 Duns & Bradstreet (n.d.). *Inversiones y Desarrollos Energéticos S.A.* https://www.dnb.com/business-directory/company-profiles/inversiones_y_sa_d74af5595ff9fea545562d7a79d07a0f.html

182 Eura DUE 2019) *Investigación de la corrupción en el sector energético* (2009) *Cooperación de Estudios Centroamericanos*, 45. https://www.scielo.sa.cr/scielo.php?script=sci_abstract&tlng=es
Investigative Reporters (2022). *An energy reform to tackle corruption and rescue the economy*. <https://reporterosdeinvestigacion.com/2022/07/25/una-reforma-enerrescatara-la-economia/>

183 See: Fernando Paíz Andrade and Anabella Schloesser de León de Paíz v. Republic of Honduras. ICSID No ARB/23/1 *Convention - Arbitration* (2023). <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB184>

184 Informa *Caracterización de la corrupción en el sector energético*

Ramos Andino, another founder of Pacific Solar Energy Holding, for US\$10 million.

Two Guatemalan shareholders in Pacific Solar Energy Holding, his wife Anabella Schloesser¹⁸⁶ According to public documents,¹⁸⁷ Fernando Paiz Andrade owns 1% of Pacific Energy Holding Ltd. owns the remaining 99%. He is the majority owners of the latter because Solar Energy Holding. In 2018, 70% of the shares of Solar Energy Holding are owned by large energy producer in Latin America registered with the financial support from the World Bank's International Financial Institutions. Its CEO is a close friend with Bill and Hilary Clinton, and is currently a director of the Clinton Foundation.

There is little public information available on

4.3.3.4. Claim by Eléctricas de Medellín Ingeniería y Servicios S.A.S.

Applicant	Eléctricas de Medellín Ingeniería y Servicios S.A.S. (Colombia), one of three investors in the private consortium Empresa Energía Honduras (EEH).
Project	Nationwide energy distribution and transmission losses.
Legal basis	Free Trade Agreement between Colombia, El Salvador, Guatemala and Honduras

¹⁸⁵ Association for a More Just Society (November 21, 2018). *Research 1: Quemados, el negociazo de la energía eléctrica.* https://revistazo.com/docs/Investigacion_Quemados.

¹⁸⁶ Bohme (September 2023) Guatemalan investors to OGAFTA against Honduras, market for the SDG. See also what is said by a Reporter. <https://www.iareporter.com/articles/guatemalan-investors-lodge-cafta-claim-against-against-the-state-this-year/>

¹⁸⁷ Commisfotr Defeans Per omodi Compet Resblution. 005-CDPC-2018-YEAR-XI. (April 12, 2018). <https://www.cdpc.hn/sites/default/files/Concentraciones/2018/%28No%2C%20005-2018%29%20Exp.%20No.%20INTERENERGY%20HOLDINGS%20Vrs%20LATAM%20ENERGY%20CORP%201%28003%29.pdf>

¹⁸⁸ Ibid.

¹⁸⁹ Inter E (2024) of directors. <https://interenergy.com/board-of-directors>

¹⁹⁰ Eléctricas de Medellín Ingeniería y Servicios S.A.S. vs. Empresa Energía Honduras. ARB/24/24. ICSID Convention - Arbitration. <https://icsid.worldbank.org/cases/case-detail?CaseNo=ARB/24/24>

Initiation of lawsuit	July 2, 2024 ¹⁹¹
Reason for request	Measures related to non-compliance with the Public-Private Partnership (PPP) contract between the company and ENEE ¹⁹²
Amount claimed	US \$ 500 million

Eléctricas de Medellín Ingeniería y Servicios pertaining to its Public-Private Partnership contract with private companies to distribute, civil society organizations opposed the privatization reforms were approved in 2014, the ENEE Workers changes and mobilized for weeks to warn the population of the consequences this would have.

For years, energy distribution has resulted in contributing factors to the poor financial state producers and then suffers losses in the energy grid including during distribution to consumers (households, companies, etc.). According a More Just Society (ASJ by its initials in Spanish), technical and non-technical energy losses represent between 8,000 and 9,000 million US\$320 to US\$360 million). In 2016, the EEH contract Ingeniería y Servicios is part, was awarded a and reduce¹⁹⁴ losses.

When President Xiomara Castro and her government ENEE expressed concern that EEH had never met including investments in the distribution network example, in 2019 and 2020 the annual reduction with EEH was 3%, for a total reduction of 19% to evaluators, energy losses increased by almost 5

In addition, according to its contract, EEH was million in the distribution system to improve s

191 Ibid.

192 CI AGRI o k a l u 2 y 2 4 n e r g é t i c a C o l o m b i a n a t o A r b i t r a t i o n w i t h H o n d u r a s i n I C S I D . <https://ciarglobal.com/energetica-colombiana-a-arbitraje-con-hon>

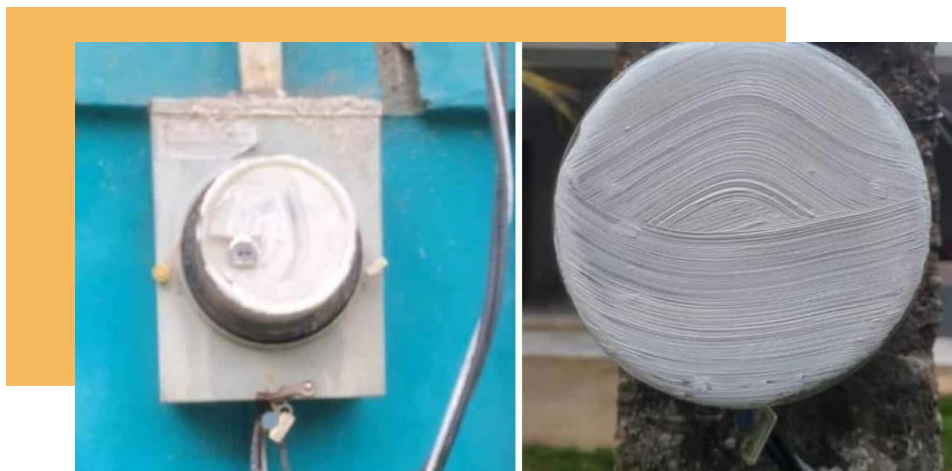
193 I n f o r m a t i e n v e n u r o c e f e t o G e n e r O f f ' c e .

194 Association for a More Just Society (n.d.). *The situation with the Empresa Energía Honduras (EEH) contract.* https://asjhonduras.info/bibliotecaASJ/documentos/ss_

US\$105.6 million in the second year. However, invested only US\$40.2 million and US\$44.8 million while independent verifications place these figures million below what the company reported.

For its part, EEH and others charge that the Honduran government also failed to meet its contractual obligations by not providing such payments as and when ¹⁹⁵ This was further complicated when the Castro administration took office and found EEH was contracted.

In addition, since EEH took over collecting payments from consumers for their energy consumption, complaints have arisen over arbitrary bills for homes and businesses throughout the country. Irregular charges were made to ¹⁹⁶ households, especially low-income families, sometimes received electricity bills much higher than what they had actually consumed. This led people over their energy meters or painting them to avoid getting charged outlandish amounts, which they believed were being manipulated by other parts of the country, residents removed the meters from their homes and set them on fire in protest against exaggerated energy charges ¹⁹⁷



ENEH subscribers paint their meters in protest. Source: elcomejamo.com

195 Ibid.

196 La Prensa (November 28, 2018). In December bill EEH must return what it overcharged to 240 thousand subscribers. <https://www.laprensa.hn/honduras/energi-a-honduras-intervencion-PVLP1237594#image-1>

197 Honduras HN News (August 12, 2020). Inhabitants of the El Carmen sector of San Pedro Sula remove energy meters from their homes. <https://newsfacebook.com/watch/?v=220561992662984>

When the contract with EEH expired in 2023, the be renewed. ENEE subsequently re-assumed responsibility part of restoring the public agency. However, due to discontent between the two parties, both EEH lawsuits in Honduran courts and complaints with each other.

In the complaints filed against EEH, Minister irregularities beginning with the bidding process; among them the lack of a legal framework for the EEH contract and EEH's inequitable distribution.

Similarly, ASJ has denounced irregularities and fraud with UFERCO in August 2021 against former has been mentioned in other corruption cases re including using his position to employ models and spouses of close political allies, such as the wife of convicted drug trafficker ¹⁹⁷ Tony Hernandez. According to the CNA, Mejía himself committed payments to EEH despite the fact that the company did not comply with the terms of its contract. The CNA also implicated members of Fund for the recovery of energy losses in the same complaint (including a representative of COALIANZA) who was in charge of ¹⁹⁸ supervising

Despite the many breaches and irregularities, EEH argues that this accountability process and non-renewal of its contract constitute

" Honduras intends, through the Attorney General control of the commercial systems that EEH operates in accordance with the rules that regulate relations between private parties and states may constitute expropriation directly of the ¹⁹⁹ contract."

-EEH statement quoted by CIARGlobal, July 22, 2022

198 National Program for the Reduction of Losses (January 22, 2023). ENEE filed its third legal action against the Consortium, Energía Honduras (EEH). <https://www.youtube.com/watch?v=PQC4e>

199 EIPUL (S. 10/02/2022) by Hernán Sánchez Mejía. <https://www.elpulso.hn/2022/03/10/tony-herandez-y-jeremy-herandez-confianza-en-la-enee/>

200 Burge, A. (2022, July 22). CNA accuses EEH of fraud in investment contract. <https://criterio.hn/cna-presenta-a-investigacion-por-fraude-contra-el-exgerente-de-la-enee/>

201 CIARGlobal (July 22, 2022). Energy Company Honduras Threatens Honduras with International Arbitration. <https://ciarglobal.com/empresa-energia-honduras-internacional/>

4.3.3.5. Claim by X-Elio Energy S.L.

Applicant	X-Elio Energy S.L.
Project	No information available
Legal basis	Honduras-Spain Bilateral Investment Treaty
Initiation of lawsuit	August 8, 2024 ²⁰²
Reason for request	The renegotiation of power generation contracts under the 2022 Electricity Law.
Amount claimed	No information available

Since 2015, X-Elio Energy has operated a solar southern Honduras.

4.3.3.6. Claim by Víctor Miguel Silhy Zacarías

Applicant	Víctor Miguel Silhy Zacarías (El Sal)
Project	No information available
Legal basis	CAFTA-DR
Initiation of lawsuit	August 8, 2024 ²⁰³
Reason for request	The renegotiation of power generation contracts under the 2022 Electricity Law.
Amount claimed	No information available

The claims from X-Elio Energy S.L. and Víctor Miguel Silhy Zacarías are being handled by the law firm White & Case, the same firm advising the Honduran government in suing Honduras over reforms introduced in the 2022 Electricity Law.

²⁰² See X-Elio Energy S.L. v. Republic of Honduras, ICSID Case No. ARB/24/31, ICSID Convention - Arbitration, 2024, <https://icsid.worldbank.org/cases/detail?CaseNo=ARB/24/31>

²⁰³ Ibid.

4.3.4. Claims related to Public-Private Partnerships: costs to the State

Public-Private Partnerships were promoted in Honduras which we analyse in Section 2, part 2.2.1. The Palmerola International Airport and Eléctricas correspond to disputes over PPP contracts. For recent claims from Operadora Portuaria Centroamericana and International Container Terminal Services Inc., we have not yet been able to identify differences over their PPP contract.

4.3.4.1. Claims by Autopistas del Atlántico and others

Applicant	<ul style="list-style-type: none"> • Autopistas del Atlántico, S.A. de C.V. (Costa Rica) and Grodco, S en C.A. (Costa Rica) and International S.A. (Costa Rica) and C.V. (Honduras) • JP Morgan Chase Bank, N.A. (U.S.A.) • Corporación Interamericana para el Financiamiento de Infraestructura S.A. (Panama) • Moneda Alturas II Investment Fund (Chile) • Moneda Latin American Debt Investment • Global Opportunities Offshore, Ltd (owned by Goldman Sachs) • Global Opportunities, LLC (U.S.) Sachs)²⁰⁵
Project	Honduras Tourism Corridor that failed the works advanced and an investment ²⁰⁶

²⁰⁴ Securitización de los activos de la red de carreteras de Honduras (2002) of financia a través de la emisión de bonos de inversión en los activos de la red de carreteras de Honduras. (2002) de la Ley de Inversión Extranjera y Comercio Exterior. Regulado en el artículo 1567/023-000002.pdf.

OPENLEIS. (n.d.). [Global Opportunities Offshore Ltd.](http://openleis.com/legal_entities/20WOJOVM5GZD5TG1ZQ39/Global-Opportunities-Offshore) http://openleis.com/legal_entities/20WOJOVM5GZD5TG1ZQ39/Global-Opportunities-Offshore

²⁰⁵ Securitización de los activos de la red de carreteras de Honduras (2002) de la Ley de Inversión Extranjera y Comercio Exterior. Regulado en el artículo 1566/0001999334-23-000001.pdf

²⁰⁶ Association for a More Just Society (ASJ). (September 3, 2018). *Analysis of the Structuring, Contracting, and Execution of the Honduras Tourism Corridor Concession Contract: Executive Summary*. <https://www.fipsnack.com/asjhonduras/resumen-ejecutivo-corredor->

Legal basis	The first Public-Private Partnership Honduras ²⁰⁷
Initiation of lawsuit	April 12, 2023
Reason for request	The company claims breach of its contract for the suspension of the toll road in the face of community protest and cancellation of the contract ²⁰⁸ in 2018.
Amount claimed	US\$179,370,2039 dollars

" We will not pay this toll because if we do, - Participant in the Dignity Camp, May 15, 20

In 2016, the company Autopistas del Atlántico, day social struggle at various points along the highway in the municipalities of San Pedro Sula and El Progreso when it installed booths a consortium between Grodco, S en C. A. (Colombia), and PRODECON S. A. de C. V. (Honduras), had won t contract with the now defunct COALIANZA for a t Tourist²¹⁰ After a twenty-seven month delay from the signing of the contract, ADASA secured financing for its project from Ba Corporación Interamericana para el Fianciami en well as a guarantee against political risk from Guarantee Agency (MI GA).

207 ADA S(AD e ce m 0 f 5)ASA. <https://es.slideshare.net/slideshow/a> Ramos, R. (November 27, 2015). Bank syndicate fna Honduras. <http://turisism/icoxlratidnr. i com/noticias/sindicato-de-bancos-fnancia-corredor-turis>

208 Bohle f A p 5 2 0 2 4 CID Tribunal Rejects Honduras' Argument that Claims Manifestly Lack Legal Merit Due to Investor's Failure to Exhaust Local Remedies. Investment Arbitration Reporter. <https://www.iareporter.com/articles/icsid-tribunal-declines-to-d argument-in-expedited-proceedings/>

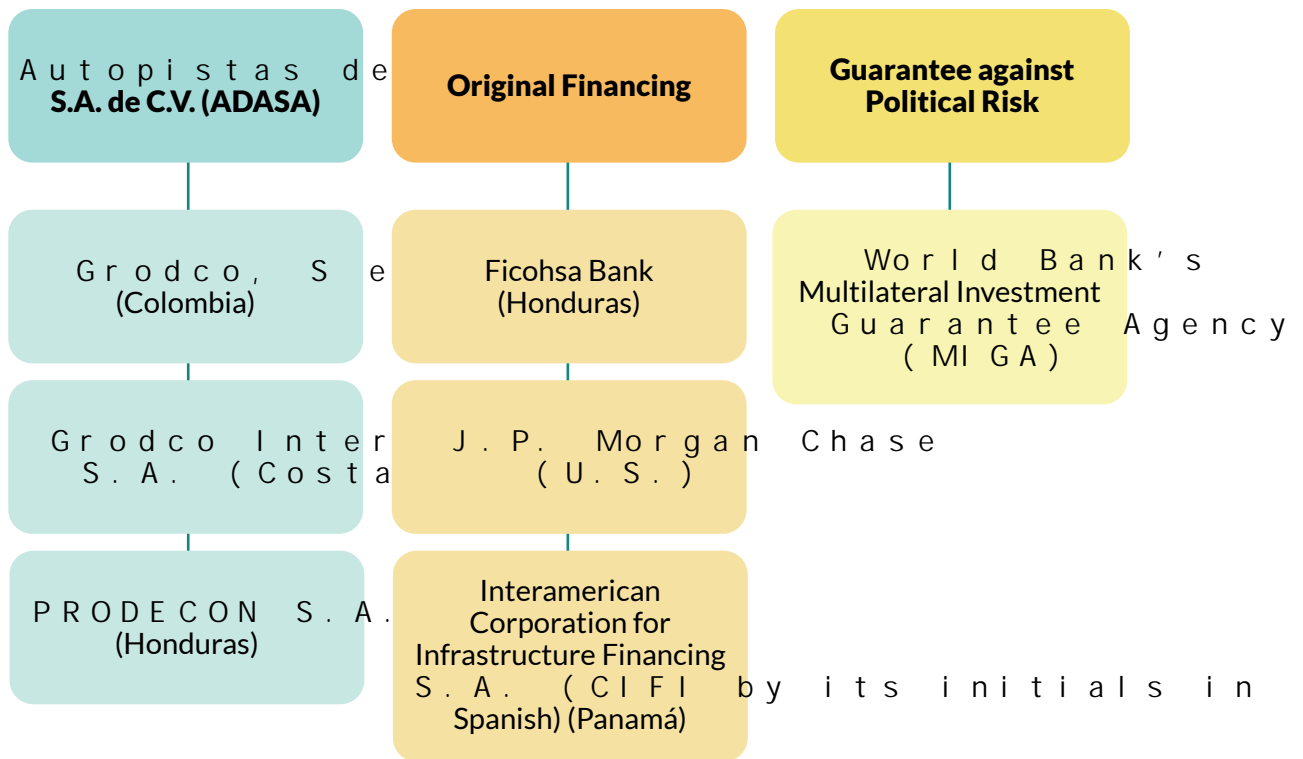
209 Informa tie n v e n u r a c t e r e t o G e n e r a l ' c e .

210 ADA S A b c i t .

Ramos, R. Ob. cit.

211 Ibid.

212 B n a m e r (i A p a 4 2 1 0 1 5) Honduras tourism corridor tollroad gets World Bank support. <https://www.bnamericas.com/en/news/honduras-tourism-corridor-tol>



This investment was promoted by the government of President Juan Orlando Hernández as a breakthrough for the country's infrastructure between the Atlantic and Pacific coasts, stimulate employment and reduce transportation costs. The expansion and improvement of 220 km of existing Ceiba in Atlántida, on the northern coast of the stretch that would be built. But, the project was a failure and its contract was cancelled in 2018 with 26.38 % of the works administered.²¹⁴

Although its original contract stated that it could only begin charging for the use of the road after construction was finished, with just officials gave approval to start charging vehicles triggering the state's commitment to make payments.

213 Multi-lateral Investment Guarantee Agency (MIGA) (November 2017) Environmental and Social Review Summary: Honduras Tourism Corridor. https://www.miga.org/sites/default/Documents/ESRS_HONDURAS_Autopista_NOV_11_2014.pdf

214 Association for a More Just Society (ASJ). (September 3, 2018). Analysis of the Structuring, Contracting, and Execution of the Honduras Tourism Corridor Concession Contract: Executive Summary. <https://www.fipsnack.com/asjhonduras/resumen-ejecutivo-corredor->

minimum annual g²¹⁵As a result, the state would have to pay the company the difference between the minimum anticipated revenue and revenue earned from this point forward, leading the state to than the US\$42 million for early cancellation irregularities ide²¹⁶Directly affected communities took a stand act. against the toll booths for over a year as part of the Camp for Dignity, not missing a day, not even Saturday, Sunday, Christmas or Easter.



No to ZEDEs and no to toll booths;
Source: Karen Spring



Source: Critero Hn

Women, men and young people who participated in this uprising considered the toll booths a "Monument to Corruption" and "stealing" was already in place and had been operating with Camp for Dignity recalled during a meeting in E Citizens' Movement (Mesa de Indignación Ciudadana) which had been built and repaired for more than population, not with private capital. For residents three toll booths violated their right to freedom of movement, as they had no alternative

215 Ibid.
216 Ibid.

way to²¹⁷ In addition, some people are reported to have lost their lives because the toll booths were located at²¹⁸ dangerous points along the highway. Contrary to the claims of officials - such as the Secretary for Infrastructure and Public Service - the promise of reduced transportation costs,²¹⁹ people who spent day after day at the Camp calculated that the price of the toll was

"The toll was charged traveling in one direction. We looked at the numbers, multiplying and calculating the cost, and it adds up to millions. We concluded that ultimately not everyone would lose out, but rather the user - because it is who is going to end up getting charged these costs."

- Participant in the Camp for Dignity, in El P

In addition, they anticipated an increase in the cost of products arriving from outside along the same highway, putting even more pressure on the economy. Despite conducting a peaceful protest, they faced repression, especially from national police.

"The police on more than one occasion fired live gas, [which is] even more harmful and more aggressive than tear gas. On many occasions one had to run to the riverbank to try and save your life."

- Participant in the Camp for Dignity, at mee

217 Radio Progreso HN (October 31, 2017). *For road sovereignty, Honduras pa'lante*. [Videohive]. YouTube. <https://www.youtube.com/watch?v=7LBXqOboorA>

218 Molina, E. (February 10, 2019). Toll ruins in tourist corridor have become a death trap. *La Prensa* <https://www.laprensa.hn/honduras/trampa-mort> LCLP1257837

219 Radio Progreso HN. Ob. cit.

When the government of Juan Orlando Hernandez managed to retain power in 2017, despite clear evidence of fraud in the national elections, the tollbooths were burned in the fervor of the protests.

In addition to allowing an early start on toll Private Partnership contract by ASJ in 2018 four the contract was authorized without economic feasibility studies and without clarity on the direct and indirect beneficiaries. In addition the investor could prioritize - increasing the US\$268.9 million, implying greater obligations then delegated to carry out its own technical s how this weakened the state's position in the a

Based on the technical study carried out by the same company, the government agreed to adjust the minimum annual guaranteed income (IM consulting the National Congress. According to they agreed to US\$512 million IMAG during the f pay the company 91.5% of the difference between what had be e²¹n F e s t i m a t e d . A S J ' s a n a l y s i s , t h e S p e for Transparency and Combating Public Corruption (FETCCOP by its initials in Spanish) opened an investigation, the results of which w

" Regarding the arbitration claim, [the compar knew - they should have known that those who granted them permits were criminals, and that criminals should not get people should be suing them instead, because they made decisions behind the backs of the people without the people having - Participant in Camp for Dignity, at meeting

Even before the contract ended with the compar COALIANZA anticipated the possibility of arbitr in international treaties it has signed. Refer

220 <https://primiciahonduras.hn/manifestantes-que-man-tres-al>
221 Association for a More Just Society (ASJ). Ob. cit.

Atlántico, Miguel Ángel García Rodríguez, CEO of the company, in 2017 [the company], I have²²² With such favorable contract terms that failure for the company, it was almost inevitable that a situation was created for the investor, whether that only harms the Honduran people.

4.3.4.2. Palmerola International Airport Demand

Applicant	Palmerola International Airport S. A.
Project	Design, Construction, Financing, Operation and Maintenance of Palmerola International Airport ^{2 2 3}
Legal basis	Public-Private Partnership Contract
Initiation of lawsuit	September 12, 2023
Reason for request	The arbitration notice is not public, but it has been reported that the company alleges that the S part of the contract regarding the p In addition, the company alleges th planning to expropriate its concessi Chinese ²²⁴ investors.
Amount claimed	US\$10 ²²⁵ million

Palmerola International Airport, S. A. de C.V. structured through Panama by its own²²⁶ Its Lenir Pérez believed that Pérez won the Palmerola Airport concession because of his closeness to former President Juan Orlando Hernández, despite financing capacity to carry out the p²²⁷ project (according to Grupo EMCO also owns an open-pit iron ore mine

222 Radio Progreso HN (October 31, 2017). Ob. cit.

223 Superintendencia de Partes y Afectados (SAPP) Palmerola International Airport: Palmerola International Airport Concession Contract. <https://www.sapp.gob.hn/palmerola>

224 Bohme (September 2023) reported that the good earl The e b dge Contract EBA B d t A g a i H o n t d u l A r a p t e r. <https://www.iareporter.com/articles/airport-operator-makes-good-on-earlier-threat-to-lodge-c-honduras/>

225 Information on contracts set to be awarded.

226 Toledo C (July 2023) German participation in Honduras airport under scrutiny. DW <https://www.dw.com/es/participaci%C3%B3n-alemana-en-aeropuerto-toledo>

227 Crit (July 2023) Palmerola airport concession is a fraud: Xiomara Castro's government. <https://criterio.hn/concesion-del-aeropuerto-de-palmerola-es-un>

has affected water sources and put environmental defenders at risk, with cases of criminalization and²²⁸ murder in recent years.

PIA initiated arbitration against Honduras under a private partnership contract it signed with the Hernández government in 2016,²²⁹ alleging that the State had not fulfilled its part of certain works. However, not only does evidence show non-compliance on the part of the investor, the arbitration also found the State in regard to a contract that has been deemed by the Council as highly unfavorable for the people, “clearly affecting the interests of the State of Honduras” “a risk to²³⁰ the State’s finances.”

Faced with this situation, Xiomara Castro’s administration took over the National Airport Service (SAN by its initials) in 2021 with the intention to take back responsibility²³¹ for management of the airport. Her administration has accused PIA of several irregularities in management of the contract. For example, PIA passed off “Munich Airport” as a model when it was in fact²³² it has also been found to have overestimated construction costs²³³, and is suspected of misrepresenting passenger number projections on which basis the royalty to be received by the investor. In addition, the government alleges illegality and fraud in connection with a loan from the National Teachers’ Welfare Institute (INPREMA) in 2017, as well as a direct award of US\$9 million for construction of the airport terminal that are part of the contract.²³⁴ Furthermore, there was a long delay in concluding the project and costs were 80% higher than estimated.

Overall, the contract terms favor only the investor. The total amount made by the investor (US\$126.43 million state

228 Avilijan Mackey, November 2020. The hidden connection of a U.S. steelmaker to the controversial Los Pinares mine in Honduras. Latin American Center for Investigative Journalism. <https://www.elclipp.org/la-conexion-escondida-de-una-siderurgica-de-honduras/>.

229 Silva, F. (June 12, 2023). Gobierno busca quitar concesión del Aeropuerto de Palmerola a empresa de Lenir Pérez. Contracorriente. <https://contracorriente.red/2023/06/12/gobierno-del-aeropuerto-de-palmerola-a-empresa-de-lenir-perez/>

230 National Anticorruption Council (CNA). (August 2020). Inconsistencies in the Palmerola International Airport concession contract. <https://www.cna.hn/inconsistencias-en-el-aeropuerto-internacional-de-palmerola-2/>

231 Ibid.

232 Silva, F. (June 12, 2023). Gobierno busca quitar concesión del Aeropuerto de Palmerola a empresa de Lenir Pérez. Contracorriente. <https://contracorriente.red/2023/06/12/gobierno-del-aeropuerto-de-palmerola-a-empresa-de-lenir-perez/>

233 Crit (e) Jr 1202 Ba)merola airport concession is a fraud: Xiomara Castro's government. <https://critorio.hn/concesion-del-aeropuerto-de-palmerola-es-un>

234 Ibid.

235 Ibid.

236 Ibid.

with US\$ 64.59 million.²³⁷ Moreover, the PEA contract includes taxes and duties during the life of the project. The early authorization of the airport resulted in a State and, according to the Government, PIA had a corresponding amount owed to the Government.²³⁸ There is also concern that the 10% fee on gross revenue from the project will only kick-in when more than 600,000 international passengers are to be achieved if we take into account Honduras' existing airport.²³⁹ The company denies this, saying that after two years of operation it is taking more than 800,000 passengers per year²⁴¹ and that it has invested more than 100 million in the project.²⁴²

4.3.4.3 Claims from International Container Terminal Services & Operadora Portuaria Centroamericana

Applicant	<ul style="list-style-type: none"> International Container Terminal Services (Philippines) Operadora Portuaria Centroamericana (Honduras)
Project	Design, Financing, Construction, Conservation, Maintenance, Operation and Exploitation of the Cargo Terminal of Port Cortés
Legal basis	<ul style="list-style-type: none"> In the case of ICTS: Law for the Promotion of Investments In the case of OPC: Contract
Initiation of lawsuit	Two suits registered on August 16, 2024
Reason for request	No information available
Amount claimed	No information available

237 Ibid.

238 Ibid.

239 National Anticorruption Council (CNA). (August 2020). *Inconsistencies in the Palmerola International Airport concession contract*. <https://www.cna.hn/inconsistencias-en-el-aeropuerto-internacional-de-palmerola-2/>

240 See IFI Disclosure. *Al. me n d d a. (r J e u 1 2 0 2 3) Concesionaria de Palmerola niega señalamientos del Gobierno*. *Tiempo*. <https://tiempo.hn/concesionaria-palmerola-niega>

241 E & N. *Nov 2023*. *Palmerola niega señalamientos del Gobierno*. *Revista EYN*. <https://www.revistaeyn.com/eyn-brandlab/palmerola-supera-pasajeros-del-2023-BD16407732>

242 Bohmle (Sept 2023). *Investor Makes Good on Earlier Threat to Lodge Contract-Based ICSID Arbitration Against Honduras*. *Investment Reporter*. <https://www.iareporter.com/articles/airport-operator-makes-good-on-earlier-threat-to-lodge-c-honduras/>

Operadora Portuaria Centroamericana, S.A. de C of International Container Terminal Services I published a notice announcing that both compani decision of Honduras to denounce OPC signed CSID trea a Public-Private Partnership contract for with COAL the frst time, the company sent a notice of int Honduras approved a concession contract for a there is little public information available ab represented by White & Case.

4.3.5. Claim by the Argüello brothers and the community of Castaños de Choloma

Applicant	<ul style="list-style-type: none"> Ernesto Argüello (U.S.A.) Juan Carlos Argüello (U.S.A.)
Project	Los Castaños de Choloma gated commun
Legal basis	CAFTA-DR
Initiation of lawsuit	May 23, 2023
Reason for request	There is little information available, but it has been reported that the company alleges that Honduras violated the investor's rights to fair treatment security, and against expropriation.
Amount claimed	US\$100 million dollars + US\$2 million damages

243 International Trade Centre (2024 August) *Security Exchange Commission Form 7-CT*. https://cdnweb.ictsi.com/s3fs-public/2024-08-Centre%20for%20Settlement%20of%20Investment%20Disputes%20the%20arbitration%20requested%20by%20ICTSI%20and%20OPC%20of%20Honduras_0.pdf

244 Mundo Marino (2023) *El mundo marítimo difiere de lo que se ve en la pantalla*. <https://www.mundomaritimo.cl/noticias/sin-mod-continuaria-terminal-de-puerto-cortes-honduras>

245 CIARGI (2021) *El operador portuario de Honduras reclama 100 millones de dólares*. <https://ciarglobal.com/operadora-portuaria-reclama-100-millones-de-dolares/>

246 Bohmer (2024) *Honduras Faces its Sixth ICSID Arbitration this Year, as US Investors in Housing Project Lodge DR-CAFTA Claim*. Investment Reporter. <https://www.iareporter.com/articles/honduras-faces-its-sixth-icsid-arbitration-this-year-as-cafta-claim/>

247 Ibid.

"What is taking place here is cheating people, but sells another."

- Member of Bufete Estudios para la Dignidad

Los Castaños de Choloma is a housing project for workers in the Sula Valley with the promise of the possibility of obtaining bank credit. The investors promised security, green space and, eventually, a day care center and other services close to their place of work. The largest maquila company Gildan, is adjacent to the development.

The reality did not live up to expectations and, following tropical storms Eta and Iota in 2020, the company Inter-Mac had not followed through with the property damage insurance of which the community members are beneficiaries. Afterwards, community leaders reports that most residents of the gated community stopped making house payments to the company. Currently, two of the investors community is working consolidate its control over

4.3.5.1. The Investors

Shortly before the 2009 military coup, Clark received financing from the then Overseas Private Investment Corporation to build and sell Inter-Mac International, Inc. to build and sell in Central America. In 2010, then President Porfirio Lobo signed a memorandum of understanding "for the construction of Inter-Mac International, represented by Xavier Argües and Hugo Llorens.

248 The press reported that, in order to qualify for one of these houses, one had to "have at least 12 months of employment in a company with 10 or more employees (at least \$100,000) of digital income" (May 12, 2010). Announcement of a millionaire investment in the housing sector: <https://proceso.hn/anuncio-millonaria-inversion-en-el-sector-vivienda/>

249 Bufete de Derechos Humanos de la Dignidad (Date: 12/02/21). Communiqué 003-2021 on the denunciation of the Inter-Mac project: <https://www.fidh.org.com/A-photo/?fbid=427361402317607&set=a.122043532849397>

250 OPI was a result of the US Government's efforts to place a 2010 development financing program in Honduras to promote private sector development. The program was approved by the US Trade Representative in 2010. US International Development Finance Corporation overview: <https://www.dfc.gov/who-we-are>

251 La Tribuna (August 5, 2010). Lobo signs agreement for the construction of low-cost housing.



Source: CRC Companies LLC



Inter-Mac International managed the project and was responsible for its construction and maintenance. Ernesto and Juan Carlos Argüello, based in Miami, LLC reported having sold its ²⁵¹ without specifying precisely to whom.

Of the Argüello brothers, Ernesto achieved some success in an NBC Miami reality show. ²⁵² The show only lasted two episodes,²⁵⁴ however Ernesto began to project an image as a philanthropist through the low-cost housing project in Honduras and his company Education Model Towns²⁵⁵ to promote himself ²⁵⁶ as a philanthropist.

In a promotional video for the model towns built by GQ magazine in 2019,²⁵⁷ Ernesto introduces the concept using the case of Castaños de Choloma. Model Towns are “communities that provide their residents a variety of opportunities for self-improvement, based on education, and with security.” However, the results have not lived up to the promises.

252 CRC Companies (n.d.). Portfolio // Los Castaños de Choloma. <https://www.crccompanies.com/portfolio/los-castanos-de-choloma>

253 Estilo Magazine (April 20, 2012). Ernesto Arguello stars in Eva Longoria's reality show. <https://www.revistaestilo.net/tendencias/ernesto-arguello-protagonista-en-el-nbc-ready-for-love>

254 The Ashley (July 7, 2013). The Couples of 'Ready for Love': Where are they now?. <https://www.theashleysrealityroundup.com/2013/07/07/the-couples-of-ready-for-love-where-are-they-now/>

255 Education Model Towns is another company that Ernesto Arguello founded with his brother Juan Carlos.

256 NBC Miami (November 20, 2013). Reality TV star, Ernesto Arguello Gives Back to the Community. <https://www.nbc.com/miami/news/ernesto-arguello-gives-back-to-the-community>

257 GQ. (October 16, 2019). Ernesto Arguello for education. <https://www.gq.com.mx/video/ernesto-arguello-por-la-educacion-slash-3373281788001>

4.3.5.2. The Deceptions

Ten years after the agreement for the construction was announced, the community made the news in early 2020 as a supposedly food-free zone, the houses had food stores. ²⁵⁸ Residents complained of having lost the roof of their homes to prevent others from looting what little was left after the storms, saying they didn't know what was happening with the company, demanding that Inter-Mac's owners come forward.



The community flooded after the Eta and Iota tropical storms.
Source: current member of the Castaños de Choloma leadership

On November 9, Inter-Mac posted a statement on Facebook stating that “valuation work has begun and we are coordinating with insurance company evaluators to complete the verification ²⁶⁰ In addition, they said they are in a process of reorganization and cleanup, “trying to restore water and power services as soon as possible.”

The disaster left behind by Eta and Iota precipitated discontent among many residents of Castaños de Choloma, unrest that had been growing by the crises arising from the COVID-19 pandemic.

258 Panorama Informativo (November 19, 2020a). *Vecinos denuncian atropellos de administradores de residencial los Castaños, Choloma.* <https://www.youtube.com/watch?v=H2LVPX5yASc>.

Panorama Informativo (November 19, 2020b). *Residencial los Castaños, Choloma, flooded.* https://www.youtube.com/watch?v=_b5hzZTIF78

259 Panorama Informativo (November 19, 2020a). Ob. cit.

260 Inter-Mac (November 9, 2020). *Notice to all Tenants/Buyers of the Castaños de Choloma whether they are current or in arrears with their payments.* Facebook. <https://www.facebook.com/photo/?fbid=3610976592294415&set=a.818889134836522&local>

lawyers from the firm Estudios para la Dignidad, leadership of the Castaños de Choloma Residents Honduras “has not taken diligent action for the improvement and repair of the affected houses.²⁶¹ Instead, the company “has developed a strategy to threaten Choloma’ residents, including threatening to evict them.²⁶² In addition, “the company continues to fail to provide information regarding the housing project and the insurance of which the families members access to it.” Between November 2021 and January 2022, representatives of the community fled a series of violent acts, the use of security guards, sometimes with National Guard, to remove residents from their homes, “without prior notification or presence.”²⁶³

On February 4, 2022, the community fled a legal process against the company that had filed and that had given the impression that the company had made a mistake.²⁶⁴ With respect to the same month, the community fled a complaint against Inter-Mac for coercion, given that it had limited the supply of drinking water to the community of around 5,000 people in retaliation for organizing in defense of their rights to decent housing.

On August 30, 2022, the San Pedro Sula Prosecutor’s Office opened an investigation against the companies Inter-Mac and R.L. “for possible ongoing fraud related to the construction of houses.”²⁶⁵ The community also fled an administrative complaint against Inter-Mac.

261 Bufete Estudios para la Dignidad (November 2021) *Communique* 003-2021: Dignified Housing in Tegucigalpa. <https://www.facebook.com/photo/?fbid=427361402317607&set=a.122043532849397>

262 Bufete Estudios para la Dignidad (November 2, 2021) *Inter-Mac security guards, raid home in the residential “Los Castaños de Choloma”* Facebook. <https://www.facebook.com/watch/?v=1312150245941993>

263 Bufete Estudios para la Dignidad (February 2, 2022) *New eviction attempt in the community of Castaños de Choloma.* Facebook. <https://www.facebook.com/EstudiosparaDignidad/photos/a.103361402317607/103361402317607/?type=3>

263 Bufete Estudios para la Dignidad (February 2, 2022) *Press conference.* Facebook. <https://www.facebook.com/EstudiosparaDignidad/videos/1106943090119>

264 Bufete Estudios para la Dignidad (February 5, 2022) *Press conference.* Facebook. <https://www.facebook.com/EstudiosparaDignidad/videos/5013691515950>

264 Bufete Estudios para la Dignidad (February 9, 2022) *Alert.* Facebook. <https://www.facebook.com/EstudiosparaDignidad/photos/a.103361402317607/103361402317607/?type=3>

265 Canal Ocho (August 30, 2022). *SPS Prosecutor’s Office investigates alleged fraud in construction of houses.* <https://tnh.gob.hn/nacional/fscalia-de-sps-el-medio-ambiente-y-estafa-en-construccion-de-casas/>

Natural Resources, Environment and Mines (SERNA) demanding annulment and prohibition to renew two environmental licenses granted to HOLA Realty for construction of the homes “violated human rights”, among other shortcomings. Environmental Impact Study approved for its second environmental license does not include a Contingency Response Plan. The complaint from SERNA and HOLA Realty, arguing that these allow for contingency measures to be adapted to protect against tropical storms Eta and Iota and exponential²⁶⁷ increased the damages.”

In addition to the damage caused by the food and inadequate materials with which their homes were destroyed, the community²⁶⁸ explain that, when it rained, water entered the materials rotted; in addition, the houses are small and the roof sheeting made for excessive overheating. They added that the process of buying and that it was difficult to file complaints with the government, with the comment that they were victims of “false advertising.” They had add that their contracts were not purchase agreements, but rather a sort of

lease for up to twenty or twenty-five years, at a price of one dollar. In the meantime, people had been living in them. It is difficult for the community to transition to owning their own, since their documents are still in the company's name.

The community's lawyers report that, since 2021, they have been responding to their nullity actions, but instead of receiving compensation, investors are suing Honduras for \$100 million dollars. At the same time, according to the municipality of Choloma, the company is currently in arrears to Los Castaños for almost²⁶⁹ 6 million Leones.

266 Bufete Upiabón (2023, May 16). *Reclamación administrativa de nulidad de licencias ambientales* (SERNA).

267 Ibidem.

268 *Meetwin* (2024, April 14). *Choloma: Un bufete upiabón* (2024).

269 *Municipalidad de Choloma* (2024, May 16). *Acta del Cabildo*.

4.3.6. Claim by JLL Capital: influence peddling

Applicant	JLL Capital, S.A.P.I. de C.V. (Mexico)
Project	Investment in CA Capital Group, which provides loans to government employees in Honduras, halted since 2018.
Legal basis	FTA between Mexico, Costa Rica, El Salvador, Honduras and Nicaragua.
Initiation of lawsuit	February 13, 2023
Reason for request	Alleges expropriation, unfair treatment, arguing that it lost control over Grupo CA Capital's decisions in Honduran courts.
Amount claimed	US\$80 million ²⁷⁰

JLL initiated its arbitration for approximately \$80 million in February 2023 under the Central America-Mexico investment in Grupo CA Capital, a company that provides loans to government employees in Honduras. JLL alleges expropriation, arguing that it lost control over Grupo CA Capital's decisions. The Mexican press reports that these decisions were made between several minority shareholders of Grupo CA Capital, the influence of the law firm Hernández y Asociados, Flores, brother of JOH²⁷¹ and a former military commander. Amílcar Hernández is a loyal supporter of his brother's role in pressuring an imprisoned drug trafficker, Lopez Sanabria, to not cooperate with US authorities in the provision of key evidence linking JOH to drug trafficking.²⁷² Amílcar Hernández is using to give in to pressure. Hernández visited him in prison, Lopez Sanabria

270 Information on the characteristics of the case.

271 Howard, G. (June 29, 2023). Financial vision. *Quadratin Mexico*. <https://mexico.quadratin.com/visión-financiera-georgina-howard-442/>

272 Adams, A. and R. (December 19, 2021). What did Nery Lopez know? Murder of imprisoned narco who talked to DEA splashes Honduran government. *Univision*. <https://www.univision.com/noticias/america-latina/que-sabia-nerly-lopez-el-asesinato-de-un-gobierno-de-honduras>

its ties to JOSHUA MARDALIER, along with other has moreover been linked to acts of corruption related to a security company that was awarded several contracts by the state during the JOH government, despite the huge conflict of interest.

In the case of Grupo CA Capital and JLL, it is Associates helped a group of minority shareholders. This ended in paralysis of the fund's operation with the minority shareholder group and a judge, allegedly looted the assets, affecting JLE and its influence - a result of influence-dictatorship - has now become a punishment for the Honduran people, who will be on the hook if the case ends in favor of the investors.

4.4 The chilling effect in evidence

In Honduras, the neocolonial influence exerted by the United States and International Financial Institutions. Added to this, supranational arbitration claims are a powerful tool for transnational and national companies (where their investments are structured through companies abroad), which they often use to influence the government against respect for human, indigenous, labor and environmental "the chilling effect".

This happens when a lawsuit, or the mere threat of a possible lawsuit, limits the decisions of authorities; manages to open negotiations under duress with governments to settle disputes outside the court process; or influence government policies in favor of the interests of people and the environment, or cause them to desist from establishing these protections.

It is more difficult to document when government supranational arbitration proceedings or the threat of

273 Ibid.

274 Public Record (September 7, 2020). *President Hernández and his family take advantage of pandemic to do business.* <https://www.expedientepublico.org/exclusiva-pr-a-provechan-pandemia-para-hacer-negocios/>

275 Howard, G. (June 29, 2023). Op.cit.

276 *Hilari Clinton: 'If it were not for Honduras, I would be in Mexico'*, Reuters. <https://www.reuters.com/world/americas/mexican-firm-blocked-unit-2023-04-14/#:~:text=ME%20CITY%20APRIL%202022,block%20of%20the%20country's%20economy>

276 Secretariat of Infrastructure and Public Services (July 29, 2022). *Press Release.* <https://hch.tv/wp-content/uploads/2022/07/Comunicado-dePrensa-INSEP-2022.pdf>

there is evidence to suggest that some of the corporate claims underway, and the threat of others against Honduras, are weighing on the decision making of state entities in several economic sectors.

4.4.1. Chilling effect of ZEDE claims

The Próspera Group's gigantic suit for almost US\$1 billion against ZEDE Ciudad Morazán clearly seek to contain the current administration's efforts to dismantle the regulatory framework that enable one cannot change what has already been decided, even if it was determined under a corrupt, despotic and criminal regime that acted against the interest of the people to cede sovereignty over their territory to private investors. It makes us question to what extent this multi-billion dollar claim, have influenced the failure by constitutional reforms that created the ZEDE framework to stop the expansion and operations of ZEDEs.

4.4.2. Chilling effect of the energy sector's claims

With regard to the seven lawsuits filed against generation and distribution of electricity, it seems clear that at least two lawsuits are aimed at influencing negotiations with the government that other companies involved in the renegotiated state is under great pressure to accept. It is notable that the ICSID arbitration procedure involving Scatec ASA, Norfund and KLP Norfund in the Agua Fria and Los Prados projects, has been settled in 2023. This indicates that the companies are seeking a settlement with the State outside of arbitration, which public officials should be aware of in this report. The question asked by communities

277 Scatec ASA v. Republic of Honduras ICSID No. ARB/23/12. *Interim Report*. Settlements in ICSID Convention - Arbitration Rules. April 21, 2023. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/13>. Norfund and KLP Norfund Investments AS v. Republic of Honduras ICSID No. ARB/23/13. *Interim Report*. Settlements in ICSID Convention - Arbitration Rules. April 21, 2023. <https://icsid.worldbank.org/cases/case-database/cas>

exchange for what?" They fear that caught up in electricity, but also the expansion of an unwanted impacts.

At a meeting in May 2024, lawyers' collective RADDH of these investments, linked to corruption, "that seek to pressure the state and continue looting". They went on to say that it is like the same time "cleaning up the [corrupt] process granted, and which resulted in the repression represented by RADDH and others in the country opposed to energy projects – such as the Agua Zarca hydroelectric project and the state the possible threat of more lawsuits could be another element bringing pressure on the government to prevent it from acting with full respect for collective rights and annulling these contracts.



Justice for Berta. COPINH; Source: Karen Spring

4.4.3. Chilling effect of the mining sector's claims

To date, Honduras has not experienced an arbitration one of the industries that regularly uses ISDS to lobby for their interests when their investments face regulatory impediments, changing

affected.²⁷⁸ However, there are indications that mining companies have been threatening possible lawsuits in their eagerness to contain the current administration's stated intentions to strengthen the organization of affected communities and projects.²⁷⁹ After assuming the presidency in early 2022, Xi no longer issue permits for open-pit mines and that she would favor the protection of water and the environment.²⁸⁰ On one hand, on February 28, 2022, the Ministry of Energy, Natural Resources, Environment and Mines (SERNA) announced a "policy to leave Honduran territory free of open-pit mining" and cancellation of environmental permits.²⁸¹ However, as soon as this statement was made, it is likely that mining companies threatened to bring claims, contributing to the government diluting its commitment.²⁸² As evidence, the day after the SERNA announcement, Aura Minerals issued a press release stating that it was working to "understand the implications of the announcement."²⁸³ Five days later, it issued another bulletin stating that the announcement was unlikely to have implications for its open pit gold mine, in spite of irregularities in its operations. It cited SERNA's minister as having said that the government would focus on unregulated mining activities and that mining companies that have their permits in order would be able to continue.²⁸⁴ For years, Aura Minerals' open pit gold mine in the region of Comayagua has been questioned for the illegal excavation of the ceiling of the mine, including for not complying with orders from SERNA.

278. Moorjani, Néstor (2019). *Extraction of minerals: a threat to the peoples' lives and the sovereignty of Latin American countries using supranational arbitration*. *Mining Watch, IPS, CIEL*. <https://ips-dc.org/wp-content/uploads/2019/06/IPS-Formatted-SPANISH.pdf>.

279. Hernández (2022). *Compañía minera niega ser responsable de esta actividad*. *Criterio*. <https://criterio.hn/xiomara-castro-ministerio-mine-de-parar-esta-actividad/>

280. SERNA, *Comunicado* febrero 28, 2022; <https://twitter.com/sernaHN/status/1498396575520935939?s=20>.

281. Hernández.

282. Aura Minerals, Inc. (March 1, 2022). *Aura acknowledges Press Release by the Honduran Ministry of Energy, Natural Resources, Environment and Mines*. <https://api.mziq.com/mzfilemanager/v2/d/7e088be0-b725-4cb9b76-e8a3-760002a979f2?origin=1>

283. Aura Minerals, Inc. (March 6, 2022). *Aura acknowledges new press releases issued and press conference held by Honduran authorities; mining companies with permits in good order allowed to continue mining activities*. <https://api.mziq.com/mzfilemanager/v2/d/7e088be0-b725-4cb9b76-e8a3-760002a979f2?origin=1>

to suspend²⁸⁴ However, Aura Minerals is listed on the Toronto Stock Exchange and could invoke the Canada-Honduras FTA if it



San Andrés Mine, Copán; Source: Karen Spring

The Honduran government also moved quickly to limit the scope of its pronouncement on open²⁸⁵ When questioned directly by AF Media about Aura Minerals and the Honduran mining company Los Pinares, two weeks later the SERNA minister said that these operations are not retroactive to what has happened with the company's operations

284 Besix (April 2020) a Canadian company alleged to be responsible for detonations in Honduras. *Avispa Midia*. <https://avispa.org/minera-canadiense-ignora-detonaciones-en-honduras/>

285 Paley (April 2021) Honduras says new mining restrictions not retroactive-39. <https://www.marketscreener.com/quote/stock/AURA-MINERAL-minister-says-new-mining-restrictions-not-retroactive-39/>

" We have had several talks with different se
is to accept historical errors. It is a hist
there has not been suffcient supervision, tha
conciliation and that this has led to violen
of our administration, but a historical mist
accept it and²⁸⁶ move forward. "

- Secretary of Natural Resources and the Envi
2022

As for Los Pinares mining company, it is possib
contributing to delays in halting its open pit
This project threatens the Guapinol and San Pe
Botaderos Carlos Escaleras National Park, whose
Congress to make way for the approv²⁸⁷ This of minin
company is registered in Panama and its owners
members of the Honduran elite. Lenir Pérez is
the JOH administration and his frm also initiat
arbitration claim, discussed in detail in secti

Members of the Municipal Committee for the Def
of Tocoa have filed numerous complaints against
other irregularities, the admission of fraudul
approval of the mine's license. In response to
serious threats, militariz²⁸⁸ In addition, the local
mayor has consistently acted in favor of the co

In May 2024, after a two-month delay, the Committee, together with its allies, achieved
the publication of Decree No. 18-2024 for the r

286 El Financiero (March 11, 2022). *Large scale mining in Honduras will continue to operate with better
"environmental practices"*. [https://www.elfinanciero.cr.com/cables/gran-mi
funcionando-con/WZSAV5FZ2RES3L6DGC4YVFEKGY/story/](https://www.elfinanciero.cr.com/cables/gran-mi
funcionando-con/WZSAV5FZ2RES3L6DGC4YVFEKGY/story/)

287 Cárca Anón, p. 92102. *When will decree 2024 be published in La Gaceta?* Centro de Estudio para la Democracia. [https://cespad.
org.hn/en/cuando-se-publicara-en-la-gaceta-el-decreto-18
nacional-carlos-escaleras/](https://cespad.
org.hn/en/cuando-se-publicara-en-la-gaceta-el-decreto-18
nacional-carlos-escaleras/)

288 Hernán B. Ortiz.

of the national... This decree led to the announcement that the environmental permit for the project will not be renewed,²⁹⁰ and to two resolutions from the Honduran Institute of Geology and Mining (Inhgeomin) a company's mini²⁹¹h g a quard discioofnsc.i al interviewed fo that it is possible that these actions could lead to another lawsuit, without indicating whether or not this is infuencing the state's d



Demonstration for the freedom of jailed water Source: Juan Esquivel (FSAR)

Another possible threat from the mining sector de R. L. de C. A. S. (Agricasa) of Vulcan Materials Co an arbitration suit for almost \$2 billion dolla

289 Re N a c i d e l f e n s e d e r e a s e d h u m a n r e a c t i o n d u r a n t a n i n t e r v e n t o m e n t a l H u m a n r i g h t s d e f e n d e r s d u r i n g 2 0 2 4 D e c r e e 1 8 - 2 0 2 4 : A n a c h i e v e m e n t o f t h e c o m m u n i t a r i a s t r u g g l e t h a t d e f e n d s t h e c o m m o n s . <https://redefensorashn.red/decreto-18-2024-comunitaria>

290 A c c o r d i n g t o t h e m i n i s t e r i o d e l a o b r a y c o m m u n e p u b l i c a d e y 2 0 2 4 n h g e o m i n s o n h o t e d e n e w e a s t r i n i l n g c o n s e r v a d i o n e a i r e a r l o s E s c a l e r a s N a t i o n a l P a r k , o n e o f t w o m i n i n g c o n c e s s i o n e s h e l d b y L o s P i n a r e s . <https://x.com/guapinol/status/1811811299422068905>

291 P e r d o n (O J , 2 1 8 3 0 2 4) i n g a n p r o r r o g a s d e c o n c e s s i o n e s m i n e r a s e n T o c o a , c i t a n d o d e c r e t o 1 8 - 2 0 2 4 . r . i t e <https://criterio.hn/niegan-prorrogas-de-conces-decreto-18-2024>

292 B u a . (M a y 7 2 0 2 4) c o m m u n i t a r i a p u e r t o c o r t e s d e m a n e s t a t i o n e x p l o i t a c i o n ; G o v e r n m e n t r e s p o n d s w i t h r e p r e s s i o n . C o n t r a c o r r i e n t e . <https://contracorriente.red/2-comunidad-en-puerto-cortes-exige-cese-de-explotacion-min>

the expansion and continuity of its claim against Honduras could potentially arise from the recent community protests in Puerto Cortés that are protesting the negative effects on their homes and water sources, and the non-compliance with promises of benefits after the opening of an open-pit gravel quarry.

Since early May 2024 when community members from Brisas de Tramade began blocking roads between Puerto Cortés and San Pedro Sula, demanding that the company leave, Honduran authorities have carried out several inspections and imposed a temporary suspension of the company's operations. This process has reportedly precipitated visits to government offices from the company's lawyer to demand the withdrawal of the lawsuit, saying that any action against its operations is unfounded. It is unclear so far whether the company will be able to resume its operations.

4.5 Conclusions concerning the mafias

To conclude, there is a lot of awareness in Honduras about the de facto status of powerful Honduran families as well as the influence of foreign interests from the United States and International Financial Institutions such as the World Bank and others. It is also well known in the country how domestic investors in Honduras, enjoy privileged political and economic connections with which they may try to influence decisions made by the government of Honduras in order to extract natural resources.

This report analyzes in depth another exclusive investment strategy, whether with foreign or domestic capital, with which investors use arbitration claims to shield themselves against measures that affect their profits, or to speculate on possible gains. This is an urgent analysis due to the avalanche of lawsuits facing the country, which we view as a corporate assault against efforts to overcome the economic crisis.

The historical reality of exploitation and dispossession in Honduras since June 2009 with the installation of the narco-dictatorship and the further entrenchment of neoliberal policy. Previously resisted political and economic changes have been implemented.

293 CIAR Global (April 3, 2023). *Vulcan increased its arbitration claim against Mexico to U S \$9 billion.*

<https://ciarglobal.com/vulcan-aumento-su-reclamo-en-arbitraje>

294 BU A O b c i t .

E P a i (s . u . l . 1 1 2 0 2 4) a n e c e t o m e c e l a a u t o p i s t a d e P u e r t o C o r t é s a S a n P e d r o S u l a . <https://www.elpais.com/hn/amanece-tomada-la-autopista-de-puerto-cortes-a-san-pedro-sula>

<https://www.elpais.com/hn/amanece-tomada-la-autopista-de-puerto-cortes-a-san-pedro-sula>

privatization of the National Electric Energy of Public-Private Partnership (PPP) contracts for infrastructure and transportation projects. Perhaps the most emblematic of the r of the ZEDE concept as a libertarian dream and investments or free trade zones that seeks to cede territorial sovereignty to private companies.

4.5.1 The investment protection system: justice for people

Arbitration claims are made possible by the ex agreements, bilateral investment treaties, national allows foreign investors to bypass national courts and bring their claims against States directly in international investment arbitration a "supranational" mechanism: a system of "parallel ignores, and often overrules, national justice.

Indeed, the foreign investment protection system is asymmetrical and one-sided, as it is an exclusive tool for transnational i corruption, repression and lack of justice for affected communities, allows them to bring claims against sovereign states. At the s representatives, in an obscure manner and behind closed doors, to use the threat of potential lawsuits to try to influence the scope for public welfare and environmental protection

In Honduras, transnational corporations may gain access to sue the government through four legal instruments:

- 1 . Eight Bilateral Investment Treaties (BITs)
- 2 . Twelve free trade agreements (FTAs) including the United States-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR)
- 3 . The Law for the Promotion and Protection of I
- 4 . Contracts entered into by the state with foreign and domestic investors

Since 1999 Honduras has faced 19 claims, 15 of which are still pending; three were settled in favor of the investor and one was settled out of court. The sources of the claims have been BITs and FTAs, in three instances they have come via the National Investment Law, and six times via contract. They have all been brought at ICSID.

4.5.2 Mafa-style suits

We describe these lawsuits as 'mafa-style', given that, in general, plagued by irregularities and corruption, these investments were imposed against the will of the people or are harmful to the public interest, having been facilitated in the context of the Juan Orlando Hernandez (2014-2022). In many instances there are indirect links to criminal networks.

We argue that the claim brought by the Rosenthal family (Panama), initiated against Honduras in 2018 for "mafia-style" lawsuits because it reflects a dispute between the personal interests of former President Juan Orlando Hernandez and the public interest.

As of 2023, there have been fourteen other mafa-style lawsuits.

Most of the nineteen claims against Honduras have been filed by Latin American investors, three of which are from industrialized countries: four are from the United States, three from Canada, and two from the United Kingdom.

The 2009 coup d'état and the imposition of the 2015 investment law have affected much of the population; similarly there have been important processes of resistance to investments that have brought claims against the state. Some of these lawsuits are also being brought against the people who rose up to resist harmful projects that were imposed through repression and in violation of human rights.

In six of the fifteen pending claims, there are affected communities and populations against these investments. Starting with the case of the island of Roátan, and also at the national level due to their importance of this matter for the entire country.

Despite threats and the criminalization of community members, local resistance persists

against the Los Prados solar energy project of and KLP - because of the impacts it on local wa environment. The investor group has brought two of US\$400 million under the National Investment influence renegotiations of these contracts, rat expansion of the project against their will.

The privatization of electricity distribution and collection of payments in the contract

with Empresa Energía Honduras (EEH) provoked n irregular and exorbitant electricity bills. Thi locked metal boxes over their energy meters or Now, Colombian investors are suing the country Trade Agreement between Colombia, El Salvador,

Residents from San Pedro Sula and El Progreso rose up for 421 days against the payment

of tolls on highways (originally built with tax that the privatization of mobility would have o completed only 10% of the works agreed to in the contract, Honduran authorities allowed the company to go ahead with the colle became known as a "monument to corruption". The and a group of fnanciers, including JP Morgan funds, are now suing the state for \$180 millio contract over this project that failed in 2018.

Brothers Ernesto and Juan Carlos Argüello, of M DR for \$100 million plus \$2 million in "moral o known as "Los Castaños de Choloma" that was p workers in the Sula Valley as a safe place for to become homeowners when they could not other this project, Ernesto Argüello cultivated a rep dedicated to building socially responsible ho complain that the housing was of poor quality and, after tropical storms Eta and Iota in 2020, the investors failed to make the insuranc struggling to take control of the management of

Given highly unfavorable terms for the Hondurans, many of these projects have provoked, these investments have little legitimacy in the country. It is unfair that the Honduran people have to "compensate" transnational corporations for investments that investors are the ones who really owe a debt to the country. The known amounts claimed in the fifteen pending lawsuits represent 40% of Honduras' GDP in 2023, or 40% of the approved public investment budget in 2024.

The exorbitant sum of almost US\$11 billion that the government is equivalent to almost three times the approved Public Investment Plan for 2024. Próspera's claim against Honduras does not meet the legal requirements that were first established, but nonetheless filed this lawsuit to pressure the government.

Beyond the amounts of money being claimed, these lawsuits represent policy decisions in the country, a phenomenon known as "litigation by force," for example, seeking to slow down efforts of the government to dismantle the ZEDE legal framework and to stop the Electric Energy Company and to retake control of the company. They represent an impediment against an effective response to demands from affected communities who reject the energy and mining projects that threaten their dispossession and displacement. The logic of the companies is that if the communities affected do not allow them to do business, they demand multi-million-dollar compensation from the country - not only for what they have already invested, albeit irregularly, but also for their expected future investments. For all these reasons, it is necessary to consider

5. Exits from the transnational investment protection system

As we have seen throughout this report, the problem with investor-state dispute settlement (ISDS) mechanisms is not that they allow investors to sue, but that they are one cog in a set of clauses that are cited by investors at the time of making claims (see section 3.1). In other words, the rights are granted to investors; when an investor believes that the state has violated that one of these rights (or privileges), then it may use ISDS to bring a multi-million claim appears in an international arbitration center. If these rights were not in laws and contracts, claims could not be brought. Before the 1990s, claims would have to be brought in national courts, as was the case until the 1990s, when BITs and FTAs began to proliferate.

In February 2024, Honduras announced its decision to withdraw from ICSID, which took effect in August 2024. This is undoubtedly an important development for a center that most foreign investors globally turn to for resolution of their claims. If not part of ICSID, this does not mean that investors will necessarily stop suing the country in international arbitration.

As we previously explained, Honduras is today entrenched in the system of privileges for foreign investment. The Law for the Promotion and Protection of Investments (LPI) grants the state and companies (such as PPPs) the right to expropriate investments. We have seen that the "protection" given to investments through laws and contracts is the state's promise not to engage in: indirect expropriation; fair and equitable treatment; prohibition of performance requirements; prohibition of restrictions to capital movements; full protection and security.

5.1. Successful system review strategies

There are numerous strategies that states can use to reform their investment treaties and ISDS. A number of governments are

5.1.1. Ecuador: Comprehensive Audit Commission on Investment Treaties and the Arbitration System

The 2008 Constitution of Ecuador establishes in treaties or instruments may be entered into in which the Ecuadorian State cedes sovereign jurisdiction to international arbitration in contractual or commercial disputes between the State and private natural or juridical persons. The government of Rafael Correa withdrew from the ICSID Convention and in 2010 began the process of denouncing investment agreements.

In 2013, the Government commissioned the creation of a Commission on Investment Treaties and the Arbitration System. This commission was comprised of experts from various fields: economics, law, political science, and social sciences. The final report reached compelling conclusions that pushed the Government to terminate the remaining BITs in force in Ecuador.

An audit committee is essential, among other reasons:

- It highlights the commitments associated with the signing of the treaties and reveals, using empirical evidence, whether these were fulfilled.
- It exposes how ISDS operates based on the domestic legal system, the claims, including law firms and arbitrators.
- It demonstrates how foreign investors have perceived the effects of investments and their impacts on the host country.
- It reveals the impacts of the arbitration system, including the pressure that lawsuits put on state coffers.

5.1.2 South Africa: Termination of BITs

In 2009, South Africa issued a critical assessment report of its investment policy which showed the imbalance between investor rights and public interest. In 2015 the Investment Protection Act was enacted, which excludes Fair and Equitable Treatment and replaces ISDS arbitration with state-to-state arbitration and a requirement to

first exhaust local remedies. This law was rejected, but it was assumed that it would scare away investments, but it did not. The Act also established the Government's intent to negotiate new BITs only for compelling economic and political reasons. In the process of debating the new law, the South African government decided to unilaterally terminate BITs with nine European Union countries, including the United Kingdom and Germany. South Africa denounced a total of 295 BITs. The new law did not scare off foreign investment. The BIT with Germany was cancelled, South Africa's main foreign investor has not only stayed, but has exponentially expanded its investment.

5.1.3. Brazil and India: Development of their own treaty model

Some of the countries that denounced their BITs decided at the same time to develop new models of investment protection treaties. Two of the most innovative models of investment treaty are Brazil's Cooperation and Facilitation Agreements (ICFTAs) with Mexico, Chile, and Colombia, and India's Cooperation and Facilitation Investment Promotion Agreements (CFIPAs) with several African countries. In 2015, India initiated the revision of its BIT model.

In January 2020, both countries signed a mutual ACFI, providing a combination of two of the most innovative treaty models developed in the world. The ACFTA has novel features, it maintains clauses similar to the ICFTAs, such as Most-Favored-Nation Treatment, albeit more limited, and the ISDS mechanism, since it creates a specific mechanism with several steps for conciliation between the parties. The ACFTA also incorporates the figures of national focal points and provides a clear path for how this dispute settlement mechanism will be implemented.

It should be clarified that Brazil's BITs, which were signed in the early 1990s, were not ratified. India, which has been the eleventh largest recipient of Foreign Direct Investment (FDI) in the world since 2015, is now the largest in Latin America and the Caribbean. The Netherlands, the United States, Germany, and France are the largest FDI recipients in the world.

295 Business & Technology 2020 launches a new R235 million facility in South Africa. <https://businesstech.co.za/news/motoring/613495/vw-launches-new->

As for India, in 2016 it terminated fifty-seven remaining ones, bringing²⁹⁶ This has not affected India from eighty-four being the fifth largest recipient of FDI in the steadily since it rescinded the new and²⁹⁷ dies Bil's 201

5.1.4 El Salvador: modification or revocation **Law and transparency regarding claims**

In 2009, Canadian mining company Pacific Rim (Australian company OceanaGold) sued El Salvador permit to operate a gold mine for which it never arbitration claim gave rise to a local, national and international campaign that, among other victories, led to the modification of the possible. This experience offers key lessons through the documentation in the context of ongoing arbitration between communities, social organizations, diverse defend sovereignty, territories and natural assets.

The struggle was carried out at²⁹⁸ national level (National Roundtable²⁹⁹ and international level (International Allies against Metal Mining in El Salvador)³⁰⁰ during the seven years that the arbitration lasted. The effectiveness of this broad coordination case in favor of the Salvadoran state, and helped clear the way for the population to finally achieve approval of the law prohibiting

In 2013, the Salvadoran government reformed Article to prevent foreign investors from³⁰¹ In the case of Pacific Rim Mining, the company originally filed DR and El Salvador's Investment Law. Pacific Rim Cayman Islands to the state of Nevada in the U.S.

296 Times of India (March 16, 2023). India asks 69 countries to renegotiate bilateral investment pacts. <https://www.bilaterals.org/?india-asks-68-countries-bilateral-pacts>.

297 Transnational Institute (TNI) (2012). Public utilities in the spotlight; the impacts of the investment protection regime on the public utilities sector in Latin America and the Caribbean. <https://www.tni.org/es/publicaciones/C3B3n/servicios-publicos-en-la-mi-rama>.

298 Separation of social and economic development in the main local organizations that confronted mining in the country since the beginning of the century: Ades Santa Marta. Facebook. https://www.facebook.com/adesantamarta1/?locale=es_ES.

299 See website of the National Alliance in El Salvador. <http://www.aliaminera.org/sv/>.

300 See website of International Allies against Mining in El Salvador. <https://www.stopesmining.org/>.

301 See three former legislative documents (2013). https://www.asamblea.gob.sv/sites/default/files/documento_legislativo.pdf.

CAFTA-DR, but the ICSID tribunal refused jurisdiction. The same arbitration panel allowed the case to proceed.

Another essential element of the success of the struggle in El Salvador was that Salvadoran organizations gained the support of the state. During the course of the arbitration the Ministry of Economy published the documentation from the arbitration process. This allowed Salvadoran citizens to expose the falsehoods, misrepresentations and distortions made by the company during the process - in particular that the company had never complied with requirements in the mining law to obtain an environmental permit. A significant communication between mobilized communities and the state's legal defense team, represented by the state attorney general, was also published.

A host of unexpected alliances were also established. These included the Catholic Church, cattle ranchers and the national oligarchy, who sympathized with concerns about the impacts of industrial gold mining, specifically the Lempa River. An information campaign about how mining would contaminate the country's water sources was also conducted. A public survey conducted by the Universidad Centroamericana (UCA) in San Salvador, which showed that 79.5% of the population was against mining, was also published.

Although the company lost and ultimately had to pay compensation fees, it was still a costly process with terrible human rights proceedings, four community activists were murdered, and the process to achieve a nationwide ban on metal mining had to be suspended while the lawsuit was ongoing to avoid giving the impression that the Salvadoran government was biased against mining and thereby put the arbitration process in jeopardy.

Finally, recognizing the intersection of local concerns and the unjust system of global investment protection was crucial to globalizing the struggle. Local organizations to become involved in a variety of ways. "Water is worth more than gold", and the focus on defending local gains in a country facing a severe water crisis was a key strategy. Grassroots organizations in the department of Chalatenango, diverse organizations and institutions in the capital San Salvador, and many organizations

around the world were able to campaign together of water, health and territory, as well as the struggle to protect the natural commons, against the imposition of corporate interests through investor-state arbitration in tribunals such as ICSID.

5.2 Recommendations for a sovereign future without ISDS

This report has shown that unrestricted protection of foreign investors has had, and continues to have, very damaging consequences in Honduras. When we began writing at the end of 2023, arbitration claims were rising. By the time we close this report in August 2024, claims have continued to rise.

It is urgent that Honduras eliminate the privileges it grants to investors, both in international treaties and in its national law. Honduras' withdrawal from ICSID is an important step, but it is important on all fronts: internationally to renegotiate investment treaties, as well as domestically, to reform the Law on Promotion and Protection of Investments of 2011.

The opacity of the investment protection system in Honduras is a major problem. Authorities must ensure transparency; the system is based on multiple irregularities contained in contracts signed immediately before the current administration must end. For this to happen, all information about investment claims should be made public.

Similarly, it is imperative that all legal actions taken against communities and social organizations for resisting and fighting against extractive projects, while guaranteeing respect for their rights to self-determination and economic, social, cultural and environmental rights. Communities have the right to demand the cancellation or non-renewal of permits and concessions that threaten their territories and livelihoods.

We propose to the people of Honduras to form a non-partisan national coalition against ISDS, where social movements and other sectors of society can share information, organize, and defend their communities from corporate interests. This coalition could gain support from global networks composed of international organizations that

also seek to stop ISDS and that would support the Honduran struggle against corporate impunity. There are many of us fighting on a global privilege.

A national coalition against the demands and power of transnational corporations is possible and necessary. Here we have shown that so. El Salvador's victories in this regard prove America, but on a global level. There are many Honduran organizations can add another milestone on the road to dismantling this unjust system that only benefits transnational investors. To Honduran governments current and future, we say: It requires a suite of public policies that head in the direction of greater sovereignty - rather than continuing to give control of the country. We recommend:

- Do not sign new FTAs, BITs or contracts with investors. If necessary, contrary, give primacy to international human rights, indigenous, environmental and labor treaties.
- Terminate existing BITs that contain ISDS. If it is not possible, it is imperative if a government's policies do not respect human, indigenous, labor and environmental rights.
- Begin the urgent process of reforming the 2011 Law for the Promotion and Protection of Investments.
- Ensure transparency of information about ongoing arbitration suits against Honduras, which would allow for the democratization of knowledge about the suits and enable the participation of affected populations.
- Make public all contracts with foreign and domestic investors, and have them cancelled or renegotiated as a matter of urgency, given that many of them were signed based on multiple irregularities.
- Strengthen national justice systems for the resolution of disputes. The national judicial system already exists: that is, for disputes with the State, not in international arbitration.

- Conduct a comprehensive citizen audit of all legal instruments containing investment protection and arbitration claims that takes into account their economic, social and environmental impacts .
 - Promote the active participation of the populations affected by projects involving foreign companies in such an audit, in accordance with their collective rights to self-determination, monitoring and evaluation of the
 - Suspend the possibility for investors to ISDS for the duration of the audit, and follow the recommendations of the audit once it is completed
 - Demand from counterparts the exclusion of ISDS from investment protection, and the substantive reduction of the rights of investors included in the investment chapters of such treaties
 - Actively support the creation of a Binding Treaty on Transnational Corporations and Human Rights being discussed at the United Nations
- transnational corporations in regards to economic, social, cultural and environmental rights .

Investor - state arbitration claims

Claimant(s)	Year the case was initiated	Investor country of origin	Treaty invoked	Administering institution	Case number	Result of the claim	Total amount claimed by the investor	Amount granted to the investor	Economic sector
Treaty - based claims									
X - Eñi or g S.L.	2024	Spain	Hondura s p a I n T	I C S I D	I C S I D Case No. A R B / 2 4 / 31	Pending	No Informa-tion		Electricity, gas, steam and air condition-ing supply
V í c M i o g u e S i z a r í a s	2024	El Salvador	C A F T A - D R I	I C S I D	I C S I D Case No. A R B / 2 4 / 32	Pending	No Informa-tion		Electricity, gas, steam and air condition-ing supply
E l é c t r i c a d e M e d e l l í n I n g e n i e r í a S e r v i c i o s S . A . S .	2024	Colombia	FTA between Colombia, El Salvador, Guatemala and Honduras	I C S I D	I C S I D Case No. A R B / 2 4 / 24	Pending	U S \$ 5 0 0 million		Electricity, gas, steam and air condition-ing supply
Fernando Paiz Andrade y Anabella Schloesser de León de Paiz	2023	Guatemala	C A F T A - D R I	I C S I D	I C S I D Case No. A R B / 2 3 / 43	Pending	U S \$ 1 6 0 million		Electricity, gas, steam and air condition-ing supply
Inversiones y Desarrollo Energéticos, S.A.	2023	Panama	FTA between Panama and Central America	I C S I D	I C S I D Case No. A R B / 2 3 / 40	Pending	U S \$ 2 0 0 million		Electricity, gas, steam and air condition-ing supply
Juan Carlos Argüello and Ernesto Argüello	2023	USA	C A F T A - D R I	I C S I D	I C S I D Case No. A R B / 2 3 / 17	Pending	U S \$ 1 0 0 million + U S \$ 2 million for moral damages		Construction
JLL Capital, S.A.P.I. de C.V.	2023	Mexico	FTA between Mexico, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua	I C S I D	I C S I D Case No. A R B / 2 3 / 3	Pending	U S \$ 3 8 0 million		Financial and insurance activities

Claimant(s)	Year the case was initiated	Investor country of origin	Treaty invoked	Administering institution	Case number	Result of the claim	Total amount claimed by the investor	Amount granted to the investor	Economic sector
Honduras Próspera Inc., S t o h a y s Development Company LLC, and Próspera Arbitration Center LLC.	2023	USA	C A F T A - D R I ; C S I D Agreement for Legal Stability and Investor Protection	I C S I D	I C S I D Case No. A R B / 2 3 / 2	Pending	U S \$ 1 0 . 7 7 5 billion		Real estate activities
Inversiones Continental (Panamá), S.A.	2018	Panama	FTA between Panama and Central America	I C S I D	I C S I D Case No. A R B / 1 8 / 4 0	Pending	U S \$ 1 1 billion		Financial and insurance activities
Gabourel Family Trust	2017	USA	H o n d u r a s U S A I T	n/A	n/d	D i s c o n t i n u e d . Agreement between parties	U S \$ 2 5 1 million	No information	Construction
Claims based in contracts and the Investment Law of 2011									
Operadora Portuaria Centroamericana, S.A. de C.V.	2 0 2 4	Honduras	Contract	I C S I D	I C S I D Case No. A R B / 2 4 / 3 3	Pending	No Information		Transportation
International Container Terminal Services Inc.	2 0 2 4	Philippines	Law for the Promotion and Protection of Investments	I C S I D	I C S I D Case No. A R B / 2 4 / 3 4	Pending	No Information		Transportation
Palmerola International Airport, S.A. de C.V.	2023	Honduras	Contract	I C S I D	I C S I D Case No. A R B / 2 3 / 4 2	Pending	U S \$ 1 0 million		Transportation
Norfund and KLP Norfund Investments AS	2023	Norway	Law for the Promotion and Protection of Investments	I C S I D	I C S I D Case No. A R B / 2 3 / 1 3	Pending	U S \$ 2 0 0 million		Electricity, gas, steam and air - c o n d i t i o n i n g supply

Claimant(s)	Year the case was initiated	Investor country of origin	Treaty invoked	Administering institution	Case number	Result of the claim	Total amount claimed by the investor	Amount granted to the investor	Economic sector
Scatec ASA	2023	Norway	Law for the Promotion and Protection of Investments	I C S I D	I C S I D Case No. A R B / 2 3 / 12	Pending	U S \$ 2 0 0 million		Electricity, gas, steam and air-conditioning supply
Autopistas del Atlántico, S.A. de C.V. y otros	2023	USA	Contract	I C S I D	I C S I D Case No. A R B / 2 3 / 10	Pending	U S \$ 1 7 9 . 4 million		Transportation
E I s a n e A	2009	Spain	Contract	I C S I D	I C S I D Case No. A R B / 0 9 / 14	Decided in favor of the investor	U S \$ 1 1 . 5 million	U S \$ 8 . 1 million	Transportation
Astaldi S.p.A.	2007	Italy	Contract	I C S I D	I C S I D Case No. A R B / 0 7 / 32	Decided in favor of the investor	U S \$ 5 . 5 million	U S \$ 5 . 3 million	Transportation
Astaldi S.p.A. and Columbus Latinoamericana de Construcciones S.A.	1999	Italy	Contract	I C S I D	I C S I D Case No. A R B / 9 9 / 18	Decided in favor of the investor	No Information	No Information	Transportation

List of acronyms

ACFI	Investment Cooperation and Facilitation Agreements (Acuerdos de Cooperación y Facilitación de Inversiones)
AgreCasa	Agregados del Caribe S. de R. L. de C. V.
ALOP	Latin American Association of Development Organizations (Asociación Latinoamericana de Organizaciones de Promoción)
PPP	Public-Private Partnership
ARCAH	Alternatives for Community and Environmental Revindication of Honduras (Alternativa de Reivindicación Comunitaria y Ambientalista de Honduras)
ASJ	Partnership for a More Just Society (Asociación para una Sociedad más Justa)
ATIC	Criminal Investigation Technical Agency (Agencia Técnica de Investigación Criminal)
BIT	Bilateral Investment Treaty
CAD	Central America for Dialogue (Centroamérica para el Diálogo)
C A F T A - D R	Free Trade Agreement between the United States, Central America and Dominican Republic
CAITISA	Comprehensive Audit Commission on Investment Treaties and the Ecuadorian Arbitration System (Comisión de Tratados de Inversión y el Sistema de Arbitraje de Ecuador)
CAMP	Committee for the Adoption of Best Practices (Comité para la Adopción de Mejores Prácticas)
CESPAD	Center for the Study of Democracy (Centro de Estudios para la Democracia)
CHAAC	Honduran Coalition for Citizen Action (Coalición Ciudadana)
CID	Mesoamerican Initiative on Trade, Integration and Sustainable Development (Iniciativa Mesoamericana de Comercio, Integración y Desarrollo Sostenible)
CNA	National Anti-Corruption Council (Consejo Nacional Anticorrupción)

CNRP	National Coordinating Committee of Popular National de Resistencia Popular)
COALIANZA	Commission for the Promotion of Public-Private Partnerships (Comisión para la Promoción de la Alianza Público-Privada)
COHEP	Honduran Private Enterprise Council (Consejo Privada)
COPINH	Civic Council of Popular and Indigenous Organizations of Honduras (Consejo Cívico de Organizaciones Populares)
EEH	Honduras Energy Company (Empresa Energética)
ENEE	National Electric Energy Company (Empresa Eléctrica)
ERIC-SJ	Reflection, Research and Communication Team (Equipo de Reflexión, Investigación y Comunicación)
EU	European Union
FETCCOP	Special Prosecutor's Office for Transparency and Corruption (Fiscalía Especial para la Lucha contra la Corrupción Pública)
FDI	Foreign Direct Investment
FNRP	National Front of Popular Resistance (Frente Popular)
FTA	Free Trade Agreement
IACHR	Inter-American Commission of Human Rights
ICSID	International Centre for Settlement of Investment Disputes
IDB	Inter-American Development Bank
IFC	International Finance Corporation
IMAG	Guaranteed Minimum Annual Income (Ingresos Garantizados)
IMF	International Monetary Fund
INE	National Statistics Institute (Instituto Nacional de Estadística)

Inhgeomin	Honduran Institute of Geology and Mining (Instituto Hondureño de Geología y Minería)
INPREMA	National Teachers' Welfare Institute (Instituto del Magisterio)
ISDS	Investor-State Dispute Settlement
LIBRE	Freedom and Refoundation Party (Partido Libertario)
MIGA	Multilateral Investment Guarantee Agency
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organization
OABI	Office for the Administration of Seized Assets (Oficina de Bienes Incautados)
OAS	Organization of American States
OFAC	Office of Foreign Assets Control
OFRANEH	Black Fraternal Organization of Honduras (Organización Fraternal Negra de Honduras)
PEMSA	Mesoamerica Power and Energy S.A. (Potencia Mesoamericana S.A.)
PGR	Attorney General's Office (Procuraduría General de la República)
PIA	Palmerola International Airport
RADDH	Network of Women Human Rights Defense Lawyers (Red de Defensoras de Derechos Humanos)
RED	Special Development Regions (Regiones Especiales de Desarrollo)
SAN	National Airport Service (Servicio Aeroportuario)
SERNA	Ministry of Energy, Natural Resources, Environment and Urban Planning (Ministerio de Energía, Recursos Naturales, Ambiente y Urbanismo)
STENEE	ENEE Workers Union (Sindicato de Trabajadores de ENEE)
UFERCO	Specialized Prosecutorial Unit against Corruption (Unidad Especializada de Fiscalización contra la Corrupción)

UN	United Nations
UNCITRAL	United Nations Commission on International
UNCTAD	United Nations Conference on Trade and D
UPOV	International Convention for the Protect
WB	World Bank
ZEDE	Employment and Economic Development Zone (Zona de Empleo y Desarrollo Económico)