

JOURNAL OF ANTI-CORRUPTION LAW

2022 Volume 6 Number 1 Pages 25 - 48

THE SHORT-LIVED STORY OF MEXICO'S SPECIAL ECONOMIC ZONES: AN ANTI-CORRUPTION CANCELLATION OR A POLITICAL DISCOURSE?

Gerardo Centeno Garcia*

ABSTRACT

This article analyses the cancellation of the 2016 Special Economic Zones (SEZs), a project that sought to increase the economic competitiveness of selected territories by attracting foreign direct investments (FDIs) through tax benefits and logistical platform commitments; being abrogated in 2019 and relocated to the 10 SEZs supporting the Trans-Isthmic Railroad in 2021 (TIR-SEZs). The paper discusses that, under the façade of anti-corruption, the current President of Mexico (2018-2024) is continuing neoliberal practices; the same ones he has called to accountability for being prone to corruption. This piece uses the theoretical bases purported by Brabazon's Neoliberal Legal, the Law & Economics and Law & Development scholarships to assess the presence of neoliberal concepts in both the previous SEZs and the TIR-SEZs' legal framework. After a brief review of foreign SEZs' experiences, the author identifies legislative patterns that might foster corruption and human rights violations within the TIR-SEZ; specially since it applies the neoliberal-ridden 2016's Federal Law of Special Economic Zones (FLSEZ). The text concludes that the current presidential administration would do better at preventing neoliberal corruption through the abrogation of the current Mexican Constitution (alongside the FLSEZ) and establishing clear constitutional principles that aid with the fight against corruption and prescinding of the anti-corruption political discourse altogether.

1. INTRODUCTION

Mexicans elected Andres Manuel Lopez Obrador (AMLO) as their new president for the 2018-2024 term. On 1 December 2018, he declared that he would carry a profound and radical transformation, aiming at correcting 36 years of "neoliberal disaster".¹ On 17 March 2019, he

* Independent Researcher, gcent096@uottawa.ca

1 TeleSUR TV (2018) "AMLO: El modelo neoliberal en México, un desastre", available at <https://www.youtube.com/watch?v=9Ywln9VQImI> (visited 23 September 2021).

presented his National Development Plan, stating that the document abolished “the neoliberal model and its economic policy of anti-popular looting and surrender [to elites’ pretensions]”.² AMLO deems neoliberalism and corruption as equal evils. Throughout his administration, these concepts have been central in the political discourse, as the main obstacles for Mexican development. Under this setting, AMLO effectively vilifies previous corrupt neoliberal administrations.

In 2018, AMLO attained 53.19 per cent of the votes, the widest victory over the closest competitor in 30 years.³ As of December 2021, AMLO is the World’s second most popular president reaching an approval rating of 69 per cent.⁴ This massive popularity gives AMLO the power to set a clear political discourse through a daily-morning press conference known as *La Mañanera*, setting the daily political agenda while informing of government activities.⁵

From the presidential pulpit, AMLO targets political rivals that, according to him, represent the previous neoliberal regimes and corrupt bureaucrats, effectively discursively vilifying his adversaries and their initiatives. AMLO used this discourse to enact a decree that cancelled President Peña Nieto’s ten Special Economic Zones (SEZs) settled within the territories of the ten poorest states in the country.

AMLO’s decree abrogated the decrees that created seven of the ten SEZs that have received legal frameworks to start operating. However, the Federal Law of Special Economic Zones (FLSEZ) was kept in force.⁶ In 2021, the President announced that the region of the Isthmus of Tehuantepec will open ten SEZs supporting the Trans-Isthmic Railroad (TIR) project, allocating similar aids than

2 Secretariat of the Interior (2019) “Presidente López Obrador declara formalmente fin del modelo neoliberal y su política económica”, available at <https://www.gob.mx/presidencia/prensa/presidente-lopez-obrador-declara-formalmente-fin-del-modelo-neoliberal-y-su-politica-economica-lo-que-hagamos-sera-inspiracion-para-otros-pueblos> (visited 23 September 2021).

3 Animal Politico (2018) “AMLO obtuvo el triunfo más holgado en 30 años, pero no se rompió récord de participación”, available at <https://www.animalpolitico.com/2018/07/participacion-ciudadana-elecciones-2018/> (visited 23 September 2021).

4 Morning Consult (2021) “Global Leader Approval Ratings Tracker”, available at <https://morningconsult.com/form/global-leader-approval/#section-58> (visited 21 December 2021).

5 Villanueva UR & Villanueva C (2020) “The power to transform? Mexico’s ‘Fourth Transformation’ under President Andrés Manuel López Obrador” 17(6) *Globalizations* 1027 – 1042 at 1031 – 1033.

6 SEGOB (2019a) “DECRETO por el que se abrogan los diversos de Declaratorias de las Zonas Económicas Especiales de Puerto Chiapas, de Coatzacoalcos, de Lázaro Cárdenas-La Unión, de Progreso, de Salina Cruz, de Campeche y de Tabasco publicados el 29 de septiembre y 19 de diciembre, ambos de 2017, y el 18 de abril de 2018”, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5579365&fecha=19/11/2019 (visited 25 August 2022).

the ones offered in the FLSEZ.⁷ Many people saw this measure as contradictory and a possible threat of further capital accumulation through illegitimate land grabbing.⁸

SEZs have been a controversial but popular investment attraction measure. In 2019, there were some 5 400 SEZs in 147 countries, an increase of 4 000 in five years.⁹ According to the United Nations Conference on Trade and Development, only 13 per cent of these SEZs are fully utilised/occupied, and 47 per cent of them were somewhat / heavily underutilised,¹⁰ resonating with AMLO's statement of illegitimate purchase of land.¹¹ Moreover, violations against human rights are a constant in SEZs throughout the World.¹² SEZs have jeopardised land rights and acquisition in Southeast Asia, India and Madagascar.¹³ Low wages in the Dominican Republic were a catalyst to its SEZs.¹⁴ There is, as discussed, an abandonment of gender issues while developing and implementing SEZs' strategies across the globe.¹⁵

Finally, we have seen that the SEZs can be attractive to corruption and organised crime.¹⁶ In the Golden Triangle Economic Zone in Northern Laos "the Zhao Wei crime network engages in an array of horrendous illicit activities, including human trafficking and child prostitution, drug trafficking and wildlife trafficking. US officials are also monitoring the zone for money laundering".¹⁷ The Free Zone of Curacao had a variant on the Black-Market Peso Exchange in

-
- 7 Lozano LF (22 March 2021) "AMLO revivirá Zonas Económicas Especiales en el Tren del Istmo" *Forbes*, available at <https://www.forbes.com.mx/amlo-revivira-zonas-economicas-especiales-en-el-tren-del-istmo/> (visited 23 September 2021).
- 8 Martín R (2018) "AMLO: fin o continuidad del neoliberalismo", available at <https://www.sinembargo.mx/10-12-2018/3508845> (visited 21 December 2021).
- 9 UNCTAD (2019) "World Investment Report 2019" at 128, available at https://unctad.org/system/files/official-document/wir2019_en.pdf#page=143 (visited 23 September 2021).
- 10 UNCTAD (2019) at 129.
- 11 Jimenez G (2019) "'Nunca ayudaron', AMLO confirma desaparición de Zonas Económicas Especiales" *El Sol de Mexico*, available at <https://www.elsoldemexico.com.mx/finanzas/amlo-confirma-desaparicion-de-zonas-economicas-especiales-3368913.html> (visited 23 September 2021).
- 12 Cotula L & Mouan L (2021) "Labour Rights in Special Economic Zones: Between Unilateralism and Transnational Law Diffusion" 24(2) *Journal of International Economic Law* 1 – 20 at 1 – 20.
- 13 Cotula L & Mouan L (2018) "Special Economic Zones: Engines of Development or Sites of Exploitation?", available at <https://pubs.iied.org/17481iied> (visited 25 August 2022).
- 14 Akinci G & Farole T (2011) *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* Washington DC: World Bank at 15.
- 15 Tejani S (2011) "The Gender Dimension of Special Economic Zones" in Gokhan A & Farole T (eds) *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* Washington DC: World Bank at 247 – 282
- 16 Serlet T (2019) "The 7 Deadly Sins Of Special Economic Zones", available at <https://www.adrianoplegroup.com/post/the-7-deadly-sins-of-special-economic-zones> (visited 23 September 2021).
- 17 Mouangkham B (2018) "Lao Casino Operator Rejects U.S. 'Transnational Criminal Organization' Designation", available at <https://www.rfa.org/english/news/laos/lao-zhaowei-02052018145742.html> (visited 25 August 2022).

which the Curacao-based business operated as a currency exchanger for drug traffickers.¹⁸ Moreover, these areas have seen money-laundering on terrorist activities.¹⁹

Despite all these problems, the author of this piece questions: Did AMLO have valid proof that corruption existed in the now-defunct SEZs, or was the sole objective to replace them with his own political-economic project (the TIR)? This paper makes a brief literature review on the history of SEZs across the globe and in Mexico, highlighting their success in attracting foreign direct investments (FDIs) but their human rights omissions as well. Moreover, under the concept of neoliberal legality (among other legal scholarships), this study assesses the opportunities of corruption contained within the Mexican legal framework. In addition, the author picks instances of the Mexican Law that fosters neoliberal tools over human rights of the people working in the SEZs, justified with concepts such as “legal certainty” and the “Rule of Law”.

2. AMLO VS NEOLIBERALISM: HOW DID THE SEZS BECAME CORRUPT WITHOUT EVER STARTING OPERATIONS

AMLO defined his government as a change of political regime, mentioning that the rampant corruption in Mexico is the result of the political regime that precedes it and that it is going to change with his administration: “The hallmark of neoliberalism is corruption.”²⁰

Through that statement, Zárate argues, corruption and privatisation are effectively synonymised at a discursive level.²¹ With said platform, the President can directly revert previous administrations’ projects with the excuse of them being milestones of corruption and neoliberalism. On the other hand, AMLO’s administration can continue and start new projects that are substantially neoliberal (the Mayan Train and the Dos Bocas Refinery, among others).²² During a *Mañanera*, AMLO said: “[The SEZs project] was supposed to help, but it never did ... [the previous government] did business, they bought land and wasted resources, they didn’t benefit [Mexicans] at all.”²³

18 Financial Action Task Force (FATF) (2010) “Money Laundering vulnerabilities of Free Trade Zones” at 22, available at <http://www.fatf-gafi.org/media/fatf/documents/reports/ml%20vulnerabilities%20of%20free%20trade%20zones.pdf> (visited 25 August 2022).

19 FATF (2010) at 15 – 26.

20 Zárate RA (2020) “López Obrador y la corrupción como ‘neoliberalismo’” in Valdez A, Rujano Silva ML, et al (eds) *La Gramática de la Corrupción. Análisis de políticas públicas y alternativas de solución*, Guadalajara: Universidad de Guadalajara at 85.

21 Zárate (2020) at 86.

22 Martín (2018).

23 Jimenez(2019).

From this statement, it seems that the main issue detected by the President was that the SEZs were, in fact, corrupt. However, from the cancellation decree's text, there is no literal mention of this being a legal binding motive behind the repeal of the SEZs.²⁴ In fact, it seems that the declaration was fairly political.

2.1 The political background during the enactment of the FLSEZ

The FLSEZ's initiative was presented by President Enrique Peña Nieto (EPN), later approved in 2016, one of his worst years in terms of popularity.²⁵ Timidly and belatedly, the approval of the creative decrees of the zones were announced in 2017 and 2018. The project never attained political and economic traction, leading to its cancellation by the "non-industry-policy" AMLO's government.²⁶ Due to the EPN's administration reputation, AMLO easily adjectivised the SEZs as corrupt.

EPN's administration was the most corrupt in Mexico's modern history.²⁷ Ten governors have been detained and judged under corruption charges since EPN's election.²⁸ Aside from corruption, the EPN administration was prone to neoliberalism. This term saw the Mexican Energy Market liberalised to private actors,²⁹ an increase of illegal outsourcing in the country,³⁰ depriving a high percentage of workers of their social security,³¹ and reforming the Mexican Constitution (CPEUM) 28 times to grant constitutional protection to neoliberal projects known as the

24 SEGOB (2019a).

25 Daen A (11 August 2016) "Popularidad de Peña registra una nueva caída: solo 2 de cada 10 aprueban su gobierno" *Animal Político*, available at <https://www.animalpolitico.com/2016/08/baja-la-popularidad-del-presidente-pena-nieto/> (visited 23 September 2021).

26 Garry S, Moreno-Brid JC et al (2021) "Mexico's Industrial Policy: a syncopated dance at the national and regional levels" in Veltmeyer H & Zayago LE (eds) *Buen Vivir and the Challenges to Capitalism in Latin America*, London: Routledge at 92 – 112.

27 La Octava (6 August 2020) "Santiago Nieto: El sexenio de Peña Nieto ha sido el más corrupto de la historia moderna", available at https://laoctava.com/videos/2020/08/06/santiago-nieto-el-sexenio-de-pena-nieto-ha-sido-el-mas-corrup-to-de-la-historia-moderna# (visited 23 September 2021).

28 El Universal (14 November 2020) "La foto "maldita" con Peña Nieto: los gobernadores presos, acusados, señalados", available at <https://www.eluniversal.com.mx/estados/la-foto-maldita-con-pena-nieto-los-gobernadores-presos-acusados-senalados> (visited 23 September 2021).

29 Alpizar-Castro I & Rodriguez-Monroy C (2016) "Review of Mexico's energy reform in 2013: Background, analysis of the reform and reactions" 58 *Renewable and Sustainable Energy Reviews* 725 – 736 at 725.

30 Miranda Millan FJ (2020) "Gobierno de Peña Nieto dejó crecer outsourcing ilegal: STPS", available at <https://noticieros.televisa.com/ultimas-noticias/enrique-pena-nieto-crecio-outsourcing-ilegal/> (visited 23 September 2021).

31 Bueno Rodriguez L & Rangel LG (2016) "Outsourcing en el México Neoliberal: La construcción de la creciente precariedad" at 16 – 18, available at <http://www.relats.org/documentos/CILAS.cilas.Bueno.pdf> (visited 25 August 2022).

Structural Reforms.³² With a President with such a “neoliberal” and “corrupt” résumé, it was easy for the AMLO administration to highlight the previous presidential projects with said adjectives.

2.2 The survival of the FLSEZ and its application on the Interoceanic Corridor of the Isthmus of Tehuantepec's Industrial Zones (TIR-SEZs)

As mentioned in the introduction of this article, AMLO implied that the EPN's SEZs were developed with the sole purpose of creating illegitimate businesses.³³ Not long after their cancellation, AMLO decreed the creation of the Interoceanic Corridor of the Isthmus of Tehuantepec's Industrial Zones (TIR-SEZs).³⁴ Similarly to EPN's SEZs,³⁵ the TIR-SEZs are an industrial project intended to bring economic development to the Mexican South (the poorest region in the country) through the generation of wealth.³⁶

Though the strategy is the same, the TIR-SEZs will be geographically positioned along the rails of the TIR. The Tehuantepec Isthmus is the narrowest zone in the country (215 km) and it has been subjected to multiple development projects by previous presidential administrations,³⁷ which could lessen the amount of infrastructure public investments required to activate the zone.

However, due to the survival of the FLSEZ, the project seems like the same horse but ridden by another rider. Villanueva and Villanueva pointed out that AMLO's 4T transformation avoids determining the role of the state to bring about greater economic progress for the country.³⁸ Moreover, other political analysts (opposition included) have adjectivised AMLO's public works as “pharaonic”.³⁹ The usage of the previous SEZ's legal framework alongside the implementation

32 Secretariat of the Interior (SEGOB) (2013) “DECRETO por el que se reforman los párrafos primero y último del artículo 25, así como el párrafo primero y tercero del apartado A del artículo 26 de la Constitución Política de los Estados Unidos Mexicanos”, available at https://www.dof.gob.mx/nota_detalle.php?codigo=5301381&fecha=05/06/2013 (visited 23 September 2021).

33 Jimenez (2019).

34 SEGOB (2019b) “DECRETO por el que se crea el organismo público descentralizado, con personalidad jurídica y patrimonio propio, no sectorizado, denominado Corredor Interoceánico del Istmo de Tehuantepec”, available at https://dof.gob.mx/nota_detalle.php?codigo=5562774&fecha=14/06/2019 (visited 25 September 2021).

35 Torres Fragoso J (2020) “Las zonas económicas especiales en México: de política pública a proyecto derogado” 17(34) *Hallazgos* 157 – 183 at 176.

36 Perez Alvarado T (2020) “Posibilidades de empleo y desarrollo en el Corredor Interoceánico del Istmo de Tehuantepec” 4 *Prospectus* 62 – 67 at 62.

37 Lamothe Zavaleta C (2020) “El desafío del Corredor Interoceánico del Istmo de Tehuantepec ” 4 *Prospectus* 50 – 54 at 50 – 52.

38 Villanueva Ulfgard & Villanueva (2020) at 1034.

39 Santos T (25 October 2021) “Recursos para obras ‘faraónicas’ de AMLO deben replantearse para apoyar a municipios” *Milenio*, available at <https://www.milenio.com/politica/obras-faraonicas-amlo-replantearse-apoyar-municipios> (visited 6 January 2022).

of the wealth creation strategy might indicate that AMLO intends to reuse them in public works publicised by him during the campaign. Nonetheless, there are certain tweaks contained in the new legal framework presented by AMLO's administration that can contradict what Villanueva and Villanueva purported.

The abrogation decree states "based on articles 25 and 26 of the CPEUM ... *and 6, 8 and 13 of the Federal Law of Special Economic Zones ...*",⁴⁰ the SEZs were thereby cancelled.

As highlighted, the FLSEZ was used to cancel the seven SEZs. This raises the question: Why AMLO's government did not abrogate this law entirely if the SEZs are contrary to the new economic project? The abrogation decree continues:

That [article 25 of the CPEUM], establishes that the State will plan, conduct, coordinate and orient the national economic activity, and carry out the regulation and promotion of the activities demanded by the general interest within the framework of the freedoms granted by the Constitution itself ... [t]he present Administration has made evident the need to reorient the development model, resize and relocate the priorities of public investment ... the National Development Plan 2019-2024 includes fundamental regional projects such as: ... *the Program for the Development of the Isthmus of Tehuantepec ...*, with the which is intended, among other assumptions, to promote economic growth and sustainable development; *create free zones to attract investment from the private sector and promote land use in the region.*⁴¹

The message is clear: State-run SEZs. In this sense, the vilification of EPN's SEZs materialised in legislation since AMLO's administration would use the same strategy, excluding private parties from administration tasks as the FLSEZ intended. This can be seen in the lapidary article 6's last paragraph: "The Governing Board may invite to its sessions, *with voice but without vote*, people whose activities are related to the purpose of the [TIR]"⁴²

However, the fact that the FLSEZ was not abrogated is a clear sign that, even if the ten SEZs of the EPN's administration are cancelled, the TIR would use the strategies included in the FLSEZ's catalogue.

As already stated, there is no mention of corruption within the text of the decree. To date, there has not been any formal criminal complaints or administrative proceedings regarding wrongdoings inside the seven cancelled SEZs.

40 SEGOB (2019a).

41 SEGOB (2019a).

42 SEGOB (2019b).

After the abrogation of the SEZs, the former Federal Authority for the Development of SEZs, Gerardo Gutierrez Candiani, stated that the public investments to make the SEZs work were minimum, and primary required for infrastructure. However, he added that the Mexican state would have to execute 242 infrastructure projects in the next 20 years. Of the latter, 67 per cent could be executed by the business sector, in addition, he added, that there was no obligation, nor in the coordination agreements, that the government invest, since it was intended that private investment flow.⁴³ Clearly, and as Torres Fragoso mentions, the SEZs were incompatible to the new economic project voted in 2018, hence, their abrogation.⁴⁴

3. NEOLIBERAL LEGALITY: A FAUX “RULE OF LAW” THAT FAVOURS THE FREE MARKET

The FLSEZ and even the CPEUM are full of concepts favouring investors, even in disregard of human rights and at the presence of corruption. Moreover, the FLSEZ purports a heavily bureaucratized administration with direct participation from private parties in decision-making processes. This situation fits perfectly in within the neoliberal legality scope.

The neoliberal state extolls the Rule of Law as the individual freedoms field.⁴⁵ Political and social issues are formulated in legal terms, later taking place at a constitutional level.⁴⁶ To some, sustaining the Rule of Law as a pillar of any democratic society is to cement colonialist values within the nation's project of the forming entity.⁴⁷ Flores, while arguing that the CPEUM should be reformed to allow the Rule of Law to be used as a defence to protect people's rights, abound on this discussion by stating:

[I]n a world characterized by great division and inequality, the application and protection of the law rarely achieves the above mentioned democratic, and rule of law, objectives without those ambitions being compromised.⁴⁸

Flores' assessment is relevant for the second most unequal country in Latin America, where the top 1 per cent of the population captures 46.9 per cent of the average national income.⁴⁹ During

43 Torres Fragoso (2020) at 176.

44 Torres Fragoso (2020) at 174 – 176.

45 Harvey D (2005) *A Brief History of Neoliberalism* Oxford: Oxford University Press at 64.

46 Kaluszynski M (2007) “The judicialization of society and politics” at 7, available at <https://halshs.archives-ouvertes.fr/halshs-00134742/document> (visited 25 August 2022).

47 Rajah J (2017) “Rule of Law Lineages: Heroes, Coffins, and Custom” 13(3) *Law, Culture and the Humanities* 369 – 382 at 371.

48 Flores I (2012) “Reconstituting Constitutions – Institutions and Culture: The Mexican Constitution and NAFTA: Human Rights vis-à-vis Commerce” 17 *Florida Journal of International Law* 693 – 718 at 698.

49 World Inequality Base (2020) “Top 1% net personal wealth share”, available at https://wid.world/world/#shweal_p99p100_z/WO;AR;BR;CU;CL;HN;MX/last/eu/k/p/yearly/s/false/21.9125/60/curve/false/country (visited 25 September 2021).

the adequation of the Mexican legal framework to the NAFTA's conditions, the legal protection of FDIs, private property, prevailed over the right of the workers and citizens.

Hence, neoliberal legality. By elevating formal equality (that all are equal before the law), capitalism created a "guise of an impartial, determinate, and humane rule of law".⁵⁰ The alleged neutrality of the law covers legal instruments under the idea of "public interest", the individual over the collective, the latter seen as an obstacle.⁵¹ It individualises corporations,⁵² by sanctifying concepts in which they have "equality" regarding other legally individualised corporations.⁵³

To protect these individualities, the importance of their rights is elevated to those of humans only in the political discourse, since the financial power allowing them to bring cases before courts might saturate the judicial dockets and displace actual human rights cases.⁵⁴ Therefore, neoliberal interests rely on legislatures to manipulate the Rule of Law to a state in which their businesses can thrive.

In terms of neoliberal legality, the modification the CPEUM's articles 28 and 27, allowed the privatisation of the railway sector⁵⁵ and the privatisation of agrarian lands,⁵⁶ respectively. 2013's *Reforma Energetica* allowed private companies to participate within the Mexican Energy Sector.⁵⁷ Neoliberalism twisted the spirit of the once "socialist constitution".

For the author of this piece, the fact that the Mexican legal framework is prone to favour neoliberal interests does not necessarily equate it with corruption; as is AMLO's position.⁵⁸ However, it is worth asking:

3.1 Is neoliberalism prone to corruption?

Gerring and Thacker demonstrated a strong consistent statistical correlation between trade, investment, and regulatory policies and political corruption across a sample that includes most

50 Brabazon H (2016) *Neoliberal Legality. Understanding the Role of Law in the Neoliberal Project* London: Routledge at 7.

51 Hayek F (2008) *The Road to Serfdom: Text and Documents: The Definitive Edition* London: Routledge at 83 – 90.

52 Harvey (2005) at 64.

53 Brabazon (2016) at 21.

54 Scolnicov A (2013) "Lifelike and Lifeless in Law: Do Corporations Have Human Rights?" 13 *University of Cambridge Faculty of Law Research Paper* 1 – 26 at 25.

55 Leyva Peña MA & Briguet Loami Lopez M (2016) "Neoliberalismo y sindicalismo mexicano aletargado" 200 *El Cotidiano* 49 – 59 at 59, available at <https://www.redalyc.org/articulo.oa?id=32548630005> (visited 25 August 2022).

56 Rouquié A (2015) "México y el TLCAN, veinte años después" 55(2) *Foro Internacional* 433 – 453 at 436.

57 Alpizar-Castro & Rodríguez-Monroy (2016) at 725.

58 Zárata Ruiz (2020) at 85 – 103.

sovereign nation-states in the world.⁵⁹ However, as they point out, this does not literally translate into neoliberalism as meaning that political-economic projects are prone to corruption. Their study is no vindication nor refutation of neoliberalism, but a qualification. Given that the methodology used by these scholars was a statistical analysis of 181 countries in the mid- to late 1990s to test the general hypothesis that market-oriented, neoliberal economic policies are associated with lower levels of political corruption,⁶⁰ they could not find a direct correlation between neoliberalism and public sector political corruption; in fact, they state that neoliberal jurisdictions have lower levels of corruption due to heavily regulated investment and trade environments.⁶¹

Rather, the author subscribes to the idea purported by Ackerman, who establishes that neoliberalist corruption is a metamorphosis from the Keynesian state-corruption; exemplified through the increasing numbers of bribes for “privileged access to the spoils of privatizing hitherto state-owned enterprises, and of a growing market of government contracts for outsourced state services”.⁶² Gerring and Thacker’s exercises did not concentrate on particular jurisdictions, making their exercise excellent in macro-levels but reductionist in terms of the political history of the studied countries. The author of this piece invites the readers to circumscribe the impacts of neoliberalism on a particular country.

Ackerman invites us to think of AMLO’s administration as a “posneoliberal” government instead of an “antineoliberalism” one, emphasising the formulation of policies to, paradoxically, alleviate the effects of neoliberalism itself.⁶³ This statement highly resonates with the fact that the FLSEZ is still alive and that the TIR-SEZs offer similar tax incentives to private investments in the delimited areas. Therefore, the discursive affront raised by AMLO is a mere vilification of previous presidential administrations.

3.1.1 *Anti-corruption as a political discourse*

This strategy was not initially applied by AMLO. Brazil witnessed the neoliberal agenda taking over the corruption discourse to incarcerate former President Lula da Silva, the frontrunner in 2018’s presidential elections. Lima and Chaloub extensively explain why Jair Bolsonaro’s victory cannot be explained without addressing this anti-corruption discursive ruse, arousing neoliberal critiques

59 Gerring J & Thacker SC (2005) “Do Neoliberal Policies Deter Political Corruption?” 59(1) *International Organization* 233 – 254 at 250.

60 Gerring & Thacker (2005) at 234.

61 Gerring & Thacker (2005) at 233.

62 Ackerman EF (2019) “Neoliberalism and Corruption in Mexico: A Wolf in Sheep’s Clothing” 51(2) *NACLA Report on the Americas* 174 – 179 at 176.

63 Ackerman EF (2021) “Posneoliberalismo realmente existente en México”, available at <http://www.politicaygobierno.cide.edu/index.php/pyg/article/view/1557/1060> (visited 25 August 2022).

against the Brazilian state and popularising anti-state politics to favour the private sector.⁶⁴ Putzel has denounced this phenomenon as well, stating that neoliberal actors vilify the state and adjectivised it as prone to rent seeking and corruption, as well as “free riding” and inefficiency.⁶⁵ He cites Jair Bolsonaro and Philippines’s President, Rodrigo Duterte, as prime examples of successful vilifiers of the state.⁶⁶ In a more intense way, this discourse was utilised by former President Donald Trump by lambasting the public service through accusations of the existence of a “deep state” comprised by corrupt politicians (generally, opposition).⁶⁷

AMLO’s discourse (and administration) holds similarities with Duterte’s tirade against *trapos* (acronym for “traditional politicians” and a Tagalog word meaning “old rag”). Both presidents have implemented universalist social policies, militarisation of public safety and the reuse of existing neoliberal policies;⁶⁸ although AMLO did not use Duterte’s strategy of summarily killing criminals.⁶⁹

To effectively tackle the neoliberal legality inserted into the Mexican legal framework, the AMLO administration must dissipate, as Villanueva and Villanueva purport,⁷⁰ its redefinition regarding the role of the state in terms of wealth generation. Moreover, the 4T should reassure itself as anti-corrupt through the enhancement or rehashing of the current anti-corruption law ruling the country, not making them synonyms with the intention of vilifying political rivals.

Once this is settled, the current administration could put in legislative effort and identify the existing constitutional principles that enable the existence of propitious legal environments for neoliberalist practices to be constitutionally defended. With that in mind, the terms under which neoliberal legality justifies its constitutionality come from these two following legal scholarships:

-
- 64 Lima PL & Chaloub J (2021) “Corruption and Neoliberalism in Contemporary Brazil” in Bianchi B, Chaloub J et al (eds) *Democracy and Brazil. Collapse and Regression* Abingdon: Routledge Studies in Latin American Politics at 78 – 79.
- 65 Putzel J (2020) “The ‘Populist’ Right Challenge to Neoliberalism: Social Policy between a Rock and a Hard Place” 51(2) *Development and Change* 418 – 441 at 423.
- 66 Putzel (2020) at 428 – 429.
- 67 Moynihan D (2020) “Populism and the Deep State: The Attack on Public Service Under Trump” in Bauer MW, Peter BG et al *Democratic Backsliding and Public Administration. How Populists in Government Transform State Bureaucracies* Cambridge: Cambridge University Press at 1 – 11.
- 68 Putzel (2020) at 430 – 432.
- 69 Putzel (2020) at 430.
- 70 Villanueva & Villanueva (2020) at 1034.

3.2 Law and Economics (L&E)

The Mexican legal framework borrows from a scholarship called L&E, which sees the law as a means to implement economic calculations,⁷¹ elevating them to constituents of “public order” (public interest).

In Mexico (as determined by the National Supreme Court of Justice), public order is a constant criterion to be determined by the judge (not by a statute, time, manner nor place) in each specific case, having in mind “the essential conditions for the harmonious development of the community, that is, the minimum rules of social coexistence”.⁷²

The definition is in juxtaposition with the L&E scholarship, “since the calculation of private interests cannot be referred to the incalculable value of a categorical imperative, as represented by the law”.⁷³ By inserting these concepts in the Constitution and claiming that they are of “public order”, L&E neoliberalist legislations open the possibility to defend failed economic strategies before the courts regardless of their socio-economic results. With the legal text by their side, the capitalist sector slowly appropriated the Rule of Law as well. This can be seen in recent suspensions against AMLO’s legislative initiatives given by the Economic Competition Tribunal.⁷⁴

This was done through precise political calculations, and there is no definitive proof of illegitimate lobbying behind the modifications of the CPEUM for this to happen. As this piece is being written, several criminal trials against politicians that approved the so-called *Reforma Energetica* are being conducted.⁷⁵ To determine the legal status of the legislators that modified the CPEUM with neoliberal concepts is beyond the scope of this text. Nonetheless, it is worth saying that said modifications were drafted in a way in which private actors could continue to exploit natural resources in the name of development.

Through the L&E scope, the FLSEZ had to be drafted in a way in which the economic “success” occurred within the *Maquilas* (to re-employ workers affected by the cancellation of the *Plan Braceros*, regardless of the quality (and even absence) of the benefits provided to them (livable

71 Brown S & Alain S (2017) *Governance by Numbers: The Making of a Legal Model of Allegiance* Oxford: Hart Publishing at 122.

72 National Supreme Court of Justice (2005) *Tesis. Registro digital: 177560*, available at <https://sjf2.scjn.gob.mx/detalle/tesis/177560><https://sjf2.scjn.gob.mx/detalle/tesis/177560> (visited 25 August 2022).

73 Brown & Alain (2017) at 121.

74 Arellano C (11 March 2021) “Frena un juez la reforma eléctrica” *LaJornada*, available at <https://www.jornada.com.mx/notas/2021/03/11/politica/frena-un-juez-la-reforma-electrica/> (visited 26 September 2021).

75 Forbes (2020b) “Di millones de pesos en sobornos a panistas, incluido Anaya: Lozoya”, available at <https://www.forbes.com.mx/politica-lozoya-dio-6-mdp-a-campana-de-ricardo-anaya-con-dinero-de-odebrecht/> (visited 7 September 2021).

salaries, social security, healthcare, among others)).⁷⁶ Moreover, it had to be drafted in a way that the economic successes in foreign SEZs could be replicated within the Mexican SEZs. To attain it, promoters of neoliberal legality purport the defence of “Legal Certainty”, a common concept within the Law and Development (L&D) scholarship. This concept can be found throughout the FLSEZ’s dictum, and on more than one occasion it has been deemed as a crucial factor to protect investors.⁷⁷

3.3 “Legal Certainty” and the “Rule of Law” under the Law and Development Scholarship

Legal certainty was key among Common Law jurisdictions to develop their commercial relationships.⁷⁸ The World Bank is convinced that strong financial markets are propelling economic development,⁷⁹ hardly attainable through civil law-style institution-building (codification, regulation and public enforcement), allegedly not as effective as Common Law.⁸⁰

The L&D scholarship flourished in the United States in the 1960s. Under it:

The legal system was seen as a purposive entity drawing on the power of the state, disciplined by its own norms, which will affect human behaviour. Law is described as a potent instrument for achieving social welfare ... The development of legal institutions was thus seen as a way of curbing arbitrary government and would become a powerful tool for planners in enhancing social welfare.⁸¹

These ideas were spread through “the engagement of academic scholars from leading US law schools in development assistance programmes funded by the US government”.⁸² Law reform projects started to be suggested to governments, especially in Africa and Latin America, through the United States Agency for International Development and the Ford Foundation.⁸³ The L&D scholarship took those initially reluctant regions by storm, proposing United States’ legal

76 Mercier (2005) at 2 – 3.

77 Chamber of Congresspeople (COC) (2016) “DECRETO por el que se expide la Ley Federal de Zonas Económicas Especiales y se adiciona un quinto párrafo al artículo 9 de la Ley General de Bienes Nacionales” at 4, 84, 105, 163, 167, 311, 350 – 351, 465, available at http://www.diputados.gob.mx/sedia/biblio/prog_leg/Prog_leg_LXIII/061_DOF_01jun16.pdf (visited 24 September 2021).

78 Roe MJ (2006) “Legal Origins, Politics, and Modern Stock Markets” 120(2) *Harvard Law Review* 460 – 527 at 479.

79 Roe (2006) at 464.

80 Stephen FH (2018) *Law and Development: An Institutional Critique* UK: Edward Elgar at 57 – 59.

81 Stephen (2018) at 7.

82 Stephen (2018) at 7.

83 Krever (2011) 294 – 295.

institutions to be inserted in their national legal frameworks to foster development and generate legal certainty. This process is known as “legal transplantation”.⁸⁴

3.3.1 “Legal transplantation”: One of the reasons behind the FLSEZ

In terms of the guidelines proposed by the World Bank, legal transplantation has been predominantly in terms of Common Law protection to creditors and investors, using the multi-cited LaPorta, Lopez-de Silanes, Shleifer and Vishny approach to assert that countries that are not receptive to legal transplantations suffer costly losses to their Gross National Product.⁸⁵

Legal transplants are frequent when it comes to drafting SEZ legislation around the world. It occurred in Vietnam, where public data revealed that the government received constant technical support by the China Centre for Special Economic Zones Research at Shenzhen University.⁸⁶ China itself was pressured by the signing of the Trans-Pacific Partnership and Trans-Atlantic Trade and Investment Partnership between their neighbours and the United States, pressuring them to transition their SEZs towards a more law-based socio-political and economic model.⁸⁷ Earlier on, China transplanted Hong Kong law into its SEZs in Guangdong and Shenzhen.⁸⁸

The FLSEZ's explanatory statement constantly reminds that previous international experiences have had success in FDI attraction. With said alibi, the legislators included the 40-year SEZ operator permit.⁸⁹ There is no literature on multi-decade length SEZ operator permits, and the explanatory document does not specify on any SEZ in which this was the case, which makes the author think that, during the legislative process, fictitious international best practices were inserted within the FLSEZ.

The abstract concept of “best international experiences and practices” appears throughout the FLSEZ's text, without specifying the procedure to determine what is considered a “best international experience and practice”. There was an intention to create a Best Practices Council, in charge of selecting the best practices to be applied within SEZs. However, this recommendation was made by the Movement of National Regeneration (MORENA), AMLO's party, one of the main opponents of the neoliberal parties before AMLO's election.⁹⁰ Sadly, this idea was not included in

84 Krever (2011) 289 – 290, 297, 316.

85 Stephen (2018) at 61 – 63.

86 Erie MS & Do HH (2021) “Law and Development Minus Legal Transplants: The Example of China in Vietnam” 8(2) *Asian Journal of Law and Society* 1 – 30 at 12, 15.

87 Li J & Zuozhen L (2018) “The Rule of Law Experiment in China's Pilot Free Trade Zones: The Problems and Prospects of Introducing Hong Kong Law into Guangdong” 10 *Hague Journal on the Rule of Law* 341 – 364 at 343.

88 Li & Zuozhen (2018) at 342.

89 COC (2016) at 95 – 96.

90 COC (2016) at 222.

the text of the FLSEZs. Instead, the three levels of government (federal, state, and municipal) have the discretion to determine which practices are the best;⁹¹ disregarding if said practices fit with the legal and cultural baggage of Mexico.

4. THE SEZ ACROSS THE GLOBE

What type of situations can be replicated through a legal transplantation strategy aiming at the goals purported by both the L&D and L&E scholarships? There are other facts (aside from the intended economic goals) that might be drawn into the TIR-SEZs through this lens.

As mentioned in the introduction, there are an approximate 5 400 SEZs worldwide.⁹² Most SEZs have four main characteristics: geo-delimited areas, multiple companies, zone management facility or administration, and a government land policy. They provide zone-exclusive infrastructure, customs regimes, regulatory regimes and fiscal regimes (capital freedoms, tax incentives and subsidies).⁹³

From the 148 existing SEZ-regulating laws in 2019, 68 aimed at attaining “Quantitative Growth” (attracting investment, promoting trade, increasing exports, or creating jobs), 57 sought “Dynamic Objectives” (innovation, industrial upgrading, skills development, economic diversification, and structural change, as well as integration into value chains), and 23 “Socio-economic Objectives” (sustainable development, the quality of employment or environmental protection); the FLSEZ being in this last category. The UNCTAD reported that gender issues have been ignored as a target.⁹⁴

The benefits awarded to companies who invest in a SEZ are varied, but fiscal incentives and special customs regimes are almost a *sine qua non* aid among them; with 98 and 94 of the SEZ-regulating laws stipulating them as a possibility within the SEZ's area.⁹⁵ In general terms, the SEZs have been successful to capture FDIs, especially in developing countries in comparison to developed ones as the latest UNCTAD's report shows.⁹⁶ However, there are experiences in which the lack of

91 COC (2016) at 476 – 477.

92 UNCTAD (2019) at 128.

93 Buba J (2017) “Special Economic Zones an Operational Review of Their Impacts” at 11 – 13, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/29054/P154708-12-07-2017-1512640006382.pdf> (visited 25 August 2022).

94 UNCTAD (2019) at 165

95 UNCTAD (2019) at 166

96 UNCTAD (2019) at 212 – 215.

transparency complicates the determination on the success rate attained by these strategies, inter alia, the Latvian case.⁹⁷

Legal planning is required to have a successful SEZ. Highly bureaucratized zones might be prone to corruption. This was the case in 1990s Russia, where the legal environment after its 2005 anti-corruption reform reduced the zones' productivity.⁹⁸

SEZs have had an illustrious run at attracting investments (and corrupt and illicit activities), but a lack-luster one at protecting human rights (labour rights, in particular). It is understood from the motives stated that in the FLSEZ initiative the prime objective of the law was to attract FDIs within the SEZs to palliate poverty; without ever acknowledging the constant of human rights violations occurred within them throughout the world (let alone the corruption issues).

In this sense: was the Mexican Legal Framework prone to allow corruption within the SEZs and, moreover, is it possible that it could occur within the TIR-SEZs?

5. THE MEXICAN LEGAL FRAMEWORK

5.1 The FLSEZ

The FLSEZ's explanatory statement mentioned that there was sufficient empirical evidence pointing out that other SEZs were the catalysts needed for economic growth and welfare of the population to occur in Southern Mexico.⁹⁹ It pretended to close the development gaps between the Southern and Northern Mexican states, arguing that "the per capita Gross Domestic Product of the southern states grew at one seventh of the rate observed in the northern border and Bajío regions (47% vs. 7% during the period 1980-2013)".¹⁰⁰

To determine the regions in which a SEZ was to be installed, the document utilises neoliberal concepts such as competitiveness and productivity.¹⁰¹ For these two conditions to occur, the plan was to attract FDIs through: a) tax incentives (a standard of every other SEZ in the world); and b) legal certainty.¹⁰² Although not explicitly mentioned, the intent of this legal certainty aspect was to replicate economic characteristics that led other international SEZs to success; a clear example of the L&E scholarship.

97 Gulbis I (2018) "Foreign Direct Investment and Special Economic Zones in Latvia" 6(1) *Baltic Journal of Real Estate Economics and Construction Management* 240 – 252 at 249 – 250.

98 Moberg L (2014) "The Political Economy of Special Economic Zones" 11(1) *Journal of Institutional Economics* 1 – 25 at 176 – 177.

99 COC (2016) at 70, 230.

100 COC (2016) at 75 – 76.

101 COC (2016) at 5 – 10.

102 COC (2016) at 262.

We have mentioned that the SEZs have shown worrisome eases to human rights violations¹⁰³ and corruption.¹⁰⁴ Despite this, the legislators considered it pertinent to allow investors to defend their rights before administrative instances (inter alia, the Federal Tribunal of Administrative Justice), aiming to display legal certainty that would not affect FDIs attraction.¹⁰⁵

There is a worrying observation within the dictum of the FLSEZ:

Although it is true that the human rights and guarantees provided for in the Constitution and international treaties must be applied unrestrictedly in the Special Economic Zones, in order to send a message of greater legal certainty to national and foreign investment...¹⁰⁶

This is an observation over article 26 FLSEZ, which establishes the procedure to revoke or cancel an administration permit, stating that this is a possibility when there are reiterated breaches that jeopardise security within the SEZ. The drafting of this paragraph is worrisome since it purports that government intervention (for permit revocation or cancellation) will be solely permitted after reiterated breaches and omissions by the Integral Administrator.¹⁰⁷ It is almost like human rights are deemed obstacles for the correct functioning of the SEZs.

“Legal certainty” is a common suggestion among the promoters of globalised neoliberal economies. The World Bank, for example, has been adamant in promoting legal certainty to have a due process in arbitration in Indonesia,¹⁰⁸ which triggered a massive land registering in said country.¹⁰⁹ However, the rise of the “good governance” discourse in the 1990s demanded the exaltation of the Rule of Law (which comprises “legal certainty”) as an item of “facilitation of utility maximizing exchange and optimal market allocation”.¹¹⁰ “Legal certainty” is just a synonym of “predictability” under investment law.¹¹¹

103 Cotula & Mouan (2021) at 1 – 20.

104 Serlet (2019).

105 COC (2016) at 105, 111, 262.

106 COC (2016) at 262.

107 Integral Administrator: The moral person or parastatal entity that, based on a Permit or Assignment, acts as developer-operator of the Zone.

108 Pouget S (2013) “Arbitrating and Mediating Disputes Benchmarking Arbitration and Mediation Regimes for Commercial Disputes Related to Foreign Direct Investment” at 3, 14, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16849/WPS6632.pdf?sequence=1&isAllowed=y> (visited 25 August 2022).

109 Gellert PK (2019) “Neoliberalism and altered state developmentalism in the twenty-first century extractive regime of Indonesia” 16(6) *Globalizations* 894 – 918 at 910.

110 Krever T (2011) “The Legal Turn in Late Development Theory: The Rule of Law and the World Bank’s Development Model” 52(1) *Harvard International Law Journal* 287 – 319 at 313.

111 Maxeiner JR (2008) “Some Realism about Legal Certainty in the Globalization of the Rule of Law” 31(1) *Houston Journal of International Law* 27 – 46 at 30.

In Mexican politics, “Legal certainty” has been used by business chambers to attack AMLO’s administration (inter alia, the American Chamber of Commerce Mexico¹¹² and the Mexican Institute of Financial Executives).¹¹³ During the presidency of AMLO, the alleged departure of neoliberalism caused constant activities inside the Legislative power, hence, legal uncertainty. Despite this, FDIs in Mexico grew 15 per cent in the first quarter of 2021.¹¹⁴

Why did Mexican legislators put special emphasis on “Legal certainty” but none on the negative impact that the SEZs might have had on human rights and transparency? Judging from the drafting of the dictum (“Although it is true that the human rights”), it seems that the protection of the investments made within the SEZs were higher in the priority list in comparison to the rights of those who were to be working inside of them.

5.1.1 Discretionary power in the FLSEZ

Another worrisome aspect contained in the FLSEZ and that could impregnate the functioning of the TIR-SEZs with corruption is the excessive discretionary power contained in its letters. What is discretionary power? Bejar Rivera states that:

The discretionary power ... differs from a regulated act, [granting more freedom] to the public official to dictate and execute administrative measures; while the [first] establish as a parameter [for official actions], [giving] a reasonable margin of freedom to act in the specific case, according to a series of criteria.¹¹⁵

The FLSEZ has this concept within its tax incentives granting system. Article 14 states the following:

*[A]dditional incentives and support will be established ... to promote the generation of capital and jobs, the development of economic and social infrastructure(...), and the productivity and competitiveness of the Zones.*¹¹⁶

112 Usla H (2021) “Empresas estadounidenses necesitan certeza jurídica para invertir en el país: Amcham México”, available at <https://www.elfinanciero.com.mx/nacional/empresas-estadounidenses-necesitan-certeza-juridica-para-invertir-en-el-pais-amcham-mexico/> (visited 24 September 2021).

113 Rodriguez S (2020) “Falta de certeza jurídica, principal limitante para inversión extranjera: IMEF”, available at <https://www.milenio.com/negocios/inversion-extranjera-falta-certeza-juridica-imef> (visited 24 September 2021).

114 Culell JM (2020) “La inversión extranjera directa en México crece un 15% en el primer trimestre y marca un récord”, available at <https://elpais.com/mexico/2021-05-21/la-inversion-extranjera-directa-en-mexico-crece-un-15-en-el-primer-trimestre-y-marca-un-record.html> (visited 24 September 2021).

115 Bejar Rivera LJ (2011) “El Control de la discrecionalidad en el Derecho Mexicano” 45 *Ars Iuris* 193 – 210, at 195.

116 COC (2016) at 479.

Again, the presence of abstract neoliberal promises (jobs, development and productivity) opens the possibility for more awards to companies within a SEZ at the discretion of the Integral Administrator, which could lead further harm to Mexican workers rights, as it happens in the *Maquilas*.¹¹⁷

5.1.2 Lax anti-corruption controls within the FLSEZ

Sadly, there are no specific processes to prevent corruption within the SEZs other than the timid article 45:

All procedures for granting, executing, and complying with Permits, Assignments or Authorizations, will be subject to the applicable legal provisions regarding the fight against corruption and administrative responsibilities. The action of the public servants ... will be subject to the constitutional principles of legality, honesty, loyalty, impartiality, and efficiency.¹¹⁸

Under the FLSEZ, corruption within a SEZ would not have been a cause for cancellation of any SEZs permits. The abrogation decree could have tied both speeches in its text (as it implied with neoliberalism),¹¹⁹ but it would have had the legal duty to prove the presence of corruption due to the lax article 45.

5.2 The TIR decree

This decree establishes the creation of the TIR authority, a decentralised public body whose purpose is to implement a logistics platform in the Ports of Coatzacoalcos, Veracruz de Ignacio de la Llave and Salina Cruz, and their interconnection by rail.¹²⁰

Per article 5 of the TIR decree, the administration of the SEZs belongs to the Governing Board of the TIR authority and the General Director. Differently from the FLSEZ, the TIR decree establishes that private parties are not allowed to get Integral Administrator permits. The Governing Board is conformed, inter alia, by the Secretariat of Finance and Public Credit (SHCP), and the Tax Administration Service (SAT);¹²¹ the two main tax authorities in Mexico.

117 Mercier D (2005) "La industria maquiladora de exportación mexicana hace 40 años" 14(1-2) *Revista Galega de Economía* 1 – 17 at 1 – 8.

118 COC (2016) at 491 – 492.

119 "The present Administration has made evident the need to reorient the development model, resize and relocate the priorities of public investment". See SEGOB (2019a).

120 SEGOB (2019a).

121 SEGOB (2019b).

The participation of private parties, per article 1 and 11, must be in terms of contributing to national economic development (under the terms stipulated, inter alia, in the National Development Plan) and would undergo into the scrutiny of the General Director, who would be able to create collaboration agreements between public institutions and the private parties to fulfill the objectives of the TIR's SEZs.¹²²

We can see that the previous SEZs were cancelled due to their incompatibility with the new economic project presented by AMLO. The decision to exclude private parties from decision-making processes is in clear contradiction with Villanueva and Villanueva; at least with regards to the TIR-SEZs. However, these state-controlled SEZs are still an attempt of wealth generation to solve poverty, nay, another project based on trickle-down economics. Unless the present administration creates state-owned corporations to capture the capital generated by the TIR-SEZs, there are no guarantees that said resources will be distributed and / or used to palliate poverty of people living in the Tehuantepec Isthmus (taking into consideration that the project stipulates tax gifts to companies investing in the zone).

5.2.1 Discretionary power in the TIR decree

The decree avoids an abuse of discretionary power by establishing that the TIR authority, per article 4, can only “promote before the competent authorities the granting of incentives to achieve the development of [TIR]”. It is unclear who would be the competent authorities to award said stimulus. However, as it was mentioned, the TIR authority is itself comprised by several federal authorities, the SHCP and SAT among them. This opens the possibility of having a collegiate body who will determine the pertinence of the TIR authority's request.

5.2.2 A neoliberal project? The lack of a parastatal handling created capital in the TIR-SEZS

Since AMLO's abrogation decree, there has not been any reform or new laws initiatives regarding the SEZs or the FLSEZ.¹²³ Moreover, the FLSEZ was not itself abrogated. However, the decree does create the TIR authority, in charge of the operation of the area, but its participation is limited to administrative proceedings.

The TIR's decree does mention the Federal Law of Parastatal Entities as the applicable law within the TIR's SEZ. Mexico has respectable experience regarding parastatal entities. Among their biggest, we have *Petroleos Mexicanos* (one of the biggest oil companies in the World) and the Federal Electricity Commission.¹²⁴ Therefore, the TIR's SEZs would not be lawless, *per se*.

122 SEGOB (2019b).

123 COC (2021) “Iniciativas”, available at http://gaceta.diputados.gob.mx/gp_iniciativas.html (visited 25 September 2021).

124 SEGOB (2020) “RELACIÓN de entidades paraestatales de la Administración Pública Federal”, available at

However, this itself exposes the TIR's SEZs to corruption since the parastatal sector is fickle to wrongdoings, a fact that led to the privatisation of many of them in the 1980s and 1990s.¹²⁵

AMLO's government has been reluctant to modify the CPEUM during the first part of the presidency, an anomaly if we compared it with the two previous presidents, Felipe Calderon and EPN, who passed 110¹²⁶ and 155¹²⁷ modifications to the CPEUM, respectively. AMLO pretends to run a non-neoliberal government with a CPEUM ridden by neoliberal concepts (ie, Economic competition (article 28, fourteenth paragraph), and Investment as a driver of development (article 25, first paragraph)). This strategy weds the market with the state and makes the price system a guarantee of freedom.¹²⁸

In theory, capital-capturing parastatal entities should be the definitive measure to practically erase any similarities between the TIR-SEZs and the previous ones. However, the tax incentives would lose their attractiveness if such measure was to be implemented in the zone. When it comes to the TIR-SEZs as a poverty palliative economic project, the author agrees with the undefinition purported by Villanueva and Villanueva.¹²⁹

5.2.3 High volumes of bureaucracy

As discussed, highly bureaucratized SEZs are susceptible to corruption.¹³⁰ Both SEZs' laws allow a considerable amount of government intervention, with FLSEZ requiring a coordination agreement between the three levels of government in which their responsibilities are discretionally set.¹³¹ However, by taking away administrative power from private parties, the TIR decree subjects the activities within the SEZs to public scrutiny instead of direct private interests.

Nonetheless, it is important to count with authorities within the SEZs that address corruption in a rapid manner, and on that, the TIR decree lacks direct involvement. Within the text of this

https://www.dof.gob.mx/nota_detalle.php?codigo=5598392&fecha=14/08/2020 (visited 25 September 2021).

125 Gasca Zamora J (1988) "Privatización de la empresa pública en México 1983-1988" 41(42) *Momento Económico* 22 – 25 at 24.

126 Chavez V (2014) "Calderón logró un récord: 110 ajustes a la Constitución", available at <https://www.elfinanciero.com.mx/politica/calderon-logro-un-record-de-110-ajustes-a-la-constitucion/> (visited 25 September).

127 Senate of the Republic (2018) "La Constitución Política de México es una de las más reformadas en el mundo, señala el IBD", available at <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/42439-la-constitucion-politica-de-mexico-es-una-de-las-mas-reformadas-en-el-mundo-senala-el-ibd.html> (visited 25 September 2021).

128 Davies W (2014) *The Limits of Neoliberalism: Authority, Sovereignty and the Logic of Competition* New York: SAGE Publications Ltd at 25 – 27, 86.

129 Villanueva Ulfgard & Villanueva (2020) at 1034.

130 Moberg (2014) at 176 – 177.

131 COC (2016) at 476.

document, there is not one mention of the word “corruption”. Moreover, it is notable the absence of the Public Function Secretariat, in charge of the fight against corruption in Mexico.¹³² Therefore, although far from neoliberal control, the TIR-SEZs are still hugely susceptible to corruption even within this public governance setting.

AMLO has stated that:

There is no corruption above, but we have not finished with official banditry. The government was rotten in everything: in the works, surcharges, purchases, luxuries. I think that's the main task, to get it over with. I am sure that it will be eradicated, but we want the example to reach states and municipalities.¹³³

When it comes to anti-corruption law, AMLO's administration has proven to have little interest in legislating to reduce space for corruption to happen. Instead, the current administration advocates for the application of the existing statutes to prevent corruption. This "Preach by example" motto has had a vast impact as a political discourse but, as the President himself admits, wrongdoings still occur in lower ranks of the Federal administration (“we have not finished with official banditry”). Many corruption scandals have occurred within the first three-years of AMLO's administration¹³⁴ which leads to the assumption that the example is not enough, let alone an acceptable public administration standard. Major revisions are ought to be done to effectively tackle corruption within the TIR-SEZs, and a good starting point could be the redrafting of several neoliberal corruption-enabling concepts plaguing its current legal framework.

6. CONCLUSIONS

Were the cancelled SEZs susceptible to corruption? Due to the legal transplantation nature of the FLSEZ and the lack of anti-corruption measures within its text, the author considers this was a possibility. As demonstrated through the literature review on SEZs across the globe, these projects are prone to held corruption and illegal activities, and the workers inside of them are vulnerable to have their human rights violated.

132 SEGOB (2019c) “PROGRAMA Nacional de Combate a la Corrupción y a la Impunidad, y de Mejora de la Gestión Pública 2019-2024”, available at https://www.dof.gob.mx/nota_detalle.php?codigo=5570984&fecha=30/08/2019 (visited 25 September 2021).

133 Forbes (2020a) “‘Ya no hay corrupción arriba’, asegura López Obrador con pañuelo blanco”, available at <https://www.forbes.com.mx/politica-ya-no-hay-corrupcion-arriba-asegura-lopez-obrador-con-panuelo-blanco/> (visited 7 January 2022).

134 La Silla Rota (2021) “Los 36 casos de corrupción que le han explotado a la 4T”, available at <https://lasillarota.com/nacion/los-36-casos-de-corrupcion-que-le-han-explotado-a-la-4t/552632> (visited 7 January 2021).

It is patent that the SEZs' project had, as every other legal transplantation in the country's past, the intention to insert legal figures alien to Mexican legal culture and reality and, as the L&E scholarship purports, to replicate the economic results (quantitatively at least) occurred in other countries' SEZs.

Thirty-six years of neoliberalist policies have been proven ineffective to mitigate the poverty in Mexico. The SEZs were another project with said characteristics that would be in question since day one if it was not because the EPN's administration deprived them from the political pomp. Moreover, it is clear, from the initiative to the FLSEZ itself, that FDIs attraction had prevalence over the human rights of the workers of the zone. The insertion of neoliberal concepts with the hope of portraying "legal certainty" to possible FDIs (as purported by the L&D scholarship) and their elevation to the constitutional level (L&E purports the Law as a platform to maximize to tot up maximised individual utilities),¹³⁵ allow their defence before courts as values of public interest (paradoxically, regardless of the effectiveness as a public policy). With said alibi, any measures taken to attract FDIs could be seen as of public interest, and wrongdoings proper of SEZs would have been ignored or dealt with under the scope of avoiding the reduction of the SEZs' productivity as it happened in the Russian case.¹³⁶

However, the reality is that those violations and corruption cases abroad occurred while the SEZs were in operation. In Mexico, this was not the case, since the SEZs never got to operate, and no permits were granted to any investors or administrators. In other words, there is no legal evidence of wrongdoings happening within the SEZs in any level (federal, local nor municipal) since, as the abrogation decree states, none of the governments made productive public investments and urban equipment for SEZ development.¹³⁷ Why did AMLO accused corruption as one of the main causes to cancel the SEZs?

If AMLO would have branded the SEZs solely as a "neoliberal failure" without recurring to his anti-corruption discourse, the TIR-SEZs would be in a paradoxical (nay, contradictory) conjuncture. Therefore, by signaling the cancelled SEZs as corrupt, the political message allows him to replicate the strategy (with the twist of giving the TIR's administration to the General Director and the Governing Board) without running the risk of being criticised of being inconsistent. The cancellation of the previous is deemed a political message since, as mentioned, there has not been material evidence of corruption occurring within the previous SEZs.

AMLO's vilifying strategy through the abuse of the corruption discourse could trivialise the fight against corruption in the country. This "combat myth" is not enough to correct the flaws of the

135 Brown & Alain (2017) at 132.

136 Moberg (2014) at 176 – 177.

137 SEGOB (2019c).

Mexican neoliberal state. Expurgation of neoliberal concepts from the CPEUM's text is a more efficient manner to combat neoliberalism and corruption but, due to MORENA's electoral results this past June, AMLO does not have enough votes in the Legislative power to modify the CPEUM.¹³⁸ If AMLO wants to shift the Mexican neoliberal state, the CPEUM should be rewritten (following the Chilean referendum example), and he should stop discursively vilifying political rivals and their neoliberal projects and, instead, start to counter said projects with thorough public policy; substantially turning his administration into the "anti-neoliberal" rehash that he promised through the 2018's presidential campaign.

138 Gonzalez Diaz M (7 June 2021) "Morena pierde la mayoría en el Congreso: lo que cambia para AMLO en su intento de consolidar su 'Cuarta Transformación' en México" *BBC News*, available at <https://www.bbc.com/mundo/noticias-america-latina-57318556> (25 August 2022).