

BRIEFING NOTES

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

“Land Tenure & Development” Technical Committee

Special economic zones and land tenure: a review of global trends

by Thierry Berger¹ and Lorenzo Cotula², November 2022

Special Economic Zones (SEZs) are geographic areas where the rules of business differ from those that prevail in the national territory. This briefing note is based on a study undertaken by the Committee to examine trends affecting SEZs globally and in Madagascar and Senegal, and the policy and legislative frameworks that underpin them. This included comparative analysis of relevant legislation in ten countries (Bangladesh, Costa Rica, the Dominican Republic, Ethiopia, Kenya, Madagascar, Myanmar, Senegal, South Africa and Thailand). The overall findings were presented in a general report, which was accompanied by two detailed reports on Madagascar and Senegal. This briefing note provides a summary of the main global trends observed.

THE CONCEPT OF SEZs

● Exceptional regimes designed to attract private investment

Many factors contribute to the concentration of industrial activities in strategic zones. For example, the location of productive activities may be determined by the availability of infrastructures or natural resources; and companies in the same economic sector, or complementary companies in the same value chain, may gain competitive advantages by clustering in the same area. These factors have led many governments to implement policy measures to promote industrial clusters, by investing in infrastructure, training, research and development.

The concept of “SEZs” encompasses a wide range of institutional configurations and denominations, but is not limited to public investments in infrastructure or expertise. In order to attract companies, SEZs come with specific legal and/or institutional mechanisms for taxation, customs, labour, and environmental protection, which differ from those in force in the rest of the national territory. It is this strong legal dimension, and the establishment of “exceptional regimes”, that characterise the concept of SEZs.

Public policies usually justify these special regimes by referring to objectives

such as promoting private investment and boosting economic development, especially in the industrial sector. SEZ policies and legislative frameworks seem to target enterprises of a certain size, thereby effectively excluding small farmers and traders.

● SEZ programmes often have mixed results

SEZ programmes are booming, with their advocates promising growth, jobs and increased exports. However, their design and implementation can be problematic, and field studies in Senegal and Madagascar found that these initiatives have a mixed record in terms of both delivery and outcomes. The global literature review provides some insights into the overall performance of SEZs around the world. In some contexts they have been relatively successful in terms of increasing exports and enabling certain countries to become major players in the garment sector, for example. But such “success” can come at a high price as SEZ programmes sometimes lead to disputes, particularly over

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working conditions, as is the case in Kenya, Ethiopia and Bangladesh. In some countries, special legislation limits the application of national labour laws in SEZs.

THE IMPACTS OF SEZS ON LAND TENURE

● Direct and indirect impacts on land tenure

While the economic aspects of SEZs are relatively well documented, less attention has been paid to their direct and indirect impacts on land tenure. The direct impacts relate to the land set aside for SEZs, which is often expropriated on the grounds of public utility. “Public interest” or “public utility” provisions in national legislation often allow governments to expropriate land that was used to support local livelihoods, and assign it to investors for development. Exceptional regimes mean that SEZ frameworks sometimes differ from the general rules and procedures for land governance, for example, by automatically declaring SEZs as public interest initiatives before any investment projects have even been identified for these zones.

The creation of SEZs can have indirect impacts on land relations, increasing pressure on land and accelerating processes of commercialisation, land speculation and forced evictions well beyond the perimeters of SEZs. This has been documented in certain contexts, such as India, where property developers have reportedly bought public land that is being privatised in order to resell it at a higher price.

Many SEZs have a smaller direct or indirect land footprint than large-scale investments such as agro-industrial plantations. However, as

SEZ OBJECTIVES IN 10 COUNTRIES AROUND THE WORLD

The policy and legislative frameworks in the 10 countries studied have multiple goals, but also share some common objectives: all ten promote exports, nine refer to the objective of attracting foreign and/or domestic investment, and eight to job creation, developing urban centres, economic development and industrialisation.

That said, there have been changes of direction over the years. In some countries – particularly Kenya, Bangladesh, Thailand and South Africa – this has meant shifting from an exclusive focus on exports to more holistic approaches that take account of both domestic and export markets, and domestic and foreign investment. In one country, the Dominican Republic, this shift was directly linked to the application of the rules of the World Trade Organisation (WTO).

DIFFERENT INSTITUTIONAL CONFIGURATIONS AND NAMES FOR SEZS

SEZs can include export processing zones (EPZs), free trade zones, industrial zones and agro-industrial parks. National legislation may also provide particular definitions of these spaces or give them specific titles, such as “investment zones” or “emergence zones”.

In Madagascar, the term SEZ refers to one of several specific legislative schemes. The ten countries surveyed reflect the wide diversity of approaches and legislative terminology for SEZs, especially Kenya, Bangladesh and Madagascar, where the simultaneous application of several SEZ regimes has generated an array of legislation and institutions over the years.

EXAMPLES OF DISCREPANCIES BETWEEN SEZ FRAMEWORKS AND NORMAL LAND GOVERNANCE RULES AND PROCEDURES

Senegal’s legislation on SEZs calls for the “fundamental rights” of local populations and vulnerable social groups to be respected when SEZs are set up, but does not explain which rights are “fundamental” compared with those affirmed in the Constitution.

Furthermore, SEZ legislation in Senegal and Bangladesh states that the creation of SEZs is automatically deemed to be in the “public interest” or “public utility” for purposes of land expropriation. Investors operating in SEZs in Senegal and Madagascar are also entitled to “prompt” or “immediate” compensation in the case of expropriation, a provision that is not included in either country’s constitution.



Aerial view of the Sandiara SEZ (Senegal) © Enda Pronat

they are often located close to urban centres and key infrastructures, they can exacerbate pressure on land in places where it is already intense.

● Highly contested processes

These impacts mean that the creation of SEZs is often contested and can lead to conflicts. Disputes can also arise when land use is changed from agricultural to industrial or residential purposes, or when homes and farms are expropriated. For example, local communities in Thailand took to the streets demanding the cancellation of a proposed industrial estate, arguing that they had not been consulted and that the project would impact on their homes, livelihoods and the environment.

In some countries, representatives of populations whose land has been expropriated for SEZ programmes have

initiated dispute resolution procedures at the national and international level to increase pressure on the actors concerned and demand appropriate compensation or the withdrawal of land grants to investors. Activists in Cambodia and India have filed complaints with the International Finance Corporation's Compliance Advisor Ombudsman and national courts respectively.

CONCLUSION AND RECOMMENDATIONS

The research results informed the recommendations presented below.

● **All SEZ policies should be guided by in-depth, participatory public reflection on national development strategies.** Any SEZ policy choice should respond to clear development objectives that are identified and agreed in a participatory manner,

and which help improve local livelihoods. The same principle applies to industrial and agricultural policies, which should take account of land policies and spatial planning strategies, and respect the rights of local communities.

● **Avoid creating "exceptional regimes",** which raise significant issues, particularly in areas such as land and labour where human rights are at stake. All SEZ programmes should ensure that human rights are duly respected in SEZs, including labour and land rights.

● Move away from a closed zone approach and **make SEZs more open spaces that create opportunities for local communities.** Many SEZ programmes have created closed spaces reserved for large-scale investors. Yet the zones could accommodate a

wide range of operators, including small-scale farmers, entrepreneurs and traders. Small-scale, labour-intensive enterprises with local roots often generate numerous jobs and sustain the livelihoods of local communities. Innovative institutional arrangements could enable small-scale operators to operate in SEZs, and facilitate and coordinate the emergence of mixed activities in the same area. This approach would also help embed SEZ programmes in territorial dynamics, promote domestic markets and add value to local products.

● **Recognise legitimate tenure rights holders and include them in decision-making processes** relating to the design, implementation and management of SEZs. Proposals to establish SEZs should be accompanied by land surveys, and should respect legitimate tenure rights in accordance with international norms and standards, including international treaties to protect human rights and the Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Such land right holders should be involved in all deci-

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sion-making processes relating to the creation and management of SEZs. All land acquisitions should be properly compensated, and measures taken to ensure that the livelihoods of affected populations are improved or restored. It should also be noted that international law and standards require the free, prior and informed consent of indigenous peoples.

● **Ensure transparency and accountability at every stage of SEZ develop-**

ment. This includes, for example, publishing draft legislation on SEZs, and in more operational terms, possible site options, the process for selecting operators, and procedures for managing land relations.

Finally, effective and accessible communication channels and grievance procedures are needed throughout the SEZ life cycle to ensure that problems are quickly identified, addressed and, where necessary, resolved. ●

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