

Special Economic Zones and Land Tenure

**Global Trends and Local Impacts
in Senegal and Madagascar**



September 2022

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The scope of the work reflects the diversity of the participants, their concerns and their personal positions on this issue.

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PREFACE

Developing our industries and services is more than a legitimate ambition for our countries. It is imperative. But does this urgent need to transform the structure of West African economies in order to respond to citizens' (and especially young people's) expectations mean that we have to follow models imported from elsewhere? Should we really make different parts of our countries vie to offer foreign investors the most attractive conditions possible, sometimes at the expense of local communities' rights?

These are some of the questions raised by the work that the "Land Tenure and Development" Technical Committee has done on Special Economic Zones (SEZ). This committee of multidisciplinary experts supported a team of Senegalese and Malagasy civil society organisations and national and international experts during an 18-month study on how the continued deployment of these exceptional zones impacts on land and local populations. The study included a review of international literature on SEZs, comparative analysis of the legislative texts in ten countries, detailed case studies developed through field surveys, and numerous interviews with the stakeholders concerned.

As Africa embarks on a massive drive to deepen regional and continental integration through the African Continental Free Trade Area (AfCFTA), we need to ask which models will enable us to fully realise our potential. Is the answer to develop exceptional zones where the arrangements for land access, taxation and employment often fall short of the rules laid down by national laws? Several African countries are rapidly rolling out these zones, seeing in them a continuity with the approaches advocated by certain international institutions and the economic expansion strategies adopted by countries such as China, which is an increasingly important economic partner on the continent. But is this really the best way forward? What conditions would need to be in place to make this type of model beneficial for States and their citizens?

This question is best answered with the help of objective analysis that sets aside ideological preconceptions and considers the rationale for creating SEZs. How do they relate to States, territories and societies, the trinity that determines the public authorities' legitimacy and people's economic and social inclusion? Are the forms of extraterritoriality that SEZs seem to promote compatible with African civil society's growing demands for an endogenous social contract based on transparent governance? How is land made available and offered to companies? What happens to the people who previously made their living on it? How many jobs have been created, what kind of jobs are they, who has taken them up? How do the territories and countries concerned benefit from the creation of these zones?

The analyses presented here show that SEZs have had mixed results in terms of economic development, to say the least. There are also concerns about the way that the land rights of people who previously used these spaces are sometimes denied. The compensation offered in most areas where the field research for this study was carried out is derisory when compared with the livelihoods lost by evictees. Despite the initial support for such initiatives, some politicians are now prepared to admit that they don't work. So what can be done?

This study raises important questions about the State's relationship with the land in its territory, and how it is appropriated. It also shows that the continuing legacy of colonial regimes still influences people's land relations. Governments find it hard to move away from the principle of State-owned land and imagine other possibilities that encourage cooperation between territorial actors, with collective resources managed through a common property approach.

Is creating dedicated priority investment zones the best way of promoting rapid economic development? Who really benefits from the preferential conditions in these zones and the land rent from these State-sponsored business enclaves? Do massive government investments in SEZs generate returns that contribute to national welfare? What can be done to ensure that this type of development is inclusive, that it does not sow the seeds of future conflicts by unjustly dispossessing local communities of their land and livelihoods, or exposing national companies that serve domestic markets to unfair competition?

The analyses presented here invite us to imagine other paths based on integrated territorial development. Many local elected representatives, enterprises, socio-professional organisations and grassroots community organisations already advocate a vision of territorial development based on a patchwork of activities that would work for every category of actor, reinforce each link in local production systems and strengthen interactions with other actors in the territory. Governments need to support and promote this type of approach too. We must set aside the outward-looking, rent-seeking and predatory economy that certain "developers" use as a convenient way of framing African emergencies, and do our utmost to strengthen cohesion between the different actors in our territories, offer our young people a desirable future, constantly strive for social equity, and preserve our natural ecosystems. This is what drives my work as Commissioner for Agriculture, Water Resources and the Environment within the WAEMU. ●

Kako Nubukpo, *Commissioner for Agriculture,
Water Resources and the Environment within WAEMU*

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LIST OF ACRONYMS

AEZ	Agricultural Emergence Zone
AGOA	African Growth and Opportunity Act
AIZ	Agricultural Investment Zone
ANDI	National Agency for Industrial Development
APIX	Agency for the Promotion of Investments and Major Works
APROSI	Agency for the Development and Promotion of Industrial Sites in Senegal
CFS	Committee on World Food Security
CIRAD	Centre de coopération internationale en recherche agronomique pour le développement
CNRF	National Land Reform Commission
CPPP	Joint Committee on Public-Private Partnerships
CRAFS	Cadre de réflexion et d'action sur le foncier au Sénégal
CRDA	Business Law Reform Commission
CTFD	"Land Tenure and Development" Technical Committee
DGPU	Delegation for the Management of the Urban Hub
ECOWAS	Economic Community of West African States
EDBM	Economic Development Board of Madagascar
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ENSA	École nationale supérieure d'agriculture (Senegal)
EPZ	Export Processing Zone
ESIA	Environmental and Social Impact Assessment
EZ	Emergence Zone
FDI	Foreign Direct Investment
FEZ	Free and Enterprise Zone
FTC	Fixed-term Contract
FTE	Full-time Equivalent
FZ	Free Zone

GRET	Groupe de recherches et d'échanges technologiques
ICJ	International Commission of Jurists
ICSID	International Centre for Settlement of Investment Disputes
IIED	International Institute for Environment and Development
IIZ	Industrial Investment Zone
IMF	International Monetary Fund
IPRCC	International Poverty Reduction Center in China
ISRA	Institut sénégalais de recherches agricoles
LDZ	Local Development Zone
MAHTP	Ministry of Land Management, Housing and Public Works
NGO	Non-governmental Organisation
P2ID	Diamniadio International Industrial Platform
PES	Plan for an Emerging Senegal
PNIAEP	National Investment Plan for Agriculture, Livestock and Fisheries
PPNT	Private Untitled Land
PSAEP	Sectoral Programme for Agriculture, Livestock and Fisheries
SEZ	Special Economic Zone
SME	Small and Medium-sized Enterprise
UGB	Université Gaston Berger
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
Voluntary Guidelines	Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WTO	World Trade Organisation
ZESID	Diass Special Integrated Economic Zone

Introduction

Special Economic Zones (SEZs) are “demarcated geographic areas contained within a country’s national boundaries where the rules of business are different from those that prevail in the national territory” (Baissac, 2011: 23). They exist in about 100 countries. Most SEZs in low- and middle-income countries aim to promote investment that will boost industrial development, although some richer countries have established SEZs that focus more on financial services (Dimitropoulos, 2021). Many SEZs are located in Asia, and an increasing number have emerged in Africa in recent years (UNCTAD, 2019: 138).

The legal frameworks for SEZs lie at the interface between national legislation and international economic law, and straddle public policy and laws relating to trade, investment, human rights, land, labour and the environment (Lang, 2010; Chaisse and Hu, 2019; Chaisse and Dimitropoulos, 2021). While these mechanisms often cover several types of investment, some laws contain exceptional regimes which mean that certain aspects of national legislation do not apply in SEZs (Cotula, 2017; Cotula and Mouan, 2021). Land slated for SEZs often supported local livelihoods before the State expropriated it “in the public interest” and offered it to investors in these sites.

SEZs not only have direct effects on land tenure, but can also have profound indirect impacts on land relations, most notably in terms of increasing pressure on land, commercialising land transactions, and leading to land speculation and forced evictions (Levien, 2018). Although many SEZs have a smaller direct or indirect land footprint than large-scale investments like agro-industrial plantations, the fact that they are often located near urban centres and key infrastructures means that they can exacerbate land pressure in areas where it is already intense. As a result, their creation is frequently associated with bitter conflicts over land acquisition.

The literature on SEZs rarely considers how these initiatives affect land tenure (with some notable exceptions, such as Levien, 2012 and 2018; and Agarwal, 2021). Yet this is a key issue in current SEZ policy debates in countries like Madagascar and Senegal, which are promoting the creation of these zones. There are concerns in Senegal that the State could take advantage of the stalled land reform to use the January 2017 law on the creation of SEZs to take control of areas with “high economic potential”. Madagascar has established various forms of SEZ under successive laws and programmes – from free zones and free enterprises to industrial investment zones and agricultural investment zones – but progress has not

been straightforward. The 2017 law on SEZs provoked public protests on the ground and reservations in the Supreme Constitutional Court; and in 2020 a controversial draft law on so-called “special status land” that formalised the status of investment zones and protected areas, grazing lands, etc., allowed these and community lands to be titled in the name of the State and managed by the administration.

The “Land Tenure and Development” Technical Committee (CTFD) felt that a more concrete and detailed examination of the global and local trends that affect SEZs in specific countries was needed, as well as the policy and legislative frameworks that underpin them. The study it instigated on SEZs and land tenure used various research methods to compile a factual overview of global trends and conduct more in-depth case studies of specific contexts in Senegal and Madagascar.

The study was structured around two complementary themes. A review of the international literature on SEZs provides insights into the global trends and land issues associated with SEZs around the world, along with broader analysis of the socio-economic performance of SEZs (their economic and fiscal impacts, effects on labour law, etc.). The study also includes comparative analysis of the relevant legislation in ten countries (Bangladesh, Costa Rica, the Dominican Republic, Ethiopia, Kenya, Madagascar, Myanmar, Senegal, South Africa and Thailand).¹ The literature review was designed as an operational tool to help develop the methodological tools for study, most notably an analytical framework for the policy and legislative frameworks for SEZs in the ten countries,² and a list of key questions to consider during the field studies in Senegal and Madagascar.³ The project team developed these tools with assistance from the Malagasy Collectif Tany and members of the CTFD.

Each team identified several specific sites in Senegal and Madagascar, which were analysed in accordance with the key questions. The study in Senegal was led by Enda Pronat and CRAFS, and the work in Madagascar was led by CIRAD with input from the Collectif Tany. The research team worked in close collaboration with the CTFD (and Gret, which acts as its scientific secretariat), mainly through virtual meetings and by gathering comments and contributions on the research tools and preliminary findings.

The study findings are presented in this report. Chapter 1 includes a review of the international literature on SEZs and a comparative analysis of the national frameworks in ten selected countries. Chapters 2 and 3 respectively summarise the results of the research in Senegal and Madagascar (detailed findings will be published in separate reports on each of the two countries), and the conclusion proposes recommendations for public policy and action on SEZs. ●

1. These countries are not necessarily representative of global trends, but were chosen according to geographical criteria, their different political and cultural orientations, and the level of SEZ development in each jurisdiction.

2. This is divided into four parts: i) overview of the SEZ framework, ii) general legal regime, iii) land issues, and iv) transparency, accountability and dispute resolution. An example can be found in Annex 2.

3. This is divided into three parts: i) general trends (description of SEZs, actors involved, types of company concerned), ii) socio-economic performance and impacts, and iii) land issues. The list of key questions can be found in Annex 3.

CHAPTER 1

Review of global trends in SEZs

General policy and legal frameworks that support or shape SEZs

Many factors can lead to the concentration of industrial activities in particular strategic zones. The location of productive activities may be dictated by the site's geographic position and the availability of infrastructures or natural resources, while companies in the same economic sector or complementary businesses in the same value chain may gain competitive advantages by clustering in the same area. This enables different sized companies to pool their services, infrastructures and expertise, create associations to address common problems and, ultimately, develop competitive industries (see, for example, the literature on "industrial districts" in Italy: Becattini, 2002; Dei Ottati, 2018). These observations have led many governments to implement policy measures to promote such clusters by investing in infrastructure, training, and research and development (UNCTAD, 2019: 133-134).

The concept of SEZs goes beyond concentrating industrial activities in a particular area. Because these zones use tax incentives and other benefits to attract business, they need to establish specific legal and/or institutional mechanisms that differ from those in force in the rest of the country. This means that there is a strong legal dimension to SEZs: they exist by virtue of legislation that establishes a special legal regime just for them. These special regimes are generally justified by public policies that promote private investment in order to boost economic development, especially (but not exclusively) in the industrial sector.

SEZ programmes are therefore often associated with development policies based on "economic modernisation", the private sector (especially large-scale, often foreign companies) and integration into the globalised economy. This link between SEZ programmes and the promotion of certain models of private investment is explicitly stated in some countries' legislation and policy documents. For example, Ethiopia started to legislate on SEZs through an investment code,⁴ and did not formulate a law on SEZs until several years later.⁵

In practice, SEZs may have more specific objectives, such as attracting foreign investment, targeting specific sectors, promoting exports of textiles, agricultural products or vehicles, or "cross-cutting" activities such as research and development (see Box 1).

4. Investment Proclamation n° 769/2012 (2012), which was repealed by Investment Proclamation n° 1180/2020 (2020).

5. Industrial Park Proclamation n° 886/2015.

Box 1

SEZ OBJECTIVES IN THE TEN COUNTRIES STUDIED

Although the policy and legislative frameworks in the ten countries studied have multiple goals, they 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. However, it should be noted that 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 imposed by the World Trade Organisation (WTO).

Sources: see Table 1 (Annex 1)

Investment zones come in a wide range of institutional configurations and go by various names (see Box 2).

Box 2

INSTITUTIONAL CONFIGURATIONS AND NAMES FOR INVESTMENT ZONES

Investment zones can include export processing zones (EPZs), free trade zones, industrial zones, agro-industrial parks and, in theory, “agropoles”, provided an exceptional regime applies.⁶ National legislation may also provide particular definitions or adopt specific nomenclatures for these spaces, such as “investment zones” or “emergence zones”. In Madagascar, the term SEZ refers to one of several specific legislative schemes. This study takes the concept of SEZs in its broadest sense, to include every different type of investment zone. The ten countries surveyed reflect the wide diversity of approaches and legislative terminology, especially in Kenya, Bangladesh and Madagascar, where the simultaneous application of several SEZ regimes has generated an array of legislation and institutions over the years.

Sources: Farole and Akinci, 2011: 2; UNCTAD, 2019: 137 and Table 1 (Annex 1)

There is a strong link between public policies and SEZ programmes. SEZs are not only a form of local and national governance which regulates the way that economic actors use certain parts of the national territory; more profoundly, they are also an opportunity to adjust land policies and reorganise relations between the State, businesses and citizens. A case in point is the special regime created for SEZs in Senegal (notably Law No. 2017-06 of 6 January 2017), which returned significant powers to the State and weakened the roles of local government structures, particularly in terms of allocating land to investors.

6. Although agropoles are often subject to different regimes, sometimes within the same country.

SEZs can also open up spaces to test new policy approaches before they are rolled out at the national level. China, for example, piloted its foreign direct investment (FDI) policies and land and labour law reforms in SEZs before applying them nationwide (Farole and Akinci, 2011 and Jiang and Zhong, 2019). There is a danger that the “experiments” conducted in these legal and operational testing grounds could be used to undermine political and social gains in certain countries.

At another level, SEZs are a means of incorporating certain territorial realities into globalised (and often complex) value chains. They are part of the political economy and the international political and legal instruments that link the governments of producing and consuming countries and a wide range of actors around value chains. In principle, SEZs can broaden central government prerogatives over local governments and authorities; in reality, they are constrained by economic logics that leave governments in low- and middle-income countries in particular with limited room to manoeuvre on issues such as the prices set by international markets. The proliferation of SEZs also partly reflects the increasing competitive pressures governments face in attracting internationally mobile industrial activity, and ensuring that this does not end up costing them more than a comprehensive reform of their domestic governance regimes (UNCTAD, 2019: 155-156; 198).

Any study of the local dynamics and land issues surrounding the creation and management of SEZs should therefore consider SEZs not only as a mechanism for linking local investment and economic activities to the national and even global levels, but also as a vehicle for highly politicised modes of governance. The rapid spread of public policies and national legislation on SEZs, and their roots in very different geographic, political and institutional contexts also highlight the need to consider global and regional trends in order to contextualise and better understand developments in specific countries.

General trends in the creation and implementation of SEZs

The past three decades has seen a marked increase in SEZs in over 100 low-, middle- and high-income countries. UNCTAD estimates that there are nearly 5,400 SEZs worldwide, with over 1,000 of them established since 2014, and 500 new zones announced and expected to open in the coming years (UNCTAD, 2019).

While the vast majority of SEZs are in Asia – there are 2,500 in China alone, and over 1,000 in South and South-East Asia – they have also spread rapidly in Africa. Several South and South-East Asian states launched their SEZ programmes in the 1970s and early 1980s; Latin American countries followed suit in the late 1980s and 1990s; and most programmes in Africa were adopted in the 1990s and 2000s. At the time of writing this report, 237 SEZs had reportedly been established in 38 African countries, with 51 under development and a further 53 planned (UNCTAD, 2019: 138). There are over 60 SEZs in Kenya alone (UNCTAD, 2019: 149, 180).

Public institutions used to be key actors in the creation and administration of SEZs, but there is an increasing shift towards hybrid governance models where the private sector plays a more prominent role (UNCTAD, 2019). Many SEZs are now established through public-private partnerships with private developers (UNCTAD, 2019: 155), as in Ethiopia, for example.⁷

7. Investment Proclamation No. 769/2012 (2012) (Article 33.2) and Investment Proclamation No. 1180/2020 (2020) (Article 31.1(h)).

The most industrialised economies have used SEZs as a mechanism to stimulate industrial restructuring or major sectoral diversification. Some low- and middle-income countries in Africa for instance (Lopes and te Velde, 2021) are using them to drive industrial change, promoting the local processing of commodities derived from natural resources in order to retain added value in agro-industrial zones and certain projects in the mining, forestry and oil sectors (UNCTAD, 2019: 149). SEZs are sometimes also associated with broader integrated spatial development initiatives, such as the creation of development corridors (Leandro, 2019).

The broad political support for SEZs is reflected in a substantial body of legislation and various ongoing legislative processes in several countries, including Madagascar. UNCTAD counted 127 SEZ-related texts worldwide, nearly 70% of which were adopted since 2000, and almost 40% of which came into force after 2010 (UNCTAD, 2019: 163). While national laws vary considerably from country to country, they often include measures relating to tax incentives, investment facilitation (through one-stop shops, for example) and investment protection (ICJ, 2017; UNCTAD, 2019 and Box 3).

Box 3

INCENTIVES IN THE TEN COUNTRIES SURVEYED

All ten countries surveyed offer businesses tax incentives and customs duty exemptions, and almost all provide for a one-stop shop in SEZs. Another major incentive is access to secure, long-term land use rights, which can be obtained through long-term leases, as in Myanmar and Thailand. Only two of the ten countries examined (Bangladesh and Senegal) have introduced legislative derogations relating to labour law.

Sources: see ICJ, 2017 and Tables 1 and 2 (Annex 1)

SEZs are sometimes established as a result of regional or even global policy initiatives that go well beyond national policies and laws. This is done through inter-state cooperation and coordination mechanisms, or internationally negotiated legal or policy instruments – as with the Chinese government’s “Road and Belt Initiative”, which aims to construct “all forms of industrial parks such as overseas economic and trade cooperation zones and cross-border economic cooperation zones, and promote industrial cluster development.”⁸ The Association of Southeast Asian Nations has drafted “Guidelines for SEZ Development and Collaboration” at the regional level;⁹ while the African Union plans to prepare a policy paper on the development of SEZs in Africa and an action plan for the creation of an African SEZ platform.¹⁰

The interface between national policies and international agreements have also led to a growing number of international disputes over certain aspects of SEZ regimes as these programmes have expanded and consolidated (see Box 4).

8. National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce of the People’s Republic of China, March 2015, <http://www.beltandroadforum.org/english/n100/2017/0410/c22-45-3.html>

9. <https://asean.org/wp-content/uploads/2016/08/ASEAN-Guidelines-on-SEZ-Development.pdf>

10. <https://au.int/en/pressreleases/20171108/african-union-commission-organized-1st-african-union-symposium-special>

Box 4**INTERNATIONAL DISPUTES OVER SEZs**

Some of the tax concessions that governments have adopted violate WTO rules prohibiting export subsidies. India found itself brought before the WTO Dispute Settlement Body, and other countries, such as the Dominican Republic, have had to modify their SEZ framework to comply with WTO rules.

Some national legislation on investment and SEZs provides for recourse to international arbitration (as is the case in at least three of the ten countries surveyed), and many international investment treaties allow investors recourse to arbitration before an international tribunal if they believe that a State has failed to meet its obligations. To date, investors have brought at least 20 arbitration cases challenging various aspects of SEZ regimes, including the removal of tax benefits.

Sources: Tables 1 and 2 (Annex 1); Nedumpara *et al.*, 2021; Shadikhodjaev, 2021; Chaisse, 2021

Yet the growing number of policy, legislative and institutional initiatives, and even cases of litigation do not necessarily reflect the operational realities on the ground. There is a huge gap between the political rhetoric on SEZs and their actual implementation in various countries, especially those that have only recently adopted SEZ programmes. The announcement or even creation of new SEZs may signal political aspirations to attract private sector investment, rather than represent a fully operational programme capable of turning those aspirations into sustainable concrete results. It costs less to develop legislation than it does to implement an SEZ programme, and levels of political commitment to such legislation may vary or be limited if the legislation is developed in response to external pressures rather than an endogenous political vision.

According to a review report commissioned by the African Development Bank, “experience suggests that political conception and implementation of SEZ programmes can be a long and difficult process, especially for governments with less capacity than those that benefit from more stable contexts” (free translation, Teufel, 2018: 43). Ghana is a case in point, as the SEZ programme it initiated after the Free Zone Act of 1995 was passed encountered many early difficulties, from disputes between the private sector and the government to infrastructure problems and lack of tenant activity. However, things did improve from 2008/2009 onwards, and the programme ultimately succeeded in terms of increasing exports and creating job (UNCTAD, 2019).

Socio-economic performance and impacts

Analysing the economic, social and environmental performance of SEZs is a complex task. There have been several studies of their socio-economic performance and impacts, but these are mostly case studies rather than large-scale macro-economic analyses (Farole, 2011; Frick *et al.*, 2019). A comprehensive review by UNCTAD (2019) found that there is “little systematic research on the impact of SEZs, and few countries have a comprehensive process for monitoring and evaluating SEZ performance” (UNCTAD, 2019: 177).

SEZs are a source of both hope and fear. Wide variations in their definitions and indicators of “success” have generated diverse and often divergent analyses. Approaches and perspectives range from economic and political economy assessments (respectively, Frick *et al.*, 2019; and Moberg, 2015) to Marxist analyses (Lieven, 2012) and human rights-based perspectives (ICJ, 2017 and 2020). Difficulties in defining and measuring “success” have also resulted in incomplete analyses. Traditional approaches that focus on economic growth or job creation often fail to consider the more diffuse ways in which SEZ-catalysed investments can generate benefits (disseminating knowledge and expertise that foreign investors may bring into the country), or the hidden costs of the “successes” achieved (loss of government revenues due to substantial tax breaks, disruption to existing livelihood strategies, etc. Moberg, 2015). As a result, empirical evidence of the successes and failures of SEZ programmes is contested and changes over time, depending not only on relevant social, economic, environmental and political developments, but also on the analytical frameworks used to assess performance and their underlying ideological assumptions.

A detailed review of the available data by UNCTAD (2019) found that SEZs often generate mixed economic outcomes: many SEZ programmes have “fail[ed] either to attract significant investment or to generate economic impact beyond their confines” (UNCTAD, 2019: 128; see also Proksch, 2019). Bangladesh and several other countries have made significant progress on certain economic indicators for trade activities in SEZs, such as export values (UNCTAD, 2019: 145), but it is often hard to establish causal links between such progress and SEZ programmes as other concomitant policy changes may also be at play. For example, the dismantling of the International Multifibre Arrangement was a key factor in the rise of the garment industry in several countries, including Bangladesh (Cotula, 2017; Cotula and Mouan, 2021) or its fall in countries such as the Dominican Republic (World Bank, 2016).

SEZ programmes in several other countries have failed to meet expectations. Exports and employment in SEZs in the Dominican Republic have tended to fall rather than rise, and firms in these zones still import products rather than buy from local suppliers (Carneiro *et al.*, 2015). The literature also notes that the economic outcomes of economic activities in SEZs will always be vulnerable to certain factors, such as the discontinuation of government subsidies (which some regard as unsustainable because they are not matched by sufficient earnings, and because they disrupt the living standards of certain sections of the population) and the externalisation of significant socio-economic costs such as the compulsory acquisition of valuable land (Moberg, 2015).

Although it is often too early to assess the long-term impacts of SEZ programmes in Africa as most started after programmes in other regions, SEZs are reported to have significantly increased Ghana’s share of exports (Farole, 2011; UNCTAD, 2019), while Kenya has become Africa’s fourth largest clothing exporter (Tyce, 2019).¹¹ A study on free zones in Madagascar conducted before changes in the Multifibre Arrangement found that SEZs had positive effects in terms of creating jobs and redistributing income among low-skilled workers, especially women (Cling *et al.*, 2005). That said, existing studies suggest that SEZ programmes in the region tend to face serious difficulties from the outset of implementation, limiting the achievement of their initial objectives (Farole, 2011).

11. However, Kweka and te Velde (2020) note that the impact of these zones on the Kenyan economy has been modest, partly due to the lack of local linkages.

The literature also identifies certain conditions that are likely to improve the economic performance of SEZs. These include:

- >> political commitment and support at the highest level;
- >> SEZ programmes that align with national development strategies;
- >> effective implementation of SEZ policy and legislation, with effective institutions dedicated to managing SEZ programmes;
- >> modern infrastructures connected to and within SEZs, reliable services and electricity and water supplies;
- >> the creation of strong linkages with the local economy, including local suppliers and workers (UNCTAD, 2019; see also for example UNDP China and IPRCC, 2015; and Aggarwal, 2019).

More detailed analysis shows that these commonly cited “success factors” are in fact symptoms rather than underlying causes of success, and that the presence or absence of these factors and, ultimately, the success or failure of SEZs, are determined by certain aspects of the political economy (Moberg, 2015). For example, Tyce (2019) highlights the importance of political economy factors that favoured the development of the garment sector in EPZs in Kenya, where the convergent interests of national political elites, domestic businesses and international donors created a powerful alliance of economic and political interests pushing for success. This led to the establishment of efficient institutional structures that could generate their own financial resources and were relatively immune to political or rent-seeking pressures, partly because employees were relatively well paid (Tyce, 2019).

The literature also raises important questions about the social impacts of SEZs. These often include the wisdom of tax incentives that may reduce social service provision because the higher standard rate taxes that fund these services do not apply in SEZs. Depending on the jurisdiction, there may also be questions about the adverse social effects of pro-business regulations relating to land access, employment conditions (and exemptions from labour legislation, as in Bangladesh¹²), administrative authorisations, and special administrative or judicial structures that change the way that citizens can hold the public authorities to account (Cotula and Mouan, 2018; UNCTAD, 2019).

Some of the problems associated with SEZs are due to the creation of exceptional legal regimes for these zones, which can cause conflicts over working conditions. This has happened in Kenya, Ethiopia and Bangladesh (Cotula and Mouan, 2021), where the most commonly cited restrictions in SEZ programmes relate to freedom of association, collective bargaining and gender discrimination (ILO, 2017 paragraphs 49, 54, 67; Richardson *et al.*, 2017). However, a number of socio-legal studies have shown that the factors affecting compliance with labour law inside and outside SEZs are extremely complex, and that working conditions may be better inside SEZs than outside because some of the companies targeted by SEZs operate to higher standards than others in order to meet the demands of their supply chain partners (Richardson *et al.*, 2017: 33; ILO, 2017; Cotula 2017).

12. The Bangladesh Export Processing Zones Authority Act 1980 No. XXXVI and the Bangladesh Economic Zones Act No. 42 of 1st August 2010 respectively allow the government to exempt export processing zones and economic zones from a number of laws, including labour legislation (Section 11A(e), (f) and (o) and Section 13(m) respectively). A new law enacted in 2019 regulates labour relations in export processing zones (Cotula and Mouan, 2021).

Land issues in SEZs

The creation or expansion of SEZs can increase pressure on land and resources, and government guarantees of favourable land access for foreign investors can lead to conflicts with local populations. This seems to be particularly problematic especially in African countries, such as in Nigeria and Mauritius (Bräutigam and Xiaoyang, 2011). Land issues are most contentious in countries that are in the process of creating new SEZs and expropriating land to accommodate them (as in Sub-Saharan Africa), rather than places with longstanding SEZs (certain Asian countries). That said, the expansion or proliferation of SEZs can cause significant land issues in contexts that are already contentious due to historical land conflicts.

The available studies suggest that SEZs tend to have a smaller physical footprint than very large-scale agribusiness plantations. UNCTAD found that most SEZs range from less than a hundred hectares of land to a few hundred hectares (UNCTAD, 2019), although they can cover considerable areas in some economic sectors, particularly agriculture. Due to their inherent connectivity needs, SEZs are more likely to be located near urban centres and transport infrastructure (UNCTAD, 2019: 185; see also Lavigne Delville and Sow, forthcoming), and thus in more densely populated areas where direct and indirect land impacts are likely to be felt more intensely.

Direct impacts relate to the land required to implement SEZ programmes, which may be acquired through expropriation in the “public interest” or more or less negotiated forms of land transfer, depending on the relevant legislation and the case in question. In terms of indirect impacts, some studies indicate that creating SEZs can lead to more commercialised land relations and change land ownership structures through land speculation, rent-seeking and forced dispossession around SEZ sites (Levien, 2018).¹³

For example, property developers in India are reportedly taking advantage of the mechanism for public interest expropriation in SEZ projects, and acquiring public land that is being privatised at a discount in order to resell it at a higher price (Levien, 2012). Meanwhile, the authorities in Vietnam decided to suspend land-use change procedures and land transactions until a new SEZ law is adopted, to avoid land speculation in future SEZs (Tam, 2018). These direct and indirect land impacts frequently result in conflicts, especially when agricultural land is converted to industrial or residential use, and homes or farms are expropriated. In Thailand, there have been demonstrations demanding the cancellation of an industrial estate planned by the military junta. Local people feel excluded from the project’s public hearing process, and are concerned about the impact it will have on their homes, livelihoods and the environment (Prachatai, 2020).

The social and economic aspects of SEZ programmes tend to be well documented by field research. This is not the case for land issues, although some studies do show how complex this aspect of SEZs can be. Indeed, some countries have changed their SEZ policy in response to social protests. In India, which has many established and nascent SEZs, affected people feared that certain projects would adversely affect their livelihoods and relationships with land and resources (Sampat, 2015). For those who have already lost their land, the most serious consequence has been greatly increased indebtedness (Agarwal, 2021). Civil society accusations of irregularities, have led local authorities to cancel a number of projects and the developers have taken the matter to court (Sampat, 2015).

13. But this phenomenon is not specific to SEZs, as urban expansion often leads to the same speculative practices, even if the expansion is for housing (see Goldman, 2011).

In other countries, the State's failure to fully evaluate the effects of its SEZ policy or consider the "losers" in SEZ initiatives has left certain households in a precarious position following the expropriation of community lands. For example, the inhabitants of an entire village in Laos lost access to the water and market garden produce they enjoyed before being displaced (Laungaramsri and Sengchanh, 2019); while households in Myanmar were reportedly forced off their land and given insufficient compensation to maintain their livelihoods (Gittleman and Brown, 2014).

There have been several occasions where disputes over land control in SEZ programmes have led to formal dispute resolution procedures at the national and international level, in order to maximise the impact of the procedures and pressure on the actors involved. Activists in Cambodia and India have filed respective complaints with the Compliance Advisor Ombudsman, the International Finance Corporation and national courts, as part of broader strategies to demand adequate compensation for expropriated land and compel the authorities to revoke land grants to SEZ developers (Sampat, 2010: 176; Bedi, 2013; Cotula and Mouan, 2018).

Although the land dynamics associated with SEZs often mirror those of other projects involving large-scale land acquisitions, there are specific aspects of SEZs that set them apart from other initiatives. Certain features of their legal regimes often involve (re)centralising land allocation powers (as in Ethiopia¹⁴), limited opportunities for public participation,¹⁵ and changed forms of access to recourse. On the latter point, labour disputes in Pakistan are referred to the Export Processing Zone (EPZ) dispute resolution mechanism rather than the national courts.¹⁶ In some countries, including those studied for this report, certain aspects of SEZ frameworks diverge from the normal rules and procedures applicable to land governance (see Box 5).

Box 5

DISCREPANCIES BETWEEN SEZ FRAMEWORKS AND NORMAL LAND GOVERNANCE RULES AND PROCEDURES

The regulations relating to SEZs sometimes differ from the normal rules and procedures for land governance. For example, 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, and for "prior consultations" with the communities concerned, but does not explain which rights are "fundamental", relative to those affirmed in the constitution for example, or specify the consequences of not holding such consultations. Furthermore, SEZ legislation in Senegal and other countries such as Bangladesh states that the creation of SEZs is automatically deemed to be in the "public interest" or "public utility" for purposes of land expropriation.

Sources: See Table 3 (Annex 1)

14. Land allocated for SEZs in Ethiopia is identified by the Investment Board (see Industrial Parks Proclamation 2015, Articles 2.18 and 25). The Board is the authority responsible for the administration and supervision of SEZs, and is composed of members of the central government (Investment Proclamation No. 1180/2020 (2020), Article 31.1(a) and Regulation No. 313/2014 on the Establishment of the Investment Board and the Ethiopian Investment Commission, Article 4) (see Table 1 - Annex 1).

15. In Myanmar, the body that determines SEZ implementation policies and proposes the establishment of new SEZs has the power to select an SEZ developer with or without competitive bidding (Myanmar Special Economic Zone Law (2014), Article 14).

16. See Sections 3(5), 4 and 7 of the Export Processing Zones (Employment Control) Regulations 1982; under Section 30 of the Pakistan SEZ Act 2012, national labour legislation applies to SEZs other than EPZs (Cotula and Mouan, 2018).

“Public interest” is used as grounds to justify and facilitate forced land acquisitions. This is a source of tension between displaced populations and the occupants of land allocated for SEZs (as in Myanmar; ICJ, 2017), and raises many questions:

- >> first, because the economic activities undertaken in SEZs are predominantly commercial;
- >> second, because the real extent of this public interest is conditioned by the exemptions granted to SEZs, including tax exemptions that reduce the government’s ability to generate revenues from SEZ activities;
- >> finally (depending on the context), because of exemptions or conditions in the application of other legislation (labour, land use planning) and the associated social benefits thereof.

SEZ regulations may also differ from normal rules and procedures relating to the protection of investors’ “property rights” – special provisions to protect investors’ property rights in Myanmar, Ethiopia, Kenya, Senegal and Madagascar all go beyond the constitutional provisions in these countries (see Table 3 - Annex 1). ●

Thierry Berger and Lorenzo Cotula

CHAPTER 2

SEZs and land tenure in Senegal

Introduction and background

- **Historical context, policy framework and emergence of SEZs in Senegal**

Many African countries spent a number of years developing poverty reduction strategies and documents, but have now turned their attention to so-called “emergence” strategies. Senegal had implemented a poverty reduction strategy which was materialised in an 2000-2002 interim document, and three generations of poverty reduction strategy papers over the period 2005 and 2012. However, an average growth rate of less than 4% from 2000 to 2012 has not allowed the country to sustainably reduce poverty. Senegal therefore decided to adopt a new development model to accelerate its progress towards emergence. Plans to initiate changes that will set the country on a new development trajectory will need to include bold actions to increase the potential for sustainable growth, stimulate creativity and encourage private initiatives.

The Plan for an Emerging Senegal (PES) of 2014 aims to structurally transform the nation’s economy. One strategic component of this plan is the creation of a regional logistical and industrial hub that will enable Senegal to engage in a process of industrialisation that will increase its export potential, reset its trade balance and create huge numbers of jobs. In order to achieve the objectives of the PES, “it is imperative to bring together the preconditions or foundations of emergence”, which the document cites as including “establishing state-of-the-art infrastructure to support production and improve the business environment”.¹⁷

Like several other African countries that have developed emergence plans, Senegal intends to use to SEZs as a key means of achieving its objectives. SEZs are strategic tools for attracting private investment and making companies more competitive,¹⁸ and fostering the emergence of an “environment for business excellence that meets the highest international standards.”¹⁹ These zones are presented as spaces that are developed for the production of goods and services, and which are governed by economic laws with specific incentives,

17. See the section summarising the PES.

18. The general introduction to the PES clearly states that Senegal had average growth of 3.1% between 2008 and 2012, with a relatively modest private sector.

19. Passage from the various decrees establishing SEZs.

facilities and arrangements for businesses that enable companies to increase productivity by reducing their investment, financing and operating costs. SEZs are framed by legal and institutional provisions that provide “guaranteed security for investors” through a package of incentives ranging from land opportunities to tax and customs benefits and advantageous recruitment conditions.

One of the main inducements designed to attract companies and help them set up operations in SEZs is facilitated land access. There is much discussion about all the proposed incentives to attract foreign and national companies, but the debate still largely focuses on facilitated land access. According to the official discourse, this is because it involves transferring land resources from local communities to private investors, so that these communities can have access to direct and indirect employment, basic social services, etc.

SEZs have had a mixed reception in Senegal from the outset. Public decision-makers maintain that they will make the country more attractive to foreign direct investment (FDI), reduce its trade deficit and increase employment. Other actors, particularly the communities affected by SEZs and civil society organisations within the *Cadre d’action et de réflexion sur le foncier au Sénégal* (CRAFS), argue that the assessments and debates on SEZs should focus on the resulting land losses suffered by local communities, the disappearance of their primary economic activities (agriculture, livestock, gathering, etc.), and other local socio-economic and environmental impacts caused by SEZs.

● **Study objectives and methodology**

This study on SEZs in Senegal aims to:

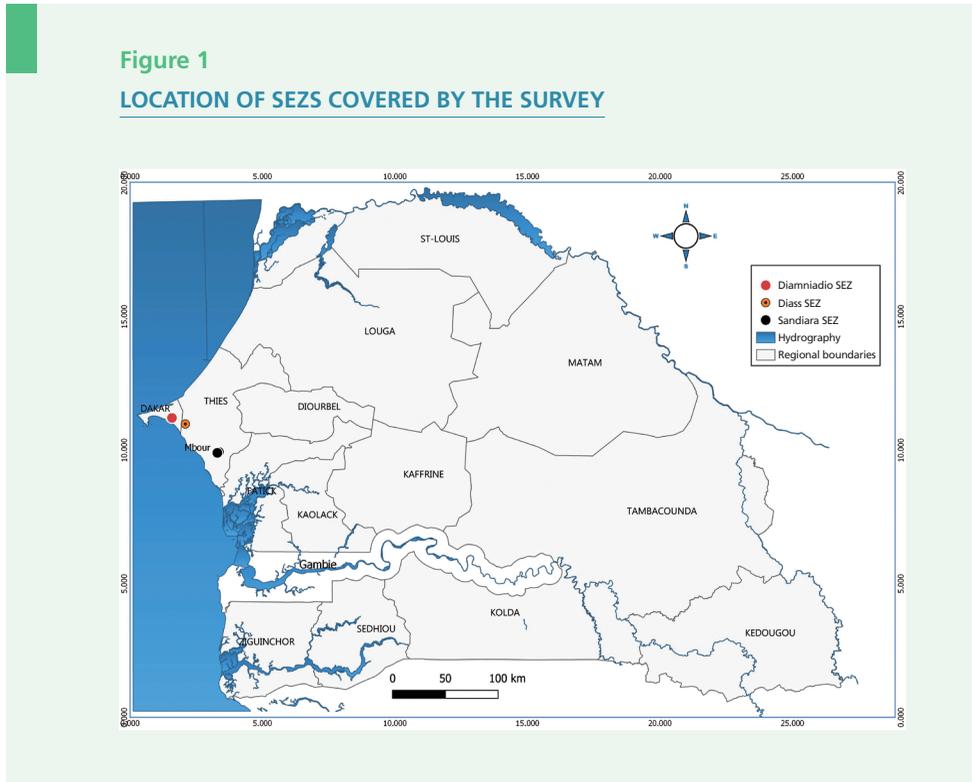
- >> capitalise on the Senegalese experience through a review of the literature evaluating the impact of SEZs in the country;
- >> understand the legal and institutional framework and policies behind SEZs in Senegal, through textual analysis and interviews with the authorities, departments and agencies implementing SEZs;
- >> analyse the impact of SEZs on the living conditions of communities in existing SEZ sites, through surveys conducted in three of the four SEZs already established in Senegal. The survey objective was to discuss land-related aspects of SEZs and the positive and negative impacts of these zones with SEZ stakeholders, directly affected populations and communities living in the vicinity of the SEZ concerned.

As noted above, the entire project team and members of the CTFD were involved in designing the analytical framework and list of key questions for the study in Senegal. The framework covers several criteria, key research questions and information that would enable us to compare the realities in Senegal with those in Madagascar (the other country case study). The methodology combines research and a literature review with interviews and field surveys.

The results of the exploratory research interviews and the literature review were presented at a civil society workshop organised by CRAFS in October 2020. The ensuing discussions raised certain issues that needed to be explored in greater depth, provided guidelines for the field survey phase, and identified strategic actors who could provide information for the study.

The field survey phase was informed by the findings of the literature review, and launched after the CRAFS workshop. Field surveys were conducted in Sandiara, Diass and Diamniadio SEZs, which were all created in 2017 and are located in the Dakar-Thiès-Mbour triangle (see

Figure 1) – an area that the International Monetary Fund (IMF) calls “the triangle of prosperity”,²⁰ which is home to most of the country’s economic activities and infrastructures. Bargny-Sendou SEZ, which was created in this triangle in 2019, was not selected for this research.



The surveys were conducted in January and February 2021, by three researchers who had been trained on the use of data collection tools. Specific tools were used for the three different categories of interviewee: i) local authorities and State structures, ii) companies and employees, iii) affected villages and communities. The questionnaire for local authorities targeted the mayor or one of their close associates, the municipal secretary, presidents of commissions, municipal councillors and the chiefs of affected villages. The surveys of institutions and public services were used to gather information from SEZ developers, the Agency for the Promotion of Investments and Major Works (APIX), which is responsible for implementing SEZ policy in Senegal, and the General Directorate of Taxes and Land Affairs, to clarify the fiscal measures and mechanisms put in place for SEZs.

The main limitation of the data collection phase stemmed from the different implementation processes in each SEZ, which meant that the same type of information was not available in every SEZ, and that it was not possible to answer the questions in the common analytical framework equally or symmetrically. It should also be noted that SEZs concentrated

20. IMF Report No. 18/8 of 11 January 2018.

in the Dakar and Thiès regions were severely affected by the Covid-19 pandemic, and the fieldwork was seriously curtailed by the curfews and restrictions on movement and gatherings in these zones.

Overview of SEZs in Senegal

Senegal has put in place a policy framework setting out the vision and objectives for SEZs, and a legal and institutional framework for the implementation of this policy.

● Legal framework for the creation of SEZs

The creation of SEZs is enshrined in Law No. 2017-06 of 6th January 2017 regarding SEZs, which is supplemented by Law No. 2017-07 of 6th January 2017 on the incentives applicable in SEZs. This legislation was driven by the government's desire to correct the deficiencies of the 2007 law creating a single zone, the Dakar integrated SEZ (ZESI), and to establish a new governance framework that would apply to all SEZs – an essential step in implementing the strategic guidelines for the PES. The 2017 SEZ law repealed the 2007 law while maintaining the existence of the Dakar SEZ, and lifted the limitation to a single SEZ (Dakar) in order to facilitate the creation of SEZs throughout Senegal.

The explanatory memorandum of the 2017 law states that the main objective is to “demonstrate Senegal's capacity to offer high value-added products and services to attract foreign investors and retain national human resources.”

SEZs in Senegal can be initiated by the State or any other public authority, and are created by decree. Under Law 2017-06, any area can be accorded SEZ status upon a written request to the Minister responsible for investment promotion. So far, four different SEZ have been created with a different typology.

Their main characteristics are summarised in Table 1 below.

TABLE 1: **Characteristics of SEZs**

Basic text and scope of the SEZ	Purpose of the zone	Specific eligibility criteria for companies
Diass Special Integrated Economic Zone, created by Decree No. 2017-932 of 9th May 2017, covering 718 ha.	Industry, agribusiness, information and communication technologies, tourism, port activities, medical supplies and services.	Must derive at least 60% of turnover from exports, invest at least 100,000,000 FCFA (€152,449), and create at least 150 direct jobs during the first year of operation.
Diamniadio International Industrial Platform, created by Decree No. 2017-1507 of 25th August 2017, covering 53 ha. A second phase covering 60 ha has just been launched.	Assembly and packaging, food processing, manufacturing, building materials, information and communication technologies, electricity and electronics, logistics and related services.	Must derive at least 50% of turnover from exports, create at least 5 direct jobs for every 100 m ² of industrial building occupied in the first year of operation, and invest at least 500,000,000 FCFA (€762,245).

Basic text and scope of the SEZ	Purpose of the zone	Specific eligibility criteria for companies
Sandiara SEZ, created by decree 2017-2189 of 22nd November 2017, covering 100 ha.	Industry, agribusiness, aquaculture, tanning, information and communication technologies, poultry farming, energy, logistics and services.	Must derive at least 50% of turnover from exports or import substitution in the first three years; create at least 5 direct local jobs for every 100 m ² of surface occupied in the first year of operation, host at least 10 students from the Sandiara vocational technical high school as part of their work-study training, starting in the second year of operation, and invest at least 500,000,000 FCFA (€ 762,245) in the first three years of operation.
Bargny-Sendou SEZ, created by decree 2019-1318 of 22nd August 2019, covering 100 ha.	Production of iron billets, concrete and wire rods, steelmaking, iron and steel industry, heavy industry; port logistics (handling, warehousing, storage) and related services.	Must derive at least 50% of turnover from exports, invest a minimum of 250,000,000 FCFA (€ 381,122 euros), and create at least 100 direct jobs during the first two years of operation.

● A specific legal framework for SEZs

The legal provisions for SEZs mainly relate to taxation, labour legislation and land tenure. They are designed to attract investors and boost their competitiveness, and diverge from the ordinary law rules on a number of points.

Tax and customs regime

Under Articles 5-7 of Law 2017-06, SEZs are divided into two zones. Zone A is determined by the SEZ administrator in conjunction with the relevant State services. It is deemed to be outside the national customs territory, with advantages and dispensatory regimes that make it a real enclave within the national territory – a secure zone where exempt companies are eligible for various customs and tax benefits in accordance with Law 2017-07. Zone B is part of the national customs territory and is governed by national customs law.

Under Article 36 of the General Tax Code, corporate tax is set at 30% of taxable profits. The corporate tax for rate companies in SEZs is 15%, and they are also exempt from other taxes and levies that go towards State, national and local public authority budgets or similar bodies. Exempted companies also benefit from the right to import goods, products, raw materials, equipment and other goods and services free of all customs duties and taxes, and to export the same goods free of duty outside the national territory. However, they are not exempt from Community levies.²¹

21. Community solidarity levies are taxes on goods and merchandise imported from third countries of the West African Economic and Monetary Union (WAEMU) and the Economic Community of West African States (ECOWAS). They are used to finance these institutions and their programmes.

Foreign exchange regulations

Under Article 13 of Law No. 2017-07, all natural and legal persons working in SEZs are permitted to make current account payments and foreign capital transactions (transfer sums of money, pay for goods, salaries, social security contributions, allowances, pensions and annuities arising from an employment contract, interest and dividends, company shares and profits, business operating profits, etc.), and seek to open a foreign currency account.

Administrative facilities and amenities

Article 35 of Decree No. 2017-535 of 13th April 2017 implementing Law 2017-06 provides for one-stop shops in SEZs, which are intended to provide businesses with quick, simplified local services.

Protection of private land

The State provides special protection for all company assets within SEZs, which are safeguarded from any direct or indirect arbitrary and/or discriminatory administrative or regulatory decision. The Government of Senegal, and its national and territorial authorities, may not expropriate or nationalise any private land, including investments in SEZs, either directly or indirectly, except in the public interest. Article 6 of Law 2017-07 states that in the event of expropriation in the public interest, the company or person affected by the measure shall receive prompt, fair, effective and prior compensation. This goes further than the Senegalese Constitution, which only provides for “fair and prior compensation”²².

Provisions that differ from labour legislation

Companies in SEZs operate under different labour laws from businesses in the rest of the country. Article 14 of Law No. 2017-07 contains a series of exemptions that relate to almost every sector of labour legislation. The main advantages and facilities they offer enterprises in SEZs are listed below:

- >> Companies in SEZ do not have to respect the legal working limit of 40 hours per week provided for in Article 135 of the Labour Code. They can require employees to work for more or less than 40 hours a week, depending on their needs.²³
- >> Although Article 44 of the Labour Code states that fixed-term contracts (FTC) should not last for more than two years, companies in SEZs are allowed to exceed this contractual period. Similarly, while Article 45 of the Labour Code states that fixed-term contracts cannot be used to fill a job linked to the company's normal business on a long-term basis, companies in SEZs are permitted to do this.
- >> Article 42 of the Labour Code states that workers are not allowed to hold more than two fixed-term contracts with the same company, or renew a fixed-term contract more than once. However, companies in SEZs can sign any number of fixed-term contracts, provided this is done within a limited period of five years.

22. Constitution of Senegal (2001), Article 15.

23. Article 80 of the Labour Code, which authorises collective agreements, stems from the fact that the provisions relating to working conditions cannot be fully harmonised across Senegal or in all branches of activity. Collective agreements may be concluded in the framework of an establishment, a company or a branch of activity, and for several branches of activity.

- >> Companies in SEZs can directly dismiss staff on economic grounds, even though Article 60 of the Labour Code states that formalities and mechanisms should be in place to avoid dismissal or to verify the real reasons for economic redundancies. Prior administrative approval is normally required for economic redundancies or internal reorganisation, but this is waived for companies in SEZs.
- >> All businesses in SEZs have the right to employ staff of Senegalese and foreign nationality.
- >> In general, all the exemptions from national labour legislation apply to enterprises in SEZs.

The State guarantees all the aforementioned advantages for companies in SEZs for a period of 25 years, which can be renewed once.

While these provisions are likely to make businesses more competitive, it should also be noted that they may undermine the rights of workers in SEZs.

Major obligations of companies in SEZs

Article 24 of Decree 2017-535 sets out a number of obligations that companies must fulfil, in addition to the advantages and facilities described above. These mainly relate to paying all fees, rents and other expenses incurred in the SEZ, keeping full financial and accounting records, and submitting annual reports to the administrator.

All businesses in SEZs are obliged to develop the land made available to them within the timeframe specified in their installation permit. They may request authorisation for a temporary interruption of activities for a period of 60 days or more if they have insufficient financial resources or some other problem affects their ability to operate (Article 32 of the implementing decree for Law 2017-06), but this must be done before activities cease. Voluntary cessation without prior permission will be sanctioned and may result in the installation permit being revoked.

Companies that set up within SEZs must also comply with strict environmental protection measures. Article 37 of Decree 2017-535 states that businesses are obliged to produce an environmental and social impact assessment (ESIA) and an environmental management plan (EMP) before they set up in an SEZ. Also, that the administrator should ensure they comply with all environmental protection standards, particularly the planned management of natural resources and protection of biodiversity (Article 38). This requirement reiterates the provisions of the Environmental Code, and is not specific to SEZs. Environmental protection in these zones is essential, especially for communities living in their vicinity, given the diverse nature of activities within SEZs and the significant risks of pollution associated with certain sectors (industry and the production of fishmeal, car batteries, pharmaceuticals, etc.).

The administrator may also prohibit any activity within an SEZ for reasons of public morality, public order, public safety, protection of human and animal health and life, environmental protection and protection of intellectual property, in particular patents, copyrights and trademarks or service marks, without prejudice to the to labour inspectors' devolved prerogatives regarding occupational risks. The legislation expressly prohibits activities related to terrorism, money laundering, drug trafficking, arms sales and smuggling.²⁴

24. Article 18 of Law No. 2017-06 of 6th January 2017 on special economic zones.

Finally, the decree states that all companies in SEZs must provide capacity building for their employees. It does not specify how this should be done, leaving it up to each enterprise to prepare, implement and pay for their capacity building plan. The advantage of this provision is that it requires businesses to train their employees and bring them up to speed with new knowledge, techniques and methods – not before time, given that only 16% of Senegalese companies provided training for their staff in 2014.²⁵

The relevant State services conduct annual checks to ensure that operators comply with these obligations and the conditions of their contracts. Article 26 of Decree 2017-535 sets out the sanctions that the administrator may apply for non-compliance, which include the suspension, withdrawal or cancellation of tax and customs benefits, or revocation of the installation permit.

Means of recourse

The means of recourse described below are specifically provided for investors that operate within SEZs. In other words, they do not apply to investors and other actors outside SEZs.

Law No. 2017-06 devotes an entire chapter (Chapter V) to means of recourse and the resolution of disputes between the State and SEZ investors. Article 19 states that SEZ investors may appeal to the Joint Public-Private Committee (CPPP) to contest any decision made by the administrator; if the CPPP upholds the administrator's decision, Article 20 allows the appellant to initiate consultations and negotiations with the Government of Senegal (GoS). If they are unable to reach an amicable settlement of their dispute with GoS, the claimant may pursue the case in the relevant Senegalese court.

There are also provisions for recourse to international arbitration (Article 22). If the claimant and GoS cannot settle their dispute amicably, and the claimant has not previously taken their case to the competent Senegalese courts, the claimant may seek a resolution through arbitration. This may involve an arbitral tribunal established under the International Convention on the Settlement of Investment Disputes (ICSID); any competent arbitral tribunal established in accordance with bilateral or multilateral agreements or treaties relating to the promotion of investments ratified by the Republic of Senegal and the State of domicile or the claimant's country of nationality; or any arbitration tribunal established in accordance with another mutually agreed dispute settlement mechanism adopted by the parties concerned. The parties retain the right to reach an amicable agreement that ends their dispute at any stage of the arbitration or jurisdictional procedure.

● **Institutional arrangements for the governance of SEZs**

The law creating SEZs anticipates that several actors will be involved in their establishment and management processes. The institutional mechanism is organised around four entities (Law 2017-06, Articles 8 to 12):

- >> the Ministry of Investment Promotion, which is responsible for the strategic guidelines on SEZs and coordinating SEZ development policy (Ministry of Economy, Planning and Cooperation);
- >> the CPPP, which oversees regulation, mediation and conciliation between actors operating in SEZs;

- >> the SEZ administrator (APIX-SA), which is responsible for the administration and management of SEZs;
- >> promoters/developers and economic entities that have signed an agreement with the competent authority and are responsible for promoting, developing, planning and operating SEZs.

Another two other bodies involved in SEZ governance are an “approval committee” and an “installation committee”. They are not included in the list of institutional actors cited in Article 8 of Law 2017-06 because they could be regarded as the technical arms of APIX (for more participatory intervention). Their devolved roles are to issue approvals to companies (see Article 12, paragraph 7 of Law 2017-06) and facilitate installation, as provided for in paragraph 13. This gives the administrator the power to modify, suspend, withdraw, revoke or cancel approvals, permits and authorisations, including the installation authorisation. Since Article 17 adds that the administrator should carry out this mission in accordance with the implementing regulations, which do provide for the establishment of these committees, they can be understood to exist in order to facilitate APIX’s work, even if the law does not expressly include them in the list of institutional actors responsible for the governance of SEZs.

SEZs and land tenure issues

The land tenure regime for SEZs is an exceptional system in the sense that it is based on land registration, which is itself considered an exceptional system by Law 64-46 on the national domain. Land in the national domain (almost all land in Senegal) is unregistered and unappropriated. Article 19 of Decree 64-573 of 30th July 1964 regarding the implementation of the National Domain Law states that the allocation of such land “confers on the beneficiary a right of use over the land in question.” According to Decree 72-1288 regarding the conditions for allocating land in the national domain, two cumulative conditions must be met before it can be registered: (i) it can only be registered in the name of the State, and (ii) the State can only require such registration for operations declared to be in the public interest.

Each SEZ is created by a decree that specifies its boundaries, which may include lands whose original legal status was land in the national domain or the State’s public or private domain.²⁶ Land in the national domain that lies within the perimeter of an SEZ is automatically incorporated into the State’s domain after registration, by virtue of Article 4 of Law No. 2017-07, which states that “the decree creating a special economic zone is equivalent to a declaration of public interest, and makes the land located within the SEZ perimeter transferable.” As a result, all SEZ land, whether it was initially in the public or the national domain, is registered and incorporated into the State’s private domain; the State then transfers its management to the administrator.

Most of the land in SEZs comes from the national domain (customary community lands), which means that establishing an SEZ on such land effectively entails dispossession and the

26. Senegalese land is divided into three major types: the national domain, private individuals’ land, and the State’s public and private domain. The State’s public domain belongs to the State and cannot be privately appropriated by virtue of its nature and purpose; the rest of its land is the State’s private domain (Article 2 of the Code on State Lands). Private individuals’ land is land that has been registered in the land registry (Law No. 2011-07 of 30th March 2011 on land ownership). The national domain, which occupies most of the country, consists of all the unclassified land in the public domain and unregistered land (Law No. 64-46 of 17th June 1964 on the national domain).

permanent loss of legitimate tenure rights. The legislation equating the establishment of an SEZ to a public interest initiative therefore facilitates the State's task and exempts it from all other procedures regarding a prior declaration of public interest (as provided for by Law No. 76-67 of 2nd July 1976 on expropriation in the public interest).

Furthermore, the system for compensating people whose land has been expropriated is anachronistic. If the land in question is in the national domain, the operation is governed by Decree 64-573 of 30th July 1964 regarding conditions for the application of Law 64-46 of 17th June 1964. According to Article 31 of this decree, the next step after a declaration of public interest is for the ad hoc commission to "estimate the compensation to be paid to the affected parties". Article 32 specifies that compensation is based solely on existing constructions, works and crops that affected parties have installed on the land in question. There is no legal entitlement to compensation for the lost land, only for the works done to or expenditures on the land.

This compensation system is out of step with developments in international jurisprudence and new international instruments to protect local people's legitimate rights. For example, the Voluntary Guidelines²⁷ set out at least two general principles that run counter to this Senegalese compensation system, namely: i) the need to "recognize and respect all legitimate tenure right holders and their rights"; regardless of whether these rights are "formally recorded or not", to "refrain from infringement of tenure rights of others";²⁸ and ii) the need to "promote and facilitate the enjoyment of legitimate tenure rights."²⁹ According to this principle, the State should take concrete steps to promote and facilitate the full exercise of all such land rights.

In addition to the Voluntary Guidelines, there are other instruments which promote customary land rights held without formal title, such as the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas. Article 12(2) of this Declaration provides for indigenous communities to seek effective and timely recourse, which may include restitution, compensation, indemnity and reparation.

Although the current legal framework in Senegal is not very favourable to local communities, it has to be said that the State compensation system does not disregard them entirely, especially where land in the national domain is concerned. The authorities sometimes seem to want to promote social stability by compensating all evicted occupants, even though there is no legal basis for this practice, which is more akin to developments in international practice than current national land legislation. This approach was adopted in Sandiara SEZ, where compensation per hectare of occupied land was used to calm the social climate (see below).

On another note, it so happened that Senegal's land reform came to a halt with the passage of the SEZ law (2017). The National Land Reform Commission (CNRF) was dissolved in 2017 before the proposed legal texts were even drafted, to the outrage of stakeholders who had hoped that the reform process would lead to a comprehensive and inclusive framework for land governance in Senegal. However, the law on SEZs did enable the authorities to achieve one of the objectives assigned to the land reform – creating attractive investment opportunities that would help boost the economy. The report presenting Decree No. 2012-

27. The Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the "Voluntary Guidelines") were adopted by the Committee on World Food Security (CFS) at its 38th (Special) Session on 11th May 2012.

28. Voluntary Guidelines, paragraph 3.1.1.

29. Voluntary Guidelines, paragraph 3.1.3.

1419 of 6th December 2012 creating the CNRF clearly stated that the law on the national domain did not meet the “development objectives that would allow our country’s economy to take off,” and that the reform therefore needed to “offer occupiers a guarantee and present attractive opportunities for major investments that are not always within the reach of local populations.” SEZs were defined in accordance with the same concern, leading some to regard the passage of the SEZ law as “soft reform from the sidelines”.

Implementation status and overall impacts of SEZs³⁰

The three Senegalese SEZs covered by this study are in their implementation phase. The outcomes, impacts and trends in each SEZ vary according to their design, purpose and development: Sandiara SEZ is an initiative driven by the commune, while Diass and Diamniadio were instigated by the central government, with the local authorities’ role in the process limited to consultation and information.

● Sandiara Special Economic Zone

Sandiara SEZ, which is located 110 km from Dakar, was created when the industrial zone established by the municipal council in 2015 was transferred to the SEZ regime (Decree No. 2017-2189 of 2nd November 2017). The mayor of the commune, who is also a technical advisor to the Presidency of the Republic, used the PES and the law creating SEZs as an opportunity to grant the municipal industrial zone SEZ status under the 2015-2025 Emerging Sandiara Plan, which his municipality had designed as a local variation of the national PES. Sandiara SEZ covers an area of 100 hectares, with a first implementation phase on 50 hectares of land. The development forecasts for this SEZ are shown in Table 2 below.

TABLE 2: **Municipal plans for the implementation of Sandiara SEZ**

Promoter/developer	Commune de Sandiara (municipal institution)
Cost of development	FCFA 30 billion (€ 45.7 million)
Start of activities	2015
Expected level of investment	100 billion FCFA (€ 152.4 million)
Amount already invested by the 5 companies located in the SEZ	ZALAR: FCFA 21.5 billion (€ 32.7 million); OMEGA: FCFA 18 billion (€ 27.4 million); PELAGIC: FCFA 2 billion (€ 3 million); OCEDIS EXPORT: 500 million FCFA (€ 762,245); FINISH PROFILES: FCFA 1 billion (€ 1.5 million)
Anticipated number of companies	60
Number of jobs planned	20,000
Number of jobs already created	500 permanent and seasonal jobs

30. The data presented in this section on levels of investment, number of businesses established and jobs created were collected before 31st December 2021.

● Diass Integrated Special Economic Zone

Diass Integrated Special Economic Zone (ZESID) is located 45 km from Dakar, near the new Blaise Diagne International Airport in Diass. The strategic advantages of this exceptional location enable companies to access the ECOWAS zone international and sub-regional market under very favourable customs and tax conditions. However, activities have yet to get properly under way, and only one of the planned 200 companies is currently under construction – hence respondents’ comments about the slow or very slow pace of implementation. ZESID’s projected development is shown in Table 3 below.

Local people and the municipality have not been involved in the implementation of this special economic zone, which was created on classified land (Diass classified forest) that the State unilaterally decided to declassify. This decision has had significant impacts on local communities that previously used the forest for income-generating activities. Study surveys show that villagers from Diass, Boukhou and Packy have experienced a significant loss of income from their primary agricultural, livestock and gathering activities since ZESID was created.

TABLE 3: **Projected development of ZESID**

Promoter/developer	Teyliom Logistics, for a first phase on an area of 90 ha (private structure)
Cost of development	Not available
Start of activities	2016
Expected level of investment	Not available
Amount of investment already made	Not available
Anticipated number of companies	Of 200 planned businesses, only one is currently under construction.
Number of jobs planned	80,000 direct and 150,000 indirect
Number of jobs already created	Not available

● Diamniadio International Industrial Platform

Diamniadio International Industrial Platform (P2ID) is located 30 km from Dakar. It was accorded SEZ status under Decree No. 2017-1110 of 30th May 2017, which was repealed and replaced by Decree 2017-1507 of 25th August 2017. This SEZ occupies land that is registered in the name of the Délégation générale du pôle urbain de Diamniadio, which is responsible for development in the town of Diamniadio.

The Covid pandemic has had a significant impact on the companies operating in P2ID. The director of the Agency for the Planning and Promotion of Industrial Sites in Senegal (APROSI), a public institution tasked with promoting and developing P2ID, insisted that it was gaining momentum but conceded that “some companies in the platform that had benefited from the African Growth and Opportunity Act (AGOA)³¹ have experienced difficulties and been forced

31. An American law that allows eligible sub-Saharan African countries to export to the US market without having to pay duties on certain products. <https://ustr.gov/issue-areas/trade-development/preference-programs/african-growth-and-opportunity-act-agoa>

to virtually suspend most of their production and shift to producing masks. For example, one company that used to employ over 3,000 people had to lay off most of its staff because of Covid-19, and ended up with under 200 employees.” Other established companies in P2ID have yet to reach their recruitment goals, and some, such as Sewacard, are still in the testing phase and have not really started marketing their products yet.

At the time of this study, the first phase had been completed on 13 hectares of the site, at a total cost of 25 billion FCFA (38.1 million euros). Work on the second phase of P2ID was launched by the President of the Republic on 6th July 2021. The plan is for the second phase to cover 40 hectares, at a cost of 60 billion FCFA (91.5 million euros) funded by Exim Bank China. A project presentation document sets out plans for over 235,000 meters of shed space, buildings and a logistics park on the site, whose projected development is shown in Table 4.

TABLE 4: Projected development and implementation of P2ID

Promoter/Developer	APROSI
Cost of development	85 billion FCFA ³² (€ 129.5 million) for the 1 st phase and 60 billion FCFA (€ 91.5 million) for the 2 nd phase
Start of activities	2014
Expected level of investment	Not available
Amount of investments already made by companies located in the area	35 billion FCFA (€ 53.3 million) over 13 ha for the first phase
Number of companies planned	100 companies, 16 of which are already established
Number of jobs planned	15,000 direct jobs and 8,000 indirect jobs
Number of jobs already created	1,035 jobs listed before the onset of Covid-19 ³³

● Comparative analysis of SEZs and their general impacts

SEZs in Senegal vary in terms of the amenities and other facilities that had to be put in place in each site, their land management and compensation systems, and their impacts on local living conditions and the environment.

Amenities and other facilities to be put in place

Article 12.5 of Law 2017-07 provides for the establishment of a one-stop shop in every SEZ. However, Diamniadio is the only one of the three sites studied with the facilities that one-stop shops provide to help operators complete formalities and other administrative procedures. The person responsible for SEZs in APIX told us that companies from other SEZs use the Diamniadio one-stop shop for their administrative needs. APIX does not think it would be cost-effective to set up one-stop shops in the other SEZs at the moment due to their very slow uptake.

32. <http://senegal-emergent.com/fr/plateforme-industrielle-integree-de-diamniadio>

33. <http://www.big.gouv.sn/index.php/2020/07/15/le-ministre-de-leconomie-visite-les-zes-dans-le-cadre-du-programme-de-relevance-de-leconomie-nationale/>

P2ID also has the all infrastructure-related facilities that companies need to operate, most of which are provided by the promoter/developer APROSI for a rental fee of 2,500 FCFA (€ 3.8) per square metre per year. In contrast, companies in Sandiara and Diass SEZs have to start from scratch and install any services they require for their business.

Another key advantage of Diamniadio SEZ is the fact that APROSI has specialist experience in promoting industrial sites. The structure that will promote and develop Sandiara, the Agence de développement communale, is still in the process of being created. The plan is to install several promoters/developers in the SEZ in Diass.

Land management and compensation systems

Every SEZ is different from the others. The land occupied by Diamniadio SEZ is part of a 1,644 hectare land title for the new Diamniadio urban hub created by Decree 2014-968 of 19th August 2014, which made 53 hectares of land available for the first phase of the SEZ. Strictly speaking, the people who were evicted from the site in 2014 therefore lost their land to the new urban hub rather than the SEZ, which was not created until 2017. All negotiations with local communities were conducted by the Delegation for the Management of the Urban Hub (DGPU), which paid compensation at a rate recognised by the law on the national domain. Nevertheless, there are questions about the extent to which customary or informal rights – which are legitimate, but not legally recognised – were taken into account, given the former director of the DGPU’s recollection of events: “When it was necessary to decommission these 1,644 ha in the public interest, the scale that was used was set by the law. The process was facilitated by the fact that most of those who declared themselves owners of the land had no real rights.”

Sandiara SEZ was established on national domain land, which is managed by the municipal council. It was the commune that decided to negotiate with local communities that would be displaced in order to create the municipal industrial zone, which was subsequently accorded SEZ status by the State. In this case, the municipality used a different compensation system from the one set out in the legal framework, compensating all occupants and holders of both formal and informal land rights, rather than only those with real rights. Levels of compensation have gradually changed in Sandiara. People affected by the industrial zone in 2014 received 300,000 FCFA/ha (459 euros), those impacted by the SEZ between 2017 and 2020 received 500,000 FCFA/ha (764 euros), and the rate since 2020 has been 1,000,000 FCFA/ha (1,527 euros). These amounts do not exclude the payment of expenses and other investments made, if any. The gradual increase is partly due to rising land values over the years, and (according to the municipality) partly to attempts to ease social tensions.

The land base for Diass SEZ was already in a classified area where private ownership is not permitted. This land was simply declassified and returned to the State’s private domain.

In summary, Sandiara was the only site where the State or a branch of government made direct contact with local communities in order to expropriate land and create an SEZ. Most of the local people’s land rights were traditional in all three sites; very few people had any kind of recorded rights. In Diamniadio, 67% of evictees held informal rights, and only 33% had a land allocation issued by the community council giving them a right of use.

The compensation systems used in Diamniadio and Diass do not provide the fair and prior compensation advocated by international instruments such as the Voluntary Guidelines, which state that customary rights must be protected even in the absence of legal title. Local

people want substantial compensation that reflects the historical legitimacy of their landholdings and the losses they have suffered, but the State is sticking to the letter of law, which provides compensation for works done on the land, not the value of land in the national domain. Another issue is that the compensation system for cancelled land rights pays little heed to the rights of legitimate tenure holders: under measures based on the National Domain Law, compensation was made to those who had directly invested in the land, who were not necessarily its legitimate owners.

The low rates of compensation for crops grown and money invested in chicken coops, market gardening equipment, wells, fences, trees, etc. do not enable people to replace the land on which they use to earn their living. Land is the main resource that rural communities rely on for their survival, and the majority of villagers surveyed still regard agriculture and livestock as the best and most sustainable way of generating regular incomes. Compensation is just a one-off payment.

In addition to the land appropriations, there are also reports of collateral damage associated with SEZs. Real estate developers armed with official titles issued by the State are taking over the remaining extension areas of villages around SEZs (such as Sandiara and Dougar in Diamniadio),³⁴ further reducing the little space villagers have left to build private dwellings, hotels, etc.

Impacts on local living conditions

All three SEZs have had direct impacts on living conditions in the communities whose land was appropriated. Most of Diamniadio SEZ occupies fertile land that villagers from Dény Malick Gueye used to use for horticulture and poultry farming; while local people used to forage, farm and graze their livestock in the classified forest where Diass SEZ now stands. In Sandiara, the municipality negotiated with affected communities and paid them compensation, but some people objected to the development and took legal action against the municipal authorities. Although the Supreme Court found in their favour, local people still had to negotiate with the municipal council because the industrial zone had by then been granted SEZ status, thereby weakening the communities' power over the resource.

Diamniadio is unusual in the way it accessed the land for the SEZ. The developer did not have to negotiate directly with communities that had legitimate claims to the land (as was the case in Sandiara), having been offered a site that was already registered in the name of the State. This made it easy to establish the SEZ, but effectively marginalised local people in the implementation process and meant that they were unable to negotiate the economic benefits from companies operating on the site. As neither the developer nor the companies feel accountable to local communities that have been dispossessed of their land, affected people are not properly informed about the SEZ and are not the primary beneficiaries of jobs created by the companies operating on the site.

34. As part of the national programme to construct 100,000 homes, the State decided to build a housing estate near Sandiara SEZ in partnership with the commune. This led to disputes with market gardeners who were using the land earmarked for development. The Prefect helped both sides find common ground (12 October 2020), and an adjoining 8 ha site was found for the market gardeners to cultivate. In Dougar (commune of Diamniadio), local people organised several demonstrations, including one on 6th June 2021 to oppose the allocation of 70 ha of land to a private company that will build housing estates on it.

In Sandiara, on the other hand, local people are among the primary beneficiaries of the jobs created in the SEZ. The decree creating this SEZ requires companies to “create direct local jobs” and take in at least ten students from Sandiara’s vocational technical high school as part of their sandwich course. Businesses in Diamniadio are encouraged to recruit locally, but can still hire workers from any area. The director of APROSI told us that the main difficulty in recruiting locally is that many people lack the qualifications these companies need, especially businesses involved in services and advanced technology.

The socio-economic impacts of SEZs should therefore be measured at different levels, and take account of local people’s perceptions. The State sees things in macro-economic terms and assesses the advantages of SEZs in terms of reducing the balance of trade deficit, while local people are more concerned with the immediate impacts on their daily lives. The two categories of actor use very different assessment criteria to measure success.

Local communities are not the only people who find themselves worse off as a result of SEZs. Company employees are no better off either, as most of the jobs created in SEZs are precarious and subject to labour legislation that does them few favours. An anonymous source in APROSI also told us that while some companies have created jobs, “the best paid positions are occupied by expatriates,” and the few Senegalese who do hold responsible positions are generally paid less than their expatriate colleagues. The majority of women who work in garment factories earn slightly more than the minimum wage (SMIG),³⁵ and can be dismissed overnight.

In Sandiara SEZ, the company with the greatest recruitment capacity specialises in fishing and processing, and only recruits extensively in its peak production period from March to June, when fish supplies are plentiful. Employees are recruited as day labourers, and expected to work 12-hour shifts from 8 am to 8 pm or 8 pm to 8 am for a daily wage of 3,500 FCFA (5.35 euros).

The main local responses to this loss of land, poor compensation and low capacity to absorb local labour are rural exodus, change of occupation (transport, trade, etc.), or what the people of Sandiara call *mbayann*: borrowing or renting land in other villages in order to continue their agricultural activities in the rainy season. The President of the Republic does seem to have some understanding of local people’s needs, and has asked ministers to ensure that SEZs fulfil their mission, particularly in terms of creating jobs in host localities.³⁶

Our findings show that while SEZs can help tackle the national trade deficit, they also need to take care of local people’s needs. The question is how to balance depriving local communities of productive resources such as land with opportunities to replace these means of subsistence in new industrial units. This is a particularly pressing issue, as it has not only become apparent that SEZs have failed to create large numbers of secure and sustainable jobs to replace the family farms that previously provided decent livelihoods; but also that the few jobs they have created are at the mercy of labour legislation and exogenous factors that leave their employees socially and economically vulnerable. Furthermore, the companies that operate in these SEZs are not necessarily part of a dynamic that will boost the local economy, for example, by positioning themselves downstream of local economic activities, particularly the processing of local products.

35. The minimum hourly wage in Senegal, which was 213 FCFA (0.32 euros) for agricultural and similar enterprises in 2018, and 317 FCFA (0.48 euros) for the non-agricultural sector in 2019. (<https://votresalaire.org/senegal/salaire/salaire-minimum>).

36. Communiqué of the Council of Ministers of Wednesday 7th April 2021.

Environmental impacts

Companies in SEZs are subject to the environmental protection measures set out in Article 37 of Decree 2017-535. Unfortunately, the ESIA and EMPs produced before the three SEZs in this study were set up are not available to the public (despite our repeated requests), so it is impossible to determine the extent to which their recommendations have been implemented. Although Decree 2017-535 says nothing about the publication of such documents, any suggestion that they are confidential is refuted by the mechanisms set out in Ministerial Order 9468 of 28th November 2001, which regulates public participation in environmental impact assessments (EIA). Article 2 of this Order calls for public participation at every stage of an EIA; Article 3 refers to displays, statements and other mechanisms to inform relevant members of the public, enable them to access technical information and express their opinions; and Article 5 requires these documents to be submitted to the community concerned.

Our surveys show that local people are starting to feel the environmental impacts of these SEZs. The vast majority of respondents in Diamniadio cited noise pollution and dust generated by machinery during infrastructure installations as the main adverse effects; but there are also concerns about water points that were buried during earthworks, thereby increasing the risk of flooding in low-lying villages around Diamniadio. Local people in Sandiara say that a company which specialises in manufacturing fish meal emits a nauseating smell that radiates up to 4km from the site. They organised a march to protest about the situation, and when the local authorities and a government representative got involved, the company decided to set up a filtering system to eliminate the smell. To emphasise the importance of environmental protection, APIX recently included promoting green energy, developing green spaces and maximising the recycling of water and waste among the SEZs' environmental objectives.³⁷

Conclusion

SEZs play a key role in Senegal's industrial recovery policy. Four SEZs have already been established and the government is looking to intensify this process, with a technical adviser to the President of the Republic stating that "Senegal should ultimately be one big SEZ".³⁸ This vision of a national network of SEZs was recently echoed by the director of SEZs at APIX, who argued that every part of Senegal has the potential to accommodate SEZs.³⁹

The Minister for the Economy, Planning and Cooperation also stressed the important role that SEZs play in stimulating the national economy during a visit to the SEZs on 14th July 2020, before urging national and international actors in the private sector to invest more in these zones. The Minister said he was "impressed by the achievements of the various structures visited" and stated that the government would "communicate more on SEZs in order to attract more investors".⁴⁰ In April 2021,⁴¹ APIX noted that the performance objectives for

37. Seminar on business and investment in Senegal, 15th April 2021 (http://www.unido.or.jp/files/2.-Mr.-Mara_APIX.pdf).

38. The second session of the "AmCham Coffee Panel" in Dakar organised by the American Chamber of Commerce in Senegal in October 2017. This session focused on the opportunities offered by SEZs.

39. National Land Forum held on 18th and 19th May 2021 at Novotel Dakar.

40. <https://www.economie.gouv.sn/index.php/fr/articles/14-07-2020/la-visite-economique-du-ministre-amadou-hott-aupres-des-entreprises-implantees>

41. Seminar on business and investment in Senegal, 15th April 2021, op cit.

SEZs include achieving an occupancy rate of at least 90%, generating significant economic returns, and ensuring that Senegal ranks among Africa's Top 10 most competitive SEZs. It certainly seems to be in the process of amplifying their introduction.

Our first observation in this respect is that all the SEZs established so far are located in the Dakar-Thiès-Mbour triangle, which includes some of the most developed sites in the country. If development of SEZs further improves this area, the socio-economic imbalance between western Senegal and other parts of the country is likely to increase.

The study findings also show that the SEZs in Senegal differ from each other in nature and design. Sandiara SEZ was a municipal initiative, while the SEZs in Diass and Diamniadio are direct government initiatives in which the communes played only a minor role. As a result, these two SEZs have very few direct links with the respective communes and local communities. This situation is also due to the fact that the local communities whose land resources were used to establish the SEZs were not involved in the process and are not the primary beneficiaries of the economic benefits generated by these platforms. SEZs might be regarded as being integrated into a more global framework from a macro perspective, but local communities will testify that they are disconnected from local realities on the ground.

On the whole, local people do not oppose the installation of SEZs. However, they do blame the government for the deterioration in their living conditions caused by inadequate compensation and lack of stable employment, as the companies in SEZs do not create enough jobs to absorb the local workforce that was previously engaged in rural activities.

Local communities want to be consulted about the creation and development of SEZs, with "win-win" partnership models that regard land resources as community inputs into the establishment of SEZs. These models would not only enable them to make sustainable incomes, but would also stop people from seeing these hubs as external initiatives that take no account of their strategic interests. People are prepared to welcome SEZs in their area if they enable them to find plenty of secure jobs and earn decent incomes, and if they help boost the local economy by involving companies that operate in SEZs in processing local products.

Recommendations

● Socio-economic and environmental recommendations

- >> Make the national plan to establish SEZs consistent with national land use plans, to improve territorial equity and encourage more harmonious territorial development across Senegal.
- >> Better integrate the SEZ policy into territorial dynamics, and encourage local economic development by positioning companies in local product development streams. SEZ policy should comply with local development plans for rural areas, and better incorporate the agro-sylvo-pastoral activities on which most communities depend.
- >> Use SEZs to drive a strategy to promote the domestic private sector and large local agricultural enterprises in order to create labour-intensive value chains.
- >> Involve local governments and communities throughout the process of setting up and managing SEZs. Draw on the experience in Sandiara to improve local authority involvement.

- >> Review SEZ policy and adopt win-win models that will benefit both local populations and investors. Land could be regarded as a contribution from rights holders whose land has been appropriated in order to establish an SEZ. This would allow them to derive local benefits from SEZs and make sustainable incomes, and stop them from seeing these hubs as external initiatives that take no account of their strategic and vital interests.
- >> Prioritise hiring local people and follow the President of the Republic's instructions to create jobs in host localities (see Council of Ministers communiqué of Wednesday 7th April 2021).
- >> Provide a support mechanism for local communities and ease conditions of access to SEZs to enable them to invest in these sites. SEZs could boost local production and generate profits for local people if they are designed to tie in with local economic realities.
- >> Ensure that scarce natural resources whose destruction would be irreversible are safeguarded within SEZ boundaries.
- >> Publish EIAs and EMPs, pay particular attention to compliance with environmental standards, and rigorously enforce protection and mitigation measures. Provide for inclusive mechanisms to monitor EMP implementation in conjunction with local elected officials and representatives of local communities.

● Socio-legal and administrative recommendations

- >> Adapt the compensation system for rights holders and users of land declared to be in the public interest so that it reflects changes in new international legal instruments that protect people's rights by recognising legitimate tenure rights regardless of whether they are "formally recorded" or not. The State refers to international standards when putting in place incentive measures to attract investors, and should follow the same standards when compensating impacted communities. In addition to prior investments and developments, compensation should also cover lost land and the socio-economic activities it supported. The assessment scale for expenditure and works undertaken on the land should also be re-evaluated, especially as the most commonly used legal framework is based on a 1964 law that takes no account of current economic developments in land.
- >> Refocus the legal framework for SEZs around the provisions for sharing benefits from land-based investments set out in the 2018 UN Declaration on the Rights of Peasants and Other People Working in Rural Areas. This point is absolutely crucial in Senegal, as several land conflicts have arisen when local communities contest the land use models assigned to private investors. The application of Article 5 of this UN Declaration could help resolve such conflicts and meet local demand for "win-win" models that respect people's fundamental rights to environmental protection and access to secure, decent jobs.
- >> Improve the system for expanding SEZs. This should no longer happen systematically, and should require a participatory evaluation of the SEZ's impact on local communities and the added value of the proposed extension.
- >> Improve oversight of the declaration of public interest process, which is often abused. How, for example, can a piece of land granted to a private company be in the greater public interest than an agricultural development by family farms?

- >> Undertake a comprehensive land reform that secures the rights of all actors, especially local communities, rather than promoting specific laws that establish exceptional regimes and/or favour one category of actors.
- >> Ensure that SEZ programmes are compatible with workers' rights relating to maximum contract duration, number and renewal of fixed-term contracts, protection measures in case of economic lay-offs, etc.
- >> Increase the digitisation of administrative files by setting up one-stop shops in all SEZs and ensuring that they have sufficient qualified staff to operate effectively.

These recommendations for a more relevant and coherent SEZ policy do not discount the legitimate questions that could be raised about the appropriateness of such a policy, given the mixed results that SEZs have had in other countries. Senegal's own experience with free zones, the precursors to SEZs, and the failures observed in the Dakar industrial free zone and its counterparts surely call for a broader perspective and a rethinking of Senegal's industrial policy objectives and tools. These free zones were intended to attract FDI, but Senegal was unable to benefit from the wave of industrial relocations from Europe in the 1980s despite its notable progress in free zone regimes. The low business uptake in existing SEZs also raises questions about the attractiveness of these zones and the State's capacity to meet the technical and economic challenges posed by the creation of such infrastructures. Finally, is the creation and spread of these "zones" really the best option, given their implementation costs, the economic benefits they actually provide for the national and local economy, and the various forms of exclusion arising from their installation?

This policy also raises a number of questions about land policy processes and debates in Senegal. Institutional actors generally defend the idea that SEZs should be rolled out across the country, and that the legal framework for this process was established by the 2017 law. However, an informed observer of Senegalese land debates might wonder whether the State is using SEZs to extend its hold over land under cover of developing its industrial policy. The SEZ land regime is exceptional in that it is based on land being registered in the name of the State, which has expedited the process by exempting itself from declarations of public interest. But land belongs to the nation, not the State under the current land tenure system governed by the law on the national domain. This implies that communities have significant powers to control this resource. Announcing the generalisation of this SEZ policy could be seen as attempting to turn the exception into the rule, and ultimately pressing ahead with significant changes to the Senegalese land tenure system without prior discussions that would allow stakeholders to engage in an inclusive, participatory land reform. The debates around the land reform never generated consensus on this point, yet it is possible that much of the land in the national domain could be registered in the name of the State in the future. ●

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CHAPTER 3

SEZs and land tenure in Madagascar

Introduction

Since the end of the 1980s, successive governments in Madagascar have advocated various forms of dedicated zones for investors in the industrial, service, tourism and agricultural sectors (Figure 2). SEZs are one of several types of tool that has recently featured in the possible range of legislation and national programmes in this field.

These zones are designed to attract investors by providing favourable customs and tax regimes, a skilled and competitive workforce, facilitated settlement conditions, and legally secure, conflict-free access to land. However, their implementation has been severely hampered by the lack of supporting decrees to clarify the laws announcing such zones. The only SEZs established so far are in the agricultural sector (agricultural investment zones - AIZ) and the tertiary sector, where free zones have been developed outside areas specifically dedicated to investment.

This study aims to summarise the characteristics of these zones, explain their slow progress, and analyse their socio-economic and legal implications. There will be a particular focus on land tenure and the extent to which these zones are regulated by the national land reform, which began in 2005 and is based on the legal recognition of customary and local rights.

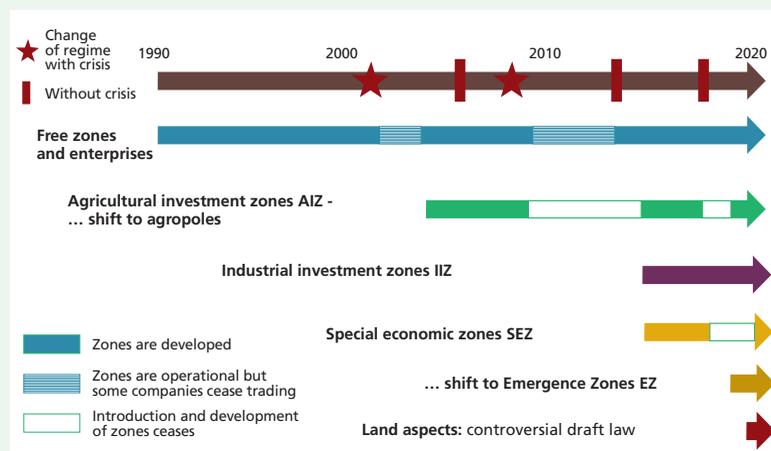
In Madagascar, the term “investment zone” encompasses various labels assigned to these dedicated spaces for investors, which may or may not be clearly demarcated. Investment zones are mentioned in connection with free zones, but none exist yet and businesses are setting up operations outside dedicated investment zones.

This study focuses on dedicated investment zones for:

- >> companies in the industrial or service sectors, including free and enterprise zones (FEZs), industrial investment zones (IIZs) and SEZs proper;
- >> agricultural operators: agricultural investment zones (AIZs), which are then divided into agricultural growth poles (agropoles) and agricultural emergence zones (AEZs).

Figure 2

INVESTMENT ZONES PROMOTED UNDER DIFFERENT LABELS BY SUCCESSIVE GOVERNMENTS



The study in Madagascar was conducted between January 2020 and May 2021 by a team composed of one senior international expert and three national specialists in this field. It was based on interviews in Antananarivo and the Vakinankaratra region, field visits (mainly to land classified as AIZs in Vakinankaratra region) and literature reviews. A total of 83 interviews were conducted with farmers, local authorities (in villages, communes and Vakinankaratra region), ministry representatives (directors in the ministries responsible for agriculture, industry and land use planning), national entrepreneurs, investment support institutions, experts, etc.

This chapter is divided into four sections. The first describes the legal framework for land tenure; the second reviews progress with FZs, IIZs and SEZs; the third develops the lessons learned from AIZs; and the final section concludes with guidelines and recommendations regarding the land aspects of these zones.

The legal framework for land tenure in investment zones

● Land slated for investment zones

Investment zones are intended to enable investors to access land inside developed areas. The State or agency/company responsible for the zone usually leases or rents the land to investors. The State or entity concerned has to identify where the zone will be created. This may be on:

- >> state land (national domain) that is set aside for the zone;
- >> legally registered (titled or recorded) private land purchased by the entity concerned or, upstream, by the State;
- >> land held by private individuals, with or without legal documentation, which is expropriated by the State in the public interest.

As part of the national land reform, Law 2005-019 and Law 2006-031 withdrew all appropriated land from the State and reclassified it under the new legal status of private untitled land (PPNT). From a legal perspective, this significantly restricted the State's domain and prevents it from allocating locally appropriated land for investment areas. However, forests and extensive grazing lands remain under State control and can be targeted as potential investment zones.

Although the new laws have not been systematically applied to protect customary rights holders (Burnod and Andriamanalina, 2017), communes that have a land office (*guichet foncier*) in place can legally register rights held on PPNT land, and provide holders of locally recognised rights with land certificates – ownership documents with a legal value similar to land titles.

A law on specific types of land was drafted in 2020 to formalise the status of dedicated investment zones, protected areas, pastures and several other land categories. It proved highly controversial,⁴² and was reportedly redrafted later that year following exchanges between different actors in the land sector. The land administration has not shared the contents of this draft, which still deals with the status of SEZs but does not mention extensive grazing lands, which would be covered by a specific law on community rights. For the time being, grazing lands and forests remain part of the national domain, and forests can be transferred to investors.

In 2021, a new law on untitled private land made significant changes to the original reform proposals. Law 2021-016, which was passed by the Assembly and the Senate in June 2021 and promulgated in October 2021, aimed to freeze the extension of customary and local lands.

Following numerous challenges to this law by various land actors (civil society groups, farmer organisations, academics, development operators, donors) and the appointment of a new minister responsible for land matters, a new law on untitled private land was passed in July 2022. Law 2022-013 recovers the gains made by the founding laws of the reform. It reaffirms the recognition of local rights, the communes' land management competences, and land certification as a legal security option for citizens on a par with registration. It reinstates legal recognition of local rights but only to land that has been appropriated for more than five years.

● Means of accessing land under current land laws

Obtaining use or ownership rights from individuals or the State

Investors can access land in two ways, by acquiring it from individuals or from the State. Foreigners are not permitted to own land.

Individuals can sell or lease their land and the State can sell or lease land from its domain. For large scale transactions (over 100 hectares⁴³) or for foreign investors, the State can no sell land, it can only lease land. Before selling or leasing any land, the State must ensure that it is titled in its name. There are two possible scenarios for this.

42. Civil society organisations, managers of protected areas and donors challenged the draft law on several counts, arguing that it ignored the lessons learned from past experience by including community lands and requiring all land, whatever its purpose, to be titled in the name of the State and managed by the land administration.

43. None of the texts specify the threshold at which land qualifies as a large area, hence the lack of precision here.

In the first, the land may have been registered in the name of the State for several decades, as is often the case with land that was registered in settlers' names before being returned to the State.⁴⁴ Much of this land is occupied by farmers, who are legally regarded as squatters even though some of them have been in place for over 10 years and could therefore initiate acquisitive prescription proceedings (Ordinance No. 60-146, Article 82). This fact is not publicised and very few people initiate such proceedings, which are extremely expensive.

In the second scenario the land is not yet registered in the name of the State, which usually asks the economic operator interested in the site to cover the registration fees. These can quickly exceed 100 euros/hectare. Most individuals, households and families who have appropriated land according to customary or local practices have no proof of legal ownership, at best possessing small pieces of paper that are *prima facie* evidence of private agreements (deeds of sale, shares, gifts, etc.) signed by witnesses and sometimes stamped by local legal authorities (representatives of the commune or *fokontany*). The original Law 2006-031 and the Law 2022-013 give local rights to appropriated land parcels a first level of protection as PPNT, even without legal documentation.

In both cases, it is common for the actors responsible for land procedures not to recognise legitimate rights (due to political support for investors, interpretation of the law, corruption, etc.). In their eyes, untitled or unrecorded land that has been appropriated is not legally protected.

Registering land in the name of the State and transferring it to a third party often involves expropriation (where rights holders are recognised as legal owners) or eviction (where rights holders are not recognised as legal owners). Both situations carry a risk of social and political conflict.

Obtaining use or land rights for investment zones

Although the concept of specific investment zones for industrial, service or agricultural activities is well established in Madagascar, the 2020 draft law on special status lands was the first land bill to specifically consider investment zones. The first version of this draft legislation proved so contentious that the ensuing process and possible second version of the draft text have not been made public.

● Provisions for land access in sectoral texts

None of the texts relating to investment zones (laws and decrees relating to FEZs, SEZs, IIZs, agropoles, etc.) provide any details about the land aspects of these zones. Some refer to the forthcoming law on special status lands, but are only specific on three points.

First, the land selected for investment zones must belong to the State (if necessary, as a result of expropriation). Second, developers can access land for SEZs through a 30-year land concession, and land for IIZs through a public-private partnership agreement. There is no

44. Land that was registered in settlers' names were partly left to them and partly returned to the State (then given or sold to local elites).

mention of FEZs or agropoles. Finally, developers can lease built or unbuilt land to companies. These texts do not create derogation arrangements for access to land in investment zones, but do pave the way for expropriation in the public interest.

● Expropriation and resettlement for rights holders

Land can only be expropriated by a public authority (the State, a public body or a public works concessionaire acting on behalf of the State), and only in the public interest – that is, for activities that contribute to the public interest (Article 34 of the Constitution⁴⁵ and Order No. 62-023 of 19th September 1962⁴⁶).

The State is expected to demonstrate that the new activities on land slated for expropriation will be the public interest. Citing the development of commercial activities as grounds for public interest can be controversial, especially if these activities are primarily in the companies' interest and will not generate funds for the State or for inclusive territorial development.

The expropriation procedure consists of nine administrative phases.⁴⁷ Whether the occupants and owners of the land in question are entitled to claim compensation depends on the relevant legislation (which may include or exclude legitimate rights holders without legal documents) and how it is interpreted.

According to information provided by the Ministry of Land Management, Housing and Public Works (MAHTP) website (on 15/06/2020), there is also a procedure for amicable expropriation with direct payment of compensation, proposed resettlement sites or compensation in kind. However, there are no explicit instructions for this amicable procedure, or any legal provisions for resettlement.

It is impossible to know whether compensation is sufficient to restore the livelihoods of those who have lost their land, as there are very few instances of expropriation resulting in compensation, and it is hard to access data on such cases. The conditions for obtaining compensation (whether it is offered to all occupants or only holders of legal documents), the actual payment of compensation by the State or the expropriating agency, and access to additional compensation (access to land) seem to be dictated by the project backers or the company concerned rather than by government policy.

45. "The State guarantees individual property rights. No one may be deprived of this right except by expropriation in the public interest, and in return for fair and prior compensation." Article 34, Constitution of Madagascar.

46. Ordinance No. 62-023 of 19th September 1962 on expropriation in the public interest, the amicable acquisition of real estate by the State or secondary public authorities, and added land values.

47. In 2020, the Ministry of Land Management and Public Works (MAHTP) website set out the following steps for expropriation: 1) Conduct a field survey to identify the plots of land concerned, and the occupants or owners likely to claim compensation. 2) Declaration of public interest. The Minister of Land Management prepares a draft decree to be submitted for approval by the Council of Ministers. 3) The properties and plots affected by the project and their owners are listed in the plot statement, which is attached to the deed of transferability. 4) The properties and plots affected by the project and the facilities thereon shall be subject to a pecuniary valuation by the Land Services Administration. 5) Rights holders to the affected properties and plots are sent a letter of notification. 6) Expropriation compensation funds are deposited in the Treasury. 7) An expropriation order is issued declaring immediate possession by the expropriator. 8) Land records are updated by transferring the properties to the name of the State or the expropriating authority. 9) Payment of expropriation compensation is made.

Investment zones for service and processing enterprises

● A succession of incomplete zones

The first investment zones: free zones

The first zones were initiated in 1989, under the Ratsiraka regime (1975-1993). Free zones (FZ) were intended to expand the industrial sector by attracting foreign capital companies, and rebalance the trade deficit through exports. Their main advantages lay in very cheap labour (the average salary in Madagascar in the early 1990s was a third of that in Mauritius), and guaranteed access to international markets through various preferential international trade agreements⁴⁸ (Dimou and Fernand, 2008). Although clusters of free-trade companies were set up with Mauritian, French, Malagasy and Asian capital over the next decade (Cling *et al.*, 2005), none of the 228 companies concerned operated out of designated free zones.

These free zone companies had to contend with the political crises of 2002 and 2009, and changes in various multilateral agreements (Dimou and Fernand, 2008). Some businesses in the textile sector closed; others were able to continue by specialising in new technologies or adapting their commercial strategies (*ibid.*). Investors are also moving into new services such as telecommunications (Glick and Roubaud, 2006).

Subsequent governments regarded the FZ regime established in 1989⁴⁹ as a successful tool that needed to be improved in the face of changing international competition. This led to the introduction of a new law in 2007⁵⁰ (in parallel with a law on investment promotion⁵¹), which placed “free and enterprise zones” (FEZ) under the jurisdiction of the one-stop shop that the Economic Development Board of Madagascar (EDBM) created for investors in 2006. A new implementing decree for this law was issued in 2015.⁵²

The FEZ model became increasingly controversial as the decade drew to an end. None of the free zone enterprises established in Madagascar were in dedicated zones that could be regarded as territorial enclaves; and 200 of the 449 free zone enterprises operating in 2018-2019 had their approval withdrawn after an inspection found them to be in breach of the regulations for free zones (particularly those relating to export obligations).

Experts also regard some aspects of the law and the incentives it offers as outdated. On the one hand, because the law does not cover social and environmental standards, skills development, value chain integration or green technologies; and on the other hand, because they believe that tax incentives should be reduced to reflect the benefits that companies derive from low-cost labour and preferential access to certain markets (World Bank, 2020). These observations, and the fact that not a single free zone was created in the two decades after their launch, led to the development of laws on SEZs and IIZs.

48. Multilateral multifibre agreements, the agreement between the European Union and the African, Caribbean and Pacific States, the AGOA in the United States, etc.

49. Law 1989-027 of 29th December 1989.

50. Law 2007-037 of 14th January 2008 on FEZs in Madagascar.

51. Law 2007-036 of 14th January 2008 on investments in Madagascar.

52. Decree 2015-1096 of 7th July 2015 implementing the Law on FEZ.

Parallel introduction of Special Economic Zones, Industrial Investment Zones and Emergence Zones

Investment zones returned to the political agenda between 2015 and 2017, when the Rajoanarimampianina government (2014-2018) reintroduced them as special economic zones (SEZ) and industrial investment zones (IIZ).

A law on industrial development passed in 2017⁵³ mentioned the creation of IIZs as a means of creating wealth, jobs and expertise. Unlike FZs, and in accordance with international trends and WTO recommendations, IIZs were primarily aimed at companies incorporated under Malagasy law that have operated in the country for at least five years. There is no requirement for companies in IIZs to export their products. In 2021, the decrees relating to IIZs were still being finalised and preparations were under way for three zones in Tuléar, Arivonimamo and Ambatolampy, one supported by a donor (African Development Bank). However, no IIZs actually existed at this point.⁵⁴

The government also introduced a parallel law defining SEZs in 2017. They have similar objectives to FZs, namely: i) to function as islands of excellence that attract domestic and international private investment; ii) to create jobs; iii) to increase the volume of exports; and iv) to stimulate growth (see law on SEZs⁵⁵). SEZs offer tax and customs advantages to operators, but unlike FEZs, must systematically fall within a precisely designated enclosed area in order to facilitate controls by State services and generate inter-company synergies. As with IIZs, no decrees had been issued and no SEZs created by 2021. Some progress had been made in developing the economic zone in the port of Ehoala in Fort-Dauphin, in southern Madagascar, but this was planned and approved long before the SEZ bill, and is still not operational.

In 2019 the Rajoelina government (2009-2014, and late 2018 to date) started to focus on creating investment attraction zones. Emergence zones (EZs) became a conceptual and operational keystone of the Madagascar Emergence Initiative, even though there was no explanation of how they link up with or differ from SEZs and IIZs. Preparations are under way for the first emergence zone in Moramanga, which has previously been described as an SEZ and an industrial park, and has probably been temporarily re-labelled as an EZ or IIZ. While the plan is to attract Mauritian investors interested in a stronger textile sector, the zone cannot be completed until the decrees specifying the IIZ implementation process are finalised and an operational National Agency for Industrial Development is established. The current government priority seems to be finalising the legislation on IIZs.

● **Apparently diverse but similar institutional structures, regimes and issues**

As things stand, companies have to choose which kind of zone they want to operate in as there is no crossover between the different regimes on offer in Madagascar. The multiplicity of incentive schemes (FZ, SEZ, IIZ) creates confusion for administrators and investors alike, although in reality only one scheme is currently operational – the free zones and enterprise regime. Law 2017-023 on SEZs has not been followed up with any decree or implementing regulation; and Law 2017-047 on IIZs is in the process of being supplemented by two decrees. There are no texts relating to emergence zones.

53. Law 2017-047 of 29th January 2018 on industrial development.

54. A generic form of industrial zones is mentioned in the urban master plans of some cities and certain municipal development plans.

55. Law 2017-023 of 28th November 2017 on special economic zones.

Despite the lack of finalised decrees, it is possible to identify some common features and differences between these zones. IIZs and SEZs share similar organisational setups, where a private developer or a developer representing a public-private partnership is responsible for the zone, and acts as an intermediary between interested companies and a dedicated national agency (the EDBM for FEZs, which already exists; and national agencies for SEZs and IIZs, as specified in the texts but not yet in existence). Each zone has a one-stop shop that represents the national agency and houses representatives from every deconcentrated State technical service. This system requires a significant investment in human resources, which will supposedly be covered by contributions from the State, developers and companies. Given the significant risk that these organisations will be in competition with each other, it also raises questions about the nature of future relations between these new institutions and the existing technical services.

The various laws, decrees and announcements relating to these zones stipulate the tax and customs advantages on offer under each regime, from subsidised credit to facilitated recruitment and labour conditions (simplified procedures for setting up business, obtaining visas, renewing fixed-term contracts, international financial operations, etc.).⁵⁶ In return, developers and companies are expected to fulfil certain obligations, such as complying with national legislation, producing an ESIA (the developer), training employees (companies in IIZs and SEZs) and, in some cases, exporting almost all their output (this applies to free zone companies; there are no explicit obligations for companies in SEZs, and companies in IIZs may be geared towards the national market).

Creating these zones requires major investments on several fronts: i) basic infrastructure and services such as roads, and access to electricity, water, sanitation and energy, which is still very limited in Madagascar; ii) identifying and securing land tenure; and iii) developing the site. Feasibility studies conducted by an international consultancy firm put the initial investment per hectare at around € 650,000 to € 850,000 to create such zones, plus management and maintenance costs.⁵⁷ If the investment is solely borne by a private developer supported by banks, it would take 25 years to repay the initial investment, as serviced land would need to be leased to companies at around US\$ 2.7/m²/ha/year (US\$ 27,000 /ha/year) to be internationally competitive. Another option would be for the investment to be borne jointly by the State, backers and the developer, but there is currently no specific or guaranteed system for allocating the expenditures incurred during the development.

● The impacts of zones dedicated to processing and service companies

Low impact on land tenure

The development of free zones companies has had very little impact on land tenure. Each company manages its own access to relatively small areas of land (generally less than 0.5 ha per company). Their creation is not conditional upon the State making land available

56. Investors in SEZs benefit from favourable labour legislation (fixed-term contracts for up to five years), income tax rates of 10% rather than 20%, facilitated currency transfers, and a stable tax regime for 20 years. IIZs offer favourable access to credit at subsidised rates, a stable tax regime (although the tax benefits have yet to be specified) and innovation incentives. They also prioritise Malagasy companies when awarding public contracts.

57. The feasibility study states that the SEZ in Moramanga will be developed in 3 phases over 15 years, and that it will eventually cover a total area of nearly 680 hectares (with approximately 220 hectares developed every five years).

to a developer, and they can conduct their business anywhere provided they obtain EDBM approval to operate as free zone enterprises. Some companies choose to operate out of private holdings that lease serviced buildings to all types of company (free zone and otherwise). Having a broader client base improves the landlord's chances of remaining profitable, as they can find other tenants if free zone companies in their premises cease trading.

The law states that SEZs and IIZs should be developed on land leased from the State covering a minimum area of 100 ha. This process involves numerous procedures, and has so far proved no faster than access to standard "out-of-zone" land. Moramanga IIZ is a case in point. The land that the State put forward for Moramanga belongs to a former State company, and therefore had to be transferred from this company, re-registered in the name of the State, assigned to the Ministry of Industry (which cannot use land for profit) and then transferred to the National Agency for Industrial Development (ANDI, which has yet to be formalised by decree and created), which can then set up a joint venture with the developer to initiate the creation of the IIZ.

Socio-economic performance of free zone companies in the 2000s

Free zone companies are the only concrete outcome of the investment incentive frameworks introduced in Madagascar's processing and services sector. The debate around this topic in the 2000s focused on three questions about their potential effects (Razafindrakoto and Roubaud, 1997; Cling *et al.*, 2005). First, the risk that FZs (or clusters of free zone companies) form isolated territorial enclaves that have no impact on the local economy and no interaction with other enterprises at the national level. Second, the tax exemptions granted to these companies prevent the State from making any return on its investments in infrastructure and services, which disappear from its orbit. Third, employment conditions are unsatisfactory and keep households in poverty.

These three points were partially refuted by studies conducted in the early 2000s (op cit.), when macro-economic modelling of the effects of free zone enterprises in Madagascar showed the presence of spillover effects. The fact that free zone enterprises imported three quarters of their inputs, and therefore had limited linkages to the local economy, was mitigated by the significant income distributed to households in the surrounding area. The 228 free zone enterprises operating at the time of the study employed 100,000 people (Cling *et al.*, 2005), paying them at similar rates to companies in other formal sectors, and higher rates than informal enterprises. It was argued that the tax losses arising from the benefits accorded to the free zone enterprises were offset by tax revenues from increased household consumption. Finally, significant growth in exports – particularly in the textile sector – meant that free zone enterprises met the dual objective of accelerating growth and reducing poverty through job creation, without worsening the balance of trade and public finances (Razafindrakoto and Roubaud, 1998, Cling *et al.*, 2005, Glick and Roubaud, 2006).

These positive effects were greatly undermined by the final dismantling of quotas imposed under the Multifibre Arrangement in 2005 (Cling *et al.*, 2009). After this date, export and employment growth ground to a halt, wages in free zone enterprises fell below those in other formal industrial enterprises, and working conditions worsened as international competition increased (op. cit.).

It also seems that nothing has been learned from the experience with Ehoala Park in Fort-Dauphin, which is managed by a subsidiary of the mining company Rio Tinto. This park covers 440 ha of serviced land (water, electricity), includes a functional port and comes with a

development plan – but still failed to attract any investors despite the port infrastructure and reduced land rents. The remoteness of the site and its isolation from the road network were probably the biggest disincentive for investors, but its stalled development was also due to political tensions between the developer and the State over the distribution of responsibilities and investments.

Agricultural investment zones and agropoles

● Successive attempts to introduce agricultural investment zones

The first wave of AIZs dating from 2005 foundered with the political crisis

The policy on AIZ was first developed in 2005 under the Ravalomanana regime (2002-2009), but never followed up with any strategic documents, laws,⁵⁸ or arrangements for specific tax regimes, etc. The policy explicitly promoted the development of agribusiness in the dairy and cereal sectors through agricultural investment zones, which were created by decrees issued by the Ministry of Agriculture, outside the framework of laws and decrees approved by various sectoral ministries. AIZs were not intended to attract foreign capital or focus on exports (as is the case with FZs), and most were allocated to Malagasy operators with close links to the government, whose output (mainly milk) was sent to private factories owned by the President of the Republic. Operators in these zones enjoyed facilitated land access, with multi-year rentals or entry conditional upon the acquisition of imported dairy cows. Almost every operation failed and investment ceased following the political crisis caused by the removal of President Ravalomanana and the establishment of a transitional regime in 2009.

Attempts to attract external investors

Between 2005 and 2015 about 100 (mostly foreign) operators investigated the possibility of developing large-scale agricultural projects (over 1,000 hectares) in Madagascar. No reference was made to AIZs by the investors or the government and technical services that welcomed them, and land access procedures were based on the general regime in place at the time.

The government was on the point of leasing 1.3 million hectares of land to the company Daewoo when the deal became public knowledge in 2009, contributing to the impeachment of President Ravalomanana (Teyssier *et al.*, 2010). The political crisis and popular opposition to these land transfers did not persuade the transitional government to jettison the policy of welcoming investors, but it did adapt it by shortening leases from 99 years to 30 years and increasing ground rents by a factor of 10 (from \$US 1 to \$US 10/ha/year) (Burnod and Andriamanalina, 2017). Companies continued to seek sites despite the crisis and the failed Daewoo deal, and some managed to obtain land through formal and informal means.

Only 7,000 hectares of the 100,000 ha of land leased by the State between 2005 and 2015 were cultivated (*op. cit.*), and 95% of these projects were abandoned by 2015 due to unrealistic business plans, insufficient funding (*op. cit.*) or land-related issues (Burnod *et al.*, 2013). Corruption is a regular feature of land access, along with very cumbersome procedures for obtaining legal documents, and local conflicts caused by the fact that much of

58. Only two decrees have been issued to secure the land base for about 10 plots of land, out of about 30 plots identified.

the land registered and leased by the State was previously used by local communities. This is not conducive to productive outcomes – for the departing companies that have lost huge amounts of money, for farmers who should have been legally protected and recognised as landholders (under the PPNT law), or for herders who found themselves squatting on customary lands. Meanwhile, the State has seen its private land holdings increase, the land it has leased is frozen until companies formally terminate their contracts, and the arrival of new entrepreneurs is likely to provoke strong protests from local communities (Burnod and Andriamanalina, 2017).

Realising that land-related factors were partly to blame for the very high failure rate in these sites, the Rajaonarimampianina and Rajoelina governments reintroduced investment zones into the political agenda with plans to make them “turnkey” sites with legally secured (legally registered) serviced land (with road access, water, electricity, etc.).

The second wave of AIZs, recalibrated to reflect high farmer occupancy

The policy on AIZs was relaunched in 2015,⁵⁹ this time by the head of Vakinankaratra region rather than the central government (Rajaonarimampianina regime 2014-2018). Inspired by the “first wave” of AIZs, this regional policy was supported by the Swiss Cooperation (Matoy project) and formalised by a small number of policy and technical documents. In addition to promoting investment, the agricultural sector and employment, it aimed to improve the system with open and widely advertised calls for proposals, and included a charter setting out additional food security and local development objectives. Access to land would be obtained at a modest rate of 20,000 MGA/ha/year (about € 5/ha/year), through 25-year rental agreements that could be renewed provided the land was put to productive use.

Most of the land slated for AIZs (for the first or second time) is titled in the name of the State or endowed to Vakinankaratra region. Much of it has a complex tenure history (colonial estates, State farms, allocations to elites who left it unused) and has been disputed at the local level and sometimes in the courts. Almost all of it is occupied by farmers who cultivate 20%-100% of their plots and have done so for a long time (over 5 years) or very long time (over 25 years), often with authorisation from a State representative or high-ranking elected official (State farm manager, MP, president).

Allocating land to operators is a complex process that often leads to conflict, farmer evictions, operators withdrawing, or renegotiations with farmers (see below). The very sensitive political context (runup to elections, change of regional leadership) and civil society response to farmer evictions limited broad political support for AIZs among decision-makers and donors from 2017 onwards, and considerably slowed down their deployment.

Moves towards agropoles or agricultural emergence zones

A series of workshops funded by the African Union and the World Bank rekindled interest in AIZs in 2019. The African Development Bank is keen to accelerate the process, and two decrees have been drafted⁶⁰ to expedite the introduction of a new type of zone

59. Echoing the Sectoral Plan for Agriculture, Livestock and Fisheries (PSAEP) and the National Plan for Agricultural Investment (PNIAEP), which allude to ambitious goals for agricultural growth poles that will cover up to 2 million hectares by 2025.

60. The Ministry of Agriculture issued these two decrees in order to obtain the third tranche of the Economic Competitiveness Support Programme (PACE) funded by the African Development Bank.

called an agropole. However, there is no clear link between agropoles and AIZs, and the only paragraph on the land-related aspects of agropoles refers to the forthcoming land bill on special status lands. No agropole or agricultural emergence zone had been created when this report was written.⁶¹

● Limited achievements

The AIZs created in 2005 did not boost agricultural development or increase genuinely productive land use. Critics and certain technicians regard the operation as a land grab by operators close to the regime, since cattle breeders were able to acquire land cheaply (although some went into debt acquiring dairy cows), and some of the cereal producers and dairy farmers in AIZs had little previous agricultural experience. Almost all of them ceased production in 2009 when the political crisis started.

When AIZs were revived in 2015, the plan was to make land available to foreign and national operators who would be shielded from administrative problems and local land conflicts. Calls for tender were put out for a total of 1,821 hectares composed of 18 plots in 11 localities.⁶² This represented a significant amount of land, given that the average farm size in Vakinankaratra region is 0.5 ha. When the tenders were assessed, 21 operators were selected for a total of 791 hectares. Their profiles illustrate the diverse land needs in the area, as they range from small and medium enterprises to non-governmental organisations (NGOs) and farmer associations composed of households that already occupied certain parts of the AIZ (see below). Several operators withdrew from the process, which ultimately ended with 14 leases being issued for a total of 266 hectares of land in 2016. Another 9 operators were granted leases for a further 145 hectares between 2017 and 2020. It is worth noting that these land allocations were very unequal, with companies granted large areas and farmer associations limited to small amounts of land.

There is a significant gap between the 1,821 ha initially put forward for potential AIZs and the 411 ha actually covered by AIZ leases (Figure 3). This can partly be explained by the remote location of the land, its inaccessibility during the rainy season, its poor agronomic quality, legal status (not yet titled) and the fact that it was occupied by farmers (titled land); and partly by the withdrawal of companies or NGOs that had little previous agricultural experience and had underestimated how much they would need to invest in order to develop the land.

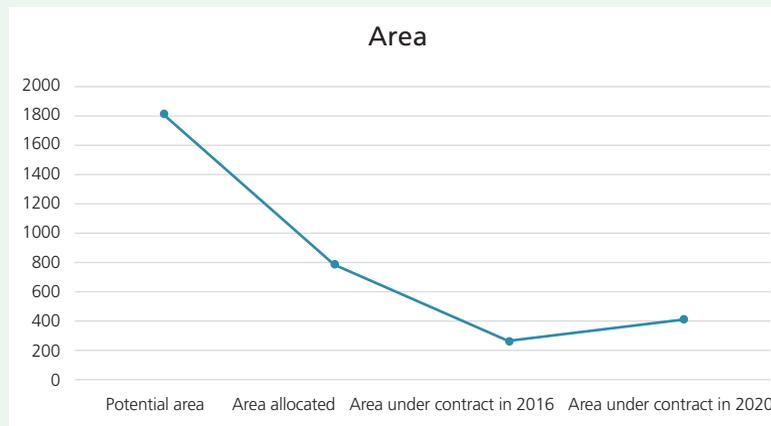
Between 2015 and 2020, land allocations for AIZs continued to prioritise companies, regardless of how much land they applied for, or the results on the ground. Companies accounted for 54% of operators, obtained the largest plots and occupied 83% of the land allocated during this period, averaging 25 ha per company (Figure 4). The number of farmer associations increased slightly in 2020, but they still only obtained 13% of AIZ land despite the fact that they accounted for 42% of operators in these zones (averaging 5 hectares per association or 0.14 ha per member).

61. Since 2018, new operators have approached the Ministry of Agriculture and the Ministry of Land Affairs seeking to obtain large amounts of land. Normal procedures for land negotiations are under way in the two cases studied (see below), and if they are successful this land could be listed as agropoles or agricultural emergence zones.

62. A 2,500 hectare plot of land was also to be included, but the allocation was stopped in the runup to the elections. New donor-funded surveys showed that the land was not conducive to investment as it already included cultivated areas, and there were serious concerns about the security of goods and people in the uncultivated area used by herders.

Figure 3

DIFFERENCE BETWEEN THE AMOUNT OF LAND CLASSIFIED AS AIZ IN 2015 (1,821 HA) AND LAND LEASED IN 2020 (422 HA)



Source: Burnod (coord.), 2017 and field surveys

TABLE 5: Land distribution between different types of beneficiary in 2015, 2016 and 2020

	2015				2016				2020			
	No. of beneficiaries		Total area (ha)		No. of beneficiaries		Total area (ha)		No. of beneficiary		Total area (ha)	
Companies or entrepreneurs	12	63%	739	93%	9	64%	229	86%	14	54%	352	83%
NGOs	3	16%	20	3%	1	7%	5	2%	1	4%	13	3%
Associations paysannes	4	21%	33	4%	4	29%	33	12%	11	42%	57	13%
	19		791		14		267		26		422	

Source: Burnod (coord.), 2017 and field surveys

● Impacts of dedicated agricultural zones

Settlement versus eviction

Vakinankaratra region has seen repeated cycles of failed incomer operations, recolonisation by farming families and farmer expulsions. Much of the land that had been set aside for AIZs in 2015 was occupied by farmers, who were not informed about the forthcoming initiative, which they saw as a non-negotiable State imposition. Tardy field visits by entrepreneurs and the land services caused panic among farming households who were considered to be squatting on State land and ordered to leave – in contravention of the region’s stated principle of “zero evictions”, and the principle of free, prior and informed consent from affected populations recommended by international bodies.

The way that farmers were evicted from land targeted for AIZs varies according to the history of the land and their level of information and organisation.

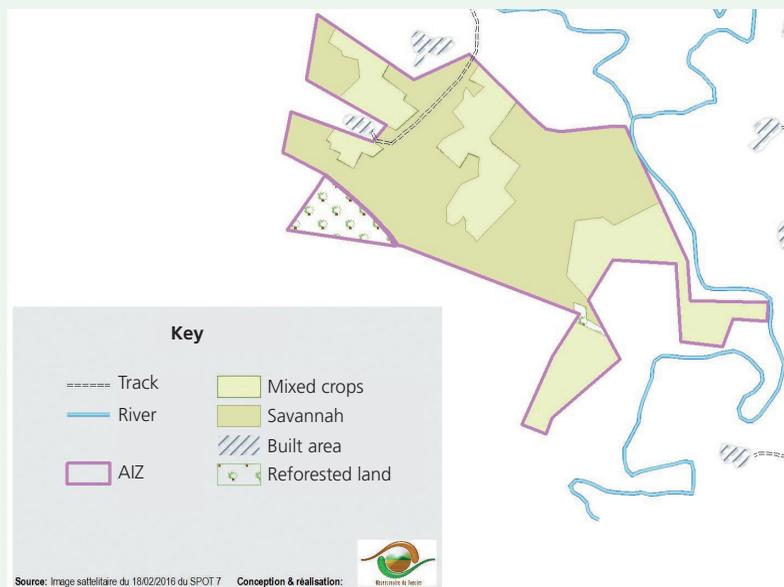
Some of the land set aside for AIZs was not used because farmers knew that it was poor quality or that it belonged to the State and would be risky to develop. This type of land was allocated to AIZ operators without incident. In some cases, operators asked for plot boundaries to be changed, either to avoid conflict or to ensure that their land allocation did not include areas already under cultivation (particularly rice fields).

In another case, land was transferred to operators after the farmers who previously occupied it had been evicted. Over a hundred families were evicted from land in two communes (see Boxes 6 and 7). Some did not dare resist and left without compensation, while others were evicted with empty promises of resettlement.

Box 6

AGRIKA PLOT, ANDRAVOLA COMMUNE

Agrika parcel is a 37ha plot of land in Andravola commune (see Figure 5) that was registered in the name of the State and assigned to the region. In the 1950s it was part of a colonial estate that was used for fodder production. When the settlers left after Independence, the land was occupied by farmers, who were forcibly evicted in 1982 to make way for a State farm. This farm ceased operating in 1992 and the land was re-occupied by farmers who were then asked to leave in 2005 when dairy farms were set up under the AIZ programme. These closed in 2009, and farmers started using some of the land for food crops and some to graze cattle. In 2015, the land was leased to a company as part of another AIZ initiative, and about 50 farming families were ordered to leave at a very late stage in the process. They did not get any support from the mayor of Andravola because their land is in a different commune, and previous interventions by the security forces made them afraid to protest about their situation. As a result, they are being evicted from their land without compensation.

Figure 4**PLOT OF LAND SLATED FOR AN AIZ THAT LOCAL COMMUNITIES USED FOR AGRICULTURE AND LIVESTOCK (IN THE SAVANNAH)**

Source: Burnod (coord.), 2017 and field surveys

Box 7**LAND IN THE COMMUNE OF IBITY**

This 75-hectare plot in the commune of Ibity has a similar history of repeated failed business ventures and farmer resettlement. However, when families on this land contested their 2016 eviction order (unlike the farmers cultivating in Agrika) with support from civil society and the media, the regional authorities and land services promised to resettle them on replacement plots that would be titled in their name. The farmers point out that it would have been better if the operators had been installed in these resettlement plots (to save the region from “borrowing from Peter to pay Paul”, as the saying goes), especially when the new regional authorities reneged on the promised resettlement (no budget was planned, and no resettlement plots identified). As it turns out, some evicted farmers will be able to access the land again as one of the private operators ceased their activities in the AIZ area.

In a third case, the land was used by family farmers who obtained recognition as AIZ operators, formed an association so that they could apply for a land allocation, and thereby managed to secure their use rights (Box 8).

Box 8

VERDUM PLOT, ANDRAVOLA COMMUNE

The Verdum parcel covers 42 hectares of land in the municipality of Andravola. Like the Agrika parcel, it was slated for a regional AIZ in 2015, but farmers mobilised against the project with support from the mayor, arguing that no company had managed to develop the land in a sustainable way for several decades. When the regional authorities gave them permission to put themselves forward for AIZ land provided they formed an association, they set up two associations and obtained two leased plots. Other farmers have since followed suit and set up associations in Andravola and neighbouring communes in order to obtain leases for AIZ land (either to have their occupation recognised by the AIZ, or to gain access to unused land).

These three cases show that the extent to which farmers are taken into account and the options they are offered vary greatly from one commune to another: some have been evicted without compensation, some have been evicted with the promise of resettlement, and others have had their land occupancy recognised and their use rights secured.

Socio-economic outcomes: farmers perform better than companies in AIZs

Our findings show that only 164 of the 311 hectares of leased AIZ land in the three municipalities studied in 2020⁶³ are actually cultivated (53%); also, that this low use rate is due to the poor performance of certain companies. Overall, companies only use 41% of the land they lease, while farmer associations use 98% of the land allocated to them (which they already occupied or was an additional land allocation). It is worth noting that both types of actor: i) produce the same types of crop⁶⁴ (maize, beans, fodder for dairy cows); ii) follow the same practices (most use similar management techniques, and only four companies have mechanised certain tasks); and iii) have similar yields. Farmer associations experience similar funding problems to companies but do not have to contend with conflicts over land, and their superior technical knowledge enables them to use their land efficiently. These findings show the inadvisability of evicting farmers to make way for supposedly more productive companies, and the need for a more rigorous selection process so that operators are chosen on the basis of their agricultural experience and true productive capacity.

In terms of local job creation, companies recorded just 0.38 full-time equivalent (FTE) jobs per hectare in 2015 (based on available data from tender documents) and only 0.15 to 0.20 FTE/ha in 2020 (field data). This is fewer than family farms, which create about 2 FTE per hectare in Madagascar.

63. Andravola, Ambohipihoanana and Ibity, three rural communes that contain most of the AIZ land.

64. With the exception of an NGO that produces essential oils and distributes them to farmers.

Social tensions, low local authority uptake and land freezes for farmers

The politicisation of serious land conflicts arising from the installation of AIZs in 2016 led to the suspension of plans to implement new AIZs (see above). Ground rents and land taxes generate minimal financial returns for the region (20,000 MGA/ha/year from ground rent, which equates to less than € 5/ha/year) and communes (10,000 MGA/ha/year for land taxes, or less than € 2.5/ha/year). The regional authorities do not monitor AIZs closely at the moment for fear of provoking new political upheavals or conflicts with operators or farmers, and has yet to contest contracts for land that is not being exploited. Some communes are trying to help new companies or associations but find it hard to proceed without clear regional guidelines for managing AIZ land. As a result, farmers find themselves in the paradoxical situation of being denied access to land while the spaces assigned to companies remain unused.

Avenues for reflection to ease access to land

- >> **Link land access projects with land use planning projects.** Medium-sized and large areas of land that are not used very productively tend to be far from villages, have poor public services and infrastructure (roads, schools, clinics, markets, drinking water) and are not very secure (risk of theft or attacks on people). Facilitating access to land therefore entails large-scale territorial projects to open up and develop all public services in the area (water, energy, security, health, etc.).
- >> **Prioritise support for farmer land access over commercial access.** Farming households need huge amounts of land – current estimates put the figure at over 300,000 hectares per year (almost 300,000 new farms are established each year). Reflections on land access for businesses, households and other institutions (NGOs, communes) should be consultative. It would be hard to justify State support (expertise, budgetary) that only benefited businesses, especially in the agricultural sector. Like businesses, farming households can supply markets and create jobs; they need infrastructure just as much as companies do, and can use it in complementary ways to businesses.
- >> **Rather than limiting reflection on facilitated land access to investment zones, aim to facilitate land access procedures across the country, and on scattered plots within a given territory.**
 - **Facilitated land access at local level without creating a delimited zone.** The 2015 land policy letter refers to investment zones for businesses and local development zones (LDZ) for farmers.⁶⁵ The advantage of having differentiated zones is that they can adapt land access procedures according to their target beneficiaries. The experiences analysed in this study show that it is difficult to identify and establish zones because of their scope and the number of parties involved. The whole concept of zones could be opened up to correspond with an intervention territory where facilitated approaches are available for smaller, scattered plots of land.

65. Collectively defined categories of actor (youth, women, migrants, etc.) could be given priority access to land in LDZs. This could include land clusters or plots scattered across a commune, and be done by linking sponsors with owners, or decentralised authorities guaranteeing the transaction, etc.

- **All citizens could also have facilitated land access, which would entail reorganising the procedures and powers of central, deconcentrated and decentralised institutions.** However, this requires a strong political will to prevent or avoid rent-seeking behaviours and monopolies of power. **It could also include facilitating rental markets for individuals** through tenders, facilitating meetings between parties, and supporting and securing contracts.
- >> **Opt for intervention areas that will include a patchwork of activities.** It takes longer to create a zone that is conceived as a continuous, homogeneous, enclosed space owned by a single actor, as this requires expropriations and changes in land use. The intervention area could be a small territory that includes a patchwork of activities and plots with different land values (built-up areas, agricultural land, pastures, cultivable land, etc.) occupied by different types of actors. Everyone holding legitimate tenure rights in the intervention zone could be part of a territorial project, and those who wish to do so could agree to cede rights of use or ownership to third parties on land of their choosing. Transactions could be organised and concluded between individuals but guaranteed by the public authorities. Concentrating socio-economic activities within the intervention area could encourage synergies between operators and facilitate possible monitoring operations by State services (customs, safety and working conditions, etc.).
- >> **Recognise and include legitimate rights holders.** As land slated for investment zones or territories is often appropriated through customary or legal means, the rights held on such land must be legally recognised when these territories are identified, whether or not the rights holders have legal documents. This would also improve the security of:
 - land rights holders who obtained their land according to legitimate local rules, as in the first version of the PPNT law;
 - farmers who are longstanding occupants of land titled in the name of the State or former settlers;
 - users and owners of customary and collectively managed land such as pastures. This requires concerted and consistent progress on laws, specific statutes and community rights.

Processes to identify investment territories should recognise stakeholders' rights and respect their decisions.

These proprietors could then be involved in the creation of these territories in different ways: as economic operators, as proprietors who rent their land for a given period, or even as owners who are willing to sell their land.

- >> **Avoid evictions.** This recommendation was prompted by several observations, apart from the negative impacts that evictions have on livelihoods:
 - evictions can generate conflicts that are harmful to both the former landholder (usually farmers and herders) and the new rights holders (usually companies);
 - it is not economically profitable to evict certain operators in order to accommodate others without ensuring that the new operators will generate sustainable socio-economic and environmental outcomes (in agriculture these include productivity and number of jobs created per hectare, respect for the environment, resilience to economic shocks, etc);

- donors and development banks may refuse to finance investors who have caused evictions;
- the public interest argument may be contested if the land will ultimately be used for commercial activities.

>> **Decentralised and voluntary procedures should include the creation, management and monitoring of investment territories, to root them in local realities and create incentives for all concerned.** Each stage should be clearly communicated and transparent (calls for tender to identify operators, well-advertised selection criteria, open selection committees, etc.). **Contractual commitments should be monitored and guaranteed by local institutions** that are able to call upon the State authorities. Municipalities could play an important role in all these respects, by acting in partnership with the State services. ●

*Perrine Burnod, Heriniaina Rakotomalala,
Valérie Andriamanga, Lydia Razanakolona*

Conclusion

The concept of SEZs is very wide-ranging and has evolved over time. The SEZ regimes in Senegal, Madagascar and the other eight countries studied differ in many respects, from their objectives and target sectors to their links with national development policies, legal frameworks, institutional set-up and implementation. Some States have adopted “special economic zone” legislation, while others use a different name for these zones or adopt SEZs as one of several models. Broadly speaking, the main distinguishing feature of SEZs is the specific legislation under which they operate: an exceptional regime that diverges from those in force across the rest of the country. This study has adopted a broad definition of SEZs that goes beyond the terminology used in each national context.

The overall objective of SEZs is often to promote investment in order to boost industrial or agricultural development. The decision-makers who champion SEZs often aim to use private investors and higher exports as levers for development, but also seem increasingly interested in more diversified activities, promoting domestic markets, and developing public-private partnerships. All SEZ policy and legislative frameworks seem to target enterprises of a certain size, which may exclude small farmers and traders in particular.

The field studies in Senegal and Madagascar found that SEZ programmes have a mixed record in terms of both delivery and outcomes. Despite its ambitious plans to roll out SEZs on a large scale, Senegal currently has only four operational SEZs, which have created far fewer jobs than anticipated. Madagascar has various legal and institutional configurations but a relatively modest level of operationalisation; it has created zones with an agricultural dimension and recently introduced other concepts such as “agropoles”, but these only exist on paper and we are awaiting clarification of their legal status. To some extent, plans to establish an SEZ appear to be a discursive means of enabling foreign investors to enter the agricultural sector, more than a fully institutionalised and operationalised strategy.

That said, our research also revealed a wide variety of configurations and experiences with SEZs, leading to different socio-economic outcomes and varying degrees of local ownership even within the same country. This point is illustrated by Senegal’s contrasting experiences with the SEZ in Sandiara, initiated by the local municipality, and the state-led Diamniadio International Industrial Platform and Diass Special Integrated Economic Zone.

The literature review provided some insights into the overall performance of SEZs around the world. They have been relatively successful in some contexts, in terms of

increasing exports and enabling 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 conflict, particularly over working conditions, as is the case in Kenya, Ethiopia and Bangladesh. Their outcomes may also be conditioned by changing global trade mechanisms, as we saw with the phaseout of the international Multifibre Arrangement, which played a key role in the development or fall of the garment industry in low- and middle-income countries such as Bangladesh and the Dominican Republic.

In terms of public policy, SEZs have sometimes served as laboratories and testing grounds for business-friendly policies that are subsequently rolled out on a wider scale. This can be seen in the past experience of countries with longstanding SEZ programmes, and declarations of intent and policy signals from more recent SEZ adopters (stated aspirations to extend SEZs across the whole of Senegal). In this way, SEZ programmes can serve as a vehicle for renegotiating established economic and political relationships that extend well beyond their immediate geographical perimeters.

When it comes to land tenure, SEZs can cause pressure on land or further exacerbate existing pressures, as in urban areas of Senegal. These zones can have direct impacts on land tenure following expropriation, and indirect impacts through processes such as land speculation in the surrounding area. The link between SEZ programmes and land policies is another significant factor in this respect. In Senegal, for example, plans to create and then generalise SEZs could be interpreted as a way of facilitating land access without having to modify the current land governance regime, the reform of which has been stalled for several years.

The fact that different rules apply to land access inside and outside SEZs enabled the Senegalese government to take over the administration of an area previously controlled by the local authority; while the government in Madagascar is currently renegotiating land access and investment promotion processes under its SEZ programme. Past experience in these two countries and elsewhere in the world has shown that such moves can cause conflicts with affected people and other actors.

The following recommendations were informed by the lessons and research findings presented in this report:

- >> **All SEZ policies should be guided by in-depth, participatory public reflection on national development strategies.** SEZ programmes should tie in with national development strategies rather than simply replicating imported institutional and regulatory models. Before they even consider establishing SEZs, policy makers should work with stakeholders to identify clear development objectives that include improving local livelihoods, then develop appropriate investment strategies and implement them accordingly. Any spatial development initiative that prioritises public and private investments in certain geographic areas should be based on this kind of holistic strategy. The same principle applies to land policies, spatial planning, land tenure regimes and respect for rights. An SEZ policy is no substitute for a land policy that secures the greatest number of rights.
- >> **Problematiser “exceptional regimes”.** Development objectives in certain “priority” territories may rely on strategic approaches to investment and public action, such as enabling clusters of companies to benefit from shared infrastructures, services and synergies to facilitate their development and improve their competitiveness. SEZs go further than this in that they have distinct legal regimes for taxation, labour, land, and/or other matters.

Establishing exceptional legal regimes is highly problematic, particularly in areas such as land and labour, where human rights are at stake. All SEZ programmes should ensure that labour, land and other rights are duly respected in the zones.

- >> **Move away from a closed zone approach and make SEZs more open spaces that create opportunities to improve local livelihoods.** Many SEZ programmes have created closed spaces for larger-scale investors. In principle, the zones could accommodate a wider range of operators, including small-scale farmers, entrepreneurs and traders, and facilitate the emergence of coordinated clusters of different activities. Small-scale, labour-intensive enterprises with local roots often create numerous jobs and sustain local livelihoods. This approach would help embed SEZ programmes in territorial dynamics, promote domestic markets and add value to local products.
- >> **Ensure that SEZ activities are economically profitable, environmentally sustainable, and generate social benefits.** Rigorous social, environmental and economic management systems are needed to operate SEZs. Decision-makers should ensure that operators provide all relevant economic and financial guarantees, and will be able to implement the project in accordance with rigorous, binding provisions for environmental protection and other agreed commitments. They should also require an independent third-party assessment of the SEZ's environmental impacts, and an independent assessment of its economic and social benefits (see also CTFD, 2014). Support mechanisms may be needed to enable smaller, locally-based companies to meet these performance requirements, and local authorities to monitor compliance effectively.

All SEZ programmes should:

- >> **Recognise legitimate tenure right holders and their rights, and include them in all decision-making processes regarding the design, implementation and management of the SEZ programme.** SEZ programmes often result in land that local people hold under customary or statutory law being appropriated. Legitimate tenure rights include titled and untitled individual and collective rights, customary possession, seasonal use and delegated rights, and the rights of women, youth and vulnerable people. Proposals to establish an SEZ should be accompanied by a land survey, and should respect and secure legitimate tenure rights in accordance with international norms and standards, including the Voluntary Guidelines and international treaties to protect human rights. Rights holders should be involved in all decision-making processes relating to the creation and management of SEZs. International law and standards require the free, prior and informed consent of indigenous peoples as a matter of course, while international instruments such as the Voluntary Guidelines call for consensual processes based on partnership and negotiation, which would allow affected people to oppose the creation of a zone if their rights are not respected.
- >> **Avoid evictions.** Evictions often lead to conflicts with legitimate tenure rights holders. It is questionable whether evictions for commercial projects should be considered to be in the public interest; forced evictions (coerced or involuntary) may also be prima facie contrary to international law. Whatever the circumstances, all compulsory acquisitions (formal expropriations or comparable procedures relating to rights other than duly registered land) should include compensation, relocation and sufficient redress to improve or restore the livelihoods of legitimate tenure right holders, in accordance with international law and the Voluntary Guidelines.

- >> **Promote transparency and accountability at every stage of SEZ development.** This includes publishing draft legislation on SEZs and public policy processes; also, in more operational terms, possible site options, the process for selecting operators (calls for tender, selection committees, environmental impact assessments, operator agreements, etc.) and managing land relations (acts of sale, leases, etc.). In addition, 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.
- >> **Ensure that all actors' commitments are monitored and evaluated.** The States and actors responsible for SEZs have a particular responsibility to design and implement appropriate public policies, and ensure effective monitoring and follow-up throughout the process. This applies to both national policy and specific SEZ sites and enterprises, where the contractual commitments of operators and other stakeholders should be monitored and evaluated to ensure that leases are respected, compensation is actually paid, etc.
On a more general level, it is recommended that:
- >> **Land governance reform processes continue and deepen.** States should initiate, continue or deepen land governance reform processes including to recognise and protect legitimate tenure right holders and their rights, secure the uses of different stakeholder groups, and establish decentralised land management systems, in accordance with international instruments such as the Voluntary Guidelines.
- >> **SEZ policies are located within wider debates on land-use planning and the vision for development,** formulating mechanisms for investment and public action that promote family farms and sustainable food systems. ●

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ANNEX 1. Tables presenting key findings of the comparative literature review

TABLE 1: **General questions on the strategic directions for SEZs in relevant frameworks (policies, legislation).**⁶⁶

Question: What are the strategic objectives (exports, internal market, etc.) and how have they changed over the years?	
South Africa	Initially, to facilitate the creation of an industrial complex, promote integration with local industry, increase value-added production and job creation; ⁶⁷ then to promote exports, attract FDI and domestic investment, promote industrialisation, national and regional development (including decent jobs), productive use of natural resources, promote SMEs and cooperatives. ⁶⁸
Bangladesh	To attract foreign investment and promote exports through the free zone regime; ⁶⁹ economic development through exports, and employment and other activities in the economic zone regime. ⁷⁰
Costa Rica	To promote exports, ⁷¹ improve the quality of life for Costa Ricans, promote socio-economic development, foreign investment and job creation. ⁷²
Ethiopia	To promote domestic and foreign investment, employment and exports, protect the environment and human welfare, develop urban centres. ⁷³
Kenya	In the first instance, to promote export-oriented investments and develop an enabling environment for them, ⁷⁴ then to promote <i>both foreign and local</i> investments and develop a favourable environment for them. ⁷⁵
Madagascar	To attract investment, increase the volume of exports, create jobs, and more broadly to promote development. ⁷⁶
Myanmar	To support national economic development, promote employment and exports; attract domestic and foreign investment. ⁷⁷

66. In these three tables, the columns for Madagascar and Senegal were drafted with assistance from the respective country teams.

67. Industrial Development Zone (IDZ) Programme Regulation published as Government Notice R1224 in the Government Gazette 21803 of 1st December 2000, paragraph 3.

68. SEZ Policy 2012, paragraph 5.2 and SEZ Act No. 16 of 2014 (South Africa SEZ Act), section 4(1) and (2).

69. Bangladesh Export Processing Zones Authority Act No. XXXVI of 26th December 1980 (Bangladesh Act 1980), Article 4A.

70. Bangladesh Economic Zones Act No. 42 of 1st August 2010 (Bangladesh Act 2010), Article 4.

71. The current framework, i.e. Law No. 7210 of 23rd November 1990 on the Free Zone Regime (as amended by, inter alia, Law No. 8794 of 12th January 2010) (Costa Rica's 1990 Law), replaced legislation dating from the 1980s.

72. Regulation No. 34739-COMEX-H on the Free Zone Regime Act of 29th August 2008 (as amended) (2008 Costa Rican Regulation), preamble.

73. Industrial Parks Proclamation, No. 886/2015 (IPP), preamble and Articles 2.1 and 4.

74. Export Processing Zones Act No. 12 of 1990 (Kenya Act 1990), preamble.

75. Special Economic Zones Act No. 16 of 2015 (Kenya Act 2015), preamble and Article 3.

76. SEZ Law, No. 2017-023 of 28th November 2017 (Madagascar SEZ Law), passed but not promulgated, explanatory memorandum and Article 1.

77. Myanmar Special Economic Zones Law (2014) (Myanmar SEZ Law), Article 4.

Dominican Republic	To promote employment and exports. ⁷⁸ The framework was reformed in 2007 and 2011 to comply with WTO rules (Defever <i>et al.</i> , 2016).
Senegal	To attract investment, promote industrialisation, increase exports, and create jobs. ⁷⁹
Thailand	In the first instance, to develop industrial zones including for export. ⁸⁰ Then economic development of border regions ⁸¹ (OpenDevelopment Thailand, 2018). And in the Eastern Economic Corridor (EEC), to promote investment in “special targeted industries” that use advanced and modern technologies in SEZs. ⁸²

Question: Are key sectors favoured?	
South Africa	No.
Bangladesh	Yes: garments. ⁸³
Costa Rica	No.
Ethiopia	No, but “specialist” parks can be created for different sectors such as textiles and clothing, integrated agri-food, technology, pharmaceuticals and metallurgy. ⁸⁴
Kenya	No, but the 2015 Act mentions specific sectors such as agricultural and livestock zones. ⁸⁵
Madagascar	No. However, natural resource extraction activities are excluded, including mining and oil and gas. ⁸⁶
Myanmar	No.
Dominican Republic	Yes: since 2007, sectors in the textile and clothing chain. ⁸⁷
Senegal	No. The framework lists some illustrative sectors of activity: agribusiness, industry, information and communication technologies, tourism and medical services. ⁸⁸
Thailand	Yes: the EEC Policy Committee identified 12 special targeted industries (see above) (Kuaycharoen <i>et al.</i> , 2020).

78. Law 8-90 of 15th January 1990 on the promotion of free zones as amended by Law 56-07 of 2007 (Law 8-90), preamble and Article 1. NB: the current framework replaced legislation from the 1950s, 1960s and 1980s.

79. Law No. 2017-06 of 6th January 2017 on special economic zones (Law 2017-06 on SEZs in Senegal), explanatory memorandum and Article 2.17.

80. In accordance with the Industrial Estate Authority of Thailand Act of 1979 (as amended).

81. In accordance with several 2015 orders.

82. Eastern Special Development Zone Act B.E. 2561 (2018) (EEC Act), preamble and Article 39.

83. See Bangladesh’s seventh five-year plan, “Accelerating Growth, Empowering People”. (2015).

84. Industrial Parks Regulation 417/2017 (IPR), Article 6.

85. Kenya Act 2015, Article 4(6).

86. Madagascar SEZ Law, Article 7.

87. Law 8-90, Article 17(f).

88. Decree 2017-535 implementing Law 2017-06 on SEZs in Senegal (Decree 2017-535), Article 3.

Question: Is there only one type of SEZ or have several types with different governance regimes emerged over the years?	
South Africa	Only one type. ⁹⁰
Bangladesh	1980 Act: export-oriented free zones. The 2010 Act is not limited to export promotion and the two regimes operate in parallel.
Costa Rica	Only one type.
Ethiopia	Only one type.
Kenya	1990 Act: creation of export-oriented processing zones (EPZs). However, the 2015 SEZ Act is not limited to encouraging exports. The two programmes run in parallel. ⁹¹
Madagascar	Several coexisting regimes covered by laws and not necessarily decrees: – free and enterprise zones; – industrial investment zones, etc.
Myanmar	Only one type.
Dominican Republic	Only one type.
Senegal	Before the SEZs created under the 2017 laws, ⁹² Dakar industrial free zone (ZPID) was created in Dakar in 1974; ⁹³ and in 2007, a law created a single integrated SEZ. ⁹⁴
Thailand	Yes: 1) industrial zones; 2) border SEZs; and 3) SEZs in the EEC.

Question: Which actors instigate the creation of SEZs (central government, local authorities, private sector, etc.)?	
South Africa	The national government, provincial governments, municipalities, public entities, municipal entities and public-private partnerships may apply to the Minister of Trade and Industry for a specific area to be designated as an SEZ. ⁹⁵
Bangladesh	The government. ⁹⁶

90. The IDZs in force at the time the South African SEZ Act came into force are now governed by this SEZ Act (South African SEZ Act, s 39(2)).

91. Which was not originally planned (Cotula and Mouan, 2021).

92. That is, Law No. 2017-06 on SEZs in Senegal and Law No. 2017-07 of 6th January 2017 on the incentive scheme applicable in special economic zones (Law No. 2017-07 on SEZs in Senegal).

93. In accordance with Law 74-06 of 22nd April 1974 (as amended)).

94. Law No. 2007-16 of 19th February 2007 establishing and laying down the rules for the organisation and operation of the integrated special economic zone.

95. South Africa SEZ Act, Article 23 (1).

96. Bangladesh Act 1980, Articles 2(f) and 10, and Bangladesh Act 2010, Article 5.

Costa Rica	PROCOMER ⁹⁷ , a non-state public entity chaired by the Minister for Foreign Trade ⁹⁸ and the Directorate General of Customs. ⁹⁹
Ethiopia	The land allocated for SEZs is identified by the industrial park authority and the Investment Board, which is composed of members of the central government. ¹⁰⁰
Kenya	The Export Processing Zone Authority for EPZs ¹⁰¹ and the government for SEZs governed by the 2015 Act. ¹⁰²
Madagascar	The authority responsible for SEZs (AZES), for public or private initiatives, following a decree issued by the Council of Ministers. ¹⁰³
Myanmar	The central institution, which is mainly composed of members of the government and is created by the executive with approval from the legislative body and the agreement of the government. ¹⁰⁴
Dominican Republic	The executive authority. ¹⁰⁵
Senegal	The State. But an SEZ can be created at the request of a local authority. The State can also grant any investor holding a land title (local authority, private sector, etc.) the status of SEZ. ¹⁰⁶
Thailand	The Border SEZ Authority chaired by the Prime Minister. The EEC designated zones by order of the head of the then ruling military government (ICJ, 2020).

Question: Are there plans to call for tenders to select the companies?

South Africa	Yes. ¹⁰⁷
Bangladesh	No.
Costa Rica	No.
Ethiopia	No. ¹⁰⁸
Kenya	No.

97. Promotora de Comercio Exterior de Costa Rica (Costa Rica's foreign trade promoter).

98. Law No. 7638 of 30th October 1996 on the creation of a Ministry of Foreign Trade and a Foreign Trade Promotion Agency, Articles 7 and 10.

99. Costa Rica's 1990 Law, Article 14 and Costa Rica Regulation of 2008, Article 35.

100. IPP, Articles 2.18 and 25.1, Investment Proclamation no 1180/2020 (2020) (IP), Article 31.1(a) and Regulation no 313/2014 on the establishment of the Ethiopian Investment Board and the Ethiopian Investment Commission, Article 4.

101. Kenya Act 1990, Article 9.2(c).

102. Kenya Act 2015, Article 4.1.

103. Madagascar SEZ Law, Articles 4 and 11.

104. Myanmar SEZ Law, Articles 12 and 13

105. Law 8-90, Article 5(a).

106. Law 2017-07 on SEZs in Senegal, Article 4.

107. Law on SEZs in South Africa, Article 31(1).

108. IPP, Article 22.4.

Question: Are there plans to call for tenders to select the companies? (following)	
Madagascar	For developers: yes, if the initiative is public; no, if the initiative is private (and accepted). For companies: no (but prior agreement with the developer and approval by AZES). ¹⁰⁹
Myanmar	Yes, but not mandatory. ¹¹⁰
Dominican Republic	No.
Senegal	No, companies are selected on the basis of their dossier. ¹¹¹
Thailand	? ¹¹²

Question: Will there be a one-stop-shop?	
South Africa	Yes. ¹¹³
Bangladesh	Yes, for economic zones. ¹¹⁴
Costa Rica	Yes. ¹¹⁵
Ethiopia	Yes. ¹¹⁶
Kenya	Yes. ¹¹⁷
Madagascar	Yes. ¹¹⁸
Myanmar	Yes. ¹¹⁹
Dominican Republic	No.
Senegal	Yes. ¹²⁰
Thailand	Yes. ¹²¹ (ICJ, 2020)

109. Madagascar SEZ Law, Articles 5 and 23.

110. Myanmar SEZ Law, Article 14.

111. Decree 2017-535, Article 18.

112. Apart from the EEC Act, most of the relevant texts are only available in Thai.

113. Law on SEZs in South Africa, Article 35(k).

114. Bangladesh Law of 2010, Article 12.

115. Costa Rica's 1990 Law, Article 4.

116. IPP, Article 27 and IPR, Article 15.

117. Kenya Act 1990, Article 9.2(i) and Kenya Act 2015, Article 11(h).

118. Madagascar SEZ Law, Chapter III.

119. Myanmar SEZ Law, Articles 6(k) and 11(l).

120. Law 2017-06 on SEZs in Senegal, Article 12(5).

121. EEC Act, explanatory memorandum at the end of the instrument.

TABLE 2: Questions on the general legal regime for taxation, customs, labour, the environment and international arbitration

Question: Tax incentives?			
South Africa	Yes. ¹²²	Madagascar	Yes. ¹²⁷
Bangladesh	Yes. ¹²³	Myanmar	Yes. ¹²⁸
Costa Rica	Yes. ¹²⁴	Dominican Republic	Yes. ¹²⁹
Ethiopia	Yes. ¹²⁵	Senegal	Yes. ¹³⁰
Kenya	Yes. ¹²⁶	Thailand	Yes (ICJ, 2020).

Question: Exemption from customs duties?			
South Africa	Yes. ¹³¹	Madagascar	Yes. ¹³⁷
Bangladesh	Yes. ¹³²	Myanmar	Yes in free zones. ¹³⁸
Costa Rica	Yes. ¹³³	Dominican Republic	Yes. ¹³⁹
Ethiopia	Yes ¹³⁴ in the "industrial park customs control area". ¹³⁵	Senegal	Yes. ¹⁴⁰
Kenya	Yes. ¹³⁶	Thailand	Yes ¹⁴¹ (ICJ, 2020).

122. SEZ Regulations 2016 (South Africa SEZ Regulations), sections 6(1) and 7(2).

123. Bangladesh Act 1980, Article 11a and Bangladesh Act 2010, Articles 10 and 11.

124. Costa Rica's 1990 Law, Article 20(g)).

125. IPP, Articles 5.9 and 9.2.

126. Kenya Act 1990, Article 29 and Kenya Act 2015, Article 35.

127. Madagascar SEZ Law, Title VIII.

128. Myanmar SEZ Law, Articles 32, 33, 40, 41, 44 and 49.

129. Law 8-90, Articles 24 and 26.

130. Law 2017-06 on SEZs in Senegal, Article 6 and Law 2017-07 on SEZs in Senegal, Articles 9 and 10.

131. South Africa SEZ Regulations, paragraphs 6(1) and 7(2)).

132. Bangladesh Act 1980, Article 15 and Bangladesh Act 2010, Articles 10 and 11.

133. Costa Rica's 1990 Law, Article 20(a), (b), (ch).

134. IPP, Articles 5.9 and 9.2.

135. IPP, Articles 2.22 and 9.4.

136. Kenya Act 1990, Article 29 and Kenya Act 2015, Articles 6 and 35.

137. Madagascar SEZ Law, Title VIII.

138. Myanmar SEZ Law, Article 3 (i).

139. Law 8-90, Articles 24 and 25.

140. Law 2017-06 on SEZs in Senegal, Article 6 and Law 2017-07 on SEZs in Senegal, Articles 9 and 10.

141. EEC Act, Article 48 (3).

Question: Derogation from ordinary labour law			
South Africa	No.	Madagascar	No.
Bangladesh	Yes. ¹⁴²	Myanmar	No. ¹⁴⁴
Costa Rica	No.	Dominican Republic	No.
Ethiopia	No. ¹⁴³	Senegal	Yes. ¹⁴⁵
Kenya	No.	Thailand	? ¹⁴⁶

Question: Are there any measures regarding local content (including local job creation)?			
South Africa	No. ¹⁴⁷	Madagascar	Foreign recruitment quota for employees (maximum 5%), but not for managers. ¹⁴⁹
Bangladesh	No.	Myanmar	A minimum number of local workers may be required. ¹⁵⁰
Costa Rica	No.	Dominican Republic	No.
Ethiopia	Replace expatriate employees with Ethiopians through knowledge transfer and training. ¹⁴⁸	Senegal	Yes. ¹⁵¹
Kenya	No.	Thailand	?

142. Bangladesh Act 1980, Articles. 11a(e), (f) and (o) and Bangladesh Act 2010, Article 13(m). See Cotula and Mouan (2021).

143. IPP, Article 28.1.

144. Myanmar SEZ Law, Article 70(a).

145. Law 2017-07 on SEZs in Senegal, Article 14.

146. Apart from the EEC Act, most texts are only available in Thai. In practice, many labour law violations have been reported (ICJ, 2020).

147. However, South Africa has a local content policy which was first introduced in 2011 (Nyakabawo, 2017).

148. IPP, Articles 6,8, 8,7 and 10,5; IPR, Article 18.2.

149. Madagascar SEZ Law, Article 42.

150. Myanmar SEZ Law, Article 11(o).

151. For example Decree 2017-535, Articles 2, 4 and 18.

Question: Are there specific environmental protection measures?			
South Africa	No, ¹⁵² except for the EIA (see below).	Madagascar	Not unless an EIA is carried out (see below)..
Bangladesh	Yes for economic zones. ¹⁵³	Myanmar	Yes. ¹⁵⁷
Costa Rica	Yes. ¹⁵⁴	Dominican Republic	Non.
Ethiopia	Yes. ¹⁵⁵	Senegal	Yes. ¹⁵⁸
Kenya	Yes. ¹⁵⁶	Thailand	Yes for the EEC. ¹⁵⁹

Question: If yes, are there specific measures relating to environmental impact assessments (EIA)?			
South Africa	Yes. ¹⁶⁰	Madagascar	Yes. ¹⁶⁵
Bangladesh	Yes for economic zones. ¹⁶¹	Myanmar	No (ICJ, 2017).
Costa Rica	Yes. ¹⁶²	Dominican Republic	N/A.
Ethiopia	Yes. ¹⁶³	Senegal	No. ¹⁶⁶
Kenya	Yes for SEZs governed by the 2015 Act. ¹⁶⁴	Thailand	Yes for the EEC. ¹⁶⁷

152. However, there are many other relevant laws relating to environmental protection such as Constitution No. 108 of 1996 (Section 24), the National Environmental Management Act (Act 107 of 1998), the National Environmental Management: Biodiversity Act (Act 10 of 2004), the National Environmental Management: Protected Areas Act (Act 57 of 2003) etc.

153. Bangladesh Act 2010, Article 33. Bangladesh Private Economic Zones Policy (2015) (Bangladesh Policy 2015), Article 2(2)(b)).

154. Costa Rica's 1990 Law, Articles 1 and 25 and 2008 Costa Rican Regulation, Article 14.h.

155. IPP, Articles 6,7, 8,6, 10.4 and 24.

156. Kenya Act 1990, Article 23.2(c) and Kenya Act 2015, Articles 5(j) and 29.2(c).

157. Myanmar SEZ Law, Article 35 and Myanmar SEZ Regulations (2015), paragraphs 47 and 55.

158. Decree 2017-535, Articles 17, 37 and 38.

159. But they are not detailed (EEC Act, Article 6(1) and ICJ, 2020).

160. South Africa SEZ Act, Article 23(3)(b) and South Africa SEZ Regulations, Article 16(1)(e)(viii)(cc).

161. Bangladesh Policy 2015, Articles 6(1)(d) and (2)(d).

162. 2008 Costa Rican Regulations, Article 10.II.a.

163. IPR, Article 9.2.d.

164. Special Economic Zone Regulations 2016 (2016 Regulations), paragraph 11.1(c).

165. Madagascar SEZ Law, Title IX.

166. However, Senegalese legislation requires companies to carry out an EIA, including those located in SEZs.

167. EEC Act, Article 8.

Question: Does the framework provide for recourse to international arbitration?			
South Africa	No.	Madagascar	Yes. ¹⁶⁹
Bangladesh	No.	Myanmar	No.
Costa Rica	No.	Dominican Republic	No.
Ethiopia	No.	Senegal	Yes. ¹⁷⁰
Kenya	Yes for SEZs governed by the 2015 Act. ¹⁶⁸	Thailand	?

TABLE 3: **Land-related issues**

Question: Are there any discrepancies between ordinary rules and procedures applicable for:	
The protection of existing land rights?	
South Africa	No.
Bangladesh	No.
Costa Rica	No.
Ethiopia	No.
Kenya	Ordinary law seems to apply. ¹⁷¹
Madagascar	No.
Myanmar	No. ¹⁷²
Dominican Republic	No.
Senegal	Yes: the framework calls for the “fundamental rights” of local populations and vulnerable social groups to be respected, and “prior consultation” with the populations concerned. ¹⁷³
Thailand	Yes (ICJ, 2020).

168. Kenya Act 2015, Article 37.2.

169. Madagascar SEZ Law, Title XIII, Chapter II.

170. Law 2017-06 on SEZs in Senegal, Article 22.

171. See with respect to SEZs the 2016 Regulations, Section 36.1(d) which requires that an expropriation be made in accordance with the “applicable law.”

172. Myanmar SEZ Law, Article 82.

173. Decree 2017-535, ss. 39 and 49. However, the framework does not specify what these “fundamental rights” are.

Conditions of public interest?	
South Africa	No.
Bangladesh	Oui. ¹⁷⁴
Costa Rica	No.
Ethiopia	No. ¹⁷⁵
Kenya	For SEZs governed by the 2015 Act the government can only appropriate an interest in land if the expropriation is for a “significant” public purpose and is consistent with “the principles of full protection, security and fair and equal treatment.” ¹⁷⁶
Madagascar	No. ¹⁷⁷
Myanmar	No (ICJ, 2017).
Dominican Republic	No.
Senegal	Yes, all SEZs are deemed to be in the public interest. The decree regarding the establishment of an SEZ is in principle a declaration of public interest. ¹⁷⁸
Thailand	It seems so. ¹⁷⁹
Land acquisition?	
South Africa	The Minister of Trade and Industry on the recommendation of the body responsible for SEZs. ¹⁸⁰
Bangladesh	Respectively, the authority responsible for free zones and the authority responsible for economic zones. ¹⁸¹
Costa Rica	PROCOMER. ¹⁸²
Ethiopia	Zones are identified by the Investment Board, ¹⁸³ which then leases to investors or to a public company, (which may be a developer or an operator) ¹⁸⁴ via the Investment Commission. ¹⁸⁵

174. Land acquired for a free or economic zone shall be deemed to be required for a public purpose (Bangladesh Act 1980, s. 11 and Bangladesh Act 2010, s. 6(3)).

175. IPP, Article 20.

176. 2016 Regulations, s. 36.1. Compare this with the provisions of the Constitution of Kenya (2010), which does not include such conditions (Article 40.3(b). (It only requires a “public purpose” or “public interest” and “prompt payment in full, of just compensation.”)

177. Madagascar SEZ Law, Article 52.

178. Law 2017-07 on SEZs in Senegal, Article 4. Except for SEZs recognized on privately owned land, Decree 2017-1174 implementing Law 2017-07 on SEZs in Senegal (Decree 2017-1174), Article 3.

179. The Border SEZ frameworks and the EEC appear to override the public purpose requirement in the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019).

180. South Africa SEZ Act, Article 23.6.

181. Bangladesh Act 1980, Article 7(a) and Bangladesh Act 2010, Article 19 (2).

182. Costa Rica’s 1990 Law, Article 4.c and d.

183. IPP, Article 25.1.

184. IPP, Articles 7.1, 9.4, 22.1.

185. It is not clear who will sign the lease.

Land acquisition? (following)	
Kenya	The Export Processing Zone Authority for EPZs ¹⁸⁶ and the government for SEZs. ¹⁸⁷
Madagascar	Land must be registered in the name of the State (domain registration, purchases from individuals, or expropriations). ¹⁸⁸
Myanmar	The Ministry of the Interior does this in accordance with existing laws. ¹⁸⁹ However, one of the bodies created by the framework, the Management Committee, has played a key role in the process although these functions are normally the responsibility of other authorities (ICJ 2017).
Dominican Republic	The framework does not specify this.
Senegal	UA decree is needed to create a SEZ. ¹⁹⁰ The land is either privately owned or State-owned, or comes from the national domain. If the State does not hold title to the land and it is in the public or national domain, its management is transferred after it has become part of the State's private domain. ¹⁹¹
Thailand	The Border SEZ Authority chaired by the Prime Minister. The EEC designated zones through an order of the head of the then ruling military government (ICJ, 2020).
Land allocations?	
South Africa	The SEZ management entity must be established by the person applying for SEZ designation. ¹⁹²
Bangladesh	Respectively, the authority responsible for free zones and the authority responsible for economic zones. ¹⁹³
Costa Rica	PROCOMER it seems, but the framework is not clear on this.
Ethiopia	The developer and the operator can sublet to companies. ¹⁹⁴
Kenya	The developer or operator of an EPZ ¹⁹⁵ and the developer of an SEZ. ¹⁹⁶
Madagascar	The State grants the developer a 30-year concession, and the developer leases the land to companies. ¹⁹⁷
Myanmar	This is done by the Management Committee. ¹⁹⁸

186. Kenya Act 1990, Article 9.2(c).

187. Kenya Act 2015, Article 4.1.

188. Madagascar SEZ Law, Articles 50 and 52.

189. Myanmar SEZ Law, Article 82.

190. Law 2017-06 on SEZs in Senegal, Article 3.

191. Law 2017-06 on SEZs in Senegal, Article 4.

192. South Africa SEZ Act, Article 25(1).

193. Bangladesh Act 1980, Articles 7(b) and 13, and Bangladesh Act 2010, Article 16.

194. IPP, Articles 2.7, 5.2, 7.1, 9.4, 22.1.

195. Kenya Act 1990, Articles 22.1(b) and 22.4.

196. Kenya Act 2015, Article 33.1(b).

197. Madagascar SEZ Law, Articles 51 and 55.

198. Myanmar SEZ Law, Article 79.

Dominican Republic	On the recommendation of the State body responsible for SEZs, an executive decree grants operators an operating permit. The operator may sell or lease land to companies. ¹⁹⁹
Senegal	A public company responsible for SEZs. ²⁰⁰
Thailand	For the EEC, the office of the EEC authority. ²⁰¹
Compensation in case of expropriation?	
South Africa	The framework does not specify.
Bangladesh	No. ²⁰²
Costa Rica	The framework does not specify.
Ethiopia	The framework does not specify.
Kenya	To be established, an SEZ must fulfil certain conditions, including having the ability to resettle the population in a socio-economically acceptable manner; the likelihood of raising the quality of life and expanding opportunities for lower-income population. ²⁰³
Madagascar	The framework does not specify.
Myanmar	The developer or investors are responsible for resettlement costs and paying compensation, in coordination with the management committee. ²⁰⁴
Dominican Republic	The framework does not specify.
Senegal	The framework does not specify. ²⁰⁵
Thailand	Yes (ICJ, 2020).
Nature and duration of leases granted to companies?	
South Africa	The framework does not specify.
Bangladesh	The framework does not specify.
Costa Rica	The framework does not specify.
Ethiopia	The framework does not specify. In practice, leases can last for 60 to 80 years (Fei and Liao 2020).

199. Law 8-90, Article 5.

200. Law 2017-06 on SEZs in Senegal, Article 4.

201. EEC Act, Article 34.

202. With regard to the economic zones governed by the Bangladesh Act 2010 (Bangladesh Policy 2015, Article 16).

203. 2016 Regulations, Articles 13(e) and (g).

204. Myanmar SEZ Law, Article 80(a) and (b).

205. In reality, the compensation complies with international standards that are more advantageous than Senegalese ordinary law. In practice, the State no longer limits itself to only compensating customary owners for expenditure and investments made on the land (which is more in line with the law), but compensates for the loss of land. This means that compensation will even be paid for the loss of undeveloped land. In addition, informal (unrecorded) land rights are also taken into account in the compensation payment.

Nature and duration of leases granted to companies? (following)	
Kenya	30 years for EPZ developers and operators. ²⁰⁶
Madagascar	The framework does not specify.
Myanmar	Yes (50 years renewable), ²⁰⁷ although foreigners are only permitted leases of up to one year, ²⁰⁸ unless permission is granted by the Myanmar Investment Commission ²⁰⁹ (ICJ 2017).
Dominican Republic	The framework does not specify.
Senegal	The duration of rights granted to the promoter/developer is determined by the agreement with the State. ²¹⁰ For companies, the benefits are valid for a period of 25 years, renewable once. ²¹¹
Thailand	Leases in the EEC can last for a maximum of 50 years. Normally, property leases cannot exceed 30 years. ²¹²
Protection of investors' property rights?	
South Africa	The framework does not specify.
Bangladesh	No. ²¹³
Costa Rica	The framework does not specify.
Ethiopia	Guarantee in case of expropriation, which must be for public purpose, and include prompt and adequate compensation. ²¹⁴ The Investment Proclamation requires public interest on a non-discriminatory basis and provides for adequate compensation corresponding to the prevailing market value. ²¹⁵
Kenya	Companies in SEZs enjoy full protection of their property rights against all risks of nationalisation or expropriation <i>a priori</i> without any condition. ²¹⁶
Madagascar	Yes. ²¹⁷ For example, the Constitution speaks of "fair and prior compensation" in the case of expropriation, ²¹⁸ and the framework provides for "prompt, fair, effective and prior" compensation. ²¹⁹

206. Kenya Act 1990, Article 21.1(c).

207. Myanmar SEZ Law, Article 79.

208. In accordance with the Myanmar Transfer of Immovable Property Act (1987) (Article 5(a) and (b)).

209. In accordance with the Myanmar Investment Law (2016) (Article 50).

210. Decree 2017-535, Article 5.

211. Decree 2017-1174, Article 1. (NB: 25 years renewable, in accordance with ordinary law which provides for up to 50 years).

212. EEC Act, Article 52 and Civil and Commercial Code (Article 540).

213. With respect to the economic zones governed by the Bangladesh Act 2010 (Bangladesh Policy 2015, Article 16).

214. IPP, Article 20.

215. IP, Article 19.

216. Kenya Act 2015, Article 34(a).

217. Madagascar SEZ Law, Article XI, Chapter II.

218. Constitution of 2010, Article 34.

219. Madagascar SEZ Law, Article 110.

Myanmar	The framework guarantees that investments in SEZs are safe from nationalisation ²²⁰ , <i>a priori</i> without any condition contrary to the 2016 Investment Law. ²²¹
Dominican Republic	No.
Senegal	Yes. ²²² The Senegalese Constitution speaks of “fair and prior compensation” in the case of legally established public need to infringe a property right, ²²³ while for SEZs, the framework refers to “prompt, fair, effective and prior compensation” and adds that “compensation shall be paid without delay”. ²²⁴
Thailand	It seems not as far as the EEC is concerned.

220. Myanmar SEZ Law, Article 86.

221. Myanmar Investment Law (2016), Article 52 (which requires expropriation measures that are actually necessary in the interest of the country or its citizens, are non-discriminatory, and consistent with applicable laws; and prompt, fair and adequate payment of compensation).

222. Law 2017-07 on ZES in Senegal, Article 6.

223. Constitution of Senegal (2001), Article 15.

224. Law 2017-07 on SEZs in Senegal, Article 6.

ANNEX 2. SEZ analysis framework

The SEZ framework includes relevant policies and legislation.

Criteria	Key questions to ask
1. Overview	
SEZ policy objectives	<ul style="list-style-type: none"> • What are the national SEZ policy objectives? Do the objectives specifically mention agricultural production (and agricultural processing enterprises)? Do the objectives specify the target markets (regional, national, global)? Do the objectives specify particular products? Is it about rebalancing national deficits and/or exploiting comparative export advantages? • Is there a policy document formally adopted by the State? How old is it?
Attitudes towards the SEZ policy	<ul style="list-style-type: none"> • Who is promoting the SEZ system? Who supports it, who rejects it, and what are their arguments? (Research could include minutes of the Council of Ministers, parliamentary debates, seminars, press coverage, national and local radio in different languages, local debates, surveys, various reactions).
Type of SEZ	<ul style="list-style-type: none"> • How are SEZs defined, what do they include? (Sector of activities, zones linked to companies, particular geographic area, etc.) • Are there any conditions regarding minimum financing, number of jobs, etc.? • Is there a set minimum/maximum area for each SEZ?
Applicable legislation	<ul style="list-style-type: none"> • What legislation specifically governs SEZs? • What other legislation is relevant?
Historical overview	<ul style="list-style-type: none"> • Prior to this recent SEZ policy, were there any other similar policies or types of economic zones? • Does the country have experience with (industrial) free zones? If so, how have they performed?
Factors and processes prompting adoption of the SEZ policy	<ul style="list-style-type: none"> • What prompted the country to create a legal framework for SEZs? Was it policies to increase market share, employment, regional specialisation, pressure from the private sector or donors, desire to replicate experiences in other countries, etc.?
Institutional framework	<ul style="list-style-type: none"> • What institutional structure is envisaged to implement the policy/legislation - in other words, to create, manage and regulate these zones (agencies, one-stop-shops, etc.)? One or more institutions? <ul style="list-style-type: none"> – Existing or new? – Independent or not? – What are its/their mandates and powers? – Does this compete with other existing institutions? – Which State structures are SEZs attached to? How are they co-ordinated? (In some countries there is a ministry for SEZs). – Do local and regional governments play a role in implementing this policy? – Can communities participate in local governance mechanisms?

Criteria	Key questions to ask
Implementation and evolution of the framework	<ul style="list-style-type: none"> ● To what extent has the SEZ policy been implemented (debate, policy document, legal framework, creation of zones, actual activities in the zones, etc.)? ● How have they performed in terms of investments, jobs, turnover, value added, taxes collected and/or lost? ● Are economic and social assessments available? ● Does the State plan to change and/or adopt new policies/legislation?
2. General legal regime	
Revisit the definition	<ul style="list-style-type: none"> ● Which aspects of the legal regime apply to SEZs? <ul style="list-style-type: none"> – Tax? – Customs status? – Labour regulations and remuneration (including social benefits)? – Access to land?
Tax and customs issues	<ul style="list-style-type: none"> ● What reductions and exemptions are provided for: <ul style="list-style-type: none"> – Imports/exports – VAT – Incomes. ● Are they time-bound? ● Do they apply to specific actors (all actors, only foreign actors, companies, associations, etc.)? ● Are there any conditions? ● Are local taxes affected by these reductions and exemptions? ● Are SEZs governed by national customs law or are they deemed to be outside the national customs territory?
Labour law	<ul style="list-style-type: none"> ● Does this framework differ from ordinary labour law or its application, meaning that workers will have less protection in SEZs than in the rest of the country? <ul style="list-style-type: none"> – Wage levels – Types of contract – Employees' origin. – Social contributions (pensions, family allowances, health insurance). – Trade union membership options. – Ancillary social and health services for workers and their families.
Environmental protection	<ul style="list-style-type: none"> ● Does the framework include measures for environmental protection? ● Does the framework include provisions for environmental regulation? ● Is there a specific requirement for each company to conduct an ESIA for the whole zone? If so, is it for particular projects (certain size, type of activities, etc.)? What types of sanctions are envisaged for violations of environmental regulations? Do they differ from sanctions in other areas? Which authority validates the environmental and social management plans?

Criteria	Key questions to ask
Local content	<ul style="list-style-type: none"> Does the framework include local requirements (to hire national employees, prioritise local suppliers, etc.)?
Profiles of proposed companies for SEZs	<ul style="list-style-type: none"> For example: <ul style="list-style-type: none"> beneficiaries' identity (legal status, nationality, level of funding, etc.), type of activities undertaken.
Requirements for inclusion in SEZs	<ul style="list-style-type: none"> What are the conditions for obtaining a permit (financial commitment, job creation, etc.)? What types of authorisation are given? For what purposes?
Company selection process or criteria for inclusion in SEZs	<ul style="list-style-type: none"> Are there plans for a tendering process? What is the selection process? Does it involve national authorities, local authorities, committees? Is the process confidential? How is it advertised? Are the selection criteria published and if so, what are they?
Contractual arrangements	<ul style="list-style-type: none"> Are contracts or agreements concluded? If so, between which parties? What do the contracts cover?
Compliance	<ul style="list-style-type: none"> Which institutions are responsible for monitoring compliance with contractual commitments (Environmental Protection Agency, Employment Agency, an SEZ institution, etc.)?
Investor protection/incentives	<ul style="list-style-type: none"> What protections will be in place for investors? For example: <ul style="list-style-type: none"> Will foreign investors have the same status as local investors? Will investors have guaranteed income transfers (to repatriate profits, transfer dividends to their home country, etc.)? Is expropriation guaranteed for investors (public interest requirement, fair and equitable compensation, etc.)?
Types of activity	<ul style="list-style-type: none"> Are there preferred sectors of activity in the SEZ? What are the conditions in terms of minimum level of finance, number of jobs, etc.? Is there a preference for certain types of investor (foreign, national, local communities, etc.)?
3. Land-related issues	
Applicable regime	<ul style="list-style-type: none"> Does the "special" law relating to SEZs differ from "ordinary" land law, and if so, how? If ordinary law applies, do SEZs raise specific land-related issues that affect the application of ordinary law (due to the nature of the actors involved, etc.)?

Criteria	Key questions to ask
Land identification and acquisition	<ul style="list-style-type: none"> • How is the land slated for SEZs identified? By whom and with whom? Is there any local consultation? • Who holds/uses the land that will be used to create the SEZ (legally and in practice)? • Who will grant rights to the developer (central government, local or customary authorities, etc.)? • Who will be the owner or long leaseholder of the SEZ according to the texts? What is the duration of the lease? How will the zone be legally registered (registration, etc.)? • How is the land negotiated or obtained from potential rights holders or users? <ul style="list-style-type: none"> – Does the process involve expropriation in the public interest or is it a private negotiation? (expropriation is not possible if the land base was not privately owned) – If it involves expropriation, see questions on expropriation. – If it does not involve expropriation, who will the developer negotiate with and how does the process work in practice? Is prior agreement obtained? • Expropriation: to what extent does the expropriation regime comply with international standards such as the FAO Voluntary Guidelines on Land Tenure? Do stakeholders such as producer organisations, civil society, etc. have to be involved/consulted in the decision-making process (designation of the zone, etc.)? Does the developer have to conduct a resettlement programme and an ESIA? If so, do they have to meet international standards? What happens to evicted populations? • Public interest: in the case of expropriation, how does law and practice determine whether the conditions for public interest are met? Are all SEZs automatically declared to be in the public interest? Are SEZs subject to a specific review? What criteria does the government take into account when declaring a zone to be in the public interest? • Indirect effects: has expropriation of the land led to an increase in land values?
Compensation and reparation	<ul style="list-style-type: none"> • How are compensation and reparation determined? What is the annual adjustment for leases? • Who can be compensated or indemnified (all occupants, or only holders of legal documents?) • Is the compensation and reparation sufficient to restore livelihoods? When will the funds be paid out, new land allocated, etc.? What are the criteria for setting compensation rates? • Who is responsible for ensuring compensation and payment of reparation (the State or developer of the SEZ?) If it is the developer, what measures are envisaged if they go bankrupt? • Are there effective recourse mechanisms if affected parties feel aggrieved?

Criteria	Key questions to ask
Rights allocated to developers/companies	<ul style="list-style-type: none"> • What type of occupancy title is issued to companies operating in an SEZ? • What right(s) will be granted to the developer / company (lease, use rights, full ownership, etc.)? • If access is temporary, for how long? What fees are due? Consideration in kind? • Is land access subject to terms and conditions? If so, who sets them? And what are the broad outlines of their content? • What are the termination clauses for the land contract? What is envisaged if the land is not used productively or no jobs are created? How will the previous status quo be restored?
Rights of affected populations	<ul style="list-style-type: none"> • Does the legislation include an obligation to recognise and respect legitimate tenure rights? • How does it compare with international jurisprudence and other international instruments to protect these legitimate rights?
4. Transparency, accountability and dispute resolution	
Dispute resolution mechanisms	<ul style="list-style-type: none"> • What mechanisms exist to resolve disputes relating to the creation and management of SEZs? • Do they differ from ordinary law mechanisms (create special courts, etc.)? How do they work? • Does the legislation provide for a binding mechanism or a simple obligation to negotiate? • Does the legislation provide for recourse to local courts, amicable settlement or arbitration?
Institutional accountability and transparency	<ul style="list-style-type: none"> • Does the legislation include provisions for transparency (rights of access and scrutiny) and SEZ accountability to citizens and civil society at initiation and once they are operational? • Who will be able to evaluate their benefits (or harms) and learn from them? • Does the legislation provide for measures if institutions violate the rights of stakeholders and populations impacted by the zones?

ANNEXE 3. Key issues addressed during the field studies in Senegal and Madagascar

General trends

● Description of SEZs (see also Part 1 of the framework)

- >> How many SEZs have been established, are under development or planned, and what are the timescales involved?
- >> What are the different types of SEZ (free zones, agropoles, AIZs, etc.)?
- >> Where are they located? In particular regions of the country, such as “investment corridors”, near specific infrastructures, or in peri-urban areas? Specify the reasons for these geographic choices (infrastructure, labour pool, political patronage, etc.).
- >> What is their size (planned and actual)?
- >> Which sectors are involved? Does the country favour one sector over another (agricultural sector, etc.)?
- >> How far have they progressed / to what extent have they been implemented?
- >> What is their legal status and main characteristics?
- >> What is the land selection process and criteria?

● Actors involved in the SEZ

- >> Who initiated the creation of the SEZs studied (State, investors, donors, other?) and how were they created? Who is pushing for their implementation? Who is holding them back?
- >> Which actors are involved in different stages of the zone in question (public and/or private institutions)?
- >> What specific support is in place (projects, donors, a particular investor, etc.)?
- >> Who are the promoters/developers and other private sector actors (companies, etc.) that have set up in the SEZ in question (or are planning to do so)? For example, are they foreign or domestic investors, etc.? How much money have they invested, and why?
- >> What is the process for selecting developers/promoters? What are the selection processes and criteria for choosing companies?
- >> How have the players changed (has the State withdrawn, has a company been bought out, etc.)?

● Describe the companies present in each SEZ surveyed

- >> Name, investors' origin, amount of capital, date of installation, activities planned/undertaken, actual level of activities, number of jobs, etc.
- >> Changeover or stability of companies (first or second generation of companies).
- >> If possible, gather companies' views on the practical advantages/disadvantages of SEZs, for possible comparison with the development of companies outside SEZs.

Socio-economic performance and impacts

To what extent have the economic activities of companies in the zone concerned progressed (number and nature of activities, volume of activity), and how does this compare with the stated objectives?

What are the direct and indirect economic, social and environmental outcomes of the SEZs in question at present – at the macro level and in more directly affected areas?

In terms of:

- >> the products produced by companies in the SEZ
- >> level of processing, maintaining added value
- >> local sourcing and subcontracting
- >> exports/foreign exchange
- >> tax revenues
- >> infrastructure
- >> employment
- >> services
- >> institutional organisation
- >> natural resource management / pressure on natural resources
- >> training, local knowledge
- >> migration
- >> political climate, conflict
- >> value chain spillover effects
- >> market access spillover effects.

What makes them economically successful? What causes problems (lack of implementation, infrastructure, etc.)?

On the social level:

- >> What positive and negative changes result from the activities conducted within the SEZs, and for whom, in terms of:
 - employment,
 - subcontracting,
 - housing/renting,
 - services related to the presence of employees (catering, etc.)?
- >> Who has access to the job opportunities created, what are the working conditions, and what are the distributional impacts of these changes (in terms of gender, intra- and inter-community relations, etc.)?
- >> Are the people who have the jobs those who lost land?
- >> What are the impacts on social service provision within and around SEZs?

Land issues

Assess SEZ landholdings in quantitative and qualitative terms (amount of land, location, population density, concomitant pressure on land, etc.):

- >> Land tenure history over time, types of use, identity and number of rights holders, forms of land access and use, authorities involved.
- >> Type of land: soil quality, access to water, roads, electricity, sewerage/drainage.
- >> Analyse land occupancy maps if before/after images are available on Google Earth.

How was the land acquired (expropriation for public interest, market transfers, etc.)?

- >> How was the land identified? By whom? Why? How did the boundaries change as a result of the field surveys? What documents were available?
- >> Who are the main actors, what is their role?
- >> Level of information about the projects available to different interlocutors.
- >> Type of consultations, who was included/not included.
- >> Nature of debates and room for manoeuvre – possible discussion.

What kinds of land access have investors been granted?

- >> What formal rights do they have, what are the mechanisms for protecting these rights?
- >> How far has the procedure actually progressed?
- >> How do different parties perceive the process?
- >> Has the system evolved over time? If so, what has changed and who are the winners (administration, local governments, populations)?

What are the trade-offs for land access for local people, local organisations, local governments?

- >> What are the contractual considerations (on paper)?
- >> What are the real trade-offs (local land taxes received, monetary compensation, access to employment, investment in infrastructure, etc.)?
- >> What monitoring mechanism is planned, in place and effective? If not, why not?
- >> What recourse is possible? Has recourse been sought? If so, by whom and how?

Has access to land through the creation/expansion of SEZs led to conflicts?

- >> If so, what kind of conflict? Land-related or not strictly land-related?
- >> Who are the parties involved?
- >> New conflict or reactivation of land conflict?
- >> At what point in the process did the conflict arise? At the outset, two years later, etc.?
- >> What types of land issues were involved (conflicting ownership claims, exclusion of users, tensions within the ownership group, attempted appropriation by a third party, etc.)?
- >> How did these conflicts evolve, how many parties are involved, what are their arguments, how has this affected the rules of the game? What are the impacts on the pace of progress or redefinition of SEZs or selected companies?

What are the direct impacts on affected populations?

Have there been expropriations or evictions? What processes did they involve? Has there been effective resettlement or compensation? Have there been any appeals?

What are the indirect impacts? For example, has the creation of SEZs given rise to land speculation, changes in land values, etc.? And, if so, what are the consequences for affected populations?

What are the broader impacts on land governance? For example, has the development of SEZs had an impact on the centralisation of land allocation powers, public participation, access to means of recourse, and the role of institutions in displacement and compensation processes?

How do these impacts differ from those associated with other forms of land acquisition, for example for mines or agro-industrial plantations? ●



Special Economic Zones and Land Tenure

Global Trends and Local Impacts in Senegal and Madagascar

Special Economic Zones (SEZs) are demarcated geographic areas contained within a country's national boundary where the rules of business are different from those that prevail in the national territory. They aim to attract investors by offering favourable customs and tax regimes, a competent and competitive labour pool, and settlement conditions that are supposed to offer legally secure, conflict-free access to land. A wide range of actors (from China to the World Bank) support this model of economic development, which has been adopted in about 100 countries.

Many studies on SEZs focus on their economic performance. Less attention has been paid to how their creation and operation affect land rights, or the

broader questions they raise about territorial governance, legislation and economic development models.

This study investigates how the establishment, development and expansion of SEZs impact on land tenure. It explores different national legislations and experiences through a global review of SEZs and case studies from Madagascar and Senegal, identifying the land issues associated with SEZs and stakeholder responses to them. The analyses in this report draw on the work of the "Land Tenure and Development" Technical Committee, providing new insights into SEZs that can inform recommendations for their future deployment and broader support for rural development. ●

The 'Land Tenure and Development' Technical Committee is an informal think tank composed of experts, researchers, practitioners and senior members of the French Cooperation. It was set up in 1996 to provide strategic support to the French Cooperation and supervise land tenure initiatives through a network of French and international actors.

Its outputs include the French Cooperation White Paper on land policies (2009), an analysis of large-scale land appropriations (2010), a guide to due diligence of agribusiness projects that affect land and property rights (2014), a document that builds on past and present policies to formalise land rights (2015), a document on a commons-based approach (2017), on the issue of young people's access to land (2020), and numerous other works and tools aimed at improving

our understanding and ability to address land issues in the global South. Full French and English versions of all these publications can be found on the Land Tenure and Development website (www.foncier-developpement.fr), which was set up to provide access to good quality information on the sector.

IIED is an international policy and action research organisation. We promote sustainable development to improve livelihoods and protect the environment in which livelihoods are built. We specialise in linking local priorities to global issues. We work alongside some of the world's most vulnerable people to give them a stronger voice in the decision-making bodies that affect them, from village councils to international conventions.

Enda Pronat, an NGO member of the Enda Tiers Monde international network, supports disadvantaged communities in experimenting

with alternative solutions, focusing on the promotion of agro-ecological practices and sustainable governance of natural resources as well as the strengthening of dialogue between stakeholders at different scales. It is a member of the Cadre de réflexion et d'action sur le foncier au Sénégal (CRAFS) which fights against land grabbing and advocates for more inclusive land policies.

The Centre de coopération internationale en recherche agronomique pour le développement (CIRAD) is a French agricultural research and international cooperation organisation for the sustainable development of tropical and Mediterranean regions. With a presence in more than 50 countries and working in partnership, the analysis of territorial development and land tenure issues is one of its priority areas of research, expertise and training.

