

**TOWARDS AN APPROPRIATE REGULATORY ENVIRONMENT FOR  
SPECIAL ECONOMIC ZONES IN NIGERIA**

By

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## **Declaration**

I declare that this Mini-Dissertation which is hereby submitted for the award of Legum Magister (LL.M) in International Trade and Investment Law in Africa at International Development Law Unit, Centre for Human Rights, Faculty of Law, University of Pretoria, is my original work and it has not been previously submitted for the award of a degree at this or any other tertiary institution.

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.....more than words.

## **Abstract**

This study set out to examine the regulatory framework of the underperformed SEZ structure in Nigeria with the aim of identifying the factors that precluded it from achieving its objectives and hindering its competitiveness in the global market. The main question to be addressed is what regulatory deficits are in the implementation of SEZ programme in Nigeria that have precluded it from achieving its objectives.

In approaching this question, this study examined the rationale underlying SEZ initiatives globally and the policy considerations for implementing sustainable SEZ. The study found that these policy components include strategic planning, comprehensive legal and regulatory framework, policy considerations, effective institutional framework, incentive framework, and physical development and management. The study further examined the regulatory framework underpinning SEZ development in Nigeria against the backdrop of the policy considerations identified. Using China's experience as benchmarks for successful SEZ development, the study draws lessons that could be useful in enhancing the competitiveness of the Nigerian zone programme.

Moreover the study argues that weak regulatory environment is largely responsible for the underperformance of SEZ programmes in Nigeria in delivering its objectives. Specifically, the study made the following findings:

- Weak institutional and regulatory structures, infrastructural shortage, lack of linkages to the wider economy and policy instability are some of the challenges of SEZs in Nigeria.
- The study found that there is swiftness on the part of the government to create zones suggests that the government views SEZs as catalyst for economic diversification and industrialization. However, further evidence shows that the regulatory framework underlying the existing zone programme is not only weak but limited in scope to drive competitiveness. It also appears that the government has not been actively committed in the zone programme. The inference drawn here is that the Nigerian government does not actively see SEZ programme as part of its development strategy.
- The Nigeria zone regulatory framework needs a comprehensive restructuring with a view to improving the competitiveness of the zones. Concerted efforts could still be

made to enhance the performance of the zones by strengthening the regulator to make it responsive to its responsibilities and engaging policies

The research therefore concludes that engaging the instrumentality of SEZs as an engine of economic growth and industrial transformation will only be successful where the regulatory environment is favourable, attractive and competitive.

Against the background of these findings, the study recommends that the starting point is for the government to adopt SEZ programme as part of its development strategy. The study also propose that adopting a comprehensive regulatory framework that will strengthening the institutional capacity of the regulator, give clarity to roles of the different stakeholders involved in SEZ development, support dynamic policies, constant policy reform and incorporate modern practices in the SEZ framework can jumpstart the competitiveness of the Nigeria zones.

## List of Acronyms

AGOA	African Growth and Opportunity Act
AU	African Union
BPO	Business Process Outsourcing
CDZ	Comprehensive Development Zones
CCECC	China Civil Engineering Construction Corporation
CFZ	Commercial Free Zones
CRCC	China Railway Construction Company
DFZ	Duty Free Zones
DCI	Dubai Internet City
EBA	Everything but Arms
EPZ	Export Processing Zones
ETDZ	Economic and Technological Development Zone
FEZ	Free Enterprise Zones
FIAS	Facility for Investment Climate Advisory Services
FDI	Foreign Direct Investment
FOCAC	Forum on China-Africa Cooperation
FP	Free Ports
FTZ	Free Trade Zones
FZ	Free Zones
GATS	General Agreement on Trade in Services
HIDZ	High-Tech Industrial Development Zones
ICT	Information Communication Technology

ILO	International Labour Organisation
LFZ	Lekki Free Zone
LFZDC	Lekki Free Zone Development Company
LFTZ	Lagos Free Trade Zone
LFTZC	Lagos Free Trade Zone Company
LNDC	Lesotho National Development Corporation
MFA	Multi-fibre Arrangement
MOCI	Ministry of Commerce and Industry (Lagos State Government)
NEPZA	Nigerian Export Processing Zones Authority
NCS	Nigeria Custom Services
NIS	Nigeria Immigration Services
NPA	Nigerian Port Authority
OETCZ	Overseas Economic and Trade Cooperation Zone
R & D	Research and Development
SACU	Southern African Customs Union
SCM	Agreement on Subsidies and Countervailing Measures
SEZ	Special Economic Zone
SEZA	Kenyan Special Economic Zones Act
SIPAC	Suzhou Industrial Park Administrative Committee
TIDZ	Technology Industrial Development Zone
TRIMs	Agreement on Trade Related Investment Measures
UAE	United Arab Emirates
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme

UNECA	United Nations Economic Commission
UNIDO	United Nations Industrial Development Organization
USD	United State Dollar
WCO	World Custom Organisation
WBG	World Bank Group

## **List of Treaties and Instruments**

The International Convention on the Harmonization and Simplification of Customs Procedure (1999)

The General Agreement on Trade in Services (GATS) 1995

The General Agreement on Tariffs and Trade (GATTS) 1994

Agreement on Trade Related Measures (SCM) 1995

Agreement on Subsidies and Countervailing Measures (TRIMs) 1995

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# **CHAPTER 1**

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## **GENERAL INTRODUCTION**

- 1.1 Background of study
- 1.2 Research problem
- 1.3 Thesis statement
- 1.4 Research question(s)
- 1.5 Significance of the study
- 1.6 Literature review
- 1.7 Research methodology
- 1.8 Scope and limitations
- 1.9 Overview of chapters

## CHAPTER 1

### INTRODUCTION

#### 1.1 Background of study

The pursuit for economic growth and political stability has been for the most part of human history and alliances priority for most countries. This is understandable considering the fact that development is the perceived yardstick for a nation's political and economic independence. Policy makers and researchers have identified and built progressive economic constructs through which countries can achieve inclusive growth and comprehensive economic development. One of such innovative policy strategies which has been increasingly employed by countries in catalysing growth and economic transformation is Special Economic Zones (SEZs).<sup>1</sup>

SEZs represent a delineated area within a nation's geographical setting governed by a set of business rules and regulatory policies which are more liberal than those obtained within the country's national boundaries.<sup>2</sup> These regimes usually cover investment conditions, trade policies, financial regulations and taxation. They are specifically designed to circumvent trade and investment barriers within a country's wider economy so as to catalyse an attractive business environment.<sup>3</sup> The concept of SEZs encompass varieties of flexible legal and economic advantages to investors relative to what they enjoy in the domestic economy such as, infrastructure, special customs regimes, improved regulatory and administrative regimes, fiscal incentives and promising hassle-free business environments.<sup>4</sup>

Developed and developing economies have increasingly utilized SEZ as an economic tool to stimulate foreign capital through foreign direct investments (FDIs), to develop and diversify exports, to increase the competitiveness of the domestic economy, create jobs, and upgrade from commodity chains to value chains.<sup>5</sup> Nevertheless, studies continue to emerge that

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<sup>1</sup> T Farole & G Akinci *Special economic zones progress, emerging challenges, and future directions* (2011) 6.

<sup>2</sup> S Woolfrey 'Special economic zones and regional integration in Africa' (2013) 109.

<sup>3</sup> H Zhang et al 'The role of special economic zones in Africa countries development and the Chinese FDIs' (2014) 3.

<sup>4</sup> Woolfrey (n 2 above) 109.

<sup>5</sup> M Engman et al 'Export processing zones: past and future role in trade and development' (2006) 8.

developing countries tend to have higher intensity of SEZ activities.<sup>6</sup> SEZ provides policy makers a manageable scale for developing the infrastructure and regulatory climate of a particular sector of a country's economy.<sup>7</sup> From a development standpoint, it can act as an incubator for experimenting new economic approaches before widespread adoption in a country.<sup>8</sup> The proliferation of SEZ in the past four decades is evident of its success as development and industrialisation tool.<sup>9</sup> There are now claims for over 4500 zones existing around the world.<sup>10</sup> However, the performances have varied greatly among countries.<sup>11</sup> For instance, the industrialisation of China, Bangladesh and Indonesia has been linked to successful adoptions of SEZ<sup>12</sup>. On the African continent, Mauritius and Ghana have also utilised the instrumentality of the SEZ to attract FDIs, increase export and capital flows, create jobs and upgrade into the global value network.<sup>13</sup> While the Chinese-model SEZ has become a world class model which has spurred the interest in many countries, the African experience on SEZ has been far from impressive.<sup>14</sup> Save for the few exceptional cases of Lesotho, Madagascar, Mauritius and Kenya. The successes recorded by the Asian Tigers<sup>15</sup> have been very difficult to replicate by many African countries.<sup>16</sup>

In a survey carried out by Thomas Farole on the assessment of the performance of SEZs in six African countries in 2009 including Nigeria, it was noted that one important reason for the underperformance of zone programmes on the African continent is the weak business environment.<sup>17</sup> The report observed that the success of SEZs is inextricably linked to the competitiveness of the national economy.<sup>18</sup> Put differently, what will determine the success or failure of any SEZ regime is the effectiveness of the design, implementation and the continuous

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<sup>6</sup> United Nations Conference on Trade and Development (UNCTAD) *Enhancing the Contribution of Export Processing Zones to the Sustainable Development Goals* (2015) 4.

<sup>7</sup> UNCTAD (n 6 above) 3.

<sup>8</sup> UNCTAD (as above).

<sup>9</sup> Engman et al (n 5 above) 5. According to the International Labour Organization (ILO), zones have increased from 176 zones in 47 countries in 1986 to 3,500 zones in 130 countries in 2006.

<sup>10</sup> UNCTAD (n 6 above) 4.

<sup>11</sup> Zhang (n 3 above) 3.

<sup>12</sup> The effectiveness of the SEZ model in the Chinese context is illustrated by the transformation of Shenzhen (Guangdong province), a small fishing village in the 1970s into today's city of almost 9 million in an.

<sup>13</sup> DZ Zeng, 'Global experiences with special economic zones- with a focus on China and Africa' (2015) 8.

<sup>14</sup> UNDP 'If Africa builds nests, will the birds come? Comparative study on special economic zones in Africa and China' (2015) 6.

<sup>15</sup> These are Hong Kong, Singapore, South Korea and Taiwan.

<sup>16</sup> Farole & Akinici (n 1 above) 11.

<sup>17</sup> Farole *Special economic zones in Africa: Comparing performance and learning from global experience* (2011).

<sup>18</sup> Farole (n 13 above) 4.

management in relation to the context in which the programme is introduced.<sup>19</sup> Thus, engaging the instrumentality of SEZs as an engine of economic growth and industrial transformation will only be successful where the regulatory environment is favourable, attractive and competitive.<sup>20</sup>

## 1.2 Research problem

SEZs have been described as specially carved out areas in a host economy where specially designed business rules that is different from those applicable in other parts of the economy are applied for the purpose of driving some identifiable objectives. The measure of success of an SEZ programme depends on the extent to which these special rules are aligned with available resources of the host country to achieve the specific objectives of the SEZ programme. Nigeria is the largest consumer market in Africa. The country is majorly dependent on import with about 90 per cent of finished products imported.<sup>21</sup> This has been attributed to the lack of competitiveness of the industry sector. Major challenges to the country's economic growth include weak investment policies, security challenges and agitation for resource control, poverty and unemployment.<sup>22</sup> In an attempt to transform its commodity-based economy to an industrialised and competitive economy, Nigeria sought after the Asian development model of creating SEZs and launched its first set of SEZs in the 1990s.

However, the outcomes have suggested that the SEZ programme has largely failed to deliver on its objectives of creating quality employment, transforming the economy from oil and commodity based to value-added products, increasing the competitiveness of the market and promoting the export profile of the country.<sup>23</sup>

So, this study will seek to examine the regulatory framework of the underperformed SEZ structure in Nigeria with the aim of identifying the fissures and factors that precluded it from achieving its objectives and hindering its competitiveness in the global market.

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<sup>19</sup> Farole & Akinci (n 1 above) 7.

<sup>20</sup> The World Bank Group (WBG) (FIAS) *Special economic zones performance, lessons learned and implications for zone development* (2008) 1.

<sup>21</sup> WBG *Nigeria 2011: An assessment of the investment climate in 26 states* (2011) 2.

<sup>22</sup> B Burungi *Nigeria 2014* (2014) 2.

<sup>23</sup> 'Custom vs Tinapa, the untold story' *The Sun* 14 October 2013 <http://sunnewsonline.com/new/customs-vs-tinapa-untold-story/> (accessed 15 October 2015).

### **1.3 Thesis statement**

This study argues that weak regulatory environment is largely responsible for the underperformance of SEZ programmes in Nigeria in particular and the African continent in general in that the success of a SEZ programme is inextricably linked to the soundness of the regulatory framework. The research therefore concludes that engaging the instrumentality of SEZs as an engine of economic growth and industrial transformation will only be successful where the regulatory environment is favourable, attractive and competitive.

### **1.4 Research question(s)**

The central question this study will answer is: what are the regulatory deficits in the implementation of SEZ programme in Nigeria that have precluded it from achieving its objectives. In going forward, the study will answer the following sub-questions:

1. What is the concept and nature of SEZ programme and how does it work as a policy tool for economic development?
2. What are the policy components of a model SEZ?
3. What has been the experience of Nigeria with SEZ programme?
4. Which aspect of the regulatory framework is responsible for the underperformance of SEZ programme in Nigeria?
5. Which international best practices can Nigeria draw lessons from in implementing its SEZ programme?

### **1.5 Significance of study**

The objective of this work is to examine the legal, institutional and regulatory framework underlying the structure of SEZs in Nigeria in order to have a vivid understanding of the inadequacies inherent in the framework. The study seeks to engage the law in finding practical improvements on the regulatory framework of zone programmes in Nigeria with the intention of devising an outcome the application of which could jumpstart the comatose zones. The study also will takes into consideration the specific and overall economic environment of Nigeria in creating an investor friendly environment that will attract economic-driven FDIs, enhance the integration of the country into the value chain, promote its manufacturing profile and create quality employments.

## 1.6 Literature overview

The concept of SEZ is a century-old subject.<sup>24</sup> After about four decades of experience in development and implementation of the concept, there are myriads of international research on SEZ both in the professional and in the academic circle. Out of the accessible aggregate of literatures that have been handed down on the conceptual analysis of SEZs, a good number of these works addressed the assessment of the performance of zone programmes from a country-specific, regional and global standpoints. The prominent views consistently focus on appraising the success story of the East Asian countries. From the few studies available on the outcomes of SEZs on the African continent, there appears to be a general consensus among the writers that performances have been generally poor. However, not a single comprehensive or expository work has been found on the outcomes of zone programmes in Nigeria specifically at present. Against this background, the distinction between the proposed research and these previous works is that the central thesis of the research shall focus specifically on Nigeria and for the most part, confined to the law-related aspect of SEZ development and operations with the intent of filling the literature gap.

Among the earliest comparative studies carried out is a World Bank report<sup>25</sup> which examined 30 years of experience in zone development worldwide between 1978 and 2008. The team of researchers examined development patterns and economic impacts of zones and observed that while zone development has effectively promoted economic growth and development among nations, success recorded had varied greatly with the programme having being successful in East Asia and Latin America countries but failed to deliver on its objectives particularly in Africa. The report suggested that the success of zone programme is mostly dependent on the choice of policy framework, bureaucratic procedure, incentives framework, location, management and development strategy. It further pointed out that when zones are designed to model sound legal and regulatory restructurings within a planned policy framework, it is very likely they achieve their objectives.

Furthermore, the study proposes a comprehensive legal and regulatory framework which could assist policy makers in developing a functional zone programme that will deliver on its

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<sup>24</sup> CD Stoltenberg 'China's special economic zones: Their development and prospects' (1984) 638.

<sup>25</sup> WBG *Special economic zones performance, lessons learned and implications for zone development* (2008).

objectives. This is the point of convergence between this proposed work and the report under review. The proposed research is focused on Nigeria against a global standpoint. It intends to investigate and propose an innovative legal, regulatory and institutional platform based on country-specific dynamics, the practical application of which will enhance the performance of zones in Nigeria.

Farole<sup>26</sup> did a comparative analysis of zone performances in ten countries including 6 in Africa<sup>27</sup> and four from Latin America and Asia.<sup>28</sup> The writer draws on the field research carried out in assessing performance and identified a myriad of factors which increasingly contribute to the underperformance of SEZ programme in sub-Sahara Africa on the whole. He observed that one major factor resulting in the poor performance of zones in Africa is the failure of the government to construct a business climate inside the zone that is considerably improved on what is outside. He noted that while national governments are keen on driving the economy by engaging SEZ, the zone programmes are continually confronted by similar challenges mostly epileptic power supply, adequate water, government bureaucracy, inefficiency and corrupt system of administration.

The book emphasised that a 'national investment climate' that supports inflow of FDIs is significant for better SEZ programme outcomes and that the more the investment environment is evaluated to attract FDIs, the greater the SEZ achieves its objectives of promoting exports and generating employment. The work further gave an insight into the framework of a general nature upon which SEZs are sustainable and the components for successful zone programme. The main point of departure from the theme of this book is that this study intends to approach the research from a legal perspective in contrast to a general approach.

In yet another work jointly edited by Farole and Lotta Moberg<sup>29</sup>, the writers examined the theory of SEZs and the objectives of government - particularly African governments, seek to achieve through their SEZ schemes as instrument of trade and investment which could be used in attracting FDIs and increase the export income of a country. They explained that a country

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<sup>26</sup> T Farole *Special economic zones in Africa: Comparing performance and learning from global experience* (2011).

<sup>27</sup> These are Ghana, Kenya, Lesotho, Nigeria, Senegal, and Tanzania.

<sup>28</sup> These include Bangladesh, the Dominican Republic, Honduras and Vietnam.

<sup>29</sup> T Farole & L Moberg 'It worked in China, so why not in Africa? The political economy challenge Of SEZs' (2014).

can achieve these objectives if deliberate steps are taken to demobilise barriers to investment in the national business environment of the country. The authors attributed the failure of many Africa SEZs to political economy issues such as the dearth of coordination and implementation among the relevant institutions resulting in the creation of bureaucratic bottlenecks and complex package of regulations. Specifically, the study noted that the Nigeria Custom Services (NCS) refused to implement the provisions of the Tinapa Zone programme which gravely undermined the zone and eventually led to its failure. In conclusion, the authors proposed a ‘robust political economy’ that is context-specific as possible solution to these problems.

This study agrees with the authors that political economy issues are country-specific and as such, replicating international best practices within the national system of a country will only bring desired outcomes where the underlying national framework is restructured to accommodate the novel policy. However, the point of divergence between the two works is that the above work under review proposed a political economy solution to improve the SEZ programmes in Africa in general. On the contrary, the central thesis of the proposed work is to investigate the inadequacies in the regulatory framework setting up SEZs specifically in Nigeria with the aim of proposing a robust mechanism as a means of strengthening the system so as to bring about the much-needed economic transformation in the real sector.

Douglas Zhihua Zeng<sup>30</sup> examine zone performances in Africa and provide an overview of the different SEZs experiences of African nations in comparison with the China success story. He identified the factors for the success of the Chinese models to include strong commitment and support of government. The study noted that in some African countries, the regulatory framework established for SEZ programmes is either obsolete or has not been established while the SEZ programme has been launched and infrastructures built and operational. The work under review differs from the proposed work in that it only made reference to the central theme of the proposed work in a narrow sense, while the proposed work intends to focus mainly on exploring the legal and regulatory framework for an appropriate SEZ programme in Nigeria.

Drawing on the above precursor studies, this research intends to come up with an innovative regulatory and institutional framework that is practicable in delivering the objectives of SEZs in Nigeria.

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<sup>30</sup> DZ Zeng ‘China and Africa’s experiences with special economic zones: what can we learn.’ (2014).

### **1.7 Research methodology**

The study shall be consulting desktop and library sources in the course of the research. The methodologies shall be descriptive, prescriptive and analytical. The study will rely on relevant textbooks, articles, reports of international organisations, working papers, newspapers and available online sources. The study will attempt to make a representation of the inadequacies in the current regulatory framework of SEZ programme in Nigeria with the aim of prescribing an innovative system that will engender the influx of foreign direct investment, export increase and industrialisation that is much needed for boosting the profile of the economy.

### **1.8 Scope and limitation**

This study shall be building on the assumption that SEZs are catalytic engine concepts which a national government can engage in achieving some level of economic transformation. The scope of this work shall not cover the argument over the value of SEZs as instrument of economic policy. It does not aim to examine the question of whether and how SEZs can make a significant input to economic growth in Nigeria. The core of this study shall focus on exploring practicable legal and regulatory tools which can be engaged in the delivery of SEZ objectives within Nigeria's economy. The limit of the study shall be confined to exploring the underlying regulatory principles of SEZs in Nigeria with the aim of creating an innovative system that will propel the much desired economic turnaround.

### **1.9 Overview of chapters**

This study will be done under six chapters. Chapter one discusses preliminary matters such as background to the study, research problem, research questions, thesis statement, the objectives of the study, research methodology, significance of the study, literature review and limitation of scope.

In chapter 2, the study will examine the concept and nature of SEZ programmes. It will endeavour to explore its workability as a policy tools for economic development.

In chapter 3, a theoretical explanation of the legal options and policy components for successful SEZ programmes will be examined. It is believed that identifying prototypes of SEZs

exemplified through the previous works of researchers and global practices is instructive in the course of this study.

Under chapter 4, Nigeria's experience with the implementation of SEZ programmes will be interrogated. The regulatory framework that underpins SEZ programmes in Nigeria will be critically examined with a view to determining the aspects of the relevant regulatory laws that are responsible for the underperformance of the programme.

In chapter 5, comparative study will be conducted using the Chinese-model SEZs as the benchmarks in order to draw inferences. China is the world's foremost success story in utilizing SEZs to industrialise.

In chapter 6, the conclusions are drawn and appropriate recommendations will be made.

## **CHAPTER 2**

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### **THE CONCEPT AND NATURE OF SEZ PROGRAMMES**

- 2.1 Introduction
- 2.2 Defining Special Economic Zones
- 2.3 Types of SEZs
  - 2.3.1 Free Trade Zones (FTZs)
  - 2.3.2 Export Processing Zones (EPZs)
  - 2.3.3 Free Ports (FPs)
  - 2.3.4 Free Enterprise Zones (FEZs) or Single Factory EPZ
  - 2.3.5 Specialised Zones
  - 2.3.6 Special Economic Zones (SEZs)
- 2.4 Objectives of SEZs
- 2.5 Global Development of SEZs
  - 2.5.1 Enhanced Role of the Private Sector
  - 2.5.2 Diverse Range of Economic Activities
  - 2.5.3 Enhanced Policy Package
  - 2.5.4 Enclaves to City Wide
  - 2.5.5 Objectives
- 2.6 SEZ Development in Africa
  - 2.6.1 Mauritius
  - 2.6.2 Kenya
  - 2.6.3 Senegal
  - 2.6.4 Lesotho
  - 2.6.5 Ghana
- 2.7 Conclusion

## CHAPTER 2

### THE CONCEPT AND NATURE OF SEZ PROGRAMME

#### 2.1 Introduction

The rationale underlying zone development as an instrument of economic transformation is principally that of policy and infrastructural development.<sup>31</sup> As a policy tool, several countries particularly in East Asia, Latin America, Middle East and the Caribbean basin have successfully used SEZs as an instrument for economic development.<sup>32</sup> Building upon this premise, this chapter will examine the notion of SEZ. The chapter will investigate the etymology of SEZ and its development patterns on the global plane. It will endeavour to explore its workability as policy tools for economic development.

#### 2.2 Defining Special Economic Zones

SEZ is a broad term that covers the wide range of free zone types utilized by both developed and developing countries.<sup>33</sup> Depending on individual country's policy objectives and considerations, countries apply different terminologies to designate the variants of traditional economic zones.<sup>34</sup> SEZs are branded according to their forms and depending on such things as size, target market and types of production.<sup>35</sup> These terminologies which may also be utilised based on the incentive package of the zone programme may include but not limited to: Free Zones (FZs), Free Trade Zones (FTZs), Free Ports (FPs), and Export Processing Zones (EPZs), etc.<sup>36</sup> In analysing the variants of SEZs, it should not elude rational thinking that the diversity in nomenclature reflects the evolving nature and distinctive purpose of each zone. While the specified objectives of the policy makers is reflected in its terminology, the outcomes of the enclave can be relatively different.<sup>37</sup> Even though, these terminologies are used interchangeably in most literature, some authors had reasoned that FTZ include EPZ, whereas many EPZs are not FTZs.<sup>38</sup>

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<sup>31</sup> The World Bank Group (WBG, FIAS) *Special economic zones performance, lessons learned and implications for zone development* (2008) 1.

<sup>32</sup> PL Watson 'Export processing zones: Has Africa missed the boat? Not yet!' (2001) 1.

<sup>33</sup> Y Fahrettin 'Improving export incentives and the free zone system in Syria' (2010) 10.

<sup>34</sup> M Masamba 'Establishing special economic zones in the Democratic Republic of Congo: In search of a sound legal framework' unpublished LL.M thesis, University of Pretoria, 2014 10.

<sup>35</sup> L Moberg & V Tarko 'Why no Chinese miracle in Africa? Special economic zones and liberalization avalanches' (2014) 3.

<sup>36</sup> Fahrettin (n 3 above) 10.

<sup>37</sup> E Blanco De Armas & MS Jallab 'A review of the role and impact of export processing zones in world trade: The case of Mexico' (2007) 2.

<sup>38</sup> D Madani 'A review of the role and impact of export processing zones' (1999) 12.

The International Convention on the Simplification and Harmonization of Customs Procedures (1999) codifies the international standard for the definition of free zones. It defines free zones as “part of the territory of a contracting party where goods introduced are generally regarded as being outside the customs territory and not subject to the usual customs control.” The International Labour Organisation (ILO) defines EPZs as:<sup>39</sup>

a clearly delineated industrial estate which constitutes a free trade enclave in the customs and trade regime of a country, and where foreign manufacturing firms producing mainly for export benefit from a certain number of fiscal and financial incentives.

However as a blanket definition, SEZs are specially designated area or legal space within a nation’s geographic boundaries, usually but not always spatially located outside the nation’s custom borders, so that special regimes are instituted to regulate the commercial activities within the area different from those obtainable in the national boundaries.<sup>40</sup> These special rules or regulatory framework encompasses investment conditions, international business transaction regimes, immigration policies, customs regulations, taxation and international trade.<sup>41</sup>

## **2.3 Types of Economic Zones**

### **2.3.1 Free Trade Zones (FTZs)**

FTZs are also known as Foreign Trade Zone, Duty Free Zone (DFZs) or Commercial Free Zones (CFZs).<sup>42</sup> Generally export focused, it is treated separately outside the customs territory and relieved of certain legal requirements related to export and import operations. It is characterised by fenced-in duty-free areas, warehousing and storage, distribution facilities for trade, trans-shipment, and re-export operations.<sup>43</sup> A leading example is the Colon Free Zone in Panama.<sup>44</sup>

### **2.3.2 Export Processing Zones (EPZs)**

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<sup>39</sup> Blanco De Armas & Jallab (n 7 above) 2.

<sup>40</sup> C Baissac ‘Brief history and overview of policy debates’ in T Farole *Special economic zones in Africa* (2011) 23.

<sup>41</sup> S Woofrey ‘Special economic zones and regional integration in Africa’ (2013) 109.

<sup>42</sup> P Pakdeenurit et al ‘Special economic zone: facts, roles and opportunities of investment’ (2014) 1.

<sup>43</sup> WBG, FIAS (n 1 above) 10.

<sup>44</sup> H Zhang & F Illeu ‘The role of Special economic zones in African Countries and The Chinese FDIs’ (2014) 6.

EPZs evolved from FTZs between 1950-1960s as a way to stimulate industrialisation and international trade in developing countries.<sup>45</sup> The traditional EPZ was structured as industrial estates where activities were originally focused on manufacturing to export markets and investment limited to foreign capital.<sup>46</sup> Special incentives and operational facilities were offered for manufacturing activities and administrative procedures were less stringent.<sup>47</sup> However, the emergence of modern EPZs has seen businesses and industries with various activities other than exports.<sup>48</sup> Nigeria zone programme was originally designed as EPZs.

### **2.3.3 Free Ports (FPs)**

FPs are generally the largest types of SEZs and they typically encompass larger areas of land to accommodate large transport facilities such as ports and airports.<sup>49</sup> The structure may cover an entire economic region of cities including rural and urban areas. They are designed to cover all types of activities such as tourism, retail sales and residential areas.<sup>50</sup> FPs usually provide wider set of business advantages.<sup>51</sup> The Aqaba SEZ in Jordan is a leading example of FP.<sup>52</sup>

### **2.3.4 Free Enterprise Zones (FEZs) or Single Factory EPZ**

Under this scheme, incentives and privileges are provided to individual enterprise irrespective of location.<sup>53</sup> In other words, a mapped out space is not required for location, factories are permitted to locate anywhere within the national territory and benefit from incentives and privileges.<sup>54</sup> This can be exemplified by the Maquiladora (in bond) enterprises in Costa Rica, El Salvador, Guatemala, Honduras, Mexico and Panama.<sup>55</sup>

### **2.3.5 Specialised Zones**

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<sup>45</sup> Baissac (n 11 above) 27.

<sup>46</sup> Woolfrey (n 12 above) 110.

<sup>47</sup> Zhang (n 15 above) 6.

<sup>48</sup> Baissac (n 11 above) 28.

<sup>49</sup> Woolfrey (n 12 above) 110.

<sup>50</sup> WBG, FIAS (n 1 above) 10.

<sup>51</sup> WBG, FIAS (as above).

<sup>52</sup> The Aqaba Special Economic Zone (ASEZ) was established by the ASEZ Law, No. 32 of 2000. It covers Jordan sole seaport of Aqaba and its environs. The zone is currently located on 375 sq/ kms of territory in the south of Jordan. ASEZ currently has an estimated population of about 90,000.

<sup>53</sup> A Aggarwal 'Economic impacts of SEZs: Theoretical approaches and analysis of newly notified SEZs in India' (2010) 7.

<sup>54</sup> Masamba (n 4 above) 12.

<sup>55</sup> Blanco De Armas & Jallab (n 7 above) 1.

Economic Zones have also advanced into specialized facilities designed to promote research and development (R & D) activities and the development of a specific type of industry.<sup>56</sup> These will include zones with science and technology based industries; petrochemical zones; tourism zones; financial services zones to stimulate offshore financial and non-financial activities; software and information communications technology (ICT) zones; airport-based zones; logistics and cargo parks.<sup>57</sup> Examples are the Dubai Internet City and Singapore Science Park.<sup>58</sup>

### **2.3.6 Special Economic Zones (SEZs)**

These evolved from the Chinese model of economic zones.<sup>59</sup> As opposed to EPZs which are enclosed industrial estates, SEZs are a much broader concept.<sup>60</sup> They are designed as mega industrial towns to accommodate different kinds of activities, including tourism and retail sales, residential areas, and the provision of a wide range of privileges.<sup>61</sup> SEZs were conceived to be laboratories for experimenting different measures of the market economy before they were reformed and introduced into the socialist economy of China.<sup>62</sup> For instance, Shenzhen which is considered as the most successful SEZ in China was used as testing ground for market oriented reforms such as the recognition of citizen status to foreign firms, the private financing of state-owned enterprises and the introduction of performance based wages and bonuses.<sup>63</sup>

## **2.4 Objectives of SEZs**

Generally, Countries set up economic zones to achieve a number of objectives particularly to attract investors in a specific sector, increase export profile, and reduce bureaucratic procedures that may hinder investment opportunities in the wider economy. This is perhaps important in zone development as it provides justification for the benefits offered by a zone. Businesses are attracted to zone locations specifically for the benefits of regulatory regimes which differ from the rest of the economy.<sup>64</sup> Consequently, it would appear that the objectives intended to be achieved by a Country through its zone development agenda will largely influence the type of zone to be established. While the rationale for zone development vary between countries, zone development objectives can be broadly divided into static benefits which are short term in

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<sup>56</sup> WBG, FIAS (n 1 above) 11.

<sup>57</sup> Pakdeenurit (n 13 above) 2.

<sup>58</sup> WBG, FIAS (n 1 above) 12.

<sup>59</sup> WBG, FIAS (n 1 above) 29.

<sup>60</sup> Aggarwal (n 24 above) 6.

<sup>61</sup> Aggarwal (as above).

<sup>62</sup> M Engman et al 'EPZs: Past and future role in trade and development' (2007) 14.

<sup>63</sup> Engman et al (n 33 above) 14.

<sup>64</sup> Woolfrey (n 12 above) 109.

nature; and dynamic benefits which derive from various indirect externalities by creating linkages to the local economy.<sup>65</sup> The following are some of the objectives that have been identified as influencing zone development by countries.

- **Job creation:** One of the major goals of SEZs to the economy of the host states.<sup>66</sup> Countries such as Tunisia and the Dominican Republic have been successful in creating jobs through their EPZ programmes.<sup>67</sup>
- **Towards a wider economic reform strategy:** Latin American countries of Dominican Republic, El Salvador, and Honduras have been successful in using free zones to take gain preferential access to United States markets and this has enabled these countries transform from commodities-based economies to export-led manufacturing economies.<sup>68</sup>
- **Inflow of FDIs:** For most developing nations, zone programmes are initiated essentially to attract in the short term increased capital through FDIs and other dynamic benefits such as hard and soft technological transfer, skill upgrade, export promotion, development of local entrepreneurialism and creation of new businesses.<sup>69</sup>
- **As testing grounds for the viability of new policies and approaches:** Economic zones have been found to be viable discrete platforms for testing various economic and legal policies before being adapted to the whole economy.<sup>70</sup> Typical examples of zones used as experimental laboratories can be seen in China's SEZs.
- **Strengthening political and economic cooperation with other countries:** The Kaesong Industrial Complex of North Korea is a classic example of this category. The project was launched in 2004 to increase co-operation and as a point of peaceful engagement between North and South Korea.<sup>71</sup>
- **To revitalise or develop a specific industry:** Specialised industrial parks such as the Taizhou Medical High-Tech Industrial Development Zones (HIDZ) in China housing biotechnology, pharmaceuticals, chemicals production and processing, medical

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<sup>65</sup> Blanco De Armas & Jallab (n 7 above) 4.

<sup>66</sup> Madani (n 8 above) 35.

<sup>67</sup> Baissac (n 11 above) 25.

<sup>68</sup> T Farole & G Akinci *Special economic zones progress, emerging challenges, and future directions* (2011) 5. For example, it allowed the Dominican Republic to create more than 100,000 manufacturing jobs and shift systematically away from reliance on agriculture.

<sup>69</sup> Blanco De Armas & Jallab (n 7 above) 4.

<sup>70</sup> T Ota 'Industrial policy in transitional economy: The role of China's SEZ in economic development' (2003) 131.

<sup>71</sup> <http://www.bbc.com/news/business-22011178> (accessed 7 May 2016).

equipment and supplies and the Dubai Internet City (DCI) are designed to support the business development of specific industries.<sup>72</sup>

- **As an urban development tool:** SEZs have been used as political and social tools to promote investment in remote areas.<sup>73</sup> China successfully utilised SEZs as a tool for urbanisation.

## 2.5 Global development of SEZs

SEZs have a long-established role in international trade.<sup>74</sup> Many governments have traditionally provided traders with protected sites that provides free storage and exchange along protected trade routes with exceptions from normal tax regimes for centuries.<sup>75</sup> In the era preceding 1900, 'entre-ports' and citywide free zones such as Gibraltar (1907), Singapore (1819), Hamburg (1888), and Copenhagen (1891) were operating<sup>76</sup> and by the beginning of 1900, 11 free zones were established in Europe and Asia. In 1937, the United States of America by the Foreign Trade Act of 1934 established its FTZ programme hosting about 266 industrial estate-style zones at ports of entry in the country.<sup>77</sup> The first modern industrial free zone emerged at the Shannon International Airport, Ireland in 1959.<sup>78</sup> Privileges offered by the zone include gain access to European markets, attractive fiscal advantage and subsidized rent and facilities.<sup>79</sup> It was created to revitalise the economically distressed southern region of the country at the time.<sup>80</sup>

The Shannon EPZ success inspired the popularity of EPZs among many emerging economies worldwide.<sup>81</sup> Growing from 79 SEZs in 29 countries in 1979<sup>82</sup>, there are now about 4000 SEZs across the world.<sup>83</sup> The global development of SEZ has seen the implementation by Countries

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<sup>72</sup> M Ruis 'Anatomy of SEZs' (2012) 43.

<sup>73</sup> Engman et al (n 33 above) 40.

<sup>74</sup> Farole & Akinci (n 39 above) 4.

<sup>75</sup> The Hanseatic League (C13<sup>th</sup> –C17<sup>th</sup>) was a commercial and protected confederation of merchant guilds and their market towns that dominated Baltic maritime trade along the coast of Northern Europe. The League was created to protect economic interests and diplomatic privileges in the cities and countries and along the trade routes the merchants visited. MS Beerbühl 'Networks of the Hanseatic league' (2012) 7.

<sup>76</sup> Farole & Akinci (n 39 above) 3.

<sup>77</sup> Pakdeenurit (n 13 above) 1.

<sup>78</sup> S Creskoff & P Walkenhorst 'Implications of WTO disciplines for special economic zones in developing Countries' (2009) 8.

<sup>79</sup> Zhang (n 49 above).

<sup>80</sup> WBG, FIAS (n 1 above) 13.

<sup>81</sup> WBG, FIAS (n 1 above) 23 & 30.

<sup>82</sup> Aggarwal (n 24 above) 5.

<sup>83</sup> UNCTAD *Enhancing the contribution of export processing zones to the sustainable development goals: An analysis of 100 EPZs and a framework for sustainable economic zones* (2015) I.

in two different stages of economic development.<sup>84</sup> Early zones were set up to alleviate unemployment and increase foreign exchange earnings of the host economy.<sup>85</sup> Some countries adopted zone schemes in the early stages of their industrial development as trade and investment tools to shift away from import-substitution policies with the aim of integrating into global markets through export-led development strategies.<sup>86</sup> More recently, zones have been designed to enhance the service sector and generate technological transfer and spill overs.<sup>87</sup> The countries in this category initiated EPZs when they already achieve industrialisation and robust exports sectors.<sup>88</sup>

SEZs were traditionally conceived as fenced-in manufacturing parks with separate customs area and less government red-tapes, generous tax holidays, unlimited duty-free of import and export and single administration or management.<sup>89</sup> Traditional zones were also characterised generally with low cost labour and total or partial preclusion to sell production into the local economy of the host country.<sup>90</sup> Another feature of older zones is that they are typically set up and operated by the host government.<sup>91</sup> SEZs are dynamic by nature, and they also evolve with the economic growth of the local economy in relation to the structure of commercial activity and technological sophistication.<sup>92</sup> The evolution of SEZ has seen a deviation from the traditional structure to emerging trends in terms of configuration, economic activity, ownership and policy.<sup>93</sup> The following highlights some of these development trends.

### **2.5.1 Enhanced role of the private sector**

Ownership and management patterns have changed. There is increasing private involvement in modern zone development particularly in developing and transition countries.<sup>94</sup>

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<sup>84</sup> Madani (n 8 above) 18.

<sup>85</sup> Aggarwal (n 24 above) 5.

<sup>86</sup> Examples of these countries are Latin America and Asian Countries.

<sup>87</sup> Aggarwal (n 24 above) 6.

<sup>88</sup> Examples of this set of countries include South Korea, Taiwan and the United States.

<sup>89</sup> Madani (n 8 above) 15.

<sup>90</sup> Madani (n 8 above) 16. For instance, Nigeria originally allows up to 25 percent of the EPZ products into its domestic market.

<sup>91</sup> WBG, FIAS (n 1 above) 18.

<sup>92</sup> Aggarwal (n 24 above) 5.

<sup>93</sup> Aggarwal (n 24 above) 10.

<sup>94</sup> WBG, FIAS (n 1 above) 2.

### **2.5.2 Diverse range of economic activities**

Modern zones have become more comprehensive in terms of economic activity to embrace wider range of industries than manufacturing and exports that were the primary activities of early EPZs.<sup>95</sup> Increasing number of zones now specialise in specific growth sectors such as tourism, information technology and financial services.<sup>96</sup> From the traditional labour-intensive focus of zones, modern SEZs have evolved to become capital intensive and highly technology intensive.<sup>97</sup>

### **2.5.3 Enhanced policy package**

Owing to the development of international law, most tax incentives and lower social standards offered in traditional EPZs to attract investors are no more compatible with international standards.<sup>98</sup> In the same vein, investors and consumers tastes are changing along with the dynamism of globalisation of production.<sup>99</sup> The preferential policy package of zones has moved away from the traditional provision of financial incentives to offering varieties of world class infrastructure and business support services.<sup>100</sup> Rigid policies requiring all productions to be exported have become flexible in new zones to accommodate supply of goods and services into the local economy on certain conditions.<sup>101</sup> While old EPZs focused on attracting foreign investors, new zones are designed to accommodate both foreign and local investors to ensure wider integration into the local economy of host countries.<sup>102</sup>

### **2.5.4 Enclaves to city-wide**

SEZs has evolved from being the usual fenced-in industrial estates to include single factory zones to integrated industrial townships.<sup>103</sup> Also, spatial dimensions of zones have broadened from locations within the proximity of ports to being located on country-wide basis to ensure their integration into host economies.<sup>104</sup>

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<sup>95</sup> Aggarwal (n 24 above) 10.

<sup>96</sup> Engman et al (n 33 above) 8.

<sup>97</sup> Aggarwal (n 24 above) 10.

<sup>98</sup> UNCTAD (n 54 above) 1.

<sup>99</sup> Madani (n 8 above) 20.

<sup>100</sup> Aggarwal (n 24 above) 10.

<sup>101</sup> Engman et al (n 33 above) 8.

<sup>102</sup> Engman et al (as above).

<sup>103</sup> Engman et al (n 33 above) 8.

<sup>104</sup> Aggarwal (n 24 above) 10.

### 2.5.5 Objectives

The objectives pursued by Countries in setting up SEZs have shifted from stimulating growth through enhanced trade and generating employments to stimulating technological upgrade, diversifying exports and ultimately to promoting planned urban cities.<sup>105</sup>

## 2.6 SEZ development in Africa

The failure of the import substitution policy of the World Bank in many developing countries in the 1950s and the economic emancipation of the Asian tiger through export promotion strategy propelled the proliferation of SEZ in Africa.<sup>106</sup> Many African countries such as Liberia, Mauritius and Senegal had begun engaging SEZ as a tool of economic development and industrialisation as early as 1970s and 1980s.<sup>107</sup> However, majority of African countries only launched SEZ programmes in the 1990s.<sup>108</sup> The significant contribution of the Mauritius zone programme to its economy encouraged the adoption of the scheme among Sub-Sahara Africa and by the 1990s, zone development initiative have become a fixture of trade and industrialisation in most countries in the region.<sup>109</sup>

While, there is a general consensus among writers that success in African zones are limited, countries such as Mauritius, Kenya, Madagascar, and Ghana have had comparative better outcomes in terms of investments, exports and employment generation.<sup>110</sup> Some researchers have identified the major reasons for poor outcomes in Africa's attempts at SEZ to include weak institutional and regulatory structures<sup>111</sup>, infrastructural shortage, lack of linkages to the wider economy<sup>112</sup>, lack of sector specialisation<sup>113</sup> and challenges of policy instability and weak governance.<sup>114</sup> Essentially, most of the successful zones thrived on trade preferences arrangements such as United States' African Growth and Opportunities (AGOA), Multi-Fibre Arrangement (MFA) and European Union Anything but Arms (EBA) as supply markets.<sup>115</sup> However, due to change in global trade and investment coupled with the rise of global

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<sup>105</sup> Aggarwal (as above).

<sup>106</sup> UNDP *If Africa builds nests, will the birds come? Comparative study on special economic zones in Africa and China* (2015) 11.

<sup>107</sup> Liberia was the first to initiate zone programme in 1970, Mauritius 1971 and Senegal 1974.

<sup>108</sup> UNIDO *Breaking in and moving up: New industrial challenges for the bottom and middle-income Countries* (2009) XIII.

<sup>109</sup> Baissac (n 11 above) 36.

<sup>110</sup> DZ Zeng 'China and Africa's experiences with special economic zones: What can we learn?' (2014) 17.

<sup>111</sup> Zeng (n 79 above) 17.

<sup>112</sup> D Brautigam 'African Shenzhen: China's Special Economic Zones in Africa' (2011) 42 *Journal of Modern African Studies* 49.

<sup>113</sup> F Bost 'Are economic free zones good for development?' (2011) 10.

<sup>114</sup> Zeng (n 79 above) 17.

<sup>115</sup> UNDP (n 73 above) 11.

production networks, many Africa zones are feared to have reached their peak and therefore may not be sustainable as most trade preferences have expired and the traditional assembly based EPZs are no longer in demand.<sup>116</sup> Going forward, African governments should consider exploring opportunities in intra-African trade through regional markets and the services sector.<sup>117</sup>

### 2.6.1 Mauritius

Mauritius adopted its Export Processing Zone Act in 1971 to tackle the challenges of high unemployment rate, low levels of foreign exchange reserves and high dependency on a mono-crop economy.<sup>118</sup> The EPZ programme provided incentives to promote FDIs and technological transfer in the country such as “exemptions from excise and duties on productive machinery and raw materials; free repatriation of capital, profits and dividends from EPZ firms; exemption from corporate tax for 10 years; a five-year tax holiday on dividends; and favourable labour laws for dismissal and overtime work.”<sup>119</sup> Building on these ‘attractive incentive package’, the political stability and the local business environment,<sup>120</sup> the market access to Europe under the Lome Convention<sup>121</sup> and MFA<sup>122</sup>, the EPZ initiative proved highly successful as it accounted for over 60% of Mauritius’ gross export earnings and provided employment for about one-third of the Mauritian labour force in the 80s.<sup>123</sup>

However, the expiration of the MFA in 2004 led to a 30% reduction in value added products produced in the EPZs and a reduction in the number of Mauritians employed in the EPZs by about 25 000 people between 2005 and 2010.<sup>124</sup> This led the Government of Mauritius to initiate strategies to diversify the economy into Business Process Outsourcing (BPO), financial services, and information technology.<sup>125</sup> According to Government figures, the BPO industry

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<sup>116</sup> T Farole *Special Economic Zones in Africa: Comparing performance and learning from global experience* (2011) 6.

<sup>117</sup> Farole (as above).

<sup>85</sup> From a mono-crop economy, depending mainly on sugar, Mauritius has diversified its economic activities into, textile and apparel industry, tourism and financial services through the EPZ programme. Mauritius is now classified as an upper middle income country with a gross national income of US\$ 9710 in 2016 and ranks 37 out of 189 globally and 1<sup>st</sup> in Africa on the World Bank’s ‘Ease of Doing Business’ indicator.

<sup>119</sup> Madani (n 8 above) 74.

<sup>120</sup> ILO Labour standards in export processing zones: a southern African perspective (1996) 9

<sup>121</sup> Madani (n 8 above) 76. Under the Lomé Convention (1975), a trade agreement between the European Union (EU) and 71 African, Caribbean, and Pacific (ACP) countries made provisions for preferential access to EU markets.

<sup>122</sup> Madani (n 8 above) 75.

<sup>123</sup> Woolfrey (n 12 above) 116.

<sup>124</sup> A Zafar ‘Mauritius: An Economic Success Story’ (2011) 24

<sup>125</sup> Zafar (n 95 above) 25.

in Mauritius was averaging a growth of 70% per year and was worth \$1.6 billion as at 2001, providing employment for more than 100,000 people.<sup>126</sup>

### 2.6.2 Kenya

Kenya's EPZ programme was initiated in 1990 with the enactment of the Export Processing Zone Act CAP 517 Laws of Kenya.<sup>127</sup> Due to its poor economic growth and a drop in GDP per capita at the beginning of 1990s, the programme was implemented to attract export-oriented investments and create jobs, achieve diversification and expansion of exports, increase productive investments, technology transfers and create backward linkages between the zones and the domestic economy.<sup>128</sup> The zone programme has been somewhat successful in attracting foreign investments, creating jobs and diversifying export production particularly in the textiles and apparel sector owing to the establishment of the AGOA in 2000.<sup>129</sup> The EPZs account for 3.2 % of Kenya's GDP and provides employment for at least 37 000 workers.<sup>130</sup> In 2013, Kenya overtook Lesotho to emerge the largest textile exporter to the United States under the AGOA preferential agreement. However, due to the limited results of the EPZ programme,<sup>131</sup> the Kenyan government undertook to upgrade its zone programme to SEZ and passed the Special Economic Zones Act, 2015 (SEZA) as part of its vision 2030 national development strategy.<sup>132</sup>

### 2.6.3 Senegal

One of the first sub-Saharan African countries to implement a free zone initiative, the Senegal EPZ programme<sup>133</sup> is considered by many commentators as exemplifying an unsuccessful zone. It was established in 1974 and became operational in 1976 but failed to deliver on its static objectives of creating employment, foreign exchange or stimulating foreign direct investments.<sup>134</sup> Even though, the Senegalese incentives package could match those of its neighbouring countries which ordinarily covers: "exemption from taxes on corporate income

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<sup>126</sup> Zafar (as above).

<sup>127</sup> [www.epzkenya.com](http://www.epzkenya.com) (accessed 10 February 2016).

<sup>128</sup> LK Vastveit 'Export Processing Zones in Sub-Saharan Africa – Kenya and Lesotho' unpublished Thesis, University of Bergen, 2013 35.

<sup>129</sup> The number of firms within the textile and apparel industries increased from 10 to 40 in 2003 alone, and investments within the zones increased from KSh0.5 billion in 2000 to about KSh17 billion by 2004 and the amount of zone exports increased by 287% between 2001 and 2004. It is estimated that between 70 percent and 90 percent of zone exports were textile and apparel products to the US supported by the AGOA.

<sup>130</sup> The EPZs earned Kenya about \$543 million in 2013 and contributed 10 percent of the country's exports.

<sup>131</sup> Investments within the zones remained rather low and stagnant in the years prior to the establishment of the AGOA in 2000.

<sup>132</sup> <http://www.industrialization.go.ke/index.php/about-us> (accessed 15 March 2016).

<sup>133</sup> Established by law 74-06 of 22 April 1974.

<sup>134</sup> Madani (n 8 above) 75.

and dividends; exemptions from customs duties and taxes on machinery, inputs and semi-finished and finished goods; and unrestricted repatriation of capital and profits,”<sup>135</sup> the zone’s failure has been attributed to factors such as bureaucratic red tape, government rigid policies in labour market, and infrastructure dearth.<sup>136</sup>

François Bost<sup>137</sup> noted that Senegal’s only free zone located in Mbao succeeded in attracting about 15 enterprises employing at most 900 permanent workers. Activities in the zone has been regarded as representing very little value added products such as “footwear, synthetic hair, sugar packaging, leather, dry batteries, bicycle tires,” etc. As a case study, it represents the difficulty of using a development strategy that has been successful in one context and transposing it to an entirely different socio-economic setting. As a progressive effort to rejuvenate the industrial zone project, the government adopted a law in 2007 to create a 10 000 hectares SEZ.<sup>138</sup> The project, which was engineered by the Jebel Ali Free Zone Authority of Dubai was designed to cover an investment of USD 800 million and provide employment for 40 000 people as of its fifth year of operation including 100 000 indirect jobs and 100 000 direct jobs in 1 000 firms within 20 years.<sup>139</sup>

#### **2.6.4 Lesotho**

Lesotho operates an economic regime in which the country engages a combination of policy instruments to facilitate industry and exports by providing special incentives and industrial infrastructures to investors.<sup>140</sup> The Lesotho National Development Corporation (LNDC) was established in 1967,<sup>141</sup> with the mandate to support and facilitate the development of manufacturing and processing industries, mining and commerce with the aim of increasing the level of income and employment in Lesotho.<sup>142</sup> Specifically, the Corporation under the Ministry of Trade and Investment aims to stimulate foreign and local investments in labour-intensive industries so as to create massive employments.<sup>143</sup> Among the preferential treatment offered to investors by Lesotho are a zero tax rate on profit from goods sold outside of the

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<sup>135</sup> Madani (n 8 above) 76.

<sup>136</sup> Bost (n 84 above) 14.

<sup>137</sup> Bost (as above).

<sup>138</sup> Bost (as above).

<sup>139</sup> Bost (as above).

<sup>140</sup> Farole (n 87 above) 16 footnote 2.

<sup>141</sup> The LNDC was established by the LNDC Act No. 20 of 1967. The Act was later amended in 1990 and again in 2000.

<sup>142</sup> ILO (n 91 above) 11.

<sup>143</sup> Vastveit (n 99 above) 61.

Southern African Customs Union (SACU), 10 percent tax rate on profits from goods sold within SACU, unrestricted sale into the domestic market, serviced industrial and commercial areas and support services for businesses such as assistance with permits and licenses, company registration, etc.<sup>144</sup> Most LNDC-assisted investors are of Taiwanese origin and South African-based with investments inflows concentrated in textiles and garments, leather and electronics industries.<sup>145</sup>

Relying on the AGOA and MFA trade arrangements and serving mainly the United States' garment and SACU markets, the value of Lesotho textile exports reached its highest in 2004 making up almost 80% of Lesotho's total exports between 2000 and 2005.<sup>146</sup> After that, the phase-out of the MFA and the uncertainty surrounding the extension of the AGOA<sup>147</sup> arrangement resulted in a major decline in apparel sector.<sup>148</sup> However employment in the textile industry had stabilized providing more than 48 000 jobs in 2014 and still accounting for 86.5 percent of total employment in the manufacturing sector<sup>149</sup>. A key factor responsible for this stability is the significant growth in investment and exports stimulated by the relocation of South African manufacturing activities to Lesotho to take advantage of the cheap labour.<sup>150</sup>

### 2.6.5 Ghana

Ghana adopted the free-zone concepts in 1996.<sup>151</sup> The initiative which was a major part of the Gateway Project was to stimulate mass of export-oriented investments, support the manufacture and export of value added goods<sup>152</sup> and facilitate trade by offering varieties of fiscal benefits and administrative benefits.<sup>153</sup> The primary objective was to make the country

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<sup>144</sup> United Nations Economic Commission (UNECA) *Country Profile: Lesotho* (2015) 12.

<sup>145</sup> ILO (n 91 above) 12.

<sup>146</sup> Vastveit (n 99 above) 63.

<sup>147</sup> AGOA preferences were extended only on 29 July 2015.

<sup>148</sup> WBG Lesotho: Systematic Country Diagnostic (2015) 24

<sup>149</sup> UNECA (n 1125 above) 12.

<sup>150</sup> WBG, FIAS (n 1 above) 25.

<sup>151</sup> The Ghana Free Zone Act was enacted in 1995 No. 504 of 1995 and the board designated four areas as EPZs namely Tema, Ashanti, Sekondi and Shama FZ or EPZs.

<sup>152</sup> W Angko 'Analysis of the performance of EPZ in Ghana' (2014) 23 *Journal of Business Administration and Education* 5.

<sup>153</sup> The benefits granted by the programme to authorised firms include full exemption from customs duties on imports and exports, exemption from the VAT, and a corporate tax holiday for 10 years after which a profit tax of 8% will apply; exemption from payment of withholding taxes from dividends from free zone investments; exemption from import licensing requirements, and streamlined customs procedures apply. Up to 30 percent of manufactured goods may be sold on the domestic market; ownership and investment regulations apply equally to nationals and foreigners; no repatriation on dividends or profits; payments for foreign loan servicing; payments of fees related to technology transfer agreements; remittance of proceeds from the sale of a portion of a free zone investment, and operation of a foreign-currency account in a bank in Ghana.

an export haven for West Africa, United States and European Union.<sup>154</sup> In contrast to many other countries in Africa, the zone is predominantly private-owned thereby limiting government's participation.<sup>155</sup> Operators can be licenced as single-factory zones with no geographical limitations or as enclaves to be located within the Tema zone.<sup>156</sup> Bost posited that the EPZs have only achieved modest success as the programme attracted about 130 firms in 2010 and employed 6 227 workers with their exports amounting to USD 457 million.<sup>157</sup> On the whole, the program has contributed substantially to Ghana's economy particularly in agribusiness, attracting about 197 enterprises<sup>158</sup> and accounting for about 45% of Ghana's exports with 80% of that generated by the single-factory zones.<sup>159</sup> The World Bank noted that the significant institutional reforms in some government agencies and the national business environment contributed to the improvement in zone outcome and growth in both domestic and international trade in the country.<sup>160</sup>

## 2.7 Conclusion

In this chapter, this study examined the etymology, concept and development patterns of SEZ on the global plane. Specifically, it explored its workability as policy tools for economic development. SEZs are specially designated space within an economy where special regimes are instituted to regulate commercial activities within the area which are different from those obtainable in the host economy. The concept of SEZ have been expressed in varieties of terminologies by different countries depending on individual country's policy objectives. Over the past four decades, languages such as FTZ, EPZ, FEZ, HITDZ, SEZ, etc. have been used in branding economic zones according to their forms. The term 'SEZ' has its origin in China and has come to be widely accepted as a much broader type of economic zone designed as city-wide to encompass myriads of activities including manufacturing, retail, tourism, residential

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<sup>154</sup> Angko (n 123 above) 21.

<sup>155</sup> Factors that hindered the free-zone program include an Economic Community of West African States (ECOWAS) ruling effectively treating export-zone products as imports, the Asian economic crisis and high inflation, infrastructure and service delivery issues. <https://www.oecd.org/aidfortrade/47811415.pdf> (accessed 10 March 2016).

<sup>156</sup> LD Cook 'Africa: A union open for growth, trade and business in *The global competitive report 2002-2003*' (2003) 139.

<sup>126</sup> Compare a World Bank assessment carried out in 2002. It was observed that the free-zone companies in the Tema zone accounted for 2,085 jobs and \$281 million in exports, including \$181 million in cocoa processing between 2008 and 2009 <https://www.oecd.org/aidfortrade/47811415.pdf> (accessed 10 March 2016).

<sup>158</sup> Angko (n 123 above) 28.

<sup>159</sup>The exports focus is on substantial re-exports of cocoa while some free-zone firms are upgrading to manufacturing and exporting cocoa butter, cocoa powder and chocolate. Ghana is among Africa's leaders in the share of its exports coming from free zones.

<sup>160</sup> WBG Project Performance Assessment Report: Republic of Ghana Trade and Investment Project (2013) 47 <https://ieg.worldbankgroup.org/Data/reports/Ghana> (accessed 10 March 2016).

towns, etc. In addition, the study found that Countries initiate SEZ programme to achieve different objectives primarily to open their doors to FDIs and in the process create job opportunities for their citizens, increase their foreign exchange earnings and generate technological upgrade and skill transfer. However, Countries with more advanced desires utilize SEZs as instrument of policy reform, to foster economic ties with other countries, as urban development strategy or to develop a specific sector. Although SEZs have a long root in history, but after the success of the first modern EPZ in Shannon, Countries all over the world have increasingly used SEZs to develop and industrialise their economies by offering special trade advantages to foreign businesses. Coming to Africa, the wave of SEZ development started in the 70s but became intense between the 1990s and 2000s with few success recorded till now. Reasons identified by researchers for the mass failure include but not limited to: weak institutional and regulatory structures, infrastructural shortage, lack of linkages to the wider economy and problems of national policy instability.

SEZs were previously designed to be enclaves to manufacture for exports, generous tax relief, and government owned. The trend now reflects increase participation of the private sector, and diverse economic activities. Furthermore, incentives now include world class infrastructure and speedy business support services. However, it is believed that where a country is determined to engage SEZ as an instrument of economic growth, it is fundamental that such Country understands the terrain of SEZs and get the implementation right to achieve its desired objectives. It is expedient to identify the objectives as these influences the type of zone and incentives to be offered by the zone. It is however more important for the objectives to be realistic given the resources available to each country. In order to achieve the identified objectives, strategic planning and creativity is required to design attractive incentives from the available resources to attract the desired businesses into the region. In my view, the question *what do we have to offer or sell to achieve what we need* should be given critical analysis by any country that desires to engage SEZ as policy instrument for economic development. It is safe to postulate that some basic components are required for successful implementation of SEZ. These components represent the skeletal policy support upon which SEZs are built and they have evolved from traditional to modern operations of SEZs. To discuss this lengthily, chapter 3 will be examining the policy and legal considerations of SEZ development.

## **CHAPTER 3**

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### **LEGAL OPTIONS AND POLICY FRAMEWORK OF SEZs**

- 3.1 Introduction
- 3.2 Legal Structure of SEZs
  - 3.2.1 Strategic Planning
  - 3.2.2 Legal and Regulatory Framework
  - 3.2.3 Policy Considerations
  - 3.2.4 Institutional Framework
  - 3.2.5 Incentives framework
  - 3.2.6 Establishment and Management
- 3.3 Compliance with Human Rights and Labour Standards
- 3.4 SEZs and Compliance with World Trade Organisation (WTO) Framework
- 3.5 SEZs and Regional Trade Agreements (RTAs)
- 3.6 Conclusion

## CHAPTER 3

### LEGAL OPTIONS AND POLICY COMPONENTS OF SEZs.

#### 3.1 Introduction

In the previous discussion, I evaluated the possible objectives underlying the development of SEZ and its economic impacts on host countries. It was aptly demonstrated that there are variants in the experiences with SEZs globally. While some countries have seen economic transformation through the instrumentality of SEZs, other outcomes have been disappointing. SEZs have the potential of catalysing diversification, economic growth and technological upgrading where they are implemented in a comprehensive and strategic manner.<sup>1</sup> The Facility for Investment Climate Advisory Service (FIAS) of the World Bank Group (WBG) noted that three decades of zone development experience suggests that the outcomes of any zone programme is tied to its policy, regulatory and administrative framework.<sup>2</sup> In the light of this, this chapter will be looking into the legal options and policy framework underlying the success of SEZs as depicted by existing repository of literature and global practices.

#### 3.2 Legal structure of SEZs

The development of SEZs over the past four decades has led to the evolution of certain policies and strategies in practice particularly those policies peculiar to successful zone programmes. It is important to point out at this juncture that there are no universal rules or framework underlying SEZ planning and development globally. This is because zone development agenda is context-specific. However, there is a resounding support for the view that success of zone initiatives depends on the choice of policy frameworks, incentive packages and administrative procedures.<sup>3</sup> Another important factor is the synchronisation of the zone programme with the wider economic framework of the country.<sup>4</sup> Realising maximum potential of a zone requires defined strategic integration of the programme into the overall economy of the country through government active participation.<sup>5</sup> The responsibility lies on the government to design

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<sup>1</sup> T Farole *Special economic zones in Africa: Comparing performance and learning from global experience* (2011) 14.

<sup>2</sup> The World Bank Group (WBG, FIAS) *Special economic zones performance, lessons learned and implications for zone development* (2008) 48.

<sup>3</sup> WBG, FIAS (n 2 above) 45; T Farole & J Kweka 'Institutional best practices for special economic zones: An application to Tanzania' (2011) 1.

<sup>4</sup> Farole (n 1 above) 9.

<sup>5</sup> H Stein 'Africa, industrial policy and export processing zones: lessons from Asia' (2007) 8; Farole & Kweka (n 3 above) 9.

innovative policies that will ensure connection between domestic investments and the zone, promote training and upgrading and enhancement of the competitiveness of the zone.<sup>6</sup>

Research works<sup>7</sup> along the policy guidelines for zone development suggest that SEZs programmes can benefit effectively if developed along the sequence of six major legal structure namely:

- Strategic planning.
- A comprehensive and transparent legal and regulatory framework.
- Policy considerations.
- Effective institutional framework.
- Incentive framework.
- Physical development and management.

### **3.2.1 Strategic planning**

It is critical to identify incentives that given other specific dynamics of a zone, such as infrastructure, market access, comparative advantage and raw materials sources, the zone outcomes will deliver on the objective intents of the policy makers.<sup>8</sup> It is equally necessary to recognise the appropriate zone type, ensure strategic collaboration of the private sector and mechanisms for backward and forward linkages between the zone and the host economy. It is also important to keep the objectives simple and flexible as strict specialisation may increase vulnerability given the competitiveness in the global market.<sup>9</sup>

### **3.2.2 Legal and regulatory framework<sup>10</sup>**

This is perhaps the most crucial aspect of SEZ development. Even though it is not enough to guarantee success, zone programme is unsustainable in the absence of good laws and regulations.<sup>11</sup> An effective legal and regulatory framework is an essential initial step to actualising the objectives of an SEZ. The legal and regulatory framework should be

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<sup>6</sup> Stein (n 5 above) 8.

<sup>7</sup> WBG, FIAS (n 2 above) 48 - 58; Organisation of Economic Cooperation and Development (OECD) 'Towards best practice guidelines for the development of economic zones' (2009) 10; R Kirk Special economic zones and economic transformation - Maximizing the impact of the special economic zones program in Mozambique (2015) 6.

<sup>8</sup> For instance, a 'build it and they will come' strategy is only viable where demand to invest in the country is high such as the case in United Arab Emirate (UAE).

<sup>9</sup> Kirk (n 7 above) 7.

<sup>10</sup> OECD (n 7 above) 14.

<sup>11</sup> Kirk (n 7 above) 7.

comprehensive, transparent and accessible.<sup>12</sup> It must also be flexible and capable of evolving with changing policy needs. The following are instructive to an effective SEZ legal framework construct.

- A comprehensive SEZ legal framework must be enacted. This will set out clear boundaries for the roles, rights and obligations of the different stakeholders including developers, operators, government and regulator to prevent duplication of duties.<sup>13</sup>
- It codifies the strategy of the zone programme, consequently all the factors identified under strategic planning and policy considerations are placed in a legal perspective and given the force of law.
- It clearly sets the SEZ designation criteria, physical development standards and developer's license criteria.
- Empowers the regulator with the role of enforcing the SEZ law with sanctions for violations and implementation of various agreement underlying the zone agenda.
- It builds a proper coordination mechanism and contract between private developer and government setting out specific time-bound obligations of both parties for the development, financing, operation, regulation and promotion of a specific zone.<sup>14</sup>
- It codifies the incentive framework.
- It should simplify and streamline administrative procedures for business registration, investment approvals, import and export licences, foreign exchange access, expatriate work permit, accelerated on-site customs inspection, etc.
- A negative list should be used in specifying prohibited activities or economic sectors.
- A special regime should be created under the zone regulator dealing with additional permits covering acquisition of landed property, labour matters, health and safety, and security. This is known as one-stop-shop.

### **3.2.3 Policy considerations**

It has been considered that after four decades of zone experience, majority of SEZs in Africa face challenges as the conventional tax incentives and privileges of stimulating FDIs by host countries are no more compatible with the growing international trade rules.<sup>15</sup> Competitiveness

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<sup>12</sup> Kirk (n 7 above) 7.

<sup>13</sup> [http://www.minicom.gov.rw/fileadmin/minicom\\_publications/policies/SEZ\\_Policy\\_Cleaned\\_.pdf](http://www.minicom.gov.rw/fileadmin/minicom_publications/policies/SEZ_Policy_Cleaned_.pdf) (accessed 4 April 2016).

<sup>14</sup> Farole (n 1 above) 167.

<sup>15</sup> UNCTAD *Enhancing the contribution of export processing zones to the sustainable development goals: An analysis of 100 EPZS and a framework for sustainable economic zones* (2015) 6.

of zone programmes can be enhanced where in addition to conventional commercial advantages such as modern infrastructure and accelerated permit process; the zone management provides cost-effective support for good environmental and social practices for businesses within the zone.<sup>16</sup> Government should engage in policy strategies that will promote competitiveness through enabling efficient performance on issues relating to business success rather than exempting companies from their own national laws and lowering international standards.<sup>17</sup> The framework for sustainable SEZs as described by the United Nations Conference on Trade and Development (UNCTAD) will cover promotion of economic linkages with their host economies, enforcing and maintaining policies and standards relating to labour, environment, health, safety and corruption.<sup>18</sup>

### **3.2.4 Institutional framework**

Independence and inclusiveness are the two fundamental principles of an effective institutional design of SEZ programme.<sup>19</sup> In structuring model for institutional operation of the zone, what is important is defining with clarity the functions, responsibilities and coverage of power of all stakeholders.<sup>20</sup> Under a zone programme, operation involves the roles of zone regulator, zone operator or manager, zone developer and zone owner.<sup>21</sup> It was common under the traditional EPZ arrangement for the government to play these institutional roles simultaneously.<sup>22</sup> This arrangement has been found to create conflict of interest and favouritism is perceived by the private sector.<sup>23</sup> Best practice approach is to establish the regulator as an autonomous body with separate roles and mandate from the owner, developer and operator to avoid conflict of interest.<sup>24</sup> This sends a signal of transparency and openness for business on the part of the government to the private sector. Moreover, it promotes transparency and minimizes political interference on the SEZ regime.<sup>25</sup>

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<sup>16</sup> UNCTAD (n 15 above) 20.

<sup>17</sup> UNCTAD (n 15 above) III.

<sup>18</sup> UNCTAD (n 15 above) III.

<sup>19</sup> Farole & Kweka (n 3 above) 4.

<sup>20</sup> Farole (n 1 above) 168.

<sup>21</sup> Farole & Kweka (n 3 above) 2.

<sup>22</sup> Farole & Kweka (n 3 above) 3.

<sup>23</sup> Farole & Kweka (n 3 above) 2.

<sup>24</sup> OECD (n 7 above) 14.

<sup>25</sup> Kirk (n 7 above) 8.

In addition to this, the independent regulator should be governed through a committee or board of directors involving cross-ministerial and private sector representation.<sup>26</sup> It has also been suggested that the regulator becomes efficient where its board reports directly to the highest possible level of government such as the Presidency or Prime Minister rather than to a Ministry.<sup>27</sup> For instance, the regulator in Kenya and Dominican Republic reports directly to the President.<sup>28</sup> It is believed that in this pattern, the government as the regulator focuses on its role in establishing an effective and sound legal framework guiding the entire process of investment, development, location, licensing of the zone and operations of the private developers and efficient service delivery.<sup>29</sup> The government also focuses on the regulatory function of ensuring compliance with the SEZ laws.<sup>30</sup>

### 3.2.5 Incentive framework<sup>31</sup>

What makes SEZs ‘special’ is the multitude of incentives offered principally to attract investors which in most cases are aimed to make up for the inefficiencies inherent in the host economy. An economy with high inherent inefficiencies such as a protected economy, poor infrastructure or regulatory barriers might be able to attract investments by providing compensation for the lower returns an investor may expect when compared to other locations.<sup>32</sup> These incentives are intended to create a more business friendly environment.<sup>33</sup> Categories of incentive package include:

- **Regulatory incentives** are intended to cut red tapes and simplify administrative procedures for firms within the zone.<sup>34</sup> This will cover any regulatory privilege such as lowering investment regulations; nationality requirements; screening and authorisation procedures; residence visa quota; relaxation of customs and import procedures; equal treatment for both foreign and local investors and investments; exemption from limits on foreign ownership of company and relaxation of restrictive practices on foreign ownership of land.<sup>35</sup> Others include a fast-track dispute resolution mechanism or court

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<sup>26</sup> Farole & Kweka (n 3 above) 6.

<sup>27</sup> Farole & Kweka (as above).

<sup>28</sup> Farole & Kweka (n 3 above) 7.

<sup>29</sup> Kirk (n 7 above) 9.

<sup>30</sup> Farole & Kweka (n 3 above) 3

<sup>31</sup> OECD (n 7 above) 8.

<sup>32</sup> M Engman et al ‘EPZs: Past and future role in trade and development’ (2007) 17.

<sup>33</sup> Engman et al (as above).

<sup>34</sup> OECD (n 7 above) 8.

<sup>35</sup> OECD (as above).

system and custom services.<sup>36</sup>The trend in modern zone management is that the zone authority is empowered to act as a one-stop shop where all investment licences and necessary authorisation are granted saving investors the bottlenecks associated with traditional public service bureaucracies.<sup>37</sup>

- **Financial incentives** will cover strategic zone locations with easy access to seaports, airports, good road networks, stable energy supply, and world-class infrastructure compared to what is available in the local economy, communication facilities, low rental and utility rates, effective trade facilitation system, grants and preferential access to loans.<sup>38</sup>
- **Fiscal incentives** are to a large extent relied upon by developing countries to stimulate the influx of FDIs.<sup>39</sup> Many countries offer similar fiscal incentive package albeit with varying extent and length in tax provision.<sup>40</sup> Standard package of fiscal incentives among countries include, reduction of corporate income tax rates, tax holidays or havens, import duty exemption, investment allowances, exemption from foreign exchange control, exemption from taxes on capital and profit repatriation,<sup>41</sup> etc. However, there is considerable debate on the effectiveness of this type of incentives as a strategy in increasing the competitiveness of zones.<sup>42</sup>

### 3.2.6 Establishment and management

The location, management and development of a zone is proportionally linked to its success or failure.<sup>43</sup> The location of a zone will to a large extent determine the off-site infrastructure expenditure of the government.<sup>44</sup> Therefore, where a zone is located in proximity to ports, train terminals, road networks, electricity and water supply, minimum costs are incurred by the government. Secondly, where a zone is operated on a cost-recovery basis as opposed to a subsidized basis, with focus on service delivery, its management and development is enhanced.<sup>45</sup> Best outcomes suggest that increased private sector participation in zone

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<sup>36</sup> Engman et al (n 32 above) 17.

<sup>37</sup> OECD (n 7 above) 8.

<sup>38</sup> Engman et al (n 32 above) 17.

<sup>39</sup> OECD (n 7 above) 9.

<sup>40</sup> D Madani 'A review of the role and impact of export processing zones' (1999) 26.

<sup>41</sup> WBG, FIAS (n 1 above) 54.

<sup>42</sup> WBG, FIAS (as above).

<sup>43</sup> OECD (n 7 above) 15.

<sup>44</sup> OECD (as above).

<sup>45</sup> OECD (as above).

management and development would reduce financial risks and involvement on the part of the government.<sup>46</sup> Consequently, international best practices encourage the following:<sup>47</sup>

- Identify and designate strategic areas for zone development in the overall land use planning of the country to encourage private developers. The central government should work together with other levels of government in designating areas for zone development to ensure coordination.
- Incorporate zone designation benchmarks in the SEZ law and regulations.
- A unit could be established within the central government to facilitate effective planning and support off-site infrastructure provision.

### **3.3 Compliance with Human Rights and labour standards**

Some aspects of SEZ development that have continued to generate controversy among activists, researchers and academics include the violations of human rights, compliance with labour standards and environmental standards.<sup>48</sup> SEZs are always perceived as an effective way of generating massive employment in developing countries. MNCs and TNCs often increase their market share by minimising labour costs to undercut their competitors in order for their products to remain competitive in the global market.<sup>49</sup> In this regard, it is not uncommon for SEZs particularly the traditional EPZ system to be characterised with poor working conditions such as payment below minimum wages, low employment security, forced overtime, hazardous and unhealthy working environment and use of temporary workers.<sup>50</sup> To worsen this situation, many countries have strict legal restrictions against freedom of association in their SEZ laws and the workers are strictly prohibited from forming trade unions.<sup>51</sup> It has been pointed out that even where the workers are legally mandated to have labour unions, host governments face challenges in implementing labour standards due to weak enforcement mechanisms.<sup>52</sup>

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<sup>46</sup> OECD (as above).

<sup>47</sup> The WBG, FIAS (n 1 above) 57.

<sup>48</sup> W Milberg & M Amengual 'Economic development and working conditions in export processing zones: A survey of trends' (2008) 3.

<sup>49</sup> P Gibson et al 'Assessment of the impact of export processing zones and an identification of appropriate measures to support their development' (2008) 37.

<sup>50</sup> Gibson (n 49 above) 38.

<sup>51</sup> Examples of such Countries are China and Nigeria. Milberg (n 48 above) 33.

<sup>52</sup> Milberg & Amengual (n 48 above) 32.

### 3.4 SEZs and the World Trade Organisation (WTO) framework

SEZs have not been specifically disciplined by the World Trade Organisation (WTO), albeit they are considered as a long-established part of international trade.<sup>53</sup> Accordingly, it is important that the operations and regulations of SEZ programmes by members be done in line with the provisions of WTO rules as the global constitution on Trade. While SEZs are not specifically mentioned in any of the WTO agreements,<sup>54</sup> some incentives used by members in their SEZ policies are subject to disciplines under the WTO, particularly through provisions in the Agreement on Subsidies and Countervailing Measures (SCM Agreement), the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Investment Measures (TRIMs Agreement).<sup>55</sup> These will include direct subsidies, tax holidays, rent subsidies, domestic content requirements, foreign exchange restrictions or a tax or import tariff exemption contingent on export performance.<sup>56</sup> These are prohibited by WTO because they constitute forms of export subsidies and have the ability to distort the trade of third countries.<sup>57</sup> The concept of SEZ is essentially fashioned on providing differential treatments to certain investments as incentives which ordinarily places these treatments in the prohibited subsidy category of the SCM Agreement.<sup>58</sup>

Many developing countries may have to restructure the incentive regimes of their SEZs to conform to SCM Agreement from the start of 2016.<sup>59</sup> Nevertheless, WTO disciplines apply only to governmental measures imposed by members and it excludes any governmental measure which exempts exported goods from duties and taxes from the purview of subsidy.<sup>60</sup> Furthermore, with the prevalence of privately owned, developed and operated SEZs, it would appear that measures imposed by private SEZ operators are not subject to WTO disciplines unless they implement a governmental measure.<sup>61</sup> In addition to the foregoing, the whole idea

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<sup>53</sup> S Creskoff & P Walkenhorst 'Implications of WTO disciplines for special economic zones in developing countries' (2009) 8.

<sup>54</sup> Creskoff & Walkenhorst (n 53 above) 10.

<sup>55</sup> Engman et al (n 32 above) 45.

<sup>56</sup> Farole (n 1 above) 176.

<sup>57</sup> Milberg & Amengual (n 48 above) 29. Some least developed WTO Members and countries whose per capita gross national product is under US\$1,000 in 1990 were previously exempted from all requirements in relation to export subsidies subject to graduation until 2015.

<sup>58</sup> Article 3(1) (a) of SCM provides that Governments are provided for offering direct fiscal subsidies contingent upon export performances.

<sup>59</sup> UNCTAD (n 15 above) 7.

<sup>60</sup> Art XVI of GATT. This is also contain in the SCM Agreement (foot note 1) [http://wto.org/english/tratop\\_e/scm\\_e.htm](http://wto.org/english/tratop_e/scm_e.htm).

<sup>61</sup> Creskoff & Walkenhorst (n 53 above) 6.

of SEZ is made possible by the underlying framework of WCO which designates zones as outside the ‘national customs territory of a country’.<sup>62</sup>

### **3.5 SEZs and Regional Trade Agreements (RTAs)**

SEZs within RTAs have the potential to promote regional synergies by promoting intra-trade and facilitating regional value chains among member countries.<sup>63</sup> SEZs may be used as a component of regional industrial tool to facilitate beneficial spill over effects such as infrastructural development along the trade routes within an RTA.<sup>64</sup> SEZs existing within the territories of an RTA can also create problems that may distort the trade of members.<sup>65</sup> It may result in trade triangulation where a product processed under a preferential duty scheme of a SEZ is allowed to enter into the customs territory of an RTA member country as an originating product.<sup>66</sup> This may open the possibility that any product not originating in any of the member countries may enter the RTA free of duties through the SEZ. Moreover, investors within a SEZ typically benefits from financial incentives and trade privileges.<sup>67</sup> This puts local investors at a disadvantage where the products from the SEZ are allowed to enter local markets free of duty or an RTA market as originating products.<sup>68</sup> SEZs existing simultaneously within a RTA may lead to a ‘race to the bottom’ among member countries and ultimately hinder the process of regional integration.<sup>69</sup> It is in the light of the foregoing that some RTAs have codified rules on SEZs in their regional arrangement.<sup>70</sup> Consequently, where a member state of an RTA is considering SEZ development, regard should be given to provisions on SEZ within the RTA framework.

### **3.6 Conclusion**

The above analysis has attempted to reflect the policy strategies that policy makers should consider in building sustainable framework for effective economic zones. Six components were considered as the pivotal policies upon which an SEZ should be built which comprise of

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<sup>62</sup> Annex D of the Revised International Convention on the Harmonisation and Simplification of Customs Procedure, 1999.

<sup>63</sup> S Woolfrey ‘Special economic zones and regional integration in Africa’ (2013) 125.

<sup>64</sup> Woolfrey (as above).

<sup>65</sup> N Koyama ‘SEZs in the context of regional integration: Creating synergies for trade and investment’ in T Farole & G Akinci *Special economic zones progress, emerging challenges, and future directions* (2011) 127.

<sup>66</sup> Koyama (as above).

<sup>67</sup> Koyama (n 65 above) 136.

<sup>68</sup> Koyama (as above).

<sup>69</sup> Woolfrey (n 63 above) 122.

<sup>70</sup> Koyama (n 65 above) 134.

strategic planning, comprehensive legal and regulatory framework, policy considerations, effective institutional framework, incentive framework and physical development and management. It has been pointed out that the policy framework for zone development should be all-encompassing and inclusive having regard to national laws, international standards on environment, human rights and labour together with regional and international agreements on trade and investment to which the host economies are signatories. It is important that the regulatory framework should be comprehensive while giving room for flexibility to adapt to economic demands and changes. Creating toxic fiscal incentives to attract investors that may harm the tax regime of the host economy is not likely the way to go about a sustainable SEZ. Rather, SEZs should be initiated and developed on policies that promote cost effectiveness such as fostering backward and forward linkages between the zone and the local economy by removing trade barriers, promoting trainings, r & d schemes; policies that will accelerate transfer of technology from FDI in the zone to the national economy and good infrastructure.

While the foregoing are vital, it is paramount to note that SEZ is a complex venture which requires a myriads of factors working simultaneously together. It follows that countries may want to consider context-specifics such as objectives, comparative advantage, location, market access, raw materials, etc. alongside the components that have been discussed. It is believed that for successful SEZ programme, countries should carefully consider the peculiarities of their economies and socio-economic factors shaping their policy space before adapting these policies. The next chapter will be looking into the central question of this study – Nigeria's SEZ experience in an attempt to evaluate the components of Nigeria's SEZ programme and expose the regulatory deficits in the implementation that have precluded it from achieving its objectives.

## **CHAPTER 4**

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### **NIGERIA EXPERIENCE WITH THE IMPLEMENTATION OF SEZ**

- 4.1 Introduction
- 4.2 Nigeria within the Global Economic Context
- 4.3 History of SEZ in Nigeria
- 4.4 The Nigeria Zone Regime
  - 4.4.1 The Nigerian Export Processing Zone Regulatory Framework
- 4.5 Challenges in the Implementation of Nigeria's SEZ Programme
- 4.6 Conclusions

## CHAPTER 4

### NIGERIA EXPERIENCE WITH THE IMPLEMENTATION OF SEZ PROGRAMME

#### 4.1 Introduction

In chapter 3, I discussed the policy components of sustainable SEZ programme and how it is important for the policy makers to build a regulatory framework that is comprehensive and flexible to economic demands and changes. In particular, it was pointed out that rather than engage excessive fiscal incentives and lower labour or environmental standards to attract investors, SEZ policy makers should design policies that will promote cost effectiveness by removing trade barriers, promoting R & D and good infrastructure. This chapter will be evaluating the regulatory framework of SEZs in Nigeria with the aim of exposing the strengths of the programme and weaknesses which could be challenging to the performance and competitiveness of the programme in delivering on its objectives. It will also attempt to explore the historical background of SEZ in Nigeria as it grows from the EPZ model to the modern SEZ programme.

#### 4.2 Nigeria within global economic context

Nigeria lies in the Gulf of Guinea on the West Africa coast, with Cameroon to its east, Benin Republic to its west, Niger to its north and bordered by the Atlantic Ocean in the south.<sup>231</sup> The Country covers a total surface area of approximately 924 000 sq. km with a population of about 180 million making it the largest population in Africa and seventh largest in the world.<sup>232</sup> As an OPEC member country with a GDP of USD 565 billion, Nigeria is the eight largest oil-producing country in the world with the 2nd largest oil and natural gas reserve in Africa.<sup>233</sup> The economy is mainly dependent on oil which account for about 90% of exports and 75% of the consolidated budgetary revenues.<sup>234</sup> However, oil and gas GDP was estimated to have declined by 1.3%, relative to a decline of 13.1% in 2013 according to World Bank report.<sup>235</sup> On the other hand, the non-oil sector largely has been growing faster than the oil sector.<sup>236</sup>

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<sup>231</sup> LFZ Investment Brochure 6 <http://www.lfzdc.org> (accessed 14 March 2016).

<sup>232</sup> <http://www.worldbank.org/en/country/nigeria/overview> (accessed 29 March 2016).

<sup>233</sup> UNDP 'If Africa builds a nest, will the birds come: Comparative study on special economic zones in Africa and China' (2015) 22 <http://www.cn.undp.org> (accessed 30 September 2015).

<sup>234</sup> <http://www.worldbank.org/en/country/nigeria/overview> (accessed 29 March 2016).

<sup>235</sup> <http://www.worldbank.org/en/country/nigeria/overview> (accessed 29 March 2016).

<sup>236</sup> WBG *Chinese investments in special economic zones in Africa: Progress, challenges and lessons learned* (2011) 41.

Real gross domestic product (GDP) is estimated to have grown by 6.1% due to continued robust performance mainly in agriculture, services and industry.<sup>237</sup>

Given her natural resource base<sup>238</sup> and large market size, Nigeria is a major recipient of FDI in Africa ranking 2nd after Angola.<sup>239</sup> However, Nigeria remains a lower middle class economy according to the World Bank Development Indicator.<sup>240</sup> The Country has been battling with poor economic conditions, low employment rate and insecurity, infrastructure dearth.<sup>241</sup> FDI attracted has been conspicuous in the oil and gas sector and exports remain primary products and commodities.<sup>242</sup> Factors responsible for the low attraction of investments in industry has been attributed to variant reasons. Essentially, it has been identified among others that poor investment climate and policy instability in the country discourages investors.<sup>243</sup> It is estimated that about 90% of finished goods are imported due to lack of competitiveness of the local manufacturing sector stemming from investment climate challenges.<sup>244</sup> The initiation of the SEZ strategy by policy makers was motivated by a developmental strategy for industrial transformation.<sup>245</sup> It is believed that SEZ could potentially deliver an efficient manufacturing and logistics platform for an import substitution strategy that will jump-start the Nigerian manufacturing sector, eventually enhancing the development of the export sector.<sup>246</sup>

### 4.3 History of SEZ in Nigeria

The journey to the creation of EPZ in Nigeria started in 1980 when a firm of consultants, Gills Nigeria Limited conducted a feasibility study and recommended that an EPZ should be established around Calabar port.<sup>247</sup> This was followed by another study carried out by UNIDO

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<sup>237</sup> The GDP numbers indicate that telecommunications, real estate, manufacturing, construction, entertainment increased their shares of GDP

<sup>238</sup> Nigeria has significant untapped potentials in the mining sector with less than 10 percent of the available resources in production. Nigeria's strong mineral reserves include gold reserves in the East and North; Limestone deposits across the Northeast, South and Northwest; Iron ore in Northeast and Central; Coal in Central; Barite in Northeast; Bitumen in the Southeast. Federal Ministry of Solid Minerals Development Mining in Nigeria (2016) 5

<sup>239</sup> AB Ayanwale 'FDI and economic growth: evidence from Nigeria' (2007) 2.

<sup>240</sup> [http://data.worldbank.org/country/nigeria#cp\\_wdi](http://data.worldbank.org/country/nigeria#cp_wdi) (Accessed 30 March 2015)

<sup>241</sup> B Burungi Nigeria 2014 (2014) 2.

<sup>242</sup> UNCTAD *Investment policy review of Nigeria* (2009) 1.

<sup>243</sup> According to the World Bank Doing Business Indicator, Nigeria ranked 169 out of 189 economies in terms of 'ease of doing business' in 2016 [http://data.worldbank.org/country/nigeria#cp\\_wdi](http://data.worldbank.org/country/nigeria#cp_wdi) (Accessed 30 March 2015) World Bank

<sup>244</sup> G Iarossi & GRG Clarke *Nigeria 2011: An assessment of the investment climate in 26 States* (2011) 59; WBG (n 6 above) 4.

<sup>245</sup> AH Ekpo 'Export-driven industrialisation: An overview of the EPZ scheme in Nigeria' in F Adewumi *Labour relations in the export processing zones: Challenges for organised labour* (1997) 3.

<sup>246</sup> WBG (n 6 above) 41.

<sup>247</sup> Ekpo (n 15 above) 6.

and UNDP between 1990 and 1991.<sup>248</sup> The reports of these two studies led to the establishment of Nigeria's first EPZ in 1992 under the Nigeria Export Processing Zones Authority (NEPZA) Act 63 of 1992.<sup>249</sup> NEPZA became the institutional agency of the government responsible for licensing, monitoring and regulating all free zones in Nigeria under the Act.<sup>250</sup> Today, NEPZA has so far established about 31 SEZs in designated areas around the country; nine of which are operational to some extent.<sup>251</sup> The objectives of the zone programme include: employment creation; increased export profile; foster skill acquisition and technology transfer from FDIs; increased foreign exchange earnings; creation of backward linkages; contribution to GDP growth; infrastructural development; facilitate trade and greater participation of Nigeria in the global markets and socio-economic development of the host community.<sup>252</sup> In order to explore its comparative advantage in oil and gas, the Nigerian government established the Oil and Gas Export Free Zone Authority (OGFZA) through the promulgation of Decree 8 1996. The Authority is charged with the responsibility of registering, licensing and regulating Oil & Gas Free Zones in Nigeria.<sup>253</sup>

However, with the inherent high value potentials and peculiarities in terms of population, labour force and an internal and attractive market<sup>254</sup> which are equally explored by countries such as Indonesia, Bangladesh and Singapore in creating economic-driven manufacturing sectors through successful SEZ programmes, Nigeria's SEZ experience has neither progressed in achieving its objectives of reducing unemployment rate nor has it been dynamic in catalysing economic growth and industrialisation.<sup>255</sup> Below is an overview of the state of affair in some zones in the country.

- **Calabar Free Trade Zone (CFTZ)**

The Calabar Export Processing Zone was the first zone established under the Export Processing Zone Act of 1992 but operation did not start until 2001.<sup>256</sup> The multimillion-dollar project situated on 220 hectares of land in Calabar, Cross River State of Nigeria

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<sup>248</sup> Ekpo (as above).

<sup>249</sup> UNDP (n 3 above) 14.

<sup>250</sup> Act 63 of 1992.

<sup>251</sup> <http://www.nepza.gov.ng> (assessed 15 September 2015). See list of FZs in Nigeria on annexure 1.

<sup>252</sup> <http://www.nepza.gov.ng> (accessed 15 September 2015).

<sup>253</sup> <http://www.ogfza.gov.ng> (accessed 29 February 2016).

<sup>254</sup> T Farole *Special economic zones in Africa: Comparing performance and learning from global experience*, (2011) 9.

<sup>255</sup> 'Tinapa N58bn facilities in comatoes at Calabar' *New Telegraph* 15 August 2014. [www.newtelegraphonline.com/tinapas-n58b-facilities-in-comatoes-at-calabar](http://www.newtelegraphonline.com/tinapas-n58b-facilities-in-comatoes-at-calabar) (accessed 20 September 2015).

<sup>256</sup> Iarossi & Clarke (n 14 above) 60.

was built with specialty in manufacturing, oil and gas, warehousing, assembling and logistic services.<sup>257</sup> The zone was designed to be an EPZ and appears to be well equipped providing serviced facilities and infrastructure such as built-up factory space, internal road network, banking services and custom services; yet suffered difficulties in attracting significant investment.<sup>258</sup> A study revealed that it has provided about 1 200 jobs as at 2010,<sup>259</sup> a figure far less than its capacity of 25 000 to 30 000 jobs. According to an International Monetary Fund (IMF) report, only 22 firms were located in the zone by 2004 with employment of 2000 workers producing mostly goods for domestic consumption.<sup>260</sup> In the same vein, Bost wrote about the Calabar EPZ that the activities of the 22 firms registered in the zone were predominantly food processing, plastics, textiles and wood working.<sup>261</sup>

- **Kano Export Processing Zone**

The Kano Free Trade Zone was the second EPZ to be created in Nigeria.<sup>262</sup> It was established in 1998 and located behind Mallam Aminu Kano International Airport in Kano, Kano State. It occupies a landmass of 200 hectares housing warehouses, NEPZA management office, offices of the NCS, Nigerian Immigration Services (NIS) and the Nigerian Police Force (NPF).<sup>263</sup> However, after about two decades of operation, it boggles the mind that the zone is still at its nascent stage.<sup>264</sup> The ILO reported in 2012 that only two factories actually operates there.<sup>265</sup>

- **Tinapa Free Zone (TFZ)**

TFZ is a N56 billion (USD 470 million) PPP project located adjacent to the Calabar Port and CFTZ.<sup>266</sup> Initiated by the Cross River State Government, TFZ is essentially developed to play a catalytic role in establishing Cross River State as a trade and investment hub in West Africa while at the same time providing a unique tourism

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<sup>257</sup> International Labour Organisation (ILO) 'Nigeria - The state of trade unionism and industrial relations practice in EPZs' (2012) 8.

<sup>258</sup> F Bost 'Are economic free zones good for development' (2011) 13.

<sup>259</sup> V Treichel, *Putting Nigeria to work: A strategy for employment and growth* (2010) 136.

<sup>260</sup> H Stein 'Africa, industrial policy and EPZs: Lessons from Asia' (2007) 17.

<sup>261</sup> Bost (n 28 above) 13.

<sup>262</sup> ILO (n 27 above) 5.

<sup>263</sup> ILO (as above).

<sup>264</sup> ILO (as above).

<sup>265</sup> (ILO (as above).

<sup>266</sup> <http://tinapa.com.ng> (accessed 16 September 2015).

experience that will stimulate the growth of tourism in the State and Nigeria as a whole<sup>267</sup> It occupies about 80 000 square metres space to accommodate state-of-the-art facilities such as four emporiums of 10 000 square metres each for retail and wholesale activities, leisure and entertainment; an open exhibition area for trade exhibitions and other events; an entertainment strip with spaces for a casino; an eight-screen digital cinema; international standard restaurants; night club and pubs; an entertainment centre with a functional games arcade and a mini amphitheatre; an artificial tidal lake; a 243 - three star called the Lakeside Hotel and a movie production studio targeted at the Nollywood film industry which is the 2nd largest in the world.<sup>268</sup>

Regrettably, the facility which enjoyed so much publicity is in comatose today. The project was hoped to generate direct and indirect employment for over 40 000 people when it commenced operations in 2007, it has barely 500 employed workers today.<sup>269</sup> The facilities which were fully developed to serve importers using the Calabar Port and exporters who plan to leverage on business opportunities in the West African regional market for consumer products are heavily underutilised.<sup>270</sup> The studio while the best in the country and probably in Africa is hardly utilised by film producers due to high cost. Infrastructure dearth,<sup>271</sup> policy reversal<sup>272</sup> and inconsistent incentive framework are some of the challenges identified as hindering the success of the zone. For instance, the non-completion of the dredging of the Calabar port channel constitute a major challenge to the zone as the port cannot support large oceangoing vessels.<sup>273</sup> The zone's monorail linking the airport and the resort which was to be jointly financed by the state and the federal government was never executed.<sup>274</sup> The zone continues to witness incessant clash between the NCS and the zone authority.<sup>275</sup>

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<sup>267</sup> 'Tinapa's waning glory' *This Day* 9 December 2015 <http://www.thisdaylive.com/articles/tinapa-s-waning-glory/227485/> (accessed 16 September 2015).

<sup>268</sup> U Inyang 'Tinapa: Going, going, going down' <http://www.tnnonline.info> (accessed 16 September 2015).

<sup>269</sup> ILO (n 29 above) 5.

<sup>270</sup> 'Tinapa's waning glory' *This Day* 9 December 2015 <http://www.thisdaylive.com> (accessed 16 September 2015).

<sup>271</sup> 'How Federal Government can save multi-billion naira Tinapa' *The Nation* 25 June 2014 <https://issuu.com/thenation/docs> (accessed on 5 April 2016).

<sup>272</sup> Iarossi & Clarke (n 14 above) 74.

<sup>273</sup> 'How Federal Government can save multi-billion naira Tinapa' *The Nation* 25 June 2014 <https://issuu.com/thenation/docs> (accessed on 5 April 2016).

<sup>274</sup> D Olatoye 'Nigerian State presses Federal Government to grant duty-free status to troubled project' (2008).

<sup>275</sup> 'Custom vs Tinapa, the untold story' *The Sun* 14 October 2013 <http://sunnewsonline.com> (accessed 16 September 2015).

- **Lekki Free Zone (LFZ)**

LFZ is a one of the Chinese Economic Cooperation Zones in Africa.<sup>276</sup> The Lekki Free Zone Development Company (LFZDC) was established by a joint venture between a Chinese Consortium - China-Africa Investment Company (60%) and Lagos State Government (40%).<sup>277</sup> As a PPP scheme, the federal government of Nigeria granted the LFZDC the exclusive right to develop, manage and operate the LFZ in 2008.<sup>278</sup> LFZ is located on the tip of Lekki Peninsula to the southeast of Lagos State. It borders Lekki Lagoon in the north and faces the Atlantic in the south. The Lagos State Government provided 16 500 hectares of land as its equity contribution and 50-year right to operate the zone to the Chinese consortium.<sup>279</sup> The zone programme is designed as a city-wide SEZ expected to provide the necessary infrastructure facilities and logistics for residential and Industrial Township for investment, trade and financial services.<sup>280</sup> A strong conviction exists among observers that with proper coordination and careful integrated execution, the LFZ is well positioned to play an important role of revitalising Nigeria manufacturing sector and transforming the economy by building on the potentialities that abound in Nigeria and stimulating quality investments from China.<sup>281</sup> According to a UNDP report, 21 enterprises have so far invested a capital of USD 156 million and some other 79 companies are already registered in the zone.<sup>282</sup> The zone is ultimately expected to create 300 000 jobs.<sup>283</sup>

- **Ogun Guangdong Free Zone**

A product of the Chinese Economic Cooperation Zones, the Ogun Guangdong Free Zone is located in the Igbesa region of Ogun State Nigeria which is 30 kilometers from Lagos International Airport.<sup>284</sup> The zone is modelled as a joint-venture between a Chinese consortium which consists of Guangdong Xinguang International Group, China-Africa Investment Ltd and CCNC Group (82%) and the Ogun State Government (18%).<sup>285</sup> The Zhongfu International Investment Nigeria (FZE) is responsible for the

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<sup>276</sup> This will be discussed in details in chapter 5.

<sup>277</sup> UNDP (n 3 above) 25.

<sup>278</sup> UNDP (n 3 above) 26.

<sup>279</sup> WBG (n 6 above) 46.

<sup>280</sup> LFZ Investment Brochure (2011) 6.

<sup>281</sup> UNDP (n 3 above) 27.

<sup>282</sup> UNDP (n 3 above) 28.

<sup>283</sup> Bost (n 28 above) 13.

<sup>284</sup> WBG (n 6 above) 53.

<sup>285</sup> WBG (n 6 above) 54.

development, management and operation of the project. The zone is developed on a total area of 10,000 hectares, which together with a 100-year concession, constitute the Ogun State Government equity share for the developer.<sup>286</sup> The objectives are similar to the LFZ and the zone is intended to be a multi-use development project covering manufacturing, logistics, commercial and residential areas.<sup>287</sup> Areas of economic activities will cover light manufacturing, machinery manufacturing, packaging and printing, tourism, transportation and logistics, auto parts and vehicle maintenance, food processing, agricultural and side-line products.<sup>288</sup> The developer indicated that 16 out of 40 firms located in the zone are fully operational and have offered about 4250 jobs to Nigerians, an improvement over 300 in 2013.<sup>289</sup>

- **Onne Oil and Gas Free Zone**

The Oil and Gas Free Zone Onne is located in the port of Onne, 30 kilometres from Port Harcourt, Nigeria.<sup>290</sup> The Nigerian Government intended to create a strategic oil service centre for onshore and offshore operations while providing the West Africa oil and gas industries with easy access and duty free distribution facilities.<sup>291</sup> The project is designed in three phases to boost manufacturing, processing and infrastructure development.<sup>292</sup> The first stage provides a free port at the Onne Port Complex, a structure spanning an area of 220 acres. It is designed as an enclave to streamline the port facilities which accommodates traffic, increases custom and pre-inspection capabilities.<sup>293</sup> The second phase is designed as a FTZ and the third phase will incorporate a Specialised EPZ at the Ikpokiri island area of the zone.<sup>294</sup> The zone commenced operation in 1997 and has since expanded its operation with over 30 international oil and gas companies, including many of the world's largest corporations registered within the zone.<sup>295</sup> The zone has witnessed an investment of over \$300 million by the private sector in Nigeria towards ensuring a constantly upgraded and

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<sup>286</sup> WBG (as above).

<sup>287</sup> WBG (n 6 above) 9.

<sup>288</sup> WBG (n 6 above) 54.

<sup>289</sup> 'Ogun-Guangdong FTZ offers 4,250 jobs – MD' 11 February 2015 <http://shipsandports.com.ng> (accessed on 5 April 2016).

<sup>290</sup> <http://www.onnefreezone.com> (accessed 18 April 2016).

<sup>291</sup> Onne Free Zone serves as a distribution centre for Cameroon, Equatorial Guinea, Gabon, Democratic Republic of Congo (DRC), Angola, Sao Tome Principe and Côte d'Ivoire.

<sup>292</sup> Stein (n 30 above) 16.

<sup>293</sup> <http://www.onnefreezone.com/free-zones> (accessed 18 April 2016).

<sup>294</sup> Stein (n 30 above) 16.

<sup>295</sup> <http://www.onnefreezone.com> (accessed on 18 April 2016).

improved facility and investment environment.<sup>296</sup> It is believed that the investment inflows into the zone embodies a greater percentage of the total investments in Nigeria and based on the performance of the zone in terms of FDI inflow, revenue generation and job creation, the Nigerian government has declared the establishment of additional oil and gas free zones such as the Apapa Oil and Gas Free Zone in Lagos.<sup>297</sup>

- **Staple Crops Processing Zones (SCPZs)**

The Nigeria SCPZ programme focuses on attracting private sector agribusinesses to set up processing plants in rural areas to add value to staple food crops, reduce post-harvest losses and reduce Nigeria's dependence on food importation.<sup>298</sup> The programme confers a set of incentives aimed at providing a competitive cost advantage and reducing the administrative burdens of SCPZ investors.<sup>299</sup> The successful implementation of the SCPZs is estimated to generate about N660 billion to N1.4 trillion to the Nigerian economy and create 250 000 jobs.<sup>300</sup> About 14 SCPZs has been established to process food crops such as rice, sorghum, cassava, fish processing, horticulture and livestock in the country.<sup>301</sup>

#### **4.4 The Nigeria Zone Regime**

The Nigeria zone programme is regulated under two regimes namely: the Nigeria Export Processing Zones Act<sup>302</sup> which establishes the Nigerian Export Processing Zone Authority (NEPZA) and the Oil and Gas Free Zones Decree<sup>303</sup> which establishes the Oil and Gas Free Zone Authority (OGFZA). Upon the recommendation of each regulator, the President is empowered to establish zones in designated areas as he thinks.<sup>304</sup> Originally, the NEPZA Act was enacted in 1992 with the responsibility of regulating, developing and managing all

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<sup>296</sup> MK Nwani 'The impact of total quality management (TQM) on employee productivity: A case study of Onne oil and gas free zone authority (OGFZA), Rivers State Nigeria' unpublished MBA dissertation, De Montfort University Leicester, 2012 23.

<sup>297</sup> <http://www.ogfza.gov.ng> (accessed on 29 April 2016).

<sup>298</sup> 'FG approves national policy on staple crops processing zones' *The Vanguard* 15 February, 2015 <http://www.vanguardngr.com>.

<sup>299</sup> N Odunlami 'Special economic zones for agricultural production and processing: The case of Nigeria's staple crop processing zones and DR Congo's agricultural business parks' (2015) 11.

<sup>300</sup> 'Staple crop processing zones, key to Nigeria's industrialisation – Adesina' *National Mirror* 12 January, 2014 <http://nationalmirroronline.net/new/staple-crop-processing-zones-key-to-nigerias-industrialisation>.

<sup>301</sup> 'Staple crop processing zones will contribute N1.4 trillion to economy' <http://www.nigeriatradeshub.gov.ng> (accessed on 10 May 2016).

<sup>302</sup> Act 63 of 1992.

<sup>303</sup> Decree 8 of 1996.

<sup>304</sup> Act 63 of 1992 sec 1; Decree 8 of 1996 sec 1.

investments in all free zones in Nigeria.<sup>305</sup> Consequent upon the promulgation of the OGFZA Act, all responsibilities relating to regulating oil and gas activities in Nigeria zones are vested in the OGFZA.<sup>306</sup> The NEPZA Regulation 2004<sup>307</sup> and OGFZA Regulation 2003<sup>308</sup> were further issued by the regulators to elaborate the roles and powers of the two Laws. The focus of this study is on industry in the non-oil sector, therefore the emphasis shall be on NEPZA regulatory framework.

#### **4.4.1 NEPZA regulatory framework**

NEPZA regulates the creation and implementation of EPZs in Nigeria including granting licenses to zone developers, providing and maintaining services and facilities.<sup>309</sup> The Agency is also empowered to adapt investment promotion strategies in the zones, including establishing investment promotion offices abroad.<sup>310</sup> NEPZA is responsible for streamlining the roles of NCS, NIS, NPF and the Federal Revenue Services into a ‘one-stop-shop’.<sup>311</sup> The Authority also has the mandate to supervise public and private entities carrying on activities within the zone.<sup>312</sup> Apart from the Federal Government, the State and Local Governments are also empowered to initiate zone development agenda in their localities.<sup>313</sup> While NEPZA is authorised to manage federal government zones, zones owned by state governments and private zones are managed by the licensees.<sup>314</sup> NEPZA therefore collaborates with States and local authorities to facilitate local and international investments into licensed free zones.<sup>315</sup> The least value of investment that can be undertaken by an investor in the NEPZA zones must be equivalent to the sum of USD\$500 000.00.<sup>316</sup>

- **Institutional arrangement**

NEPZA is headed by a Governing Board attached to the Federal Ministry of Trade and Investment. The Chairman of the board is appointed by the President on the

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<sup>305</sup> Sec 12 of ‘the Act’.

<sup>306</sup> Decree 8 sec 5(2).

<sup>307</sup> Sec 10(4) of ‘the Act’.

<sup>308</sup> Decree 8 sec 25.

<sup>309</sup> Secs 2(1) & 4(a-c) of ‘the Act’.

<sup>310</sup> Sec 4(f) of ‘the Act’.

<sup>311</sup> Sec 4(c); UNDP (n 3 above) 23.

<sup>312</sup> Sec 4(d) of ‘the Act’.

<sup>313</sup> UNDP (n 3 above) 23.

<sup>314</sup> Part 2 NEPZA Regulations, 2004.

<sup>315</sup> UNDP (n 3 above) 23.

<sup>316</sup> Part 1(16) NEPZA Regulations.

recommendation of the Minister.<sup>317</sup> Other members of the Board include: “a representative each from the Federal Ministries of Commerce and Tourism; Industries and Technology; the Director of Customs; the Managing Director of the NPA; the Nigerian Chambers of Commerce, Industries, Mines and Agriculture; the Manufacturers Association of Nigeria; the Association of Nigerian Exporters; two persons to be appointed by the Minister from the private sector; a representative of the Central Bank of Nigeria (CBN) and the Managing Director of the NEPZA.”<sup>318</sup>

- **Legal framework**

- a. Ownership and management:** NEPZA regulated zones are structured to allow the active participation of the private sector in ownership and management.<sup>319</sup> The legal framework makes provision for zones to be owned and managed by public entities, private entities or under PPP arrangement.<sup>320</sup>

- b. Incentives framework:** The Act provides standard incentives for zones under its regime across the country. However, specific regulations must be enacted for individual zones.<sup>321</sup> All firms located within NEPZA zones are exempted from taxes, levies, duties and foreign exchange regulations applicable in the custom territory.<sup>322</sup> Investors are entitled to import goods, raw materials and components into the zones free of customs duty.<sup>323</sup> Investors are also permitted to repatriate foreign capital in the zones at any time with capital appreciation of the investment, remittance of profits and dividends earned in the zones.<sup>324</sup> In addition, import or export licences are not required.<sup>325</sup> There is waiver on all expatriate quotas and one-stop approvals for permits, operating license and incorporation papers. Initially, only 25% of products and goods manufactured in the zones can be sold in the custom territory.<sup>326</sup> However, in order to boost the performance of the zones and considering the internal market strength of Nigeria, the volume was increased to 100% of production which may be sold into the customs territory with valid permit

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<sup>317</sup> Sec 3(1) of ‘the Act’.

<sup>318</sup> Sec 3(1) (a-g).

<sup>319</sup> Sec 1(2).

<sup>320</sup> Sec 1(2).

<sup>321</sup> WBG (n 6 above) 43.

<sup>322</sup> Sec 18(1).

<sup>323</sup> Sec 12(1).

<sup>324</sup> Secs 18(b-c).

<sup>325</sup> Sec 18(d).

<sup>326</sup> Sec 18(e).

and payment of appropriate duties.<sup>327</sup> For prohibited items in the custom territory, free zone goods are allowed for sale provided such a good meet the requirement of up to 35% domestic value addition.<sup>328</sup> At construction stage, firms are not required to pay rent on land for the first 6 months of construction for government owned zones.<sup>329</sup> The Act empowers foreign investors to have 100% ownership of their business within the zones<sup>330</sup>. Investors are also qualified to employ foreign managers and qualified personnel in their companies within the zones.<sup>331</sup>

- c. One-stop-shop:** The NEPZA Act empowers the Authority to streamline all procedure necessary for authorization of investments in a zone.<sup>332</sup> The Authority is also required to state by Order from time to time its requirements for the grant of authorisations for investments in a zone.<sup>333</sup> This will cover requirements ranging from company registration, land ownership, immigration and employment permits and all licenses pertaining to investment in the zone. Therefore, any firm which proposes to undertake an approved activity within a zone shall apply to the Authority in writing for permission to do so and shall include in its application all documents and information in support as the Authority may require.<sup>334</sup>
- d. Land acquisition:** Any enterprise that has been licenced by NEPZA is eligible to apply for serviced land or factory space within any of the zones.<sup>335</sup> An approved enterprise may apply and be granted land or factory space on a prescribed deposit by the Authority to enable it undertake the approved activity for which approval is granted by the Authority or Zone Management.<sup>336</sup>
- e. Investment sectors:** Investment activities permitted within the NEPZA zones include such as manufacturing of goods for export; warehousing, freight forwarding and customs clearance; handling of duty free goods which includes transhipment, sorting, marketing, packaging; financial services; import of goods for special services, exhibitions and publicity; international commercial arbitration services;

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<sup>327</sup> Sec 3(e).

<sup>328</sup> <http://www.nepza.gov.ng/incentives.asp> (accessed on 28 April 2016).

<sup>329</sup> Sec 18(f).

<sup>330</sup> Sec 18(g).

<sup>331</sup> Sec 18(h).

<sup>332</sup> Sec 18(3).

<sup>333</sup> Sec 18(3).

<sup>334</sup> Sec 9(1).

<sup>335</sup> Part 1(6) NEPZA Regulations.

<sup>336</sup> Part 11(1).

activities relating to integrated zones; and other activities deemed appropriate by NEPZA.<sup>337</sup>

- f. Environmental, safety and health measures:** Investors are to apply for electrical inspection test before commencement of machine installation.<sup>338</sup> Firms are obliged to submit their waste management and pollution control plans to the Authority or Zone Management for inspection and approval.<sup>339</sup> The Authority or Zone Management shall be responsible for the maintenance of facilities such as: roads, drainage, street lightening, water supply line, sewage line and firefighting. However, any maintenance works executed by the Authority on behalf of the investor shall be paid for by the investor.<sup>340</sup> In conjunction with relevant government agencies, the Authority shall inspect and monitor the operations of anti-pollution devices and measures within the zone.<sup>341</sup>
- g. Labour:** Employees are prevented from embarking on strike actions or lockouts for a period of 10 years following the commencement of operations within the EPZ.<sup>342</sup> The Authority or Zone Management shall with the co-operation and participation of employers and employees, provide welfare benefits required by zone employees such as housing, sports facilities, health and medical services.<sup>343</sup> The Ministry of Labour and Productivity shall collaborate with the Authority or Zone Management to establish a Labour and Employment Service Office in each zone.<sup>344</sup> This office shall regulate the labour market and oversee any matter relating to terms and conditions of employment, safety, health and welfare of workers in the zone.<sup>345</sup> Working hours is as agreed by mutual agreement and the employment contract but this must not exceed 8 hours daily.<sup>346</sup> The minimum wage is the same as the minimum prescribed by law within the custom territory.<sup>347</sup>

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<sup>337</sup> Third schedule to 'the Act'.

<sup>338</sup> Part 1(9) NEPZA Regulations.

<sup>339</sup> Part 10(6)

<sup>340</sup> Part 10(4)

<sup>341</sup> Part 10(6)(c)

<sup>342</sup> Sec 18(5).

<sup>343</sup> Part 8(4).

<sup>344</sup> Part 8(5).

<sup>345</sup> Part 8(5).

<sup>346</sup> Part 8(12).

<sup>347</sup> Part 8(15).

- h. Dispute resolution:** The Authority or Zone Management is empowered to entertain and resolve trade disputes arising within the EPZ in consultation with the Ministry of Employment, Labour and Productivity.<sup>348</sup>

#### **4.5 Challenges in implementation of Nigeria's SEZ programme**

Based on the evidence gathered so far, it is safe to say that none of the Nigerian zones has delivered on its composite objectives. The success recorded by Onne Oil and Gas Free Zone substantiates the observations of many commentators that investments attracted to Nigeria has been predominantly in the oil and gas industry which represent limited contribution to the employment profile and industry in Nigeria.<sup>349</sup> Some of the key challenges identified as undermining the performance of the zones are as highlighted below:

- **Lack of comprehensive legal framework**

The present legal framework were enacted during the military regime in Nigeria and has continued to regulate zone programme with little or no policy reform. The Law is obsolete and inflexible to drive the changing trend in zone development. Specifically, the frameworks lack clarity and they are riddled with ambiguities regarding the regulations on sales to the domestic market and tax treatment of output allowed into the domestic market. For instance, while NEPZA Act limits it to 25%,<sup>350</sup> the Regulation stipulates that 100% of output can be sold into the local market upon payment of import duty.<sup>351</sup> Again, the framework does not make provision for the channel for selling those products into the domestic market. Having realised the changing trend in zone development strategies, the government has subsequently encouraged the development of zones based on PPP arrangements. Nonetheless, adapting the existing legislations to drive competitive and functional zone programmes has proved erroneous. There is a deficit of the pivotal roles of the different stakeholders involved in the operation of the zones and this has resulted in confusion and ambiguities in the roles of the stakeholders. Besides the foregoing, the existing legal framework does not address the role of PPP arrangements. This has continued to have serious implications on the development of zones in Nigeria.

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<sup>348</sup> Sec 4(e) of 'the Act'.

<sup>349</sup> T Farole 'Second best'? Investment climate and performance in Africa's SEZs' (2010) 16.

<sup>350</sup> Sec 18(e) of 'the Act'.

<sup>351</sup> Part 1(3)(e) NEPZA Regulations

- **Weak institutional framework**

The current institutional arrangements is prone to political interference and bureaucratic bottlenecks. The board of NEPZA is attached to the Federal Ministry of Trade and Investment. The appointment of the members of the board is made by the President. In addition, the board representation is dominated by government officials with few positions set aside for the private sector.<sup>352</sup> The outcomes of the NEPZA zones supports the assessment that board representation alone is not enough.<sup>353</sup> Particularly, the logic in having the Director of Customs on the NEPZA board is lost considering the series of conflicts between NEPZA and NCS which refused to acknowledge TFZ as DFZ.<sup>354</sup> Moreover, the present institutional structure creates institutional conflict of interests as NEPZA carries out the roles of regulator, developer, owner and operator in the government owned zones. As pointed out earlier, this traditional structure where the same government body performs all these functions will likely lead to a situation where the government is regulating itself. There are no concerted legislative efforts made to clarify many of the confusions inherent in the laws.

- **Zone model**

The Nigerian zone programme was originally structured as EPZ to attract labour-intensive industries.<sup>355</sup> In many economies today, the dynamism of global economy has influenced a move from the traditional EPZ model to promoting the potentiality for zone to grow to a significant scale and generate spill over to the broader economy.<sup>356</sup> In most cases, the resultant indications of the EPZ structure include rigid rules about the nature of firms and businesses that are allowed in the zones, location of investments, market to which production could be sold and volume of production allowed into the local economy.<sup>357</sup> A modern trend in the free zone concept is the licensing of a city-wide area as a special economic zone which would accommodate different variants of free zone. This would explain why in the absence of the requisite policy framework Lekki and Ogun zones are being developed and operated as SEZs to support varieties of economic activities.<sup>358</sup> NEPZA once declared that it is working towards engaging with relevant stake holders to

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<sup>352</sup> Sec 3 of 'the Act'.

<sup>353</sup> Farole (n 24 above) 186.

<sup>354</sup> T Farole & G Akinci *Special economic zones progress, emerging challenges, and future directions* (2011) 20.

<sup>355</sup> Farole (n 24 above) 160.

<sup>356</sup> Farole & Akinci (n 124 above) 6.

<sup>357</sup> Farole (n 24 above) 166.

<sup>358</sup> WBG (n 6 above) 50.

modify the processes that would lead to the establishment of the first SEZ in Nigeria.<sup>359</sup> The reality of this is yet to be seen.

- **Inadequate knowledge**

Generally, knowledge gap is a major challenge of government programmes in the world over. This is why many governments today execute public projects on public-private partnership structure to take advantage of the knowledge repository in the private sector. Setting up an economic zone is a complex venture which requires high-level experience in aligning the incentives with country-specific dynamics such as comparative advantage, location and target sectors to attract the right investments.<sup>360</sup> The case of TFZ where the Rivers State Government invested about USD \$500 million in developing the zone facility shows that heavy investment in infrastructure without the requisite working knowledge in zone development does not guarantee zone success. At most, the outcome can be described as ‘white elephant’.<sup>361</sup>

- **Lack of integration for technological spillage**

There is no single zone in Nigeria that has been able to facilitate forward and backward linkages for promoting skill acquisition and knowledge sharing. Currently, there is doubt whether any initiatives exist to address support for Start-ups, skills and technological upgrade, R & D between the zones and domestic economy.<sup>362</sup>

- **Lack of effective strategic planning, coordination and management**

Strategic planning and management entails developing clear long-term economic growth strategies,<sup>363</sup> deliberate active support and commitment of the programme at the Presidency,<sup>364</sup> and coordination across the various government institutions responsible for delivering on the complex package of incentives, regulations and services of the zone programme.<sup>365</sup> Lack of coordination resulted in the creation of overlapping zone regime in Nigeria. Barely four years after NEPZA was created and before its first zone started operation, OGFZA was established. This development undermined the performance of

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<sup>359</sup> G Kuye ‘The role of NEPZA in infrastructural development in Nigeria’ 1.

<sup>360</sup> Farole & Akinci (n 124 above) 11.

<sup>361</sup> ‘Special economic zones not so special’ *The Economist* 4 April 2015 <http://www.economist.com/news/leaders/21647615-world-awash-free-trade-zones-and-their-offshoots-many-are-not-worth-effort-not> (accessed

<sup>362</sup> WBG (n 6 above) 52.

<sup>363</sup> Farole (n 24 above) 158.

<sup>364</sup> Farole (n 24 above) 152.

<sup>365</sup> T Farole & L Moberg ‘It worked in China, so why not in Africa’ (2014) 9.

Nigeria zone programme as investors had difficulties in determining which authority regulates the oil and gas companies based inside NEPZA zones and the services companies located inside the OGFZA zones.<sup>366</sup> The confusion was only resolved two years later by a ruling issued by the Attorney-General of the federation who declared OGFZA responsible for all oil and gas related activities in the country.<sup>367</sup>

The lack of coordination and cooperation between the different levels of government was seen in the unending conflicts between the NSC (an agent of the federal government) and Tinapa Zone Management Authority (an agent of the Cross-River State Government).<sup>368</sup> As the regulator for all zones in the manufacturing industries with the mandate to align and streamline the activities of other federal agencies such as NCS and NPA, NEPZA lacks the will power to challenge the vested interests of these agencies.<sup>369</sup> The zones' competitiveness is greatly hindered by series of conflicts between NEPZA and these bureaucratic agencies stemming from delay in port handling of goods for import and export processing, difficulties in repatriation of capital gains out of Nigeria,<sup>370</sup> etc.

- **Poor national business climate**

It is worthy of note that even though EPZs are considered enclaves theoretically, it has been discovered that the success of zone programmes is essentially connected to the will of the host government on one hand and the broader national investment environment on the other hand.<sup>371</sup> Therefore, it is safe to conclude that some factors that contribute to the outcomes of zones are not exclusive to the zone location, but linked to the overall national business climate. It is not enough for the high-quality infrastructure to stop at the gate of the zones. The initiators concerned themselves about the infrastructure within the zone while the quality of infrastructure and service delivery outside the zone particularly access roads, airport, sea port and railways, power supply are poor. According to investors in the Tinapa and Calabar zones, poor road connectivity and port-related delays are challenges that undermine the performance of the zones. The Calabar port which ought to serve Tinapa

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<sup>366</sup> T Farole & J Kweka 'Institutional best practices for special economic zones: An application to Tanzania' (2011) 6.

<sup>367</sup> Iarossi & Clarke (n 14 above) 74.

<sup>368</sup> 'Custom vs Tinapa, the untold story' *The Sun* 14 October 2013 <http://sunnewsonline.com/new/customs-vs-tinapa-untold-story/1> (accessed 30 March 2016); 'Tinapa's waning glory' *This Day* 9 December 2015 <http://www.thisdaylive.com/articles/tinapa-s-waning-glory/227485/> (accessed 30 March 2016).

<sup>369</sup> UNDP (n 3 above) 29.

<sup>370</sup> UNDP (n 3 above) 30.

<sup>371</sup> Farole (n 24 above) 9.

and Calabar zones could not contain large ocean going vessels. Chances of success of these zones are limited if they lack the basic internal and external infrastructures connecting zones to domestic and international supply access and markets.

- **Infrastructure and trade facilitation**

FDIs are always attracted to agglomerations where they can easily access quality infrastructure, deep labour market and knowledge spill overs. In examining the business climate in Nigeria free zones, Iarossi and Clarke observed that even though the Nigerian free zone programme appears to offer an improved investment environment compared to what is obtainable in the national investment environment, this is not sufficient to attract global investors.<sup>372</sup> The primary reason for this have been found to be that the business climate in the free zone still falls below international standards.<sup>373</sup> This explains why Lekki and Ogun Free Zones are thriving while many other zones in Nigeria could not take off. Due to politicised policies and bureaucratic bottlenecks in licencing procedures, land acquisition and registration, the cost of doing business is high.<sup>374</sup> Particularly, investors in the zone suffer from epileptic power supply, poor access roads to the zones, poor port conditions, shortage of water supply etc.<sup>375</sup>

- **Uncompetitive policies and strategies**

Nigeria zones are built on such factors as exemptions from labour rights and strike outs, trade preferences, taxes, import and export duties as incentives to foreign investors rather than addressing more important aspects of investment environment. Studies have progressively revealed that fiscal and financial incentives which are traditionally regarded as sources of competitiveness for zone development are no longer attractive to investors and therefore have no measurable effect on SEZ success.<sup>376</sup> Apart from the fact that these incentives are not sustainable, coordination of incentives is required to attract the right investors and to establish a policy environment that promotes investors' confidence in transparency and predictability. A report by the Action Aid and Tax Justice Network of Africa revealed that Nigeria loses USD \$2.9 billion yearly through financial incentives in a bid to attract FDIs into the SEZs.<sup>377</sup> The report noted that financial incentives are being

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<sup>372</sup> Iarossi & Clarke (n 14 above) 59.

<sup>373</sup> Iarossi & Clarke (n 14 above) 60.

<sup>374</sup> [http://data.worldbank.org/country/nigeria#cp\\_wdi](http://data.worldbank.org/country/nigeria#cp_wdi) (accessed 30 March 2016).

<sup>375</sup> Iarossi & Clarke (n 14 above) 63 – 66.

<sup>376</sup> T Farole 'Special economic zones: what have we learned' (2011) 2

<sup>377</sup> 'Nigeria loses N577b yearly as tax incentives to firms' *The Guardian* April 13, 2016 <http://guardian.ng/news/nigeria-loses-n577b-yearly-as-tax-incentives-to-firms> (accessed 20 April 2016).

used by the government as substitutes for the policies that could genuinely attract quality investments. The challenges of weak SEZ governance, poorly designed legal and regulatory frameworks and inefficient bureaucracies are considered to stem from misaligned incentives.<sup>378</sup>

- **Lack of consistency and commitment of government**

More often than not, inconsistent policies due to change of government is the bane of many good economic policies in Nigeria. This is especially so when a new government does not fully recognise the potentials of economic zones as a driver of economic transformation and industrialisation or neglect to acknowledge the commitments made by the previous government.<sup>379</sup> Consistent and active support from the national government is fundamental to zone success. Countries such as China, Mauritius and Korea have achieved success in zone development because they adopt SEZ programme as an integral part of their development strategy. Regrettably, zone development agenda in Nigeria is rather politically motivated and devoid of robust business approach.<sup>380</sup>

- **Insecurity**

Another major challenge to Nigeria's national investment climate is security threats. The unending intimidation of the Boko Haram terrorist group in the North, Biafra upsurge in the East and recently the activities of the Delta Avengers in Niger-delta region has continuously undermined investors' confidence in the polity.<sup>381</sup>

#### **4.6 Conclusion**

This chapter explored the regulatory framework upon which the Nigeria SEZ is constructed with a view to determining the aspects of the regulatory laws that are responsible for the underperformance of the programme. The study found that Nigeria launched her SEZ programme in the 1990s with the objectives to create employment, increased her export profile, foster skill acquisition and technology transfer from FDIs, increased foreign exchange earnings, infrastructural development; facilitate trade and greater participation of Nigeria in the global markets. Today, Nigeria has created about 30 zones most of which are underperforming. Worthy of note is the SCPZs recently created with the objective of attracting

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<sup>378</sup> Farole & Moberg (n 135 above) 7.

<sup>379</sup> D Z Zeng 'China and Africa's experiences with special economic zones: what can we learn' (2014) 19.

<sup>380</sup> Farole (n 24 above) 169.

<sup>381</sup> 'Insecurity threatening to Nigeria's economic growth, IMF warns' *The Cable* 25 April 2014 <https://www.thecable.ng/insecurity-a-threat-to-your-economic-growth-imf-tells-nigeria>

private sector agribusinesses in rural areas to add value to staple food crops, reduce waste and Nigeria's dependence on food importation.

Even though, the promptness on the part of the government to create many zones suggests that the government views SEZs as catalysts for economic diversification and industrialization, the inference drawn here is that the Nigerian government does not actively see SEZ programme as part of its development strategy. The legal framework underlying the existing zone programme has been found to be inadequate to support a sustainable SEZ. The regime was enacted in 1992 and designed to support EPZs with little or no efforts at reform. The zones are practically abandoned after launching, without policy attention to improve performance and competitiveness. The regulatory framework also lacks coordination among the different levels of government. For instance, it is evident from the study that state-owned zones are struggling to start due to lack of communication and active support from the federal government.

The incentive package does not contain any provision to support local small scale businesses into the zones. Apart from the findings that the incentive package contains inconsistencies, the legal framework offers unlimited tax holidays with no sunset clause. Moreover, the law lacks built-in incentives to enhance linkages between the zones and the local economy in terms of transferring skills, building local businesses and encouraging R & D. It follows that the incentive regime failed to reflect coordination and alignment to achieve the desired objectives of the zones. The institutional regime has failed to support an effective regulatory capacity. As revealed in the course of the study, NEPZA has difficulties in managing the zones to the exclusion of interference from other interested government agencies.

It is important that these concerns should be addressed with a view of turning around the zones. The regulatory framework needs a comprehensive restructuring that will reflect dynamic policies. The objectives of each zones must be examined and incentives that will help achieve the objectives should be designed. Concerted efforts could still be made to improve the competitiveness of the underperformed zones by strengthening NEPZA to make it responsive to its responsibilities and engaging policies to encompass modern trends like PPP arrangements, and wide range of economic activities. In the next chapter, I shall be looking at the Chinese SEZ model so as to bring to bear the constituent elements of the successful zone experience in China.

## **CHAPTER 5**

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### **SPECIAL ECONOMIC ZONE DEVELOPMENT IN CHINA**

- 5.1 Introduction
- 5.2 Evolution of the Chinese SEZ Model
- 5.3 Policy and Regulatory Framework
  - 5.3.1 Objectives
  - 5.3.2 Legal Framework
  - 5.3.3 Institutional Framework
  - 5.3.4 Incentives
- 5.4 Challenges
- 5.5 Conclusion

## CHAPTER 5

### SPECIAL ECONOMIC ZONES IN CHINA

#### 5.1 Introduction

The economic emergence of China over the past three decades has continued to capture the imagination of political analysts and researchers. Among the questions which academic minds sought to answer include: How did China achieve this rapid growth, what have been its strategic drivers and most importantly, what can be learnt from China's success? One important engine of growth that cannot be denied is the SEZ development that began after China's reforms. This chapter will be examining the development experience of SEZs in China with a view to reflecting some lessons learnt so far that could be useful in enhancing the Nigerian zone programme. An investigation will be made into the role play by SEZs in China's economic development, and some of the challenges encountered during the initial stage of development of the SEZs will be taken up for analysis. The work shall also discuss how China was able to tackle these problems with context-specific measures that catalysed the success of the SEZ programme.

#### 5.2 Evolution of the Chinese SEZ Model

In the centrally planned economy which prevailed under Mao Zedong, China experienced some economic setback due to economic policies with disastrous effects which contributed to a decade of economic collapse in China.<sup>1</sup> The country was in absolute poverty with about 69 percent of its population employed in agriculture, the per capital income was about 616RMB in rural areas, foreign trade and investment were insignificant.<sup>2</sup> This situation calls for a critical systematic reform.<sup>3</sup> The government of China therefore adopted the Open Door Policy in 1979<sup>4</sup> and planned to open up to the world by welcoming FDIs.<sup>5</sup> For lack of experience, China decided to 'open' gradually from the coastal cities and later spread to the interior.<sup>6</sup> Thus, four

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<sup>1</sup> This period is known as the 10 years Cultural Revolution from May of 1966 to October of 1976 Y Kim 'Chinese-led SEZs in Africa- Are they a driving force of China's soft power?' (2013) 13.

<sup>2</sup> H Zhang & F Ilhéu 'The role of economic zones in African countries development and the Chinese FDI' (2014) 2.

<sup>3</sup> Zhang & Ilhéu (n 2 above) 2.

<sup>4</sup> In 1979, the central government under Deng Xiaoping introduced the open door policy, heralding a shift in economic policy.

<sup>5</sup> DZ Zeng 'China and Africa's experiences with special economic zones: What can we learn (2014) 3.

<sup>6</sup> Zhang & Ilhéu (n 2 above) 4.

SEZs were initially established in China's Southern coastal regions of Shenzhen (near Hong Kong), Zhuhai (near Macao) and Shantou (a major home of overseas Chinese) in Guangdong Province and Xiamen in Fujian Province.<sup>7</sup> In 1988, the fifth SEZ was established in Hainan with the aim of transforming the remote island into a Province.<sup>8</sup>

The first four SEZs were characterised by large areas with the objective to facilitate broadly based, comprehensive economic development.<sup>9</sup> They were designed with special policies and trade advantages and deliberately located far from the centre of power in Beijing to be shielded from political interference and risks.<sup>10</sup> They were encouraged to pursue open economic policies that would serve as a test for innovative policies which, if proven successful, would be implemented more widely across the country.<sup>11</sup> In assessing the accomplishment of goals in economic transformation, these SEZs proved successful by revitalizing China's economy through the introduction of foreign capital, manufacturing and technology.<sup>12</sup> The initial success recorded propelled the extension of the initiative to the inland regions with specific focus on technology-intensive industries.<sup>13</sup> Today, China has developed several variations of SEZs ranging from Economic and Technological Development Zones (EDTZs), Border Economic Zones (BEZs), HIDZs, FTZs, EPZs, and other types of development zones in the form of National Tourist Holiday Resorts, Bonded Logistics Parks, Bonded Port Areas, Trade Zones, and Business Investment Zones.<sup>14</sup>

Brautigam and Xiaoyang noted the strategic role played by SEZs in China's economic reforms as experiments in the management of market liberalisation and as magnets for thousands of Chinese and foreign firms.<sup>15</sup> Also commenting on the contributions of SEZs to China's development, Zeng documented that SEZs accounted for about 21.8% of national GDP, about 46% of FDI, an estimate of 60% of exports, and generated in excess of 30 million jobs in 2007.<sup>16</sup> Based on this successful domestic experience, China's Ministry of Commerce (MOFCOM) launched a programme to facilitate the development of overseas economic

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<sup>7</sup> DZ Zeng 'Global experiences with special economic zones with a focus on China and Africa' (2015) 4.

<sup>8</sup> T Ota 'Industrial policy in transitional economy: the role of China's special economic zone in economic development' (2003) 131.

<sup>9</sup> Zeng (n 7 above) 4.

<sup>10</sup> Zeng (n 5 above) 4.

<sup>11</sup> Zhang & Ilhéu (n 2 above) 4.

<sup>12</sup> DZ Zeng *Building engines for growth and competitiveness in China* (2011) 10.

<sup>13</sup> Zeng (as above).

<sup>14</sup> H Cowaloosur 'The absentee landlord: African state in Chinese special economic zones in Africa' (2012) 1.

<sup>15</sup> D Brautigam & T Xiaoyang 'China's special economic zones in Africa' (2011) 30 *Journal of Modern African Studies* 49.

<sup>16</sup> Zeng (n 12 above) 14.

cooperation zones in 2006.<sup>17</sup> A total of 19 zones were selected seven of which are in Africa namely: Egypt, Ethiopia, Mauritius, Nigeria (2), and Zambia.<sup>18</sup> The SEZ programmes are to be implemented in the spirit of bilateral cooperation<sup>19</sup> with the aim of enhancing mutual growth and development in China and the selected countries.<sup>20</sup>

### **5.3 Policy and regulatory framework**

#### **5.3.1 Objectives**

China did not specifically spell out its objectives for pursuing its SEZ agenda.<sup>21</sup> As illustrated in Article 1 of the Regulation of the People's Republic of China (PRC), the SEZs were conceived to open the country to the outside world and support the transformation process.<sup>22</sup> Broadly, China regards the SEZ initiative as key conduits in achieving both political and economic objectives.<sup>23</sup> The Government specifically designed the scheme to cover a wide range of economic activities in order to achieve these objectives:<sup>24</sup>

- Transfer of hi-tech industries into the SEZs;
- Experiment and acquisition of advanced technology and managerial expertise;
- Sources of increased employment;
- Earning of foreign exchange through promotion of exports;
- Promotion of economic and regional development;
- Experiment of new economic reform with market forces;
- Reintegration of Hong Kong, Macao and Taiwan with the mainland.

#### **5.3.2 Legal framework**

The implementation of China's SEZ started in December 1979 when the state council and the central committee of the Chinese Communist Party jointly gave autonomy to the Guangdong and Fujian provinces allowing them to implement special policies and measures governing the

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<sup>17</sup> T Xiaoyang 'How do Chinese 'special economic zones' support economic transformation in Africa' (2015) 3.

<sup>18</sup> Xiaoyang (n 17 above) 3.

<sup>19</sup> Kim (n 1 above) 6.

<sup>20</sup> Cowaloosur (n 14 above) 1.

<sup>21</sup> D Wall 'Special economic zones In China: The administrative and regulatory framework' (1993) 7 *The Journal of East Asian Affairs* 229.

<sup>22</sup> E Knoth 'Special Economic Zones and Economic Transformation the Case of the People's Republic of China' Unpublished PhD thesis, University of Konstanz, 2000 25.

<sup>23</sup> Ota (n 8 above) 132.

<sup>24</sup> Wall (n 22 above) 229; Ota (n 8 above) 132.

operation of enterprises in the SEZs.<sup>25</sup> During the course of many conferences with officials from Guangdong and economists from PRC, Hong Kong and Macao, 11 drafts of an initial set of SEZ regulations were produced.<sup>26</sup> By the end of 1979, the Guangdong Provincial People's Congress adopted draft regulations consisting of 30 articles, which were sent to the state council in Beijing for extensive discussion.<sup>27</sup> In August 1980, the National People's Congress gave assent to the regulations on SEZ in Guangdong Province to govern the three zones in the Guangdong province.<sup>28</sup>

While the development of the SEZ initiative elicited the interest of foreign investors, the lack of explicit guidelines for investment in the regulations gave rise to hesitation as foreigners had difficulties in discerning investment policies and practice in the zones.<sup>29</sup> In the years that followed, continuous efforts were made in policy reform to fill this void with the release of other investment guidelines such as the Shekou Industrial Zone (SKIZ) for joint ventures, a ten-point set of policy guidelines released in 1981 to further expand upon the 1980 regulations and the promulgation by the Guangdong Peoples' Congress of four new Provisional regulations covering entry and exit procedures, labour and wage system, land usage and business registration.<sup>30</sup> However, the Guangdong regulations provides the basic legislative framework upon which other zones were built.<sup>31</sup> In the light of this, this work will be addressing the China SEZ legal framework in the light of the Guangdong regulations as it is considered as the centrepiece of China SEZs.

The regulation establish a legal framework distinct from those applicable elsewhere in China.<sup>32</sup> It sanctioned the existence of wholly-foreign-owned firms in PRC for the first time since 1949.<sup>33</sup> There is no minimum foreign-equity requirements unlike previous investment guidelines applicable across China which mandated 25% minimum foreign equity.<sup>34</sup> Article 3 establishes the Guangdong Provincial Administrative Commission to develop and manage the SEZs. The regulation grants unusually wide scope and power to sanction investment to the

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<sup>25</sup> CD Stoltenberg 'China's special economic zones: Their development and prospect's (1983) 24 *Asian Survey* 639.

<sup>26</sup> A Fenwick 'Evaluating China's special economic zones' (1984) 376 *Berkeley Journal of International Law* 376.

<sup>27</sup> Fenwick (n 26 above) 379.

<sup>28</sup> Stoltenberg (n 25 above) 640.

<sup>29</sup> Stoltenberg (as above).

<sup>30</sup> Stoltenberg (n 25 above) 642.

<sup>31</sup> Fenwick (n 26 above) 379.

<sup>32</sup> Fenwick (n 26 above) 382.

<sup>33</sup> Art 1 Regulation on Special Economic Zones in Guangdong Province. <http://www.asianlii.org/cn/legis/cen/laws/rosezigp554/#6>

<sup>34</sup> Fenwick (n 26 above) 382.

administrative commission.<sup>35</sup> The PRC retains the broadest possible administrative, political, and judicial authority in the zones.<sup>36</sup> As part of the efforts of the central government to take power from the centre and secure the independence and autonomous status of the SEZs, the regulation emphasised the retention of political and legal sovereignty consistently.<sup>37</sup> The SEZ programme in China was initially developed after the EPZs of Shannon, Taiwan and Korea.<sup>38</sup> However, unlike the latter which is confined largely to labour-intensive industrial production, Article 4 of the SEZ regulation allows foreign investors to participate in all items of industry, agriculture, livestock breeding, fish breeding and poultry farming, tourism, real estate, research and manufacture. The regulation also extends the range of proposed investment broadly, far more than any allowed in other parts of the country at the time,<sup>39</sup> soliciting foreign capital for basic infrastructural development including public utilities, roads, wharves, and warehouses.<sup>40</sup>

### **5.3.3 Institutional framework**

The Special Bureau at the Ministry of Foreign Trade and Economic Relations is the key institution responsible for coordinating the development of the SEZs at national level.<sup>41</sup> The development of the SEZs is supervised by the provincial governments: Guangdong for Shenzhen, Shantou for Zhuhai, Fujian for Xiamen, and Hainan for Hainan Island.<sup>42</sup> The day to day administration of the zones are managed by the SEZ Administrative Commissions which are under the control of the provincial governments.<sup>43</sup>

The Administrative Commission of the Guangdong SEZs had the following functions:<sup>44</sup>

- to draw up development plans for the zones and organize their implementations;
- to examine and approve investment projects in the zones;
- to deal with the registration of industrial and commercial enterprises in the zones including allocation of land;

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<sup>35</sup> Fenwick (n 26 above) 381.

<sup>36</sup> Arts 7 & 23.

<sup>37</sup> Fenwick (n 26 above) 381.

<sup>38</sup> Ota (n 8 above) 131.

<sup>39</sup> Fenwick (n 26 above)

<sup>40</sup> Art 5.

<sup>41</sup> Knoth (n 22 above) 29.

<sup>42</sup> Wall (n 21 above) 232.

<sup>43</sup> Knoth (n 22 above) 29.

<sup>44</sup> Knoth (as above).

- coordinates working relations among all relevant authorities such as banking, insurance, taxation, customs, frontier inspection, postal and telecommunications organizations;
- administers labour matters;
- responsible for educational, cultural, health and other public welfare facilities in the SEZs; and
- Supervises the implementation and enforcement of laws and orders in the SEZs.

#### 5.3.4 Incentives

Like any other zone programme, a number of incentives<sup>45</sup> were used in the Chinese SEZs to stimulate foreign investors but with slight variations depending on the province. These consist mainly of reduced or no customs duties; no import quotas; reduced or no foreign exchange controls; unlimited profit repatriation; no or a minimum of taxes; less restrictions on foreign ownership; less bureaucracy and streamlined procedure with relative independence for local planning authorities; good infrastructure or the prospect of heavy infrastructure development; direct access to planning units at provincial and central level; tax holidays; reduced tax on corporate profits (15%); duty-free allowances on production materials; autonomy in hiring and firing workers; generous depreciation allowances; negotiated limited access to the domestic Chinese market for goods produced within the zone; residence and work permits and income tax exemptions for foreigners working in the zones.

#### 5.4 Challenges

Despite the central government's determination for the success of the SEZ initiative, China encountered a number of difficulties during the early stage of development especially in connection with the decentralisation drive.<sup>46</sup> To overcome these problems and increase the attractiveness of the SEZs, the central government focused on improving the early investment environment by developing new regulations and designing incentives packages that will attract the desired industries.<sup>47</sup>

- **Low human capital and infrastructural development**

Early experience with China's SEZ development revealed that one of the biggest challenge was the lack of experience of the political decision-makers which led to

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<sup>45</sup> Knoth (n 22 above) 31-32.

<sup>46</sup> Stoltenberg (n 25 above) 650.

<sup>47</sup> Stoltenberg (n 25 above) 651.

inefficiencies, corruption and smuggling in some of the zones.<sup>48</sup> The SEZ officials were also confronted with a labour force which was unskilled and unaccustomed to industry.<sup>49</sup> It is also interesting to know that not all the zones have access to adequate transportation network, communication and power supply.<sup>50</sup> One of the challenges facing Nigeria zone programme as pointed out earlier is the lack of adequate knowledge on the part of policy makers and zone developers most especially in aligning the incentives with the objectives.

- **Murky regulatory structure**

There was no clarity in the interpretation of many of the new laws and the court systems were not sufficiently developed.<sup>51</sup> As a result of this, many investors were discouraged.<sup>52</sup> Beyond the problems associated with the new laws, most of China's legislation were largely available in Chinese or Mandarin language.<sup>53</sup> Foreign investors were therefore forced to rely on their local partners' knowledge of the law.

- **Mushroom strategy**

The path of success of the SEZs at the coastal regions encouraged many local governments and cities to adopt SEZ strategy for economic growth and to promote local and village enterprises (TVEs) without proper evaluation and planning.<sup>54</sup> The aftermath of this situation is that many of the zones were not competitive and eventually failed.<sup>55</sup> Consequently, China embarked on efforts to eliminate unqualified zones to limit the blind expansion of zones.

- **Unhealthy competitions**

The growing number of zones led to extreme competitions among the SEZs with many of them struggling to attract investments in similar sectors and industries.<sup>56</sup> This situation led to significant overlaps, waste of public resources and decline in efficiency of some zones.<sup>57</sup>

- **Environmental degradation and resources constraints**

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<sup>48</sup> Hainan SEZ was characterised with a great number of unnecessary investments especially in real estate, coupled with corruption and smuggling. Knoth (n 23 above) 223.

<sup>49</sup> Stoltenberg (n 25 above) 650.

<sup>50</sup> K Wong 'China's special economic zone experiment: An appraisal' (1987) 69 *Swedish Society for Anthropology and Geography* 35.

<sup>51</sup> Knoth (n 23 above) 225.

<sup>52</sup> Stoltenberg (n 25 above) 650.

<sup>53</sup> Stoltenberg (n 25 above) 651.

<sup>54</sup> Zeng (n 7 above) 6.

<sup>55</sup> Zeng (as above).

<sup>56</sup> Zeng (n 12 above) 41.

<sup>57</sup> Zeng (n 5 above) 11.

Owing to the rapid industrial expansion, many SEZs faced serious shortage of resources and environmental challenges such as severe pollution, waste management issues, and limited land, water, oil, electricity and skilled labour.<sup>58</sup> China has since upgraded its environmental standards to develop a recycling economy with the aim of improving the country's environment and saving resources.<sup>59</sup>

- **Poor integration with urban development**

Despite the success recorded by the SEZ programme, some of the zones are behind in providing the appropriate social services such as sufficient transportation, health, education and social facilities.<sup>60</sup> This is especially so for zones located in underdeveloped regions.<sup>61</sup> These zones face challenges in attracting high-quality investments and sustaining growth.<sup>62</sup>

## **5.5 Key elements of success**

### **5.5.1 Strategic location and comparative advantage**

The first four SEZs in China were located in strategic locations in the coastal regions of Guangdong and Fujian provinces for a number of reasons.<sup>63</sup> The Chinese government chose these locations taken into consideration their history of foreign trade relations, the far distance from Beijing and Shanghai to limit political interference, indigenous connection to overseas Chinese, and their proximity to major economic centres such as Macao, Taiwan and Hong Kong.<sup>64</sup> For instance, the SEZs in the Pearl River delta region was built on the availability of logistics, labour, capital, access to international market, technology and infrastructure in Hong Kong.<sup>65</sup> The moral of the story is that, in choosing location for SEZs, the comparative advantage of the locality should be taken seriously. It is unlikely that zones will on their own create comparative advantage, but they can be built on existing advantages as the cases of the SEZs in Guangdong province.

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<sup>58</sup> Zeng (n 12 above) 40.

<sup>59</sup> S Wahyuni et al 'The role of special economic zones in China economy development' (2012) 21.

<sup>60</sup> Zeng (n 12 above) 41.

<sup>61</sup> Zeng (n 7 above) 7.

<sup>62</sup> Zeng (as above).

<sup>63</sup> Knoth (n 23 above) 222.

<sup>64</sup> Zhang & Ilhéu (n 2 above) 7.

<sup>65</sup> Ota (n 8 above) 132.

### **5.5.2 Strong political will and government support**

The Chinese government was committed to ensuring a successful and stable macro-environment for the open door policies one which will prevent political interference from undermining the performance of the SEZ initiative.<sup>66</sup> With a collaborative effort of the central and local governments, an effective policy space, regulatory regime and an efficient infrastructural support were built for the success of the zones.<sup>67</sup> Apart from basic infrastructure, government interventions also cover skill acquisition, seed money, management consulting, product testing centres,<sup>68</sup> etc.

### **5.5.3 SEZs as laboratories and incubators**

SEZs in China were essentially used to experiment different measures of reform policies before adoption into the wider economy.<sup>69</sup> Apart from the fact that this function helped the government identify practicable policies, it also saves cost and avoid waste of resources which could have been otherwise incurred if the policies were imported directly into the whole country.<sup>70</sup> The experimental strategy engaged through the SEZ programme enabled the policy-makers to learn from their mistakes and develop sustainable policy framework for the SEZ initiative one that is peculiar to China's economy. Today, China has emerged an expert economy in SEZ development, importing her ideas to other countries.

### **5.5.4 Dynamic policies and development models**

Essentially to attract the right talents, various incentives were incorporated in the SEZs covering streamlined administrative process, sound infrastructure, rapid customs clearance, concessionary tax rates, and labour packages - all these were targeted to encourage foreign and local businesses in selected sectors.<sup>71</sup> Moreover, the SEZs at inception were given autonomy such as legislative authority to develop regulations to govern the zones and wide discretion to amend these regulations and policies according to dynamic market demands and development stages of the zones.<sup>72</sup> For instance, at the early stage of the open door policy, the preferential tax policies for foreign investors were considerably generous compared to what is obtainable

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<sup>66</sup> Zhang & Ilhéu (n 2 above) 8.

<sup>67</sup> Wahyuni et al (n 61 above) 20.

<sup>68</sup> Zeng (n 5 above) 6.

<sup>69</sup> Ota (n 8 above) 131.

<sup>70</sup> Knoth (n 23 above) 225.

<sup>71</sup> Zeng (n 7 above) 6.

<sup>72</sup> Zeng (as above).

within inland China. However, with the increasing growth of FDI flows, financial incentives were adjusted gradually.<sup>73</sup>

### **5.5.5 Technological and skill transfer between zone and economy**

Among the key strengths exhibited by the SEZs in China is the high concentration of skilled workers and experts particularly in the High-Tech Industrial Zones (HIDZs).<sup>74</sup> Basically, the government adopted policies to attract high-quality personnel in R & D, generate innovation and high-technology by increasing investment, establish R&D infrastructure, and offer special incentives to encourage high-tech firms into the zones.<sup>75</sup> In addition, the inflow of FDIs and the Chinese diaspora have played a major role in bringing capital investment, generating technology and spill overs; and supporting the building of local manufacturing capacity.<sup>76</sup> Most importantly, mechanisms for supply chains and value chains were put in place to ensure strong links between local enterprises and the zones.<sup>77</sup> For instance, frequent meetings were arranged between foreign investors and local suppliers to establish connections.<sup>78</sup> The government also facilitated the training of many officials by organising visits to successful SEZs, undertake trainings on SEZs, or participate in SEZ practice.<sup>79</sup> Nigeria may borrow some of these measures to generate skill transfer within its zones to the wider economy.

## **5.6 Conclusion**

China launched its SEZ programme as a development strategy to revitalise its closed economy to a market economy. China is not the first country to apply SEZs, but it is perhaps the most successful in using them. China carefully researched the zone operations of other developing countries such as South Korea, Taiwan, and the Philippines before launching a unique model of SEZs that is peculiar to its economic and political terrain. China strategically considered economic and political parameters in mapping out locations for its first four SEZs. China also strategically designed incentives to attract its desired industries and initiated dynamic policies to support the achievement of the objectives of the SEZs. The SEZ administration was given

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<sup>73</sup> Zeng (as above).

<sup>74</sup> Zeng (n 12 above) 21.

<sup>75</sup> Zeng (n 12 above) 22.

<sup>76</sup> Zeng (as above).

<sup>77</sup> Xiaoyang (n 17 above ) 6

<sup>78</sup> Xiaoyang (as above).

<sup>79</sup> Xiaoyang (as above).

autonomy to make law reform and enact regulations according to the demands of the market and stages of development of the zones. In assessing China's strategic use of SEZs, the World Bank reported that China's gross domestic product (GDP) has been growing at an average annual rate of more than 9 percent since 1979 and in 2010, it has surpassed that of Japan and become the world's second-largest economy.<sup>80</sup> As an engine of growth, China has been able to use SEZ to catalyse urbanisation and lift millions out of poverty. Shenzhen, a fishing village of 25,000 people grew to a city of 10 million within thirty years, making it the largest and perhaps the most successful SEZ in the world today. In 1991, China extended its investments incentives from the SEZs to other parts of the economy increasing the inflow of FDIs.

Nevertheless, this studies found that China encountered some challenges in the course of its SEZ development. This gave credence to the notion that there is no perfect system. However, China was able to make celebrated progress today through consistent policy reform, coordination and collaboration between the different levels of government in terms infrastructural support to the zones. In support of Thomas Farole's view, many SEZs continue to fail because governments install these programmes and abandon them to survive on their own without sufficient dynamism in policy reform. Nigeria can take a piece from China in this context, revitalising its SEZ programme by introducing clear goals and dynamic benchmark to improve infrastructure and business support; efficient monitoring and competition regimes; support domestic investment into the zones and promote business value chains including continuous technology scholarship and skill transfer. Suffice it to say that facilitating economic growth through SEZs is not an automatic process that simply necessitates the right policies. However, Nigeria like most African countries is a society where the chief factors responsible for distorted economic policies and insufficient dynamism are politically motivated. It is in this circumstance that SEZs can possibly be most effective, in catalysing processes of economic transformation as demonstrated by the classic case of China's SEZs, which were used to experiment liberal economic reforms before adapting them to the wider economy in a gradual way.

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<sup>80</sup> DZ Zeng China's special economic zones and industrial clusters: Success and challenges <http://blogs.worldbank.org/developmenttalk/china-s-special-economic-zones-and-industrial-clusters-success-and-challenges> (accessed 25 May 2016).

## **CHAPTER 6**

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### **CONCLUSIONS AND RECOMMENDATIONS**

- 6.1       Recap of the Research Question(s)
- 6.2       Summary of Findings
- 6.3       Final conclusions
- 6.4       Recommendations

## CHAPTER 6

### FINAL CONCLUSION

#### 6.1 Recap of the research problem

This study set out to investigate the regulatory deficits in the implementation of SEZ programme in Nigeria that have precluded it from achieving its objectives. In the course of the research, the study was able to examine and provide answers to the following sub-questions as analysed below.

1. What is the concept and nature of SEZ programme and how does it work as a policy tool for economic development?
2. What are the policy components of a model SEZ?
3. What has been the experience of Nigeria with SEZ programme?
4. Which aspect of the regulatory framework is responsible for the underperformance of SEZ programme in Nigeria?
5. Which international best practices can Nigeria draw lessons from in implementing its SEZ programme?

#### 6.2 Summary of findings

In chapter 2, this study examined the etymology, concept and development patterns of SEZ on the global plane. Specifically, it explored its workability as policy tools for economic development. SEZs are specially designated space within an economy where special regimes are instituted to regulate commercial activities within the area which are different from those obtainable in the host economy. The concept of SEZ have been expressed in varieties of terminologies by different countries depending on individual country's policy objectives. Over the past four decades, languages such as FTZ, EPZ, FEZ, HITDZ, SEZ, etc. have been used in branding economic zones according to their forms. The term 'SEZ' has its origin in China and has come to be widely accepted as a much broader type of economic zone designed as city-wide to encompass myriads of activities including manufacturing, retail, tourism, residential towns, etc.

In assessing the rationale underlying the development of SEZs, this study found that countries initiate SEZ programme to achieve different objectives primarily to open their doors to FDIs and in the process create job opportunities for their citizens, increase their foreign exchange earnings and generate technological upgrade and skill transfer. However, countries with more advanced desires utilize SEZs as instrument of policy reform, to foster economic ties with other countries, as urban development strategy or to develop a specific sector. Although SEZs have a long root in history, but after the success of the first modern EPZ in Shannon; countries all over the world have increasingly used SEZs to develop and industrialise their economies by offering special trade advantages to foreign businesses. Coming to Africa, the wave of SEZ development started in the 70s but became intense between the 1990s and 2000s with few success recorded till now. Reasons identified by researchers for the mass failure include but not limited to: weak institutional and regulatory structures, infrastructural shortage, lack of linkages to the wider economy and problems of national policy instability.

Chapter 3 made an analysis of the policy strategies that policy makers should consider in building sustainable framework for effective economic zones. Six components were examined as the pivotal policies upon which an SEZ should be built which are: strategic planning, comprehensive legal and regulatory framework, policy considerations, effective institutional framework, incentive framework, and physical development and management. It was pointed out that the policy framework for zone development should be all-encompassing and inclusive having regard to national laws, international standards on environment, human rights and labour together with regional and international agreements on trade and investment to which the host economies are signatories. Specifically, it was emphasized that the legal framework should be comprehensive while giving room for flexibility to adapt to economic demands and changes. Moreover, the study found that creating excessive fiscal incentives to attract investors may not only harm the tax regime of the host economy, it is not sufficient to attract quality investments and therefore unsustainable. Rather, SEZs should be initiated and developed on policies that promote cost effectiveness such as fostering backward and forward linkages between the zone and the local economy by removing trade barriers, promoting trainings, R & D schemes, encouraging local businesses into the zone and good infrastructure.

Chapter 4 explored the regulatory framework upon which the Nigeria SEZ is constructed with a view to determining the aspects of the regulatory laws that are responsible for the underperformance of the programme. The study found that Nigeria launched its SEZ programme in the 1990s with the objectives to create employment, increased her export profile,

foster skill acquisition and technology transfer from FDIs, increased foreign exchange earnings, infrastructural development; facilitate trade and greater participation of Nigeria in the global markets. Today, Nigeria has created about 30 zones most of which are underperforming. Worthy of note is the SCPZs recently created with the objective of attracting private sector agribusinesses in rural areas to add value to staple food crops, reduce waste and Nigeria's dependence on food importation.

The study found that there is swiftness on the part of the government to create zones which suggests that the government views SEZs as catalyst for economic diversification and industrialization. However, the legal framework underlying the existing zone programme was found to be limited in scope. The regime was enacted in 1992 and designed to support EPZs with little or no efforts at reform. The zones are practically abandoned after launching, without policy attention to improve performance and competitiveness. The regulatory framework also lacks coordination among the different levels of government. For instance, it is evident from the study that state-owned zones are struggling to take-off due to lack of communication and active support from the federal government. The inference drawn here is that the Nigerian government does not actively see SEZ programme as part of its development strategy.

Furthermore, the incentive package does not contain any provision to support local small scale businesses into the zones. Apart from the findings that the incentive package contains inconsistencies, the legal framework offers unlimited tax holidays with no sunset clause. Moreover, the law lacks built-in incentives to enhance linkages between the zones and the local economy in terms of transferring skills, building local businesses and encouraging R & D. It follows that the incentive regime failed to reflect coordination and alignment to achieve the desired objectives of the zones. The institutional regime has failed to support an effective regulatory capacity. As revealed in the course of the study, NEPZA has difficulties in managing the zones to the exclusion of interference from other interested government agencies.

The study did a comparison between China and Nigeria SEZ programme in chapter 5. The study found that China launched its SEZ programme as a development strategy to revitalise its closed economy to a market economy. China is not the first country to apply SEZs, but it is perhaps the most successful in using them. China carefully researched the zone operations of some developing countries such as South Korea, Taiwan, and the Philippines before launching a unique model of SEZs that is peculiar to its economic and political terrain. China strategically considered economic and political parameters in mapping out locations for its first four SEZs.

China also strategically designed incentives to attract its desired industries and initiated dynamic policies to support the achievement of the objectives of the SEZs. The SEZ administration was given autonomy to make law reform and enact regulations according to the demands of the market and stages of development of the zones. As an engine of growth, China has been able to use SEZ to catalyse urbanisation and lift millions out of poverty. Shenzhen, a fishing village of 25,000 people grew to a city of 10 million within thirty years, making it the largest and perhaps the most successful SEZ in the world today.

### **6.3 Final conclusions**

In the light of the foregoing, it is believed that where a country is determined to engage SEZ as an instrument of economic growth, it is fundamental that such country understands the terrain of SEZs and get the implementation right to achieve its desired objectives. It is expedient to identify the objectives as these influences the type of zone and incentives to be offered by the zone. It is however more important for the objectives to be realistic given the resources available to each country. In order to achieve the identified objectives, strategic planning and creativity is required to design attractive incentives from the available resources to attract the desired businesses into the region. In my view, the question *what do we have to offer or sell to achieve what we need* should be given critical analysis by any country that desires to engage SEZ as policy instrument for economic development.

It is safe to postulate that the basic components required for successful implementation of SEZ include strategic planning, comprehensive legal and regulatory framework, policy considerations, effective institutional framework, incentive framework and physical development and management. However, policy makers should consider that SEZ is a complex venture which involves careful consideration of different aspects of the economy. In other words, countries should consider context-specifics such as objectives, comparative advantage, location, market access, raw materials, etc. alongside the components that have been discussed. Putting all these components into perspective while constructing the regulatory framework will support the delivery of a competitive SEZ programme.

The Nigeria zone regulatory framework needs a comprehensive restructuring with a view to improving the competitiveness of the zones. Concerted efforts could still be made to improve the competitiveness of the underperformed zones by strengthening NEPZA to make it responsive to its responsibilities and engaging policies to encompass modern trends like PPP

arrangements, and wide range of economic activities. The objectives of each zones should be examined and incentives that will help achieve the objectives should be designed. This study revealed that China encountered some challenges in the course of its SEZ development. This gave credence to the notion that there is no perfect system. However, China was able to make celebrated progress today through consistent policy reform, coordination and collaboration between the different levels of government in terms infrastructural support to the zones. In my view, the Nigeria zones are underperforming because government install these programmes and abandon them to survive on their own without sufficient dynamism in policy reform. Nigeria can take a piece from China in this context by introducing clear goals and dynamic benchmark to improve infrastructure and business support; efficient monitoring and competition regimes; support domestic investment into the zones and promote business value chains as well as technological learning and skill upgrade. It is in this circumstance that SEZs can possibly be most effective, in catalysing processes of economic transformation as demonstrated by the classic case of China's SEZs.

#### **6.4 Recommendations**

The Nigerian zone regime has been in existence for over 20 years and has not delivered results in terms of its objectives. There are a number of ways in which a comprehensive regulatory framework can jumpstart the competitiveness of the zones.

1. The starting point is for the government to adopt SEZ programme as part of its development strategy.
2. Design a master plan identifying strategic locations for SEZ development taking into consideration the comparative advantage of those locations in terms of raw material, labour, local industries, specific sector to be developed, etc. and the objectives to be achieved by the zone. Taking a cue from China, the following market-driven 'bottom-up' clusters could be considered for SEZ locations in the future:
  - a. Aba market in Abia State for leather works;
  - b. Alaba market in Lagos State for entertainment industry and film production. Nigeria film industry is the fastest growing in the world today. The government could tackle the menace of piracy by building this market into an SEZ.
  - c. Ikeja computer village, Lagos State for hi-tech industrial zone.

3. A comprehensive and an effective SEZ legal framework is recommended which will encompass modern practices in SEZ and address issues that have been raised in the course of this study.
- Strong collaboration between all levels of government is essential for successful zone development. Government could therefore consider establishing a platform for partnership between the Federal and State governments most especially in terms of location, effective communication, infrastructural development and project finance. It will be recalled that Calabar and Tinapa zones are both facing infrastructural dearth challenges and lack of communication stemming from the failure of the federal government to play its role in infrastructural development and policy. It is therefore suggested that government could consider instituting a structure for joint venture between federal and state governments in SEZ development.
  - SEZs are not just about attracting any foreign capital but attracting qualitative capital which can only be done by formulating the appropriate incentives for the capital. Therefore to attract the right capital, the incentive framework should be reviewed and redesigned to attract the desired businesses and the desired human capital.
  - The law should give clarity to reflect precision on sale to the local market, requirement for value addition, and advantages for skill and technological transfer to the local economy. The tax incentives should not be left unlimited but incorporated with sunset clauses.
  - The incentive regime should be reviewed constantly to reflect market demands and stage of development of the zones.
  - In order to facilitate transfer of technology and skill upgrade from FDIs to local companies, mechanisms for supply chains and value chains should be put in place to build connections between the zones and local businesses to build local manufacturing capacity. The government should also consider involving institutions of learning in facilitating technological spillage. NEPZA can consider involving the private sector in coordinating and facilitating this process between the investments in the zones, government departments and tertiary institutions by creating R& D centres, facilitating trainings and seminars for

government departments on SEZs and encouraging students to undergo internships in specific industries.

4. Competitiveness is not in numbers but in output. Existing zones should be reviewed based on the above suggestions and zones that could not meet up with parameters should be scrapped.
5. The government should consider reinforcing the current institutional arrangement under NEPZA. As shown in the course of this study, considerable strength is required to coordinate the activities of other relevant government agencies particularly NSC. Government could consider creating a separate department having a statutory status under the NCS to work closely with NEPZA. The legislation should give clarity to the powers and responsibilities of all stakeholders involve in SEZ development. NEPZA could also consider involving the services of experienced developers in zone development and management. Djibouti engaged the services of Dubai World after assessing the success of the Jebel Ali FTZ and Djibouti has record of good success today in SEZ. Onne zone is being managed by a private company and equally has good results.

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## APPENDIX

**Table 1: List of registered zones in Nigeria**

Free Zone List							
S/N	Name	Location	Sponsor/Developer	Land Size (Hectares)	Date of Designation	Specialty	Status
1	Calabar Free Trade Zone (CFTZ)	Cross River	Fed. Govt.	220	1992	Manufacturing, Oil & Gas, Logistic Services	Operational
2	Kano Free Trade Zone (KFTZ)	Kano	Fed. Govt.	463	1998	Manufacturing, Logistic Services, Warehousing	Operational
3	<a href="#">Tinapa Free Zone &amp; Resort</a>	Cross River	State Govt./Private	265	10/7/2004	Manufacturing, Trade, Tourism & Resort	Operational
4	<a href="#">Snake Island Int. Free Zone</a>	Lagos	Nigerdock Plc	59.416	4/4/2005	Steel Fabrication, Oil & Gas, Sea Port	Operational
5	<a href="#">Maigatari Border Free Zone</a>	Jigawa	State Govt.	214	2000	Manufacturing, Warehousing	Operational
6	<a href="#">Ladol Logistics Free Zone</a>	Lagos	GRML		6/21/2006	Oil & Gas, Fabrication, Oil & Gas Vessels, Logistics	Operational
7	<a href="#">Airline Services EPZ</a>	Lagos	Private		3/21/2003	Food Processing and Packaging	Operational
8	ALSCON EPZ	Akwa Ibom	Fed. Govt./Private	814.619	Jun-2004	Manufacturing	Operational
9	<a href="#">Sebore Farms EPZ</a>	Adamawa	Private	2000	12/21/2001	Manufacturing Oil & Gas, Petrochemical	Operational
10	Ogun Guandong FT Zone	Ogun	State Govt./Private	10000	2/28/2008	Manufacturing	Operational
11	Lekki Free Zone	Lagos	State Govt.		12/4/2008	Manufacturing, Logistics	Operational
12	Abuja Tech. Village Free Zone	Federal Capital Territory	FCT	702	5/18/2007	Science & Technology	Under Construction

S/ N	Name	Location	Sponsor/ Developer	Land Size (Hectares)	Date of Designation	Specialty	Status
13	Ibom Science & Tech. FZ	Akwa Ibom	State Govt.	122.137	7/14/2006	Science & Technology	Operational
14	Lagos Free Trade Zone	Lagos	Eurochem technology Singapore	218	10/4/2002	Manufacturing Oil & Gas, Petrochemical	Operational
15	Olokola Free Trade Zone	Ondo & Ogun	State Govts./Priv ate	10500	2004	Oil & Gas Manufacturing	Operational
16	Living Spring Free Zone	Osun	State Govt.	1607.86	10/12/2006	Manufacturing, Trading and Warehouse	Under Constructi on
17	Brass LNG Free Zone	Bayelsa	Fed. Govt./Priva te	304.245	2/2/2007	Liquified Natural Gas	Dev. yet to commenc e
18	Banki Border Free Zone	Borno	State Govt.	500		Manufacturing, Warehousing, Trading	The Sponsor yet to be committe d
19	Oils Integrated Logistics Services Free Zone	Lagos	Private Oil Field Industry Support Service Ltd	1000	10/12/2004	Marine, Logistics, Support Services for offshore Oil Repairs	Operational License Suspende d
20	Specialize d Railway Industrial FTZ	Ogun	State Govt.		4/30/2007	Rail Cargo Transport	Dev. yet to commenc e
21	Imo Guangdon g FTZ	Imo	State Govt.	1399.27	5/7/2007	Manufacturing	Dev. yet to commenc e
22	Kwara Free Zone	Kwara	State Govt.	355.587	7/10/2009	Trading, Warehousing	Physical Dev. Yet to commenc e
23	Koko Free Trade Zone	Delta	State Govt.	2327.29	12/2/2009	Manufacturing	Physical Dev. Yet to commenc e

S/ N	Name	Location	Sponsor/ Developer	Land Size (Hectares)	Date of Designation	Specialty	Status
24	Oluyole Free Zone	Oyo	State Govt.	1374.5	5/16/2000	Manufacturing	Physical Dev yet to Commence
25	Ibom Industrial Free Zone	Akwa Ibom	State Govt.		20/2/2012	Manufacturing, Oil & Gas, Trading Services	Physical Dev. yet to commence
26	Badagry Creek Integrated Park	Lagos	Kaztec Engineering	531	2014	Fabrication	Under Construction
27	Ogindigbe Gas Revolution Industrial Park (GRIP)	Delta	Alpha GRIP Dev. Co.	2506.03	2014	Petrochemical, Fertilizer, Manufacturing and Gas Processing related activities	Under Construction
28	Nigeria Aviation Handling Company (NAHCO)	Lagos	NAHCO	10	2014	Cargo Hub, Transportation and Warehousing	Under Construction
29	Nigeria International Commerce city	Lagos	Eko Atlantic FZ ltd	1000	2014	Financial institutions (local and international) leisure, real estate, shopping malls and corporate business, commerce	Under Construction
30	Ogogoro Industrial Park	Lagos	Digisteel	52	2014	Oil & Gas, Fabrication, Oil & Gas Vessels, Logistics	Under Construction
31	Centenary City		Centenary City Plc	1264.78	2014	Leisure, real estate, shopping malls and corporate business, commerce	Under Construction
32	Ondo Industrial City	Ondo	Ondo State Govt	2771.2	2015	Petro-Chemical & Manufacturing	Under Construction

Source: NEPZA website

**Table II: List of zones awaiting approval**

Free Zone List						
S/N	Name	Location	Sponsor/ Developer	Land Size (Hectares)	Specialty	Status
1	Ossiomo Free Trade Zone		Ossiomo Investment Ltd	1497	Refineries, Petrochemical plant, Gas processing plant, Metal extraction Industries, Metal Fabrication, fertilizer production, warehousing, Packaging and logistics Services.	At the Presidency
2	Enugu Power And Industrial Development Free Zone	Enugu	State Govt./Oil Data Consulting Company Ltd	403.562	Manufacture of high voltage power generation and distribution equipment and accessories, production of fertilizer from coal, and other value added industrial clusters.	At NEPZA
3	Warri Industrial Business Park	Delta	State Govt./ARCO Petrochemical Engineering Company Limited	329.1	Heavy & light Industries, Oil& Gas, shipping & logistics, R&D and Residential Real estate/ Leisure.	At the Ministry
4	Kogi Free Zone	Kogi	State Govt.	268.49	Manufacturing	At the Ministry
5	Baklang Free Zone		Baklang Offshore Support Services Conglomerate (BOSS)	75	Fabrication: ship, high value marine, oil & gas equipments, logistics services and manufacturing.	Appraisal On-going. Site inspection carried out
6	Madewell & Textile INC. Free Zone		Madewell Garments INC	952.534	Manufacturing activities viz-a-viz production of apparels and garments	At the Ministry
7	Airport Free Zones	Enugu, Kano, Lagos, Rivers	NEPZA/ Federal Ministry of Aviation	1742.24	warehouses, processing of manufactured goods,tourism and hotel services,light industries	Appraisal On-going. Site inspection carried out
8	Sahara offshore Logistics Base Free Zone		Sahara energy Resources	20.6	Oil & Gas Processing, Fertilizer, Plastics & Chemical, Warehousing, Trans-shipment & Distribution	Appraisal On-going. Site inspection carried out

Source: NEPZA website.