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FACULTY OF LAW
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**THE IMPACT OF TRADE AND INVESTMENT POLICIES ON THE
LABOUR STANDARDS IN THE MAURITIAN AND NAMIBIAN EXPORT
PROCESSING ZONES: LESSONS FOR RWANDA**

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Research Dissertation presented for the approval of Senate in fulfilment of part of the requirements for the LLM Degree in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of the LLM Dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

Signature: _____

Date: 15 February 2010

DECLARATION

I Jackie Nankunda declare that the dissertation **impact of trade and investment policies on the labour standards in the Mauritian and Namibian Export Processing Zones: lessons for Rwanda**, is my work and that it has not been submitted for any degree or examination in any other university. All the sources used or quoted have been duly acknowledged.

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DEDICATION

This work is dedicated to my late father, Gideon Kahwa Rwakayigaba & mother,

Joy Kahwa

To Niyigaba Gasheegu, for selflessly supporting me.

University of Cape Town

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I give all the glory to God, the giver of wisdom. Without his divine grace, this work would not have been accomplished.

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LIST OF ABBREVIATIONS

AGOA	Africa Growth and Opportunity Act
ASCM	Agreement on Subsidies and Countervailing Measures
AU	African Union
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CESTRAR	<i>Centrale des Syndicats des travailleurs du Rwanda</i>
COMESA	Common Market for Eastern and Southern Africa
CTC	Clothing Technology Centre
DBM	Development Bank of Mauritius
EAC	East African Community
EPZA	Export Processing Zone Authority
EPZDA	Export Processing Zone Authority
EPZDA	Export Processing Zone Development Association
EPZs	Export Processing Zones
EU	European Union
FDI	Foreign Direct Investment
FIAS	Foreign Investment Advisory Service
FTAs	Free Trade Areas
FTZs	Free trade zones

GATT	General Agreement on Tariffs and Trade
ICCPR	International Covenant on Civil and Political Rights
ICFTU	International Confederation of Free Trade Unions
ILO	International Labour Organization
IRA	Industrial Relations Act
ITUC	International Trade Union Confederation
KFTZ	Kigali Free Trade Zone
LaRRI	Labour Resource and Research Institute
LDCs	Least Developed Countries
MANWU	Metal and Allied Namibia Workers Union
MEDIA	Mauritius Export Development and Investment Authority
MEPZA	Mauritius Export Processing Zone Association
MIFOTRA	Ministry of Public Service and Labour
MLC	Mauritius Labour Congress
NAFAU	Namibia Food and Allied Workers Union
NCB	National Computer Board
NEPAD	New Partnership for Africa's Development
NUNW	National Union of Namibian Workers
ODC	Offshore Development Company
OECD	Organisation for Economic Co-operation and Development

RDB	Rwanda Development Bank
RFTZ	Rwanda Free Trade Zone Company
RIEPA	Rwanda Investment Promotion Agency
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAPs	Structural Adjustment Programmes
SSFR	Social Security Fund of Rwanda
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
VAT	value-added tax
WBEPZMC	Walvis Bay EPZ Management Company
WTO	World Trade Organisation

ABSTRACT

The globalisation of the world economy through increased trade and foreign investment by multinational companies (MNCs) has been accompanied by mounting concern over its social impact on the core labour standards. Export Processing Zones (EPZs) are areas established in order to attract foreign investment. Particularly, governments entice investors with infrastructure investment, duty-free imports and exports and by exempting their EPZs from regulations covering labour standards. There is an increasing belief that the desire to encourage investors in EPZs has also urged governments into ignoring workers rights. Poor working conditions and lack of labour rights have increasingly become part of the global economy through EPZs, which advertise the absence of trade union rights to attract investment. The purpose of this paper is therefore to demonstrate the impact of trade and investment policies on the labour standards in the EPZs. This paper reduces the scope of this discussion by focusing on the interplay between EPZs and labour standards. In other words, it seeks to determine the impact of trade and investment policies on the labour rights of workers in the Mauritian and Namibian EPZs. It further explores the relevance of establishing an EPZ in Rwanda and presents the overall lessons that Rwanda can learn from the Mauritian and Namibian EPZs.

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CHAPTER 1: INTRODUCTION

1.1 Background of the study

Export Processing Zones (EPZs) have become rather popular trade and investment policy instruments used by governments to promote trade and Foreign Direct Investment (FDI).¹ The trend of establishing EPZs was started by the creation of the Shannon Free Zone in late 1950s in Ireland,² a zone that now boasts over 100 international manufacturing companies.³ It was the success of this first zone that encouraged many countries to create their own EPZs in the hope that the incentives would encourage industrial development.⁴ The World Bank regards the increasing introduction of EPZs as a signal of a country's departure from import substitution towards an export-oriented economy.⁵

According to the International Labour Organization (ILO), the number of countries with EPZs increased from 25 in 1975 to 130 in the year 2006.⁶ Growing numbers of countries engage in the global economy through EPZs.⁷ Some EPZs have become an important link in the global production systems of certain sectors, such as textiles, clothing and footwear.⁸ In other words, EPZs are seen as vehicles of globalization and a step in the process of liberalising trade and integrating national economies into the global economy.

EPZs are increasingly created as a means to attract new investments. Governments compete for FDI through unsustainable and socially damaging policies such as relaxation of labour rights and offering ever-increasing fiscal benefits,

¹ Micheal Engman, Osamu Onodera and Enrico Pinali 'Export processing zones: past and future role in trade and development' OECD Trade Policy Working Paper No. 53 Working Party of the Trade Committee TD/TC/WP(2006)39/FINAL at 8.

² Shannon development 'An economic overview of the Shannon region.' Available at <http://www.shannonireland.com/media/Media,7049,en.pdf> [Accessed 2 July 2009].

³ Kersty McCourt 'Manufacturing Poverty.' Available at <http://www.pambazuka.org/en/category/comment/22712> [Accessed 2 July 2009].

⁴ Ibid.

⁵ World Bank 'Export Processing Zones: Policy and research series paper 20.' Available at <http://www1.worldbank.org/prem/PREMNotes/premnote11.pdf> [Accessed 3 July 2009].

⁶ Jean-Pierre Singa Boyenge 'ILO database on export processing zones.' Available at <http://www.ilo.org/public/english/dialogue/sector/themes/epz/epz-db.pdf> [Accessed 30 June 2009].

⁷ Ibid.

⁸ Ibid.

infrastructure and services.⁹ However, these incentives led to a ‘race to the bottom’ with regard to labour standards. Host governments, desperate to keep foreign investors within their national border, offered ever-increasing concessions, using public resources to cross-subsidise foreign capital.¹⁰

Rwanda envisions establishing an EPZ. It is a small densely populated country that lies at the crossroads of two major trade routes in the middle of an enormous market.¹¹ Taking advantage of its strategic position of two major trade routes, that is, the Northern corridor that links it to Kenya, Uganda, Burundi and Eastern Congo(DRC) and the Central corridor that links to Tanzania, Burundi and Eastern Congo(DRC). It is clear that Rwanda occupies a unique position in East and Central Africa.¹² Rwanda envisages to serve as a regional hub for trade in goods and services through the EPZ.¹³ It has a clear vision of where it wants to go through a solid vision 2020 plan and it has become an oasis of stability and security in a tumultuous location.

1.2 Statement of the Problem

The proliferation of EPZs implies that the growing share of international trade, investment and labour are affected by the various policies applied in these zones.¹⁴ EPZs attract primarily highly labour-intensive activities, such as, textiles, apparel, footwear, electronics assembly, some types of food processing and data-processing services.¹⁵ However, it is observed that labour turnover is rapid yet unionization rates tend to be low since governments actively discourage union organization and strike rights even where such rights are protected.¹⁶ More importantly, there are cases in

⁹ Rudolf Traub-Merz ‘The African Textile and Clothing Industry: From Import Substitution to Export Orientation in Jauch Herbert and Traub-Merz Rudolf *The future of the textile and clothing industry in Sub-Saharan Africa* (2006) 18.

¹⁰ Ibid.

¹¹ The WTO Secretariat ‘Trade policy review Rwanda: Report by the government.’ Available at http://www.wto.org/english/tratop_e/tpr_e/g129_e.doc [Accessed 17 June 2009].

¹² Christopher McCrudden and Anne Davies International Trade Law and Labour Rights’ cited in Markus Gehring and Marie-Claire Cordonnier *Sustainable Development in the World Trade Law* (2005) 2.

¹³ ‘Free trade zone’ is defined in the Rwanda Investment Code as a geographically demarcated area into which goods and services are imported free of duties and taxes with at least eighty percent (80%) of those goods and services sold for re-export while twenty percent (20%) are sold locally after paying all the necessary duties and taxes.

¹⁴ Engman *et al* (note 1) at 8.

¹⁵ Keith Maskus ‘Should core labour standards be imposed through international trade policy?’ (1997) Policy research working paper 1817 the World Bank, Development Research Group at 10.

¹⁶ Ibid.

which governments choose to suspend or modify labour laws inside EPZs in the evident hope that this limitation on labour rights will attract investment.¹⁷ It is hence pertinent to examine the impact of trade and investment policies on the labour standards in EPZs, particularly in the case of Mauritius and Namibia and to determine the extent to which labour rights are violated in the EPZs.

Rwanda is at an advanced stage of establishing an EPZ, the Kigali Free Trade Zone (KFTZ) is presently under construction. Currently, Rwanda has only a rudimentary legal framework for the establishment and operation of Free Trade Zones. The only provisions on Free Zones can be found in the Law 'Establishing the Rwanda Investment Promotion Agency (RIEPA).'¹⁸ The Law presents some essential provisions on the establishment, organization and management of Free Economic Zones.¹⁹ However, it does not provide a detailed legal framework for developing and operating as well as using a Free trade Zone. In the absence of any existing law regulating Free Trade Zones in Rwanda, the paper seeks to determine, what should constitute the essential elements in the establishment of an EPZ in Rwanda? In the midst of where there have been rampant industrial actions by EPZ workers who have been complaining against pathetic working conditions, abuse of labour standards as well as massive violation of labour rights, is the KFTZ worth labour standards sacrifice and what lessons can Rwanda learn in order to protect workers in the established KFTZ.

1.3 Objectives of the study

- i. To discuss the legal and policy framework of EPZs.
- ii. To explore relevant labour standards status in the Mauritian and Namibian EPZs.
- iii. To discuss the impact of increased liberalization of trade and attraction of investment on labour rights of EPZs workers in general.
- iv. To discuss the compatibility of EPZ as a trade and investment policy with the World Trade Organization (WTO) rules.

¹⁷ Ibid.

¹⁸ Law N° 26/2005 of 17/12/2005 relating to investment and export promotion and facilitation. Available at http://www.rwandainvest.com/pdfs/investment_code.pdf [Accessed 17 June 2009].

¹⁹ Ibid Article 22 and 23.

- v. To identify some of the essential lessons that Rwanda can learn from the practices of Mauritian and Namibian EPZs.

1.4 Research questions

The fundamental question that this dissertation intends to answer is:

To what extent do trade and investment policies affect the labour standards in EPZs?

In answering this question, the dissertation will be guided by the following sub-questions:

- i. What is the legal, administrative and policy framework for EPZs?
- ii. What is the place of EPZs in the WTO regime? Are WTO rules compatible with EPZs?
- iii. To what extent are EPZs liable for the violation of labour rights?
- iv. How can Rwanda ensure that in its trade and investment policies, the labour rights of the future KFTZ are protected while at the same time it remains competitive at the regional and international market?

1.5 Methodology

This study is informed by both primary and secondary sources. Primary sources such as the ILO Conventions and Legislations or Acts that regulate EPZs will be used.

Secondary sources consist of books, journals, articles and reports of various International Organizations and academic materials from the Internet.

The study will also be processed using a comparative methodology. Mauritius and Namibia were chosen as areas of study because these countries present structural similarities with Rwanda. The analysis of Mauritian and Namibian experiences will highlight the impact of trade and investment policies on the labour rights of workers in the EPZs.

1.6 Literature review

Most of the literature on EPZs centers on economic issues and on how uncontrolled trade liberalisation impacts on labour rights in general. However, no literature has specifically demonstrated the impact on the labour standards in EPZs. This dissertation focuses on EPZs as trade and investment instruments to demonstrate the impact of trade and investment policies on the labour rights of workers in EPZs. In

addition, it identifies some of the essential lessons that Rwanda can learn from the practices of other EPZs.

In their paper, Howse and Mutua²⁰ address the tensions and potential synergies between the two legal regimes governing trade, investment and human rights. They propose that, in cases where trade policies lead to the violation of human rights, the trade policies must be interpreted to be consistent with the former. This dissertation will go further to suggest that where good labour laws and trade and investment policies exist, labour rights should not be sacrificed in the name of attracting foreign investment, a factor the authors did not address.

In his article, Haywood,²¹ acknowledges that the importance of regulatory relief in EPZs is frequently overlooked. He notes that EPZs being geographical areas in which goods enter duty free for processing and export, they are not free. They are regulated environments in which the regulations are different from the regulations in the rest of the national economy. This dissertation posits that where a good regulatory system exists, such stable and transparent regulation should favour policies that promote sustainable development and improved working conditions in EPZs.

Questions have always been raised as to the position of EPZs in the WTO regime. Seeing that EPZs are trade and investment policies, are they compatible with WTO rules? Howse,²² argues that some incentives given by host countries to investors at the EPZs amounts to subsidies and hence illegal. He acknowledges that the WTO agreements have not directly mentioned EPZs and that there has been no decided case indicating whether exemption of EPZs from the labour laws amounts to the prohibited subsidies.

Countries establish EPZs with an aim of achieving specific goals which include attracting foreign direct investment, creating employment for their citizens, earning foreign currency, and transfer of technology among others. According to

²⁰ Robert Howse and Makau Mutua 'Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization.' Available at http://www.dd-rd.ca/site/PDF/publications/globalization/wto/protecting_human_rightsWTO.pdf [Accessed 3 2009].

²¹ Robert Haywood 'Free zones in the modern world.' Available at <http://www.wepza.org/article5.html> [Accessed 3 July 2009].

²² Robert Howse 'The World Trade Organisation and the protection of workers' rights (1999) 3 *Journal of Small and Emerging Business Law* 131 at 148.

Jauch,²³ not all EPZs have been able to achieve the goals for which they were established. EPZs in Africa, except for few countries, have had no or little impact on the development of their host countries. By looking at Mauritius and Namibia as case studies, this dissertation demonstrates that, EPZs are sometimes not the best tools to development and that, to some extent, they cost the host country more than what they earn from it.

1.7 Overview of the chapters

Chapter one is the springboard of this paper. It introduces the subject, identifies the problem, outlines the methodology and most importantly, defines the concept of EPZs and presents an overview of goals and characteristics of EPZs. Chapter two will deal with the best practice policy framework for successful EPZs hence the discussion will base on the legal, policy and administrative environment of EPZs. This chapter will also focus the discussion on the position of EPZs in the WTO. It will also look at the blend of labour rights and EPZs: Is it a crippling cocktail? It will further look at the international labour standards in EPZs.

Chapter three discusses the threat of trade and investment policies to labour standards in the Mauritian and Namibian EPZs. Chapter four will explore the relevance of creating an EPZ in Rwanda. It will also explore the circumstances in which labour standards can be enforced in the established KFTZ. It will present the overall lessons that Rwanda can learn from the Mauritian and Namibian EPZs. Chapter five will conclude the study.

1.8 Definitions and overview of EPZs

1.8.1 Labour Standards

Labour Standards are defined as norms and rules that govern working conditions and industrial relations.²⁴ They exist at the national level in the form of laws and government regulations and at the international level in the form of treaties.²⁵

Freedom of association and the right to collective bargaining; prohibition of forced

²³ Herbert Jauch 'Export processing zones and the quest for sustainable development: a Southern African perspective.' (2002) 14 *Environment and Urbanisation* 101 at 102.

²⁴ Steve Charnovitz 'Trade, employment and labour standards: The OECD study and recent developments in the trade and labour standards debate' (1997) 11 *Temple International and Comparative Law Journal* 131 at 133.

²⁵ *Ibid.*

labour; prohibition of discrimination in employment; and prohibition of exploitative forms of child labour are regarded as ‘core’ labour standards.²⁶

There is a consensus that core labour standards provide a minimum set of global rules for labour in the global economy and are regarded by many developing countries as part of a broader development agenda, both as a goal and as a principal means of development.²⁷ Similarly, Labour standards provide the means to empower workers to gain a fair share of the increased productivity they are creating in all countries.²⁸

1.8.2 What are EPZs?

Today, there are many EPZs which include Free Trade Zones (FTZs), special economic zones, bonded warehouses, free ports, customs zones and maquiladoras. Different countries have adopted different names and definitions of what constitutes an EPZ. Kusago and Tzannatos²⁹ have presented a list on terminology that has been used. Among the most popular ones used are industrial free zones or EPZs,³⁰ duty free EPZ, free export zone in the Republic of Korea, EPZs in the Philippines, special economic zone in China,³¹ investment promotion zone in Sri Lanka, free ports,³² free zone in the United Arab Emirates (UAE) and maquiladora in Mexico. Another frequent reference is free trade zones which date back to the 19th century.³³

There are different internationally used definitions. The ILO has defined EPZs as ‘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

²⁶ Ibid.

²⁷ Esther Busser ‘The role of core labour standards and decent work in addressing the MFA/ATC phase-out.’ Available at <http://library.fes.de/pdf-files/iez/03796/06article.pdf> [Accessed 7 December 2009].

²⁸ Ibid.

²⁹ Takayoshi Kusago and Zafiriz Tzannatos ‘Export Processing Zones: A Review in Need of Update’ (1998) Social Protection Discussion Paper No.9802, World Bank.

³⁰ The typical examples of industrial free zones are located in Ireland, Taiwan (China), Malaysia, Dominican Republic, Mauritius, Kenya, Hungary. Available at <http://www.ilo.org/public/english/dialogue/sector/themes/epz/typology.htm> [Accessed 3 July 2009].

³¹ Special economic zones are mainly found in China (southern provinces, including Hainan and Shenzhen). Available at <http://www.ilo.org/public/english/dialogue/sector/themes/epz/typology.htm> [Accessed 3 July 2009].

³² The typical examples are in Hong-Kong (China), Singapore, Bahamas Freeport, Batam, Labuan, Macao. Available at <http://www.ilo.org/public/english/dialogue/sector/themes/epz/typology.htm> [Accessed 3 July 2009].

³³ Kusago and Tzannatos (note 29) at 5.

producing mainly for export benefit from a certain number of fiscal and financial incentives.³⁴

According to the World Bank, an EPZ is ‘an industrial estate, usually a fenced-in area of 10 to 300 hectares that specializes in manufacturing for export.’³⁵ However, today’s EPZs have evolved from their original definition and many firms called export processing firms, now benefit from the incentives offered in the zones without being physically fenced in.³⁶ Rwanda Investment Promotion Agency (RIEPA) defines the concept of a zone as ‘an alternative policy framework, developed by government to promote policy objectives of government, thus, EPZs are all government authorized areas such as free ports, free trade zones, custom free zones, industrial free zones or foreign trade or any other type of zone.’³⁷

The United Nations Conference on Trade and Development (UNCTAD) describes EPZs:

...as industrial estates which form enclaves within the national customs territory and are usually situated near an international port and/or airport. The entire production of such zones is normally exported. Imports of raw materials, intermediate products, equipment and machinery required for export production are not subject to customs duty.³⁸

The thesis opts to base its study on both definitions adopted by the ILO and the World Bank. However, both the World Bank and ILO definitions are restrictive and narrow. This is because some firms are not geographically constrained in industrial estates such as Mauritius and China.³⁹ Consequently, in addition to adhering to the narrow definition of the World Bank and ILO, this study will include Mauritius EPZs, which are not geographically limited.

1.8.3 Goals and characteristics

While there are different definitions of EPZs, there is an overall consensus on their primary goals. According to Madani, these primary goals are:

To provide foreign exchange earnings by promoting non-traditional exports; provide jobs to alleviate unemployment or under-employment problems in the host country and assist in income creation; attract foreign direct investment (FDI) to the host country; in the case of a

³⁴ ILO ‘What are EPZs?’ Available at <http://www.ilo.org/public/english/dialogue/sector/themes/epz/epzs.htm> [Accessed 2 July 2009].

³⁵ World Bank ‘Export Processing Zones: Policy and research series paper 20.’ Available at <http://www1.worldbank.org/prem/PREMNotes/premnote11.pdf> [Accessed 3 July 2009].

³⁶ Ibid.

³⁷ Haywood (note 21).

³⁸ Wei Ge ‘The dynamics of export processing zones.’ Available at http://www.unctad.org/en/docs/dp_144.en.pdf [Accessed 3 July 2009].

³⁹ Dorsati Madani *A Review of the Role and Impact of Export Processing Zones* (1999) 74.

successful EPZ foreign direct investment would be accompanied by technological transfer, knowledge spill-over and demonstration effects that would act as catalysts for domestic entrepreneurs to engage in production of non-traditional products.⁴⁰

An EPZ can achieve the above by attracting local and foreign investors who bring with them a package of management, technology and marketing skills and international connections. With these objectives, some EPZ promoters have argued that, the EPZ has become a proven policy tool which Governments can and should use in all countries to ease the pain of delay, red tape, bureaucracy and lack of welcome and assistance inflicted on manufacturers trying to be involved in unfamiliar environments to produce for the global market.⁴¹ There is little doubt that zones must continue to evolve in response to the global integration, international trading rules and the rise of regional Free Trade Areas (FTAs).⁴²

According to the research conducted by the ICFTU,⁴³ EPZs often fall short of their goals and their performance is erratic, despite the incentives offered by host governments. They cite several reasons why the benefits of EPZs to host countries are limited.

Firstly, investments are usually short term, with companies moving at short notice to other zones where the incentives are better. Secondly, companies bypass local markets by importing their raw materials, which brings little benefit to the host country. Thirdly, there are no strategies to facilitate the transfer of technology and skills to the domestic market and since most companies operating in EPZs do so independently, there is very little communication between them and domestic firms. Finally, the concessions provided to companies in EPZs result in environmental damage, poor safety and health standards, and labour rights abuses.⁴⁴

Whereas, there is agreement about the objectives of an EPZ, there is no general consensus about their definitive characteristics. There are nonetheless, a few common characteristics to these EPZs. EPZs are special enclaves, outside a nation's normal customs barriers.⁴⁵ The enclave nature of an EPZ in developing countries has become more attractive for transnational firms.⁴⁶ Additionally, multinational corporations seek out EPZs precisely because they are enclaves and have little

⁴⁰ Ibid.

⁴¹ Richard Bolin 'Why export processing zones are necessary.' Available at <http://www.wepza.org/article1.html> [Accessed 6 July 2009].

⁴² Ibid.

⁴³ ICFTU 'What is the latest research on Export Processing Zones (EPZs) and how are women in particular affected by EPZs?' Available at <http://www.icftu.org/displaydocument.asp?Index=991225100&Language=EN> [Accessed 3 July 2009].

⁴⁴ Ibid.

⁴⁵ Peter Warr 'Export processing zones: The economics of enclave manufacturing.' Available at <http://www.jstor.org/stable/pdfplus/3986349.pdf> [Accessed 6 July 2009].

⁴⁶ Ibid.

connection to the rest of the economy or society.⁴⁷ As Rondinelli quotes an American businessman who was enthusiastic about a free trade zone in Seoul saying:

Free trade zones are like Hilton Hotels. When you're inside one, you don't know what country you're in and the hassles of the country don't touch you. It's a businessman's dream. And the workers are polite and obedient and almost look alike-sometimes you wonder if they're Mexicans, Filipinos, Malays or Arabs.⁴⁸

They are controlled either by a customs administration or an EPZ authority. The firms inside them are mostly foreign and enjoy favoured treatment with respect to imports of intermediate goods, taxation, and infrastructure.⁴⁹ They are also free from industrial regulations applying elsewhere in the country.

They benefit from unlimited duty-free imports of raw, intermediate input and capital goods necessary for the production of exports; less governmental red-tape, including more flexibility with labour laws for the firms in the zone than in the domestic market; generous and long-term tax holidays and concessions to the firms; above average (compared to the rest of the host country) communications services and infrastructure; it is also common for countries to subsidize utilities and rental rates.⁵⁰

These privileges are subject to the conditions that almost all of the output is exported and that all imported intermediate goods are used within the zones or else re-exported.⁵¹ The benefits of EPZs include direct ones, notably, foreign exchange earnings, employment creation, income and spill over benefits, including learning by locally owned firms; training, skills and know-how acquired by local people employed there; learning by foreign investors and buyers about the economy as a source of manufactured exports and the upgrading of the capabilities of local suppliers and officials in response to exacting foreign demands.⁵² While several other instruments have the potential to provide similar benefits, an EPZ is the easiest system to provide favourable, lightly regulated environment suitable to foreign investors that can be provided in many varied locations at once.⁵³ Successful EPZs increase exports and increased exports can give a country greater confidence and the resources to undertake trade policy reforms.⁵⁴ The direct effects of EPZs on trade policy appear to have been positive on balance in Malaysia, Sri Lanka and Taiwan.⁵⁵

⁴⁷ Dennis Rondinelli 'Export processing zones and economic development in Asia: A review and reassessment of a means of promoting growth and jobs' (1987) 46 *American Journal of Economics and Sociology* 89 at 98.

⁴⁸ Ibid.

⁴⁹ Warr (note 45).

⁵⁰ Madani (note 39).

⁵¹ Warr (note 45).

⁵² Anthony Churchill *Export processing zones* (1992) 6.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

CHAPTER 2: THE LEGAL, POLICY AND ADMINISTRATIVE FRAMEWORK OF THE ESTABLISHMENT AND OPERATION OF EXPORT PROCESSING ZONE

2.1 The Regulatory and Administrative environment

It is important to note that despite a common concept on EPZs or Free trade zones (FTZs) being geographical areas in which goods enter duty free for processing and export, Haywood,⁵⁶ claims ‘they are not free. They are regulated environments in which the regulations are different than the regulations in the rest of the national economy. They are regulated primarily by the national authorities that create them.’⁵⁷ In most cases the rules are more liberal, though ironically in many cases they are effectively more controlled environments and often following the rules of law more closely than the rest of the economy.⁵⁸ For example, while many industrial zones have no duty charged on imports or exports, they are tightly controlled by customs to prevent smuggling into the domestic customs territory.

In contrast to the attention given to incentives, the importance of regulatory relief to investors is frequently overlooked. Yet a crucial aspect of successful EPZ programs is the simplification and streamlining of investment approvals, expatriate work permits, removal of required import and export licenses, as well as accelerated on-site customs inspection procedures and automatic foreign exchange access.⁵⁹ In many countries, EPZ legislation is increasingly incorporating features to increase the transparency and automaticity of programs. Likewise, the investment approval examination process has been transformed from case by case evaluation of applications to a process of simple registration of investment, meeting clearly defined criteria.⁶⁰ A key global trend is the movement toward the establishment of one-stop shops to consolidate and accelerate government approvals.

There is also enormous scope to streamline customs procedures within EPZs. Since the imports of EPZ enterprises are physically secured and do not enter the

⁵⁶ Haywood (note 21).

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ FIAS *Special economic zones: Performance, lessons learned and implications for zone development* (2008) 55.

⁶⁰ Ibid.

domestic customs territory (unless subsequently sold to the local market), customs functions are simplified.⁶¹ They do not have to assess and collect duties and taxes. The focus is on ensuring that merchandise has not been improperly diverted to the domestic customs territory.⁶² The main customs principles for zone operations are: the rapid physical transfer of merchandise, reduced documentation and flexible physical controls during processing.⁶³ FIAS indicates that the customs principles are achieved by developing a single declaration form to be administered by customs; providing single, on-site inspection of zone imports and exports to avoid redundant inspection and developing enhanced enforcement techniques.

2.2 Incentive and institutional framework

Investors often set up operations in the zones because of the wide range of advantages offered by the Export Processing Zone Authority (EPZA). The EPZA is a government corporation with responsibility of operation and management of all EPZs which are to play a central role in the country's industrialization and export expansion programmes.⁶⁴ There has been a great deal of debate regarding the types of fiscal incentives and other privileges at the heart of an EPZ regime. Countries are under pressure to compete for investors by trying to attract them with tax holidays. While some of these incentives are normally time limited for example corporate income tax breaks, others are intended to create a more business friendly environment.⁶⁵ The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) presents a comprehensive list of incentive packages frequently offered.⁶⁶ Incentives that attract EPZ investors cover a wide range of activities. Organisation for Economic Co-operation and Development (OECD) summarizes some of the incentives provided to affect companies' decisions as follows:⁶⁷

Firstly, EPZs provide improved physical infrastructure, including enhanced access to transport and logistical networks, telecommunications networks and utility

⁶¹ Churchill (note 52) at 58.

⁶² Ibid

⁶³ Ibid

⁶⁴ Elizabeth Remedio 'Export processing zones in the Philippines: A review of employment, working conditions and labour relations' (1996) International labour office working paper No 77 at 5.

⁶⁵ Ibid.

⁶⁶ UNESCAP 'Pre-feasibility Study of an Export Processing Zone in Vanuatu.' Available at http://www.unescap.org/tid/missn_vanu.pdf [Accessed 3 August 2009].

⁶⁷ Engman (note 1) at 17.

services. Some zones also provide production/office space, residential housing and services institutions such as schools.

Secondly, the streamlined administrative services, such as, providing single window or one-stop shop government services, fast track customs services simplify or abolish licensing procedures, and providing a dedicated legal framework and court.

Thirdly, fiscal incentives, such as: duty drawbacks or exemptions from import duties on raw materials, intermediate inputs and capital goods used in the production of goods and supply of services are also provided by EPZs. This can also include various exemptions of customs fees and charges, namely:

- i. Exemptions from the payment of sales tax on exported products or services as well as on all goods and services domestically purchased and used in the production;
- ii. tax holidays, rebates or reduced tax rates on corporate income or profits, often linked to the export performance of companies or to the share of exports in total production;
- iii. indirect subsidies, like special grants for education and training; and direct subsidies, like the supply of water and electricity below market rates.

Fourthly, EPZs provide relaxed legal and regulatory requirements, including on foreign ownership, labour and environmental laws and regulations; foreign exchange regimes, rules on the lease or purchase of land and finally export promotion services.

A government plays an important role in providing the necessary legal framework to an EPZ. It being a managed policy tool of governments, the government should be fully acquainted of the nature of incentives offered and the type of industries they might attract such as light or heavy industry, long or short-term investments to ensure that they match the government's general policy framework and expectations.⁶⁸ In addition, government officials need to ensure that these incentives conform to the WTO rules on export promotion instruments.

Freedom from customs regulations, however, is only part of a larger package of incentives provided by governments to attract multinational firms to developing

⁶⁸ Madani (note 39) at 66.

countries.⁶⁹ Customs rules are not a God-given set of natural rights, but simply policy tools of governments to control and tax international commerce.⁷⁰ Indeed, custom rules vary between industries, products, and sources or goods. With EPZs, nations create multiple custom territories within their country.

Moreover, the success of FTZs or EPZs usually depends on efficient administration of the zones and freedom from bureaucratic red-tape, delays and corruption often associated with public administration in developing countries.⁷¹ In some countries, firms locating in EPZs are also exempted from the provincial and local taxation and restrictive air, water and environmental pollution laws. Nevertheless, the environmental impact of zones and lax regulation and monitoring has raised concern. In fact, environmental pollution has been confirmed in some zones, for example, in the Dominican Republic and Mexico.⁷² Yet systematic analysis is lacking that would lead to well targeted, sensible regulation and monitoring.⁷³

Regulatory control is extensive in more than a few developing economies, to the point where some firms and economies are discriminated against and incentives are often distorted.⁷⁴ Compared with firms outside, EPZ firms enjoy special advantages, such as less regulation and red tape, duty free imports for use in export production and sometimes better tax incentives.⁷⁵ The EPZ tries to put its firms on an equal footing with international competitors who enjoy free trade status in a good business environment with little regulation.⁷⁶ Thus, local firms are discriminated against not by the existence of the EPZ but by the distortions and excessive regulation in the local economy.

⁶⁹ Haywood (note 21).

⁷⁰ Ibid.

⁷¹ Warr (note 45).

⁷² The World Bank 'Export processing zones.' Available at <http://www1.worldbank.org/prem/PREMNotes/premnote11.pdf> [Accessed 3 August 2009].

⁷³ Ibid.

⁷⁴ Churchill (note 52) at 19.

⁷⁵ Ibid.

⁷⁶ Ibid

2.3 EPZs and International Regulation

2.3.1 Kyoto Convention and Convention against Illicit Traffic in Narcotic Drugs

The uses of zone policies are subject to several different types of regulation through international agreements and treaties. Principally, these involve the Kyoto Convention, the 1988 Convention against Illicit Traffic in Narcotic Drugs, and various provisions of the WTO.

Chapter 2 of the revised Kyoto Convention concerns free zones and gives guidelines to customs authorities with respect to free zones. Most states have not acceded to the convention, and those that acceded have largely ignored some of its provisions. The convention views free zones as being outside of normal customs territory rather than subject to an alternative customs regime.⁷⁷ It then sets out to define a scheme of establishment and control of free zones. It notes that ‘National legislation shall specify the requirements relating to the establishment of free zones, the kinds of goods admissible to such zones and the nature of the operations to which goods may be subjected in them.’⁷⁸

The Kyoto Convention also legitimizes the concept of not charging duty on the goods of free zone that enter the domestic customs territory. Goods admissible to a free zone are entitled to exemption from or repayment of import duties after they have been introduced into the free zone.⁷⁹

The 1988 Convention Against Illicit Traffic in Narcotic Drugs reaffirms the expectation that national authorities are the principle control mechanism in FTZs. The convention particularly requires parties to engage in suppression activities in zones that are no less than those used in the national territory.⁸⁰ This includes monitoring the movement of goods and persons in FTZs and free ports, and the right to empower the competent authorities to search cargoes, vessels and when appropriate, to search crew members, passengers and their baggage.⁸¹

⁷⁷ See Chapter 2 annex D (F1) of the revised Kyoto Convention entered into force on February 3 2006.

⁷⁸ Ibid Sec 2

⁷⁹ Ibid sec 7 and 9.

⁸⁰ Art 18(1) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

⁸¹ Art 18(2) (a).

The provisions of both these Conventions state or imply that free zones are outside the customs territory of the nation. However, this is an erroneous concept as all EPZs practice customs control, but with different customs regulations and, rarely, with different customs authorities.

2.3.2 Are EPZs compatible with WTO rules?

The main objective⁸² of establishing the WTO was to aid in the liberalization of trade by reduction and elimination of tariffs and other barriers to trade.⁸³ The preamble to the Agreement establishing the WTO indicates that WTO is also meant to ensure developing and Least Developed Countries (LDCs) have a share in the international market. The Preamble thus provides: ‘Recognizing further that there is need for positive efforts designed to ensure that developing countries and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.’⁸⁴

The strict implementation of Structural Adjustment Programmes (SAPs), particularly privatization, removal of exchange control, labour deregulation, liberalization of international trade have made encouraging FDI, the chief development strategy for many LDCs.⁸⁵ It is against this background that EPZs have been established to attract FDI.

There have been questions about the place of EPZs in the WTO regime and whether their creation could be considered as an export subsidy and therefore prohibited under the WTO. Some scholars have argued that EPZs are as a result, an illegitimate trade-distorting incentive that could be impermissible under WTO rules.⁸⁶ The obligations in the Agreement on Subsidies and Countervailing Measures (ASCM) have a direct impact on the free-zone programmes of WTO Members.⁸⁷

⁸² Other Objectives of the WTO include: Acting as a forum for negotiations, dispute settlement as well as a forum for governments to negotiate trade agreements.

⁸³ The Marrakesh agreement establishing the world trade organization. Available at http://www.wto.org/english/docs_e/legal_e/04-wto.pdf [Accessed 3 August 2009].

⁸⁴ Ibid.

⁸⁵ Valerie Bieberich ‘Structural Adjustment Policies and Stability in Sub-Saharan Africa: Moving Forward.’ Available at http://rooseveltinstitution.org/policy/defensediplomacy/file/saps_in_africa.pdf [Accessed 4 August 2009].

⁸⁶ Raul Torres ‘Free zones and the World Trade Organization Agreement on Subsidies and Countervailing Measures.’ (2007) 2 *Global Trade and Customs Journal*, Kluwer Law International, Volume 2, The Hague, Netherlands at 217.

⁸⁷ Ibid.

In brief, the Agreement on SCM defines what a ‘subsidy’ is. In order to understand how the SCM Agreement affects EPZs, it is important to recall some of the basic definitions in the Agreement. Article 1.1 of the SCM Agreement considers a subsidy as ‘any financial contribution by a government or any public body within the territory of a member, ie, where government revenue that is otherwise due is foregone or not collected, eg, fiscal incentives such as tax credits.’⁸⁸ Likewise, it establishes disciplines on the granting of incentives falling within that definition. Provisions on prohibited subsidies (part II),⁸⁹ actionable subsidies (part III),⁹⁰ and countervailing measures (part V) apply only to subsidies that are specific, that is, granted to a particular company or companies; to a particular sector or sectors; or to a particular region or regions.⁹¹ The Agreement prohibits specific subsidies that are contingent upon export performance and those that are contingent upon the use of domestic goods over imports.⁹² The SCM Agreement covers only subsidies related to goods. Subsidies related to services are dealt with separately, in the General Agreement on Trade in Services (GATS).

The SCM Agreement does not have rules specific to EPZs. Therefore, the compatibility of EPZs to WTO rules cannot be analysed as a single programme but rather, the different incentives, benefits and requirements of EPZs have to be looked into in order to see how they fit within the WTO rules. It is also difficult to generalize since the different types of incentives and benefits of an EPZ can vary greatly from country to country or even within countries.⁹³ Nevertheless, some benefits and incentives that have been discussed earlier are universal in all EPZs. For instance, one of the most common incentives given is an exemption from payment of import duties and charges on all imported goods.

Secondly, many EPZs also grant as a benefit a total or partial exemption from the payment of direct taxes, eg, income tax and social welfare charges such as social

⁸⁸ The World Trade Organisation Agreement of Subsidies and Countervailing Measure.’ Available at http://www.wto.org/english/docs_e/legal_e/24-scm.pdf. [Accessed 4 August 2009].

⁸⁹ The following subsidies shall be prohibited (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I; (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

⁹⁰ See part III of the SCM Agreement. Available at http://www.wto.org/english/docs_e/legal_e/24-scm.pdf. [Accessed 4 August 2009].

⁹¹ Article 2 of the SCM Agreement.

⁹² See also Annex I of the SCM agreement for an illustrative list of export subsidies. Available at http://www.wto.org/english/docs_e/legal_e/24-scm.pdf. Accessed 4 August 2009]

⁹³ Torres (note 86) at 217.

security contributions. Some EPZs also grant exemptions from the payment of indirect taxes such as sales tax and prior stage cumulative taxes like Value Added Tax (VAT). They may also grant full or partial exemptions from fees and charges payable to the government in connection with exports.

All the benefits and incentives just mentioned fall under the definition of a subsidy. This is because they are a financial contribution (in most cases in the form of revenue forgone), they are provided by the government or public body and they confer a benefit since enterprises operating in the EPZs are at an advantage when compared to those enterprises operating in the customs territory of the country.⁹⁴ Therefore, the attractiveness of EPZs to export-oriented foreign investors typically goes beyond granting of export subsidies, a type that may be inconsistent with the WTO Subsidies Agreement.⁹⁵

Although export subsidies are a *per se* violation of WTO obligations, and are to be removed by the offending country, an exception exists for low income countries. The least developed countries designated by the United Nations and those with GNP per capita below \$1,000 are exempted from this requirement.⁹⁶ Thus, the EPZs need not to eliminate tax benefits that favour export production and yet the future expansion of such zones is possible. Notably, WTO rules do not refer to EPZs by that name and there is no official WTO definition of an EPZ.⁹⁷

2.4 Labour Legislation and Labour relations in EPZs

Labour standards and labour relations are the most critical and controversial elements of EPZs. Therefore, the key issue to be considered regarding labour legislation and labour relations in EPZs is whether the national labour legislation applicable to EPZs is applied in practice in the zones.

⁹⁴ UNCTAD 'Export processing zones at risk? The WTO rules on subsidies: what options for the future?' Available at <http://www.unctad.org/Templates/webflyer.asp?docid=3154&intItemID=2261&lang=1> [Accessed 6 August 2009].

⁹⁵ Ibid.

⁹⁶ David Robertson 'Export Processing Zones and the WTO Agreement on Subsidies and Countervailing Measures' in Rajiv Biswas *International tax competition: globalization and fiscal sovereignty* (2002) 200.

⁹⁷ ITUC 'The WTO and Export processing zones.' Available at http://www.ituc-csi.org/IMG/pdf/WTO_and_EPZs.pdf [Accessed 3 August 2009].

2.4.1 Labour standards sacrificed in the name of attracting investors in EPZs

The wide proliferation of EPZs has increased the competition among EPZ-operating countries to attract foreign investment in the zones. Under the assumption that exemptions of the labour laws in EPZs would attract greater foreign investment, some EPZ-operating countries have, under their laws, either deprived EPZ workers of their right to organize themselves in trade unions or the right to strike.⁹⁸ It has been justified that the exemption of EPZs from the application of labour laws is that workers in the zones enjoy better facilities, service conditions and their wages are above the national average than workers in other industrial sectors.⁹⁹ Yet the sacrifices made by the workers of the EPZs have not led to the promised development of their countries, which is why it is more regrettable given that respecting their rights could, in the eyes of the international trade union movement, help turn the EPZs into a hub of long term investment and development.¹⁰⁰

Equally, labour standards have been sacrificed to gain a competitive edge. Labour Resource and Research Institute (LaRRI)¹⁰¹ explains that: ‘when potential investors are presented similar ‘technical’ incentives, what are left in the bargain basket are labour standards (wages and work conditions) and environmental standards.’ However, in the context of EPZs, it may result in ‘a race to the bottom’ leading to deteriorating working conditions in EPZs and as a result, certain countries stand to lose in international markets to countries that do not observe basic labour standards.¹⁰²

Notably, governments that seek to attract foreign investors to the EPZs by offering them the least restrictive regulatory framework in terms of social, employment rights and financial incentives have made restrictions, such as, trade union freedoms, the right to strike, bans on collective bargaining, abusive salaries

⁹⁸ ICFTU ‘Export Processing Zones-Symbols of exploitation and a development dead-end.’ (September 2003) ICFTU report at 11.

⁹⁹ Ramapriya Gopalakrishnan ‘Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms’ (2007) International Labour Standards Department working paper No. 1 at 12.

¹⁰⁰ ICFTU ‘International labour standards and trade.’ Available at http://www.icftu.org/www/english/congress2000/econres2000_XI.pdf [Accessed 4 December 2009].

¹⁰¹ LaRRI ‘Export Processing Zones in Namibia: Taking A Closer Look.’ Available at <http://www.larri.com.na/files/EPZ%20REPORT.pdf> [Accessed 20 November 2009].

¹⁰² Ibid.

and working hours, poor working conditions to constitute the rule rather than the exception in EPZs.¹⁰³

Although in most EPZ-operating countries, the national labour and industrial relations legislation are applicable in the zones, EPZs are unable to effectively exercise their freedom of association because of the anti-union discriminatory practices adopted by employers against EPZ workers engaged in trade union activities, such as, the unjust dismissal, suspension, transfer and blacklisting of trade union officials and members.¹⁰⁴ Sometimes employers in EPZ enterprises have resorted to physical violence to prevent workers from forming and joining trade unions of their choice or placed severe limitations on the free exercise of this right.¹⁰⁵

Even in countries where the labour legislation applies to the EPZs, the governments often turn a blind eye to labour rights. For example, in Lesotho, some EPZ employers take full advantage of the authorities' powerlessness or lack of interest in ensuring that the applicable labour laws are observed and pay wages below the statutory minimum, refuse to pay sickness benefits and make unilateral deductions from their employees.¹⁰⁶ It should be noted that workers' rights violations frequently committed in EPZs is a result of inaction on the side of governments which in their efforts to attract investors, exclude EPZs from the scope of application of labour laws.¹⁰⁷

In addition, governments do not take any measures like, employing a sufficient number of well-trained and equipped work inspectors to enforce labour laws within EPZs and to ensure that these laws are respected by the enterprises operating within the EPZs.¹⁰⁸ Correspondingly, Milberg and Amengual¹⁰⁹ argue that even in cases where workers' rights are legally mandated, many countries simply lack the resources to enforce labour laws in many EPZs. Consequently, countries hosting EPZs could face serious difficulties in ensuring respect for their labour

¹⁰³ Gopalakrishnan (note 99) at 12.

¹⁰⁴ ILO *Labour and social issues relating to export processing zones* (1998) 21.

¹⁰⁵ ICFTU (note 98) at 11.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ William Milberg and Matthew Amengual 'Economic development and working conditions in export processing zones: A survey of trends' (2008) International Labour Office working paper No 3 at 32.

legislation owing to the absence of labour inspectors or their inability to enter the EPZs.

The ILO study draws a conclusion that there is a problem of non-respect for core labour standards in EPZs and also EPZs were growing in number because of the attractiveness of investment locations that exist in EPZs since they do not allow core labour rights or else do not enforce them.¹¹⁰ However, the ILO insists that only EPZs with high-quality human resources and stable labour relations will be able to meet the high standards for speed, cost and quality in the global economy.¹¹¹ If the full employment and productivity potential of EPZs is to be met, a proper human-resource development strategy will be necessary.

It can be concluded, while EPZs offer abundant and relatively cheap labour and sometimes with exemptions from the national labour legislation, workers are open to all kinds of abuse and substandard labour conditions can emerge from the restriction of rights such as freedom of trade unions, right to strike and collective bargaining, and from unregulated terms and conditions of employment. The ILO has concluded that legal restrictions on trade union rights in a few EPZ operating countries, the lack of enforcement of labour legislation and the absence of workers' organizations representation were among the factors noted as undermining the ability of zones to upgrade skills, improve working conditions and productivity and thereby become more dynamic and internationally competitive platforms.¹¹²

2.4.2 EPZs and Labour Rights: A crippling cocktail?

Labour rights have been classified as human rights by the International Covenant on Civil and Political Rights¹¹³ and thus fall within the classification economic, social

¹¹⁰ Inter-American Development Bank, Organisation for Economic Co-operation and Development *Foreign direct investment versus other flows to Latin America* (2001) 86.

¹¹¹ ILO press release 'Export processing zones growing steadily.' Available at http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_007997/index.htm [Accessed 3 July 2009].

¹¹² ILO Committee on Employment and Social Policy 'Employment and social policy in respect of export processing zones (EPZs)' Available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb286/pdf/esp-3.pdf> [Accessed 13 November 2009].

¹¹³ Article 6 of International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

and cultural rights. Labour rights are a group of legal rights to which those who are in employment situations are entitled to enjoy and they relate to.¹¹⁴

In the language of human rights, the Universal Declaration of Human Rights (UDHR) clearly demonstrates the nature of the protection afforded to employees.

Article 23 states:

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.¹¹⁵

Certain labour rights or standards, such as, the right to collective bargaining and freedom of association, the right not to be enslaved, the abolition of child labour, and equality of opportunity in employment for men and women have come to be widely regarded as basic human rights with a universal character.¹¹⁶

The question of violation of labour rights continues to be one of the most controversial aspects of EPZs. The ILO report noted the fact that many zones are not fully applying adequate labour standards or protecting worker's labour rights, high labour turnover, absenteeism, stress, fatigue, low productivity and labour unrest still characterize most EPZs.¹¹⁷

In addition, Gerbracht¹¹⁸ argues, with respect to EPZs, in light of the tax holidays and increased risk for labour rights violations within the zones, countries may be prevented from eroding the already limited protection to EPZ workers' rights as a way of enticing firms to develop within the zone. Similarly, Changwon¹¹⁹ argues that multinationals invest in EPZs not only to take advantage of exemptions from tax

¹¹⁴ Asian Development Bank 'Core Labour Rights Handbook.' Available at <http://www.adb.org/Documents/Handbooks/Core-Labor-Standards/CLS-Handbook.pdf> [Accessed 12 November 2009].

¹¹⁵ Art 23 of the Universal Declaration of Human Rights (UDHR) adopted on December 10 1948.

¹¹⁶ Howse (note 22) at 149.

¹¹⁷ ILO (note 87) at 21.

¹¹⁸ Bryan Gerbracht 'Export Processing Zones and Free Trade Agreements: Lessons from the North American Agreement on Labour Cooperation' (2007) 16 *Transnational Law. & Contemporary Problems*. 1029 at 1050.

¹¹⁹ Lee Changwon 'Development of Free Economic Zones and Labour Standards: A Case Study of Free Economic Zones in Korea.' Available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1019&context=intlvf> [Accessed 1 December 2009].

and customs duties but also from the anti-union climate. He adds that Governments even publicize their union-free environment in order to attract foreign investment.¹²⁰

Nam¹²¹ attributes violations of labour laws in EPZs to the use of EPZs as trade policies. The scholar argues that developing countries often prioritize economic development over human rights and such a phenomenon leads to a 'race to the bottom.'¹²² Such prioritization being demonstrated in the words of the Namibian President, Sam Nujoma in which he justifies the non-applicability of Namibian labour laws in the EPZs as a 'delicate compromise necessary to achieve a larger goal of job creation.'¹²³

While EPZs are undoubtedly huge employment generators, the threat of dismissal is a weapon used by most employers in the EPZs to dissuade workers from exercising their rights.¹²⁴ In spite of the low pay and poor working conditions, workers remain silent for fear of losing their jobs. According to the ICFTU's latest Annual Survey, in Egypt most EPZ workers are forced by their employers to sign letters of resignation before being contracted, so that they can dismiss them as and when they please.¹²⁵ Likewise, EPZ employers resort to wage reductions and transfers to remote areas to silence activists, or even dismiss them without notice if they do not follow orders.¹²⁶ In absence of unions and contracts, all too often lead to abusive working hours in the EPZs. Many EPZ workers complain that they have to work a ridiculous number of hours (between 15 and 16 hours a day in some extreme cases) if they want to keep their jobs.

Abuses of labour rights also exist owing to the lack of labour inspections. One of the most serious abuses in this respect is the practice of locking workers into the workplace during working hours.¹²⁷ It is a result of paranoia among employers who fear theft on the part of the workers, and has already been the cause of numerous

¹²⁰ Ibid.

¹²¹ Chu Yun Juliana Nam 'Competing for foreign direct investment through the creation of Export Processing Zones: The impact on human rights' in Olivier De Schutter *Transnational corporations and human rights* (2006) 161.

¹²² Ibid at 164.

¹²³ Labour Resource and Research Institute (LaRRI) 'RamateX: On the other side of the fence.' Available at <http://www.alrn.org/images/upload/RamateX.doc> [Accessed 18 November 2009].

¹²⁴ ICFTU (note 98) at 14.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

deaths in company fires.¹²⁸ Bangladesh is one of the most dangerous countries in this respect.¹²⁹ On the other hand, abuse of labour rights is due to trade liberalization. The argument in favour of this is that trade liberalisation throws the labour and welfare systems of the states into competition with each other and the major consequence of this is the reduced power of countries to regulate labour within their own borders.¹³⁰

Since EPZs are manifestations of trade liberalization which results in the violation of labour rights, EPZs will continue to violate labour rights, unless there is a political will that jealously guards the full realisation of labour rights. In order to enhance labour practices in EPZs, OECD suggests that governments should be encouraged to further harmonise labour standards in EPZs with those in the wider economy and increase their efforts to enforce them effectively.¹³¹

It is clear that the implementation level of the labour rights in EPZs is very low. Attracting investors in EPZs has been given priority over labour rights and as a result labour rights abuses are so common in EPZs. The blend of EPZs and labour rights is not inherently bad. However, in the absence of application of national labour legislation in EPZs and the political will to safeguard the labour rights of workers, EPZs and labour rights mix into a crippling cocktail. If one believes that the labour rights in question are indeed fundamental human rights, then enforcing them in EPZs should be a priority. For labour rights to be enforced in EPZs, it would require not only a willingness by the countries to value the labour rights of EPZ workers over the desire to attract EPZ firms, but also a willingness by EPZ developers to report illegal practices.

2.5 International Labour Standards in EPZs

2.5.1 Enforcement of Labour Standards under the ILO

The significance of International labour standards stems from the ILO's aims and purposes. ILO is the premier body in the development of international labour standards for the protection of labour rights. Ever since its formation, the ILO has maintained and developed a system of international labour standards aimed at

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Bob Heepie 'Four approaches to the modernisation of individual employment rights' in Marco Biagi, Roger Blanpain and Manfred Weiss *Changing industrial relations and modernisation of labour law* (2003) 189.

¹³¹ OECD *Organisation for Economic Co-operation and Development Employment Outlook* (2008).

promoting opportunities for women and men to obtain decent and productive work, conditions of freedom, equity, security and dignity.¹³² The Preamble to the Constitution of the ILO expressly indicates that recognition of the principles of freedom of association is vital for the improvement of the conditions of labour and the achievement of universal and lasting peace.¹³³

The ILO has continuously monitored EPZs and has highlighted the importance of respect for fundamental principles and rights at work including the national and international labour standards as major factors in attracting investment that promotes long-term high-quality growth.¹³⁴ Legal restrictions on trade union rights in a few EPZ-operating countries, the lack of enforcement of labour legislation and the absence of workers' organization representation are among the factors noted as undermining the ability of zones to upgrade skills, improve working conditions and productivity and ultimately to become dynamic and internationally competitive platforms.¹³⁵

Ensuring that labour standards are reinforced, in 1998, the ILO member states identified four standards as 'fundamental principles and rights at work'¹³⁶ that all countries should promote, regardless of their level of development.¹³⁷ These core labour standards include freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.¹³⁸

The two ILO instruments that are of special relevance to EPZs are the Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention No. 87) and the Right to Organize and Collective Bargaining

¹³² ILO 'Introduction to International Labour Standards.' Available at http://www.ilo.org/global/What_we_do/InternationalLabourStandards/Introduction/lang--en/index.htm [Accessed 13 November 2009].

¹³³ Preamble to the ILO Constitution.

¹³⁴ Changwon (note 119).

¹³⁵ Ibid.

¹³⁶ The ILO Declaration on the Fundamental Principles and Rights at Work 86th Session, Geneva, June 19th 1998.

¹³⁷ Kimberly Elliott 'Labour Standards, Development, and CAFTA' (2004) *International Economics Policy Briefs*. Available at <http://www.iie.com/publications/pb/pb04-2.pdf> [Accessed 13 November 2009].

¹³⁸ ILO (note 94).

Convention, 1949 (Convention No. 98), the two Conventions, have been categorized as fundamental Conventions requiring universal observance.¹³⁹

2.5.1.1 Freedom of Association and Protection of the Right to Organise Convention, 1948

The convention establishes that ‘workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.’¹⁴⁰ It guarantees to employers and workers’ organizations, the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.¹⁴¹

Whereas, some may consider trade unions as essential in ensuring that EPZ workers enjoy the freedom of association, more particularly, they are essential in light of the fact that workers in many EPZs are physically isolated from other industrial workers and barely have any prior experience in union activity.¹⁴² Others believe that trade unions may cause political fear. For instance, in some countries, they prevent any challenge to the government’s hold on to power or economic fear that unions raise costs and reduce production in low-wage and low-productivity activities.¹⁴³

2.5.1.2 Right to Organise and Collective Bargaining Convention No. 98 (1949)

The convention provides for protection against anti-union discrimination, for protection of workers’ in respect of their employment.¹⁴⁴ The Convention seeks to protect employers’ and workers’ organizations against acts of interference by each

¹³⁹ The other Conventions that are of relevance to EPZs are First, Maternity Protection Convention 103 (1952). It stipulates that at least 12 weeks of maternity leave should be granted to a female worker (Art 3) and also provides that it shall be unlawful for an employer to dismiss a woman while she is on maternity leave or give her notice of dismissal at such a time that the notice would expire while she is on leave (Art 6). Second, Human Resources Development Convention 142 (1975), which requires the adoption and development of comprehensive programmes of vocational guidance and training taking account of employment needs and level of economic, social and cultural development (Art 1). The programmes and policies are to improve the abilities of the individuals and influence the working and social environment. They shall also enable all persons without any discrimination whatsoever to develop and use their capabilities to work.

¹⁴⁰ Art 2 of C87 Freedom of Association and Protection of the Right to Organise Convention, adopted in 1948.

¹⁴¹ Article 3 para. 1.

¹⁴² Gopalakrishnan (note 99) at 25.

¹⁴³ Ibid.

¹⁴⁴ Art 18 para 1 of ILO Convention 98 Right to Organise and Collective Bargaining Convention, 1949.

other or other's agents or members in their establishment, functioning and administration.¹⁴⁵ It provides that such protection shall apply more particularly in respect of acts calculated to: (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; or (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or with the consent of the employer, within working hours.¹⁴⁶ It seeks to promote collective bargaining by calling upon States to take measures appropriate to national conditions, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations with a view to regulation of the terms and conditions of employment by means of collective agreements.¹⁴⁷

In order to address concerns relating to labour standards within EPZs, the Committee of Experts on the Application of Conventions and Recommendations (CEACR)¹⁴⁸ has requested member states, since 1980, to provide in their reports, information concerning the effects of setting up EPZs on the rights of workers under Conventions Nos 87 and 98.¹⁴⁹ However, it has been noted that the information received has been incomplete in respect of many countries where there are known to exist.¹⁵⁰ Similarly, trade unions specifically in respect to EPZs have made little use of the mechanism of the freedom of association committee that examines complaints from workers' or employers organization relating to freedom of association.¹⁵¹

In addition, there appears to remain problems of application of labour standards in EPZs. In certain countries where the right to organize and bargain collectively have the force of law in the EPZs, many trade union representatives are denied access to workers in the zones either by reason of laws restricting the entry of

¹⁴⁵ Article 2 para. 1.

¹⁴⁶ Article 1 para. 2.

¹⁴⁷ Article 4.

¹⁴⁸ The CEACR is a 20-member body consisting of eminent jurists drawn from member States who are appointed by the Governing Body of the ILO. The Committee monitors compliance with international labour standards on the basis of reports submitted by member States regarding the application of the Conventions ratified by them and also on the basis of observations by employers' and workers' organizations.

¹⁴⁹ ILO 'Economic and social effects of multilateral enterprises in export processing zones.' Available at http://www.ilo.org/public/libdoc/ilo/1988/88B09_332_engl.pdf [Accessed 13 November 2009].

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

persons into the zones.¹⁵² An example is the EPZ Decree of Nigeria, which provides that no person shall enter into a zone without the prior permission of the concerned authority or because of other measures taken by EPZ enterprises, such as the deployment of armed security guards to prevent trade union representatives from meeting EPZ workers.¹⁵³

In brief, it has been observed that EPZs have drawn attention to low trade union memberships, denial of access for trade union representatives to workers in EPZs, anti-union practices by employers in EPZs, and the poor enforcement of labour laws in EPZs.¹⁵⁴ Therefore, there is a need to emphasize the importance of improving labour-management relations and promoting collective bargaining in EPZs and countries should ensure that there is full application of ILO standards in their EPZs. More importantly, countries that have not ratified Conventions Nos 87 and 98, which are the fundamental freedom of association instruments should do so.¹⁵⁵

2.5.2 WTO rules and labour rights

Although most governments using EPZs do not apply labour legislation adequately in EPZs, whether through legal exemptions or simply by de facto non-enforcement of labour law in such zones,¹⁵⁶ it should be noted that the Subsidies Agreement does not state whether labour incentives amount to export subsidy. It seems to be concerned, mainly, on tightly defined financial exemptions under its Article 1 and tends to ignore the labour incentives notwithstanding the evident financial benefits they afford the companies concerned. There has also been no precedent in other WTO Agreements prohibiting the use of exemptions from labour legislation in EPZs.¹⁵⁷ The only thing that would be prohibited is the provision of more favourable

¹⁵² ILO General Report of the Committee of Experts on the Application of Conventions and Recommendations, 1999. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_103484.pdf [Accessed 19 November 2009].

¹⁵³ Ibid.

¹⁵⁴ Gopalakrishnan (note 99) at 8.

¹⁵⁵ Countries that have ratified Convention No. 87 include Botswana, Chile, Estonia, Grenada, Indonesia, Lithuania, Republic of Moldova, Mozambique, Namibia, South Africa, Sri Lanka, The former Yugoslav Republic of Macedonia, Turkmenistan and Zambia. Whereas, Convention No. 98 has seen ratifications from Botswana, Burundi, Chile, Estonia, Georgia, Madagascar, Republic of Moldova, Mozambique, Namibia, Nepal, South Africa, Suriname, The former Yugoslav, Republic of Macedonia, Turkmenistan, Uzbekistan, Zambia and Zimbabwe.

¹⁵⁶ Ibid.

¹⁵⁷ Howse (note 22) 131.

treatment to national companies as compared to foreign companies,¹⁵⁸ which is not the case in EPZs or to give more favourable treatment to some foreign companies rather than to others¹⁵⁹ which normally is not the case either.

The WTO has little to say about labour practices and workers' rights.¹⁶⁰ It has no committee or working group on trade and labour and no agreement addressing labour standards, the only directly relevant provision in the General Agreement on Tariffs and Trade (GATT) is an article exception to trade obligations for measures relating to the products of prison labour.¹⁶¹ Elliott and Freeman¹⁶² argue that the attempt to include labour rights in the WTO Agreements in terms of 'a social clause' has been resisted as being a protectionist measure that is likely to be abused by members of WTO. The WTO has kept labour issues at a distance, this was explicitly stated in its 1996 Singapore Ministerial Declaration that:

...the International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes...¹⁶³

Similarly, the Doha Ministerial Declaration of 2001 failed to address labour standards, except to state that: 'we reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the ILO on the social dimension of globalization.'¹⁶⁴

The failure of the WTO to address the core issue of labour rights has inspired critics such as Howse asserting that:

The idea that labour rights issues are simply a matter for the ILO, therefore, ignores the existing and continuing role the WTO has been playing in constraining one important instrument available to improve compliance with core labour rights: trade measures aimed at punishing noncompliance with core labour rights. At least until very recently GATT/WTO jurisprudence (albeit developed in other contexts, such as trade and environment) evoked

¹⁵⁸ Ibid.

¹⁵⁹ This would be contrary to the National Treatment Principle provided for under Art II of GATT 1947.

¹⁶⁰ Andrew Guman 'Trade, Labour, Legitimacy' (2003) 91 *California Law Review* 885 at 885.

¹⁶¹ Ibid.

¹⁶² Kimberly Elliott and Richard Barry *Can labour standards improve under globalization?* (2003) 108.

¹⁶³ Singapore WTO Ministerial 1996: Ministerial Declaration WT/MIN (96)/DEC Adopted on 13 December 1996 at para 4.

¹⁶⁴ Doha WTO Ministerial 2001: Ministerial Declaration WT/MIN(01)/DEC/1 Adopted on 14 November 2001 at para 8.

constraints that may go far beyond what is needed to prevent abuse of labour rights for 'protectionist purposes.'¹⁶⁵

Nevertheless, Cling and Etilly¹⁶⁶ note that trade-unions in the developed countries, as well as many in the developing world broadly support efforts for the WTO to incorporate a social clause (which remains to be defined). They further stress that:

If world trade through the WTO is to achieve an improvement in the living standards working people around the world, particularly in developing countries (rather than an increase in exploitation of workers by authoritarian governments, especially in EPZs), it is more urgent than ever for the respect of core labour standards to be incorporated in the international trading system.¹⁶⁷

Based on the above discussion of international labour standards in the EPZs, the ILO and WTO have strengths and weaknesses in their potential ability to enforce labour rights. Consequently, it can be suggested that they should collaborate on enforcing labour standards in the EPZs. this may turn EPZs into models for promoting labour standards.

¹⁶⁵ Howse (note 22) at 132.

¹⁶⁶ Jean-Pierre Clingand and Gaëlle Etilly 'Export processing zones :a threatened instrument for global economy insertion?' Available at http://dial.prd.fr/dial_publications/PDF/Doc_travail/2001-17.pdf [Accessed 28 November 2009].

¹⁶⁷ Ibid.

CHAPTER 3: THE THREAT TO LABOUR STANDARDS IN EPZS: EXPERIENCES IN MAURITIUS AND NAMIBIA

‘With the liberalisation of trade, EPZs have mushroomed. A carrot for the investors, and a stick for workers’ rights, they are a clear illustration of the harmful effects of globalisation on rights at work.’¹⁶⁸

3.1 Mauritius EPZ: A success story?

Mauritius is considered a success story, with regard to creation of an EPZ. Its example has inspired several promoters of export led growth through EPZ development.¹⁶⁹ In reviewing the performance of the Mauritian EPZ model, it is hoped that this ‘success story’ will serve as an eye-opener to Rwanda on how an EPZ would best operate.

3.1.1 Background

Mauritius is a small island republic of 1,865sq.km off the East Coast of Africa, has one of the highest population densities in the world, approximately 555 per km².¹⁷⁰ Before and the years following independence, Mauritius was a mono economy relying mainly on exports, which almost exclusively consisted of sugar, this characterized the economy with low economic growth combined with rising levels of unemployment and falling living standards.¹⁷¹ It was in this light that the new government of independent Mauritius undertook to establish the first EPZ in 1970 in the hope of creating employment.¹⁷² Unlike EPZs in other countries, the Government of Mauritius decided that its EPZ was not to be geographically restricted to any one area, because limiting a zone to a certain area would delay the implementation of the scheme.¹⁷³ This means the whole country is an EPZ. It is believed that the creation of the EPZ marked the beginning of a new era that paved the way for the

¹⁶⁸ Natacha David ‘Export Processing Zones: the carrot and the stick.’ Available at <http://www.icftu.org/displaydocument.asp?Index=991214069&Language=EN> [Accessed 4 December 2009].

¹⁶⁹ Gerard Sanspeur and Rajakrishna Chellapermal ‘Freeport development: the Mauritius experience’ A monograph prepared for UNCTAD (1996) UNCTAD/494(13) at 1.

¹⁷⁰ Dev Luchmun ‘Women in trade unions in the Mauritius export processing zones’ in Margaret Hosmer Martens and Swasti Mitter *Women in Trade Unions: organizing the unorganized* (1994) 175.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ David Cowan and Moemedi Phetwe ‘Export Processing Zones: does the Mauritian experience provide lessons for Botswana’s efforts to diversify exports and boost employment?’ (September 1997) The research bulletin Volume 15 No 1 at 4.

diversification, industrialization and the modernization of the Mauritian economy by attracting substantial amount of FDI in export-oriented activities.¹⁷⁴

The Island possesses numerous key competitive advantages, namely, a strong manufacturing base, a trained labour force, harmonious industrial relations, political stability and a strategic location between Asia and Africa.¹⁷⁵ Most importantly, Mauritius has a preferential market access; it is the ideal springboard to Africa, to the European Union (EU) and to the USA through the Common Market for Eastern and Southern Africa (COMESA), Southern African Development Community (SADC), the Cotonou Agreement and the Africa Growth and Opportunity Act (AGOA).¹⁷⁶

3.1.2 Mauritius Trade and Investment Policy Regime

The trade policies are an integral part of economic policies and as such are aimed at improving the living standards of the population and securing full employment through accelerated transition towards a globally competitive economy.¹⁷⁷ During the 1970s and 1980s, Mauritius had a highly restrictive trade regime.¹⁷⁸ Today, Mauritius intends to gradually move from its current partial openness to trade to complete openness.¹⁷⁹ The WTO remarked on Mauritius's reforms of liberalising trade by significantly increasing the number of duty-free import items and therefore reducing the simple average tariff.¹⁸⁰ Mauritius is an original member of the WTO and grants at least MFN treatment to all its trading partners.¹⁸¹ Mauritius has also made major changes to its investment regime.¹⁸² In order to attract investment, the Government changed its strategy from granting numerous and overlapping incentives towards one based on a low-tax regime and targeted promotion of projects.¹⁸³

¹⁷⁴ Board of Investment 'The manufacturing and light processing sector in Mauritius.' Available at <http://www.investmauritius.com/download/Manufacturing%20and%20Light%20Engineering.pdf> [Accessed 1 December 2009].

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ WTO 'Trade and investment regime.' Available at http://www.wto.org/english/tratop_e/tpr_e/s210-02_e.doc [Accessed 5 December 2009].

¹⁷⁸ Arvind Subramanian 'The Mauritian success story and its lessons' (2009) Research paper No 2009/36 United Nations University-World Institute for the Development Economics Research at 9.

¹⁷⁹ WTO (note 177).

¹⁸⁰ WTO 'Trade policy review: Mauritius.' Available at http://www.wto.org/english/tratop_e/tpr_e/tp298_crc_e.htm [Accessed 5 December 2009].

¹⁸¹ Ibid.

¹⁸² WTO (note 177).

¹⁸³ Ibid.

Like most developing countries, Mauritius has actively participated in the global competition for FDI and it is one of the few countries that have successfully deployed FDI to maximize the opportunities of preferential trade status, notwithstanding limited supply capacities and remoteness from world markets.¹⁸⁴ FDI through EPZs played a critical role in industrial diversification, employment creation, export development and growth and has helped the economy emerge from agricultural dependence and backwardness to a modern, dynamic and technologically advanced economy with higher per capita incomes and greater equity.¹⁸⁵ FDI was particularly crucial in contributing largely to the take-off of the EPZ by attracting small Asian investors to locate textile and garment manufacturing operations in Mauritius and benefit from the preferential access to the European and United States markets.¹⁸⁶

3.2 The establishment and operation of EPZs in Mauritius

3.2.1 An overview of Mauritius EPZ Regime

The EPZ was established in 1970 with the purpose of diversifying exports into manufactures.¹⁸⁷ As mentioned earlier, the underlying motives for the Mauritian government to establish an EPZ were not different from the motives of other countries. The EPZ of Mauritius was created with the objective of creating new employment opportunities; diversify the local economy; provide a strong base for the promotion of new technological and managerial skills and generate much needed foreign exchange.¹⁸⁸ Consequently, the established EPZ would attract FDI by offering investors a wide range of fiscal incentives, which include duty-free imports of machinery, raw materials and other inputs, substantial tax holidays, subsidized power rates and factory space, free unlimited repatriation of profits and dividends and access to credit on preferential terms.¹⁸⁹

¹⁸⁴ Vinay Ancharaz 'FDI and Export Performance of the Mauritian Manufacturing Sector.' Available at <http://r0.unctad.org/p166/reduit2004/module6/FDI%20and%20Export%20Performance.pdf> [Accessed 23 November 2009].

¹⁸⁵ Ibid.

¹⁸⁶ UNCTAD 'Investment policy review Mauritius.' Available at <http://www.gov.mu/portal/sites/ncb/mac/nlibrary/efiles/dig4.pdf> [Accessed 5 December 2009].

¹⁸⁷ Rojid Sawkut, Sannasee Vinesh and Fowdar Sooraj 'The net contribution of the Mauritian Export Processing Zone using benefit–cost analysis' (2009) 21 *Journal of International Development* 379 at 380.

¹⁸⁸ Ibid.

¹⁸⁹ Ancharaz (note 184).

Mauritius presents many aspects of a dual economy. The introduction in 1970 of the EPZ status extended to export industries and a number of incentives were designed to attract foreign investment. Since the mid-1970s, a reduced corporate tax rate of 15 per cent has been granted for the life of the export company and customs duty and sales tax are exempted on 'scheduled' raw materials and equipment.¹⁹⁰ Over time, duty and tax exemptions have been extended to non-sugar agriculture, hotel services, Pioneer Status enterprises ('infant industries') and to the fisheries sector.¹⁹¹ With a view to begin redressing the dualism encouraged by such schemes, incentives were consolidated but not rationalized,¹⁹² The Industrial Expansion Act of 1993 aimed at the integration of non-EPZ sub sectors into the EPZ sector and provision of a new legal framework for industrial modernisation, transfer of technology, upgrading of small and medium enterprises.¹⁹³

The Labour market is perhaps the most attractive incentive of the Mauritius EPZ. The availability of surplus labour was originally a key incentive and unemployment in Mauritius remained rather high until 1985.¹⁹⁴ At the same time, the level of wages stayed relatively low. In addition, the foreign investors also benefited greatly from the literate, trilingual French, English, and Chinese) and highly adaptable workforce along with favourable labour laws for the termination of employment and over-time.¹⁹⁵

3.2.2 Legislative and administrative policies governing the Mauritius EPZs

The concept of an EPZ is viewed as a legal status or framework within which firms producing for the export markets could take advantage of the mostly fiscal and financial incentives provided in the law. Mauritius passed the EPZ Act in 1970, which established the legal framework for export-led growth. The Act was designed to attract foreign investment through a system of tax concessions and other incentives like duty free import of intermediate goods, credit incentives, repatriation of capital and dividends (a rarity among developing nations), easing of bureaucratic

¹⁹⁰ WTO 'Trade policy review of Mauritius.' Available at http://www.wto.org/english/tratop_e/tpr_e/tp15_e.htm. [Accessed 1 December 2009].

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Industrial Expansion Act No 11 of 1993. Available at <http://www.gov.mu/portal/goc/industry/file/iea.pdf> [Accessed 1 December 2009].

¹⁹⁴ Ancharaz (note 184).

¹⁹⁵ Ibid.

restrictions, and reduced rates for utilities. At first tariffs and quotas remained in place but in a move towards further liberalization these were dismantled in 1985.¹⁹⁶

In order to set up an EPZ, an Export Enterprise Certificate must be obtained from the Ministry of Industry and Technology, involving a certain amount of bureaucracy¹⁹⁷ and once established in the EPZ, the following incentives apply:

No customs duties or sales taxes payable on raw materials and equipment; no corporate taxes payable and no withholding tax on dividends; no capital gains tax; free repatriation of dividends, profits and capital; 60 per cent remission of customs duties on buses for personnel transport; 50 per cent reduction in registration fees payable on land and buildings; relief on personal income tax for two expatriate staff.¹⁹⁸

Besides, the EPZ Act of 1970, Mauritius decided to create a Freeport ie a FTZ adjacent to the port. However, the first requirement to establish a Freeport was an appropriate legislation for controlling and monitoring of Freeport activities. In this regard, the Freeport Act was passed in 1992 to ‘provide for the establishment of Freeport zones in Mauritius and to regulate their operations.’¹⁹⁹ In 2004, another Freeport Act was enacted which provides for a new legal framework to regulate the Freeport activities. Its objective was:

To amend and consolidate the law relating to the Freeport, to provide for a new legal framework to regulate the Freeport activities and, in collaboration with the port and airport authorities, to promote, coordinate and encourage locally and internationally, the development of Freeport in Mauritius with a view to transforming it into a logistics, marketing and distribution hub in the region.²⁰⁰

The Act provides for the creation of a Freeport Authority, which has the object of promoting and encouraging Freeport trade, regulating and controlling activities in the Freeport zones and manages land use in the Freeport.²⁰¹ The Act further stipulates that ‘no person shall carry out any Freeport activity in any Freeport zone unless he is the holder of an appropriate Freeport licence under this Act and no

¹⁹⁶ Ibid.

¹⁹⁷ Lowtax Network ‘Mauritius Free Trade Zones.’ Available at <http://www.lowtax.net/lowtax/html/jmucfir.html#marsa> [Accessed 3 December 2009].

¹⁹⁸ Ibid.

¹⁹⁹ The Freeport Act 1992 (Act No 13 of 1992).

²⁰⁰ The Freeport Act 2004. Available at http://www.gov.mu/portal/sites/mra/download/FreeportAct_180908.pdf [Accessed 3 December 2009].

²⁰¹ Ibid subsection 6 (a, b and c).

holder of a Freeport licence shall carry out any business activity outside the Freeport zone.²⁰²

The main bodies that cooperate actively in the administration of the Mauritian EPZ are firstly, the Mauritius Export Processing Zone Association (MEPZA), which is a private organisation that regroups members of the EPZs.²⁰³ Its activities are geared towards promoting the interests of its members both at the national and international levels.²⁰⁴ Therefore, it acts as a consultative and advisory body on different issues of interest such as budget proposals, industrial relations and long-term industrial strategy.²⁰⁵

Secondly, is the Export Processing Zone Development Association (EPZDA) whose mission is to act as a facilitator and catalyst in forging the competitive edge of all export-oriented activities.²⁰⁶ It provides export competency development support through training programmes, consultancy services and assessment of performance amongst others.²⁰⁷ Through its Clothing Technology Centre (CTC), the EPZDA assists garment manufacturers in improving the design and quality of their products as well as in the acquisition of technology.²⁰⁸ Furthermore, the CTC runs technical training programmes and it has recently set up a model factory with a view to give hands-on training to those joining the textile or apparel industry.²⁰⁹ In addition, the EPZDA assists manufacturers in the supply chain management, encouraging the establishment of backward linkages and the clustering of enterprises.²¹⁰ In summary, the activities of the EPZDA aim at improving productivity, enhancing quality, increasing competitiveness, developing creativity and design capabilities for local companies.²¹¹

²⁰² Ibid subsection 20(1 and 2).

²⁰³ National Computer Board (NCB) 'Governmental bodies.' Available at <http://www.gov.mu/portal/site/ncbnew/menuitem.e6c78af276b0a4c9fff04a10a0208a0c/> [[Accessed 25 November 2009].

²⁰⁴ Intracen 'Country paper- Mauritius: overview of the economy.' Available at <http://www.intracen.org/wedf/ef2001/cpmauritius2.pdf> [Accessed 25 November 2009].

²⁰⁵ NCB (note 203).

²⁰⁶ Intracen (note 204).

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ NCB (note 203).

3.3 Factors in the success story of Mauritius EPZ

There has been a tremendous debate as to the source of the success of Mauritian EPZ. The Mauritian EPZ experience is considered as a 'success story' due to the coming together of all the necessary elements and policies required for the flourishing of EPZs, namely, political stability, the infrastructure of the zone, a large pool of educated labour, a productive labour force, an attractive incentive package, limited bureaucracy and minimal interference.²¹² According to Madani, the Mauritian EPZ is a success because 'the island has managed to achieve the primary goals of employment creation, export diversification, gross and net export increase, attracting FDI and being on the receiving end of some demonstration effect and human capital build-up.'²¹³ Employment in EPZ firms grew to 17 000 by 1976 and reached 90 000, nearly a 1/3 of all jobs on the island by 1990. Full employment was attained in 1988.²¹⁴

The success of Mauritius, however, appears to be due to exceptional reasons, which are probably not to be found elsewhere. The reasons of this success could be summarized as follows:

Firstly, the strong 'ownership factor' by all stakeholders in the country, namely policy makers, local business leaders and labour. Secondly, the preferential market access. Thirdly, the cumulative impact of the right macro economic environment and the micro business environment that was already in place through the EPZ regime. Fourthly, the synergy between foreign investors (largely from Hong-Kong) and local operators. Finally, the institutional support provided by Mauritius Export Development and Investment Authority (MEDIA), Export Processing Zone Authority (EPZDA) and Development Bank of Mauritius (DBM).²¹⁵

Notably, Mauritius being one of the first countries to implement the EPZ concept in modern time contributed to Mauritius' EPZ success. Since it provided an

²¹² Vijaya Ramachandran and Rachel Cleetus 'Export Processing Zones: Lessons for Tamil Nadu.' Available at http://www.cid.harvard.edu/archive/india/pdfs/epzs_ramachandran_cleetus1099.pdf [Accessed 25 November 2009].

²¹³ Madani (note 39) at 74.

²¹⁴ Ibid.

²¹⁵ Raj Makoond 'Best practices in public free zones: The Mauritian free zone model.' Available at [http://www.ifc.org/ifcext/fias.nsf/AttachmentsByTitle/BangladeshRT2Topic2paper.pdf/\\$FILE/BangladeshRT2Topic2paper.pdf](http://www.ifc.org/ifcext/fias.nsf/AttachmentsByTitle/BangladeshRT2Topic2paper.pdf/$FILE/BangladeshRT2Topic2paper.pdf) [Accessed 25 November 2009].

economically attractive environment, it meant that it did not have many other developing countries to compete with in order to attract foreign firms as many newly established EPZs do today.²¹⁶

Attracting foreign investment is considered a key element to the success of the Mauritian EPZ. This was achieved by selling the EPZ scheme to overseas industrialists through campaigns to widely publicise the benefits offered by the EPZ.²¹⁷ It was a well-coordinated promotional campaign comprising the spreading of information on the EPZ through brochures, newspapers, trade magazines and by displays at trade and industrial fairs.²¹⁸ Mauritian diplomatic missions abroad also organised extensive meetings with potential investors.²¹⁹

Despite the success of Mauritius EPZ, it also shows the weak position of the labour movement which protested but was unable to prevent the lowering of the minimum wage. Jauch, Keet and Pretorius²²⁰ explain that instead of increasing the minimum wage for women to the level of that of men, the Mauritian government bowed to the demands of investors and international competitiveness at the expense of the Mauritian workers. As a result, the standard of living of most workers seems to have remained low and the cost to workers of the Mauritian miracle has been heavy.²²¹

3.4 Labour Standards in Mauritius EPZs

Mauritius positively stands out when it comes to labour rights in Africa. Labour rights are beginning to be respected in EPZs and the government is increasing its efforts to guarantee equal rights all over the island.²²² Nevertheless, the labour regime in the EPZs in Mauritius remains a major issue. In order to attract investors, the Government offers low-interest loans, leases factory shells, sets minimum wages for EPZ that are below those for the rest of the economy and excludes EPZ from

²¹⁶ Madani (note 39) at 74.

²¹⁷ Cowan and Phetwe (note 173) at 4.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Herbert Jauch, Dot Keet and Leon Pretorius *Export processing zones: Economic, social and political implications* (1996) 27.

²²¹ Ibid.

²²² See Afrol news 'Mauritian export processing zones improving rights.' Available at <http://www.afrol.com/articles/12847> [Accessed 26 November 2009].

many of the existing labour laws.²²³ An important special consideration is that EPZ firms are allowed to dismiss workers without notice and without dismissal pay in effect the power of trade unions is weakened.²²⁴ In addition, the Government maintains a competitive exchange rate guaranteeing that low wages in local currency translate into low wages in foreign currency.²²⁵

3.4.1 Freedom of association and the right to collective bargaining

As seen in chapter two above, the rights to freedom of association and forming or joining trade unions are often not respected in the EPZs. This is also true for Mauritius. Although Mauritius has ratified the two ILO Conventions protecting Freedom of Association and the Right to Collective Bargaining on 1 May 2005 and 2 December 1969 respectively,²²⁶ in practice restrictions on the principles and rights contained in these conventions are common in the Mauritius EPZs.

The Constitution protects workers' right to form or belong to trade unions or other associations for the protection of their interests.²²⁷ Enterprises that operated in the zone were initially not exempt from the operations of the national labour legislation as well as the national labour relations legislation.²²⁸ In 1993, the first link was drawn between the efficiency of EPZs and labour rights. The Industrial Expansion Act 11 of 1993 amended the EPZ Act of 1970 and this amendment afforded enterprises operating in the EPZs greater flexibility with respect to labour rights, in particular, rights relating to working hours.²²⁹ However, it has been widely criticised for insufficient protection against anti-union discrimination. Unionisation rates are much lower in the EPZs than in the economy as a whole and numerous EPZ employers are actively hostile to union organisation among their employees.²³⁰

²²³ Larry Willmore 'Export processing in the Caribbean: lessons from four case studies' (September 1996) Working Paper No. 42 at 19.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ministry of Labour, Industrial Relations and Employment 'Labour Standards: ILO Conventions – Ratified.' Available at <http://www.gov.mu/portal/site/laboursite/menuitem.70c45a46945faadb93347524e2b521ca/> [Accessed 26 November 2009].

²²⁷ Article 13(1) of Mauritius Constitution.

²²⁸ Article 14 of Mauritius Export Processing Zone Act of 1970.

²²⁹ Article 20 of Industrial Expansion Act No 11 of 1993.

²³⁰ ITUC 'Report for the WTO general council review of the trade policies of Mauritius.' Available at http://www.ituc-csi.org/IMG/pdf/TPR_MAURITIUS_final_2_.pdf [Accessed 26 November 2009].

Though labour legislation covers companies operating within the Mauritian EPZ, it is not enforced and this has caused a bias on many labour inspectors. This has been stressed by Jugdish Lollbeeharry, General Secretary of the Mauritius Labour Congress (MLC), an ICFTU affiliate that:

It's very easy to sack people in the EPZ, that is, why workers are so scared of becoming union delegates. We have been calling for a revision of industrial law to help combat abuses but the government has replied that changing the law risks frightening off investors and provoking relocations.²³¹

Further, the low unionisation rate in the Mauritius EPZ is partly accounted to fear of dismissal, coupled with a large proportion of newly recruited women workers whose family and domestic commitments in addition to long working hours make contact between them and union officials difficult.²³² François Alexis, another MLC organiser in the EPZ is quoted explaining that:

Workers know of many cases of people who joined unions ending up sacked or deprived of the right to work overtime. The law allows you to join a union but it is not applied. The bosses do what they like and use blackmail along the lines of "if you set up a union the factory will close". The Labour Minister is from the grass roots and a former trade unionist, but the political speeches do not reflect the real situation.²³³

Further, union activists are often denied access to the premises of the EPZ employers and workers are harassed or fired for expressing union sympathies or interest in forming a union.²³⁴ In many cases, this lack of effective union representation has resulted in health hazards and workplace-related illnesses not being addressed and rectified, often leading to an unhealthy working environment for EPZ employees.²³⁵

The labour law provides and guarantees the right to strike. However, the Industrial Relations Act (IRA) sets a deadline of 21 days following compulsory arbitration for holding a strike.²³⁶ It gives the government 21 days in which to respond to any dispute and to refer it to the Permanent Arbitration Tribunal or the Industrial Relations Commission. If the government does not reply within 21 days, the strike can be held. The IRA states that participation in an illegal strike is grounds for dismissal. The IRA also allows the Prime Minister to declare a strike illegal

²³¹ ICFTU 'Behind the brand names: Working conditions and labour rights in Export Processing Zones.' Available at <http://www.icftu.org/www/PDF/EPZreportE.pdf> [Accessed 28 November 2009].

²³² Ibid.

²³³ Ibid.

²³⁴ ITUC (note 230).

²³⁵ Ibid.

²³⁶ Section 92 of the Mauritian Industrial Relations Act 67 of 1973.

should she or he consider that the strike could damage the country's economy. It is clear that in practice, the IRA prevents the exercising of the right to strike.

While the right to associate and bargain collectively is guaranteed on paper, the IRA provides the government with far-reaching powers to delay strikes, thus many workers remain unable to exercise this right.²³⁷ Similarly, the general anti-union sentiment among employers mean collective bargaining is very rare. As a result, wages are often set by Statutory Wages Commissions.²³⁸

The lack of legislative protection against anti-union discrimination, especially in EPZ has caused both the ILO and the national trade union centre, the Mauritius Labour Congress – affiliated to the ICFTU to demand amendment of the law.

3.4.2 Conditions of work

The EPZ workers in Mauritius especially the migrant workers face tough living and working conditions, including long working days and cramped living quarters provided by employers.²³⁹ The minimum weekly wage (188 Mauritian rupees) for an EPZ worker is lower than that of a non-EPZ worker which is about 200 rupees.²⁴⁰ Due to the low wages and salaries, workers are forced to work overtime. Although the standard legal workweek in the industrial sector is 45 hours, employees in the Mauritius EPZ are required to work for 45 hours a week plus 10 hours compulsory overtime that is provided for by the Labour legislation.²⁴¹ These long hours are very hard on the women and it has been estimated that this is the cause of the comparatively high rate of absenteeism especially where women fear being dismissed if they are absent because of illness.²⁴²

Although Mauritius has ratified the two conventions protecting freedom of association and collective bargaining, the level of union membership remains very low in companies located in the EPZ in addition to the bad working conditions where the legislation in force allows employers to require compulsory overtime and the working hours exceed those applying to other sectors of the economy.

²³⁷ ITUC (note 230).

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ U.S. Department of State 'Mauritius human rights practices.' Available at http://dosfan.lib.uic.edu/ERC/democracy/1994_hrp_report/94hrp_report_africa/Mauritius.html [Accessed 15 December 2009].

²⁴¹ Luchmun (note 170) at 178.

²⁴² Ibid.

3.5 Namibian EPZ: An appropriate model?

3.5.1 Background

Namibia is regarded as one of the most competitiveness countries in the sub-Saharan Africa with an economic growth that largely depends on its ability to engineer export-led industrialisation by taking advantage of its strategic location and superb economic infrastructure.²⁴³ Namibia's main attractions for foreign investors are thought to be political stability, its insignificant external debt, access to the world market and its fairly developed infrastructure network, such as the efficient deep-water harbour of Walvis Bay, the major road transport corridors (the Trans-Caprivi and Trans-Kalahari Highways) providing indispensable links to neighbouring countries and its heavily modernised and expanded telecommunications network serve as an enabling infrastructure base for any investor.²⁴⁴

Namibia offers an excellent market access and serves as a springboard to the regional markets of the Southern African Customs Union (SACU) and the SADC.²⁴⁵ It is a member of the Rand Common Monetary Area, COMESA, New Partnership for Africa's Development (NEPAD) and the African Union (AU). In 1990, Namibia signed a bilateral agreement with the Overseas Private Investment Corporation of the United States, whose purpose is to promote economic growth in developing countries by encouraging United States' private investment.²⁴⁶ It is also a member of the WTO and benefits from the United States' AGOA and the African, Caribbean, Pacific and European Union partnership agreement for the renegotiation of the Lomé Convention, the Cotonou Agreement.²⁴⁷

3.5.2 Namibia's Trade and Investment Regime

The main aim of the trade policy in Namibia has been the diversification of the export base through various investment packages.²⁴⁸ While Namibia has been part of a trend of liberalisation of SACU, Namibia's trade regime is restrictive and its tariff

²⁴³ Labour Resource and Research Institute (LaRRI) 'Export Processing Zones in Namibia: Taking A Closer Look.' Available at <http://www.larri.com.na/files/EPZ%20REPORT.pdf> [Accessed 10 December 2009].

²⁴⁴ Ibid.

²⁴⁵ UNCTAD 'Country profile-Namibia.' Available at http://www.unctad.org/sections/dite_fdistat/docs/wid_cp_na_en.pdf [Accessed 20 November 2009].

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ OECD 'Namibia.' Available at <http://www.oecd.org/dataoecd/58/28/1826046.pdf> [Accessed 5 December 2009].

barriers remain high leading to high taxes for both consumers and producers.²⁴⁹ Nevertheless, Namibia has a favourable investment regime and within Africa, it belongs to the ‘success stories’ of investment attracting countries.²⁵⁰ One of the key government policies of attracting investors was the establishment of the EPZ programme in 1995 with generous tax incentives.²⁵¹ The Government of Namibia is actively seeking foreign investment as a way to develop the economy, generate employment and boost foreign exchange earnings.²⁵² In this regard, a number of positive steps, such as, the right to private ownership and establishment, protection of property rights, EPZs and transparency of the regulatory system have been taken by the Government to establish a system and an environment conducive to foreign investment.²⁵³

The establishment of the EPZ, particularly at Walvis Bay and the setting up of the Namibian Investment Centre have served as catalysts for FDI.²⁵⁴ They have facilitated the entry of foreign investors by minimizing the bureaucratic processes in approving investment applications, providing information, support services such as labour recruitment services and building facilities.²⁵⁵ In this context, the EPZ has succeeded in attracting manufacturing industries which may increase the impact of foreign investment on the Namibian economy.²⁵⁶ As part of its strategy to become an internationally competitive investment location and a further incentive to foreign investors, the Namibian Government introduced the EPZ Act in 1995 as a legal framework for the creation and operation of EPZs.

3.6 Legislation, Incentives and Administrative set-up of the EPZ Regime

3.6.1 EPZ legislation and incentives

In 1995, the Government of the Republic of Namibia adopted the EPZ Act (Act No. 9 of 1995) as a legal framework for promoting export-led industrialization of the

²⁴⁹ Dirk Hansohm ‘Can Namibia do better? Policies to improve economic performance.’ Available at http://www.nepru.org.na/index.php?id=279&no_cache=1&file [Accessed 5 December 2009].

²⁵⁰ Ibid.

²⁵¹ OECD (note 248).

²⁵² Namibia Embassy ‘Trade and investment incentives.’ Available at <http://www.embnamibia.at/NAMIBIA/tradeInvestment/01%20Trade%20and%20Investment%20Incentives.pdf> [Accessed 5 December 2009].

²⁵³ Ibid.

²⁵⁴ Olukunle Iyanda ‘The impact of multinational enterprises on employment, training and regional development in Namibia and Zimbabwe: A preliminary assessment.’ Available at http://www.ilo.org/public/libdoc/ilo/1999/99B09_61_engl.pdf [Accessed 7 December 2009].

²⁵⁵ Ibid.

²⁵⁶ Ibid.

highly primary sector-driven national economy. The Act states the specific objects and purposes of EPZs as follows:

...to attract, promote or increase the manufacture of export goods; to create or increase industrial employment; to create or expand export earnings; to create or expand industrial investment, including foreign investment; and to encourage technology transfer and the development of management and labour skills in Namibia.²⁵⁷

Namibia presents one of the most favourable EPZ regimes of the Southern region as it offers export-oriented manufacturers a range of internationally competitive advantages.²⁵⁸ All enterprises eligible for EPZ status are exempted from corporate income tax, duties and VAT on machinery, equipment and raw materials imported into Namibia for manufacturing purposes.²⁵⁹ The EPZ enterprises only pay personal income tax on employees' income as well as the 10% withholding tax (non-resident shareholders) on declared dividends.²⁶⁰ In addition, EPZ enterprises are allowed to hold foreign currency accounts at commercial banks and to repatriate their capital and profits.²⁶¹ In the promotion of the EPZ, the Government stresses that the Namibian EPZ incentives are of indefinite period²⁶² as opposed to some other EPZs that may have a limited duration.

Namibia's incentive regime includes the Foreign Investment Act which outlines the legal framework within which investors can operate in Namibia and provides the basic guarantees for an enabling environment conducive to the foreign investors.²⁶³ It makes provision for which 'a foreign national may invest and engage in any business activity in Namibia which any Namibian may undertake.'²⁶⁴ In addition, it assures a foreign investor an equal position with a Namibian national. It stipulates that '...a foreign national shall be in no different position than any Namibian, except as may be otherwise provided by this Act.'²⁶⁵ It also guarantees the availability of foreign currency for the transfer of profits and proceeds of sale as well

²⁵⁷ Section 3 of Export Processing Zones Act 9 of 1995 as amended by Export Processing Zones Amendment Act 6 of 1996.

²⁵⁸ Ministry of trade and industry Namibia 'Export processing zone investor guide: Harnessing Namibia's manufacturing and exporting potential.' Available at <http://www.embassyofnamibia.org.br/investments/Namibias%20Export%20Processing%20Zone.pdf> [Accessed 10 December 2009].

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Foreign Investment Act. Available at http://www.mti.gov.na/publications/investment_act.pdf [Accessed 10 December 2009].

²⁶⁴ Ibid section 3(1).

²⁶⁵ Ibid section 3 (2).

as recourse to international arbitration in the case of disputes, while investors may also be eligible for the Certificate of Status Investment.²⁶⁶

3.6.2 Administrative set-up

The Offshore Development Company (ODC)²⁶⁷ is charged with the monitoring, regulation and promotion of Namibia's EPZ as a vehicle for export-led industrialisation of the national economy and it offers highly competitive fiscal and non-fiscal incentives to investors engaged in manufacturing and other value-adding economic activities.²⁶⁸ Promotion of investments into the EPZ regime and management of the EPZ Secretariat, which processes investors' applications for EPZ status are some of the functions performed by the ODC.²⁶⁹ The ODC provides various services to investors under the EPZ, such as, information on potential and existing investment opportunities under the EPZ; information on the incentives offered by the Government through the EPZ; evaluation and recommendation of qualifying applications for approval by the EPZ Committee and the Minister of Trade and Industry; affordable factory shells and warehouses through industrial park development etc.²⁷⁰

The ODC works in close collaboration with Walvis Bay EPZ Management Company (WBEPZMC). The WBEPZMC was established in 1996 with a purpose of marketing Walvis Bay as the safe destination for FDI and a means of fast-tracking the industrialization programme of the Namibian government.²⁷¹ The WBEPZMC provides a wide range of services, such as, construction, leasing, acquisition of infrastructure and operational expenditure to facilitate a hassle-free start-up in the zone.²⁷²

²⁶⁶ Ibid Section 9.

²⁶⁷ The ODC is a product of an Act of Parliament and the Export Processing Zone Act thus the flagship of Namibia's EPZs regime.

²⁶⁸ Ministry of trade and industry 'Offshore Development Company.' Available at <http://www.mti.gov.na/subpage.php?linkNo=16> [Accessed 10 December 2009].

²⁶⁹ Ibid.

²⁷⁰ Ministry of trade and industry Namibia 'Export processing zone investor guide: Harnessing Namibia's manufacturing and exporting potential.' Available at http://www.embnamibia.at/NAMIBIA/tradeInvestment/export_processing_zone_investorguide.pdf [Accessed 10 December 2009].

²⁷¹ Walvis Bay Export Processing Zone Management Company 'Brief Overview of the Walvis Bay EPZ.' Available at <http://www.wbepzmc.iway.na/> [Accessed 10 December 2009].

²⁷² WBEPZMC 'Walvis Bay Export Processing Zone: an innovative approach to offshore investments.' Available at http://www.wbepzmc.iway.na/PDF/Walvis_Bay_EPZ.pdf [Accessed 10 December 2009].

3.7 Labour standards status within the EPZ

3.7.1 Labour Legislation

Prior to the amendment of the EPZ Act, the application of the Labour Act in the EPZs had been suspended and the exclusion of the labour act became a topic of heated debate in Namibia. Namibian president clearly described the exclusion of the Labour Act as ‘necessary “to allay investors” fear of possible industrial unrest and a delicate compromise, which is necessary to achieve the larger goal of job creation.’²⁷³ Excluding the applicability of the labour act in the EPZs is a limitation on the labour rights and this left the road to the recognition of labour rights in the EPZs in Namibia paved with a million potholes. The EPZ Amendment Act 6 of 1996 (Amendment Act of 1996) made the national labour legislation applicable subject to certain modifications, such as, the provisions of the Labour Act 1992 Act 6 of 1992 would apply in an EPZ.²⁷⁴

In Namibia EPZ, certain violations of workers’ rights continue to take place and this clearly demonstrates a negative influence of international trade and investment on respect for workers’ rights, which in turn has a major impact on the prices of exports from the EPZ sector.²⁷⁵ An example is where a Chinese worker at a Malaysian-owned textile plant that operates in the EPZ reputed for its anti-union practices found herself in hospital following an attack by a dog used by security guards during a demonstration organised by the Chinese workers protesting their working conditions, the inedible food and the medicals imposed at their own expense.²⁷⁶

3.7.2 Freedom of Association

The freedom of association is embedded in Namibia’s Constitution. Article 21 stipulates that ‘all persons shall have the right to freedom of association, which shall include freedom to form and join associations or unions, including trade unions and

²⁷³ Herbert Jauch ‘The Impact of Global Production Systems on Trade Union Strategies: The Case of Export Processing Zones (EPZs) in Namibia.’ Available at <http://www.larri.com.na/files/EPZ-Ramatex%20paper%202006.pdf> [Accessed 4 November 2009].

²⁷⁴ Section 8(1) Export Processing Zones Amendment Act of 1996.

²⁷⁵ International Trade Union Confederation Report on Internationally-recognised core labour standards in the five countries of the Southern African Customs Union.’ Available at <http://www.ituc-csi.org/IMG/pdf/20091103101840-Microsoft Word - SACU-final .pdf> [Accessed 4 November 2009].

²⁷⁶ Lawrence Egulu ‘International Labour Standards and their Relevance to Sub-Saharan Africa’ in Jauch and Rudolf (note 9) at 116.

political parties.²⁷⁷ However, due to the continuous opposition from the National Union of Namibian Workers (NUNW) that the exclusion of the labour act is a violation of both the ILO convention and Namibia's constitution, the EPZ Act of 1995 was amended in 1996 with respect to the labour rights provisions. When the EPZ was created in 1995 in Walvis Bay in Namibia, the Windhoek government, sensitive to investors 'concerns' banned the right to strike in the zone.²⁷⁸

The EPZ Amendment Act exempted strikes and lockouts by stating that, 'no employer or employee shall take action by way of or participate in a lock-out or strike in an EPZ.'²⁷⁹ A case in point is when Ramatex started its operations in early 2002, refused the Namibia Food and Allied Workers Union (NAFAU) access to its premises, despite a Ramatex press statement a week before in which the newly established Malaysian company said it was committed to freedom of association and to respecting Namibian laws and workplace regulations, forcing union organisers to meet workers outside the factory during lunch breaks and after working hours.²⁸⁰ As a result, workers suffered from skin rashes and allergies due to dust particles, highly exploitative wages and unfair labour practices.²⁸¹

Opposition to the EPZ policy by the labour movement in Namibia is often countered by accusations on one hand that trade unions are still living in the ideological past and that trade unions are obstacles to economic growth and job creation.²⁸² On the other hand, unions are widely seen as instigators of workers who expect too much and table unrealistic demands.²⁸³ Some EPZ managers have openly told their workers that they would not tolerate trade unions, while others have praised the no strike-clause of the EPZ Act as 'otherwise the unions would eat us.'²⁸⁴ Furthermore, the prevention of strikes in EPZs is one of the major incentives for companies to enter the EPZ as most investors first ask about the labour situation and

²⁷⁷ Art 21(1) (e) of the Namibian Constitution. Available at <http://www.namibweb.com/const.htm> [Accessed 7 December 2009].

²⁷⁸ ICFTU 'Behind the wire: Anti-union repression in the export processing zones.' Available at <http://actrav.ilo.org/actrav-english/telearn/global/ilo/frame/epzicftu.htm> [Accessed 1 December 2009].

²⁷⁹ Section 8(2) (a).

²⁸⁰ Jauch (note 273).

²⁸¹ Ibid.

²⁸² Herbert Jauch 'Trade unions in Southern Africa.' Available at <http://www.larri.com.na/papers/Workers%20in%20Southern%20Africa-2003.PDF> [Accessed 7 December 2009].

²⁸³ Sylvi Endresen and Herbert Jauch 'Export processing zones (EPZs) in Namibia: A successful story?' Available at <http://www.larri.com.na/papers/EPZ-ILRIG.PDF> [Accessed 10 December 2009].

²⁸⁴ Ibid.

are pleased with the no-strike-clause.²⁸⁵ This has left trade unions with problems when trying to organise at EPZ companies as it seems EPZ companies are very powerful since they are protected by the EPZ policy thus unions find it difficult to represent the workers fully.²⁸⁶

3.7.3 The Right to organize and collective bargaining

The 1992 Labour Act recognises the right to collective bargaining individually or collectively. Section 58 of the act recognises registered trade unions as exclusive bargaining agents on behalf of the employees within the bargaining unit in question, whether or not such employees in such bargaining unit are members of such trade union or group of trade unions.²⁸⁷ However, a notable feature of the Namibian EPZs is the almost complete absence of collective bargaining. Trade unions hardly manage to conclude collective agreements and commence negotiations over conditions of employment.²⁸⁸ For instance, the Metal and Allied Namibia Workers Union (MANWU) submitted proposed recognition agreements to two EPZ companies in Walvis Bay in 1997 and 1999 but did not receive any response.²⁸⁹

3.7.4 Conditions of work

In the Namibian EPZ, conditions of work such as, minimum wages, hours of work as well as occupational health and safety standards have been violated.

Any discussion on EPZs in Namibia would be incomplete without reference to the case of Ramatex. The conditions of work at Ramatex demonstrate a picture of what a threat to labour standards EPZ firms are. The treatment of workers at Ramatex shall be used to paint a picture of what the consequences of EPZ factories can be. Jauch is of the opinion that Ramatex has resulted in ‘...the establishment of a large number of working poor in full-time employment, unable to meet even their basic needs. This is in sharp contradiction with the Namibian government’s stated objective of promoting decent work in line with ILO standards.’²⁹⁰

The treatment of workers at Ramatex factories constituted a flagrant violation of both national and international labour standards. Most workers in Ramatex

²⁸⁵ LaRRI (note 243).

²⁸⁶ Endresen and Jauch (note 283).

²⁸⁷ Section 58 of the Labour Act of 1992.

²⁸⁸ LaRRI (note 243).

²⁸⁹ Ibid.

²⁹⁰ Jauch *et al* (note 220) at 11.

complained of earning very low wages and salaries thus forced to work overtime to supplement their basic salaries so that they can cover their basic expenses such as rent, water, food and transport and yet they still have to share their limited income with their extended families and children.²⁹¹ Due to lack of protective clothing, which is a basic necessity when working in a textile industry, some workers encounter work-related accidents and injuries, develop chest problems and have allergic reactions due to exposure to the dust from the fabric.²⁹² This creates another burden for the workers because they have to cover their own medical costs and are denied paid sick leave thus end up working even when they are sick or injured.²⁹³

Tensions boiled over on several occasions as Ramatex was unwilling to address the workers concerns and the last nail on the coffin was dropped when on 6 March 2008, the company suddenly closed without giving any prior notification to its workers, the union or the Namibian Government.²⁹⁴ Workers and their union even struggled to receive a retrenchment package, which was only agreed to after workers' demonstrations and threats by the Namibian Government that the Asian Ramatex managers would only be allowed to leave the country if they met their obligations towards the retrenched workers.

A threat to labour standards? Namibian EPZs have fostered a culture of disregard for labour standards. The impression created is that EPZs are foreign territory with regard to labour laws. Namibia's experiences with EPZs in general and Ramatex in particular point a threat to the labour standards. Therefore, there is a need to ensure compliance by foreign investors with national laws and regulations, workers rights, as well as environmental, health and safety standards. Experiences elsewhere have shown that compromises on social, environmental and labour standards in the name of international competitiveness lead to a 'race to the bottom'.²⁹⁵

²⁹¹ LaRRI 'Ramatex: On the other side of the fence.' Available at <http://www.larri.com.na/?q=node/224> [Accessed 10 December 2009].

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Herbert Jauch 'Attracting foreign investment at all costs? The case of export processing zones (EPZs) and Ramatex in Namibia' in Trade union strategies towards global production systems (2009) 1 *International Journal of Labour Research* 9 at 82.

²⁹⁵ Jauch (note 282).

CHAPTER 4: THE ESTABLISHMENT OF AN EPZ IN RWANDA: IS IT A REGIME WORTH THE SACRIFICE?

The Rwanda FTZ proposal envisions establishing Rwanda as an economy wide free trade zone, following the example of Hong Kong or Singapore.²⁹⁶ Currently, the KFTZ is under construction and completion is estimated to end 2010. This chapter will try to explore whether the regime will manage to pay off Government for the sacrifice it will make in terms of its trade and investment policies, labour regulation and tax concessions.

4.1 Rwanda: A fragile Economy

Since the 1994 genocide, Rwanda has made substantial strides towards recapturing lost economic ground. The events of 1994 contributed to a rapid deterioration in production, as well as to the destruction of communication and transport infrastructures.²⁹⁷ In support of this, Rwanda a small, landlocked country in East and Central Africa with 10 million people and a high population density (368 people per sq km) has been the beneficiary of substantial international donor assistance, amounting to over \$2 billion since 1995.²⁹⁸ This international aid has been predominantly devoted to reconstruction of the country's infrastructure, restoration and improvement of government institutions and services, especially those serving rural areas where most Rwandans reside as small-scale farmers.²⁹⁹

Rwanda represents a stable and predictable business environment with robust economic growth and low inflation, a stable currency and a strong commitment to private sector development as well as impeccable peace and security.³⁰⁰ Overtime, Rwanda has witnessed a dramatic and sustained GDP growth rate and investor confidence. Despite the unfavourable international economic environment

²⁹⁶ Dean DeRosa and Vernon Roningén 'Rwanda as a Free Trade Zone.' Available at http://www.adr-intl.com/potomac/RwandaFTZ_101503.pdf [Accessed 11 January 2010].

²⁹⁷ Ministry of Commerce, Industry, Investment Promotion, Tourism and Cooperatives (MINICOM) 'Trade policy and strategies.' Available at http://www.minicom.gov.rw/IMG/pdf/TRADE_POLICY_AND_STRATEGIES.pdf [Accessed 11 January 2010].

²⁹⁸ World Bank 'Rwanda-country brief.' Available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/RWANDAEXTN/0,,menuPK:368714~pagePK:141132~piPK:141107~theSitePK:368651,00.html> [Accessed 11 January 2010].

²⁹⁹ Ibid.

³⁰⁰ The Finnish Partnership 'Trade and investment opportunities in Rwanda.' Available at http://www.finnpartnership.fi/content/tiedostot/neuvonta/Trade_and_Investment_opportunities_in_Rwanda.pdf [Accessed 11 January 2010].

characterized by a worst inflationary shock and the current global financial crisis in 2006, Rwandan economy continued to perform well with the real GDP growth rate of 11.2 per cent in 2008 following 7.9 per cent recorded in 2007.³⁰¹

Since 2000, Rwanda has envisaged a set of policies with the goal of transforming the agrarian subsistence economy into a sophisticated knowledge-based society.³⁰² These policies are defined in a framework called vision 2020. The Vision seeks to fundamentally transform Rwanda into a middle-income country by the year 2020, which will require achieving annual per capita income of US\$ 900 (US\$ 290 today), a poverty rate of 30 per cent (64 per cent today) and an average life expectancy of 55 years (49 years today).³⁰³

Important socio- economic performances have been achieved and the country has built a solid foundation to its development to the extent that Rwanda is now the top global reformer in doing business.³⁰⁴ 'Rwanda can be proud that it is the first Sub-Saharan African country to be named top global reformer by the World Bank.'³⁰⁵ However, many challenges remain for Rwanda since it is dependent on significant foreign aid. Exports continue to lag far behind imports and this will continue to affect the health of the economy.³⁰⁶ Inflation may become a problem due to the large influx of donor funds. Further, the persistent lack of economic diversification beyond the production of tea, coffee and minerals keeps the country vulnerable to market fluctuations.³⁰⁷

³⁰¹ National Bank of Rwanda (NBR) 'NBR Annual report 2008.' Available at <http://www.bnr.rw/docs/publicnotices/BNRANNUALREPORT2008.pdf> [Accessed 11 January 2010].

³⁰² Thomas Rusuhuzwa and Joseph Baricako 'The global financial crisis, slowing private capital inflows and economic growth in Rwanda and Burundi.' Available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/2009%20AEC> Accessed 11 January 2010].

³⁰³ Republic of Rwanda 'Rwanda vision 2020.' Available at <http://www.rwandainvest.com/IMG/pdf/Vision-2020.pdf> [Accessed 11 January 2010].

³⁰⁴ The World Bank 'Doing business 2009.' Available at http://www.doingbusiness.org/Documents/FullReport/2009/DB_2009_English.pdf [Accessed 11 January 2010].

³⁰⁵ Press release 'Doing business.' Available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,enableDHL:TRUE~menuPK:34466~pagePK:64001179~piPK:34518~theSitePK:4607,00.htm> [Accessed 11 January 2010].

³⁰⁶ US Department of State 'Rwanda economy.' Available at <http://www.state.gov/r/pa/ei/bgn/2861.htm#econ> [Accessed 11 January 2010].

³⁰⁷ Ibid.

4.2 The trade and investment regime

Rwanda considers trade and investment to be an essential economic growth factor. In this regard, the main aim of its trade policy is to contribute to the country's social and economic development and to poverty reduction as stipulated in the Vision 2020.³⁰⁸

The trade policy retains core principles of developing internal trade by making available goods and services on markets, trade promotion, trade professionalization, regional integration, domestic market supply improvement, consumers' protection, and international trade promotion.³⁰⁹ The Government is pursuing an active policy of trade integration with regional partners and has preferential access to the EU and US markets. Rwanda has also been a member of the WTO since 22 May 1996³¹⁰ and had previously been a member of the GATT since 1 January 1966.³¹¹ As a result of these agreements, Rwanda benefits from extensive preferential access to key markets. This has been insufficient so far to generate a large export sector, however, mostly because of the limited level of industrial development and export capacity.³¹²

Rwanda has been eligible to the preferential market access granted by the United States (US) under the AGOA since its inception in October 2000. The US also granted special preferences to Rwanda for apparel exports starting in March 2003.³¹³ These preferences allow duty-free access to the US for six types of apparel, subject to certain quantity limitations on duty-free imports, not on imports in general applied on an AGOA-wide basis.³¹⁴ Rules of origins are also relaxed as duty-free access is granted to apparel made from fabrics imported from non-AGOA countries. In spite of this, however, exports to the US almost exclusively consist of tea, coffee and and spices, ores, slag, and ash and machinery and mechanical appliances.³¹⁵

³⁰⁸ WTO 'Trade policy review on Rwanda.' Available at http://www.wto.org/english/tratop_e/tptr_e/tp236_e.htm [Accessed 11 January 2010].

³⁰⁹ Rwanda Development Gateway 'Trade and industry.' Available at http://www.rwandagateway.org/gateway_new/?rubrique26 [Accessed 11 January 2010].

³¹⁰ WTO 'Rwanda and the WTO.' Available at http://www.wto.org/english/thewto_e/countries_e/rwanda_e.htm [Accessed 14 January 2010].

³¹¹ WTO 'The 128 countries that had signed GATT by 1994.' Available at http://www.wto.org/english/thewto_e/gattmem_e.htm [Accessed 14 January 2010].

³¹² UNCTAD A report on the investment policy review of Rwanda (July 2006) UNCTAD/ITE/IPC/2006/11 at 64. United Nations publication, Geneva, Switzerland

³¹³ AGOA 'AGOA Country eligibility.' Available at http://agoa.info/index.php?view=about&story=country_eligibility [Accessed 14 January 2010].

³¹⁴ Arona Butcher 'US Trade and investment with Sub-Saharan Africa' (2004) Fourth annual report United States International Trade Commission (USITC) publication 3650 at 6-84.

³¹⁵ Arona Butcher 'US Trade and investment with Sub-Saharan Africa' (2005) Fifth Annual Report at 6-80. USITC publication 3741.

Similarly, Rwanda benefits from tariff-free and quota-free access to the EU market on virtually all goods under the Everything But Arms (EBA) initiative. Although exports to the EU are slightly more diversified, the bulk of exports also consist of coffee, tea and ores.

The Government is aware that few local firms are likely to be competitive in the short to medium term in the production of high value-added goods for exports to the US and the EU and the exports to these markets will likely remain dominated by tea, coffee and a few other traditional goods or commodities. As a result, it has rightly decided to extend its network of trade agreements within the region. Rwanda joined the FTA made up of a sub-group of 11 COMESA member states³¹⁶ in 2004 and it had been a member of the COMESA³¹⁷ from the start in 1994.

Additionally, in June 2007, Rwanda became a full member of the East African Community (EAC)³¹⁸ and negotiations are continuing in 11 sub-committees to bring the country's policies into line with those of the EAC in areas ranging from trade, finance and investment to education, agriculture and health.³¹⁹ Thus, full EAC membership should allow Rwanda through the EPZ to exploit its comparative advantage in regional markets, as well as benefiting from the ongoing global trade liberalization that offers improved access to the EU and US markets. Recognizing the rising importance of South Africa as a trade partner and source of investment, Rwanda entered into a bilateral framework agreement that covers trade, investment and certain other areas of mutual interest.³²⁰

Consequently, Rwanda continues the process of integrating trade policy into a broader strategic framework after the implementation of the integrated Framework.³²¹ In 2006, Rwanda's trade regime was less open than an average Sub-

³¹⁶ Burundi, Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Zambia, Zimbabwe.

³¹⁷ COMESA includes the following countries: Angola, Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.

³¹⁸ EAC 'About EAC.' Available at <http://www.eac.int/about-eac/quick-facts.html> [Accessed 14 January 2010].

³¹⁹ The Republic of Rwanda 'Economic development and poverty reduction strategy, 2008-2012.' Available at <https://www.imf.org/external/pubs/ft/scr/2008/cr0890.pdf> [Accessed 14 January 2010].

³²⁰ Ibid.

³²¹ Ibid.

Saharan Africa (SSA).³²² However, since 2004 Rwanda had made some efforts towards free trade, for example, by removing tariffs on imports from COMESA.³²³ Trade liberalization will initially induce increases in import demands and reductions in tariff revenues.³²⁴

Rwanda has put in place one of Africa's most open FDI regime as it does not place restrictions on FDI entry and establishment.³²⁵ According to the 2005 Investment and Export Promotion and Facilitation law, all foreign investments are allowed and foreign investors are granted national treatment for most intents and purposes.³²⁶ Similarly, article 42 of the Constitution specifies that 'Every foreigner legally residing in the Republic of Rwanda shall enjoy all rights save those reserved for nationals as determined under this Constitution and other laws.'³²⁷ The Government has embarked upon an ambitious programme to modernize the investment framework.³²⁸ The aim is to provide a framework that promotes investment and protects national interest. Rwanda maintains an investor-friendly attitude by welcoming and facilitating investments both before and after their establishment. This awareness is reflected in the Rwanda Development Board (RDB), a one-stop shop for all investors, which was set up in September 2008 by bringing together all the government agencies responsible for the entire investor experience under one roof.³²⁹

It is important to note that there are many opportunities and challenges in the trade and investment regime. On one hand, opportunities in the trade and investment are numerous with strong potential for Rwanda to become a regional trade hub; Rwanda has a strategic central location and tremendous asset of both a common language and multilingualism with both local and international languages.³³⁰ On the other hand, the trade and investment regime suffers from constraints such as weak

³²² World Bank 'Trade brief of Rwanda' Available at <http://info.worldbank.org/etools/wti2008/docs/brief159.pdf> [Accessed 11 January 2010].

³²³ Ibid.

³²⁴ DeRosa and Roningen (note 296).

³²⁵ UNCTAD (note 312) at 31.

³²⁶ Art 7 explicitly states that 'Foreign investors may invest and have shares in investment projects in Rwanda and shall be treated in the same way as Rwandan investors in matters related to incentives and facilities.'

³²⁷ The constitution of the republic of Rwanda adopted by referendum of 26 May 2003.

³²⁸ Rwanda Development Gateway 'Rwanda Investment Policy Review.' Available at http://www.rwandagateway.org/article.php?id_article=8253 [Accessed 11 January 2010].

³²⁹ RDB 'About RDB.' Available at <http://www.rwandainvest.com/spip.php?article2> [Accessed 12 January 2010].

³³⁰ MINICOM (note 297).

export structure high transport costs, poor infrastructure in rural areas, competition from outside, financial constraints, outdated business laws, low levels of production and marketing constraints.³³¹

4.3 The rationale for the establishment and operation of EPZs in Rwanda

4.3.1 EPZs and their relevance to Rwanda

Given that Rwanda has considered establishing an EPZ, it may be because the current investment policies are not attracting the levels of foreign investment and exports that the government desires. There is a sense that ‘something’ more needs to be done to attract foreign investment and stimulate the economy and an observation that EPZs have worked well in Mauritius and elsewhere, Rwanda will learn a few lessons.

Additionally, it is deemed that an EPZ in Rwanda will undoubtedly enhance the quality of exports, attract foreign investment, provide foreign exchange earnings by promoting non-traditional exports and motivate other entrepreneurs in Rwanda to engage in production for non-traditional exports.³³² For an enterprise to be eligible to invest in the EPZ, it should have the capacity to accomplish the following goals or some of them:³³³

- i. creation of jobs that require specific and high quality technical know-how;
- ii. infusion of substantial new investments into productive activities;
- iii. transfer of modern technology and other know-how;
- iv. diversification and expansion of investment enterprises and exports;
- v. utilisation of locally produced raw materials; creation of linkages within the economy;
- vi. establishment of a plan of action which does not degrade the environment.

The law further stipulates that ‘an investor operating in a free economic zone shall be entitled to a right of importing machinery, equipments and raw materials (for the industry) and other goods free of duty.’³³⁴ The law n° 14/98 of 18/12/1998 establishing the Rwanda investment promotion agency provides some of the

³³¹ Ibid.

³³² Rwanda Development Gateway ‘The Export Processing Zone.’ Available at http://www.rwandagateway.org/article.php3?id_article=107 [Accessed 14 January 2010].

³³³ Art 24 of the Law No. 26 /2005 of 17/12/2005 relating to investment and export promotion and facilitation.

³³⁴ Ibid Annex 1(6).

incentives an investor operating in an EPZ shall be entitled to: exemption from withholding taxes and taxes on dividends; exemption from all other taxes normally levied on a business enterprise operating in the country; tax free externalisation of funds; the right to purchase locally produced goods and services free of duty and sales taxes as inputs in its production process.³³⁵

Although, the above incentive regime that will be offered by the Rwandan EPZ seems attractive, it would probably not be the principal attraction to the foreign investors, it would have to be internationally competitive and offer incentives comparable to those in Mauritius, Kenya and elsewhere. The Rwandan EPZ would probably have to compete with other incentive schemes in the EAC region.

It is not clear that a traditional EPZ is the best instrument to attract the type of investments that the country would benefit most from. In particular, providing a tax-free environment for an unlimited period of time may be excessive, especially if the Government faces the cost of setting up some of the physical infrastructure to EPZs.³³⁶ It also runs the risk of attracting ‘non-sustainable’ investors that choose investment locations mostly for incentives purposes and operate as enclaves with very limited linkages with the economy.³³⁷ Better-targeted incentives aimed at promoting the type of investments that Rwanda needs most may be a more efficient use of fiscal policy tools and scarce government resources.³³⁸ An alternative strategy, modelled around multi-facility industrial parks and free port logistics centres would be more appropriate for Rwanda.³³⁹

4.3.2 Fundamental steps that should be taken before establishing an EPZ in Rwanda

The first step is the passing of an Act that will empower the establishment of an EPZ. A statutory body or parastatal and in some cases a commercial company is established to oversee and regulate the operations of an EPZ. The powers of the regulatory authority are usually specified in the enabling Act.

³³⁵ Art 34 of the law No 14/98 of 18/12/1998 establishing the Rwanda investment promotion agency (RIEPA).

³³⁶ UNCTAD (note 312) at 41.

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ Ibid.

A fundamental question that must be clearly answered is whether Rwanda wants to encourage increased manufactured exports from foreign firms or whether it wants to encourage exports from firms already established in Rwanda. If the latter is more important, then the question becomes, what type of incentive will be most effective in increasing exports? As seen in chapter one, a range of incentives is possible. Would an EPZ attract foreign firms to locate in Rwanda which otherwise would not have come and would these firms contribute to the development of the country? Would the existing Rwandan firms benefit from the establishment of an EPZ? More specifically the Government will have to take decisions on a number of important questions, which relate to the establishment of an EPZ in Rwanda.

Given the nature of EPZ operations, it is difficult to see how an EPZ in Rwanda would operate. Nevertheless, if this is the case, then the real question would be whether an EPZ could be of benefit to Rwanda's existing manufacturing exporters. In addition, the manufacturing industry that exists in Rwanda has grown up in the face of stiff competition from larger and more established Kenyan firms. Furthermore, membership of regional organisations, such as the EAC and COMESA may limit the benefits of EPZs in Rwanda. The challenge remains on how to encourage existing Rwandan industries to export more unless a general export incentive scheme that is more appropriate and possibly cheaper is granted to local firms operating in the KFTZ.

4.4 The Legal and policy framework of the EPZ regime

Rwanda has no specific legislation governing EPZs. It only has a rudimentary legal framework for the establishment and operation of EPZs. At present, the Law No 26 /2005 of 17/12/2005 relating to investment and export promotion and facilitation covers the subject. It provides some essential provisions on the establishment, organization and management of EPZs but does not provide a detailed legal framework for developing and operating as well as using an EPZ. It defines an EPZ as 'a clearly geographically demarcated industrial zone where imported or locally produced machinery, equipment, goods and services are imported free of duty and utilized in producing new goods with at least 80 per cent of those goods exported and 20 per cent sold locally after paying the necessary duties and taxes.'³⁴⁰

³⁴⁰ Art 2 (7) of the Law No 26 /2005 of 17/12/2005 (note 333).

The Law No 26 /2005 requires EPZs to be established in respect of issuance of a certificate from authorities in charge of land granting; availability of land structure and environment assessment; presenting a study of the project; presence of a master plan; indication of how compensation of property and the activities of the expropriated persons are respected in accordance with law.³⁴¹

Art 23 establishes that the ‘Agency has the responsibility of organising and managing free economic zones, but controlling the daily operations of such places may be carried out by companies or private individuals in accordance with specific conditions stipulated in an agreement.’³⁴² Under the new scheme, Rwanda Free Trade Zone Company(RFTZ co.), a privately established company but with shareholders that are government parastatals, namely, Rwanda Development Bank(RDB), the Social Security Fund of Rwanda(SSFR), Bond Trading, Prime Holding and SONARWA is responsible for the managing the EPZs. The law of 2005 stipulates that the agency, which in this case is RFTZ co will assess whether businesses proposing to establish in an EPZ will provide all or some of a number of benefits to Rwanda when granting licences to operate in EPZs.

The planning strategy devised for the EPZ provides goals and objectives for the KFTZ is to: Firstly, develop a world-class free zone in Rwanda focused on attracting industrial, petroleum and commercial investors. Secondly, be competitive with other regional and international free zones and industrial estates and promote strong physical and economic linkages with the Democratic Republic of Congo, Burundi, Uganda, Tanzania and Kenya. Thirdly, attract new firms and new types of businesses and industries to the region and specifically to Rwanda, create jobs for the local population, provide a flexible and variety of free zone facilities that will accommodate the targeted market; promote backward and forward linkages; encourage development in an environmental friendly manner to preserve the beauty of the region.³⁴³

³⁴¹ Ibid Art 22(1-5).

³⁴² Ibid Art 23.

³⁴³ Jebel Ali Consultings FZE(JAFZA); *Kigali Free Zone, Master Planning and Market Access Study*, final report (September 2006) unpublished.

4.5 Protection of Labour Standards in Rwanda

Rwanda is among the very rare countries that have ratified all eight core ILO labour Conventions.³⁴⁴ The Ministry of Public Service and Labour (MIFOTRA) was established to reinforce the national labour standards, promote job creation and institutionalize an efficient and modern public service management framework that will enable private and public sector organizations to perform at their best and effectively contribute to improving the lives of the Rwandan population.³⁴⁵

4.5.1 Freedom of Association and the right to Collective Bargaining

Rwanda ratified both ILO Conventions on the Freedom of Association and on the Right to Organise and Collective Bargaining in 1988.³⁴⁶ The constitution provides for the rights to form trade unions, engage in collective bargaining, and strike.³⁴⁷ Similarly, the new labour law provides workers or employers with the right to freely set up and join any trade union.³⁴⁸ An order of the Minister in charge of Labour determines the modalities and conditions for the registration of trade union.³⁴⁹

According to the 2007 ICFTU annual Survey of Trade Union rights violations,³⁵⁰ while the government appears to be trying to improve relations with trade unions, for example, it has allowed the organisation of elections to determine the representativeness of the trade union organisations but suspicions remain that it is still seeking to manipulate them. The authorities have interfered in trade union affairs and employers have shown hostility to unions, with little or no retribution. Thus the overall record of trade union rights has been poor, with pressure being exerted on the unions often in subtle and indirect fashion.³⁵¹

Employers frequently intimidate trade unionists who are too militant for their liking. They do this through transfers, demotions and dismissals. In January 2005, for

³⁴⁴ ILO 'List of Ratifications of International Labour Conventions.' Available at <http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byCtry.cfm?ctychoice=2830&lang=EN&hdroff=1> [Accessed 16 January 2010].

³⁴⁵ MIFOTRA 'Our mission.' Available at <http://www.mifotra.gov.rw/lang/en/index.php> [Accessed 16 January 2010].

³⁴⁶ ILO 'ILOLEX Ratification.' Available at <http://www.ilo.org/ilolex/english/newratframeE.htm> [Accessed 17 January 2010].

³⁴⁷ Art 38 and 39 of the Constitution of the Republic of Rwanda.

³⁴⁸ Art 101 of the law No 13/2009 of 27/05/2009 regulating labour in Rwanda, Official Gazette of the Republic of Rwanda n° special of 27/05/2009.

³⁴⁹ Ibid Art 102.

³⁵⁰ ICFTU 2007 annual survey of violations of trade union rights.' <http://survey07.ituc-csi.org/getcountry.php?IDCountry=RWA&IDLlang=EN> [Accessed 16 January 2010].

³⁵¹ Ibid.

example, the telecommunications company RWANDATEL sacked Anathalie Mukayih, the treasurer of the union committee of the telecommunications union.³⁵² Employers do not always respect the Constitutional requirement to discuss any proposed staff reductions with their employees' union representatives.³⁵³ In early 2006, the Kigali Institute for Science and Technology unilaterally dismissed 45 employees.³⁵⁴

The Labour Code recognises the right to strike,³⁵⁵ however, with so many restrictions. A strike is legal when the other party has been given a four day notice or when the arbitration committee has exceeded 15 days without taking decision or when the conciliation resolution on collective bargaining and the court award being enforceable has not been implemented.³⁵⁶ In its comments, the ILO committee notes that a form of compulsory arbitration places too great a restriction on the right to strike of trade union organizations.³⁵⁷ The list of the so-called 'essential services' in which strikes are not allowed is excessively long. Besides these legal restrictions, the government and many employers are opposed to the idea of trade unions operating freely. Labour legislation is rarely enforced due to a lack of inspectors, no resources for enforcement and an insufficient number of labour courts compounding the workers' rights abuses which Rwandan workers face.³⁵⁸

The right to collective bargaining is recognised³⁵⁹ but this right was severely limited. Although, the national trade union centre, *Centrale des Syndicats des travailleurs du Rwanda* (CESTRAR) has noted a definite improvement in the social climate, it continues to denounce the continuing harassment of trade unionists who

³⁵² ITUC 2009 annual survey of violations of trade union rights.' Available at <http://survey09.ituc-csi.org/survey.php?IDContinent=1&IDCountry=RWA&Lang=EN> [Accessed 16 January 2010].

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Art 151 of the law N° 13/2009 of 27/05/2009 (note 348).

³⁵⁶ Ibid Art 151(1 and 2).

³⁵⁷ ILO 'Freedom of Association, Collective Bargaining, and Industrial Relations in Rwanda.'

Available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloilc&document=484&chapter=16&query=%23subject%3D01%40ref%2B%23YEAR%3D2009&highlight=&querytype=bool&context=0> [Accessed 18 January 2010].

³⁵⁸ Pambazuka 'Trade union rights desperately lacking in Rwanda.' Available at <http://www.pambazuka.org/en/category/rights/22020> [Accessed 18 January 2010].

³⁵⁹ Art 119 of the law N° 13/2009 of 27/05/2009 (note 348).

have been threatened and sometimes dismissed either unfairly or for the supposed reasons of ‘removal’ of a particular post or ‘staff reductions.’³⁶⁰

In sum, workers have the right to collective bargaining, right to organise and form trade unions, however all these rights are limited or hardly used because of lack of enforcement. Therefore, there is a need to adopt measures to promote these rights.

4.5.2 Prohibition of child and forced or compulsory labour

While the labour code specifically prohibits child labour,³⁶¹ it is still prevalent in Rwanda. Most children still work in subsistence farming, in small companies and on tea plantations. School enrolment is low and public schools lack even the most basic supplies.³⁶² Many children, mainly genocide orphans, work as domestic servants, they receive low wages and abuse is common.³⁶³ Furthermore, there are some 7,000 street children in Rwanda whose income is dependent on selling goods, begging and stealing.³⁶⁴

The law prohibits forced or compulsory labour³⁶⁵ and the government generally enforced this right. However, prisoners were assigned work details that generally involved uncompensated public maintenance duties and *Gacaca* courts sentenced convicts to perform community service and those suspected of committing genocide who confessed were given sentences involving community service.³⁶⁶

4.5.3 Acceptable conditions of work

The labour law does not indicate the minimum wage but stipulates that the minimum guaranteed wage (MGW) per categories of work shall be determined by an Order of the Minister in charge of labour after collective consultations with the concerned organs.³⁶⁷ In all enterprises, the legal employment’s duration is 45 hours per week.³⁶⁸ However, due to the specific nature of the work the weekly working hours shall be based upon the agreement between the two parties.³⁶⁹ The law also provides for the

³⁶⁰ ILO (note 357).

³⁶¹ Ibid Art 4.

³⁶² US department of state A report on human rights practices in Rwanda.’ Available at <http://www.state.gov/drl/rls/hrrpt/2008/af/119019.htm> [Accessed 18 January 2010].

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ Art 8 of the law No 13/2009 of 27/05/2009 (note 53).

³⁶⁶ US department of state (note 359).

³⁶⁷ Art 76 of the law No 13/2009 of 27/05/2009 (note 348).

³⁶⁸ Ibid Art 49.

³⁶⁹ Ibid.

mandated weekly rest period, which shall not be less than 24 consecutive hours per week.³⁷⁰ However, the law does not provide for premium pay for overtime.

4.6 EPZs and labour standards: potential challenges and tensions for the future in the KFTZ

The Law No. 26 /2005 and the labour code do not have express provisions regarding the applicability of the current labour code in the established EPZ. Overtime is practically compulsory in EPZs. Furthermore, it would be easy for an EPZ firm to threaten to leave if a dispute was not settled to its advantage. There seems to be a loop hole in Rwanda because it is not clear whether the ordinary labour code will apply or whether the government intends to set up labour standards that are applicable only in the EPZ.

A notable challenge relates to the recently adopted labour code whose provisions may well deter prospective investors. Should the Labour Code, in particular the provisions concerning joining or forming any trade unions of the workers' choice, working hours and handling of industrial disputes apply to the EPZ? Experience in many EPZs is that overtime is practically compulsory. Furthermore, it would be easy for an EPZ firm to threaten to leave if a dispute was not settled to its advantage.

Along this line, given the exploitative character of EPZs and abuses of workers rights, all hands must be on deck to protect the worker from extreme abuses. This is certainly a task for all, that is, the government, workers themselves, trade unions and EPZ employers. Generally they should work towards ensuring the observance and protection of labour rights in the EPZs. Working conditions and abuse of workers rights in EPZs have been widely criticized by scholars. The criticism centers on harsh working conditions and lack of freedom of association. This situation was demonstrated in the Namibian EPZ experience. This ought to be avoided in Rwanda; hence, it is useful that from the start a cordial working relationship should exist between workers and EPZ employers. Good working industrial conditions is necessary for a sound EPZ that will stimulate growth in the Rwandan economy.

³⁷⁰ Ibid Art 52.

If the Rwandan government must live to the expectation of protecting and ensuring its citizens a humane existence, it must do everything possible to ensure that employers in the EPZs observe basic minimum labour standards and working conditions. This can be done through increased labour inspection services. The ILO has argued in respect of its conventions that making work more humane and promoting conditions in which work respects the worker's life and health, requires creating a machinery to oversee and supervise implementation of conventions adopted in the first instance to humanise work.

4.7 Constraints and prospects to the successful establishment of the EPZ program in Rwanda

4.7.1 Constraints

Rwanda is a small landlocked and densely populated country with enormous transport barriers. The country lacks a link to regional railway networks, which means that most trade is conducted by road. This does not only lead to higher costs of transport but also leads to dependence on the infrastructure and administrative procedures of neighbouring countries with coastlines (Kenya and Tanzania).³⁷¹ It has been noted that Rwanda has the highest imported freight service costs in the region, which are nearly three times the African average.³⁷² The location and accompanying structural bottlenecks puts Rwanda at a competitive disadvantage as opposed to its neighbouring countries in the region, which are located in the seacoasts. Thus, the landlocked situation creates a high dependence on its neighbours for access to global trade and markets which is a major constraint for Rwanda's international trade, competitiveness and may hinder EPZ development.

The second source of constraint is the long-term damage done to physical and institutional infrastructure by the genocide of 1994. Close to one million people were killed, two million people were driven into exile, over a hundred thousand people were put in prison, and thousands of people were handicapped, physically and mentally.³⁷³ The lack of investment and maintenance in electricity, for example,

³⁷¹ Supachai Panitchpakdi and Guy Sebban An investment guide to Rwanda: Opportunities and conditions (2006) a guide published as part of the UNCTAD–ICC series of investment guides UNCTAD/ITE/IIA/2006/3 at 2.

³⁷² Ibid.

³⁷³ Rwanda Genocide Rwanda: 'The wake of a genocide.' Available at <http://www.rwanda-genocide.org/> [Accessed 12 January 2010].

plagues Rwanda to this day as investors identify the cost of power and the erratic nature of its supply in addition to the severe damage to human resources and institution as the main constraints on doing business in Rwanda.³⁷⁴

The low level of human resource development in terms of severe shortage of professional personnel constitutes a constraint to the development of the EPZ regime such as, the lack of adequately trained people in EPZ programmes. This is demonstrated by a shortage of technicians and competent managers which constrains the expansion of the secondary and tertiary sectors.³⁷⁵ In addition to the illiteracy that is rampant both amongst the urban and the rural population with 48 per cent of Rwandans unable to read and write.³⁷⁶

In brief, Rwanda faces particular challenges to attract foreign investment given the small size and low level of development of its economy, poor infrastructure, low level of human capital and limited natural resources. As a consequence, it must strive to make the most of all its assets and the need to put in place a private-sector friendly legal and regulatory framework and its willingness and commitment to work in that direction. Rwanda should thus strive to achieve the highest standards in legal and regulatory issues

In sum, FIAS summarizes the most common obstacles to the success of EPZs as poor site locations; entailing heavy capital expenditures; uncompetitive policies such as reliance on tax holidays, rigid performance requirements, poor labour policies and practices; poor zone development practices for instance inappropriately designed or over-designed facilities, inadequate maintenance and promotion practices; subsidized rent and other services.³⁷⁷ It further notes that cumbersome procedures and controls, inadequate administrative structures or too many bodies involved in zone administration and weak coordination between private developers and governments in infrastructure provision are obstacles.³⁷⁸

³⁷⁴ Panitchpakdi and Sebban (note 371) at 2.

³⁷⁵ Republic of Rwanda (note 303).

³⁷⁶ Ibid.

³⁷⁷ FIAS (note 59) at 50.

³⁷⁸ Ibid.

4.7.2 Prospects

With the numerous constraints, why should Rwanda take an interest in establishing an EPZ in a landlocked country with a limited market? These are some of the reasons:

Primarily, Rwanda is a virgin territory for investors. The domestic market may be small but it offers opportunities across the board as so few goods and services are locally produced.³⁷⁹ The country runs a substantial trade deficit because it imports just about everything and this offers opportunities for import substitution, for example in consumer goods, the largest category of imports.³⁸⁰ The very fact that this is a landlocked country to which access only comes with high transport costs also means that there is a certain natural protection for investors in the country.³⁸¹ These features of Rwanda as an investment location would be of particular interest to small investors.

On one hand, Rwanda's position as a landlocked country may be looked upon as a constraint to establishing an EPZ. On the other hand, there are numerous opportunities arising from this strategic positioning. The landlocked position has shaped Rwanda into developing a vision that focuses on regional integration with Rwanda as a hub, investing in a knowledge -based economy, and economic transformation towards high-value products.³⁸² This requires that Rwanda establish adequate soft and hard infrastructure to support the development agenda, which in turn presents immediate prospects for serious investment.³⁸³

It is important to note that 15 years after the genocide, Rwanda is a very different country from what it was for most of its post-independence history. Foreign investors speak of it as one of the safest and peaceful places in Africa with a strong anti-corruption policy. It also has a development-oriented Government committed to the transformation of the economy into a regional hub for services and industry. Clean, committed and peaceful, Rwanda is now an investment location well worth considering.

³⁷⁹ UNCTAD (note 312) at 1.

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² Remarks by the President of the Republic of Rwanda at the Leadership Summit on Private Equity In Africa on 2 November 2009, London.' Available at <http://www.paulkagame.com/speeches02-11-2009.php> [Accessed 19 January 2010].

³⁸³ Ibid.

In order to increase the probability of success of an EPZ program, it is suggested that the establishment of EPZs should not be regarded as a substitute for pursuing economy-wide reforms. Similarly, there is a need to encourage more and stronger backward linkages between export-oriented firms and the rest of the local economy; to diversify the composition of the export-oriented sector and to upgrade export-oriented legislation.

There is substantial potential for Rwanda to take advantage of the prospects to benefit from the development of EPZs. Taking advantage of these prospects, however, will not be easy. Rwanda will have to be able to put together a coordinated package of incentives, infrastructure and services that will be attractive to foreign investors. This will require articulating a vision of the country's development, building national consensus around this vision, moving expeditiously to action, to implement the elements of the vision and sustaining continuity of the package of incentives, infrastructure and services offered.

4.8 Lessons for Rwanda

It has been pointed out in chapter two that fiscal incentives are important in determining the attractiveness of EPZs. Therefore, it is important that the established EPZ in Rwanda exempts its firms' exports from indirect taxes such as sales taxes, border taxes and import charges. However, special care would be needed to ensure that these measures are applied in a manner consistent with the WTO rules. It is thus important to strengthen and streamline the system of permissible incentives.

Rwanda should look to the experience of Mauritius simply because it has been one of the most successful countries in history at achieving both economic growth and distributional equity as seen in the previous chapter. The Mauritian EPZ regime provides a role model for Rwanda, particularly in the view of the fact that it is the first EPZ to be established in the Sub-Saharan region, and the fact that it is often, so far regarded as one of the few most successful EPZs in the world.

It seems too obvious to mention that, to develop a successful program in any area, a country must have a clear vision of where it is going and what it wants to do. In the 1970s by establishing an EPZ, Mauritius decided that it could remain in a low-growth rut as a sugar-based economy practicing import substitution or it could adopt

an export-oriented approach to growth and aim for higher sustained growth rates by positioning itself as an offshore base for manufacturers supplying European markets.

However, a vision itself is not enough. In Mauritius, it is evident that actions to set up the EPZs took place on a broad front involving a large number of actors. The government established an attractive legislative and incentive framework. MEDIA undertook the design, construction and marketing of the EPZs. The Development Bank set up business-friendly lines of credit. The Chamber of Commerce provided constant feedback on the needs of the business community. A 'One-stop-shop' was set up in the Ministry of Industry and Commerce to serve as a mediation center that would help businessmen resolve problems with the administration.

As discussed in the Mauritius and Namibian EPZ experiences, compromises on social, environmental and labour standards in the name of international competitiveness lead to a 'race to the bottom.'

Mauritius positively stands out when it comes to labour standards in EPZs. The impact of the Mauritian trade and investment policies in respect of labour standards is impressive. Mauritius can also be applauded for its liberal policy toward trade union rights and the right of association. This is portrayed by a flexibility given to labour unions to negotiate higher wages for EPZ workers than those applying outside the zones.

For the case of Namibia, Ramatex represents a typical example of a transnational corporation playing the globalisation game.³⁸⁴ Overall, Ramatex' presence in Namibia was a disaster for the country³⁸⁵ and some hard lessons will have to be learned by Rwanda to avoid the same in future. When dealing with foreign investors, there is an urgent need to ensure compliance with national laws and regulations, workers rights, as well as environmental, health and safety standards.

Similarly, in the case of Ramatex, the Namibian government abandoned its role as regulator and defended Ramatex against criticism and concerns raised by workers, unions and some NGOs. The Ramatex case has shown the problems of

³⁸⁴ Jauch (note 273).

³⁸⁵ Ibid.

blindly accepting any investment as beneficial. Instead of adopting an open-door policy towards foreign investment, Rwanda will need to adopt selective policies that channel investments into the established EPZs, this will have a lasting developmental impact. They require a very clear and strategic EPZ development agenda that is not based on blind faith in foreign investment, as workers cannot remain mere victims of investment decisions.

It has been discussed in the previous chapters that EPZs are more likely to be successful when there exists the lowest amount of risk, a liberal foreign exchange regime and stability in currency, transparency in regulatory regime and good institutional response. Therefore, Rwanda needs to adopt a clear, targeted and well-defined export-oriented strategy in order to promote the philosophy of export promotion through EPZs. There is also a need for consistent support by both the governments and policymakers. The government, along with its agencies and related departments needs to maintain the support extended to investors in EPZs. This should be shown through continuity of fiscal incentives, infrastructure services and business environment. The EPZs need to be designed in a way that these do not result into a need for government subsidies leading to deterioration in fiscal discipline. To reduce the distortionary impact on the host economy, differential fiscal incentives need to be rationalised. It would be justified to give affordable incentives consistent with the WTO.

It is the intention of this chapter to conclude that the regime in itself is not a bad approach to export led growth. The regime in its finest state will suit perfectly with the vision 2020 of transforming Rwanda into a middle-income by stabilizing the economy, reducing aid dependency and developing exports. In order to ensure the successful implementation of the EPZ regime in Rwanda, it is vital that a number of critical conditions be met, namely : the formulation of a proper legal, institutional and regulatory framework; the provision of modern infrastructure and equipment facilities; the simplification of administrative procedures and training manpower; the provision of an attractive and competitive package of incentives and the launching of an aggressive marketing and promotional campaign.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The previous chapters have demonstrated that behind the veil of promoting investment in EPZs, governments draft national trade, investment and labour policies that fall short of meeting the core labour standards. Thus, in the name of attracting FDI, trade and investment policies have had a detrimental effect on labour standards in EPZs. Yet trade and investment continue to hold the potential for contributing to higher development, employment, living standards and fighting world poverty.³⁸⁶ Similarly, EPZs are important source of job creation but the quality of these jobs leaves much to be desired. Competition for FDI has led to the provision of incentives such as labour flexibilities and exemptions from labour regulations and none or insufficient enforcement of labour legislation. Trade union rights are systematically undermined in EPZs, resulting into massive violations of workers' rights. The governments must incorporate far-reaching improvements in their mechanisms so that trade and investment policies can serve social development and help lead to the improvement not the denial of labour rights. EPZ laws need to be democratised by considering labour standards.

To reach this conclusion, the paper employed an overview of the concept of EPZs encompassing the definition of EPZs and labour standards, goals and characteristics of EPZs in chapter one. Chapters two and three have demonstrated that the desire to attract foreign investment has caused 'race to the bottom' in labour standards of EPZs. This has been demonstrated in the experiences of Mauritius and Namibia that have both opened up their economies to foreign investment through establishment of EPZs that have resulted in violations of core labour standards. In particular, the weakness of the labour laws contributed to the exploitation and suffering of EPZ workers. Chapter four explored whether the establishment of an EPZ regime is worth Rwanda's sacrifice.

Sound labour management relations are essential to the success of EPZs. For EPZs to fully achieve their economic and social potential, governments should have clear, comprehensive trade and investment policies consistent with the need to

³⁸⁶ ICFTU 'International labour standards and trade.' Available at http://www.icftu.org/www/english/congress2000/econres2000_XI.pdf [Accessed 4 December 2009].

promote labour standards in the EPZs as defined in ILO standards. Political and social stability based on good governance, transparency, effectiveness and respect for national and international labour standards is a major factor in attracting investment that promotes long-term, high quality growth in EPZs. More importantly, the legal restrictions on trade union rights, the lack of enforcement of labour legislation, the absence of workers' organization representation and of effective structures of labour management relations undermine the ability of EPZs to upgrade skills, improve working conditions and productivity and thereby become dynamic and internationally competitive platforms.

Nevertheless, the failures and successes of Mauritius and Namibia EPZs serve as models to Rwanda. For the fact that EPZ policies are trade and investment centred, it is important that it is understood that the systematic violation of labour standards in EPZs for the purpose of attracting foreign investment is a particularly cruel and unfair form of trade and investment policy.

5.2 Recommendations

Despite all the many challenges in Rwanda, the EPZ regime could, if well managed and all the necessary tools are in place, assist in realizing the countries vision 2020 of transforming Rwanda into a middle-income country by the year 2020.

However, there is need to put in place a transparent and appropriate legal, regulatory and incentive framework based on best practices and an efficient and effective administration mechanism to oversee the implementation of the EPZ regime. The regime should be taken as part of a coordinated comprehensive countrywide reform aimed at building a sustainable conducive environment for the development of the export oriented industrial sector. More importantly, local industries should be called to actively participate in activities of the EPZ. The EPZ Authority should work hard in building local awareness of the operations and benefits of the regime. Should Rwanda establish the regime in the wake of regional integration, she needs to negotiate for harmonization of incentives to deter competition among member states of the same trading blocks.

Rwanda should be fully appraised of the costs and benefits to the budget and to the incentives they will be offering to EPZs. Incentives should be compatible with WTO rules. In addition, zones and EPZ firms should be allowed to locate in various

locations like in Mauritius. Government should provide efficient, streamlined and prompt services for setting up and running EPZs approval of investment applications, customs and other supervisory institutions. Privately owned and managed zones should be encouraged. However, strengthening regulations and monitoring can mitigate potential labour law infractions and improve working conditions, reducing turnover and absenteeism and increasing worker productivity. Follow-up regulations, incentives, and monitoring should be tailored accordingly.

In order to ensure that labour relation policies and the laws applicable to EPZs respect the trade union rights of EPZ workers, it would be necessary to encourage governments to promote tripartite consultations in the development of such laws and policies.³⁸⁷ For achieving better compliance with the national and international labour standards in EPZs, strategies such as, information, education and awareness-raising programmes aimed at investors, managers, employers and workers of EPZ enterprises should be employed.³⁸⁸ In addition, encouraging governments to provide for workers' participation in boards of investment promotion and EPZ management bodies would ensure that these labour standards are also respected in practice.

Governments' commitment to core labour standards would help to spread more fairly the benefits of EPZs by preventing the worst forms of exploitation and enabling trade unions to bargain for decent and appropriate levels of wages, benefits and working conditions. It would encourage a more sustainable process of foreign investment and bring increased benefits to EPZ host countries. The pre-requisite for any investment in EPZ must be strong workers' rights and environmental clauses to ensure that incentives for FDI do not include violation of core labour standards or lax environmental protection in EPZs.

The WTO must agree upon a range of measures to tackle the priority concerns with respect to core labour standards and establish full transparency, cooperation and openness towards other relevant UN agencies, in particular the ILO. The WTO in conjunction with the ILO, the main international organisations and other actors concerned, including unions and employers, should work together to

³⁸⁷ Gopalakrishnan (note 92)

³⁸⁸ Ibid.

develop proposals for effective international policies to promote labour standards, investment and trade in EPZs.

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