JOURNEYS:

CURRENT STATE ASSESSMENT OF NIGERIAN EXPORT PROCESSING/FREE TRADE ZONES REGIME

THOUGHT LEADERSHIP BY:

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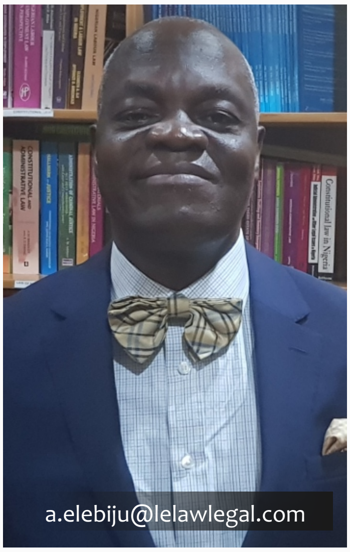


> "IS NIGERIAN FTZ STRATEGY WORKING? 'JURY IS OUT' "
>
> - AFOLABI ELEBIJU, JUNE 2008[2]

> "NEPZA HAS SEEN MUCH DEVELOPMENT IN THE COURSE OF ITS EXISTENCE, BUT IT COULD HAVE BEEN BETTER"
>
> - ENGR. TERHEMBA NONGO, MD NEPZA, SEPTEMBER 2019[3]

Nigeria, in a bid to further improve her investment attractiveness propositions, formally joined the league of countries with export processing zone (EPZ) or free trade zone (FTZ) regimes in 1986, with the enactment of the ***Nigeria Export Processing Zones Act*** (***NEPZ Act***).[4] Whilst the NEPZ Authority (NEPZA), established by ***section 2 NEPZ Act*** was only inaugurated in 1992, it took another nine years after NEPZA's inauguration before the first EPZ in Calabar commenced operations in November 2001.[5] In 1996, the ***Oil & Gas Export Free Zone Act***[6] (***OGEFZ Act***) was enacted to cater for the oil and gas industry, with the OGEFZ Authority (OGEFZA) as the regulator whilst Onne/Ikpokiri in Rivers State was designated the inaugural OGEFZ.[7]

The regulatory regime of Nigerian FTZs and the appropriate legal tax regulatory treatment of transactions within and outside the

1 The authors gratefully acknowledge the input of our former colleague, Ms. Ayooluwatunwase Fadeyi to the first draft of this article, but take full responsibility for all the views expressed herein.

2 Slide 40, ***'Free Trade Zones & Nigeria Tax Regime'***, a June 2008 presentation by Afolabi Elebiju (referred to subsequently in this article).

3 NEPZA, ***'Why Kano FZ Must Work Optimally'***, https://www.nepza.gov.ng/index.php/news/item/18-why-kano-fz-must-work-optimally-nepza-ag-md (accessed 04.04.2020).

4 ***Cap. N107, Laws of the Federation of Nigeria (LFN) 2004***.

5 Nats Agbo, ***'Understanding Nigeria's Free Trade Zone Scheme'***, *The Guardian*, 07.09.2016: (accessed 25.04.2019).

6 ***Cap. O8, LFN 2004***.

7 The President has the authority to designate an area as an EPZ on the recommendation of NEPZA: ***section 1 NEPZ Act; Rule 1, Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria 2004***. Apparently, ***section 1 OGEFZ Act*** took the unusual step (rather than *via* subsidiary legislation), of designating Onne as the first OGEFZ.

Zones, have been well discussed elsewhere.[8] This article focuses on the current state assessment of Nigerian FTZs, an evaluation of their historic (actual) *versus* projected contributions to the economy, *vis a vis* the regulatory energies expended in establishing and administering the FTZ regulatory framework. There are burning questions: *Could there have been more progress in Nigeria's FTZ journey than we have had?*[9] *How do we de-bottleneck the impediments to optimal FTZ contributions to national economic development?*[10] We discuss our findings and views on these issues, henceforth in this article.

Strides: Calabar, Onne OGEFZ and Lekki FTZ Case Studies

Calabar FTZ

The Calabar FTZ (CFTZ), located in Cross River and occupying a land size of over 220 hectares, was established in November 2001 as the pioneer FTZ in Nigeria.[11] It had reportedly attracted over 11,000 jobs to Cross River State as at May 2017 and hosts enterprises such as General Electric FZE.[12] Bedevilled by infrastructural challenges since its start-up (discussed extensively in this article), NEPZA announced some "upgrade" of CFTZ in December 2019 "*to make the zones attractive to investors and manufacturers.*"[13]

Onne OGEFZ

The Onne OGEFZ in Rivers State, was the first and only designated OGEFZ in Nigeria, and OGEFZA began regulatory operations in 2000.[14] The OGEFZA has since licensed over 200 companies to operate in Onne, including reputable multinationals representing 45 nationalities, and supporting Nigerian upstream activities. According to Intels Nigeria Limited (Intels), "*Onne Port Complex is the largest oil and gas free zone in the world.*"[15] The Onne OGEFZ comprises two major terminals: Federal Ocean

8 See for example, Afolabi Elebiju, ***'Free Trade Zones & Nigeria Tax Regime'***, *CITN MPTP presentation, Ibadan, 25.06.08* **("CITN Presentation"):** https://www.slideshare.net/slideshow/embed_code/key/Bkvn9hpIhdlsTY ; and ; Frank Okeke and Ayo Fadeyi, ***'Nigeria Free Trade Regime: Frequently Asked Questions (FAQs)'***: http://www.lelawlegal.com/_blog-details.php?title=nigeria-free-trade-zone-regime; and Uzeme Olomu-Agbodo, ***'Free Trade Zones in Nigeria: Contentious and Burning Issues'***: https://www.academia.edu/16085453/ (all accessed 08.03.2019).

9 For example, NEPZA's list of (19) inactive FTZs, include some that had been designated an FTZ since 2000, but remarks thereunder about their status was that "*physical dev. yet to commence*". An example is Oluyole FTZ, Ibadan: https://www.nepza.gov.ng/index.php/free-zone/inactive-free-zones (accessed 04.04.2020).

10 Many of these questions are not new. In the ***CITN Presentation***, Afolabi Elebiju raised the following posers *inter alia* in ***Slides 41, 42*** and **46** under ***'Counting the Cost':*** *'30 Silver Coins' Paradox: has Government given away too much? Cf. NLNG Tax Incentives Act/NNDC Levy/Udoma Committee on Review of Concessions & Waivers; Preliminary issue: meaningful analysis difficult -absence of accurate, current data on monetary value of FTZ incentives since inception, vis a vis impact of FTZs on local and national economy; Difficult to see how NEPZA can perform duty (in s. 4(g)) – 'recommendation to the Federal Government of additional incentive measures for the Zones'-without scientific data to evaluative adequacy or otherwise of incentives; Internal and external studies are both necessary. NEPZA still largely "civil service", e.g. on access to information; Cf. Costa Rica: Cost-Benefit Analysis of the FTZ System: The Impact of FDI in Costa Rica(2005 Study –OAS Trade, Growth & Competitiveness Studies) done for Foreign Trade Corporation of Costa Rica; 'NEPZA News. THIS IS A TEST NEWSREEL INFORMATION MAY BE DATED':* http://www.nepza.org/microNews/index.php; *As at December 2007, the value of investments in Nigeria's pioneer EPZ was only $100 million. Cf.with another view that private sector investments reached $220m (as at 2004); After 1st private EPZ (Lekki), many major investors now seeking FTZ status for locations of their business, e.g. OKLNG, Brass LNG, AKLNG; How much have we seen in the so called 'four priority areas of development': i. Metallurgical/Engineering Industries, ii. Agriculture (Forest-based/agro-allied), iii. Chemical/Petrochemical Sector, [and] iv. Construction Sector[?]; Tax incentives–without them firms might not have come, but now that they have come...; Personal income taxes (PIT) payable by employees of approved enterprises –incentives apply to firms, not employees…; Employment of locals: concerns about Lekki EPZ ($267 million investment in 1st Phase, proposed 15 sq. km coverage & total investment of $5 billion). '… as with other announced Chinese projects in Africa, whether or not Nigeria will ever see a… FTZ in Lagos where 300,000 Nigerians are employed is a matter of speculation, if not skepticism. … According to a Nigerian report, 'Chinese companies are notorious for their tendency to bring in their own workers as opposed to hiring locally. This policy does not in any way address issues of unemployment in the host nations. Safety standards within their industries are another area of concern'; OGEFZ–instability in Niger Delta a major inhibitor to goal of being service hub to entire Gulf of Guinea…; Infrastructure is always a major issue…"*

11 See Abdulaziz Salisu, ***'Diversifying the Economy through Export Processing Zones',*** *Economic Confidential, 20.06.2017:* https://economicconfidential.com/2017/06/export-processing-zone-economy/ (accessed 06.05. 2019).

12 It hosts "*companies engaged in manufacturing, trading, provision of services and oil and gas related activities*". See ***'CFTZ Attracts 11,000 Jobs To Cross River – NEPZA Boss'***: https://www.nepza.gov.ng/index.php /news/item/3-cftz-attracts-11-000-jobs-to-cross-river-nepza-boss (accessed 04.04.2020).

13 See Francis Arinze Iloani, ***'Kano, Calabar Free Trade Zone Almost Complete - NEPZA',*** *Daily Trust, 26.12.2019:* https://www.dailytrust.com.ng/kano-calabar-free-trade-zone-almost-complete-nepza.html (accessed 04.04. 2020). "*… the Acting Managing Director of NEPZA, Engr. Terhemba Nongo, said the upgrade involved provision of internal road networks, water supply and electricity to make the zones attractive to investors and manufacturers.*" On another occasion, he stated: "*But following the coming into office of President Muhammadu Buhari, things have been looking up. Before now, the most the Authority got in terms of budgetary receipts was N2billion! But under the incumbent President, specifically in 2017, for the first time in the history of NEPZA, the Authority received an unprecedented capital injection of N50billion – although only N20.5 billion was released. The same figure was again allocated to us in 2018. And from the budget estimates, we are expecting the same in this 2019. Consequently, there has been a corresponding spike in the activities in the Public Zones in Calabar and Kano, especially in terms of infrastructural development or renewal i.e. water, power, roads etc. By the time we are through, these public Zones would have world-class amenities or infrastructure; and invertors operating there too, who have issues with water or power, would heave a sigh of relief. And world-class investors would, therefore, be attracted to the Zones, and this, in leaps and bounds.*" See NEPZA, ***'Why Kano FZ Must Work Optimally'***, https://www.nepza.gov.ng/index.php/news/item/18-why-kano-fz-must-work-optimally-nepza-ag-md (accessed 04.04.2020). Also, according to former MD NEPZA, Emmanuel Jime, "*Recognising the need to boost the activities of NEPZA, the administration decided to increase the authority's budgetary allocation to N50bn ($161.6m), with this sum projected to increase to roughly N100bn ($323.3m) in 2020. Free zones are expected to have the kind of infrastructure that cannot be found elsewhere in the country. Nigeria has an infrastructure deficit at the moment. Power, water and even a functioning road network are not guaranteed nationwide.* ***The decision has been made to empower free zones to create oases of great infrastructure. The idea is to develop these particular platforms to a level where they can compete with other such zones based around the world.*** *We plan to follow the examples set by Ireland, the UAE and China.*" (Emphasis supplied). See ***'On Using Free Zones as Cornerstones of Economic Growth',*** *(interview with Oxford Business Group), 11.02.2019:* https://oxfordbusinessgroup.com/views/emmanuel-jime-managing-director-nigeria-export-processing-zones-authority-nepza (accessed 04.04.2020).

14 *Cf.* OGFZA statement on its website: "*The first oil and gas export free zone to be established in the country was the Onne Oil and Gas Free Zone in Rivers State.* ***Subsequently other oil and gas free zones were established*** *as public-private partnerships between the Federal Government of Nigeria and private sector operators.*" See OGFZA, ***'OGFZA History'***: https://www.ogfza.gov.ng/index.php/company-overview/company-history/ (accessed 15.05.2019). OGFZA listed "*Existing Zones Under OGFZA*" as: (1) OGFZ Onne/Ikpokiri, Rivers State (Operating); (2) OGFZ, Warri Port Complex, Delta State (Operating); (3) OGFZ, Eko Support Lagos Operating; and (4) Brass Oil & Gas City, Brass Island (BOG), Bayelsa State. See: OGFZA, ***'Presentation on the Oil & Gas Free Zones Authority Nigeria'*** *(undated), Slide 4:* http://fzgil.org/wp-content/uploads/2017/09/The-Oil-Gas-Free-Zones-Authority.pdf (accessed 20.05.2019).

15 Intels, ***'Onne Port Complex'***: http://www.intelservices.com/onne-port-complex (accessed 20.05.2019). Intels further states, "*All of the major industry players are operating from Onne, supporting the exploration and production of Nigerian activities. Under-used and partially built, Intels Nigeria Limited refurbished it from 1982 until 1995, when the first ocean vessel moored at FOTs (Federal Ocean Terminal) Berth No. 1. This became the only berth for deep offshore support.*"

Terminal (FOT) and Federal Lighter Terminal (FLT).

In 2017, OGEFZ was reportedly adjudged by the *Financial Times* as the most successful African FTZ, in in terms of Foreign Direct Investment (FDI).[16] According to OGEFZA, Intels, inspired by best practices in other jurisdictions such as the North Sea and the Gulf of Mexico, domesticated the concept of *"one-stop oil service centre"* that led to the integration and rationalization of the logistic requirements for import and supply of equipment for offshore exploration, development and production which also *"maximised Nigerian Ports Authority's (NPA) revenue and control."* The introduction of the concept of shared-facilities and services by all the major upstream and downstream companies drastically reduced their operational costs.[17]

The OGEFZA incorporated Freezone Global Investments Ltd in 2015 as it's *"investment subsidiary"* to engage with potential investors, promote investment opportunities in OGFZs and facilitate PPPs on behalf of OGEFZA in OGFZs, and maximize *"OGFZA's potential as a vehicle for promoting accelerated growth and sustainable development."*[18] According to OGFZA, operators in the OGEFZ include the following:

Tenant Investors – these are approved enterprises engaged in the processing, refining /manufacturing of products in the oil or gas value-chain; or are service companies involved in or supporting oil and gas projects.[19] Since the OGEFZA support the integration of oil and gas value chains (upstream and downstream), these Tenant Investors focus on the related opportunities and in that regard lease spaces/facilities provided by FTZ development companies.

Free Zone Developers - Investors may develop a greenfield/ brownfield on a build, operate and transfer basis as a free zone for a concession period. They provide to the Tenant Investors infrastructure for rent or lease which may include: logistics and management services, stacking areas, warehouses, jetty facilities, and power generation plants.[20]

16 OGEFZA, ***'Oil and Gas Free Zone Onne'***: https://www.ogfza.gov.ng/ index.php/free-zones/onne/ (accessed 15.04.2019). *Cf.* with concerns expressed in 2008: *"OGEFZ–instability in Niger Delta a major inhibitor to goal of being service hub to entire Gulf of Guinea. Cf. with Equatorial Guinea's Bioko–likelihood of overshadowing Onne as a major oil and gas hub. In tandem with unfortunate trend whereby Angola is now leading African oil producer."* See Afolabi Elebiju, ***CITN Presentation (supra)***, *Slide 46.*

17 See OGFZA, ***'OGFZA History'***: https://www.ogfza.gov.ng/index.php/company-overview/company-history/ (accessed 15.05.2019). In 1988, Nicotes Nigeria Limited, the predecessor (affiliate) of Intels obtained an initial five-year lease from NPA to operate NPA's facilities at Onne Port Complex (OPC), Warri Old Port (WOP) and Calabar New Port (CNP), as part of the process of stepping up the logistic support for the oil and gas industry. The three ports, which were previously underutilised, became strategic locations for the creation of integrated transit and supply bases and optimal oil service centres. In 1992, to meet the need for large and long-term investments required to boost the sector, Nicotes applied for and was granted a 21-year extension of its leases at the OPC, WOP and CNP. These were part of the leases taken over by Intels, and eventually consolidated into a single lease document between NPA and Intels in 2005, (the Consolidate d Lease). In 1992, in response to FG's invitation to the maritime industry to participate in the needed investment to complete the development of the FOT, Intels brought in significant investment to complete the FOT. It subsequently injected additional investments in infrastructure, including the development of approximately 100,000 square metres stacking area and the refurbishment of warehouses and the partially completed quay apron, allowing the first vessels to be berthed at FOT in 1995. According to Intels, *"all of the major industry players are operating from Onne, supporting the exploration and production (E&P) activities in Nigeria's oil industry, with over 200 companies in the OGEFZA."*

18 OGFZA, http://fzgil.org/?page_id=24 (accessed 15.04.2019).

19 Typical services provided by Tenant Investors include: one-stop- shop stevedoring, terminal and supply base operations, stockists, pipe coating, machine shops, fabrication yards, environmental services, dry/liquid bulk, yard/dry dock, boat companies, shipping lines and vessel operators, airfreight operators, terminal operators, clearing and forwarding, oilfield transit & supply services, heavy lift transport companies, drilling contractors, cementing service, drilling fluid services, wellhead & subsea equipment, fabrication & engineering, information technologies & security systems, and banking services. See OGFZA, ***'Free Zone Tenant Investors'***: http://fzgil.org/?page_id=141 (accessed 15.04.2019).

20 OGFZA, ***'Free Zone Developers'***: http://fzgil.org/?page_id=144 (accessed 15.04.2019).

Intels Nigeria Limited: Portrait of an OGFZA Player

According to Intels, it started operation in Warri Old Port Complex in 1984; following a lull in activities in early 2000s, things picked up subsequently mainly due to the Escravos Gas-to-Liquid (EGTL) project.[21] Intels chose Calabar as an operations base in 1989, and grew steadily from there: *"… Calabar Port complex is a perfect support base for any activity in that region."*[22] Intel's history and investments in its flagship venture in Onne Port (which reportedly contributes about US$6.5 million annually into the Federal Government's coffers yearly, and generating over 10,000 jobs), and other proposed projects especially in the Lagos axis have been well documented.[23] Recognising the potential role of Lagos State in the future development of deep water blocks in Western Nigeria, it collaborated with **Eko Support Services Limited** ((ESSL), which has a base at NPA's Apapa port) to enable service provision to clients in the Lagos area.[24]

Lekki FTZ

The Lekki Free Zone Development Company (LFZDC) was established in May 2006 as a Joint Venture (JV) between: China-Africa Lekki Investment Limited (CALIL, itself owned by a consortium of Chinese companies) as the majority shareholder, the Lagos State Government (LASG) and Lekki Worldwide Investments Limited (LWIL). LFZDC was authorised by the NEPZA and LASG as the sole developer, operator, administrator and manager of the South/West Quadrant of the LFZ project.[25]

Part of its objectives include developing, operating and managing LFZ in accordance with global best practices, leveraging the advantages of Lagos as an important distribution hub in West Africa, thereby contributing to Nigeria's economic development whilst enhancing the economic cooperation between Nigeria and China.[26] The LFZ is home amongst others, to the Dangote Refinery and the Alaro City.[27] LFZ is also adjacent to the approved location for the proposed Lekki International Airport (LIA)[28] and in close proximity to the deep sea port and a number of planned industrial developments.[29] Export revenue at the LFZ is projected to hit over US$6 billion by 2020[30] while Dangote's investments alone in the LFZ is projected to generate N8 trillion turnover annually.[31] In contrast, the entire FG budget for 2019 was N8.83 trillion (compared with N9.12 trillion and N8.61 trillion in in 2018 and 2017 respectively).[32]

21 Intels, ***'Warri Port Complex'***: http://www.intelservices.com/warri-port-complex (accessed 15.04.2019).

22 http://www.intelservices.com/calabar-port-complex (accessed 15.04.2019).

23 See for example, Sulaimon Salau, ***'INTELS: Indelible Footprints Spurs $7b Investment, Economic Growth'***, *The Guardian, 04.12.2017:* https://guardian.ng/business-services/money/intels-indelible-footprints-spurs-7b-investment-economic-growth/(accessed 15.04.2019). For example, apart from its Onne Port facility, its Onne Estate comprises 971 units of residential accommodation over 50 acres near the Onne Port complex in the OGEFZ: http://www.intelservices.com/onne-estate (accessed 15.04.2019). Free Zone. According to the earlier report, *"Intels is now embarking on other multi-billion dollar projects in Lagos, which include; the Badagry Deep seaport and Industrial Park Free Zone, Eko Atlantic Economic City, Eko Energy Estate, Eko Support Services, and Lekki International Airport and a host of others."*

24 The collaboration resulted in redevelopment of the EESL base (also a free zone facility), which was completed in May 2014, becoming *"the only dedicated Oil and Gas facility in Lagos offering both port services and shore base services"* providing logistic solutions: http://www.intelservices.com/lagos-port-complex (accessed 15.04.2019). For further details about ESSL's services/operations, visit: https://ekosupportservices.com/(accessed 15.04.2019).

25 LFTZ is located in the South Eastern corner of Lagos State, facing the Atlantic Ocean to the south, and the Lekki Lagoon to the north. See LFTZ Investment Brochure: https://www.eiseverywhere.com/file_uploads/ 4c89fc4ccf7b9b01305474f571ba12b3_LFZ_InvestmentGuide.pdf. (accessed 15.04.2019).

26 LFZDC, ***'Our Company Background'***: http://lfzdc.org/about-us/ (accessed 15th April 2019).

27 The Dangote Refinery costing around US$12 billion is expected to produce 65.4 million litres of petrol, diesel, aviation fuel and kerosene daily. It will enhance Nigeria's the ranking of as a major contributor to global refining capacity when it comes on stream in 2020. See Udeme Akpan, ***'$12bn Dangote Refinery Enhances Nigeria's Ranking'*** *Vanguard Newspaper, 26.02.2019*: https://www.vanguardngr.com/2019/02/12bn-dangote-refinery-enhances-nigerias-ranking/ (accessed 25.04.2019). This massive project is the largest industrial complex in Nigerian history and scheduled to be completed by 2021 (originally 2020). See Dangote Group Website, https://www.dangote.com/our-businesses/ (accessed 15.05.2019). The refinery site covers an area of 2,635 hectares in the LFZ near the Lekki Lagoon. The location will enable easy shipment of refined petroleum products to the international markets. Additional benefits of the project is that the gas from the pipeline system could generate 12,000MW electricity for the nation. There are also has plans to construct a 570 MW power plant within refinery complex. See also Roseline Okere, ***'Dangote Deep-Sea Pipeline to Boost Nigeria's Power Generation by 12,000MW'***, *The Guardian, 14.06.2018:* https://guardian.ng/business-services/dangote-deep-sea-pipeline-to-boost-nigerias-power-generation-by-12000mw/ (accessed 15.05.2019). Alaro City is a joint venture between Rendeavour and LASG. See Rendeavour, ***'Project Profile'***: https://www.rendeavour.com/projects/ lagos/ (accessed 25.04.2019).

28 Unfortunately, the LIA project is not closer to take off than when initially proposed. See Sunday Onen, ***'Africa: Lagos Yet to Find Investors for Lekki Int'l Airport 10 Years After'***, *ATQ News, 04.03.2019*: https://www.atqnews.com/ng/africa-lagos-yet-to-find-investors-for-lekki-intl-airport-10-years-after/ (accessed 24.04.2019).

29 For instance the Lekki Deep Sea Port slated for commencement in 2020. See Lekki Deep Sea Port website, ***'Project Status'***: https://lekkiport.com/project-status/ (accessed 15.05.2019).

30 Adekunle, ***'Export Inflow at Lekki Free Zone to Hit $6bn by 2020 – Ambode'***, *Vanguard Newspaper, 06.07. 2018*: https://www.vanguardngr.com/2018/07/export-inflow-at-lekki-free-zone-to-hit-6bn-by-2020-ambode/ (accessed 26.04.2019).

31 George Okojie, ***'Our Investments in Lekki Free Zone will Earn Nigeria N8trn Annually – Dangote'***, *Leadership Newspaper, 01.03.2018*: https://leadership.ng/2018/03/01/investments-lekki-free-zonell-earn-nigeria-n8trn-annually-dangote/ (accessed 26.04.2019). Note that the commissioning and operational start of the Dangote refinery has been shifted to early 2021, with envisaged full capacity by end of June 2021: Tope Alake, ***'Nigeria's Dangote Refinery to Start Operating in Early 2021'***, *Bloomberg, 29.10.2019*: https://www.bloomberg.com/news/articles/2019-10-29/nigeria-s-dangote-refinery-to-start-operating-in-early-2021 (accessed 04.04.2020).

32 BudgIt, ***'Proposed Budget 2019 Analysis - FG Proposes to Spend N8.83trn in 2019'*** *Proshare,* 22.03.2019 https://www.proshareng.com/news/Budget%20and%20Plans/Proposed-Budget-2019-Analysis----FG-Prop/44520 (accessed 15.05.2019). The 2020 FG budget is 10.59 trillion: https://yourbudgit.com/wp-content/uploads/2020/01/2020-Approved-Budget-Analysis.pdf (accessed 04.04.2020).

FTZ and Local Content Development

Investment in local content or backward integration is critical to sustainable growth of any economy. Over the years, all the floating production, storage and offloading (FPSO) vessels operating in Nigeria's oil and gas industry were built and integrated in foreign shipyards, denying Nigeria the huge benefits of growing her gross domestic product (GDP) through in-country domiciliation of the huge expenditure, and local capacity development, as well as job creation.[33]

There are proposed developments to curb some of these challenges, such as the Tomaro Industrial Park, (TIP), 75 hectares of land between neigbouring FTZs Snake Island and Lagos Deep Offshore Logistics Base (LADOL)), and which was granted FTZ status in 2017. TIP, which is estimated at US$450 million includes a ship fabrication yard, a modular refinery, access slipway, oil storage tank farms, water treatment plant, power generation plant, container lay down /transit, and crude oil distillation unit.[34]

If consummated, TIP will be a welcome development compared to Heerema (a world leading ship builder and fabrication giant)'s pull out from Nigeria during President Jonathan's administration. Herema had attempted to invest in Nigeria; its Nigerian subsidiary had identified and secured a 19-year lease from the Nigerian Navy on Ogogoro Island, near Lagos to build a replica of its giant world-class Dutch shipyard in in Nigeria.

However, the project did not materialise based in part on allegations of corruption and strong arm tactics by Nigerian public officials.[35] The benefits that this project would have brought to Nigeria were huge in terms of direct and indirect jobs, local content compliance, technology transfer etc.

It seems Nigeria has learnt from its past mistakes. Recently, the Board praised the management of Dangote Petroleum Refinery and Petrochemical Free Trade Zone Enterprises (DPRP) in the LFTZ over its adherence to the local content law in the execution of its projects and declared its intention to further partner with the DPRP for effective implementation of the Local Content policy in the country.[36]

LADOL, on its part, has sought to protect local content in the LADOL FTZ. A prominent example was the action LADOL brought against Samsung for an alleged intention to renege on local

33 Following the signing into law of the ***Nigerian Oil and Gas Industry Content Development Act 2010 (NOGICDA)*** by President Jonathan, the Nigerian Content Development and Monitoring Board (the Board) is mandated to champion the increased participation of Nigerians and Nigerian facilities in the oil and gas industry. This would be by *inter alia* facilitating local capacity development and ensuring that the execution of large components of any project is domiciled in-country***. Section 106 NOGICDA*** defines Local Content as *"the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilisation of Nigerian human, material resources and services."* ***NOGICDA*** empowers the Board to maximise local participation in the oil and gas industry as part of the efforts to build local manpower and facilities, curb capital flight and create job opportunities for Nigerians in the industry.

34 Abiodun Eromosele, ***'Investor Stakes $450m on New Free Trade Zone, to Build Ships in Nigeria'*** *ThisDay, 06.04.2018*: https://www.thisdaylive.com/index.php/2018/04/06/investor-stakes-450m-on-new-free-trade-zone-to-build-ships-in-nigeria/ (accessed 24.04.2019).

35 Following HNL (Hereema's Nigerian subsidiary)'s initial payment of N75 million to the Nigerian Navy, HNL had followed up with an application to the Ministry of Commerce that the proposed shipyard be granted FTZ status, given HNL's expected level of investment . However, HNL reportedly received a letter dated 07.06. 2006 cancelling its lease with the Navy on the ground that the project purportedly did not comply with the provisions of the ***Public Procurement Act, Cap. P43 LFN 2004 (PPA)***. This was despite the fact that the lease predated the ***PPA*** which became law only on 04.06.2006, and its regulatory agency, the Public Procurement Commission (or Bureau of Public Procurement?) only became operational 18 months after. See Ayodeji Jeremiah, ***'BusinessDay Reports that Heerema, Major Shipbuilder, Quits Nigeria Over Corrupt Contract Process'***, *27.03.2010*: (accessed 25.04.2019). It was striking that the Nigerian Investment Promotion Commission (NIPC) as the investment promotion agency of government either failed to, or unsuccessfully championed, the case of Hereema within government circles. See also, ***'Nigeria: While Heerema Quits'***, *ThisDay (editorial), 23.03.2010:* https://allafrica.com/stories/201003231100.html (accessed 04.04.2020).

36 Shola Bello ***'Dangote Group: Boosting Economic Growth with Local Content Initiatives' Leadership'***, *22.10.2018*: https://leadership.ng/2018/10/22/dangote-group-boosting-economic-growth-with-local-content-initiatives/ (accessed 15.04.2019).

content declarations in their successful joint bid for Egina FPSO integration and fabrication facility at LADOL FTZ in Lagos for Total Upstream Nigeria Limited.[37] This is in line with its business model of enhancing local content capability for itself and other companies operating in Nigeria's oil and gas industry through the organisation of trainings and other workshops.

Disputes: FTZ Related Litigation

Disputes in FTZs in recent years can be categorized into: contractual/regulatory compliance and administrative disputes respectively.

For instance, under disputes in transactions and regulatory compliance, in **Nigerdock Nigeria Plc-FZE v. FIRS**[38] the Tax Appeal Tribunal (TAT) held that "*where an approved enterprise supplies goods and services to customers outside the zone but in the customs territory, the 'supply' is an operation and is a taxable activity because it is not within the zone. The income received on the supply shall be taxable pursuant to section 11 of NEPZA and Part 2 section 15(a) of NEPZ Authority Regulations and Operational Guidelines for Free Trade Zones in Nigeria. The installation service at the site amounts to supply of service outside the Free Trade Zone.*"

There are allegations that some FTZ operators/managers and enterprises engage in sharp practices that undermine government's efforts. Many times allegations and counter-allegations may be traded between operators and FTZ resident enterprises.[39] The interests of FTZ operators like LADOL and FTZ enterprises may sometimes not align, leading to disputes, several ending up in court if parties are unable to agree. Such disputes must be well managed in order not to constitute an impediment to realisation of FTZ objectives.[40] It is thus commendable that government through its various agencies tries to mediate such disputes in order to ensure that FTZ objectives are met.[41]

Gaps: Nigerian FTZ Regime Inadequacies

Arguably, there is still not enough publicity on the effectiveness of FTZs to attract more prospective investors. More can be done to publicise Nigerian FTZs to encourage investment. Whilst the NIPC's recent efforts as part of Nigeria's broad investment promotion efforts are noted,[42] it does not appear that OGEFZA and NEPZA have been impactfully marketing the Nigerian FTZ regime globally. Recently, much of the headline information on Nigerian FTZs have been negatives: for instance, the near abandoned Tinapa project, FTZ related litigation between operators and approved enterprises, FG's running battles with Intels,[43] or even sometimes friction between different FTZ operators over alleged breach of 'exclusivity', etc.[44]

This factor in addition to power shortages, infrastructure and logistics challenges make Nigerian FTZs not significantly attractive to investors. FTZ related disputes should be proactively managed in order to

37 Oladeinde Olawoyin, ***'Untold Story of the Titanic Battle Between LADOL, SAMSUNG Over Local Content'***, *Premium Times, 04.04.2019*: https://www.premiumtimesng.com/business/business-news/286358-untold-story-of-the-titanic-battle-between-ladol-samsung-over-local-content.html (accessed 24.042019).

38 ***(2016) 24 TLRN 1.***

39 See Musa Ibrahim, ***'LADOL – Friend or Foe to Foreign Business?'*** *ThisDay, 03.04.2019:* (accessed 15.05.2019).

40 The most high profile dispute was between LADOL and its FTZ partner, Samsung Heavy Industries (SHI) regarding the Egina FPSO; the platform was to boost Nigeria's oil production capability by 200,000 barrels a day. Their joint venture – SHIN-MCI-FZE, owned 70% by SHI and 30% by GRFZMC, entered a sub-lease agreement with GRFZMC in order for SHI-MCI FZE to construct and develop a world class fabrication and Integration yard and quay wall for the execution of the local content elements of the Egina FPSO Project. Subsequently, GRFZMC sought to eject SHI from the LADOL FTZ due to an alleged expired operating license. LADOL cited material breach of the sublease covenant on the part of SHI which was yet to be remedied. The matter is currently in court (*Suit Number LD/493CM/2018 – SHI Nigeria Limited & Anor v. Global Resource Management Limited & Anor.)* On 11.12. 2018, *Lawal, J* of the Lagos State High Court granted an interim injunction restraining LADOL from ejecting SHI from the FTZ pending the hearing and judgment of the matter. In the Ruling, LADOL was ordered to provide services such as power and water to SHI to continue its operations unhindered. See Akinwale Akintunde, ***'Court Bars LADOL from Ejecting Samsung from Lagos Free Zone'*** *ThisDay, 11.12.2018*: https://www.thisdaylive.com/index.php/2018/12/11/court-bars-ladol-from-ejecting-samsung-from-lagos-free-zone/ (accessed 05.03.2019).

41 See for example, Ayetamaranbrakemi Longjohn, ***'FG Speeds Up Settlement of Samsung, LADOL Feud for Sake of Investments'***, *The Guardian, 29.01.2020*: https://guardian.ng/opinion/outlook/fg-speeds-up-settlement-of-samsung-ladol-feud-for-sake-of-investments/ (accessed 04.04.2020).

42 The NIPC in May 2018 launched *iGuide*, an online portal for investors. The online portal is said to contain useful information and data for any investor who is interested in the Nigerian market. It provides investors with up-to-date and pertinent information on the processes, procedures and basic costs of doing business in Nigeria, to enable investors get access to the basic information they need to make better informed decisions on Nigeria as a preferred investment destination. It provides information on *Starting Business, Labour, Production Factors, Land, Taxes, Investor Rights, Growth Sectors and Opportunities*. It is also a marketing tool, as information on Nigeria's investment processes and procedures are on one platform for easy access. See NIPC, ***'A Look at 'iGuide Nigeria', the New Online Portal for Investors'***, *28.05.2018*; (accessed 15.05.2019).

43 In 2017, it was alleged that Intels sold off assets imported into the FTZ without paying relevant duties. There were also accusations of operating at the FTZ without a subsisting licence. See Onome Ohwovoriole, ***'Intel Seems to be in Fresh Trouble'***, *Nairametrics*, 30.10.2017: https://nairametrics.com/2017/10/30/intels-to-be-probed-by-oil-and-gas-free-zone-authority/ (accessed 15.05.2019).

44 There has also been allegations of Intel's exclusivity to OGEFZ franchise in Nigeria and that LADOL should therefore not be undertaking oil and gas FTZ. See Nicholas Ibekwe ***'EXCLUSIVE: Why Nigerian Govt. Moved Against Atiku's Cash Cow, Intels'***, *Premium Times*, 27.06.2017: https://www.premiumtimesng.com/news/ headlines/235188-exclusive-why-nigerian-govt-moved-against-atikus-cash-cow-intels.html (accessed 15.05. 2019).

protect the integrity of FTZs as attractive investment propositions. Generally, disputes generate negative publicity, and could make prospective foreign investors cautious about investing in FTZs due to a perceived lack of strong governance/management culture.

Furthermore, a lack of data hinders proper evaluation of the FTZ regime. It is hard to measure the contributions of FTZs in Nigeria due to lack of reliable data on the performance of FTZs. The paucity of data constrains well informed economic decisions by potential investors want to know whether locating in an FTZ would suit their interests. Secondly, absence of data curtails government's ability to analyse the impact of its FTZ's regulatory strategy and leverage lessons therefrom on next steps.

The truth is that we learn a lot from successful zones, in particular, as they point to potentially scalable nationwide solutions. For example, in its transition to a market economy, China used its Shenzhen Special Economic Zone to test whether trade liberalisation would be a sound development strategy.[45] Thus, until Nigeria takes data collection seriously, it would be impossible for us to know what we do not know about FTZs. Problems of inadequate or non-current data is in our view, an indictment on the effectiveness of NEPZA and OGEFZA's regulatory oversight.

For now, we can only scrutinise individual FTZs to elicit information on how to deal with FTZs, going forward. Although FTZs are supposed to be conducive to business growth, many of them still suffer from the infrastructural deficiencies that plague the rest of the country. For example, one of the most cited barriers to the growth of the CFTZ (Nigeria's pioneer FTZ), has been the lack of investment in dredging the Calabar port.[46]

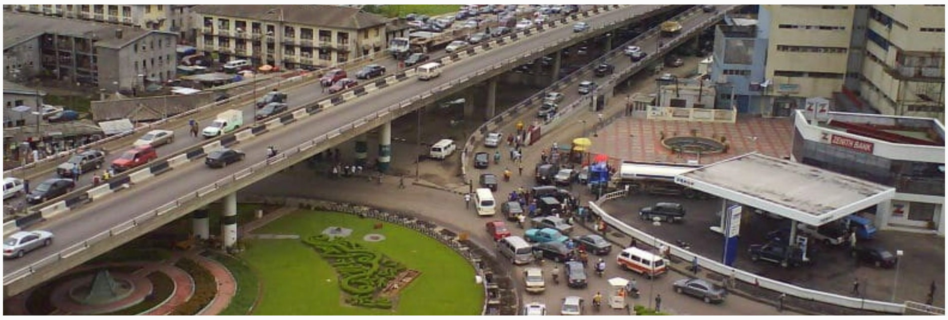
Rather than tackle these challenges frontally, Nigeria's FTZ approach has so far been to rely on tax incentives to attract investors. The subsidies implied by these tax breaks are insufficient to overcome a fundamental lack of quality public infrastructure for most industries. And where the incentives have been 'successful', it is not immediately apparent that they were necessary to begin with.[47]

That the most active FTZs in Nigeria are oil-related (even if not all under the management of the OGEFZA) is telling, given the strategic importance and relative economic viability of the oil and gas industry. Therefore, it is possible that companies in these Zones would thrive even if they did not receive any incentives.

Road Ahead: Suggestions for Legislative & Policy Reforms

Currently there are thirty four (34) FTZs in Nigeria; twenty-one (21) inactive FTZs from which some are under construction, yet to commence development, sponsors yet to be committed, physical development of some are yet to commence. FTZs should be energetically monitored. The incidence of 'inactive FTZs' especially after reasonable timelines within which their operative status should have changed to active FTZs, is an anomaly that should not be tolerated.[48]

45 ***'Special Economic Zones - Political Priority, Economic Gamble'***, *The Economist, 04.04.2015:* (accessed 15.05.2019)
46 Lakinbofa Goodluck, ***'Calabar Port Dredging: A Case of More Talk, Less Action'***, *Ships and Ports, 22.01.2018:* http://shipsandports.com.ng/calabar-port-dredging-a-case-of-more-talk-less-action/ (accessed 24.03.2018).
47 Mustapha Ndajiwo, ***'Are Tax Incentives in Nigeria Attracting Investment or Giving Away Revenue****?' Tax Justice Network, 14.08.2018:* https://www.taxjustice.net/2018/08/14/are-tax-incentives-in-nigeria-attracting-investment-or-giving-away-revenue/ (accessed 26.04.2019). *"In the telecommunications sector, the FG granted GSM and some other telecom operators Pioneer Status in 2001. Although Pioneer Status has a maximum 5 year tenor (the legal stipulation being that it is granted for an initial 3 years, and may be renewed for two years),… the FG granted it for 5 years in one fell swoop. Pursuant to the more than expected revenues and attendant profits declared by operators, FG tried to restrict the incentives to 3 years….the President after much global criss-crossing, admitted that his numerous trips have not yielded the expected volume of foreign investment."* See Afolabi Elebiju ***'Promoting Country Competitiveness Through Sectoral Refroms: Case Study of Nigerian Mobile Telecommunications Sector, 1999-2006'***, *(MentorHouse, 2014), pp. 46-47.*
48 For example, as a result of its inactive status, the operational license of Oils Integrated Logistics Services FTZ in Lagos was suspended after over 14 years of redundancy. See NEPZA, ***'Inactive Free Zones'***: http://www.nepza.gov.ng/index.php/free-zone/inactive-free-zones (accessed 05.03.2019).



The World Bank reportedly advised that Nigeria adopt a single FTZ regulatory authority regime, in line with global best practices.[49] Such unified regime also reduces administrative costs and streamlines operations, endangers long-term stability and the safety of investment which cumulatively lead to greater investor-confidence.[50] In 2017, the National Assembly attempted to amend the ***OGEFZ Act*** by seeking to increase the regulatory coverage of the OGFEZA to other oil and gas EFZs. Those in support of the amendment pointed to the fact that the Onne OGEFZ since its establishment had contributed significantly to the economy.[51] Were the same mechanisms be extending to other zones, there is a likelihood that the benefits would be significantly increased.

Unifying FTZ administration as suggested by the World Bank will entail legislative action, as it would mean collapsing two statutory bodies into one.[52] An argument against could also be raised that these zones are sector specific and as such, different bodies with the necessary specializations are needed to make the most of the project. Abridgment deals with the present duplicity of powers and costs. However, necessary mechanisms must be in place to ensure there is no opportunity for impunity and mismanagement. Abridgment would also add more responsibility on the sole governing body which can create an equally greater impediment to the growth of the economy. [53]

Sub-optimal regulatory and administrative management of FTZs negatively impacts all stakeholders, including approved enterprises operating in the FTZs. If the current FTZ system is not yielding expected result, the single factory zones scheme operating in countries like Ghana and Kenya (African FTZ leaders with 192 and 160 FTZs respectively as at 2017), can be considered.[54] The single factory zone operates where government confers export potential status to a company regardless of where the factory is sited within the country; factories do not have to locate within a designated zone to receive incentive and privileges.[55] The now defunct Olokola LNG project and Brass LNG were planned as FTZs.[56]

Initiatives: The Project M.I.N.E (Made in Nigeria for Exports) Angle

Recently, Project M.I.N.E, an otherwise 'quiet' initiative was in the news as a result of the National Assembly querying its alleged funding without appropriation and other alleged due process infractions during the

49 Gabriel Olawale, ***'World Bank Advocates Single Regulatory Authority For Free Zones'*** *Vanguard*, *11.07.2017*: https://www.vanguardngr.com/2017/07/world-bank-advocates-single-regulatory-authority-free-zones/ (accessed 05.03.2019).

50 The licensing, monitoring and regulation of FTZs is vested in the NEPZA by the ***NEPZ Act,*** whilst that of OGEFZ is vested in the OGFEZA. ***Section 5(2) OGEFZ Act*** confirms that prior to its enactment, Nigeria operated a unified FTZ scheme: *"The Authority [OGEFZA] shall have the power to take over and perform the functions being hitherto performed by the Nigerian Export Processing Zone, as they relate to oil and gas."* It has been argued that this is a direct conflict with the mandate of NEPZA as it usurps it functions in relation to Onne/Ikpokiri FTZ. NEPZA is presumed to be an export processing authority which should regulate both oil and non-oil and gas activities of the FTZ. Joseph Ushigiale ***'Free Trade Zones Operators Kick as Senate Moves to Amend OGEFZA Act'*** *ThisDay*, *09.02.2017*: https://www.thisdaylive.com/index.php/2017/02/09/free-trade-zones-operators-kick-as-senate-moves-to-amend-ogefza-act/ (accessed 15.05.2019).

51 OGEFZA, ***'Our Track Record'***: https://www.ogfza.gov.ng/index.php/company-overview/track-record/ (accessed 16.04.2019).

52 This would entail amendment of NEPZA and maybe repeal of OGEFZA or repeal of both and enactment of brand new legislation. Presidential committee asks government to scrap 102 agencies The Presidential Committee on reform of government agencies on Monday recommended the reduction of statutory agencies of government from 263 to 161. The proposal is contained in an 800-page report submitted to President Goodluck Jonathan by the former Head of Service and Chairman of the Committee, Steve Oronsaye: https://www.premiumtimesng.com/news/top-news/4678-presidential_committee_asks_government_to_scrap_102_agencies.html

53 Such unification may not be on the radar of the FG. The concluding part of OGFZA history on its website (supra) states: *"**2016 Going forward:** OGFZA has begun the process of implementing the provisions of its enabling law and Federal Government directives ceding regulatory control of all Oil and Gas Free Zones in the country to OGFZA."*

54 Ben Ezeamalu, ***'INTERVIEW: How Nigeria's 'Pathetic' Free Trade Zones Can End Recession - Ndibe',*** *Premium Times*, *17.12.2016*: https://www.premiumtimesng.com/features-and-interviews/218298-interview-nigerias-pathetic-free-trade-zones-can-end-recession-ndibe.html (accessed 25.04.2019).

55 A major example is the '*Maquiladora*' system in Mexico. A *Maquiladora* is a factory that operates under preferential tariff programs established and administered by the United States and Mexico. Materials, assembly components, and production equipment used in *Maquiladoras* are allowed to enter Mexico duty-free. Some of the advantages of this system is that there are less governmental red-tape including more flexibility with labour laws for the firms. It would also be easier to track the progress of the factories and licenses can be revoked based on the concluding results. A disadvantage is that as the benefits accrue to a single factory, the impact of the project would not be as far reaching as in the case of a FTZ. Maquiladora Website: https://maquiladoras-educateyourself.weebly.com/ (accessed 25.04.2019).

56 https://www.nepza.gov.ng/index.php/free-zone/inactive-free-zones (accessed 04.04.2020).

2019 Budget defence of the Federal Ministry of Investment Trade and Industry (FMITI).[57] The allegations and FMITI's well publicized rebuttal of same probably made significant section of the public aware of Project M.I.N.E.

Accordingly, Project M.I.N.E is a presidential initiative under FMITI's supervision to develop Special Economic Zones (SEZ) across Nigeria with the aim of boosting local manufacture of Nigerian goods for export. Approved by the Federal Executive Council (FEC) in June 2018, its target was to double Nigerian export manufacturing output to 20% of GDP by 2029. It planned to set up production hubs across the country in partnership with three development finance institutions: Afreximbank, Bank of Industry (BoI) and the Nigeria Sovereign Investment Authority (NSIA).[58]

Shandong Ruyi, a Chinese textile conglomerate has reportedly announced its commitment to invest US$2 billion to the cotton, textile and garment industry for the SEZs to be put up in Abia, Kano and Lagos States. [59]

In line with the public-private partnership (PPP) model, a special purpose PPP entity – Nigeria Special Economic Zones Company Limited (NSEZCo) – was designed to enable institutional investors participate in Project MINE alongside the FGN, and to apply global best practices and processes to the long-term financing and development of SEZs. Apparently, members of the National Assembly Committee (comprising relevant committees of the Senate and the House of Representatives) opposed this transactional savvy arrangement as financial malpractice, alleging same involved usurpation of the powers of NEPZA.

The issue was referred to the Attorney General of the Federation (AGF) who in his directive ruled in favour of NSEZCo on the following basis:

"NSEZCO was not established to take over the functions of NEPZA as the mandates of both entities are distinct with little or no area of overlap; NSEZCO is set up to facilitate investments in SEZs. This does not touch on or derogate from the functions of NEPZA under the existing law. The relationship between NSEZCo and NEPZA is that of sector participant (albeit indirect) and sector regulator. NSEZCO is an investment vehicle and not a regulator while NEPZA is a regulator. The provisions in the Appropriation Acts of 2017 and 2018 were made for Project MINE and not for NEPZA but were domiciled in NEPZA at the specific request of the Honourable Minister of Industry, Trade & Investment. The transfer of Project MINE funds to NSEZCo is lawful and does not contravene the Appropriation Acts or the NEPZ Act, Therefore, the funds domiciled in NEPZA should be released to NSEZCO to enable her to utilise same for the Presidential initiative – Project MINE as approved by the Federal Executive Council." [60]

Issues like this affects investor confidence as in LADOL/SHI's case and should be managed properly. It is imperative the National Assembly is well informed, and understand policy initiatives they have oversight of before rushing to make wild allegations that could unnerve investors as well as potentially putting the country in bad light.

57 Sabo Mohammed, Chairman of the Committee, said the SEZ Company which was included in the budget was not part of the 17 agencies under the FMITI, hence it was inappropriate for it to be included in the budget. See Oluwaseyi Awojulugbe, ***'Senate Rejects Ministry Of Trade's Budget Over Inclusion Of 'Private' Company',*** *The Cable, 01.04.2019:* https://www.thecable.ng/senate-rejects-trade-ministry-budget-inclusion-private-company/amp (accessed 15.05.2019).

58 Some of its functions include to aid structural transformation of the Nigerian economy by increasing the manufacturing sector's contribution to GDP to 20 per cent by 2025; Contribute to sustainable inclusive growth by creating 1.5 million new direct manufacturing jobs in the initial phase of Project MINE; Increase and diversify foreign exchange earnings to at least $30 billion annually by 2025, by increasing manufacturing sector exports; Create local models of global best practice in the provision of world-class infrastructure at competitive costs connecting SEZs to international and regional markets with transport links, uninterrupted power, ICT, water, sewage and other services to ensure smooth and efficient operation of SEZ businesses; Promote the "cluster" effect to be gained by locating similar export-oriented manufacturing businesses within the same locality; Attract world-class investors with strong positions in global supply chains and investors with the potential to increase the scale of operations rapidly to set up operations in SEZs; and Create an enabling environment for SEZ businesses by instituting best in class legal and regulatory frameworks, using technology and streamlined processes to facilitate movement of people, goods and capital and easy access to government services, approvals and permits. Bisi Daniels, ***'Nigeria Signs Agreements with Afreximbank, BoI, NSIA to Develop Special Economic Zones'*** *Premium Times, 09. 02.2019*: https://www.premiumtimesng.com/business/business-news/311445-nigeria-signs-agreements-with-afreximbank-boi-nsia-to-develop-special-economic-zones.html (accessed 25.04.2019).

59 See Collins Nweze, ***'$500m Coming For Special Economic Zones Funding'*** *The Nation*, 27.02.2019: https://thenationonlineng.net/500m-coming-for-special-economic-zones-funding/ (accessed 15.05.2019). Ministry of Finance Incorporated (MOFI) is a shareholder, holding the FG's interest of 25% in NSEZCO. The balance of 75% is currently held in trust on behalf of other prospective shareholders (DFIs), pending completion of investors' diligence and documentation and approval procedures. See John Bosco Agbakwuru, ***'Presidency Clarifies Status Of SEZ Company',*** *Vanguard, 04.04.2019*: https://www.vanguardngr.com/2019/04/ presidency-clarifies-status-of-sez-company/ (accessed 15.05.2019). See also FMITI, ***'Project MINE and Lekki Textile & Garment Park'***, *13.09.2017*: https://nigeriaembassygermany.org/mosaic/_M_userfiles/pdf/INVESTMENT%20OPPORTUNITIES%20IN%20SPECIAL%20ECONOMIC%20ZONES%20FOR%20MADE%20IN%20NIGERIA%20FOR%20EXPORTS%20(MINE).pdf (accessed 04.04.2020).

60 FMITI, ***'Official Statement on Project MINE (Made in Nigeria for Export) and Nigeria SEZ Investment Company Limited',*** *The Cable, 11.04.2019*: https://www.thecable.ng/promoted-official-statement-on-project-mine-made-in-nigeria-for-export-and-nigeria-sez-investment-company-limited (accessed 26.04.2019).

Studies of the SEZ models in Ethiopia, Kenya, Egypt, Gabon and Morocco show that the most sustainable approach to rapid and sustained SEZ development is the PPP model. The most compelling case study of this model was the Gabon SEZ Company, a PPP venture led by Olam (a multinational commodities and food group founded in Nigeria) as operator and manager, with the Government of Gabon and AFC as co-investors. Gabon SEZ has mobilised over US$400 million in shareholders' investment and attracted about 130 enterprises to set up operations there, creating tens of thousands of jobs. [61]

In our view, the Project M.I.N.E initiative can potentially leapfrog Nigeria's FTZ impact, with huge spill over effect for the overall economy, not just our manufacturing sector. It is a veritable prong in the quest to diversify Nigerian economy, whilst its PPP model will ensure accountability and efficiency – attributes that wholly driven public sector initiatives are not champions of. In its short existence, a lot of progress has already been made under Project M.I.N.E, with projects at various stages of development.[62] Project M.I.N.E represents a laudable paradigm shift from the erstwhile *"laid back, too little, too late"* approach of FG in FTZ management;[63] consequently, all hands should be on deck to ensure its success.[64] Unfortunately, it appears that apart from the unhelpful distraction of unfounded allegations of fraud, the initiative itself has apparently lost traction, especially after change of guards at the FMITI at the onset of President Buhari's second term. In our view it is a veritable prong that should be pursued with great passion, especially as government is a continuum and the ability to project stability should be a virtue.[65]

Conclusion

The common global practice is that sovereigns revisit their FTZ legislation every five (5) or ten (10) years.[66] In our case, the ***NEPZ*** and ***OGEFZ Acts*** are both well over twenty (20) years old. Thus, the need to revisit both legislation cannot be overemphasized.

Analogy may be drawn with the

61 Kanmi Ademiluyi, ***'NSEZCo: The Fact of The Matter'***, *Leadership Newspaper, 22.042019:* https://leadership.ng/2019/04/22/nsezco-the-fact-of-the-matter/ (accessed 26.04.2019).

62 According to the FMITI, the early stage projects in the first phase of NSEZCo's operations were underway and they include: (a) ***Enyimba Economic City, Abia State:*** A 9,500+hectare multi-township economic city venture. Pre-development work has been completed and three major anchor investors have been secured, with construction expected to commence in the second quarter of 2019; (b) ***Lekki-Epe Model Industrial Park, Lagos State:*** A 1,000-hectare multi-cluster model industrial park in the North East quadrant of the LFTZ. Pre-development work is currently ongoing and two major anchor investors have been secured; (c) ***Funtua Cotton Cluster, Katsina State:*** Seeks to aggregate cotton grown by over 800,000 farmers in Northern Nigeria into a world-class vertically integrated ginning, spinning, weaving and garment-making cluster, that will also supply yarn and cloth to other textile clusters around the country. Also, pre-development studies are ongoing for greenfield SEZs in Benue, Kwara and Sokoto States whilst studies will soon commence in Ebonyi, Edo and Gombe States amongst several others. See FMITI, ***Official Statement on Project MINE (supra)***).

63 Apparently, Project M.I.N.E leveraged learnings from studies on Nigerian FTZs such as the World Bank's ***'An Overview of Six Economic Zones in Nigeria: Challenges and Opportunities (February 2012)'***, *Policy Note No. 103442, 2012:* http://documents.worldbank.org/curated/pt/795251468196751971/pdf/103442- WP-An-Overview -of-Six-Economic-Zones-in-Nigeria-Challenges-and-Opportunities-PUBLIC.pdf (accessed 04.04.2020). The study covered: *"1. Lekki Free Trade Zone, Lagos State; 2. Ogun-Guangdong Free Trade Zone, Ogun State; 3. Abuja Technology Village in FCTA; 4. KoKo Free Zone, Delta State; 5. Warri Industrial Business Park, Delta State; and 6. The ICT Park Asaba, Delta State."* Its Executive Summary (p.3) stated *inter alia: "All the zones face some common challenges, at varying degrees, in the areas of legal and institutional framework, resettlement, infrastructure, environment, zone management & operational know-how, and host government ownership.* ***Given these challenges, it seems clear that the issues of infrastructure, such as the reliability of power supply, transport, and logistics could have been sorted out if some of these zones were properly planned, supported and managed. To overcome these constraints, a set of action plans are proposed for moving forward, including: hands-on technical assistance to the zone developers and regulators through WB projects, especially in the areas of legal framework, zone management and operational know-how; knowledge sharing and capacity building; additional analytical TAs for business plan or master plan; financing or credit enhancing schemes through the equity investment of IFC or the risk guarantee programs of MIGA; and assistance on investment promotion****."* (Emphasis supplied).

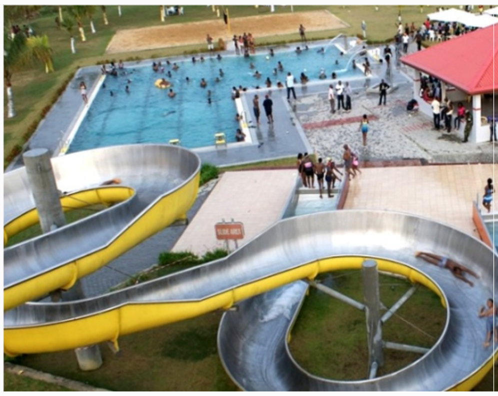
64 It is perhaps in the light that the National Industrial Council announced its intention to review fiscal arrangements and incentives applicable to FTZs in Nigeria. Nigeria needs to get her act right to fully key into the benefits of FTZs rather than by merely mouthing platitudes. See Bisi Daniel, ***'Nigeria Industrial Council Improves Operations of Free Trade Zones'***, *The Eagle,* 25.07.2018: https://theeagleonline.com.ng/nigeria-industrial-council-improves-operations-of-free-trade-zones/ (accessed 05.03.2019).

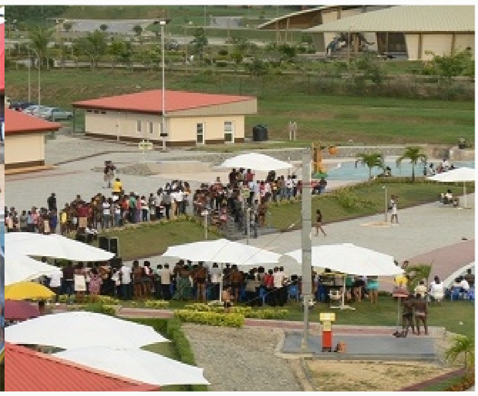
65 Incidentally, another bane of Nigerian regulatory practice has been the incessant turnover of NEPZA's Managing Director/CEOs and all the inefficiencies and disruptions that such frequent personnel changes occasion. OGEFZA appear to be faring better as its current MD, Umana Okon Umana's recently had his three year tenure renewed by President Buhari, effective 23.12.2019. See OGFZA, ***'Umana Gets Second Term as OGFZA MD/CEO'***: https: //ogfza.gov.ng/2020/01/16/umana-gets-second-term-as-ogfza-md-ceo/ (accessed 04.04.2020).

66 ***'Regulation & the Economy-The Relationship & How to Improve It'*** *Committee for Economic Development of the Conference Board, 27.09.2017;* https://www.ced.org/reports/regulation-and-the-economy (accessed 15.05.2019).

pioneer status tax incentive scheme. For instance, ***section 11 Pioneer Status Incentive Regulations 2014*** provides that: *"The Commission shall carry out periodic impact assessment and evaluate the utilization of the savings accruing from the incentives to-(a) measure the effectiveness of the incentives; and (b) ensure that the savings accruing from the incentives are utilised for the intended purposes."* [67]

It is paramount for the government to take stock of the progress of FTZs till date to ensure the regulatory framework is repositioned for optimality, and engender confidence of its ability to deliver for all stakeholders. Project management success is often determined by whether the project is operating within the original timeline/development status. Periodic quality reviews on FTZs would also determine the progress rate.[68] Inter-agency cooperation, often touted by NEPZA/OGEFZA as part of their strengths was recently thrown into some doubt by allegations that the FIRS, opposed the grant of FTZ status to some applicants.[69]





Does continuation of the FTZ scheme provide the economy with the desired/anticipated growth to make a business case for the incentives being showered on entities operating within FTZs? According to the Holy Bible *"to whom much is given, much is expected"* (***Luke 12:48***). Is the government holding the short end of the stick, a la *"the 30 coins paradox"* where Judas 'sold' Jesus for only thirty pieces of silver.

Assuming he obtained a higher price, it was still a grossly unequal exchange: *"what shall it profit a man if he gains the whole world and loses his soul?"* (***Mark 8: 36***). Unfortunately, Judas' 'seller's remorse' was too late; government cannot afford not to periodically review the cost benefit analysis of Nigeria's FTZ regime with a view to ensuring that it can positively answer the question: *"are we giving too much in exchange for little?"*

67 See also ***Section 7 Industrial Development (Income Tax Relief) Act, Cap. L7, LFN 2004***: *"The Minister shall cancel a pioneer certificate upon the application of the pioneer company concerned… if the Minister is of the opinion that a pioneer company has contravened any provision of this Act or has failed to fulfil any estimate or proposal made in its application for a pioneer certificate or any conditions contained in its pioneer certificate."* On 2 August 2017, Nigeria's Federal Executive Council (FEC) reviewed the list of "pioneer industries and pioneer products" (Pioneer List), to include the entertainment sector amongst others, drastically affecting the potential tax treatment of subject sectors and products. This culminated in the issuance of the ***Application Guidelines for Pioneer Status Incentive (AGPSI), 2017*** by the FMITI. See Chuks Okoriekwe, ***'A Commentary on Recent Developments and Implications for Businesses'***; *LeLaw Thought Leadership, 29.09.2018:* http://www.lelawlegal.com/blog-details.php?title=Pioneer-Status-Tax-Incentive-in-Nigeria-A-Commentary-on-Recent-Developments-and-Implications-for-Businesses (accessed 15.05.2019).

68 See also ***'Could NTP be a Competitiveness Tool for Nigeria?'***, *'Taxspectives by Afolabi Elebiju', ThisDay Lawyer, 27.04.2010, p. vi;* also available at: http://www.lelawlegal.com/blog.php (accessed 22.05.2019). Commenting on the ***National Tax Policy 2010***, the author stated: *"Thus on **Tax Free Zones (TFZs, section 4.4(a)**), 'the Executive and Legislative should work closely to identify new areas, where such special arrangements are required and pass necessary legislation to create them. **The status of such TFZs and the benefits accruing therefor must be subject to periodic review and a system put in place for measuring.....the direct benefits being derived from the zone in contrast to the tax revenue not being collected**'. This exemplifies the '30 silver coins' paradox, and would hopefully be a departure from non-implementation of provisions like **section 4(g) NEPZA Act** on **'recommendation to the Federal Government of additional incentive measures for the Zones', which could have only been performed on the basis of scientific data.**"* (Emphasis supplied).

69 See Francis Arinze Iloani, ***'NEPZA Blames FIRS for Non-Approval of New Zones in 2019'***, *Daily Trust, 19.12.2019:* https://www.dailytrust.com.ng/nepza-blames-firs-for-non-approval-of-new-zones-in-2019.html (accessed 04.04.2020). According to the news report: *"Nigeria Export Processing Zones Authority (NEPZA) has revealed that no new free trade zone was approved in 2019 because of interference by the Federal Inland Revenue Service (FIRS) in the process. Speaking to journalists on the performance of NEPZA in 2019 during the staff union's end of year seminar held in Abuja, the Acting Managing Director of NEPZA, Engr. Terhemba Nongo, said, 'out of perception, the FIRS said some free trade zones won't start.' The NEPZA boss said a committee, comprising of relevant stakeholders, has been set up to resolve the problem and hopefully, about six new free trade zones pending on the table of President Muhammad Buhari may be approved. Daily Trust recalls that the present administration approved the establishment of new free economic zones to be sited in each geopolitical zone of the country (FEZs). However, the implementation has been stalled due to disagreement between NEPZA and the industry ministry on the implementing body and the custody of the funds released for the projects."*

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