

Labour Rights in Special Economic Zones: Between Unilateralism and Transnational Law Diffusion

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ABSTRACT

Special economic zones (SEZs) have spread rapidly over the past 20 years, including in many low- and middle-income countries keen to attract private investment for industrial development. But while much debate has focused on their economic performance and success factors and on links with the wider architecture of international economic law, there are enduring concerns over respect for labour rights in SEZs. These concerns are partly rooted in features of the legal regimes that underpin SEZs, such as arrangements that qualify the application of ordinary labour law, or ineffective systems to ensure compliance. This article discusses the law governing labour rights in SEZs, drawing on the case studies of Bangladesh, Ethiopia, and Kenya—three countries reflecting different generations of SEZ legislation, types of SEZs, and regulatory approaches. The article explores the complex interplay of different ‘unilateral’ and international legal regimes, the structural features that affect labour rights in SEZs, and possible ways forward for research and practice.

I. INTRODUCTION

Special economic zones (SEZs) have spread rapidly over the past 20 years, including in many low- and middle-income countries keen to attract private investment for industrial development. But while much debate has focused on their economic performance and success factors, SEZ programmes have often formed the object of contestation over land expropriations, poor labour conditions, and lost public revenues. These concerns are often partly rooted in shortcomings of the legal regimes that govern the creation and operation of SEZs—including, and depending on the circumstances, their perceived failure to protect workers and affected people both within and outside the SEZs, their

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exempting SEZs from national laws, or their weak arrangements to ensure compliance.¹ This situation calls for interrogating the social and environmental dimensions of SEZ programmes, exploring the place of law as part of the problem and—potentially—the solution.

Labour has featured prominently in international debates about SEZs. The perceived policy imperative to create employment is often invoked to justify special legal regimes aimed at promoting commercial investments in labour-intensive industries. This is despite empirical studies showing that, while employment in SEZs has increased, particularly in certain low- and middle-income countries, there is no robust evidence that the commercial activities would not have taken place without the SEZ incentives ('additionality').² Meanwhile, there have been widespread concerns about labour rights in SEZs, particularly in the Global South, including both employment conditions (such as wages, terms of employment, health, and safety) and labour relations (freedom of association, unionization, and the right to go on strike).³ Wages may be higher in SEZs than in the rest of the country, partly due to the nature of the firms operating in the zones, and compressions of rights often reflect wider national problems rather than a SEZ-specific issue.⁴ But in some jurisdictions, SEZ legislation qualifies the application of national labour law, creating special regimes—'zones of exception'—that mediate the integration of portions of national territory into the global economy.⁵

Issues of labour in the SEZs are bound up with complex legal frameworks at national and international levels: from the legislation that governs the establishment and operation of SEZs, to national labour law and international labour conventions, all the way to the international arrangements that facilitate cross-border trade and investment. In addition, the spread of SEZ laws questions the modalities and boundaries of international economic law (IEL). On the one hand, the primary grounding of SEZs in domestic legislation outlines the role of national regulation, and of 'unilateralism', in contemporary economic governance. On the other hand, parallels and cross-fertilization within waves of domestic law-making highlight how formally unilateral acts

- 1 See, for example, International Commission of Jurists, 'Special Economic Zones in Myanmar and the State Duty to Protect Human Rights' (ICJ, 2017), <https://www.icj.org/wp-content/uploads/2017/02/Myanmar-SEZ-assessment-Publications-Reports-Thematic-reports-2017-ENG.pdf> (last accessed 1 March 2021); and International Commission of Jurists, 'The Human Rights Consequences of the Eastern Economic Corridor and Special Economic Zones in Thailand' (ICJ, 2020), <https://www.icj.org/wp-content/uploads/2020/08/Thailand-SEZs-Publication-2020-ENG.pdf> (last accessed 1 March 2021).
- 2 Xavier Cirera and Rajith W.D. Lakshman, 'The Impact of Export Processing Zones on Employment, Wages and Labour Conditions in Developing Countries: Systematic Review', 9 (3) *Journal of Development Effectiveness* 344 (2017), at 355.
- 3 See, for example, 'Promoting Decent Work and Protecting Fundamental Principles and Rights at Work in Export Processing Zones' (International Labour Office, 2017), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_584474.pdf (last accessed 1 March 2021).
- 4 Cirera and Lakshman, above n 2, at 252.
- 5 Ramapriya Gopalakrishnan, 'Freedom of Association and Collective Bargaining in Export Processing Zones: Role of the ILO Supervisory Mechanisms', ILO Working Paper No.1 (International Labour Organization, 2007), http://www.ilo.org/public/libdoc/ilo/2007/107B09_61_engl.pdf (last accessed 1 March 2021); Lorenzo Cotula, 'The State of Exception and the Law of the Global Economy: A Conceptual and Empirical-Legal Inquiry', 8 (4) *Transnational Legal Theory* 424 (2017), <https://tinyurl.com/yb6aoqh9> (last accessed 1 March 2021).

may be embedded in transnational political economies that influence the circulation of regulatory models. This includes inter-state diplomacy; pressures from business actors, international agencies, and export market governments; and local-to-global mobilization by labour movements. Besides raising issues of eminent practical relevance, then, the place of labour rights in the SEZs poses probing theoretical questions about the nature and operation of the norms underpinning the global economy.

This article discusses the law governing labour rights in SEZs, focusing on the manufacturing sector in low- and middle-income countries. It draws on a review of available literature and legislation concerning three countries: Bangladesh, Ethiopia, and Kenya. While not necessarily representative of wider trends, the three countries were selected on the basis of two main criteria. The first concerns the need to consider different generations of SEZ laws: Bangladesh adopted SEZ legislation from the 1980s, Kenya from the 1990s, and Ethiopia only formalized its industrial park programme in recent years. The second criterion relates to diversity of regulatory and institutional models for addressing the interface between labour and SEZ laws, particularly the varying degrees to which ordinary labour law applies in the SEZs: separate laws govern labour issues in Bangladesh's zones; while in Ethiopia and Kenya, national labour legislation applies both within and outside SEZs. The next part sets the scene by elaborating on the conceptual dimensions. It also introduces the three focus countries, locating their respective SEZ programmes within their wider contexts. Part II explores, in general terms, the interface between SEZ and labour law in the three countries. Part III dives deeper into selected labour issues. The conclusion (Part IV) outlines key findings and possible ways forward.

II. SPECIAL ECONOMIC ZONES, LABOUR RIGHTS, AND 'UNILATERAL' IEL

Examining labour rights in SEZs requires exploring the interface between two areas of law that are underpinned by different normative values: SEZ laws and labour law. The legal regimes governing SEZs present international law dimensions, for example where trade agreements detail the customs treatment of goods originating from SEZs,⁶ or where businesses initiate treaty-based investor–state arbitrations over disputes stemming from the withdrawal or modification of tax or other SEZ incentives.⁷ However, SEZs are primarily created and governed by national legislation, or even subnational legislation, for example in some federal states.⁸ As such, SEZ regimes are extremely diverse, and the very notion of SEZ can vary in different jurisdictions. The primary grounding of SEZ regimes in the realm of national law reflects a 'unilateral' form of economic regulation.

However, the interface between SEZs and labour rights also illustrates complex intersections between national and international forms of regulation. Firstly, labour law

6 For example, Articles 25 and 29 of the 2004 Protocol on the Establishment of the East African Customs Union and the related Customs Union (Export Processing Zones) Regulations.

7 Leila Choukroune and James J. Nedumpara, 'Special Economic Zones and WTO Litigation'; Irma Mosquera and Frederik Heitmüller, 'International Taxation in Special Economic Zones'; and Julien Chaisse, 'Mapping the Interactions between Special Economic Zones and ISDS' (all in this Special Issue).

8 See, e.g., the Andhra Pradesh Special Economic Zones Act, 2005.

rests not only on national legislation, often including constitutionally guaranteed rights, but also on international law. And at a deeper level, properly understanding labour law requires situating it in the wider context of longer-term global reconfigurations of production and trade, which present inherently transnational legal dimensions.⁹ International instruments related to labour law include a large number of multilateral conventions developed over the years by the International Labour Organization (ILO);¹⁰ while the ILO Declaration on Fundamental Principles and Rights at Work identifies principles and rights deemed so fundamental that all ILO member states must promote and respect irrespective of ratification of the relevant convention.¹¹ On several occasions, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized that workers in SEZs ‘should benefit from the full application of the fundamental principles and rights at work and of the ratified Conventions.’¹² Further, a growing number of international trade and investment treaties include labour chapters or clauses,¹³ and certain SEZs mobilize the labour of people who have special status under international law, such as refugees.¹⁴ Labour also intersects with other issues that engage a wide range of internationally recognized human rights, such as the rights to health and to housing, and civil and political rights.¹⁵

Secondly, and on a different plane, the geographic spread of a successive wave of SEZ laws over the past few decades and the evolving ways in which they address labour issues point to channels for law diffusion that eschew formalistic approaches—including through explicit or implicit imitation effects (China’s ‘success story’ being

- 9 Amin Parsa and Niklas Selberg with Adelle Blackett, ‘Decolonizing Labour Law: A Conversation with Professor Adelle Blackett’, *Third World Approaches to International Law (TWAAIL) Review*, <https://twail.com/decolonizing-labour-law-a-conversation-with-professor-adelle-blackett/> (21 January 2021, last accessed 1 March 2021).
- 10 The text of ILO Conventions and related ratification information is available at <https://www.ilo.org/dyn/normlex/en/f?p=1000:12020:::NO::> (last accessed 1 March 2021).
- 11 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (Geneva, 18 June 1998). See <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang—en/index.htm> (last accessed 1 March 2021).
- 12 International Labour Office, above n 3, para 52.
- 13 James Harrison, ‘The Labour Rights Agenda in Free Trade Agreements’, 20 *Journal of World Investment & Trade* 705 (2019).
- 14 Michael Castle-Miller, ‘The Law and Policy of Refugee Cities: SEZs for Migrants’, in Julien Chaisse and Jiayang Hu (eds), *International Economic Law and the Challenges of the Free Zones* (Alphen aan den Rijn: Wolters Kluwer, 2019), 185–211; Heaven Crawley, ‘Why Jobs in SEZs Won’t Solve the Problems Facing the World’s Refugees’, *The Conversation*, <https://theconversation.com/why-jobs-in-special-economic-zones-wont-solve-the-problems-facing-the-worlds-refugees-75249> (6 April 2017, last accessed 1 March 2021); Katharina Lenner and Lewis Turner, ‘Making Refugees Work? The Politics of Integrating Syrian Refugees into the Labor Market in Jordan’, 28 (1) *Middle East Critique* 65 (2019); Fekadu A. Tufa, ‘Focus on the Ethiopian Jobs Compact’, in Liliane Mouan, Cameron Thibos, and Simon Massey (eds), *After the ‘Migration Crisis’: How Europe Works to Keep Africans in Africa* (openDemocracy, 2020), https://cdn-prod.opendemocracy.net/media/documents/After_the_Migration_Crisis_How_Europe_works_to_keep_Africans_in_Africa.pdf (last accessed 1 March 2021), p. 58. On refugees and ‘states of exception’, see, e.g., Daria Davitti, ‘Biopolitical Borders and the State of Exception in the European Migration ‘Crisis’’, 29 (4) *European Journal of International Law* 1173 (2018).
- 15 Andrew Lang, ‘Trade Agreements, Business and Human Rights: The Case of Export Processing Zones’ (Harvard University: John F. Kennedy School of Government, 2010), Corporate Social Responsibility Initiative Working Paper No. 57, <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Lang-export-processing-zones-Apr-2010.pdf> (last accessed 1 March 2021), at 3.

particularly notable in this regard);¹⁶ political influence; pressures from donor agencies and export market governments; and complex epistemic communities of development agency staff, government officials, consultants, and other actors. Legislative developments in different countries also point to indirect connections linked to the competitive nature of production for global markets.

Indeed, SEZ legislation in Bangladesh, Ethiopia, and Kenya is embedded in specific country contexts, but also reveals cross-linkages between different national laws, and between national and international law. In Bangladesh, the Bangladesh Export Processing Zones Authority (BEPZA) Act of 1980, as amended, provided the legal basis for the establishment of state-run export processing zones (EPZs),¹⁷ as part of a wider package of measures to attract foreign investment and promote exports as a route to economic development.¹⁸ The EPZ programme initially had a slow take-off, but the phasing out in 2004 of the international Multi-Fibre Arrangement that imposed trade quotas on textile and clothing from developing countries,¹⁹ duty-free entry to the European Union's market under the 'Everything But Arms' scheme of trade preferences for least-developed countries,²⁰ and a global restructuring of the apparel industry involving downward pressures on international prices fostered rapid growth in Bangladesh's garment sector.²¹

Various estimates suggest that in the two decades until the financial year 2017, EPZs attracted US\$4.3 billion of investment and contributed to US\$59.4 billion of export earnings (or almost 20% of the country's total exports in the same year), and that between 2017 and March 2020, inflows of foreign direct investment (FDI) in the zones totalled about US\$1.2 billion.²² In 2016 alone, the combined exports of eight EPZs were valued at US\$6.7 billion, representing about 20% of the country's total exports.²³ The same year, EPZ firms provided employment to more than 450,000 people. This number increased to 524,000 in June 2019.²⁴ These developments enabled Bangladesh to consolidate its position as the world's second largest ready-made garment exporter

16 See Jan Knoerich, Liliane Mouan, and Charlotte Goodburn, 'Is China's Model of SEZ-Led Development Viable? A Call for Smart Replication', *Journal of Current Chinese Affairs* (forthcoming).

17 Bangladesh Export Processing Zones Authority Act No. XXXVI of 26 December 1980, as amended.

18 See also the Bangladesh Foreign Private Investment (Promotion & Protection) Act No. XI of 1 April 1980.

19 The transitional arrangement was provided by the WTO Agreement on Textiles and Clothing, Annex 1A to the Agreement Establishing the World Trade Organization (Agreement on Textiles and Clothing, 15 April 1994, 1868 UNTS, terminated 1 January 2005).

20 The latest legal instrument governing this scheme is Regulation No. 978/2012 of the European Parliament and of the Council of 25 October 2012, Applying a Scheme of Generalised Tariff Preferences and Repealing Council Regulation (EC) No. 732/2008, Articles 1(2)(c) and 17–18.

21 Haroon A. Khan, *The Idea of Good Governance and the Politics of the Global South: An Analysis of Its Effects* (Abingdon and New York: Routledge, 2016), 120.

22 World Bank, 'The Rise of Special Economic Zones in Bangladesh. Bangladesh Policy Notes' (World Bank, 2018), 1, <https://openknowledge.worldbank.org/handle/10986/30555> (last accessed 1 March 2021); and the economic data made available by Bangladesh Bank (the central bank of Bangladesh), 4, <https://www.bb.org.bd/econdata/fdi.pdf> (last accessed 1 March 2021).

23 Mohammad A. Razzaque, Bazlul H. Khondker, and Abu Eusuf, 'Promoting Inclusive Growth in Bangladesh through Special Economic Zones: A Research Paper on Economic Dialogue on Inclusive Growth in Bangladesh' (Overseas Development Institute, 2018), 21.

24 Danish Trade Union Development Agency, 'Bangladesh Labour Market Profile 2020' (Danish Trade Union Development Agency, 2020), 3.

after China. In a move to diversify away from garment and promote greater involvement of the private sector in SEZ ownership and management, the Bangladesh Economic Zones Act of 2010 established a new breed of ‘economic zones’, overseen by a separate authority (the Bangladesh Economic Zones Authority, BEZA) and governed by a more flexible regime for a wider range of SEZ types and of economic activities, including operations not focused on export processing and including privately initiated and operated economic zones.²⁵

Kenya has also experienced a succession of SEZ programmes. The EPZ Act of 1990 paved the way to the creation of EPZs, while the more recent Special Economic Zones Act of 2015 provides a broader definition not restricted to export processing and places greater emphasis on public–private partnerships.²⁶ The 2015 Act outlines diverse types of SEZs, including agricultural zones, business processing outsourcing zones, industrial parks, and livestock zones.²⁷ While the SEZ Act was initially meant to replace the EPZ regime, developments in the implementation phase point to a change of strategy, with the EPZ programme continuing to operate in parallel.²⁸ The two regimes are overseen by separate institutions (the EPZ Authority and the SEZ Authority), which function as one-stop shops to promote development and operation of the zones.²⁹

Research has documented the growth of Kenya’s garment sector in the EPZ over the course of the 1990s, and even more so in the early 2000s.³⁰ Key factors included a conducive political economy characterized by the converge of interests among national political elites, domestic businesses, and international donors, leading to the establishment of efficient institutional structures relatively insulated from rent-seeking pressures;³¹ and the coming into effect of the US tariff-free regime under the African Growth and Opportunity Act of 2000 (AGOA),³² which prompted foreign investments oriented towards exporting to the USA.³³ In 2005, the garment sector constituted about 37% of the EPZ enterprises and contributed 90% of local jobs.³⁴ Ten years

25 Bangladesh Economic Zones Act No. 42 of 1 August 2010.

26 ‘A special economic zone shall be a designated geographical area where business enabling policies, integrated land uses and sector-appropriate on-site and off-site infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where any goods introduced and specified services provided are regarded, in so far as import duties and taxes are concerned, as being outside the customs territory and wherein the benefits provided under this Act apply.’ (section 4(4)).

27 Section 4(6).

28 Emmanuel Laryea, Dennis Ndonga, and Bosire Nyamora, ‘Kenya’s Experience with SEZs: Legal and Policy Imperatives’, 28 (2) *African Journal of International and Comparative Law* 171 (2020).

29 EPZ Act section 9. SEZ Act section 11.

30 Matthew Tyce, ‘The Politics of Industrial Policy in a Context of Competitive Clientelism: The Case of Kenya’s Garment Export Sector’, 118 (472) *African Affairs* 553 (2019).

31 *Ibid.*

32 African Growth and Opportunity Act, https://agoa.info/images/documents/2385/AGOA_legal_text.pdf (18 May 2000, last accessed 1 March 2021).

33 Tyce, above n 30.

34 International Federation of Human Rights (FIDH), ‘Economic Development or Human Rights? Assessing the Impact of Kenya’s Trade and Investment Policies and Agreements on Human Rights. International Fact-Finding Mission’ (FIDH, 2008), at 18.

later, Kenya became sub-Saharan Africa's top garment exporter to the USA.³⁵ The sector's dominance has diminished in recent years as other activities gained importance, but garment remains one of the most significant sectors in EPZs. In 2019, for example, it employed 60,390 workers—representing nearly 82% of the total local workforce in EPZs—and constituted 17.5% of EPZ enterprises, around 69% of exports and 63% of total EPZ sales.³⁶ Overall, the AGOA programme led to the growth of EPZs exports to the USA from US\$26,058 million in 2011 to US\$45,373 million in 2019.³⁷ However, the phasing out of the Multi-Fibre Agreement, and the related lifting of voluntary export restrictions on some Asian countries, fostered garment industry expansion in those countries, including Bangladesh, but created difficulties for Kenya's EPZ garment sector.³⁸ In this context, the adoption of the SEZ Act reflected an attempt to revamp the programme, in the context of wider reforms to promote private investment and public–private partnerships.³⁹

Ethiopia is a celebrated case of rapid industrialization and one of Africa's leading investment destinations.⁴⁰ Asian and Western businesses have invested in the country, attracted by the country's extremely low labour costs and by duty-free access to the US market under the AGOA. The government's resolve to promote industrialization through a succession of national industrial policies is also commonly identified as a key success factor.⁴¹ From the mid-2000s, this resolve translated into the creation of industrial parks aimed at promoting labour-intensive, export-oriented activities, such as textiles and agro-processing,⁴² and the establishment of government entities tasked with the management of the parks. These include the Ethiopian Investment Board and the Ethiopian Investment Commission (EIC).⁴³ The latter was established as an 'autonomous' government office responsible, among other things, for the regulation of the Industrial Park Development Corporation (IPDC),⁴⁴ a public enterprise set up

35 Export Processing Zone Authority (EPZA) Kenya, 'Export Processing Zones Program Annual Performance Report, 2015' (EPZA, 2015), at 26.

36 Export Processing Zone Authority (EPZA) Kenya, 'Export Processing Zones ReportProgram Annual Performance, 2019' (EPZA, 2019), at 26.

37 Ibid, at 25.

38 Tyce, above n 30.

39 See also the Public Private Partnerships Act of 2013. For a discussion of these aspects, see Laryea, Ndonga, and Nyamora, above n 28.

40 See RMB, 'Where to Invest in Africa 2017/2018', <https://www.rmb.co.za/where-to-invest-in-africa-2018-edition/top10.html> (last accessed 1 March 2021).

41 Giovanni Beatrice et al., 'Sourcing Textile and Garments in Ethiopia: A New Sourcing Destination' (MVO Nederland, 2019).

42 Ethiopia's industrial strategy has been outlined in several policy documents, including the Sustainable Development and Poverty Reduction Programme (SDPRP, 2002/03-2004/05); the Plan for accelerated and Sustained Development to End Poverty (PASDEP, 2005/06-2009/10); the Growth Transformation Plan I (GTP I, 2010/11-2014/15); and the Growth Transformation Plan II (GTPII, 2014/15-2019/20). See Françoise Nicolas, 'Chinese Investors in Ethiopia: The Perfect Match?' (Institut Français des Relations Internationales (IFRI) and OCP Policy Centre, 2017).

43 Ethiopian Investment Board and Ethiopian Investment Commission Establishment Council of Ministers Regulation No. 313/2014, Federal Negarit Gazette, 20th Year, No. 63, 14 August 2014.

44 Industrial Parks Development Corporation Establishment Council of Ministers Regulation 326/2014. The IPDC replaces the Ethiopian Industrial Zones Development Corporation that was approved two years earlier under the Ministry of Industry. See Ermias W. Azmach, 'Regulating Industrial Parks Development in Ethiopia: A Critical Analysis', 10 Beijing Law Review 23 (2019), at 42.

with the dual role as a regulator and SEZ developer.⁴⁵ The central place of the zones in Ethiopia's strategy was reaffirmed and formalized in several investment laws,⁴⁶ and subsequently in the Industrial Parks Proclamation of 2015, which also provides key elements of the regulatory framework for SEZs.⁴⁷

Compared to Bangladesh and Kenya, then, Ethiopia's SEZ experience is of more recent institutionalization, and it stemmed organically from the implementation of nation-wide industrial policies, with formal SEZ regulation following the establishment of pilot experiences. At the same time, the regulatory interventions spurred the further development of SEZs, which transformed Ethiopia into a favoured destination for FDI in Africa, leading to a surge in FDI inflows after 2012.⁴⁸ Total capital invested in industrial parks between 2015 and 2018 amounted approximately to US\$540 million, accounting for roughly 5% of annual FDI inflows in recent years.⁴⁹ In 2016 alone, the recorded FDI inflow was US\$3.2 billion, a 46% increase compared to the previous year when it reached US\$2.2 billion, putting the country as Africa's second largest economy.⁵⁰ This economic impact is most visible in the garment and textile industry, which has grown at an average of 51% between 2011 and 2017.⁵¹ While FDI inflows declined slightly in 2018, Ethiopia was still the largest recipient of FDI in the East African region, absorbing about half of the region's FDI inflows thanks in large part to the country's industrial parks.⁵² By early 2020, the country's 14 operational industrial parks employed 88,000 workers.⁵³

- 45 According to Article 5 of Council of Ministers Regulation 326/2014, the IPDC is responsible for the development, administration, and promotion of industrial parks as well as the outsourcing of industrial park management and lease of developed land to park developers. Further, 'industrial park developers' are defined in Article 2(10) of Industrial Park Proclamation No. 886/2015 as 'any profit making public, public-private or private developer, including the Corporation [IPDC] engaged in designing, constructing or developing industrial parks in accordance with the Investment Proclamation and Investment Regulations, industrial park developer permit and industrial park developer agreement' (emphasis added).
- 46 See Investment Proclamation No. 769/2012, Federal Negarit Gazette, 18th Year, No. 63, 17 September 2012; Investment Proclamation No. 1180/2020, Federal Negarit Gazette, 26th Year No. 28, Addis Ababa, 2 April 2020.
- 47 Article 2(1) of the Industrial Parks Proclamation No. 886/2015 defines the parks as 'an area with distinct boundary designated by the appropriate organ to develop comprehensive, integrated, multiple or selected functions of industries, based on a planned fulfilment of infrastructure and various services such as road, electric power and water, one stop shop and have special incentive schemes, with a broad view to achieving planned and systemic development of industries, mitigation of impacts of pollution on environment and human being and development of urban centres, and includes special economic zones, technology parks, export processing zones, agro-processing zone, free trade zones and the like designated by the Investment Board.'
- 48 According to Ethiopian Investment Commission, Ethiopian Investment Report 2019 (The Federal Democratic Republic of Ethiopia, 2019), at 14.
- 49 Kartik Akileswaran, Maleda Bisra, and Melat Tekaligne, 'Reflecting on the "How" of Ethiopia's Industrialisation Push', <https://institute.global/advisory/reflecting-how-ethiopia-industrialisation-push> (20 January 2020, last accessed 1 March 2021).
- 50 Martha Belete Hailu and Zeray Yihdego, 'The Law and Policy of Foreign Investment Promotion and Protection in Ethiopia: An Appraisal of Theories, Practices and Challenges', in Zeray Yihdego et al. (eds), *Ethiopian Yearbook of International Law* (Cham: Springer, 2017), 13–47, at 31.
- 51 See The Ethiopian Embassy, 'Ethiopia: The Next Hub for World Apparel Investment and Sourcing', <https://ethiopianembassy.be/ethiopia-the-next-hub-for-world-apparel-investment-and-sourcing/> (2 February 2018, last accessed 1 March 2021).
- 52 Ethiopian Investment Commission, above n 48, at 14–15.
- 53 Andualem Mengistu et al., 'Firms in Ethiopia's Industrial Parks: COVID-19 Impacts, Challenges and Government Response' (The World Bank Group, 2020), at 3.

There are important interrelations among the three countries' SEZ programmes, and between the programmes and wider international trends. For example, international factors such as tariff preferences in key export markets (particularly in the EU and the USA) appear to have affected the performance of SEZs and legislative responses to evolving performance, while the phasing out of the Multi-Fibre Agreement produced differentiated outcomes in Bangladesh and Kenya, highlighting the interdependence of SEZ programmes in different countries. In addition, various factors have facilitated the spread of SEZ regulatory models. Ethiopia's SEZ experience explicitly draws inspiration from East Asian industrial development models, and particularly from China.⁵⁴ Ethiopia sent high-level officials to visit Chinese SEZs, some at the invitation of China's Ministry of Commerce,⁵⁵ and Chinese officials were reportedly invited to Ethiopia for on-site guidance and consultation.⁵⁶ In addition, Chinese SEZ developers were reported to have provided input into the design and implementation of Ethiopia's SEZ framework, including by discussing with the Ethiopian government specific articles of the 2015 Industrial Park Proclamation, such as those enabling developers to sub-lease land to enterprises established in the zones.⁵⁷

Meanwhile, a range of international actors have influenced SEZ legislation in the three countries. For example, the Tony Blair Institute was reported to have embedded staff at Ethiopia's EIC and IPDC and to have provided advisory support on the industrialization strategy to other government agencies, including the Prime Minister's Office.⁵⁸ International consulting firm Locus Economica reported to have provided input into the development of SEZ legislation in Bangladesh, Kenya, and Ethiopia.⁵⁹ Transnational labour movements have advocated for, and inputted into, national law reform processes—particularly in Bangladesh, where several sections of a draft Bangladesh EPZ Labour Act were redrafted through tripartite consultations based on ILO observations as well as comments from collective bargaining agents and businesses.⁶⁰

54 See Xiaodi Zhang et al., 'Industrial Park Development in Ethiopia Case Study Report' (United Nations Industrial Development Organisation, 2018), at 48; Christopher Clapham, 'The Ethiopian Developmental State', 39 (6) *Third World Quarterly* 1151 (2018); Ding Fei and Chuan Liao, 'Chinese Eastern Industrial Zone in Ethiopia: Unpacking the Enclave', 41 (4) *Third World Quarterly* 623 (2020), at 627.

55 See Deborah Bräutigam and Xiaoyang Tang, 'Going Global in Groups': Structural Transformation and China's Special Economic Zones Overseas', 63 *World Development* 78 (2014); Keyi Tang, 'Lessons from East Asia: Comparing Ethiopia and Vietnam's Early-Stage Special Economic Zone Development', Working Paper No. 2019/5 (China Africa Research Initiative, School of Advanced International Studies, Johns Hopkins University, 2019), 9.

56 Tang, above n 55, at 12.

57 *Ibid.* See also Fei and Liao, above n 54, at 629.

58 Akileswaran, Bisra, and Tekaligne, above n 49.

59 See Locus Economica, 'Reforming Bangladesh's Zones', <http://www.locuseconomica.com/blog/2016/9/21/reforming-bangladeshs-zones> (21 February 2007, last accessed 1 March 2021); 'Ethiopia Special Economic Zone Policy and Legal Framework', <http://www.locuseconomica.com/blog/2015/12/16/ethiopia-special-economic-zone-policy-and-legal-framework> (1 December 2015, last accessed 1 March 2021); 'Modernizing Kenya's Special Economic Zones Law and Regulations', <http://www.locuseconomica.com/blog/2015/12/16/kenya-special-economic-zones-law-and-regulations-drafting-project> (16 December 2015, last accessed 1 March 2021).

60 International Labour Organisation, 'Right to Organise and Collective Bargaining Convention, 1949 (No. 98)—Bangladesh (Ratification: 1972)': CEACR, Observation—adopted 2019, published 109th ILC

These diverse channels for transnational law diffusion have sustained evolutions in labour law. In Bangladesh, for example, increased pressure from local and transnational trade unions and rights groups, but also from the ILO and authorities in key export markets such as the EU and USA, heralded a new wave of reforms, including the enactment of the 2019 EPZ Labour Act that abolished the earlier, more restrictive EPZ Workers Welfare Association and Industrial Relation Act.⁶¹ Meanwhile in Ethiopia, a campaign for living wage spearheaded by transnational labour unions has gained momentum,⁶² in spite of the government's insistence that a minimum wage for the private sector must be determined by the labour market.⁶³

III. THE INTERFACE BETWEEN SEZ LEGISLATION AND LABOUR LAW

SEZs entail the application of 'rules of business' that depart from those prevailing in the national territory.⁶⁴ In other words, the distinctive feature of SEZs lies in specificities affecting their institutional and legal regimes, generally developed with the aim of attracting investment. In these respects, SEZs overlap with, but must be distinguished from, other forms of geographic clustering—for example, those dictated by available or projected infrastructure, the location of certain natural resources, or the pooling of support services and expertise among businesses operating in the same economic sector or linked by complementarities or value chain relations.⁶⁵

The contours of SEZs' special legal regimes can vary significantly across jurisdictions. Special tax rules are a recurrent feature of SEZ programmes. With regard to labour, however, the picture is more diverse, and the extent to which SEZ regimes affect the application of ordinary law varies in different countries. Amita Punj identified three main approaches: 'inclusionary' models, whereby ordinary labour law fully applies in the SEZs; 'exclusionary' models, whereby a separate legal regime governs labour relations in the SEZs; and 'special/altered' regime, whereby national labour

session (2021), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:2333772 (last accessed 1 March 2021).

- 61 *The Financial Express*, 'EPZ Labour Act to Protect Rights of Workers, Owners', <https://thefinancialexpress.com.bd/public/index.php/trade/epz-labour-act-to-protect-rights-of-workers-owners-1569731945> (29 September 2019, last accessed 1 March 2021).
- 62 Trade unions are currently campaigning for minimum wages above US\$121 per month. See IndustriALL, 'Ethiopian Textile Unions Campaign to End Poverty Wages', <http://www.industrialunion.org/ethiopian-textile-unions-campaign-to-end-poverty-wages> (10 May 2018, last accessed 1 March 2021); IndustriALL, 'ACT Initiative: A Potential Strategy for Living Wages in Ethiopia', <http://www.industrialunion.org/act-initiative-a-potential-strategy-for-living-wages-in-ethiopia> (27 February 2020, last accessed 1 March 2021).
- 63 Gifawosen M. Mitta, 'Labour Rights, Working Conditions, and Workers' Power in the Emerging Textile and Apparel Industries in Ethiopia: The Case of Hawassa Industrial Park', *New Research in Global Political Economy Working Paper No. 01/2019* (University of Kassel, 2019), 47.
- 64 Claude Baissac, 'Brief History of SEZs and Overview of Policy Debates', in Thomas Farole (ed.), *Special Economic Zones in Africa: Comparing Performance and Learning from Global Experience* (World Bank, 2011), 23–60, at 23, <http://documents.worldbank.org/curated/en/996871468008466349/Special-economic-zones-in-Africa-comparing-performance-and-learning-from-global-experience> (last accessed 1 March 2021).
- 65 See, for example, the literature on Italy's experience with 'industrial districts': Giacomo Becattini, 'Industrial Sectors and Industrial Districts: Tools for Industrial Analysis', 10 (4) *European Planning Studies* 483 (2002); G. Dei Ottati, 'Marshallian Industrial Districts in Italy: The End of a Model or Adaptation to the Global Economy?' 42 (2) *Cambridge Journal of Economics* 259 (2018).

law applies with modifications.⁶⁶ The boundaries between these three categories are porous, not least because, under certain circumstances, modifications to the application of national labour law in the SEZs may flow from legislative ambiguities that grant the executive considerable discretionary power, rather than explicit legal provisions.⁶⁷ Historically, several countries have moved from exclusionary to either inclusionary or special/altered models, typically as a result of labour struggles and in some cases international pressures.⁶⁸

The three focus countries present different approaches in the way legislation addresses the interface between SEZ and labour laws. Bangladesh's BEZA Act allows the government to exclude or modify the application of 'any other Act' and purports to prevail over 'any other law' in case of conflict.⁶⁹ In addition, the BEPZA and BEZA Acts specifically empower the government to exempt or modify the application of certain laws, and the BEPZA Act empowers the government to exclude the application of labour laws to the EPZs.⁷⁰ The EPZ Labour Act, a new piece of legislation enacted in 2019, governs labour relations in the EPZs.⁷¹ This legal regime is complemented by special institutional arrangements. Under ordinary legislation, the Ministry of Labour is responsible for labour issues, including registration of trade unions and handling of industrial relations. However, labour issues in the EPZs and the economic zones are handled by the BEPZA and the BEPA, respectively.⁷² Unlike the Ministry of Labour, the mission of the BEPZA and the BEZA is not primarily to handle labour matters but to promote the development of SEZs. Some commentators examining comparable administrative structures in other jurisdictions have raised concerns about possible conflicts of interest if trade-offs arise between labour rights and productivist concerns.⁷³

On the other hand, legislation in Kenya and Ethiopia provides for the application of ordinary labour law in the SEZs. Kenya's SEZ (including EPZ) incentive system is primarily centred on taxation, including value added tax, excise duties, corporate income tax, and withholding tax.⁷⁴ Regulations do provide for some regulatory latitude, both in

66 Amita Punj, 'Special Economic Zones: Operational Adjustment of Labour Law', 5 (1) *Journal of National Law University Delhi* 78 (2018), at 79.

67 See also Ferdous Rahman, 'Harmonization of Workers' Welfare and Investors' Protection in Special Economic Zones of India: Regulatory Freedom and Challenges', *Transnational Dispute Management* (2020).

68 Punj, above n 66, at 79–80.

69 Bangladesh Economic Zones Act of 2010, above n 25, sections 3 and 13(p). See also Cotula, 'The State of Exception and the Law of the Global Economy', above n 5; and Chaumtoli Huq, 'Charting Global Economic Inequalities and Emancipatory Human Rights Responses from the Ground up: The Tea Workers' Movement of Bangladesh', 52 (1) *Columbia Human Rights Law Review* 372 (2020), at 401–402.

70 Bangladesh Export Processing Zones Authority Act of 1980, above n 17, sections 11A(e), (f), (o) and 13(m).

71 Bangladesh EPZ/EZ Labour Law Ordinance No. 01 of 2019. At the time of writing, an English translation of this law was not publicly available, and limited commentary provided in this Article is based on secondary sources.

72 See, e.g., Bangladesh Economic Zones Act of 2010, above n 25, section 19(14).

73 Jaivir Singh, 'Labour Law and Special Economic Zones in India', Working Paper No CSLG/WP/08 (Centre for the Study of Law and Governance, Jawaharlal Nehru University, 2009, reprint 2012), at 15, <https://www.jnu.ac.in/sites/default/files/u63/08-Labour%20Economic%20Jaivir%20Singh%29.pdf> (last accessed 1 March 2021).

74 EPZ Act, section 29. SEZ Act section 35.

general terms,⁷⁵ and in relation to certain issues such as land,⁷⁶ and environmental permitting and management.⁷⁷ However, neither the EPZ Act nor the SEZ Act restricts the application of labour legislation in the zones, and national labour law in principle applies. In fact, draft Supplemental Special Economic Zones Regulations explicitly refer to compliance with ILO Conventions.⁷⁸ Meanwhile, Ethiopia's Industrial Parks Proclamation explicitly states that ordinary labour law shall apply in industrial parks.⁷⁹

This does not mean that legislation in Kenya and Ethiopia does not raise questions about arrangements to ensure labour rights are respected in the zones. Ethiopia's legislation contains detailed provisions on businesses' rights and benefits,⁸⁰ while labour issues seem relegated to succinct 'miscellaneous provisions'.⁸¹ When it comes to labour contracts, Ethiopia's Industrial Parks Proclamation merely requires that these be negotiated between the employer and employee 'taking into account the Industrial Park's peculiar feature',⁸² which remains undefined.

The significance of SEZ regulations in labour matters can only be properly understood in the light of wider evolutions in national labour law. The overall trend in the three countries has been towards incremental improvements in national labour legislation, partly in response to advocacy led by the labour moment and to international pressures. In Bangladesh, the Labour Act of 2006 created a consolidated legal regime,⁸³ repealing multiple pre-existing legal instruments including some with roots in colonial legislation,⁸⁴ and new labour legislation adopted in 2013, in the wake of major industrial accidents, further raised standards.⁸⁵ Kenya overhauled its labour legislation in 2007, including through the Employment Act of 2007 and the Labour Relations Act of 2007, and Ethiopia did the same through its Labour Proclamation of 2019,⁸⁶ following a series of damning investigations into the labour conditions in the country's burgeoning garment sector.⁸⁷

75 See Article 10(1) of the EPZ Act ('Without prejudice to the generality of the powers conferred under this Act, the Authority shall formulate such rules as may be required for the purpose of ensuring orderly and fair development, and operation of export processing zones and export processing enterprises...'); Article 34 of the EPZ Act ('The Minister may make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorized to be made'); and Article 39(1) of the SEZ Act ('The Cabinet Secretary shall, upon the recommendation by the Authority, make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorized to be made').

76 Articles 37–39 of the SEZ Regulations of 2016.

77 SEZ Regulations of 2016, sections 41–48.

78 See Articles 26(2), 26(5), and 27(3) of the draft Supplemental Special Economic Zones Regulations, draft dated 15 November 2019.

79 See, for example, Article 28(1) of the 2015 Industrial Parks Proclamation.

80 Articles 4, 15, 19, and 34 of Industrial Parks Council of Ministers Regulation No. 417/2017 provide further details on the one-stop shop services and incentive package provided, which include simplified customs procedures, exemption from customs duty, and tax and income tax holiday during five consecutive years.

81 See section 8 of Industrial Parks Council of Ministers Regulation No. 417/2017.

82 See Article 28(3) of Industrial Park Proclamation No. 886/2015.

83 Bangladesh Labour Act No. XLII of 11 October 2006.

84 For example, the Workmen's Compensation Act No. 8 of 5 March 1923 (India), amended in 1980 and 1987.

85 Bangladesh Labour (Amendment) Act No. 30 of 22, July 2013.

86 Labour Proclamation No.1156/2019, Federal Negarit Gazette, 25th Year No. 89, Addis Ababa, 5 September 2019. This labour law repealed Labour Proclamation No. 377/2003 along with its amendments.

87 See, e.g., Margaux Yost and Lauren Shields, 'Ethiopia's Emerging Apparel Industry: Options for Better Business and Women's Empowerment in a Frontier Market', *BSR* (Paris, 2017); Laura Dean, 'Ethiopia Touts

In Bangladesh, the existence of special labour rules applicable in the SEZs means that these evolutions have only an indirect bearing on labour standards in the SEZs, mediated by their indirect influence on the development of SEZ-related labour legislation. The EPZ Labour Act of 2019 repealed and replaced the earlier, more restrictive EPZ Workers Welfare Association and Industrial Relation Act.⁸⁸ The reverberations are more direct in Kenya and Ethiopia, where generally applicable national law applies. In Ethiopia, the SEZ labour regime reflects the Ethiopian government's strong preference for tripartite social dialogue as laid out in the Labour Proclamation of 2019.⁸⁹ While the Industrial Park Proclamation authorizes the Ministry of Labour and Social Affairs to establish key labour rules and procedures, this is to be done 'in consultation with the Ministry of Industry on the basis of tripartite modality.'⁹⁰

Similarly, Ethiopia's Industrial Parks Council of Ministers Regulation of 2017 mandates that complaints and labour disputes be resolved 'pursuant to the Labour Law by giving priority to alternative dispute mechanism.'⁹¹ This secondary legislation also goes a step further in establishing a 'tripartite committee' constituted of the Ministries of Industry, and of Labour and Social Affairs, as well as industrial park developer, operator or enterprise, and employees' representatives, whose responsibility is to ensure the respect of workers' rights, conflict prevention (through continuous consultation and engagement), and the maintenance of 'industrial peace.'⁹²

In practice, enjoyment of labour rights partly depends on factors beyond legislation, such as the corporate practices of businesses operating in SEZs or of their buyers, while the enclave nature of SEZs can make it difficult for workers to unionize regardless of legislation. Labour rights abuses take place in and outside SEZs, and in some cases working conditions may be better inside SEZs than outside.⁹³ But legislation does matter, particularly where it translates into separate institutional configurations. The next section examines a few specific issues related to labour rights in the SEZ programmes of Bangladesh, Ethiopia, and Kenya.

Good Conditions in Factories for Brands Like H&M and Calvin Klein, but Workers Scrape By on \$1 a Day', *The Intercept* (2018); Davison, 'Park Life: Workers Struggle to Make Ends Meet at Ethiopia's \$250 million Industrial Zone', *The Guardian* (2017).

88 *The Financial Express*, above n 61.

89 The 2019 Labour Proclamation Law replaces Labour Proclamation No. 377/2003, which was drafted partly to address discrepancies between national legislation and the ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). See https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158894/lang-en/index.htm (last accessed 1 March 2021).

90 See Article 28(3) of Industrial Parks Proclamation No. 886/2015. Article 2(25) of the same law defines the 'tripartite modality' as an 'arrangement by which the Ministry of Labor and Social Affairs, Employers of Industrial Park Developer, Industrial Park Operator or Industrial Park Enterprise and employees' representatives address labour issues through constructive consultation.'

91 Article 21(2) of Industrial Parks Council of Ministers Regulation No. 417/2017.

92 Article 35 of Industrial Parks Council of Ministers Regulation No. 417/2017.

93 Cirera and Lakshman, above n 2, at 252. See also Ben Richardson, James Harrison, and Liam Campling, 'Labour Rights in Export Processing Zones with a Focus on GSP+ Beneficiary Countries' (European Parliament, 2017), http://www.tepsa.eu/download/studies_for_the_european_parliament/droi_report_on_labour_rights_in_epzs/Labour-Rights-In-Export-Processing-Zones.pdf (last accessed 1 March 2021).

IV. EMPLOYMENT CONDITIONS AND LABOUR RELATIONS IN SEZs

While policy and business actors focus on SEZs' potential for mass jobs creation, research suggests that the creation of SEZs can disrupt existing livelihoods as well as creating new jobs,⁹⁴ and that exploitative working conditions may have far-reaching adverse consequences that are not necessarily offset by the income those jobs generate.⁹⁵ Among other aspects, these circumstances interrogate the quality of the jobs created in the SEZs. Job quality depends on many factors, such as the nature and size of firms, the relevant industrial sector, company policy, and conditions in the labour market.⁹⁶ But legislation governing employment conditions and labour relations is an important aspect.

Here too, there are variations across and within the three focus countries. As was noted earlier, working conditions and labour relations in Bangladesh's SEZs are governed by a special legal regime, though the new EPZ Labour Act of 2019 appears to improve rights for workers in the zones.⁹⁷ The Act governs, for example, relations between workers and employers, the minimum rates and payment of wages, leave, and health and safety issues in EPZs and SEZs.⁹⁸ In Kenya and Ethiopia, on the other hand, national labour legislation applies in the SEZs and regulates key employment terms such as basic minimum conditions of employment,⁹⁹ the protection of wages¹⁰⁰, the determination and mode of payment of wages,¹⁰¹ working hours,¹⁰² annual and sick leave,¹⁰³ occupational health and safety,¹⁰⁴ and prohibited acts such as discrimination at work.¹⁰⁵ In Kenya, in addition, these labour rules are complemented by provisions that recognize, for example, a constitutional right to 'fair labour practices', 'fair remuneration', and 'reasonable working conditions'.¹⁰⁶

In all three countries, SEZ legislation and national labour laws offer some protections to women workers,¹⁰⁷ and Ethiopia's 2019 Labour Proclamation dedicates an

- 94 See, for example, Huq, 'Charting Global Economic Inequalities', above n 69, discussing the adverse impacts of converting agricultural land for purposes of building a new SEZ.
- 95 Carlos Oya, 'Building an Industrial Workforce in Ethiopia', in Fantu Cheru, Christopher Cramer, and Arkebe Oqubay (eds), *The Oxford Handbook of the Ethiopian Economy* (Oxford: Oxford University Press, 2019), at 682–83.
- 96 Peter Gibbon, Sam Jones, and Lotte Thomsen, 'An Assessment of the Impact of Export Processing Zones and an Identification of Appropriate Measures to Support their Development' (Danish Institute of International Affairs, 2008), at 36.
- 97 As discussed (above n 71), it was impossible to access an official English translation of this law. Relevant commentary is thus based on secondary sources.
- 98 See Bangladesh EPZ Labour Ordinance 2019, Articles 26, 41, and 35 cited in Bangladesh Economic Zones Authority (BEZA), Labour Management Procedure (LMP) (BEZA, 2020).
- 99 For example, in Kenya, Employment Act, Revised Edition 2012 [2007], Chapter 226, published by the National Council for Law Reporting with the Authority of the Attorney-General, Article 26.
- 100 Ibid, Part IV.
- 101 See, e.g., Ethiopia's 2019 Labour Proclamation, Articles 53–60.
- 102 Ibid, Articles 61–68. See also Kenya's Employment Act, Revised Edition 2012, Article 27.
- 103 Ibid, Articles 28 and 30. See also Ethiopia's 2019 Labour Proclamation, Part V.
- 104 See the 2019 Labour Proclamation, Part 7.
- 105 Ibid, Article 14. See also 'Special Economic Zones Regulations: Supplemental Regulations Arrangement of Regulations', draft dated 15 November 2019, Article 27(4).
- 106 The Constitution of Kenya, 2010, Articles 41(1) and 41(2).
- 107 Maternity benefits are guaranteed in Kenya's 2019 draft SEZ regulation (Article 27(2)) and 2012 revised employment law (Article 29) as well as in Bangladesh's EPZ Labour Act (Article 30). However, these benefits do not extend to Bangladeshi women who have two or more surviving children at the time of their leave.

entire chapter to women workers, prohibiting gender-based discrimination, prohibiting women from undertaking hazardous work, and regulating maternity leave.¹⁰⁸ The special attention paid to women workers in this and other laws is of particular relevance to SEZs, given the predominance of women workers in SEZ manufacturing,¹⁰⁹ particularly young migrant women,¹¹⁰ the potential for enhanced women's economic empowerment in the zones,¹¹¹ and considering the risks associated with work in the zones.¹¹²

Despite these positive provisions, however, problematic aspects remain in all three focus countries, irrespective of their applicable labour regimes. This is evident in the area of wage relations, for instance, where the push for 'wage competitiveness' promoted by international financial institutions¹¹³ has led to differing legal responses in the focus countries. Bangladesh and Kenya have adopted a legally prescribed minimum wage,¹¹⁴ while in Ethiopia the 2019 Labour Proclamation does not prescribe a

- 108 Labour Proclamation No.1156/2019, above n 89, Articles 14(b), 87, and 88.
- 109 Ethiopia's garment and textile sector reportedly employs 62,000 workers of whom 95% are women. In Bangladesh, BEPZA reports that 64% of Bangladeshi nationals employed in EPZs are women. IndustriALL, 'ACT Initiative: A Potential Strategy for Living Wages in Ethiopia', <http://www.industrialunion.org/act-initiative-a-potential-strategy-for-living-wages-in-ethiopia> (last accessed 1 March 2021); BEPZA, Annual Report 2017–18 (BEPZA, 2018), at 7, https://www.bepza.gov.bd/public/storage/upload/tender/file_1558596027.pdf (last accessed 1 March 2021).
- 110 In Ethiopia, for example, the Hawassa Industrial Park has reportedly attracted a significant number of rural migrant workers and provided them with additional opportunities and freedom. See Adam Kessler, 'Career Pathways of Workers in Special Economic Zones in Ethiopia' (unpublished dissertation on file at University of Leicester, 2018).
- 111 See International Finance Corporation (2011), 'Fostering women's economic empowerment through special economic zones: comparative analysis of eight countries and implications for governments, zone authorities, and businesses. Various studies on female EPZ workers in Sri Lanka shows that women's empowerment through SEZs is often dependent on a range of factors, such as the length of employment in the SEZs, earnings management, their contribution to households, and occurrences of violence against women (or lack thereof). See Peter Hancock, 'Violence, Women, Work and Empowerment: Narratives from Factory Women in Sri Lanka's Export Processing Zones', 10 (2) *Gender, Technology and Development* 211 (2006); Peter Hancock et al., 'Women's Economic Empowerment and Formal Income: Sri Lankan Export Processing Zones (EPZs) and Their Impact with Gender Perceptions of Empowerment', 68 (5) *Norsk Geografisk Tidsskrift/Norwegian Journal of Geography* 291 (2014); Chamila T. Attanapola, 'Were They Ever "in Place"? Sense of Place and Self-Identities among Migrant Female Export-Processing Workers in Sri Lanka', 60 *Norsk Geografisk Tidsskrift/Norwegian Journal of Geography* 217 (2005).
- 112 On the more negative gender aspects, see Sheba Tejani, 'The Gender Dimension of Special Economic Zones', in Thomas Farole and Gokhan Akinici (eds), *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington DC: World Bank, 2011); and Tavoyan Women's Union, 'Our Lives Not for Sale: Tavoyan Women Speak Out against the Dawei Special Economic Zone Project' (Tavoyan Women's Union, 2015).
- 113 For example, a recent report on economic constraints in the manufacturing states: 'Still, low wages in Ethiopia of about \$1100 per worker per year enable (based on data from Enterprise Survey, 2011) firms to remain competitive even if firms in other countries are more productive'. See World Bank, '4th Ethiopia Economic Update Overcoming Constraints in the Manufacturing Sector' (Washington DC: World Bank, 2015), at x.
- 114 These government-mandated minimum wages are largely dependent on workers' skillset. In Bangladesh, unskilled garment and textile workers earn on average US\$105.45 per month whereas highly skilled workers earn US\$182.32. In Kenya, meanwhile, the minimum monthly salary for the lowest urban workers is just over US\$93 per month. See BEPZA, Circular of 27 November 2018 Regarding Re-fixation of Minimum Wages for the Workers of the Enterprises of EPZs-2018 and <https://www.minimum-wage.org/international/kenya> (last accessed 1 March 2021).

statutory minimum wage. Rather, the Proclamation designates a Wage Board to ‘periodically revise minimum wages based on studies which take into account the country’s economic development, labour market and other considerations.’¹¹⁵ The law also lays out requirements for certain industrial disputes relating to working conditions, wages, and collective agreements to be settled amicably through conciliation or by a Labour Relations Board.¹¹⁶

In practice, the laws are not always enforced effectively—neither in Bangladesh, where the zone authorities are responsible for labour inspection and enforcement, nor in Kenya and Ethiopia, where labour matters are regulated by national government agencies. Further, there are widespread concerns in all three countries about the determination, amount, and payment modalities of wages, both inside and outside SEZs. In Kenya, workers and activists have complained about low salaries in EPZs over the years.¹¹⁷ There have also been complaints about lack of adequate compensation for overtime work and companies’ strategies that place downward pressures on wages.¹¹⁸ Meanwhile, SEZ employers were reported to have lobbied the Kenyan government to exempt EPZ companies from the national minimum wage band in order to ‘spur competitiveness.’¹¹⁹

In Ethiopia, the lack of a statutory minimum wage has been partially blamed for the preponderance of employment contracts that obfuscate the difference between wages and employment-related benefits,¹²⁰ as well as for the extremely low salaries being paid to SEZ employees. Indeed, some estimates put the entry-level salary of Ethiopia’s garment workers at less than US\$25 per month, the lowest wages ever documented in any garment exporting country in recent years.¹²¹ This and other issues have been at the heart of a recent wave of strikes and protests, which have created challenges for SEZs’ already weak labour conciliators.¹²² In Bangladesh, meanwhile, the government increased the minimum wage after mass protests and ‘wildcat strikes’ over low and late

- 115 Labour Proclamation No.1156/2019, Article 55(2). It is important to note that despite being one of the oldest members of the ILO (since 1923), Ethiopia is not a signatory of the ILO’s Minimum Wage Fixing Convention, 1970 (No. 131). See Mitta, above n 63, at 40, 47.
- 116 Labour Proclamation No.1156/2019, Articles 142, 143, and 145.
- 117 See, e.g., The New Humanitarian, ‘Focus on Working Conditions in EPZ Companies’, <https://www.thenewhumanitarian.org/report/48975/kenya-focus-working-conditions-epz-companies> (9 March 2004, last accessed 1 March 2021).
- 118 FIDH, above n 34.
- 119 See Mumbi Warui, ‘EPZ Processor Seek Minimum Wage Exemption’, *Citizen Digital*, <https://citizentv.co.ke/business/epz-processors-seek-minimum-wage-exemption-200247/> (14 May 2018, last accessed 1 March 2021).
- 120 Interview with labour expert, July 2018. See also Mitta, above n 63, at 51–2.
- 121 See Worker Rights Consortium, ‘Ethiopia is a North Star: Grim Conditions and Miserable Wages Guide Apparel Brands in their Race to the Bottom’ (Worker Rights Consortium, 2018). Other studies suggest that the monthly wages of garment and textile workers in Ethiopia vary between US\$35 and US\$70, compared to US\$400 in China. See Mark Lane, ‘Major Survey Highlights Chronically Low Wages in Ethiopia’, *Apparel Insider*, <https://apparelinsider.com/major-survey-highlights-chronically-low-wages-in-ethiopia/> (12 March 2019, last accessed 1 March 2021); Beatrice et al., above n 41; Mitta, above n 63, at 46–8.
- 122 See Worker Rights Consortium, above n 121, at 3; Hannah Abdulla, ‘Workers Strike at Ethiopia’s Industrial Park’, *Just-Style*, https://www.just-style.com/news/workers-strike-at-ethiopia-hawassa-industrial-park_id135778.aspx (15 March 2019, last accessed 1 March 2021); Paul M. Barrett and Dorothee Baumann-Pauly, ‘Made in Ethiopia: Challenges in the Garment Industry’s New Frontier’ (NYU Stern Centre for Business and Human Rights, 2019), at 16.

payment of wages.¹²³ The revised wage structure announced in early 2019 followed eight days of labour unrest that led to the sacking of thousands of workers.¹²⁴

A second critical element in the SEZ labour regime that has formed the object of concern among advocates, businesses, and governments in export-market countries relates to freedom of association and collective bargaining. These concerns have been raised in Ethiopia and Kenya, where SEZ workers are guaranteed the unconditional right to freedom of association and collective bargaining, including the right to form, join, and end membership of trade unions.¹²⁵ In practice, workers have been reportedly barred from joining unions and undertaking collective bargaining activities in Kenya.¹²⁶ In Ethiopia, the rights to freedom of association and collective bargaining are also said to be under pressure in the face of a weak trade union movement and alleged state and employer hostility to unionization in SEZs.¹²⁷ There are reports of authorities and employers monitoring 'workers' councils' and of employers interfering in the selection of workers' representatives.¹²⁸ Field research from one of Ethiopia's industrial parks highlighted low levels of unionization and management resistance in the face of labour inspectors' calls for companies to allow workers to form unions.¹²⁹

In Bangladesh (where a separate, more restrictive legal regime has been applied in the zones), incremental reforms to labour law have established important safeguards over the years, including the affirmation of the right of workers to form or join trade unions,¹³⁰ followed by a considerable increase in labour unionization.¹³¹ The 2019 EPZ Labour Act, which applies to all the country's EPZs and SEZs under BEZA, appears to further extend these rights in an attempt to bring the EPZ labour regime in line with national labour law. The new Act is cited as guaranteeing the right to freely form, join, or not join Workers' Welfare Associations (WWAs)¹³² and as allowing WWAs to function as trade unions and to be registered within three months of operation.¹³³

- 123 ILO, *Bangladesh: Seeking Better Employment Conditions for Better Socioeconomic Outcomes* (Geneva: ILO and International Institute for Labour Studies, 2013), at 9.
- 124 The Daily Star, 'Workers' Wages Rise in 6 Grades', <https://www.thedailystar.net/business/bangladesh-garment-workers-salary-structure-be-revised-1686979> (14 January 2019, last accessed 1 March 2021). The government reported that 4489 workers were dismissed from 41 factories following the 2018–19 minimum wage protests and after confirmation from the Bangladesh Garment Manufacturers and Exporters Association and the Bangladesh Knitwear Manufacturers and Exporters Association. However, an independent report suggests that almost 12,000 garment workers were sacked. See https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:2333772 (last accessed 1 March 2021); Business and Human Rights Resource Centre (BHRRRC), 'Union Busting and Unfair Dismissals: Garment Workers during COVID-19' (BHRRRC, 2020), at 6.
- 125 See, e.g., Ethiopia's Labour Proclamation No.1156/2019, Article 113(1) and 126; The Constitution of Kenya, 2010, Articles 41(2) and 41(5); and Special Economic Zones Regulations, *supra*, Article 26(1).
- 126 See FIDH, above n 34, at 22–3; The New Humanitarian, above n 105.
- 127 Mitta, above n 63, at 54.
- 128 Barrett and Baumann-Pauly, above n 122, at 14; Mitta, above n 63, at 55–7.
- 129 Fei and Liao, above n 54, at 632.
- 130 Bangladesh Labour Act of 2006, above n 83, section 176(a).
- 131 Labowitz and Baumann-Pauly, above n 122, at 29, reporting that 323 of the 464 trade unions that existed in Bangladesh as of August 2015 had been established after 2013.
- 132 Bangladesh EPZ/EZ Labour Law Ordinance No. 01 of 2019, Article 94, as cited in BEZA, above n 98, at 24. As noted above n 71, an English translation of the 2019 Ordinance was not publicly available at the time of this research.
- 133 Under the previous labour regime, WWAs were functioning as collective bargaining agents rather than trade unions. See Ivonne Stein, 'No Trade Unions – Workers' Welfare Associations at EPZ',

According to media reports, the Act also lowers a previous requirement of a minimum of 30% of workers' consent to form a WWA to 20% as well as the mandatorily required workers' consent for calling strikes: the consent of two-thirds of the workers is now required instead of the previous three-fourths.¹³⁴ Importantly, the Act seems to guarantee job security for WWA leaders in case of strikes and lockouts¹³⁵ and to allow the Department of Inspection of Factories and Establishments (the government authority responsible for inspections of factories) to inspect EPZs factories along with BEPZA (previously the only authority responsible for EPZ factories' inspections).

Despite these important advances, however, several actors found significant aspects of the reformed legislation that do not comply with international conventions on freedom of association and collective bargaining. Over the years, workers' delegates from several countries including Italy, South Africa, and Brazil filed complaints against Bangladesh over alleged violations of the ILO Conventions 81, 87, and 98 on labour inspection, freedom of association, and the right to organize and collective bargaining.¹³⁶ The ILO's CEACR listed numerous areas that needed to be reviewed to conform to these international conventions.¹³⁷ These include the exclusion of some categories of workers, lack of sufficient protection against anti-union discrimination and interferences in trade union affairs, lack of independence of the labour inspection authorities, and the broad powers of the Executive Chairperson to rule on the legitimacy of termination of a WWA representative.¹³⁸ A recent report further highlighted worrying trends of trade union repression in Bangladesh, suggesting that these issues exist both inside and outside the zones.¹³⁹

In sum, analysis of SEZ and labour laws in the three countries points to both legislative advances and enduring problems. In Bangladesh, successive reforms have tightened the regulation of employment conditions and labour relations, but legal and practical factors continue to curtail the enjoyment of labour rights for some categories of workers employed in manufacturing both inside and outside SEZs. A similar contradiction is visible in Kenya, where nationally applicable labour legislation does protect individual and collective labour rights in the SEZs but seems often disregarded in practice. Similarly, in Ethiopia, legislative safeguards appear to contrast with local realities, while the lack of a statutorily mandated minimum wage increases the vulnerability of workers both inside and outside SEZs. These considerations suggest that SEZ legislation *per se* is not necessarily the determinant of poor working conditions and labour relations in

<https://www.steinandpartners.com/en/no-trade-union-workers-welfare-associations-at-epz/> (23 October 2014, last accessed 1 March 2021).

134 Ivonne Stein, 'Bangladesh Passes EPZ Labour Ordinance', <https://www.steinandpartners.com/en/bangladesh-passes-epz-labour-ordinance/> (15 January 2019, last accessed 1 March 2021).

135 Ibid.

136 International Labour Organisation, Right to Organise and Collective Bargaining Convention, 1949 (No. 98)—Bangladesh (Ratification: 1972), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:2333772 (last accessed 1 March 2021).

137 International Labour Organisation, Right to Organise and Collective Bargaining Convention, 1949 (No. 98)—Bangladesh (Ratification: 1972): CEACR, Observation—adopted 2019, published 109th ILC session (2021), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4021836 (last accessed 1 March 2021).

138 Ibid.

139 BHRRC, above n 124.

SEZ-based manufacturing, because problems may be rooted in gaps between law and practice, and in wider issues affecting labour relations both inside and outside SEZs. At the same time, the findings illuminate the role that national and international labour law can play in shaping SEZ workers' rights, both in substantive terms and as regards institutional arrangements for supervision and enforcement, while also highlighting the need to address the social, political, and economic factors affecting the ways in which the law operates.

V. CONCLUSION

Employment creation and labour rights in SEZs are a much-debated policy issue that has far-reaching implications for the livelihoods and rights of many. In low- and middle-income countries, this issue has been at the centre of considerable controversy, particularly with regard to workers' rights in the manufacturing sector. The global evidence base presents a mixed picture, reflecting diverse and evolving economic, political, and juridical realities. The specific place of SEZ programmes in labour relations also involves considerable complexities. Where studies have documented poor working conditions and violations of fundamental rights at work, including the right to freedom of association and collective bargaining, these issues are often present both inside and outside SEZs, albeit in different forms, and they may be caused by diverse factors, including corporate policies and practices, labour market characteristics, and a country's socio-political and economic conditions. The law is an important parameter to make sense of this variation in space and time and to understand the processes that influence labour rights in SEZs. This is particularly the case where SEZ laws exclude or modify the application of national labour legislation and provide for a separate set of administrative and adjudicatory authorities responsible for protecting labour welfare in the zones.

Bangladesh, Kenya, and Ethiopia present three diverse experiences with governing labour rights in the SEZs. Overall, the three countries present a shift from an 'exclusionary' model to a 'modified' (Bangladesh) or 'inclusionary' model (Ethiopia and Kenya), to follow Amita Punj's classification, whereby labour rights in the SEZs increasingly rest on the application of ordinary legislation, or comparable legal regimes. However, the degree and pace of this evolution vary considerably and depend on context-specific domestic and international political-economic dynamics. Special labour legislation continues to apply in Bangladesh. In all three countries, the intersections between SEZ and labour laws involve tensions and ambiguities, albeit in fundamentally different ways, resulting in poor enforcement of legislation, weak controls, and discrimination against certain groups of workers. Taken together, the SEZ legal regimes in the three countries illustrate the policy dilemmas facing many low- and middle-income country governments on how to reconcile economic imperatives with protecting the rights of workers, and ultimately of citizens—a concern that is referred to in the preamble of Ethiopia's 2019 Labour Proclamation.

In more theoretical terms, this discussion of labour rights in SEZs illustrates the complexities that characterize debates about 'unilateral' IEL. The central place of national law in governing SEZs and the diverse legislative approaches followed in the

three focus countries point to the relevance and context specificity of national legislation in governing transnational economic relations. This consideration highlights the place of unilateralism in global economic governance, at least in terms of the formal legal structures that sustain economic organization. At the same time, multiple channels of cross-fertilization and inter-dependence link developments in the three countries and beyond. These include structural factors such as increased global competition for FDI and for export markets, domestic and international pressures to use low-wage enclaves to climb up the value chain ladder, and complex constellations of international actors supporting the diffusion of regulatory models, each with distinct interests and motives—from the international financial institutions and international advisers that have promoted or shaped SEZ legislation, to labour movements and international organizations working to advance labour rights. These factors qualify the real depth of the formal unilateralism, inscribing SEZ regulation within an inherently globalized political economy that responds, to varying degrees, to competing pressures from productivist imperatives and rights activism.

Further research is needed to develop a more fine-grained understanding of the complex, multifaceted issues related to unilateralism and diffusion as they affect labour rights in the SEZs. This includes a more in-depth examination of (i) comparative experiences related to labour rights within and outside SEZs in the same jurisdiction, in both law and practice; (ii) the country-specific historical and socio-political trajectories in which SEZ programmes are designed and implemented, analysing the ways in which social struggles and political developments in each country shape both SEZ and labour law reforms; and (iii) the modalities of cross-fertilization among SEZ programmes across countries, both direct (for example, through international actors facilitating cross-fertilization) and indirect (via parallel policy responses to changes in global economic contexts), and the interplay between formally unilateral law-making and the real-life channels for law diffusion. These research themes would provide fertile ground for socio-legal approaches that can combine doctrinal and empirical insights to generate new data on the law and practice of labour rights in SEZs.