

STAPLE CROPS PROCESSING ZONES (SCPZs): Promoting Sustainable Agricultural Value Chains.



Legal due diligence for the SCPZ Programme.

African Development Bank

April 2023

1.1 Introduction

The SCPZ is a sovereign operation, and the executing entities (EEs) are the national government of the Programme Countries. This document provides the due diligence carried out by the AE regarding the implementation of the SCPZ.

The AE has carried out the Country Fiduciary Risk Assessment (CFRA) which provided the bases for dialogue on the portfolio risks and implementation of subsequent funding operations in the respective countries.

1.2 Regulatory, tax and insurance necessary to the implementation of the Facility

Permit and licenses

For the implementation of the climate resilient activities, the beneficiaries will already have access to land to be eligible as indicated in the eligibility criteria. The governments of all the Programme Countries have already allocated portions of land that will be under the SCPZ. For the PPP arrangement with the government, the governments in the Programme Countries will be responsible for granting permits and licenses for private sector ESCOs as part of their regulatory activities. Since the governments are also the EES, they are responsible for assisting the private sector ESCOs to have access to the allocated areas for each of the asset's installations. The resettlement implications of these have been considered in the Resettlement Plans for the countries. These access to the allocated land areas considered in the funding proposal will be part of the tendering process and the PPP agreement.

The sovereign EEs will work through several institutions including those responsible for regulatory measures for renewable energy systems and agricultural production. The EEs will coordinate with their national agencies responsible for regulatory measures and will oversee the processes to ensure seamless implementation. This is the normal arrangements the AE has for sovereign operations such as the SCPZ. It will be helpful to cite some of the relevant laws and regulations applicable to the SCPZ.

Guinea.

Guinea 2040 Vision” document adopted in April 2017, of which the National Economic and Social Development Plan (PNDES, 2016-2020) is the operationalisation tool, which sets out the country's development orientations.

- The SCPZ project is embedded on this document and integrates the objectives of the main rural development programmes which are: (i) National Agricultural Investment and Food Security Programme (PNIASAN), (ii) the Special Programme for Food Security (SPFS), the National Programme for Food Security (PNSA), (iii) the National Agricultural Development Policy (PNDA), (iv) Accelerated Programme for Food Security, Nutrition and Sustainable Agricultural (PASANDAD, 2017-2020), etc.

The Constitution and the Civil Code of 16 January 1996,

- guarantees the right to property, specifying that no one can be expropriated except in the legally established interest of all, and subject to fair and prior compensation.

Energy Sector Development Policy Letter (ESDPL) adopted in 2009.

- reflects the country's strategy for the sector's development. This Letter, which is spread over a 20-year period and covers all forms of energy, includes: (i) a General Policy Declaration (GPD), setting the objectives, strategic orientations for the development of the energy sector and implementation conditions; (ii) a Detailed Policy Letter (LPD) which is a GPD operational document; and (iii) an Action Plan and a Priority Investment Programme.

- Regarding rural electrification, the new policy was initiated by the “Sector Policy Letter for the Promotion of Decentralised Rural Electrification” in February 1998 and confirmed in 2013 by the updated Energy Sector Development Policy Letter. In the same vein, Law L/2013/061/CNT on rural electrification was adopted in September 2013.

Law L/2019/035/AN of 4 July 2019 on the Civil Code

- determines the general principles of the transfer of rights and the use of property in general. According to Article 829, no one shall be compelled to transfer his property, except in the public interest and in return for fair and prior compensation.

Ordinance O/92/019/PRG/SGG of 30 March 1992 on the Land and State Code (CFD)

- replaced the legislation in force since the First Republic which gave the State a monopoly over all land in the country, by introducing a system of concessions that granted usage rights to individuals. This new Land and State Code has a wider scope of application in terms of land management by allowing the extension of real rights over land, in addition to the State, to public, physical persons and corporate bodies.
- law considers landowners to be: (i) persons holding a land title; (ii) occupants holding a land register, a residence permit or an authorisation to occupy, in force under the old land law; (iii) occupants who can prove peaceful personal and continuous occupation in good faith.
- This mechanism was strengthened by Decree D/2001/037/PRG/SGG of 17 May 2001 adopting the rural land policy, which reconciled the legal mechanism with positive customary practices. Customary” holders could be considered as “de facto occupiers” and consequently invoke the condition of prolonged occupation of land for their own benefit, provided that a public enquiry validates their useful possession (development according to local customs).

Senegal

Emerging Senegal Plan (ESP)

- The South Agro-pole/SCPZ project is embedded on this plan and that seeks to guide the nation to accelerate its march towards emergence.
- constitutes the framework for economic and social policy in the medium and long term. The vision of the ESP is that of an emerging Senegal by 2035 with a society based on solidarity and the rule of law.

Act III of Decentralisation

- The general objective of the decentration reform is to organise Senegal into viable, competitive territories that promote sustainable development.

Law No. 64 - 46 of 17 June 1964,

- relating to the national domain and Implementing Decree No. 64 - 573 of 30 July 1964. Both legal documents specify that holders of a formal or informal right to land in the national domain may be displaced for reasons of general interest.

Togo

The Constitution of the Togolese Republic as adopted by constitutional referendum on 27 September 1992 and promulgated by the President of the Republic on 14 October 1992.

- applicable to the right to development (art. 12), the right to property (art. 27), the right to health (art. 34), the right to education (art. 35), etc.

- Regarding land tenure, article 27 states that "the right of ownership is guaranteed by law. It can only be infringed based on a legally established public interest and after fair and prior compensation".

Law n°2018-005 of 14 June 2018 on the Land and State Code

- Article 5 specifies that "The land tenure system in force in the Togolese Republic is that of the registration of buildings, determined by the provisions of Title III of this Code. It governs all rural, peri-urban and urban land and is based on publication in land registers.
- Article 6, emphasises that: "In the Togolese Republic, the State holds oversight over lands in the national territory for the : (i) preservation of its integrity; (ii) the guarantee of the right of ownership of the State and local authorities, natural persons and legal entities of private law acquired in accordance with the law and regulations; (iii) the guarantee of property rights of individuals and communities acquired according to customary rules; and (iv) the guarantee of its sustainable use and development.
- Article 7 reinforces the above-mentioned provisions in the following terms: "No one shall may not be forced to transfer its property or real property rights, except for the implementation of development policies or for reasons of public utility, and in any case in return for fair and prior compensation".

Ordinance No. 70-18 of 17 May 1978 on the creation and development of planned agricultural development zones.

- states in article 1: "with a view to carrying out rural development works in the various regions of Togo, planned agricultural development zones (ZAAP)/SCPZ shall be created by decree. These establishments will be endowed with legal personality and financial autonomy".
- Article 3 defines the objectives of the ZAAPs as follows: "to allow the inventory and evaluation of the land included in the said perimeter; to authorise the establishment of new agro-land structures and the overall registration of land in the name of the owners and the State as regards the land in the national land estate; to make community exploitation of the land in the development zone compulsory ; to allow for the compulsory purging of all prior land rights on ZAAP land; to allow for the expropriation of land located on sites reserved for collective development work; to make land included in the development perimeters transferable to existing or future cooperatives, organisations or communities".

Currency regime, foreign exchange and regulatory approval

As a multilateral development institution, the AfDB enjoys a preferred creditor status which gives preferential access to foreign currency in case the country is imposing any restrictions in regard to the foreign currency conversion. This preferential access reduces currency conversion risk in the Programme Countries. .

For Guinea, Senegal and Togo, Regulation No. 09/2010/CM/UEMOA/- regulations relating to the external financial relations of WAEMU States are applicable. The Central Bank of West African States (BCEAO) has the exclusive right to issue currency throughout the member states of the West African Monetary Union. The BCEAO issues banknotes and coins that are legal tender and redeemable throughout the member states of the Union. The creation, issuance and cancellation of banknotes and coins are decided by the Council of Ministers. The Regional Stock Exchange (BRVM) in Abidjan trades equity securities and an effective regulatory system exists to facilitate portfolio investment through the BCEAO. The French Treasury continues to hold the international reserves of WAEMU member states and supports the fixed exchange rate of CFA 655.956 to 1 Euro. The AE is not aware of any restrictions on the transfer or

repatriation of capital, dividends and income earned, or on investments financed with convertible foreign currency in the West African CFA region.

Taxation.

As indicated in Clause 6:05 of the FAA, under Article 47 of the Agreement establishing the Accredited Entity, there is provision for tax exemption with regards to any obligation relating to the payment, withholding or collection of any tax or duty. Accordingly, the AE shall not withhold any amount for Taxes from any Other GCF Funds and Unused Funds to be transferred by the Accredited Entity to the Fund, The Fund shall not be required to make any additional contribution, including for the payment of Taxes, during the implementation of the Funded Activity. The flow of GCF proceeds will therefore not be affected by taxes and will reflow back to the GCF without any tax impacts.

Insurance

Section 10 of the AMA provides for the AE to ensure that adequate provision is made for the insurance of any Goods required for the Funded Activity against hazards. Any indemnity for such insurance shall be payable in a freely usable currency to replace or repair such Goods; the AE, as a lender of record, will ensure that each project is adequately insured as per standard industry practices.