Investment and SDGs in **Tunisia**

Tunisian Observatory Of Economy

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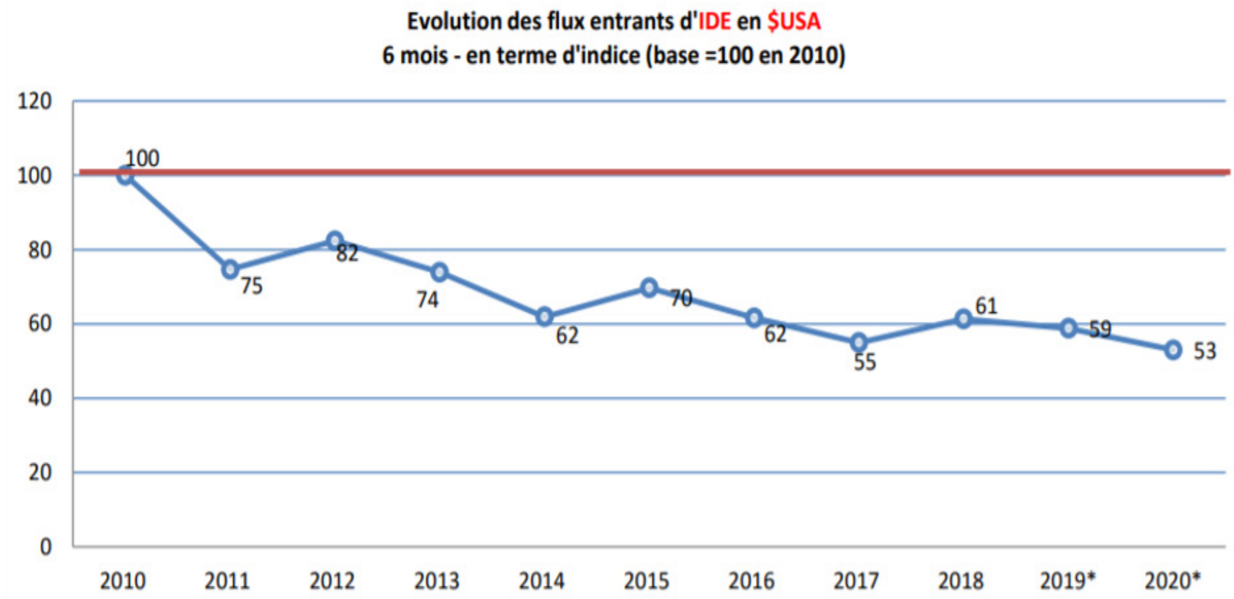
This chapter aims to a nalyze the national context of economic development in Tunisia, mainly through an in-depth analysis of foreign investment, public-private partnerships, and CSR policies. Since the 1990s, the national development strategy has been characterized by an over-reliance on foreign direct investment to bolster growth and create job opportunities. Indeed, Tunisian authorities have focused on attracting foreign direct investment (FDI) based on the assumption that foreign businesses are the primary source of jobs and wealth creation, innovation, and economic well-being of society. Since the 1990s and the implementation of the IMF structural adjustment plan, the country's economic development model has been based on Tunisia's engagement in globalized trade. As a result, development was concentrated on the coast to the detriment of inland regions. The model was highlighted during the Tunisia 2020 conference, also called the International Investment Conference, which took place in 2016. During the conference, national authorities introduced the 2016-2020 Development Plan to international partners based on the same narrative focused on attracting and boosting foreign investments in Tunisia.

The conference and the Development Plan are indicative of Tunisia's continued focus on financing development through foreign private capital. Since 2021, several reforms have been adopted to attract FDI. Moreover, those years witnessed the emergence of a narrative towards entrepreneurship and startups, with the adoption of the StartUp Act in April 2019. Thus, there seems to be a continuity in the economic policy adopted before 2011. The authorities are utilizing the same economic narrative to legitimize neoliberal policies based on deregulation and privatization.

1. Development Context and Investment Overview in Tunisia

A Deeper look at the business sector - FDI analysis

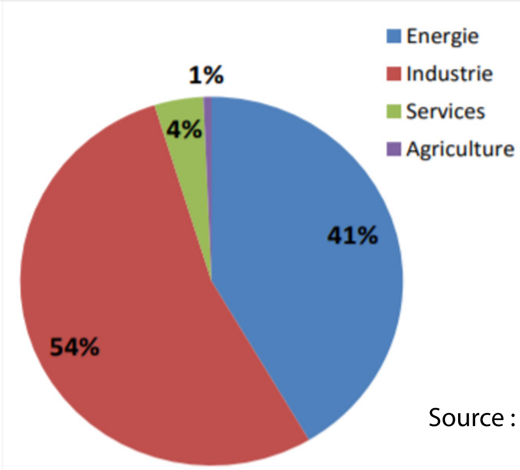
Graph 1: Description of FDI in Tunisia during 2010 and 2020



Source : FIPA, Bilan des flux des IDE, 1er semestre 2020

In 2019, foreign direct investments represented a total sum of 2,479.1 million Tunisian dinars (0.9 million USD).[1] However, FDIs decreased by 9.6% compared to 2018, while increasing 16.3% compared to 2017. A closer look at FDI distribution by sector in the first semester of 2020 shows that the majority of FDIs go to the manufacturing sector (50.4%), followed by the energy sector (36.7%), the service sector (12.2%), and finally the agricultural sector at 0.7%.[2]

Graph 2: Description of FDI in Tunisia during 2010 and 2020



Source : FIPA, Bilan des flux des IDE, 1er semestre 2020

FDIs are overly concentrated in sectors with low added value in the value chain employing low-skilled labor or in the energy sector, particularly widely contested and harmful extractive industries due to their impact on local development, the environment, and health. The energy sector, which absorbs a large part of these investments, generates few jobs locally and has a minor spillover effect on the productive economy.

FDIs are also concentrated in manufacturing (with 526 projects), especially in the textile and clothing industry (130 projects). The total value of all projects is estimated at 1,569.6 million TND. FDIs in manufacturing led to a high number of low-skilled jobs (in textiles and clothing). The investments created 14,353 new jobs, 93.6% of which are in that sector. Nevertheless, such investments maintain and fuel a low added value-based development model with deep regional disparities.

FDIs in Tunisia are concentrated in the already developed areas of the coast and Greater Tunis, aggravating socio-spatial inequalities. Indeed, 40% of FDIs are in the Greater Tunis region, more precisely in the governorate of Tunis; another 20% are in the North-East region.

In 2020, FDIs (excluding energy) came mainly from France (35% of total FDIs), Germany (12%), Italy (11%), and Qatar (10%). In short, European countries remain Tunisia's largest trade partner, especially France, Italy, and Germany. As a result, the country suffers from a lack of economic diversification and significant dependence on the European macroeconomic situation and EU regulations.[3]

The very moderate growth of FDIs in the past three years (2017-2020) alongside the rise in capital outflows puts into question the viability of the exclusively FDI-based model. Additionally, generating dividends that are then repatriated to the country of origin could often lead to an imbalance between capital inflows and outflows.[4] In parallel, Tunisian authorities have stepped up efforts to attract FDIs, notably through tax incentives (lower tax rate) and financial incentives (bonuses). However, the recent legislative move to review these measures and proceed to a cost-benefit evaluation indicates an awareness of the need to improve the impact of the incentives regime.[5] According to a survey by IFC (World Bank Group) in 2012, it appears that almost 90% of investors surveyed would have invested in Tunisia even without exorbitantly expensive tax incentives.[6] Over the last decade, the average tax incentive represented 70% of corporate tax revenues, public funds that could be redirected towards the promotion of added value manufacturing and agricultural sectors, particularly in the areas most neglected by FDIs.

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The government's approach and narrative towards business and investment

The government strategy to promote foreign investment as a source of growth and job creation has included a set of legislative changes aimed at gradually deregulating and liberalizing trade and investment through, among other things, successive ‹reforms' of the Investment Code since 1994, a set of financial and fiscal incentives, and the adoption of a sectoral and then generalized legal framework for PPPs. Promoting FDIs in the discourse and through legal reforms has been a constant position taken by the government towards businesses. It continued even after the revolutionary process started in 2011 and aimed to challenge the existing development model. Improving the attractiveness for private operators, mobilization of external funds for infrastructure projects, notably via PPPs, and helping private investors identify high-potential sectors and industries in each country's regions were seen as the main drivers of development.[7]

Entrepreneurship appears to be the general strategy to revive the national private sector and create employment for youth, especially educated youth who suffer from endemic unemployment. The narrative around the Startup Act focused on presenting Tunisia as a «country of Startups»[8] at the crossroads of the Mediterranean, the Middle East and North Africa (MENA) region, and Africa. The legislative reform promotes a label of merit and sets up a series of benefits and incentives for investors. It is based on the slogan «freeing energies», particularly from bureaucratic and institutional obstacles. Since 2019, 248 labels for startups have been granted at an acceptance rate of 70%. As for startup profiles, 70% were initiated by graduates with a bachelor's degree and around five years of experience, while young graduates and students represent 6% of the total. Among the approved startups, 68% were founded individually by men, women founded 4%, and three-quarters were in Greater Tunis (75.4%) compared to 3.7% in the South-East.[9] They have a total of 8 subsidiaries abroad, the majority of which are in Europe. Thus, it seems the startup development strategy promoted by the authorities follows the same trends (economic centralization around Tunis, gender inequality, youth unemployment) as the strategy on FDIs and tends to deepen the current economic imbalances. While the promotion of entrepreneurship is a welcome step, it cannot replace a national strategy aiming at developing a solid national private sector contributing to regional development to reduce inequalities, generate added value, and create employment opportunities.

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Business pledge to the Sustainable Development Goals

Agenda 2030 for Sustainable Development provides a robust framework for businesses to engage in corporate social responsibility (CSR). It includes a call for businesses to apply their creativity and innovation to solve development challenges and all actors, including companies, to pursue a shared vision driven by sustainable development and address socio-economic and environmental challenges. In addition, the 2014 Tunisian Constitution enshrines several principles related to sustainable development, in particular, social justice and sustainable development (Article 12) and the right to a healthy environment (Article 45).

Since 2011, new actors have emerged that engage in CSR initiatives, such as the Institute for the Social Responsibility of Tunisian Enterprises (IRSET). In December 2019, the Tunisian Union of Industry, Commerce, and Handicrafts (UTICA), the leading national employers' organization representing the national private sector,[10] officially joined the Global Compact (GC)[11] and publicly announced its commitment to the SDGs and the 2030 Agenda. During a seminar on «Sustainable Development Objectives and the Private Sector» in partnership with the United Nations Office in Tunis and the IRSET, UTICA committed to implementing GC principles. The Global Compact is a United Nations initiative launched in 2000 to encourage companies worldwide to integrate and promote several principles relating to human rights, international labor standards, the environment, anti-corruption, and the SDGs. Since the early 2000s, Tunisian authorities have started to engage with CSR standards, including adherence to OECD guidelines on Multinational Enterprises and the implementation of the GC to stimulate business competitiveness. The Global Compact was launched in Tunisia in September 2005 with the strong support of public bodies, reflecting the importance they placed on business engagement. Yet, these new actions were made without any biding measures. For example, the label CSR Tunisia was created, and most ILO conventions have been ratified. A convention was signed in 2012 between the Ministry of Governance and INNORPI (National Institute for Normalization and Intellectual Property) to implement governance mechanisms in public and private sectors through the promotion of CSR norms. Article 2 of this convention provides for the need for public and private companies to consider the expectations of society, the social repercussions, and the environmental aspects of their activities. Public institutions carried out programs to promote and implement CSR norms, such as the Ministry of Social Affairs between 2006 and 2009 and CITET and INNORPI since 2010. According to a study published by the Respeco Research Institute, Tunisia is ranked 59th for its compliance with CSR standards, with a positive trend this past decade as it was ranked 82nd in 2013.

Following the association agreement with the European Union (EU) in 1995 and accession to the World Trade Organization in the same year, the government engaged in an upgrading program with the EU in the framework of the association agreement, which included a diagnosis of the socio-economic environment of companies. In addition, the integration of CSR standards proposed by the International Standardization Organization (ISO) in the field of management and the environment was implemented by INNORPI, which manages the main international social and environmental certifications such as the 14001 standard measuring environmental impact and the 9001 standards on quality management.[12] The ISO also offers a CSR reference framework that is neither binding nor certifying, the ISO 26000 standard, based on the recommendations of the GC and promoted by INNORPI.[13] These frameworks are all voluntary and non-binding.[14] Tunisian companies that joined the GC in 2005 did not benefit from any support structures and had difficulties implementing their commitments, especially CSR activities (such as the inability to establish a CSR report). In 2015, IRSET became the official representative of the GC network,[15] liaising with the UN Global Compact. Its mission was to mobilize companies around CSR and ensure the necessary support and follow-up for managing their membership. IRSET is now officially responsible for supporting companies to integrate and implement GC principles. Most of the companies adhering to the GC are exporting companies (42% of exporting companies have set up CSR programs compared to 26% of local companies), or «off-shore», which benefit from the dissemination of ‹best practices՛ via their international partners.[16] Their integration of CSR is also an essential requirement of business partners, donors, and investors. According to Ghozzi-Nekhili, «[in] Tunisia, some exporting companies or those wishing to develop a partnership with foreign companies must set up organization models that comply with international standards, which may be certification standards (SA 8000, ISO 14001, OHSAS 18001...) or non-certification standards (ISO 26000, SD 21000)». Their study showed that the primary motivation for companies to adopt CSR principles was the demand of international customers, who are increasingly sensitive to these standards, and increased access to external financing.[17]

Role of the State, CSR, and National legal frameworks

In addition to these recent evolutions from business actors՛ perspective, several strategies on sustainable development with indirect implications for CSR have currently been developed at the state level, such as the National Strategy for Sustainable Development (SNDD)[18] in 2011, the National Green Economy Strategy (SNEV)[19] in 2016, and the National Strategy for the Fight against Corruption (2016).[20]

Parliament also adopted a law on CSR in 2018,[21] including six articles. In its first article, it states that its objective is to enable reconciliation between institutions and their natural and social environment by following the principles of sustainable development and good governance and affirms its conformity with various higher standards: The Constitution, the UN Global Compact, the Universal Declaration of Human Rights, the ILO conventions and the Rio Declaration on Sustainable Development. It defines CSR as «the principle adopted by institutions to ensure that they are responsible for the impact of their activities on society and the environment by adopting transparent behavior that benefits the community at the regional level». The law is intended to apply to public and private institutions, encouraging them to allocate funds to finance CSR projects. These CSR projects must be in various fields: the environment and Sustainable Development, the rationalization and development of natural resources, the development of skills and employment, and the promotion of good governance. Even if a specific percentage is not stipulated in the law, the CSR law encourages public or private companies to allocate funds for financing and implementing social or environmental projects.

However, the CSR law was a missed opportunity to establish a binding framework and contains no binding monitoring mechanism.[22] The approach incorporated in the CSR law is based on a philanthropic charitable approach and mindset.[23] Indeed, the Law does not mention the obligation to respect human rights, the environment, or the fight against corruption, as in most international standards. CSR is defined as a form of social and environmental action to improve production methods and move towards greater transparency.

Rather than encouraging companies to voluntarily dedicate a specific amount of money for development projects, the CSR law should mention an obligation to report on turnover, recruitment methods, production processes, environmental and social impacts. It should also address issues related to production systems and relations with customers and employees. Moreover, even if companies use part of their profits to finance development projects without changing their production methods to reduce negative impacts on local development, the environment, and society as a whole, they will, in effect, pay for philanthropic actions to improve their reputation.

When analyzing the ‹intents› of the authorities and members of Parliament regarding the adoption of the law, it becomes more apparent that the Law was proposed and discussed to revive the extractive industries (in particular phosphate and oil sectors), which have been strongly impacted by social movements in several regions questioning the development role of this sector and highlighting its damaging impacts on the environment, agriculture, and community health.[24] These social movements, growing since 2011, have provoked significant losses for extractives industries in particular, and private foreign companies were threatening to leave the country[25]. In its introduction, the CSR Law states that its objective is to enable reconciliation between companies and their natural and social environment by following the principles of sustainable development and good governance.[26] The national report on the CSR strategy published at the end of 2018[27] by the Ministry of Local Affairs and the Environment outlines the CSR Law's objectives as follows: «A better attractiveness of the country and easier access to foreign capital» by improving the country's image while FDIs are declining» and «financially more efficient companies thanks to the implementation of CSR», which allows better operational efficiency (reduction of energy consumption, waste, etc.), «better relations with employees, with labor peace resulting in better productivity» by easing «tensions» and «strikes», and ensuring «better reputation and a better corporate image». The 2018 National CSR Strategy clearly expresses the objective with a high focus on the ongoing strategy to attract FDIs and to improve the country's image and reputation for FDIs. Thus, the CSR strategy remains rooted in the same paradigm and narrative regarding FDIs. The CSR Law is only one part of this strategy to ‹purchase social peace› after a long series of sit-ins in several extractive industry sites.

Indeed, after the revolution, the country experienced momentum among social movements and workers unions, with tensions and strikes blocking production in extractives industries for several months. Some companies closed down or relocated their activities. Implementing a CSR strategy and the related legal framework explicitly aim to limit criticism of extractive companies, particularly around pollution, health impacts, and employability, instead of questioning their role and contribution to sustainable development. On the one hand, social movements continue to question the development model through their critical positions and actions. On the other hand, the State maintains a model based on low-value-added sectors that are relatively stagnant, such as the textile sector, with low skilled workers and primary commodities/ extractive activities mainly for targeting exports, coupled with a narrow view of local development based on ‹specializing› a region in one type of production instead of diversifying sectors and promoting vibrant local development.

A 2009 study in Tunisia[28] highlighted that the lack of involvement of managers in CSR is generally due to the lack of binding obligations. «[I]n the unanimous opinion of managers and experts in our sample, SMEs would be more involved in Sustainable Development if a law required them to do so» (Author's translation), the report states. Similarly, a study from the same year[29] showed that many companies following the sustainable development principle do so primarily in compliance with regulations: «Companies are seeking regulatory compliance and show a willingness to comply with existing laws. However, they see these regulations as either not sufficiently dissuasive (lack of obligations) or not sufficiently enforced by competitors (lack of commitment from competitors). Companies rarely want to go beyond the law and wait for either a tightening up of or compliance with, existing laws before committing themselves further».[30] The role of the State is critical to clarify obligations and consequently have a real commitment from companies.

Business and Human rights: any corporate crisis?

The CSR law was a response from national authorities to several corporate crises triggered by social movements and demonstrations from local communities denouncing the negative impacts of corporations on the environment, health, and local development. Several social movements have emerged since 2011 criticizing the negative impacts of corporate activities, especially extractive industries, with devastating implications on the environment (water and soil pollution) and community health and disastrous implications on fishing, agriculture, and tourism. These social movements targeted private and public companies and are related mainly to the right to water, the right to health, the right to decent work, and the right to an adequate standard of living.

The phosphate industry is mainly targeted. In Tunisia, phosphate is mainly extracted in the Gafsa mining basin by the public enterprise 'Compagnie de Phosphate de Gafsa' (CPG), and its transformation is done in Sfax, Gabès and Skhira by another public enterprise 'Groupe Chimique Tunisien', (GCT). Phosphate production is one of the most polluting, mainly because of the phosphogypsum discharged into the sea[31]. Environmental damage poses severe problems in the Gabès region, including significant effects on communities' health, with toxic heavy metals in the water and the air. Gabes is the most polluted city in the country and suffers from infertility, frequent miscarriages, and cancer.[32] Moreover, although phosphate represents a regional wealth, these regions are among the poorest and most affected by unemployment, which raises equal redistribution.[33] There are also other examples of solid social contestation of private companies involved in the extractive industries, denouncing the environmental pollution and their lack of participation in local development. Since 2017, sit-ins have been taking place at the El Kamour oil site (in the Tataouine region) in the name of the right to work demanding decent jobs for the graduates.[34] On the island of Kerkennah, the British oil group Petrofac was stopped by sit-ins and demonstrations denouncing the lack of local development and employment but also protesting water pollution caused by oil spills in the sea, which had a disastrous impact on the fishing sector (the private company left the country in 2018).[35] Many other social movements towards extractive industries also took place in the South West.[36]

In Kairouan in 2020, communities protested the negative impacts of the Sotacib cement factory, a foreign enterprise,[37] on the environment and health. Inhabitants reported experiencing respiratory problems since the start of its activity, such as the exponential appearance of asthmatic conditions. Sotacib has been created in 2008 and became operational in 2012. In addition, communities were denouncing the emission of toxic gases that impacted crop quality, representing all of their livelihoods. They consequently suffered from low olive production, poisoning of livestock, or inability to continue their income-generating activities such as beekeeping. A joint field visit carried out by the Business and Human Rights Resource Centre (BHRRC) and the Tunisian Forum for Economic and Social Rights (FTDES) proved that pet coke in the company's production cycle accentuated health problems in the locality. It also caused soil and flora degradation, and the intensity of mine explosions caused cracks in the ceilings of the local houses.

Another significant corporate crisis related to the environment and health concerns pollution caused by the Brickworks (BKS) in Kalaa Sghira in Sousse Region. The pollution is damaging community health and agriculture. More than 6,200 people are directly affected by its toxic fumes, which cause heart, respiratory, and cancer diseases besides its impact on agriculture. Under the Ministry of Health, the Department of Environmental Health and Protection confirmed the danger posed by BKS in a report dated 2015. However, no concrete measures have been taken. Mobilized since 2013, the inhabitants of Kalâa Sghira are demanding the rapid relocation to a new site and compensation for health and environmental damage. In 2017, the activists managed to agree with the Ministry of Industry that the owner must propose a new location for the industry. The UGTT, the leading trade union center, also insisted that the workers maintain their right to work at the factory. So far, no relocation procedure has been undertaken. According to the factory owner, the idea has been studied but is financially and technically impossible.

The domestic business sector: main characteristics

The distinction between the foreign and domestic private sector is not clear in the Tunisian context. Indeed, a Tunisian company, according to the code of companies, can be owned to 99.9% by foreign capital.

A World Bank survey carried out between September 2019 and July 2020[38] among 615 companies revealed that Tunisian enterprises were mainly linked to the following sectors: textile and clothing sectors (129 firms), wholesale and retail trade (125 firms), services (125 firms), industry (124 firms) and Food (112 companies). Around 76% of enterprises are medium or small enterprises[39]. Their regional distribution is also uneven, with 108 companies in the South-East and South-West region, 135 in the North-East and Centre-East, 167 in the Center-East, and 205 in the North-East. The same survey revealed that the main challenges they face are access to finance, corruption, and political instability: 39.4% of the surveyed companies mentioned financing their activities as the main challenge. In comparison, 15% cited corruption, and 11.5% mentioned political instability. Infrastructure has also been cited as a fundamental challenge: 44.8% of Tunisian companies identify transport as a significant issue compared to 23.5% in the Arab region and 20.3% in the rest of the world.[40]

Similarly, the domestic private sector is characterized by low employability. Thus, only 4% of the companies that existed in 1996 have grown by 2010, and 55% of them have gone bankrupt. Labor productivity has shown weak growth over the last decade, while the share of the informal sector, estimated at 40 percent by the IMF, concentrates a large part of the jobs of unemployed youth. The share of private investment in Tunisia barely reaches 15% and is mainly concentrated in Greater Tunis and the Eastern regions.

2. Case study on Public-Private Partnership

This second part of the chapter will present a case study on PPP user-payer and raises important issues related to accountability and the private sector's role in development.

For this case study, PPPs are defined as long-term contractual arrangements in which the private sector provides infrastructure and services traditionally provided by governments - such as hospitals, schools, prisons, roads, airports, railways, and water and sanitation facilities - or where, by mutual agreement, the public and private sectors share the associated risks. This definition covers both concessions and PPPs per se in Tunisian law[41].

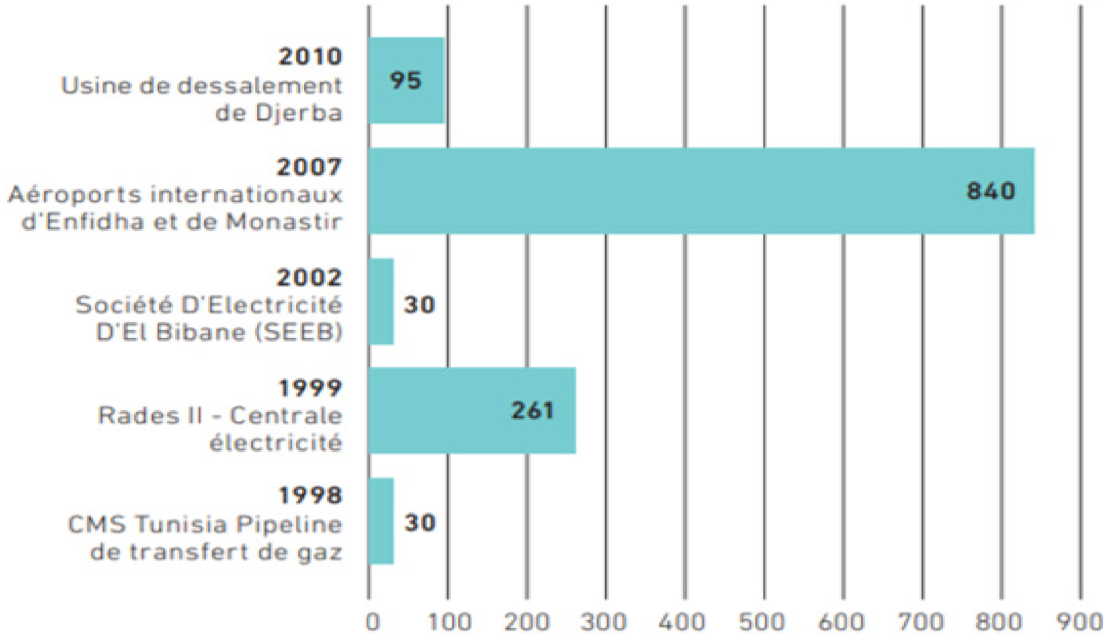
A legal framework pushed by IFIs

Tunisian legislation differentiates between public procurement, concessions, and PPPs per se. The major difference between concessions and PPPs lies in the remuneration model of the private partner: payment by the user in the case of the concession, public payment through an annual rent in the case of the PPP. The duration of the contract is between 20 and 99 years and may originate from a call for tenders or an unsolicited application by a private entity.

The participation of the private sector in the provision of infrastructure and public services is not a new phenomenon in Tunisia. PPPs were gradually authorized in Tunisia from 1987 through sectoral laws in the context of a structural adjustment plan with the IMF, whose conditionalities resided mainly in the liberalization of foreign trade, investment, the financial sector, and the State disengagement in favor of the private sector. The Tunisian government authorized concessions in the power generation sector in 1996, then in 2004 in other sectors (water, air, and land transport), under pressure from the World Bank[42]. Governed by a body of contradictory legislation at that time, the Tunisian State unified the concession regime through the 2008 framework law,[43] which generalized the granting of concessions in all sectors and regulated concession projects. This framework law was completed in 2013[44] and amended in 2019.[45] Similarly, a new legal framework on PPPs was provided in 2015,[46] authorizing the establishment of all types of PPPs, including those directly financed by the State. The decision was prompted by IFIs as a loan conditionality, although some administrations were somehow questioning the need for a new legal framework instead of amending the existing legal framework.[47]

The General Law on concessions adopted in 2008 was amended in 2019 under the bill entitled «investment incentives and improvement of the business climate». These amendments aimed to improve Tunisia's position in the World Bank's «Doing Business» ranking. This law includes amendments to the law on concessions (2008) and PPPs (2015) and the investment code adopted in 2016. These amendments have been supplemented by two decree-laws dated May 20 and 28, 2020, following the disputes with TAV over the Enfidha airport concession. One of the negotiation points is extending the contract to extend the fee repayment schedule over a more extended period. They target concessions, including the possibility of extending the duration of the concessions and other measures on tendering and administrative control of the concessions.

Graph 3: Total investments of PPP per infrastructure project in Tunisia from 1998 till Present (in Million US$)



Source : « Des projets qui ne décollent pas, Défis et leçons à tirer des partenariat public-privé en Tunisie »

Since 1998, there have been five public-private partnerships in Tunisia (all of them were concessions) for a total amount of US$1.2 billion. The security, defense, and prison sectors are excluded from PPPs. There has been no PPP project carried out under the 2008 legislative framework on concessions law and or the 2015 PPP law, as the five PPPs are all dated before 2008.

The international financial institutions have promoted PPP partnerships in Tunisia. Indeed, the government has worked with the World Bank and other donors such as the European Investment Bank (EIB) and the OECD in developing the PPP framework. The World Bank had, in this framework, provided funding dedicated to «improving the business environment». The IMF, for its part, has exerted pressure through loan conditionality. Faced with financial difficulties, the Tunisian government obtained financial assistance from the IMF, granted in 2013. PPPs have since been systematically included in the list of reforms required by the IMF in the framework of its program. Moreover, in 2016, IMF assistance under the Extended Credit Facility was conditioned on the country's economic and financial reform program, which included the adoption of the PPP law and the implementation of its decrees.

The 2015 PPP law presents some wins and other shortcomings regarding business accountability practices that we will present in the following part.

PPP Legal framework and business accountability practices: win and shortcomings

Transparency

PPPs have tended to undermine the principle of transparency and access to information. Indeed, commercial secrecy is invoked by private companies during negotiations, which imposes confidentiality on PPP contracts and the concessionaire selection process. However, the Tunisian Constitution mentions transparency in public affairs and good management of public funds as a key principle. Furthermore, disclosing documents and information related to public procurement allows good understanding, effective control, efficient performance, and accountability for results.

The lack of transparency in the concessionaire selection process and the lack of public disclosure of information (tender documents, PPP contracts, financial details) raise serious concerns about the risk of corruption. The law on PPPs passed in 2015[48] was a step forward in making the process more transparent. Thus, the public entity, the General Instance on PPP (IGPP), must publish the decision, the control and audit reports, and an extract of the signed partnership contract on its website. This measure was pushed by members of the parliament during the discussion of the law in the finance committee, under the recommendations of civil society. However, although IGPP's website is regularly updated, civil servants are prohibited from disclosing the entire contract, and technical and commercial issues remain confidential.

For example, the 2020 government decree on the conditions for granting concessions states that «the concession grantor is required not to disclose information of a confidential nature that candidates have communicated to it», which undermines/limits the principle of public disclosure. The same decree does not make it mandatory to make all contractual documents and bid selection reports available but merely requires the simple publication of the «contract summary». However, the annual report on the implementation of PPPs, submitted each year to the Assembly of People's Representatives as part of the financial Law, is an essential step towards more transparency and accountability.

Procurement practices

According to the 2015 law, competition is the rule. Still, the law authorizes procedures that derogate from it: this is the case for competitive dialogue between the public and private partners before submitting bids, restricted tenders, direct negotiation, and «unsolicited bid partnerships». However, it leads to limited competition between companies, which is already structurally weak due to the nature of PPP projects. Limited competition can increase the final cost of the project and increase the risk of corruption. Similarly, a broad interpretation has been applied to Article 10 of Law 2019, which specifies the cases in which the private partner can be chosen, either after consultation or by direct negotiation in the case of an unsolicited bid. An unsolicited bid is driven by the private sector and not solicited by the public partner for projects that do not directly or indirectly contribute to the State. In the case of an unsolicited bid for which the State decides to launch a call for bids, it was also added that the bidder who submitted the bid must be one of the companies selected during the prequalification phase and have a margin of preference in the evaluation of its bid that is not less than 15%. Thus, the margin of preference of the unsolicited bidder has been increased (to 15% instead of 2%), thus calling into question the quality/price ratio in the final selection of the tender.

The practice of PPPs in Tunisia tends to crowd out small and medium-sized enterprises (SMEs) in favor of multinationals and to generate monopolies and cartel agreements, which have the resources to potentially set themselves up against the public authorities. For those reasons, it would be judicious to split PPP contracts in such a way as to favor SMEs. Thus, the project's final cost would be reduced through increased competition and the risk of corruption. This dynamic was initiated by the decree of 20 May 2020, which aims to promote inclusive entrepreneurship and the role of youth in the economy. It established a legal framework for «small projects» worth less than 15 billion dinars and carried out by «young promoters», who benefit from simplified procedures. However, this amendment moves in facilitating procedures by creating «simplified procedures» concessions for small projects».[49] It de facto undermines administrative control and the rigor and fairness of the selection process without genuinely guaranteeing SME access to PPPs.

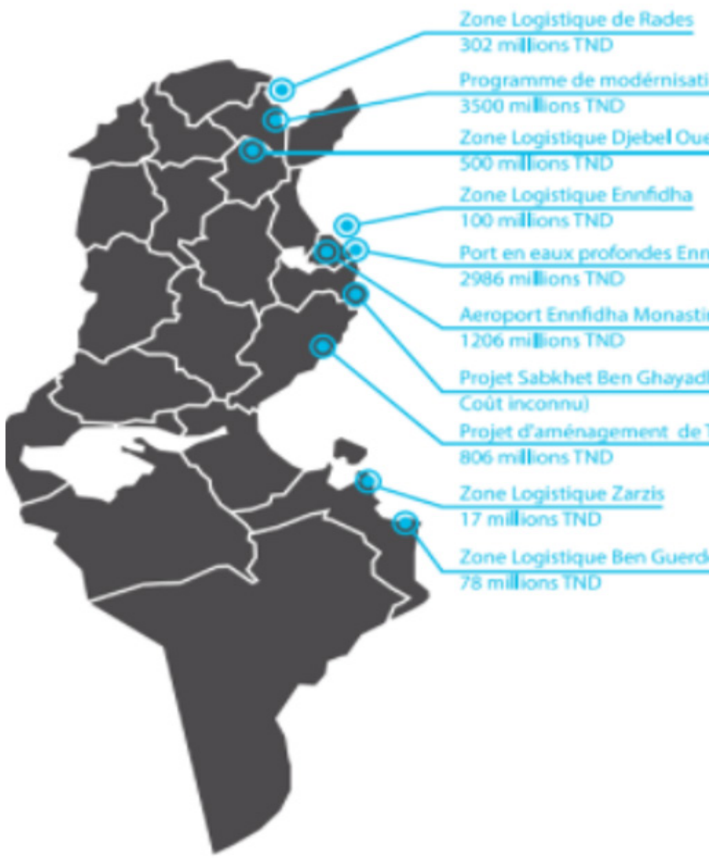
PPP and public fund management

PPPs are promoted as a solution to mobilize the funds needed to finance infrastructure and an alternative to indebtedness, less costly than traditional public contracts. Thus, they would, on average, be more profitable. PPPs have, on the contrary, been synonymous with an additional cost for public finances and sustained indebtedness. The law of 2019 provides significant incentives for spontaneous partnerships, i.e., partnerships that are not solicited by the public authorities. These incentives were renewed by the decree of 20 May 2020. This decree stipulates that the holder of the unsolicited bid is systematically selected in the restricted call for tenders and is given a 20% margin of preference. This margin of preference does not guarantee the choice of the tender with the best value for money. The use of unsolicited partnerships raises several questions. It favors projects that correspond to the expectations of the donor rather than the interests of Tunisia. Moreover, spontaneous partnerships are not compatible with the need for a development plan over several years and planned in detail.

In the current situation, the cost of PPPs is not included in the stock of public debt but is accounted for as capital expenditure. On the contrary, the rent paid annually to the private person must be accounted for as debt. The public entity commits to pay an annual amount that includes the repayment of the capital and interest borrowed from the private person over several decades. Therefore, it is a «hidden» debt, which allows the heavily indebted Tunisian State to put forward the argument of a public investment without impact on the country's financial solvency. To better measure the budgetary risks and contingent liabilities, PPPs must be recorded on the balance sheet and accounted for as debt. Besides, it is essential to highlight the necessity to manage public funds for PPPs properly. Indeed, the budgetary impact of PPPs is higher than public procurement for three reasons: the government guarantees private borrowing, which carries a risk of default, pays long-term dividends to shareholders, and incurs much higher transaction costs than in traditional public procurement. To this must be added the risk of over-invoicing the asset and the higher interest rates on the bank loan than the State could have obtained directly. The technical and financial offer must be the subject of attention, particularly the amount of the annual concession fee: an overly optimistic scenario can lead to difficulties in the financial equilibrium, for which the public entity is legally responsible.

The 2015 law establishes the prior assessment methodology on the public procurement tool to be used, which represents significant progress in limiting the use of PPPs only to situations where it represents a comparative advantage. However, the modalities and criteria for comparative cost/benefit evaluation to determine whether it is more economically and socially advantageous to use a PPP rather than a public contract have not been detailed in the law or decrees processes, which is crucial to better management of public funds.

Interestingly, most of the planned PPP projects are concentrated on the Tunisian coast, thus reinforcing regional inequalities within the Tunisian territory. Indeed, investors tend to favor projects located in areas already well equipped with infrastructure for cost and ease, which would increase inequalities and is contrary to the SDG10.[50] Therefore, in addition to a clear definition of national priorities, state regulation would enable guiding investments towards a more balanced development of the different Tunisian regions.



Source: "Note de synthèse à propos du projet de loi sur les PPP en Tunisie », Observatoire Tunisien de l'Economie

Lack of consultations

Consultation of the populations affected by PPP projects and the participation of civil society is non-existent in the current legal framework. However, these projects can negatively impact these populations and lead to abuses of all kinds. The OECD highlighted this shortcoming in 2015,[51] stressing the need to broaden the instruments of public participation to involve civil society in all phases of preparation and monitoring of PPPs, especially in the case of a concession where the beneficiaries bear the project's financial cost. PPPs should be part of a national development plan adopted by the Tunisian Assembly of Representatives, be subject to an annual monitoring report on the impact of these projects, and include consultation and participation of the actors concerned throughout the project's life. The 2019 law has been met with widespread criticism from parliamentarians and CSOs for the excessive influence of international institutions on its development and its many shortcomings in sustainable development impact, transparency, monitoring and control, and consultation with local communities. Yet, reforms adopted in May 2020,[52] which profoundly amend the legal regime of PPPs, were applied through a government decree without parliamentary consultation, under the guise of combating the impact of the COVID-19 pandemic.

Institutional shortcomings in monitoring and control

The decree of 20 May 2020 establishes a system of simplified procedures for «small» projects. This type of concession does not require a preliminary feasibility study, a prior opinion from the General Body for Public-Private Partnerships (IGPP), and a provisional guarantee. This trend contributes to weakening democratic control over the management of public resources; it reduces regulatory capacity and public control over PPPs. Public-private partnerships are complex operations involving many stakeholders. The private partner is supported by legal and financial advisers, while the public partner has few resources. PPPs must be closely monitored throughout the project to ensure that all risks are minimized. In the 2019 law, evaluation measures are limited to a preliminary feasibility study, with no mid-term audit or other measures to verify the project's impact. Development impact is not assessed throughout the project life cycle but focuses on the preparatory phase. In terms of sustainability and human development criteria, the law provides that the call for tender should mention several criteria and performance indicators. However, once the preliminary study phase has been completed, these criteria do not seem to be evaluated regularly. The Tunisian Observatory of the Economy has recommended setting up two evaluations per PPP project, one at the end of the initial investment and another after five years.

Recent decrees are moving towards a weakening of the State's regulatory capacity in PPPs. Indeed, the decree of 28 May 2020 facilitates the extension of PPPs projects (which before could only take place once at the request of the concessionaire), adds new reasons justifying this (including the «continuity of public service»), and makes the report submitted to the IGPP's approval a mere formality. In contrast, it was previously at the heart of the decision to accept or reject the extension. Under the current law, the extension of the contract seems to be automatically validated.
The laws and decrees have established an institutional framework in which the highest decision-making level is the Strategic Council for Public-Private Partnerships. This Council approves the national PPP strategy. The responsibility for implementation lies with the PPP Unit of the Ministry of Finance, called the General Instance for Public-Private Partnerships (IGPPP). However, the PPP Unit does not have enough human resources so far to manage and control PPPs.

The decree of 20 May 2020 has taken some steps in the direction of better project monitoring. It reinforces support and technical assistance mechanisms for the benefit of the conceding authorities to prepare projects. Similarly, it stipulates that the IGPP is responsible for «controlling and observing the degree of monitoring of the application of the provisions of the contract by the concessionaire» based on the annual executive report submitted by the concessionaire, and «auditing and evaluating concessions to verify compliance with contractual clauses and performance objectives». However, the content of these arrangements remains unclear.

Public-private partnerships are complex operations involving many stakeholders. The private partner is supported by legal and financial advisers, while the public partner has few resources. PPPs must be closely monitored throughout the project to ensure that all risks are minimized.

Conclusions and Recommendations

National authorities continue to maintain the same narrative and strategies focused on attracting and boosting foreign investments in Tunisia to create employments and added value without addressing regional inequalities in terms of development and regional marginalization. A real industrial and agriculture strategy of development aims to reinforce the local production and develop national productive capacities to create jobs and a sustainable development that considers better management of natural resources and environmental issues. While the promotion of entrepreneurship is a welcome step, it does not replace a national strategy that aims to develop a solid national private sector, contributing to regional development to reduce inequalities, create added value, and generate employment opportunities. Moreover, strengthening the regulatory role of the State and better negotiate with IFIs to maintain specific instruments and leverage to implement development policies is critical to address the ongoing reforms pushed by IFI, which aims at dismantling further regulation:

- Review investments legal framework and adopt regulation of the investment directed according to strengthen industrial and agricultural national productive capacities and added value, focusing less on the interests of private investors
- Adopt a policy of incentives and targeted subsidies to support sectors and investments in marginalized regions
- Review the distribution of financial resources in the regions to address infrastructure and social services gaps which can be mainly addressed through public investments
- Regularly audit the external public debt and related conditionalities to negotiate them better and assess their impact on sustainable development, human rights
- Establish a debt negotiation strategy based on the results of regular audits.

In the same logic, PPPs have been widely promoted to attract private investment to construct large infrastructure projects and fill the infrastructure gaps. In this context, the national legal framework has recently been reformed in Tunisia under the influence of IFIs, as explained above. However, as this study shows, the new framework focuses on the interests of investors and places too many risks on public finances. Moreover, the current legal framework and recent amendments do not address the main gaps (corruption risk, lack of widespread consultation, and proper monitoring mechanisms) and regulatory capacity vis-à-vis the private sector. Following this analysis, a certain number of recommendations have been developed to address these gaps:

Governance of PPPs

- The cost/benefit evaluation methodology should be clearly mentioned in the law and decrees. In addition, the assessment should integrate impacts on public finances and environmental, social, and HR impacts assessments.
- Tunisian legislation should provide for the highest standards of transparency and disclosure of documents and information related to PPP, per the general principles of open contracting.
- all contracts and tender documents, as well as impact assessments on environment and human rights impacts throughout the project lifecycle, should be disclosed.
- To ensure democratic ownership of PPP projects, they should be part of a national development plan adopted by the Tunisian Assembly of Representatives. In addition, the government's annual report on PPPs to the Tunisian Parliament should include annual development, environment, and Human Rights impact assessments.

- The possibility of unsolicited partnerships should be significantly limited.
- For any major infrastructure project, the Tunisian government should ensure democratic accountability through informed consultation and broad civil society-affected communities participation and monitoring. It includes engagement with local communities, trade unions, and other stakeholders throughout the life cycle of the PPP. In addition, the project should undertake prior socio-economic and environmental impact assessments.

The law should ensure government oversight of PPPs and strengthen its capacity to manage, supervise, and monitor PPP projects and assess their environmental, social, and human rights impacts, including their impact on gender equality.

Budgetary risks and contingent liabilities related to PPPs

- PPPs must be recorded on the balance sheet and accounted for as debt.
- The law should ensure that the contract does not place undue risk on the public sector, including foreign exchange risk.

Renegotiation and Litigation in PPP Contracts

- The contract should also specify the conditions under which renegotiation may be permitted, mainly where it is linked to the financial equilibrium of the contract.
- The contract, the technical and financial bid submitted in the tender, and the specifications should be binding and form part of the contractual documents.
- The use of private international arbitration in the clauses of PPP contracts should be prohibited.

The implementation of PPPs should be carried out with the utmost care to protect the public interest

- PPPs should be limited to major projects carried out by the central public authority.
- Local authorities should be prohibited at that stage or allowed to implement PPP projects only if the Court of Auditors allows them to verify competence and resources.
- It is essential to ensure that project outcomes are designed and evaluated throughout the project life cycle to benefit all members of society.
- Governments should develop clear outcome indicators and effective monitoring to measure the impacts of PPPs, including on the environment, development, and human rights, from the selection phase to the operational phase of the project.

Strengthening the regulatory role of the State and better negotiate with IFIs to maintain specific instruments and leverage to implement development policies is critical to address the ogoing reforms pushed by IFI.

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– Un projet de décret portant fixation de la composition de l'observatoire de Responsabilité sociétale des entreprises (RSE), son organisation et les modalités de son fonctionnement

– Un projet de décret portant fixation de la composition des comités régionaux de pilotage de la responsabilité sociétale des entreprises, leurs compétences et prérogatives

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