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The State, Investment Projects, and Development Challenges in **Sudan**

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Introduction

The success of the investment process, domestic and foreign, is contingent on legislation, laws, policies, and other state regulations regarding the business environment. They contribute to preserving the business sector's private property rights and the rule of law as a prerequisite to establishing and running businesses, in addition to protecting individual human rights. They also provide entrepreneurs the confidence to enter the formal economy and contribute to economic growth and development on the country level. Various schools of thought have debated the state's role in the economy. Supporters of that role see the state as a key actor in planning and implementing projects to achieve development. Opponents, however, believe that «market mechanisms» are capable of achieving balance and providing welfare to the community. Some see the state's role as limited to legislation, preserving rights, and establishing infrastructure and major public services projects. The state gained a tremendous economic role, «showing great potential, on the one hand, and equally dangerous burdens on the other. Development was considered one of the main responsibilities facing developing societies. The idea of the welfare state that prevailed in industrialized countries to varying degrees was highlighted. In the two cases, the state played an important and effective role in the economic field. Over time, however, many problems appeared, necessitating the reconsideration of the concept of development, the welfare state, and the role of the state in each.»[1]

In any case, the state will keep performing various vital functions. However, it should not overpower the private sector or compete with it, whether in investment or crowding out financing from the banking sector and local financing institutions. Such competition will be unequal due to the state's power and authority to enact legislation, laws, policies, influence, and tools of oppression. The context of sustainable development in Sudan shall be analyzed, using a political-economic-critical approach, developing a critical view of the role of the state and its approach towards commercial enterprises. The state's development plans shall also be reviewed, along with private sector accountability. The above will provide a general view of conditions governing investment, the private sector, and public services, using education and health as a model.

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First: Sustainable Development in Sudan: Challenges and Needs

The export of Sudanese oil beginning in September 1999 was a qualitative leap for the economy, especially in hard currency. «The oil sector contributed to moving the wheel of economic growth in Sudan during the past decade. It represented 15% of the GDP, more than 90% of total Sudanese exports, and 50% of state revenue. As a result, the country achieved the economic stability witnessed in the past era, maintaining exchange rate stability, limiting inflation to a single digit, and achieving an average real economic growth rate of 8%. Consequently, however, the national currency value increased, leading to a decrease in the competitiveness of non-oil exports, which resulted in a decline in production in the real sector (agriculture and industry).»[2]

However, all those revenues were lost after the secession of South Sudan in July 2011. It marked the beginning of economic deterioration and instability and paved the way for the December 2018 revolution. Shortage in essential commodities such as flour, medicine, and fuel, in addition to lack of liquidity and the depreciation of the national currency, led to the overthrow of the regime after thirty years of rule. The loss of revenue had a significant impact on the failure to achieve several Millennium Development Goals (MDGs) by the end of 2015. That year's infant mortality rate was about 45 deaths per 1000 live births, while the mortality rate for children under five was about 66 deaths per 1,000 live births. The mortality rate for mothers who die during pregnancy or childbirth was 320 per 100,000. The average life expectancy at birth was 64.

HIV prevalence is estimated at 2% of the population aged 15-49 years. Illiteracy among the population over 15 years affected about 9,773,917 people in 2018. More than 5 million of those were women. In addition, more than two million children dropped out of school.

The deteriorating economic situation is one of the biggest challenges impeding the achievement of the Sustainable Development Goals (SDGs) in Sudan. According to the Ministry of Finance and Economic Planning data, inflation recorded high growth rates in 2017, 2018, and 2019, amounting to 34.1%, 61.9%, and 53.9%, respectively. It resulted from the acceleration in the growth of the money supply and the decline in the economic growth rate from 4.4% in 2017 to 2.2% in 2018 and -9% in 2019. According to the monthly report issued by the Central Bureau of Statistics, the inflation rate amounted to about 114% in May 2020 and 136% in the following June. The «total budget deficit also increased to 46.2 billion pounds»[3] in 2019, compared to 37.9 in 2018. Thus, the deficit as a percentage of GDP amounted to 3.1% in 2019. Estimates of the total deficit in the 2020 budget amounted to about 73 billion pounds or 3.5% of GDP. The trade balance deficit increased to $5 billion in 2017, $4.37 billion in 2018, and $4.87 billion in 2019. The total external debt also reached $49.9 billion in 2018, or 98.9% of GDP. The ratio of total external debt to total government revenues reached 972.6% in the same year.[4] In 2017, around 2.9 million people were unemployed, or 22% of the workforce. Graduates make up around 23% of the total unemployed. Among youth, the rate is closer to 40%. The above figures will negatively impact the ability to achieve the SDGs, such as in health, education, water, and other essential services, due to the loss of additional revenue caused by COVID-19 shutdowns.

Various reports put Sudan at the bottom of human development indicators, ranking towards the bottom in the 168th place in the *Human Development Report 2019.* According to the World Bank classification of countries based on the level of per capita income, released in July 2020, Sudan was classified among low-income economies - a group of countries in which the average per capita

GNI is around $1,035 or less per year - after having been classified as a low-middle income country in the ten years before that. It is an indicator of the economy's deterioration, added to the mainly tribal armed conflicts, preventing the country from achieving the SDGs and necessitating the push for peace and stability in the transitional period.

Second: The Government's Approach Towards Business and Investment

Sudan adopted several laws and legislations to create an environment for business and investment, especially FDIs. «After independence from British colonialism in 1956, the Law of Benefits Granted became the first investment law, encouraging industry and regulating investment to bring about balanced economic and social development. It also aimed to provide job opportunities and increase the industrial sector's contribution to GDP, which did not exceed 2% compared to the agricultural sector, which exceeded 76% for the same period. The second law to encourage investment was issued in 1967. In 1970 and 1971, Sudan conducted the first comprehensive industrial survey of the Sudanese industry, providing baseline industrial information that helped in «industrial planning between 1969 and 1985.» The period witnessed many strategic and essential industries such as major sugar projects (Kenana - Sennar - Asalaya) and spinning and weaving industries in the public sector. The private sector was also involved in spinning and weaving, local clothing industry, medicines, dry battery stones, and others.»[5]

However, in May 1970, President Jaafar Numeiri issued a presidential decree to nationalize foreign companies and banks operating in Sudan during the May 1969 Revolution/Coup commemoration. The announcement came from the ideological orientation of that time, which influenced the country's socio-economic policies. However, the situation was not without repercussions on the country's economic relations and the private business and investment environment, which pushed foreign investors away. In the 1970s and 1980s, the government adopted «central planning» as a principle. The state had a significant role in economic activity and owned the means of production. The private sector was reluctant to invest due to the instability of economic policies and the uncertainty about government decisions and political conditions.

The 1990s saw a dramatic shift to complete economic liberalization starting February 1992. The economy was to become «based on the market (supply and demand), and the state's direct role in economic activity was reduced through privatizing public sector institutions, especially the ones that recorded losses, and the gradual lifting of subsidies on goods and services in an attempt to address increasing economic distortions and imbalances. As a result, the private sector started to dominate many activities and services. Moreover, the policy's impact on the industrial sector was positive. The value of

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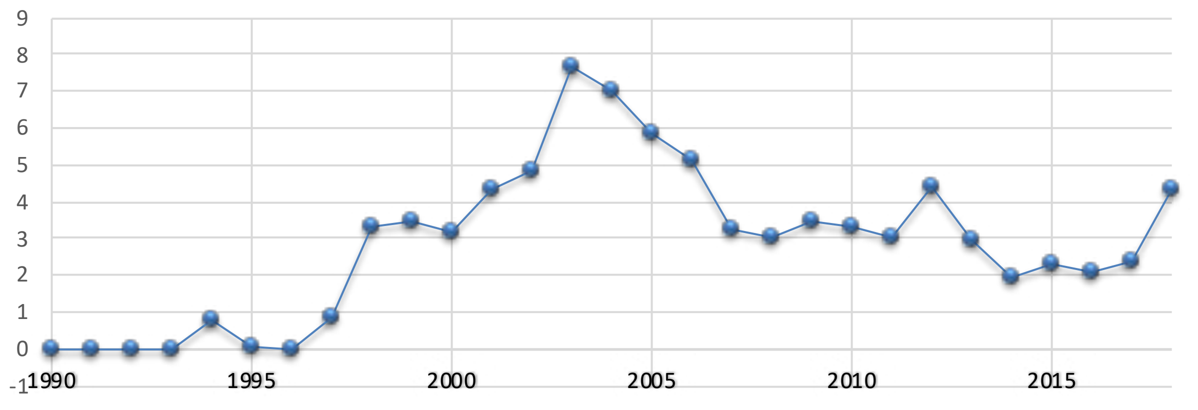
Figure 1: Net FDI Flows (% GDP)



Source: World Bank Databank: World Development Indicators[26]

industrial exports increased to 30% of GDP in 2007, compared to 17% in 1992.»[6] In terms of regulation, the Sudanese government issued an investment law in 1990, establishing the General Authority for Investment, which the Ministry of Investment later replaced. The investment law was amended in 1999 and 2003, focusing on simplifying procedures and prioritizing directing investment to less developed areas and strategic projects.[7]

The World Bank›s FDI data from that period indicate that foreign investment inflow as a percentage of GDP was -0.3% in 1990. Following economic liberalization policies, it gradually improved to reach 7% in 2003. With the discovery of oil, many Asian and Gulf countries entered the market. Sudan Airlines was privatized and sold to Kuwaiti investors; the government kept 30% of the shares. The company was severely hurt by US economic sanctions and was unable to purchase spare parts. The sanctions impacted FDI in general, especially from the EU and the US, as companies were afraid to invest in a state classified as terrorist. In some areas, political instability, armed conflict, and economic instability following South Sudan›s secession added to the woes.

In 2013, the Sudanese government enacted the National Investment Promotion Law, aiming to encourage investment by domestic and foreign private actors in projects that would achieve the objectives of the national strategy and development plans. The law especially prohibited discrimination between local and foreign investors or the private and public sectors. It also stipulated the establishment of a single-window system to facilitate procedures. In addition, it exempted the imports of strategic investment projects - from capital equipment - from value-added tax and customs, according to the list approved by the National Investment Authority. Furthermore, it provided facilities and guarantees against nationalization, seizure, and confiscation of the project›s assets and real estate, «except in the public interest» and in return for fair and prompt compensation. Other guarantees were related to the transfer of profits, the sale of assets, the non-imposition of fees, and the protection of projects. Following the December Revolution›s overthrow of the Inqaz regime, a draft investment law was issued in 2021, abolishing the National Investment Law of 2013 and all other state investment laws. It aimed to enhance and develop the environment to attract investment (local, regional, and global levels) in line with the objectives and priorities of the economic and development plan for Sudan to contribute to achieving sustainable and balanced development. The law granted many tax and customs exemptions for imports of capital goods and guaranteed the transfer of profits, in addition to legal guarantees not to confiscate or nationalize.

The government made repeated attempts to reform investment laws and create a business environment. However, several challenges still face the private sector. There remains a contradiction in the government's discourse towards business since adopting the policy of complete liberalization of the economy, which implies the dominance of the private sector over economic activity in a free and business-friendly environment. The first aspect of the contradiction relates to around 650 state-owned companies affiliated with different ministries, the armed forces, the security apparatus, and other regular forces. These companies are not subject to oversight and review by the state's general auditors; their influence and connections limit the private sector's ability to compete. Another aspect relates to politically connected private sector companies and facilities, which benefit from privileges not accorded to others. For example, some government officials are owners, partners, or shareholders in private companies. They outperform the public sector institutions in terms of capabilities and service quality.
Sudan was ranked very low (171 out of 190 countries) in terms of ease of doing business in the Doing Business report. The report indicated that «not all regulatory changes make it easier for entrepreneurs to do business. In 2018/19, 26 economies introduced 31 reforms that stifled efficiency. Some changes are a conscious trade-off. [...] In Sudan, the new majority in the National Assembly did not endorse temporary amendments to the Companies Act. As a result, a lapse in the provisions adversely affected Sudan's performance on the indicators for getting credit, protecting minority investors, and resolving insolvency.» High regulatory costs are another obstacle facing the private sector, especially in countries where administrative corruption is rampant.

Regarding the private sector's access to electricity, the reliability of energy supplies in Sudan is very low. Data on the number and duration of power outages is absent. In addition, access to credit has been weakened by the repeal of provisions that prioritize secured creditors' claims within bankruptcy proceedings and provide reorganization procedures. As for resolving insolvency, Sudan has made it more difficult by inadequate procedures and weak creditor rights.[8]

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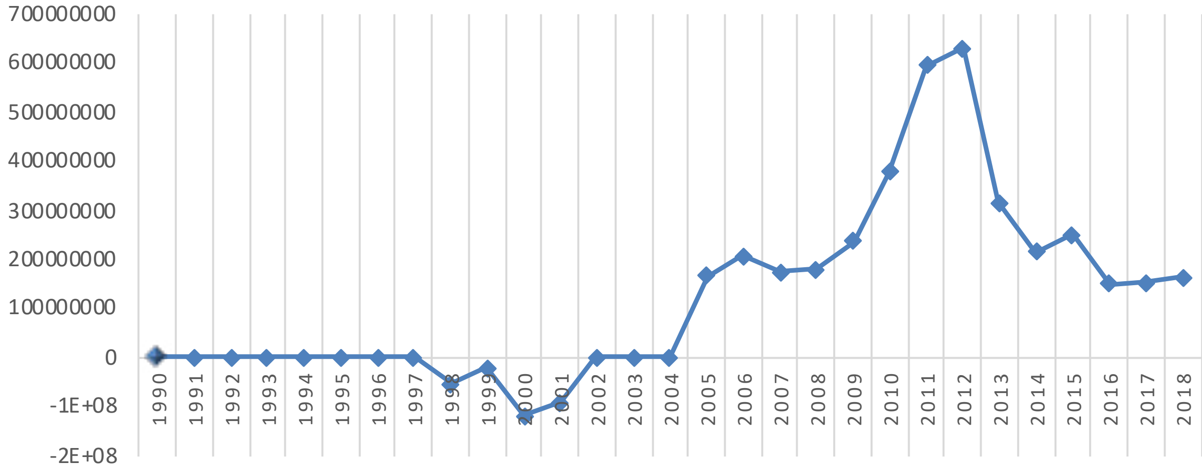
Third: Capital Account and Regulatory Framework for Business in Sudan

Countries that suffer from a lack of self-financing for investments seek to create a stable, secure, and stimulating economic environment to attract foreign direct and indirect investment. Thus, many countries have adopted economic liberalization policies, including the liberalization of the capital account to allow the free movement of capital to and from the country, ensuring economic integration and openness to the outside world. The capital account consists of official and private flows, including FDI, portfolio investments, short and long-term trade credit, loans, currency, deposits, and other accounts payable.[9]

Figure 2 shows that capital account data is unavailable for the periods 1990-1997 and 2002-2004. The net account was negative between 1997 and 2004, which means that the country was an importer of capital during this period that witnessed oil exploration and the beginning of export. The capital account improved after 2004, driven by oil export revenues and the rise in its global prices. Most foreign investment during this period was in the oil sector and related industries. This period witnessed remarkable economic stability in addition to «relative» political stability after the signing of the comprehensive peace agreement in 2005. The regulatory framework for business continued to be based on the economic liberalization policies adopted since February 1992. In addition, Sudan coordinates with the IMF to regain its membership, meaning further reforms to attract foreign investment and create a business environment.

Figure 2: Net Capital Account in Sudan (balance of payment in current US dollars)



Source: World Bank Databank: World Development Indicators[27]

Fourth: Development Plans and Business Sector Accountability

The private sector plays a vital role in economic activity and turning the wheel of development to achieve economic stability and social welfare. However, there are limits to the private sector›s exercise of economic activity when social costs arise or what is known as externalities. When these effects on society are adverse, in the sense that the social costs have become higher than the social benefits, the state intervenes through private sector regulations to restore balance and determine its role and contribution to achieving sustainable development and the country›s development goals. However, clarity in legislation and policies related to business sector accountability is needed. Thus, «strengthening private sector commitments towards achieving SDGs requires an approach based on two pillars. The first involves «do not harm» policies, whereby private sector actors are expected to adopt measures that prevent the violation of any of the rights of the third party throughout their work, ensuring accountability and responsibility. The second pillar depends on producing added value and active contribution to achieving the SDGs. It assumes the fulfillment of basic obligations under national laws, including the tax regulatory framework and the promotion of collective goals such as research and development, technological advancement, and digital transformations.»[10] It begs the question: are there national laws that address corporate accountability in Sudan?

Several investment laws have been enacted to regulate the business environment and attract more local and foreign investments into the country, including the National Investment Encouragement Act of 2013. The Act included several guarantees, facilities, and protections for investors, but the word «accountability» was not mentioned in the text. However, Chapter Eight regarding general provisions includes many stipulations related to violating the law in Article 33, including:

- «The Investor is deemed to commit a contravention to this Act, if he violates the provisions of Sections 27 ,24, or 28,» related to project›s establishment according to the safeguards and procedure of grant of a license, conditions for continuity of enjoying license, and investor duties, respectively.

- «Without prejudice to any other punishment provided for in any other law, the Organ may, upon recommendation of the competent Minister in case of Investor committing any of the contraventions provided for in subsection (1), according to the size of the contravention and circumstances of its commission and extent of detriments occurring to the national economy, impose any of the following sanctions,» beginning with a warning, then reducing concessions, deprivation thereof, their whole or partial cancellation, and ending with the cancellation of the license and restitution of the land lease, while guaranteeing the right to appeal.

The act was abolished in the first draft of the 2020 Investment Law, which included several new reforms regarding business accountability. For example, Chapter 8 on violations and penalties stipulates that «anyone who commits the following acts shall be considered to have committed a crime: (a) Encroaching on investment lands shall be punished with imprisonment for a period not exceeding ten years and a fine determined by the court, and in case of recurrence, he shall be punished with imprisonment for a period not exceeding fifteen years. (b) Providing false and misleading information or using illegal methods that result in obtaining any benefit for himself or any other person shall be punished with imprisonment for a period not exceeding five years and with a fine determined by the court. (c) Violating the laws of the state in a manner that threatens its security and safety or seriously harms the national economy shall be punished with imprisonment for a period not exceeding five years or with a fine determined by the court, or with both.» Although the above text dealt with accountability and the consequences of violating the laws, it did not address human rights and non-financial business reporting obligations.

According to UNCTAD's Investment Policy Review, «Sudan has made efforts to diversify the economy and attract FDI into new industries. However, more is needed to build a transparent and predictable business environment.» It adds that «Sudan has put in place a relatively open investment legislative framework with several of the existing laws being modern and in line with good practices. However, their implementation is often impeded by the absence of secondary legislation, insufficient institutional capacity, and lack of coordination among different levels of the government, which is notably the case for the FDI-specific, environment, and competition regimes.»

Does the national human rights law impose any requirements on the business sector in Sudan? What are they?

«In 2011, the UN Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises reviewed corporate laws in 39 jurisdictions including Algeria, Morocco, Sudan, KSA, and the UAE. It noted two evident patterns. The first is a lack of clarity in corporate laws related to what is required from companies, their managers, and employees in terms of human rights. In some cases, it was not even clear what they were allowed to do. The second pattern is the limited coordination between bodies governing companies, on the one hand, and government agencies tasked with human rights obligations, on the other. In many cases, companies, their managers, and their employees lack effective guidance on how best to ensure or supervise corporate respect for human rights.»[11]

In terms of corruption, Sudan is considered globally as a highly corrupt country. Available country data and reports point to persistent, widespread, and pervasive forms of corruption. For example, Sudan was ranked among the most corrupt countries in the world in 2011. According to Transparency International's Corruption Perceptions Index, Sudan (177 out of 183 countries) ranked 1.6 on a scale of 0 (highly corrupt) to 10 (highly clean).[12] The low ranking could be one of the main obstacles to the entry of FDIs into Sudan. Thus, the revolutionary government and those who follow should exert extra effort against corruption to create an investment-friendly environment. According to a 2015 report by UNCTAD, «Sudan has not ratified the key international legal instruments for the fight against corruption, and the national legal framework is incomplete. Sudan signed the United Nations Convention on Combating Corruption (UNCAC) on January 14, 2005, but has not ratified it. It is also not a State party to the African Union Convention on Preventing and Combating Corruption. The national legal framework for the fight against corruption is fragmented and does not cover all the offenses. While the 1991 Criminal Code criminalizes both active and passive bribery of civil servants, offenses are insufficiently sanctioned. A 1989 law on combating illicit (haram) and suspicious enrichment encourage whistle-blowing, but no protection is given to third parties. The Ministry of Justice has indicated that if not proven, the allegations of the whistleblower can be re-qualified as defamation.»[13] Accordingly, clear national laws that address business sector accountability about combating corruption do not yet exist. Thus, the matter requires reconsideration to establish clear and binding legal texts regarding the private and public sector's contribution to creating an investment environment in the country.

The Interim Constitution of 2005 refers in several articles to the need to protect the environment in general and especially in the oil industry. The task is under the joint authority of the federal and state governments. At the federal institutional level, the

Ministry of Environment and Urban Development is responsible for setting policies. The Supreme Council for the Environment and Natural Resources is responsible for coordinating with the states. At the state level, local councils were established to protect the environment. Any project that may have environmental consequences should be subject to an environmental feasibility study. In 2001, the government enacted an environmental protection law. However, there is no secondary legislation specifying the type of projects that may harm the environment. Thus, detailed criteria should be developed for projects subject to environmental impact assessment and building the capacity of monitoring and evaluation committees to ensure effective law enforcement and the safety of the environment and society. Concerning transparency measures, the business sector is required to abide by the provisions contained in investment laws.

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Fifth: Local Business Sector and FDIs

The private sector in Sudan is diverse, with a traditional base of agricultural activities and many companies catering to the growing domestic demand for a wide range of goods and services. Meanwhile, informal business activities have spread in various urban centers and currently make up many private sector activities. The formal private sector consists mainly of small businesses, organized as private limited companies (60%) and individual firms (37%) spread over a wide range of sectors, many of which are family-owned. In the 2008 census, only 8% of companies operating in the manufacturing sector were partnerships, 2% were state-owned, and only 3% were listed on the Khartoum Stock Exchange. Most SMEs operate in agriculture, manufacturing, trade, finance, and commercial companies in construction, transportation, and professional services. However, only a few large enterprises and conglomerates operate in trade, agriculture, and industrial processing.[14]

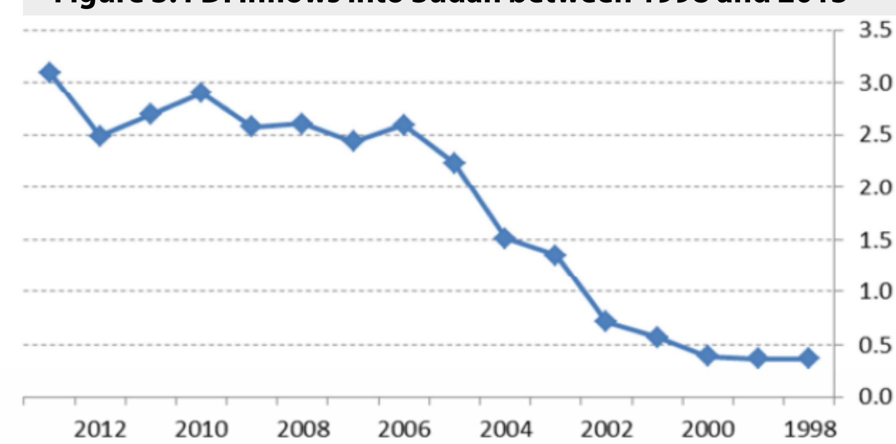
Between September 2014 and February 2015, the World Bank conducted an enterprise survey of around 662 facilities and companies in the state of Khartoum, 74% in Khartoum City and the remaining in Bahri and Omdurman. Around 56% of the companies were small (5-19 workers), 37% were medium (20-99 workers), and the remaining 7% large (more than 100 workers). They operated in various sectors, 41% in wholesale, 21% in retail, 24% in services, and 13% in manufacturing.[15] The survey found that one of the main distinguishing characteristics of the local private sector is that most companies and investments are concentrated and operate in the services sector and industry, especially oil and mining, in which foreign investments are concentrated. A small percentage work in agriculture due to disputes over land ownership, natural conditions, or fluctuations in world prices for products. «Investments are geographically concentrated in Khartoum state due to the availability of infrastructure and public services required for investment. It is one of the negative aspects of the investment reality in Sudan, which is not in line with the state's plans towards balanced development.»[16] The concentration of most private sector institutions and foreign investments in Khartoum and some major cities will limit their contribution and ability to achieve sustainable and balanced development goals. Therefore, the geographical and sectoral distribution of investments must be reconsidered. There are few interactions between local businesses and FDI since foreign investment goes to sectors requiring huge capital and high-precision technologies that the local business sector does not possess, such as oil and related industries. On the other hand, the Sudanese private sector has been excluded from international partnerships for nearly three decades due to economic sanctions imposed by the US and its inclusion in the list of state sponsors of terrorism. As a result, Sudan's financial assets were frozen, and US companies and individuals were prevented from exporting US technology to Sudan or investing in the country.

In addition, financial institutions and countries friendly to the US were obligated not to deal with Sudan under sanctions. The situation affected the interaction between local and foreign investors, reducing the opportunities for partnerships or cooperation. In January 2017, however, the White House announced a partial lifting of some economic sanctions imposed on Sudan while keeping it on its list of state sponsors of terrorism.

Sixth: FDI Inflows into Sudan

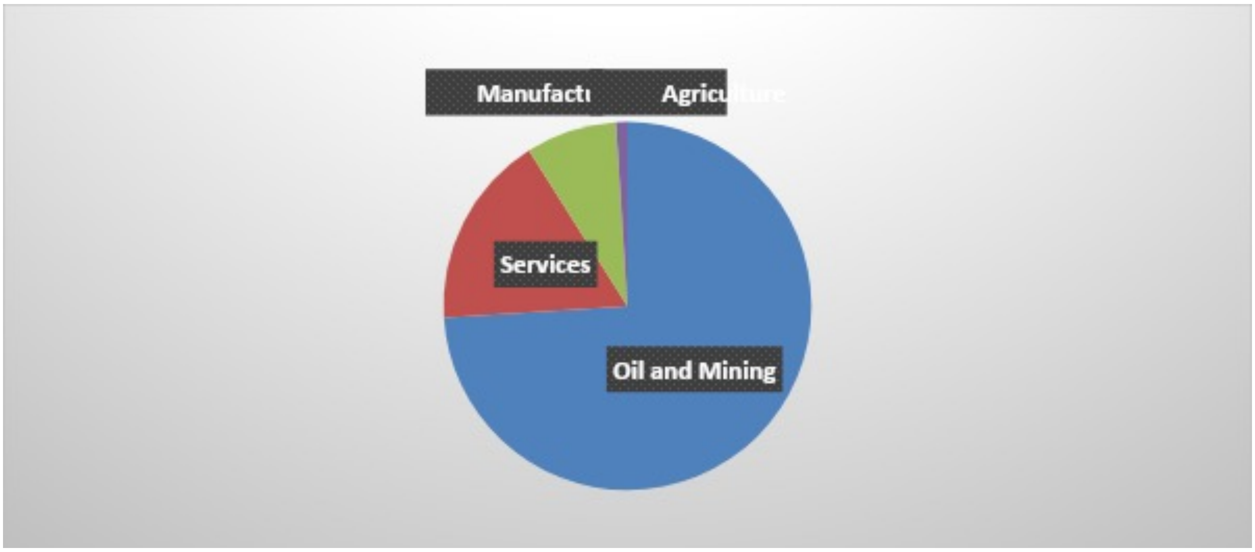
The number of private sector projects, both domestic and foreign, increased after the adoption of economic liberalization in Sudan in the early 1990s, especially after discovering and exporting oil. After the signing of the Comprehensive Peace Agreement in 2005 between the government and the Sudan People's Liberation Movement, subsequent economic and political stability added to the momentum. As shown in Figure 1, net FDI inflows as a percentage of GDP tended to increase after the export of oil and the rise in global prices. However, it declined following South Sudan's secession in July 2011.
As indicated in Figure 3 below, based on UNCTAD data, the total FDI flow before 1998 was less than 100 million dollars per year. However, it reached 2.6 billion dollars in 2006, surpassing the North African region except Egypt in terms of capital flows (Nigeria and South Africa on the continent level). As of 2011, the capital of inward FDI in Sudan stood at 24 billion, occupying the fourth-highest position in North Africa after Egypt, Morocco, and Tunisia (sixth in the continent).

Figure 3: FDI Inflows into Sudan between 1998 and 2013



Source: UNCTAD

Figure 4: Sectoral Distribution of FDIs in Sudan



Source: Central Bank of Sudan Annual Reports

The largest share of these investments went to the industrial sector (oil and mining), where «the number of approved investment projects increased from about 288 in 2000 to 859 in 2009. During this period (2000-2009), the total number of approved investment projects reached about 21,314 projects, topped by the industrial sector with about 10,317 projects, followed by the service sector with about 9,924 projects. The agricultural sector lags with about 1083 projects.»[17]

The above figure shows that 74% of total foreign direct investment is concentrated in the oil and mining sector, 17% in services, 8% in industry, and 1% in agriculture. According to data from the Ministry of Investment, total foreign investments amounted to about $28.457 billion during the period 2000-2010, most of which were in the oil and mining sector, about $21.05 billion (of which only about $88.1 million was in mining, mainly for gold). On the other hand, investment in services, industry, and agriculture was $4.799 billion, $2.221 billion, and $0.405 billion, respectively. The most significant proportion of investments in the petroleum sector were directed to exploration, which accounted for about 83% ($17.32 billion), the remaining 15% ($3.2 billion) going to transportation/pipeline investments, and 2% (0.447) to refining.[18] The large volume of investments in the oil and mining sector is due to competition between companies and countries to obtain the rights to explore and extract oil in proportion to the oil reserves discovered in Sudan and control energy resources and their profitability globally.

The decline in FDIs in the agricultural sector, on the other hand, is due to some complications related to disputes over land ownership and its procedures, and sometimes too weak infrastructure that makes it difficult for products to reach the consumption and export markets. Added to that are a multiplicity of fees and levies between the different states, contributing to increasing production costs. Finally, investors fear the fluctuations of natural conditions in the areas of irrigated agriculture. The services sector received the most significant proportion of FDIs after the oil sector, due to the ease of investment and simple procedures, in addition to quick and almost guaranteed returns. Manufacturing ranked third, but it is mainly linked to the oil industry and petroleum derivatives and manufacturing industries that do not need complex technologies, such as foodstuff, spinning and weaving, plastics, and leather goods.

Lack and inaccuracy of FDI data are one of the problems facing studies in the field. Most of the investments are also new and concentrated mainly in the oil and mining sector in Khartoum state due to infrastructure and essential services. However, they are also present in oil and mining areas in other states. Such investments may not add much value to the sectors related to sustainable development unless the revenues and rents of non-renewable resources diversify the economy and develop other sectors such as agriculture and industry and improve services quality, especially health education. However, none of that happened.

Oil and mining revenues are subject to depletion over time due to their limited reserves, unstable global prices, and the environmental damage they cause. Relying on them exposes the economy and society to many economic, social, and political risks. Sudan has always faced dependence on oil as a major source of financing and foreign trade. After the secession of South Sudan in June 2011 and the loss of oil, the economic situation deteriorated significantly and continues to do so. So far, the pound's value fell against foreign currencies until it reached two hundred pounds against one dollar in August 2020. It was in addition to high inflation rates and other forms of instability. Therefore, these crises are partly rooted in dependence on one resource and the lack of economic and investment diversification.

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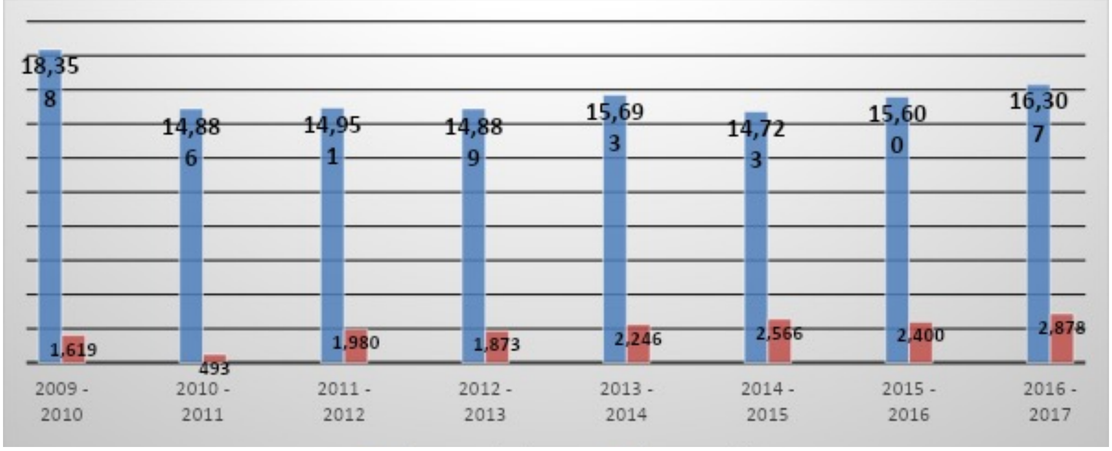
Seventh: The Private Sector and Public Services in Sudan: Education and Health

Providing social services, health, and education to citizens is one of the vital roles of the modern state, based on the social contract between the government and citizens in exchange for political and administrative representation and taxation. Such services are among the fundamental rights of citizens. Recently, the private sector has been active in providing such services in several countries, including Sudan, especially after adopting the policy of economic liberalization. Some encourage such a step as necessary to provide high-quality services. On the other hand, some see it as a «commoditization of services» and an abandonment of the state's duties and responsibilities. As a result, the number of private schools and universities has increased around the country, and so did the number of students attending them. Some believe the quality of services provided by private education is better than those provided by government schools. However, the number of public schools and universities and the number of students attending them is still higher due to the high costs of private institutions than most families' income and living standards.

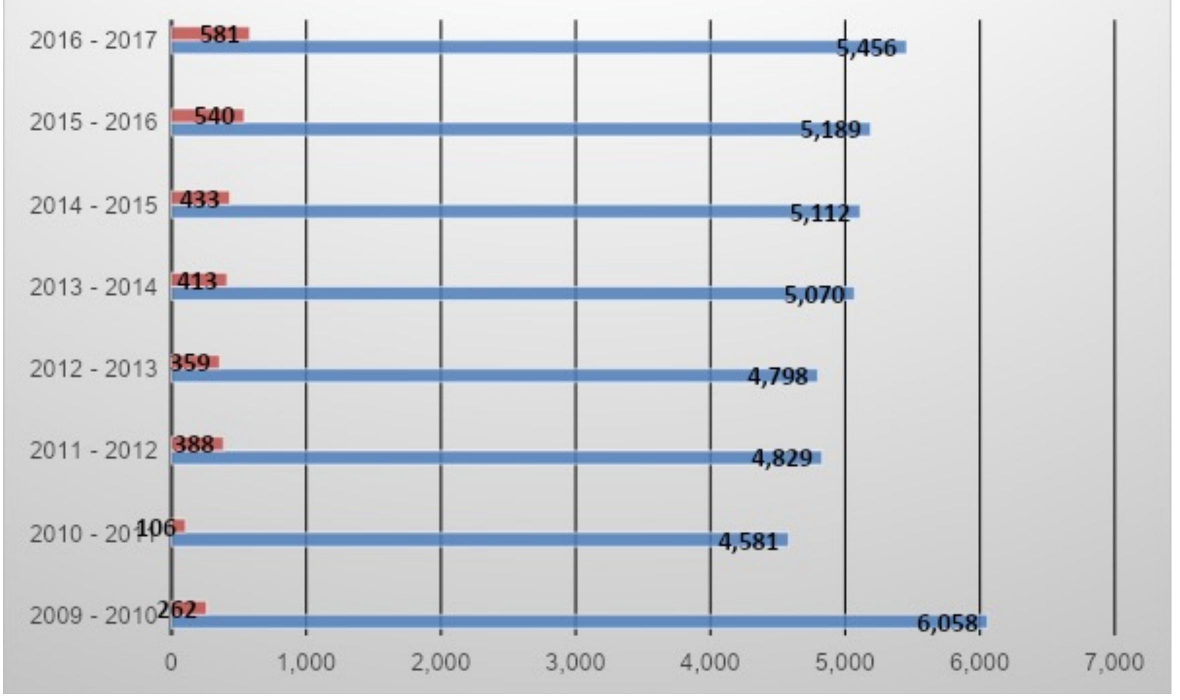
The above figure shows the continuous increase in the number of private schools in the basic stage in Sudan during the above period, reaching 2,878 schools in the 2016/2017 academic year. However, the number remains low compared to government schools, for the reasons mentioned above (high costs). Most private schools are also concentrated in Khartoum and some other major cities in Sudan due to the high population density, urbanization, diversity of income sources, and the education legacy of families. Similarly, the number of students enrolled in private schools continued to relatively and slightly increase compared to government schools, which absorb the most significant percentage of school enrollment. Official statistics are unavailable after 2017.

Figure 5: Public and Private Schools in Sudan between 2009 and 2017



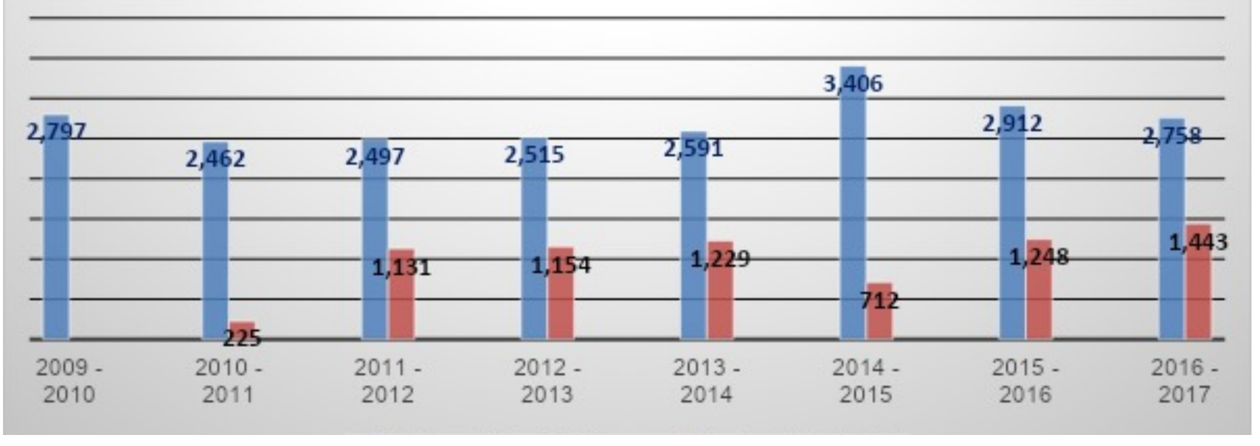
Source: Central Bank of Sudan Annual Reports

Figure 6: Number of Students in Public and Private Schools (basic education)



Source: Central Bank of Sudan Annual Reports

Figure 7: Number of Public and Private Schools (secondary level)

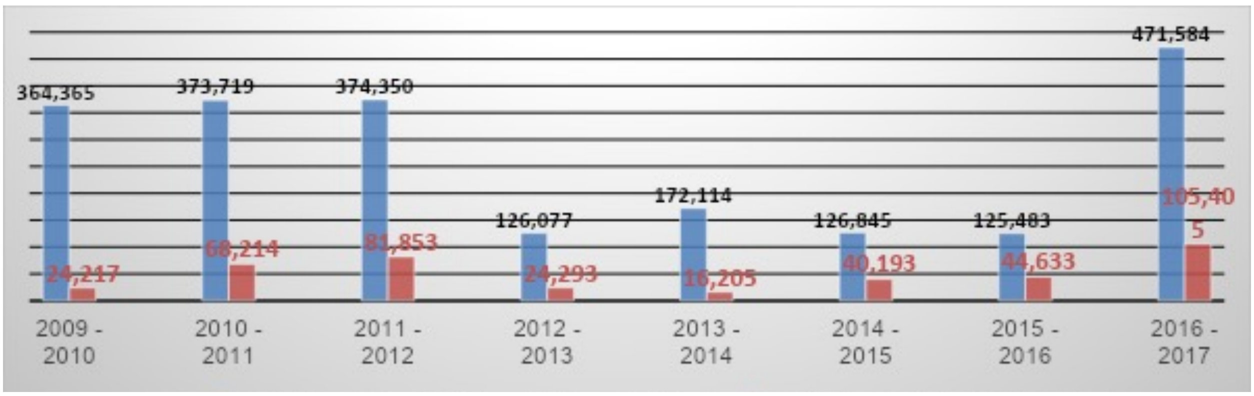


Source: Central Bank of Sudan Annual Reports

The figure shows the increasing contribution of the private sector to education, as the number of secondary schools continued to increase. Most were local schools owned by Sudanese, with some foreign schools in a limited area in the capital.

On the other hand, higher education witnessed a wave of expansion called the «higher education revolution,» starting in December 1989. It aimed to increase non-governmental universities and colleges throughout the country to allow the highest number of students to join. The following figure shows the development of the number of students in higher education between 2009 and 2017.

Figure 8: Number of Undergraduates Accepted in Public and Private Universities and Institutes



Source: Central Bank of Sudan Annual Reports

The figure shows that the number of students admitted to private universities and colleges at the bachelor's level increased to 100,000 students in the 2017 academic year. It is an indicator of the effective contribution of the private sector in providing education.

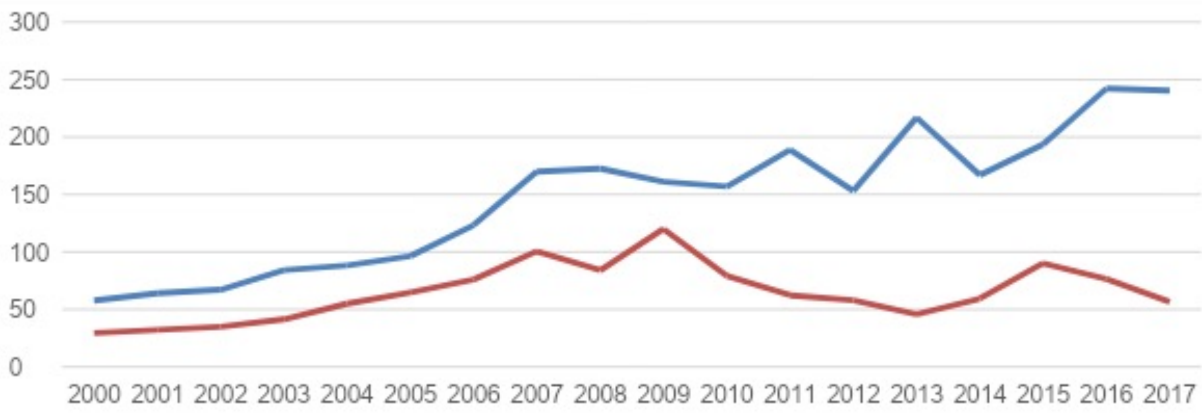
Whether at the level of schools, universities, or university colleges, most investments in the field are owned by the Sudanese private sector. There are no significant FDIs in the field of education. However, the government has made room for the private sector without leaving the field altogether, without fully privatizing education on any level. At the level of partnerships, the government has placed the burden of financing the second and third semesters of the school budget (running the school and covering current expenses such as maintenance, daily services, and meals) on citizens through what was known in Sudan as «the popular effort,» where parents and educational councils pay the additional fees and expenses to finance these items in government schools. Thus, the government pays wages and salaries only to teachers and school staff. However, after the December 2018 revolution, the transitional government headed by Prime Minister Abdalla Hamdok pledged free education.

There are some partnerships between the Government of Sudan and some regional and international organizations (such as UNICEF, WFP, UNESCO, UNFPA, UNDP, the EU, IDB, Islamic Dawa Organization, Saudi Development Fund, and other regional institutions) to support basic education, many of which provided technical and financial assistance to the government, especially in regions affected by war and armed conflict.[19]

The government provides services through public hospitals and health centers in various regions, particularly main cities. However, people usually complain about the services provided by these hospitals, which face tremendous pressures and have weak absorptive capacities and a few doctors compared to the number of patients and service applicants. According to Federal Ministry of Health data for 2018, the number of large government hospitals in all of Sudan did not exceed 623. The number of health centers is about 2,641, there are 2,685 basic health units, and the number of beds is about 71 per 100,000 people.[20] World Bank data shows that government spending on health did not exceed 2% of GDP over the past decade, except in 2009 when it reached 2.6%. With a growing population and its concentration in cities, public health services deteriorated. As a result, the private sector entered the market to provide high-quality services different from what is provided by the public sector.

According to the annual health statistical report for 2007, «private health services were classified according to the following types: private hospitals and centers, specialized clinics, general practitioners› clinics, dental clinics, X-ray units, pharmacies, and veterinary clinics and stores.[21] They provide better health services than those provided by the public sector and consequently face growing demand.

Figure 9: Per Capita Share of Government Spending on Health Compared to Private Sector Spending



Source: World Bank DataBank, International Development Indicators

The above figure shows that the per capita share of local private health spending[22] was higher than its share of local government spending between 2000 and 2017 due to the low share of health services in GDP compared to other sectors, such as security and defense. The percentage of government spending on health did not exceed 18% of general government spending in 2015. Thus, the private sector has a leading role in providing health services. The per capita share of private spending on health services has grown continuously, in line with the growth of the private sector as a whole. Employees and workers in the private sector enjoy medical insurance in the best private hospitals and centers. However, the limited geographical distribution of such services in the capital and some major cities in the public and private sectors remains an issue. Consequently, most people who need to receive medical care migrate to the capital, which indicates that there are investment opportunities that the private sector can seize and provide high-quality health services in the various states of Sudan.

Committing to private sector contribution to achieving the SDGs in the country, the General Federation of Sudanese Employers, representing the private sector, spoke at a workshop on «Partnerships and Integrating the Principles of the Global Compact and the SDGs.» It confirmed its interest in social responsibility issues in rural and urban areas and participation in pushing forward sustainable development and stabilization of societies. According to the Information, Research, and Training Center for Employers, the «Global Compact Network in Sudan»[23] was established in 2008 and included several leading companies, aiming to stimulate companies and CSOs in recognition of the principle of participation and social responsibility. The Federation contributed to establishing the village of Adwa in South Darfur to resettle people fleeing the war, providing a health center, water sources, and agricultural machinery, in addition to supporting education, universities, higher institutes, and conferences. Nevertheless, there is no specific action plan published by the Sudanese General Federation of Employers to contribute to achieving the SDGs, but for some individual initiatives by some private companies within the framework of their CSR. Therefore, employers must reconsider the matter to organize and activate the role of the business sector in the economy and contribute to achieving an added value for society. Unfortunately, no data is available on public-private initiatives regarding job creation or reducing wage gaps, gender equality, climate change, or research and development.

Therefore, employers must reconsider the matter to organize and activate the role of the business sector in the economy and contribute to achieving an added value for society.

Eighth: A Critical Evaluation of the National Legislative Framework: National Investment Promotion Law of 2013

This section aims to provide a critical review of the Investment Promotion Law of 2013 in Sudan, from the point of view of accountability for the business sector and the progress made in this regard. It will consider whether the law included clear and explicit legal texts that dealt with private sector accountability in combating corruption, respecting environmental laws, human rights obligations, and social responsibility. In addition, it will assess the legislative framework from a sustainable development perspective. Accordingly, what are the consequences of breaching the provisions of this law by the private sector? Are there any parties that contributed to advancing the legal changes? Does the adopted approach pay attention to accountability considerations? In addition, the section will propose recommendations for a better approach to building a framework for business sector accountability in Sudan.

The role played by the business sector - local and foreign - is essential to achieving macroeconomic goals, such as increasing production and raising productivity levels, and thus economic growth, employment, and economic stability in general. The private sector seeks to maximize its profits and reduce costs to the lowest level through its use of natural and human resources in production processes. Sometimes, its economic activity results in adverse social and environmental effects, requiring the state's intervention through laws, policies, and regulation of its work and production relations to correct these imbalances. This intervention also aims to strengthen the business sector accountability framework and increase its effectiveness. They should be capable of obligating the local and foreign private sector to these policies while preserving its rights to work and develop within a stimulating legislative framework and an enabling business environment. Moreover, they should enhance their role in achieving economic growth and sustainable development, which explicitly means preserving the rights of current and future generations to enjoy their resources and lead a dignified and secure life over time.

The business sector thrives in economies capable of creating a good investment climate amid sustainable political and economic stability, and FDIs will start to flow in:

- «Often, building an ‹enabling environment› has been associated with shrinking the role of the state. Given their international economic commitments, States have been increasingly giving up the tools that they need in order to stimulate positive dynamic linkages between investments and sustainable development. States have also often been reluctant to design an accountability framework under domestic legislative frameworks that clarifies their expectations from business and sets mechanisms to hold violators to account. This in turn has led to increasing cases of corporate impunity for malpractices and human rights violations.
- «In addition, given that many Arab countries are often categorized as ‹fragile› and ‹conflict affected economies›, they are often advised to compensate for risks faced by investors in such contexts, by «strengthen(ing) investment policy frameworks». These are is usually the keywords for calling countries to commit to a national and international legal framework (consisting of international treaties) that recognizes what is considered ‹high standards for investor protections,› including «guarantees for investors, namely: provision of fair and equitable compensation for expropriation; granting of fair and equitable treatment to foreign investments; intangibility of the law; guarantee of transfer of fund, right to repatriate profits and to liquidate the investment; or access to the international settlement of investment disputes.» This kind of legal framework does not usually attend to issues pertaining to responsibilities and accountability of businesses and investors, and in many instances, could constrain government›s regulatory space and tools needed to address business accountability.»[24]

On the other hand, several laws and legislations have been enacted to encourage investment, regulate and create the investment environment, and clarify the duties and responsibilities of foreign and local investors, the privileges they obtain, and the penalties that may result from violating these laws. The latest of these laws is the «National Investment Promotion Law of 2013,» according to which the «Investment Promotion Law of 1999» was repealed, «providing that all regulations, orders, decisions, licenses, benefits, guarantees, and exemptions, issued and measures taken, under the provisions of the said law remain in effect until Canceled or modified under the provisions of this law. It aimed to encourage the Sudanese and non-Sudanese private sector, the cooperative, mixed, and public sectors to invest in projects that achieve the objectives of the national strategy, development plans, investment initiatives, rehabilitation, and expansion of investment projects.»[25]

After the secession of South Sudan in July 2011, this law was drafted under complex economic conditions when the economic situation in Sudan deteriorated - as explained in the first section. The government was mainly concerned with «encouraging investment» and attracting the most significant number of FDIs to bridge the gap left by the secession of the south and the government›s loss of its primary resource, oil. Therefore, the law aimed to provide guarantees and facilities to investors. However, the word accountability only appears in Chapter Eight general provisions and includes guarantees and facilities granted to investors. There are some texts related to violating the provisions of the law and including penalties ranging from a warning to reducing or depriving the granted privileges, canceling them in whole or in part, canceling the license, or confiscating the land with fair compensation, while giving the investor the right to complain and resort to the competent court. Only these are the details related to accountability or «violating the provisions of the law,» and there is no more detail about the accountability of the business sector regarding combating corruption, environmental issues, human rights violations, or commitments towards the MDGs, given that the SDGs had not been formulated yet.

However, the law's main shortcoming is a lack of clarity in the accountability framework, as it only paid attention to encouraging and attracting FDIs to obtain resources and compensate for the loss of oil after the secession of South Sudan. From the perspective of sustainable development, the change does not serve to achieve the mentioned goals. The law fails to include a binding text for the business sector to achieve the SDGs, the minimum of which are related to preserving the environment, natural resources, and social responsibility.

Although classified as more open than older investment laws and in line with the economic liberalization policy pursued since 1992, it suffers from some weaknesses. UNCTAD speaks of «institutional and regulatory weaknesses» that affect the implementation of investment legislation. The regulatory framework often lacks clarity and necessary operational details. Secondary legislation is usually missing, especially about environmental protection and competition. It lacks sufficient details regarding business sector accountability in encroachment on the environment through pollution or other violations. It does not clarify the limits of such infringement, penalties incurred, remedy, or compensation, whether directly, for example, monetary compensation, or indirectly through the imposition of taxes on the business sector, and then these taxes return to society in the form of health, education, and infrastructure.

The law stipulated the establishment of several bodies. However, some have not seen the light, and others are functioning partially, especially in relation to labor, competition, and anti-corruption, mainly due to a lack of resources. When institutions are established, their mandate is often excessive, with powers intersecting and overlapping between the center and the states in which investments are established. It affects the business sector and weakens state institutions in following up and monitoring these actions and holding the private sector accountable in the absence of explicit texts specifying the standards based on which the business sector is held accountable. Sudan revised and canceled the Investment Promotion Law of 1999, the amendment of 2000 and issued the Investment Promotion Law of 2013. However, the two laws are almost identical in terms of the business sector and FDI accountability. Thus, the draft investment law of 2021 should review these issues to avoid deficiencies present in previous laws and legislation to include binding legal texts regarding the private sector accountability in Sudan.

Based on the economic liberalization policy pursued by the government since the 1990s, its continuous endeavor to encourage investment and create appropriate conditions, and through its coordination with several IFIs and taking into account their recommendations to enhance the role and participation of the private sector in economic activity, the Ministry of Finance and Economic Planning in Sudan established a PPPs unit under the presidential decision issued by the Council of Ministers regarding the restructuring of the Ministry of Finance and Economic Planning. This unit is affiliated to the Economic Planning Agency at the Ministry of Finance, according to Cabinet Resolution No.463 dated November 23, 2014. It aimed to involve the private sector in implementing economic projects within the framework of the policies set by the government and the projects it specified. So far, however, PPPs have not been implemented by this unit, except for Omdurman Water Purification Plant (Al-Manara), along with several proposed projects in the fields of agriculture, livestock, manufacturing, mining, water and electricity, and manufacturing and supplying gas depots. Accordingly, the government needs to exert additional efforts to create the investment and business environment to activate private sector participation in financing and establishing development projects.

Among the challenges facing the private sector and investment promotion laws in general are the so-called «grey companies» affiliated with civil and military government institutions. They have unlimited influence and compete unfairly with the rest of the private sector, thanks to the privileges they enjoy. Moreover, they are often directly linked to the authority and decision-makers and are not subject to the authority of the state's public auditors. According to the Ministry of Finance, the number of government companies exceeds 600, including 200 companies affiliated with the military. For the investment laws to be more effective and to ensure the accountability of local and foreign business sector companies, this matter should be settled to make the investment environment safer and fairer and to raise the degree of competition between companies.

Accordingly, the government needs to exert additional efforts to create the investment and business environment to activate private sector participation in financing and establishing development projects.

Suggestions for a better approach to investment law concerning business accountability

1. Involve stakeholders when discussing and drafting investment laws, which should serve the investment business environment and become binding, based on the rights and duties to which they have agreed.

2. Legal texts related to accountability should be clear, detailed, and reinforced by legislation and regulations that show the limits of the private sector's economic activity to prevent human rights violations, encroachment on the environment, its resources, and the surrounding community, and cases of corruption and criminal behavior.

3. The law must contain the mechanisms and means by which the economic activity of a business is evaluated and the remedies and restitution of rights in the event of violations against the «third party» or the community.

4. The law must include transparency standards required of companies, especially those concerned with sectors vital to sustainable development, and set priorities and programs to accompany the CSR plan.

5. Companies and commercial establishments must be required to establish rules of behavior and codes of reference for their employees to be a binding contract at the individual level to respect human rights and preserve and protect the environment; they must bear total responsibility by the conditions granted to them under the business license.

6. Set standards for environmental impact assessment of projects and build the capacities of monitoring and evaluation committees to effectively contribute to environmental protection and resource sustainability for future generations to achieve justice.

Macro-level Recommendations to create the climate and attract investment

1. Accelerate the achievement of peace and political stability in war and conflict areas, prepare their investment environment, and involve them in the production cycle, which would contribute to increased growth and bring about balanced development and paying attention to infrastructure and auxiliary services for the production sector.
2. Work to achieve macroeconomic stability and adopt related policies, such as the necessary reforms of subsidies and exchange rates, to reduce the budget deficit, find suitable alternatives instead of borrowing from the Central Bank, and reduce inflation rates to prepare the economy for gradual stability.
3. Provide an appropriate environment for the local and foreign private sectors, encouraging them to invest in fields that create added value and high returns to the economy. In addition, free zones need to be developed to activate border trade to exchange goods and services and avoid or reduce smuggling.
4. Concerning investment lands, ownership conditions should be clarified and settled so that the land is not a subject of dispute when projects are established.
5. Develop institutional dialogue between the public and private sectors to form an effective partnership in establishing and financing development projects while urging the local private sector to develop partnerships with FDI, benefit from its expertise and technologies, and neutralize crowding potential impact out.
6. Urgently coordinate between the various authorities in the country - related to investment - to prevent any conflict in the competencies or powers entrusted to each party.
7. Settle the conditions of government companies to neutralize their negative impact on the private sector to fair competition.

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