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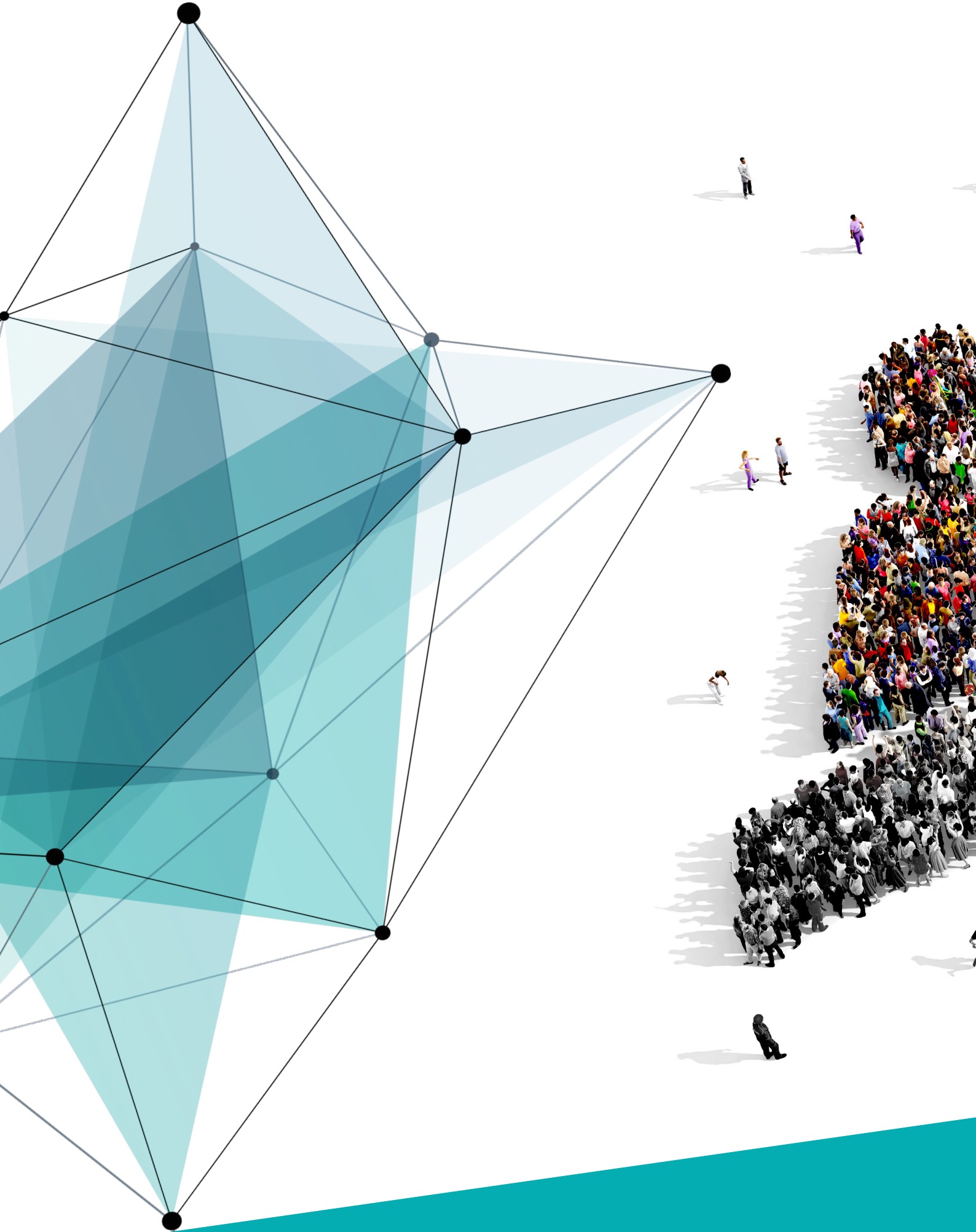
Arab NGO Network for Development
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The private sector and the development challenge in the Arab region: Nascent role and lacking accountability mechanisms

Kinda Mohamadieh

Legal advisor and senior researcher with the Third World Network office in Geneva





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P.O.Box: 4792/14 | Mazraa: 1105-2070 | Beirut, Lebanon
Tel: +961 1 319366 | Fax: +961 1 815636

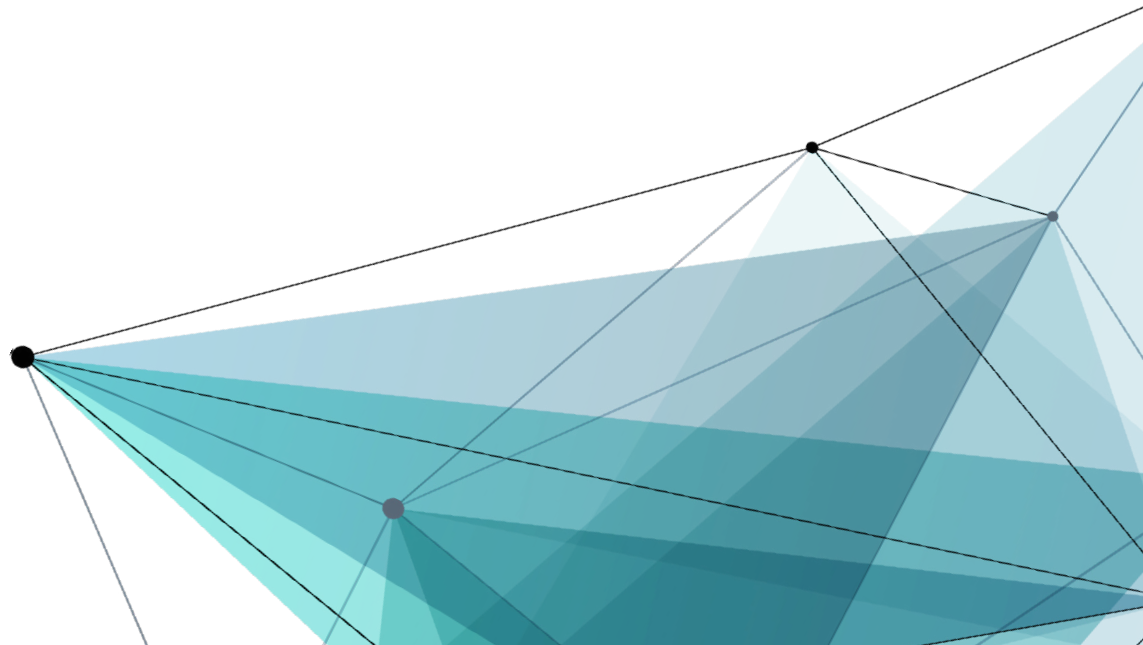
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Kinda Mohamadieh

Legal advisor and senior researcher with the Third World Network office in Geneva. Previously, she was senior researcher at the inter-governmental organization, the South Centre. She had also worked with the Arab NGO Network for Development.

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Introduction

A major question in development policy today is what role should the private sector play in the development field and what accountability framework should accompany its expanding role in the development space. This publication entitled “The Arab Watch on Economic and Social Rights 2021: Questioning the role of the private sector in development” seeks to investigate the issue through thematic and national reports. This chapter gives an overview of three broad observations that could be tweaked out of the eleven national reports and 11 thematic reports you can read in this publication.

The first observation is that the narrative on the role of the private sector in the development sphere is well accepted in the Arab region and reflected in the official developmental visions and plans. However, this narrative does not result from an indigenous process, nor is it operationalized through policy, institutional or legal tools. The second observation is that advancing an accountability framework that could accompany a role for the private sector that is better aligned with developmental processes requires close attention and account of the broader economic, developmental, and governance context prevailing in each country. Finally, the third observation is that an effective developmental role and accountability framework for the private sector requires moving away from the dominant charitable and voluntary approaches towards concepts and tools rooted in developmental and rights-based approaches.

This chapter will further elaborate on these observations, providing examples from the thematic and national chapters below. It concludes by suggestions for the way forward in developing an accountability framework to accompany the expanding role of the private sector in the developmental sphere, built around two pillars: “do-no-harm” and developmental value addition.

1. The well-settled narrative on the role of the private sector in development

As in most other countries, the private sector in the Arab economies has long been accepted as a major actor in the economic process. The narrative about the role of the private sectors has been linked to development processes and goals adopted by Arab governments. These linkages to development have been amplified in the context of the Sustainable Development Goals (SDGs) agenda. However, they extend back to before the adoption of the SDGs.

In most countries reviewed in this report, the role of the private sector has been well integrated into the official narrative on development. For example, in Morocco, emphasis on the business enabling environment came to the forefront with economic liberalization, which had commenced by abolishing the policy of ‘Moroccanization’ of economic activities adopted during the 1970s and based on an import substitution economic approach.¹ The process was associated with a reconceptualizing of the approach to the role of the State. The latter shifted from planning and implementation focused on enhancing investment and employment to one focused on strategic identification of economic priorities and sectors to be supported and later to one focused on providing an enabling environment for the private sector. It meant that the State retreated from intervening in the economy through public investments to create more jobs and employment opportunities and instead focused attention on incentivizing the private sector to create the needed employment opportunities.

In Tunisia, ‘reforms’, including in the post-2011 revolution period, have taken on a deregulatory and liberalizing trend, justified as means to promote foreign investment as a source of growth and jobs. Similar to what the Moroccan

report showed, the approach to conceptualizing the State's role in Tunisia focused on attracting private operators, mobilizing external funds for infrastructure projects, notably via public-private partnerships, and helping private investors identify high-return sectors and industries in Tunisia's different regions.² Entrepreneurship has been the focus of the narrative and strategy concerning economic revival post-Tunisian-revolution through enhancing the role of the national private sector and creating employment for youth. Meanwhile, the role of the State was downplayed or stigmatized.³

The Jordanian report points out that Jordan's Investment Authority has extensive plans focused on attracting investments by promoting free economic zones in various regions around the country. In addition, the government has repeatedly self-identified as "business-oriented," noting that it gives investors the "red carpet treatment."⁴ This narrative has been reflected in promises of preferential treatment for investors in the form of reducing disclosure and the amount of information that investors are required to fulfill their responsibilities regarding human rights, labor rights, and environmental and sustainability requirements, in addition to a series of tax exemptions and deductions.⁵

In Iraq, governmental plans have been heavily reliant on expanding the private sector's role. The Iraqi governmental strategies since 2005, the year its new constitution was adopted, refer heavily to the role of the private sector. For example, the 2010-2014 development plan assumed private sector participation would be up to 46% of the total planned investments and 40% in the 2018-2022 governmental development plan.⁶ In Yemen, the private sector was considered the main actor in economic and social development under the strategic development vision 2025, the development program for 2012-2014, and the 5-year plan 2001-2005. These plans, which were developed with World Bank support, emphasized public-private partnerships and included a wide privatization program.⁷

Expanding reliance on the private sector's role in the official development narrative and plans had often been a result of a trickle-down of the international narrative on sustainable development and the role of the private sector in the plans and visions followed nationally. This international narrative is shaped by United Nations discourses on financing development goals and the discourses that international financial institutions (IFIs) promote. Such discourses, particularly ones nurtured by IFIs, often revolve around a growth model that promotes less State interference and more spaces for private endeavors and self-regulation by the private sector. Thus, the expansion of the narrative on the private sector's role in Arab countries' developmental plans is less of a by-product of indigenous processes or narrative built from the grounds up and more of the absorption of an international narrative that is heavily tainted with a neo-liberal economic approach rooted in an orthodox neo-classical economic theory.

In this context, the approach to the State's role moved from perceiving it as the main actor and shaper of the national economy to one that is more passive and focused on facilitating an expanding role for the private sector. In the same vein, activating a dynamic role of the State in the national economy has been cast as the antithesis for advancing the private sector. Yet, between these two approaches lies the potential for combining an active role for the State with an active role for the private sector. It would include a role for the State in incentivizing the economic cycle through public investments and fiscal spending to dynamically interact with private investments and help gear those investments towards national development priorities.

For example, Mariana Mazzucato speaks of refocusing government on its initial purpose and mission and bringing a dynamic role of the State into the interface between the public and private sectors.⁸ Thus, enhancing the role of the private sector does not have to come at the expense of downgrading or suppressing the role of the State. However, this has often been how the interaction between the two has been presented in orthodox

neoclassical economic theory. Yet, successfully stimulating a dynamic interaction between active roles for the State and the private sector requires paying attention to how the public and private sectors collaborate, including the contracts that underline those collaborations and their terms and conditions. For example, it is not enough to promote public-private partnerships (PPPs). It is important to ensure that the underpinning terms of the collaboration embodied in the PPP allow a contribution to a broader collective good in the form of servicing national development goals and ensuring that no harm is borne by third parties/communities as a result of these collaborations (more discussion of these issues can be found in the second chapter by Kinda Mohamadieh, entitled “Development, the State and the Role of Business: Considerations in the Way Towards Effective Accountability Frameworks”).

2. The private sector's role and its accountability within the broader economic, developmental, and governance context

The Arab region exhibits different stories of the private sector's involvement in the domestic economy and developmental scene. Therefore, furthering the added value and accountability of the private sector in host economies requires a better understanding of the nature of the private sector itself and how it operates in those economies. The approach to accountability mechanisms for the private sector has to be situated within an understanding of the broader economic, developmental, and governance context in the concerned country.

The private sector's features in Arab countries

In most Arab countries, the dominant form of business enterprise is family-based micro, small and medium enterprises (MSMEs).⁹ In several countries, there is a mix between small SMEs and bigger multinational companies. For example, in Morocco, the private sector is diverse in size and types of enterprises. It includes multinational companies, big national companies, domestic MSMEs, and the informal sector, demonstrating different economic and social performances.¹⁰ Multinational companies play a major role in some countries, especially where the economy revolves around one major sector, such as in Iraq, where the oil sector is dominant. The Yemeni report notes that national private sector entities, which are primarily micro and small enterprises contributing to fisheries and agriculture, manufacturing, wholesale, retail, and transport, form a small fraction of the local economy compared to oil and gas, where multinational companies are dominant.¹¹

As noted in the chapter entitled ‘An Overview of the Private Sector in Arab Countries’, “[t]he Arab private sector consists of formal business enterprises including, amongst other, state-owned enterprises and large politically connected private companies”.¹² The private sector in Arab countries was described as irregular because “large and politically connected firms are on top of a large but atomistic informal sector at the bottom, and a gnawingly missing middle.”¹³

Advancing an accountability regime is not solely linked to reforming the legislative and institutional frameworks. It is also connected to developing the economic model from a rentier-based economy dependent on cheap labor to a productive and diversified economy. It revolves around knowledge creation and sustainability and generates value-added employment opportunities.¹⁴ The Bahraini report pointed out that in rentier societies such as that of Bahrain, advancing an accountability framework for business is bounded within the

pattern of dominant economic activities, which is closely connected with the role of the State in Bahrain.¹⁵

The interactions of business and political powers

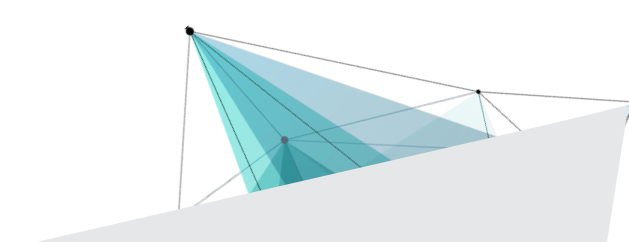
In the context of crony capitalist models, where alliances between the political circles of decision-makers, business elites, and economic power hubs are dominant and often tainted with corrupt dealings, accountability cannot rely on formal governance mechanisms such as interventions by the State and use of the legislative processes. In a glaring example, the Lebanese report highlights how the complex interrelationship of private and political powers creates extensive barriers to the potential establishment and implementation of a developmental vision in Lebanon. As the report highlights, “the history of modern Lebanon indicates that aspirations for economic, social and political change had been made increasingly difficult in the context of a politico-economic setting molded primarily in favor of elites, and sustained by the politics of sectarianism.”¹⁶

The report from Mauritania refers to cases where the ruling regime was involved in targeting prominent local businesspersons. One example given in the report referred to the issuance of an arrest warrant for a businessman closely involved with foreign investors, using an unfair taxation scheme to pressure the business group and freeze their personal assets as a mechanism of political pressure.¹⁷ In addition, Mauritania witnessed the emergence of business groups of close ties with the government, referred to as the class of ‘new businessmen,’ which had undermined the ability to attract foreign investment. The report also notes that among the major obstacles for a flourishing role of the domestic business sector is the concentration and monopolization of economic resources in the hands of few major powerful companies associated with major families in Mauritania, which were able to sweep the major deals during the period of liberalizing the Mauritanian economy.¹⁸

The role of civil society acquires crucial importance in these contexts, including pursuing strategies to unveil information on the private sector’s role and conduct and increasing the reputational costs of involvement in harmful activities. It also includes the pursuit of strategies to utilize the judicial process to pursue accountability.

The role of multinational companies

Countries with a heavy role for multinational companies and foreign investors in PPPs, such as in major infrastructure projects or long-term extractive projects, ought to pay close attention to the contracts underpinning these projects and the international law commitments applying to these investments. Thus, when big foreign multinational companies play a major role in small or medium-sized economies, like the ones in the Arab region, the host State would need to elaborate cooperation mechanisms with the home State of the investors. It becomes especially important when dealing with companies whose aggregate economic weight could outweigh that of the host State.



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Collaborations among home and host States of investors, and the role of regulations with extra-territorial reach through which home States could regulate the conduct of their nationals when operating abroad, gains particular importance in this context. These form an important part of the legal basis for holding companies accountable in their home States for violations or harm they may cause when operating abroad. They are crucial regulatory interventions that allow pushback against a race to the bottom by exporting harmful activities to less developed countries where the State is not in a position to regulate or is complicit in human rights violations. They are also important in enhancing private sector accountability within the context of global or regional value chains.

Accountability challenges within value chains

Another important factor in advancing accountability mechanisms is the increasing concentration of economic activities in global and regional value chains. While enterprises from the Arab region are not yet deeply integrated into such value chains, advancing this integration often appears as one of the recommendations in the context of economic recovery.¹⁹ Moreover, these chains, including the practice of business entities involved in their lower levels, are often heavily influenced or controlled by corporate powerhouses. These trends have been complicating the questions of accountability and liability of business entities when harm arises due to conduct undertaken within the context of such chains.

In the context of the COVID-19 pandemic, value chains turned into an avenue for exporting parts of the burdens of the crisis to the lower ends of the chain. For example, reports emerged that suppliers in the garment industry value chains have been facing mounting challenges as a result of unreasonable demands from big clients, mainly corporations in the United States and the United Kingdom, including cancellations of orders and contracts for goods that were ready or in the

manufacturing phase, despite the contractual obligations underpinning these orders.²⁰ Such squeezing down by multinational companies on the lower end of the supply chain is reflected in multiple interconnected pressures on the economic conditions of developing countries, including through factory closures, unpaid workers, and the clampdown on government tax revenue, which itself means fewer investments in public systems and less support to local workers and industries. In effect, these trends demonstrate that big corporations uphold their commitment to the primacy of shareholder value at the expense of the workers whose sweat enables profits to accrue for those at the top of the value chain. These situations result from a lack of action by the home states of multinational corporations concerning clarifying their companies' obligations when operating abroad, via subsidiaries, suppliers, or through other arrangements.

Widespread informality and challenges to accountability mechanisms

In addition to the thematic report entitled 'An Overview of the Private Sector in Arab Countries',²¹ several of the national chapters point to the widespread informality in various economic sectors across the Arab region. In such situations, accountability mechanisms relying on formal State intervention and the law might not be effective. Informality in core sectors such as transport and communication, retail, construction, agriculture, and fishing means that many workers are not registered in social security systems and are highly vulnerable in cases of fluctuations in their work conditions. As a result, the role of the law in protecting them and guaranteeing their rights is marginalized. Alternative grievance mechanisms could be made available to workers or communities in such contexts, which could allow an avenue for those affected.

Accountability of the private sector in areas of conflict

In the context of conflicts, formal mechanisms might break down or become inapplicable. However, in certain situations, international mechanisms for monitoring the role of the private sector in conflict areas could add value. For example, in February 2020, the UN Human Rights Office published a report identifying more than 100 business entities involved in activities related to the Israeli settlements in the Occupied Palestinian Territories. This report followed a mandate from the UN Human Rights Council in 2016 to produce a database of companies involved in the settlements.²²

In post-conflict areas, especially those with significant natural wealth concentrated in certain sectors, like oil, mining, or other extractives, special attention is needed towards managing the interactions between incentivizing private investments and the developmental and human rights dimensions of those investments. During post-conflict periods, multinational companies usually have a high interest in entering these newly stabilized jurisdictions and gaining a competitive edge. Yet, in the immediate post-conflict period, the State apparatus is generally weak. Governmental institutions and other oversight institutions, such as the legislative branch, are usually not well-equipped to ensure contracts between the host States and these companies are well-balanced and secure the accountability of the private sector. Moreover, civil society dynamics might be weak or focused on humanitarian, civil, and political rights and not necessarily give enough attention to developmental and broader human rights accountability.

For example, the Iraqi report discusses how administrative and financial corruption has been widespread in the post-conflict period given the weakness of the parliamentary oversight, the inadequacy of the laws, and the entanglement between the bureaucracy or technocratic

institutions and the political parties holding power or fighting over power.²³ In Yemen, the complex context combining economic, political, and security instabilities, coupled with corruption and bureaucracy, deeply under-developed infrastructure, on top of severe repercussions of the war, created an environment where survival of the private sector has been highly challenging. Opportunities for private sector development, particularly productive activities that need a certain margin of stability and long-term investments dwindled in these circumstances. Given the lack of governmental, institutional mechanisms coupled with the weakness in the civil society capacities to attend to this issue, the ability to build an accountability framework on the role of the private sector finds no place in the agenda of national concerns.²⁴

The legislature's role in the accountability regime

The effectiveness of the legislative mechanisms is crucial to enable proper oversight and evolution in the accountability frameworks associated with the expanding role of the private sector. Therefore, it is important to keep the legislative framework associated with the role of the private sector - such as corporate law, investment laws, environmental and other public interest laws, and tax laws - coherent and aligned with the developmental objectives. Indeed, advancing coherent and comprehensive reforms and transformations in the legislative framework is crucial in building an effective accountability regime.

In big part, the legislature's role is to ensure an approach that balances between the developmental public interest and social justice considerations on the one hand and the elements needed to stimulate the market and the private endeavor on the other.²⁵ In the report from Palestine, the author explains how the absence of the Legislative Council weakened the opportunities for building an accountability framework for the business sector. It meant that oversight and accountability over the performance


of the executive authority in its contractual relations with the private sector were absent. It led to significant implications on the ability to preserve the rights of third parties, including workers, consumers, and other impacted groups.²⁶

In many Arab countries, even where the legal framework is available, the implementation and follow-up mechanisms are often absent. Lack of governmental capacities to ensure effective implementation of the laws is one manifestation of the regress in the role of the State and disinvestment in public systems and regulatory capacities, including regress in the status of the public sector jobs. The report from Jordan pointed out that even where laws attend to human rights and sustainability considerations, the authorities lack the tools to ensure the implementation of the laws.²⁷ Lack of enough funding has meant that regulatory authorities lack the needed human and other institutional resources to implement the laws. In Jordan, the number of labor inspectors appointed by the Ministry of Labor, the executive branch responsible for enforcing the labor law, has been insufficient to monitor labor abuses. Moreover, legal obligations on minimum wage, overtime, occupational safety and health, and other standards were not adhered to, in part because the penalties imposed in cases of violations were not sufficient to deter perpetrators.

3. The private sector's role and accountability: dominant voluntary and charitable approaches

The national reports reviewed in this publication reveal that countries in the Arab region generally lack a clear vision of how the private sector could actively contribute to development processes and lack effective frameworks to regulate the relationships between the State and the private sector. In addition, the reports point to weaknesses in the governmental authorities' ability to attend to private sector accountability even where laws exist. Furthermore, legal liability mechanisms that would allow impacted parties to bring claims against companies engaged in harmful conduct are generally weak. In this context, the private sector either does not pay any attention to its relationships with its societal context, particularly the costs that it externalizes as a burden on society, or exercises a charitable approach that is often delinked from its operational conduct.

The tools to assess the role of the private sector from a developmental perspective are not widely available, even among civil society organizations. Consequently, in preparing the national reports in this publication, several authors relied on international indicators such as the World Bank's Doing Business Report.²⁸ The World Bank presents its Doing Business rankings as "objective measures of business regulations"²⁹. Yet, these rankings are also producing "skewed policy prescriptions that obstruct developing countries'... recovery efforts [from the COVID pandemic] and constrain their resilience to future crises".³⁰ The Doing Business report has been linked with a "regulatory race to the bottom [that] erodes worker and environmental protections in the meantime." For example, the



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fewer regulations, the higher a country scores on the Doing Business index, which is considered a booster to its chances of attracting foreign investment. Policies rewarded in the rankings include cutting corporate income taxes and contributions to employees' retirement schemes, reducing social tax rates, and abolishing social security contributions. At the same time, welfare and environmental protection are discouraged.

Such indicators are rooted in a vision for the relationship between the State and market actors that is skewed towards more deregulation and less role for the State. Such vision falls in tension with the objective of actively linking the private sector's role to developmental objectives. Reliance on such indicators by researchers is often due to the lack of other indicators, particularly indigenous and reflecting national developmental considerations. It also reflects the limited availability of alternative models for assessing State-market dynamics. Yet, a developmental project would require moving away from such static visions of State-market interactions towards more dynamic relationships, whereby the State plays roles beyond merely facilitating the private endeavor. These roles include interventions as an investor, as a mobilizer of private investors in crucial developmental sectors, and as a regulator that ensures that profit-making endeavors do not come at the expense of externalizing costs onto society and undermining the rights of third parties.

When it comes to States, their approach- as explained under the first observation of this chapter- is often focused on providing an 'enabling environment' geared towards increasing quantities of investments. In this quest, States have often undertaken international commitments and enacted laws that either constraint the State's policy tools to link investments with development or ignored issues related to the balance between rights and obligations of investors and related accountability mechanisms (More discussion of these matters can be found under the chapter entitled "Development, the State and the Role of Business: Considerations in the Way Towards Effective Accountability Frameworks"

by Kinda Mohamadieh). Sustainability and social considerations related to the private sector are either completely lacking or, where they are addressed, limited to voluntary approaches and do not set legal obligations under an enforceable framework.

The Iraqi report points out that the absence of clear rules or guiding charter on the private sector's contributions and accountability on the developmental and societal fronts means that business enterprises are unaware of what is expected of them and do not undertake initiatives in this regard.³¹ The Yemeni report highlights that business enterprises are rarely attentive to sustainable development and human rights issues. The bigger foreign oil companies involved in the country seem to be more attentive, as the report highlights, given the international legal obligations on their parent companies, which sometimes extend across the whole corporate group and its supply chain.³² The report does not assess though whether these requirements on the parent company are comprehensive and effective.

Companies do not go further than what is required from them. Instead, they often choose to dismiss such considerations with the lack of obligations on sustainability, developmental added value, and human rights under an enforceable framework. Some companies might even utilize the narrative of responsible business conduct to gain a better reputation or competitive edge in the market rather than provide a genuine societal contribution.

A small fraction of business enterprises engages in some type of voluntary initiatives of a societal dimension. These initiatives remain charitable, the national reports in this publication indicate. They do not structurally interact with the nature of practice and operations of the concerned business entities and remain peripheral to their core business and operational models. For example, the Bahrain report noted that private sector initiatives focus on donations to charitable, religious, health, educational, and environmental projects. Yet, these interventions do not reflect comprehensive rights-

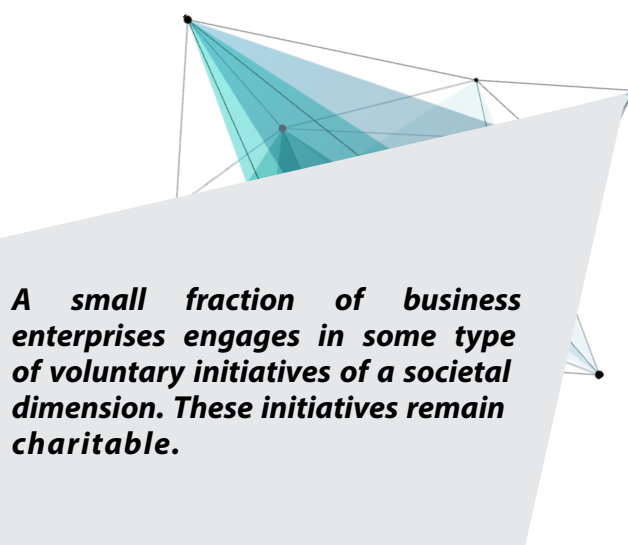
based and development-oriented contributions by companies.³³ While the Bahraini government has developed the legislative framework for companies related to economic, financial, and commercial matters, private sector accountability regarding human rights and rights of impacted communities has not been integrated into the legislative frameworks or official documents and plans such as the Bahrain 2030 Vision, despite stressing the role of the private sector as a partner in economic development.³⁴ The Jordanian report also pointed out that national companies consider their social responsibility constrained to charitable activities and traditions and does not stem from a strategic developmental approach and vision³⁵.

The Moroccan report demonstrates that the legal framework on the responsibilities of business entities focuses on obligations regarding workers and their rights (respecting the labor code, social security benefits, social insurance for accidents at work and others), and environmental aspects such as those related to environmental impact assessment and air pollution.³⁶ Yet, concerning broader considerations on contributions of a developmental nature and obligations towards communities and society at large, the approach remains focused on voluntary guidance. For example, there is no requirement from business enterprises to publish reports on non-financial matters like social contributions in terms of job generations or contribution to national developmental goals.³⁷

Similarly, the report from Palestine points out the weak level of compliance by the business sector with governance requirements, including corporate social responsibilities, given that the principles outlined in the Corporate Governance Code approved in 2009 remain guiding and non-binding. As a result, there is a lack of incentive for fulfilling these guiding principles and no cost or deterrence regarding non-fulfillment, the report highlights.³⁸

The Tunisian report points out that since the early 2000s, Tunisian authorities have started to engage

with corporate social responsibility standards but their interventions remain confined to voluntary guidance. The standards considered in Tunisia include adherence to the OECD Guidelines on Multinational Enterprises and the implementation of the Global Compact, with a view towards stimulating business competitiveness.³⁹ In December 2019, the Tunisian Union of Industry, Commerce and Handicrafts, the main national employers' organization in Tunisia representing the national private sector, officially joined the UN Global Compact and publicly announced its commitment to the SDGs and the 2030 Agenda.⁴⁰ Yet, even companies that have joined the Global Compact from 2005 onwards have faced difficulties in implementing their commitments and especially Corporate Social Responsibility action, such as inability to develop a Corporate Social Responsibility's report and so on, the report highlights.⁴¹ The Tunisian Parliament also adopted a law on corporate social responsibility in 2018 (more details about this case are included in the annexed chart). The report interestingly notes a 2009 study undertaken in Tunisia⁴² that linked the lack of involvement of company managers in corporate social responsibility 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.



4. The way forward: an effective accountability mechanism requires legal obligations and redress mechanisms

This report highlights a serious gap in effective accountability mechanisms that could accompany the role of the private sector in the Arab countries, including in its expanding active partnerships with the State and involvement in processes related to development goals. Starting to effectively redress this gap requires adapting accountability mechanisms to each country's economic, social, and governance contexts, including considering the nature of the private sector and its interactions with the State.

At the heart of advancing from a mere narrative linking investment to sustainable development towards real action, including developing an effective accountability framework for the private sector, is a needed shift away from pursuing the role of the State as a mere facilitator of market dynamics and private interests. Instead, it requires focusing the role of the State on creating an enabling environment for sustainable development that deploys positive action and cooperation by both States and private enterprises, along with other actors, including local communities and rights holders in general. The State should not employ its policy, legal and institutional tools to protect the private endeavor at the expense of the people and public interest. Instead, it should mobilize the former to nurture dynamic linkages between private endeavor and broader public collective goods. By revising and redirecting the policy, legal and institutional tools at its disposal for such purposes, the State could also facilitate a re-rooting of the private enterprise, including its profit-making strategies, in broader social visions and responsibilities.

The State aspired to in this context is a Developmental State with a vision to enable and serve national developmental trajectories rooted in the needs of its local communities. It is a State where there is harmony and coherence between the operations of the technocrats and bureaucracy and the macro developmental vision. Unfortunately, this is not to be found in most Arab countries when writing this chapter. Instead, the State in many Arab countries is "neo-patrimonial" - as Adib Nehme describes it.⁴³ In some cases, it is non-existing or partially dysfunctional, especially in areas of conflict.

The task of civil society in pursuing effective accountability mechanisms is thus more urgent and needed. It begins by nurturing the language of accountability and the vision for what it means to imagine the purpose of the private sector beyond the narrow profit considerations. It also includes creating spaces of engagement and exchange among state representatives, civil society, unions, and the private sector. Finally, one of the most urgent tasks is the pursuit of remedy for victims harmed by private endeavors by pursuing any tools available in the prevailing governance context. It could include pursuing strategic litigation through the courts and other grievance mechanisms that might be available, including potential international human rights or other mechanisms. It also includes garnering the power of civil society campaigning to unveil cases of injustice and raise the reputational costs that business enterprises could face if they seek to push their profit margins at the expense of peoples' rights.

Two main pillars for an effective accountability framework

An effective accountability framework would require attention to two pillars. It is worth noting here that the notion of accountability as used here extends beyond legal accountability, although it encompasses the latter. The term refers to accountability within a broader developmental project, which also accounts for the added value of the private sector on the developmental front.

The first pillar entails do-no-harm policies through which private actors are expected to take measures to prevent violations of third-party rights throughout their practices. It includes recognizing potential externalities that may arise within the context of their business practices, taking measures to limit externalities, and ensuring liability and accountability where social externalities arise. This pillar will contribute to managing the tension between the profit-making drive and the culture of maximization of shareholder value dominant among businesses and their responsibilities as influential social and economic actors.

This pillar requires advancing and strengthening the national legislative frameworks that clarify the duties of private entities and the mechanisms available for victims of business misconduct to pursue remedy and justice. These should include mandatory due diligence laws,⁴⁴ other human rights, environmental and labor regulations, and comprehensive systems of legal liability for legal and natural persons conducting business activities, including under administrative, civil, and criminal liability frameworks.

In this regard, States have existing obligations under international human rights law to regulate the conduct of their businesses when operating in their territory or jurisdiction⁴⁵. In addition, UN Human Rights Treaty Bodies have recognized that states have positive obligations to “exercise due diligence to prevent, punish, investigate or redress the harm caused by private persons or entities.”⁴⁶ In meeting this duty, states should adopt effective measures to prevent future injury, respond to past injury in cases of violations in the context of business activities and operations,⁴⁷ and have adequate legal and institutional frameworks to provide remedies.⁴⁸

Principle 14 of the Guiding Principles on Business and Human Rights, which the UN Human Rights Council adopted by consensus in 2011, provides that “the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational

context, ownership, and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and the severity of the enterprise’s adverse human rights impacts”. The concept of human rights due diligence, as developed under the GPs, covers the ‘business relationships’ of business entities, which are understood to include “relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”⁴⁹ This notion, therefore, extends beyond the corporate legal structure to cover relationships within the global value chain. Yet, the main shortcoming of the GPs has been the casting of human rights due diligence as an expectation and not an obligation. In that sense, it does not depart from the mainstream orthodox economic theory that situates the role of the State as a facilitator of business, that sets expectations of businesses. Still, it does not actively engage in regulating business. Such an approach has created confusion and has been identified as potentially problematic in practice.

Bonnitcha and McCorquodale have pointed out that this approach creates uncertainty about the extent of businesses’ responsibility to respect human rights and about “how the responsibility related to businesses’ correlative responsibility to provide a remedy in situations where they have infringed human rights.”⁵⁰ Since the GPs were released, there has been a limited number of interventions by States to develop their domestic legal framework in a way that reflects this global consensus and clarifies the obligations of companies when conducting business domestically or internationally⁵¹, including through GVCs. Building an effective accountability regime requires moving from voluntary guidelines to a clear legal regime that addresses the private sector’s obligations regarding its governance, contribution to development, and respect of human rights, including environmental rights. These issues are addressed in discussions on a legally binding instrument to regulate, in international human rights law, the activities of

transnational corporations and other business enterprises taking place under the auspices of the UN Human Rights Council, in which several Arab countries are actively participating⁵².

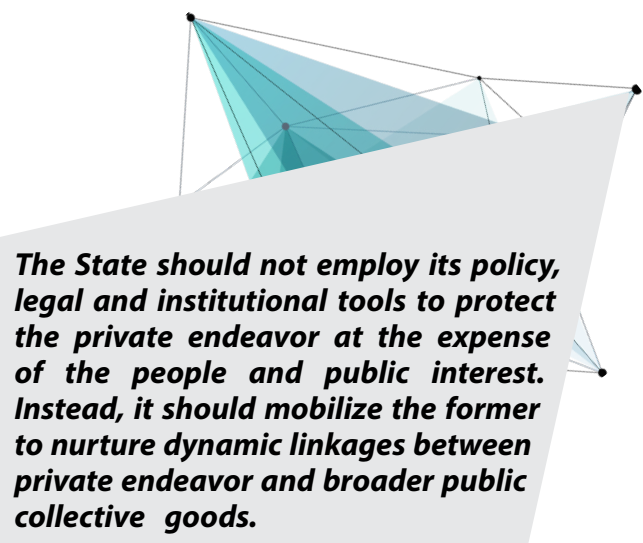
The second pillar entails attention to the value addition of the private sector towards national sustainable development goals. It would entail fulfilling basic obligations under national laws, including the tax regulatory framework, advancing collective targets such as research and development, technological advancement, and digital transformations, among other goals.

This pillar requires attention to how macro-economic policies of the State could enable or hinder advancements in the role of the private sector that could contribute to development objectives, such as decent job creation and advancement of productivity.⁵³ Macroeconomic policies could play a major role in enabling incentives or disincentives on productive investments that contribute to job creation and economic dynamism. Fiscal and monetary policy mixes influence the costs of financing investments, the dynamism of the private investment, sectors in which private investment flourishes, and whether that happens in productive sectors or financialized static sectors. Furthermore, industrial policies are crucial influencers of the ability to attract private investments to sectors of priority in the country's developmental trajectory.⁵⁴

Barriers emanating from macro-economic policies and impacting the growth and potential contribution of the private sector to developmental cycles are abundant in the Arab countries. For example, the Lebanese chapter described a "monetary and fiscal policy mix curbing private investment and an industrial policy often used as a political instrument rather than an economic one under systems of crony capitalism." The report explains how this long-standing fiscal-monetary policy mix favored the interests of financial capital, big banks, and oligarchs over sustainable development considerations, reinforced an asymmetry

between productive capital and financial capital, and served as a fetter to productive private sector development.⁵⁵

This pillar would require attention to how the dynamics between national private enterprises and foreign investors evolve. It entails a dynamic role of the State in designing the basis for cooperation with the private sector to reinforce, rather than undermine, developmental and sustainability objectives. It also requires paying attention to how contracts between the public and private sector are developed and how they reflect developmental considerations, revising and aligning international commitments undertaken under trade and investment agreements, and the approaches to investment laws, governmental procurement laws, and corporate governance laws. For example, essential to re-envisioning the investment governance regime is advancing the national legal frameworks through which investor obligations would be concretized and clarified, including, for example, human rights legal frameworks. This is a crucial complement to reforming commitments under international investment agreements. Moreover, it is one way in which states could utilize their policy and regulatory tools to direct investment towards sustainable development objectives.



The State should not employ its policy, legal and institutional tools to protect the private endeavor at the expense of the people and public interest. Instead, it should mobilize the former to nurture dynamic linkages between private endeavor and broader public collective goods.

Annex: Scenes from approaches and propositions on the role of the private sector and its accountability from around the Arab region

This chart includes extracts from the 11 reports included in this publication that demonstrate certain practices in the covered Arab countries or selected suggestions from the authors regarding approaches to the role and accountability of the private sector in those countries. It is meant to give a glimpse into stories told in more detail in the national chapters of this publication.

Egypt	<p>The Egyptian reports show that despite the official narrative supporting reform in international investment governance, Egypt passed Law no. 32/2014 prohibiting third parties from challenging business contracts between the State and private investors. It includes contracts in which the State or its entities comprising: ministries, agencies, organs having specific budgets, local administration units, general authorities, public institutions, or State-owned companies or companies in which the State holds shares are involved. The Law was issued in the absence of a legislative body during the year 2014. Such Law forgoes the rights of citizens and workers to uncover suspected cases of corruption and deny them access to the judicial process to pursue remedy and justice in case their rights are undermined. Furthermore, the Egyptian report points out that such Law makes corruption invisible and un-exposable. As a result, it offers impunity in front of economic, administrative, or criminal courts to investors violating the Law and the rights of third parties.⁵⁶</p>
Jordan	<p>The Jordanian report recommends that one avenue to enhance the positive interlinkages between foreign investment and national development paths is performance requirements. It could include requirements that aim to enhance local capacity in the relevant sector, others that aim to strengthen back and front linkages between the foreign investment and the local economy, others that seek to improve the social outcomes, and those aiming at contribution to the macro-economic stability. The preceding performance requirements had played a significant role historically in the economies of Japan, Singapore, South Korea, Taiwan, and other industrialized countries. However, advancing on this front requires the State pays attention to the kind of rules it commits itself to under international investment and trade treaties, many of which could prohibit or restrict the use of such developmental tools. It also requires moving beyond the constraining neo-liberal approach promoted by the Washington Consensus, which discourages the use of such policy and regulatory tools.⁵⁷</p>
Iraq	<p>The Iraqi report highlights the role of the civil society organizations in a context where the state apparatus is not properly functioning, given the ramifications of the conflict period. As a result, the corruption in the governance system, the role of civil society organizations takes on higher importance, including monitoring and evaluating the crucial aspects of the role of the private sector in development and its related accountability. This includes the need for more research, including in universities and national research institutions, on issues about private sector governance and accountability. It also includes the need to propose and set in a place a transparency mechanism through which more information would be available to the public regarding the role of the private sector, including, among other issues, rights of workers, children rights, and avoidance of child labor, and contributions to sustainable development.⁵⁸</p>

Tunisia	The Tunisian report provides that the Parliament adopted a law on corporate social responsibility (CSR) in 2018. However, the CSR law was a lost opportunity for establishing a binding framework and did not include a binding monitoring mechanism. The approach incorporated in the CSR law is based on a philanthropic charitable approach and mindset ⁵⁹ . 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. The Tunisian report proposed that a CSR law should include an obligation to report on turnover, recruitment methods, production processes, environmental and social impacts, and address issues related to production systems and relations with customers and employees. The report points out that many companies use part of their profits to finance charitable projects without changing their production methods to reduce negative impacts on local development, the environment, and society. In effect, they pay for philanthropic actions to buy a better reputation for their company. ⁶⁰
Morocco	The Moroccan report reviews how in the city of Casablanca, 48 enterprises launched a social initiative with the assistance of the General Confederation of Moroccan Enterprises to contribute to marginalized neighborhoods, particularly youth empowerment. Consequently, the General Confederation established in 2006 a committee to develop a social responsibility certificate, allowing the recognition of business contributions to social projects, and used the ISO 26000 standard as a reference. The latter is a guidance document regarding the social responsibility of business and does not provide for any obligations. Yet, this initiative did not get active engagement and positive responses from businesses or business associations. The General Confederation of Moroccan Enterprises cooperated with the National Council for Human Rights in 2012 to promote the respect of the UN Guiding Principles on Business and Human Rights. NGOs have provided detailed monitoring reports on these principles. Yet, no progress has been achieved on developing a binding legal framework on business obligations. ⁶¹
Palestine	The Palestinian report highlighted that government procurement contracts by the government present a major part of the public budget and are adopted in major sectors closely entangled with basic services and rights of Palestinians such as electricity, water, communication, and transport. Thus, the Palestinian governing authority had attempted to support local businesses through allocating the local business sector special attention and treatment when it comes to government tenders and purchases. Yet, the developmental considerations from this important policy tool remain unfulfilled given several challenges, including shortcomings in the legal framework, particularly when it comes to transparency, good governance, the reflection of international standards, and the requirements for the protection of economic and social rights of different societal groups impacted by the projects. In addition, challenges include the lack of a broader developmental plan within which the tenders could be situated, lack of clear mandates for bodies entrusted with launching the bids and those responsible for the management and oversight, and lack of specialized expertise and human resources for setting conditions for bids and reviewing and studying the submitted bids. ⁶²
Lebanon	The Lebanese report highlights that Lebanon's regulatory framework governing investment is not comprehensive and is incoherent. It lacks a guiding logic or overarching doctrinal framework that underlies investment-related policy-making, evident in the areas of investment promotion, competition, and public procurement, where legislation is ad-hoc, incoherent, and sensitive to politicized decision-making processes, according to the report. However, in areas where the legislation effort is apparent, such as the corporate tax codes, enforceability is weak, and non-compliance is rampant. ⁶³

Mauritania	The Mauritanian report reviews the experience of the Parliamentary Committee for Investigation and Accountability concerning governmental authorities and private parties. The Committee was established by a law passed in 2020 and tasked with monitoring and investigating conditions of several sectors. It benefits from international expertise in technical, legal, and financial fields, in addition to the secondment of five judges from the accountancy court. It has investigated public-private partnerships and found a breach of the requirements of the public-private partnership law. The Committee recommended: the need to review the legal and regulatory framework, prohibition of defining laws in accordance with specific interests and undertaking special agreements with certain private entities, enhancing transparency, among other recommendations. The report calls for strengthening the committee's capacities to interfere ex-ante to prevent corruption, not solely ex-poste, and enhance civil society support. ⁶⁴
Sudan	The Sudanese report discusses the National Investment Law of the year 2013, which was developed and adopted in challenging times for the country due to the separation of South Sudan in the year 2011 and the related deterioration of the economic conditions. The government's attention was focused on attracting investments and filling the gaps resulting from the loss of the national resource of oil. The Law carried the objective of encouraging investments in projects that contribute to national development and enhancing projects by Sudanese and non-Sudanese private sector, cooperatives, and the public sector. However, the substantive content of the Law focuses almost exclusively on providing protection and facilities to investors, while attention is lacking to aspects concerning the contribution of investments and investors to sustainable development, the respect of the investor to human rights and environmental preservation, and mechanisms for holding investors accountable in this regard.
Yemen	The Yemeni report suggests an approach that combines a system of incentives and clarifies the obligations under the Law. Within such an approach, the State could offer a set of incentives to businesses that actively invest in the community and developmental endeavors, to stimulate positive competitiveness among businesses that invited them to do better when it comes to developmental added value, protection of the environment, consumer and workers' protections. The report also proposes establishing a national corporate social responsibility index. ⁶⁵
Bahrain	The Bahraini report reviews the Corporate Governance Code adopted in 2010 ⁶⁶ . In 2018, two principles were added to the code, including the principle that companies should strive through social responsibility to exercise their role as good citizens. The principle provides that companies set a social responsibility policy approved by the Board of Directors, disclose social responsibility aspects in their annual reports, and develop an annual plan on social responsibility. The notion of a social responsibility plan seems to cover the extra programs that the companies undertake to support projects in sectors like education, health, religious field and does not necessarily cover the internal processes of the company, including how it treats its workers, approaches to its processes, production cycles, products, services it provides, suppliers as well as communities impacted by its operations. It also does not integrate a human rights approach. The Code remains a voluntary set of principles not linked to corporate obligations or enforcement mechanisms.

Endnotes

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- 5 Ibid, Jordanian report.
- 6 Hassan Kazem, “Accountability of Private Sector in Iraq”, page 6.
- 7 Yahya Saleh, “Private Sector in Yemen: Social Roles and Possibilities of Accountability”, page 11.
- 8 See: Interviews with Mariana Mazzucato at: <https://edition.cnn.com/videos/world/2021/01/28/mariana-mazzucato-economy-moonshot-climate-covid-amanpour.cnn> and <https://marianamazzucato.com/> (last visited June 2021)
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- 15 Ibid, Bahraini report, page 19.
- 16 Hassan Sherry, “Aligning Business with Sustainable Development: The Case of the Food and Beverages Sector in Lebanon”, page 27.
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- 21 Supra note 9, Abla, page 10. See also: Arab NGO Network for Development, Arab Watch on Social and Economic Rights, “Informal Employment” (2016), available at: <https://www.annd.org/cd/arabwatch2016/#english>
- 22 See: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25542&LangID=E>. The mandate followed up on the 2013 report of the Independent International Fact-Finding Mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63), reports of the UN Secretary-General, resolutions of the UN General Assembly and Security Council, an advisory opinion of the International Court of Justice and the opinions of several human rights bodies reaffirming the illegality of the Israeli settlements in the Occupied Palestinian Territory, including in East Jerusalem.
- 23 Hassan Kazem, “Accountability of Private Sector in Iraq”, page 5.
- 24 Yahya Saleh, “Private Sector in Yemen: Social Roles and Possibilities of Accountability”, page 14
- 25 Nasser Abdel Karim, “Role of the State, Investments and Developmental Challenges in Palestine”, page 14.
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- 32 Ibid, Iraqi Report.
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- 37 Ibid, page 6.
- 38 Nasser Abdel Karim, "Role of the State, Investments and Developmental Challenges in Palestine", page 16
- 39 Investment and Sustainable Development Goals: the Case of Tunisia, page 7.
- 40 Ibid, page 7.
- 41 Tunisian report, page 9.
- 42 Ben Boubaker Gherib J., Spence M., Ondoua Biwolé V. (2009) Développement durable et PME dans les pays émergents : Entre proactivité, opportunisme et compromis. *Journal of Small Business & Entrepreneurship*, 22:3, 355-375
- 43 See: Adib Nehme (2016), *The NeoPatrimonial State and the Arab Spring*, available at: https://www.aub.edu.lb/ifi/Documents/publications/books/2015-2016/20160613_adib_nehme.pdf
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- 45 The Committee on Economic, Social and Cultural Rights (CESCR) provided that states should take steps to 'prevent human rights contraventions abroad by corporations which have their main offices in their jurisdiction, without infringing the sovereignty or diminishing the obligations of host states under the Covenant.' Source: Statement on the obligations of State parties regarding the corporate sector and economic, social and cultural rights (2011), para. 5, available at: <https://digitallibrary.un.org/record/715883?ln=en>
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- 47 Human Rights Committee, General Comment 35, UN Doc. CCPR/C/GC/35 (2014), para. 9; General Comment 27, UN Doc. CCPR/C/21/Rev.1/Add.9 (1999), para. 6; and, Committee on the Rights of the Child, General Comment 16, UN Doc. CRC/C/GC/16 (2013) p. 2.
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52 See: Resolution 26/9 of the Human Rights Council, 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights', July 2014, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9 and the work of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx>.

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54 Ibid.

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58 Iraqi report, page 22

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60 Tunisian report, pages 9-10.

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62 Palestinian Report, page 28 and conclusions.

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66 Available at: <https://ecgi.global/code/corporate-governance-code-kingdom-bahrain-2010>