HORN OF AFRICA INITIATIVE

Regional Private Sector Engagement Roadmap

2024–28

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The Horn of Africa Initiative

The Horn of Africa Initiative (HoAI) was created in October 2019 during the World Bank Group/International Monetary Fund Annual Meetings in Washington, DC, by the ministers of finance and other representatives of the Horn of Africa (HoA) countries, in partnership with three development partners. The initiative highlighted the importance of developing a coordinated approach to address shared regional challenges such as natural disasters, pandemics, insecurity, and fragility and emphasized the importance of improved regional connectivity, increased trade, and expanded access to energy and digital services for economic growth and poverty reduction. Today, the HoAI comprises the countries of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, and South Sudan.[1] The Federal Ministry for Economic Cooperation and Development (Germany), or BMZ, joined the initiative as a fourth development partner in May 2023.

Programs under the HoAI are organized into four thematic pillars: (1) regional infrastructure connectivity; (2) economic and trade integration; (3) building resilience; and (4) human capital development, where the respective national policies of the countries converge to achieve deeper regional cooperation and integration in the Horn of Africa. HoAI acts as a new model for regional integration, encompassing policy dialogue, investments, and political ownership.

A Secretariat has been established with a team of experts under the guidance of the Head of the Secretariat to support the initiative's functions. The HoAI Ministerial Group offers strategic guidance to the initiative and is chaired on a rotational basis. Following Djibouti, Kenya's cabinet secretary for treasury and national planning chaired the HoAI in 2022 (and early 2023), followed by Ethiopia's Minister of Finance H. E. Ahmed Shide on March 8, 2023.

1. Sudan is currently inactive in HoAI, and Eritrea's involvement is limited to a technical role.

Abbreviations and Acronyms

ACLED	Armed Conflict Location & Event Data
AfCFTA	African Continental Free Trade Area
BA	Borderless Alliance
BMO	business membership organization
BOO	build-own-operate
COMESA	Common Market for Eastern and Southern Africa
DTAA	Double Taxation Avoidance Agreement
EAC	East African Community
EFFSAA	Ethiopian Freight Forwarders and Shipping Agents Association
EMDE	emerging market and developing economy
FDI	foreign direct investment
HoA	Horn of Africa
HoAI	Horn of Africa Initiative
ICT	information and communication technology
IGAD	Intergovernmental Authority on Development
KEPSA	Kenya Private Sector Alliance
KNCCI	Kenya National Chamber of Commerce and Industry
kWh	kilowatt hour
MSME	micro, small, and medium enterprise
MW	megawatt
OSSIC	One Stop Shop Investment Center (South Sudan)
PPP	public private partnership
PSE	private sector engagement
SEZ	special economic zone
SIA	Somali Industry Association
SME	small and medium enterprise
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development

Executive Summary

The Private Sector Engagement (PSE) Roadmap aims to create a more conducive environment for cross-border trade and investment in the Horn of Africa (HoA) region, which comprises Djibouti, Ethiopia, Kenya, Somalia, and South Sudan. It outlines a five-year plan for 2024–28 with 10 key goals to boost foreign direct investment, stimulate local private sector growth, promote women's economic participation, and drive inclusive development across countries. This exercise comes from a request from the Ministers of Finance during the 17th Ministerial Meeting of the Horn of Africa Initiative (HoAI), held in May 2023, to develop new mechanisms for engaging with the private sector and investors, creating a regional platform for discussing policies that encourage investment, job creation, and economic growth (section 2).

The roadmap begins by presenting a vision statement for using PSE to advance regional economic integration. It then analyzes the baseline investment landscape, identifying legal and regulatory constraints on business entry, property rights, contract enforcement, infrastructure gaps, and access to finance. Political instability and conflict risk also hinder investor confidence. Subsequently, the roadmap presents a series of goals and approaches to further promote development by identifying specific actions that HoA governments can put in place to advance economic growth and regional integration.

The roadmap builds on earlier initial drafts presented at the 14th and 16th and HoAI Ministerial Meetings. It is based on a series of consultations with the private sector in Djibouti, Ethiopia, Kenya, Somalia, and South Sudan. All the private sector organizations participating in the consultation process on September 19, 2023, discussed the findings, actions, and goals presented in this document at a workshop organized in Addis Ababa (see section 4). The actions described here aim to promote greater economic integration within the HoA, following the principles of the African Continental Free Trade Area (AfCFTA) and the policies of other Regional Economic Communities of which HoAI states are members, notably the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the Intergovernmental Authority on Development (IGAD).

The investment climate in the Horn of Africa faces multiple binding constraints across legal and regulatory frameworks, infrastructure, access to finance, and political stability. Key challenges include major difficulties in business licensing, property rights protection, contract enforcement, and insolvency resolution. Opaque approval processes and restrictions on foreign equity impede foreign direct investment FDI inflows. Poor road infrastructure drives up transport costs, while high electricity prices reduce competitiveness in some countries. Small and medium enterprises (SMEs) struggle to obtain credit due to underdeveloped financial sectors and collateral barriers. The limited availability of quality data also undermines investment decisions and market analysis. Additionally, conflict, unrest, expropriation risk, and corruption create an unpredictable political environment across several HoA nations (section 3).

Other impediments include cumbersome and fragmented customs processes that increase trade costs. Firms must obtain multiple permits from different government agencies, which is time-consuming and costly. Varying requirements for local and foreigner workers exacerbate the regulatory burden. Comprehensively addressing this multitude of challenges across legal frameworks, infrastructure, access to finance, and political stability is essential to unlocking the region's investment potential.

To address challenges, the roadmap defines 10 interlinked goals (section 5):

1. Create a regional platform for regularly engaging public and private actors in dialogues related to the development of common policies on investments.

2. Strengthen the national statistical capacities of HoAI countries to guide investors' decisions.

3. Harmonize business licensing processes in the region by adopting a single business permit system that includes a trading license.

4. Promote the adoption of public private partnerships (PPP) for cross-border projects under the HoAI framework in areas such as climate adaptation and mitigation, physical and digital infrastructure, agribusiness, livestock value chains, and trade facilitation.

5. Promote women's economic participation and legal parity with men.

6. Identify priorities requiring rapid action, particularly tax convergence.

7. Develop cross-border special economic zones (SEZs) at key HoA border areas.

8. Improve business entry, property rights, and access to finance.

9. Strengthen market access, linkages, investment protections, and incentive regimes aligned with the AfCFTA Protocol on Investments.

10. Adopt cluster development programs to promote regional value chains.

The roadmap then outlines priority activities under each goal, such as establishing a permanent PSE Secretariat and national focal points, adopting unified business licensing frameworks, implementing the AfCFTA Investment Protocol, and launching cluster development programs for SMEs (see section 6).

Implementation Roadmap

This document provides an implementation schedule for 2024–28, anchored by a revised governance structure (see sections 7 and 8):

- **Start-up phase, 2024.** Establish operational governance bodies such as a regional task force.

- **Delivery phase, 2024–28.** Design projects, secure donor funding, and issue procurements.

- **Review phase, 2028.** Assess progress made toward achieving the 10 goals.

Existing HoAI institutions will manage the roadmap by:

- **Policy Steering Committee.** HoAI Finance Ministers will provide oversight.
- **Regional task force.** Key agency representatives from each country will coordinate implementation.
- **Thematic working groups.** Technical experts from relevant agencies will design activities.
- **Secretariat.** The Secretariat will facilitate meetings and liaise with stakeholders.

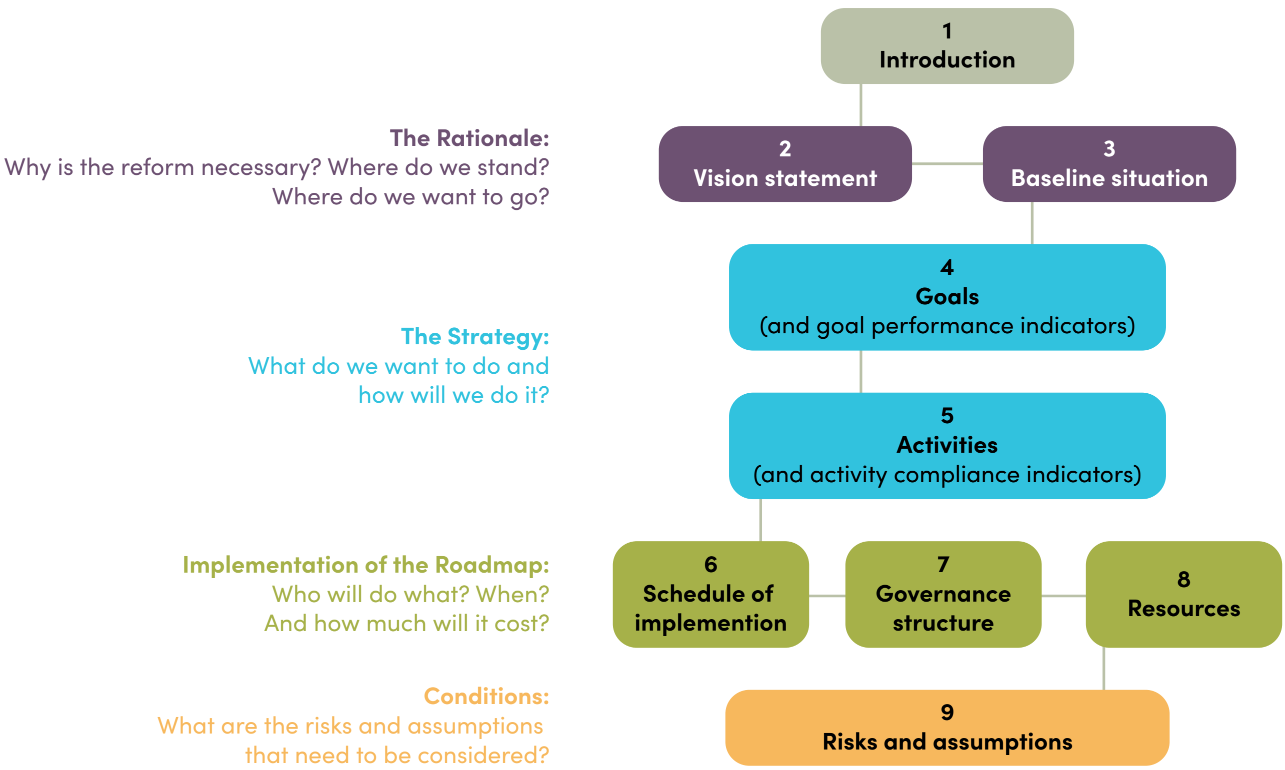
Full roadmap implementation can catalyze substantial increases in intra-HoA trade and investment. Regional infrastructure projects will plug connectivity gaps and support value chains. Empowering the private sector will drive industrial growth, exports, and job creation. Crucially, aligning regulations with the AfCFTA Protocols on investment, trade, and gender economic empowerment will accelerate regional integration. Success will inspire broader national reforms. The PSE roadmap provides a practical five-year strategy for the HoA region to make decisive strides toward economic integration.

1. Introduction

This roadmap outlines priority actions on how countries participating in the Horn of Africa Initiative (HoAI) can create a more conducive and enabling environment that encourages cross-border trade and from countries outside the region and from other Horn of Africa (HoA) nations. It also highlights opportunities for private sector engagement (PSE) in the formulation and implementation of regional policies.

The roadmap underscores the importance of the public sector in HoA countries to work cooperatively with the private sector in a mutually beneficial partnership. This would promote the participation of the latter in the formulation of public investment policies and align investment facilitation policies with global benchmarks, which is essential for HoAI countries to diversify and expand production capacities and exports, promote economic growth, build critical infrastructure, and create more resilient economies. PSE in the policy and sectoral dialogue is applicable to all HoAI pillars, including resilience and human development. Figure 1.1 outlines the approach underpinning the roadmap.

Figure 1.1. Structure of the Roadmap Document



2. Vision Statement

The vision of the HoAI is to advance regional integration in the Horn of Africa by coordinating public policy responses to common development challenges in the region. Reforms to facilitate investment are essential to setting up a more transparent, efficient, and investment-friendly business environment and to making it easier for investors to create, conduct, and expand their activities.

The HoAI Ministers of Finance called for continued dialogue with the private sector to improve government policies aimed at boosting economic development. During the 17th Ministerial Meeting of the HoAI, held on May 24, 2023, on the margins of the African Development Bank's 2023 Annual Meeting, the Ministers expressed a desire to develop new mechanisms for engaging with the private sector and investors through aggregation into a regional entity to serve as a multistakeholder platform to discuss prospective policies that encourage investment, job creation, and the economic growth of HoA countries.[1]

1. 17th Ministerial Meeting of the Horn of Africa Initiative 24 May 2023: Sharm-el-Sheikh Communique, available on: https://www.hoainitiative.org, in the 'Ministerial Meetings' area.

3. Baseline Current Situation

The objective of this section is to describe the current investment landscape in the HoA countries by outlining the policies, regulations, and initiatives already in place in each country and identifying gaps and implementation challenges. The purpose of this analysis is to identify coordinated actions that these countries can put in place to further simplify the business environment for investors, reduce unnecessary administrative burdens, and spur foreign and cross-border investments in the region.

The latest (2023) edition of the World Investment Report of the United Nations Conference on Trade and Development (UNCTAD) shows that, over the last decade, foreign direct investment (FDI) in the HoA countries has consistently increased, although the trend has been highly erratic. Ethiopia has largely driven the FDI levels in the region. After a period of rapid and consistent growth until 2016, FDI in Ethiopia declined sharply and then increased dramatically again in 2021. Somalia's FDI performance has been quite positive: the country managed to attract a rising influx of investments over the same period, including during the COVID-19 crisis.

In South Sudan, FDI inflows began in 2017, reaching a negative value of -US$232 million in 2019 (table 3.1). The negative value is due to the deterioration of the political situation and the resurgence of subnational conflicts and factional fighting in the country. Moreover, in 2019, South Sudan grappled with one of the worst flooding events it had ever experienced, affecting almost 1 million people. Beginning in 2020, FDI regained momentum, driven primarily by the oil and gas sector (which is substantial in South Sudan), as well as by agriculture, mining, and infrastructure development. Nevertheless, despite the country's great potential in these areas, investments in the country remain weak because of unfair practices that foreign investors continue to report, including the expropriation of assets, unpredictable tax policies, harassment by security services, extortion attempts, inconsistent results in legal proceedings, and labor disputes.[2] In a 2021 ranking of perceptions of corruption, the non-governmental organization Transparency International cited South Sudan as the country with the highest level of public sector corruption in the world. In its 2022 ranking, South Sudan was listed as second worst, after Somalia.

Table 3.1. Horn of Africa, FDI inflows by country, 2017–22 (in millions of US$)

Country	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Djibouti	286.0	153.0	124.0	160.0	165.0	170.0	175.0	158.2	168.0	190.9
Ethiopia	1,343.9	1,855.1	2,626.5	4,142.9	4,017.1	3,310.3	2,548.7	2,381.0	4,259.4	3,670.0
Kenya	1,978.4	1,513.9	1,463.7	1,138.6	1,403.6	1,139.4	1,098.4	716.8	463.3	759.5
Somalia	258.0	261.0	303.0	330.0	369.0	408.0	447.0	534.0	601.0	636.0
South Sudan	n/a	n/a	n/a	n/a	1	60	-232	18	68	122

Source: UNCTAD: https://unctad.org/fdistatistics.

The African Continental Free Trade Area (AfCFTA) presents a valuable opportunity to expand FDI, employment, exports, and inclusive growth across Africa. Estimates indicate that the AfCFTA could increase FDI inflows from 111 to 159 percent, facilitating skills transfer, local economic linkages, and integration into global value chains. Successful AfCFTA implementation could potentially lift 50 million people out of extreme

2. U.S. Department of State 2022.

Box 3.1. Types of Foreign Direct Investment

Four types of foreign direct investment (FDI) can be identified depending on the key motivations driving investor locational decisions:

- **Natural-resource-seeking investment** is characterized by firms seeking to access and exploit natural resources and raw materials in the host country. This is the easiest type of investment to attract because investors will go where such resources can be found, however difficult the operating environment.

- **Domestic-market-seeking investment** is driven by firms seeking to deliver goods and services within a host country. It entails investments motivated by the size and characteristics of the host country's domestic market. Access to larger markets beyond domestic borders through regional economic communities can influence market-seeking investments.

- **Efficiency-seeking investment** is export-oriented and characterized by investors seeking to maximize cost efficiency and benefit from production factors that improve their ability to compete in international markets. A typical example of efficiency-seeking FDI occurs when firms integrate international production patterns to maximize efficiency gains through global value chains.

- **Strategic-asset-seeking investment** occurs when firms aim to consolidate or improve their positioning in a given market by acquiring strategic assets such as brands, human capital, know-how, and market share. In most cases, this type of investment involves the acquisition of an existing enterprise, with mergers and acquisitions as the typical mode of FDI entry into the host economy.

Source: Dunning, 1993.

poverty and raise per capita income by 9 percent by 2035.[3] Intra-African trade is projected to rise significantly, especially in manufactured goods. In this regard, policy harmonization around trade, investment, e-commerce, and intellectual property will be critical.

FDI and Development Impact

FDI can enable productivity improvements, export diversification, and knowledge diffusion. However, these benefits are not guaranteed. Well-designed investment promotion policies and frameworks are key to maximizing FDI's development impact. Four FDI types exist based on investor motivations: 1) natural resource seeking, 2) market seeking, 3) efficiency seeking, and 4) strategic asset seeking. Efficiency-seeking FDI oriented toward exports and global value chains has the most transformative capacity for economic upgrading, job creation, and diversification (box 3.1).

3. Echandi, R., Maliszewska, M. and Steenbergen, V., Making the Most of the African Continental Free Trade Area: Leveraging Trade and Foreign Direct Investment to Boost Growth and Reduce Poverty, World Bank, 2022.

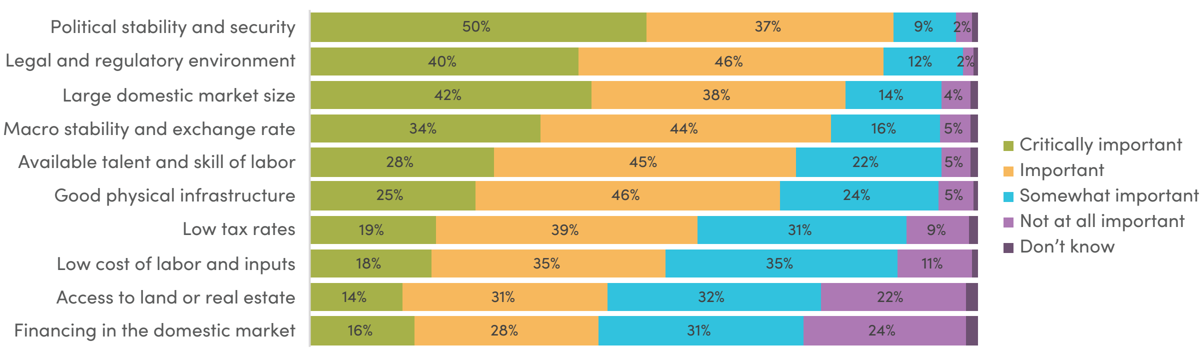
The policy and legal frameworks play pivotal roles in attracting export-oriented, efficiency-seeking FDI. Investor priorities include political stability, business-friendly regulations, protections against expropriation, and transparent implementation of laws and policies. Weak investment protections hinder the retention and expansion of existing FDI. Regulatory uncertainty also negatively affects reinvestment intentions. Informal barriers such as poor implementation of formal rules can deter FDI even when legal restrictions are minimal. Timely investor grievance mechanisms are essential.

Main Obstacles to Investment Growth

A country's legal and regulatory environment is among the principal factors affecting investor's location-related decisions. According to the Global Investment Competitiveness survey,[4] political stability and a business-friendly regulatory environment are the most important factors in investors' decision making (figure 3.1). Political risks are wide-ranging, including the risk of expropriation, restrictions on the transfer and convertibility of currencies, the risk of breach of contract, unpredictable and arbitrary actions, discrimination, and the absence of regulatory transparency. De-risking, or reducing project or country risk, can lead to a balanced risk-return profile and could help attract private investment. Perception that the risk is too great can prevent investments that are commercially profitable and economically attractive from materializing.

Political risks and concerns over the stability of a country's legal and regulatory regime represent the most significant deterrents to investment. More than three-quarters of surveyed investors had encountered some type of political risk in their investment projects in emerging market countries. In severe cases, such as expropriation, about half of the investors cancelled a planned investment or withdrew an existing one. Investor protection guarantees included in a country's domestic legal framework and its international investment agreements typically provide legal protection against such risk. In the Global Investment Competitiveness survey, 81 percent of investors cite country legal protections as important or critically important to investment decisions; 51 percent cited bilateral investment treaties. Investors also seek predictability and efficiency in the implementation of laws and regulations. About four out of five investors surveyed cite the transparency and predictability of public agency conduct—and the ease of doing business—as important determinants of their locational decisions. More than one-third of investors rate these as critically important factors or potential deal breakers (figure 3.2).

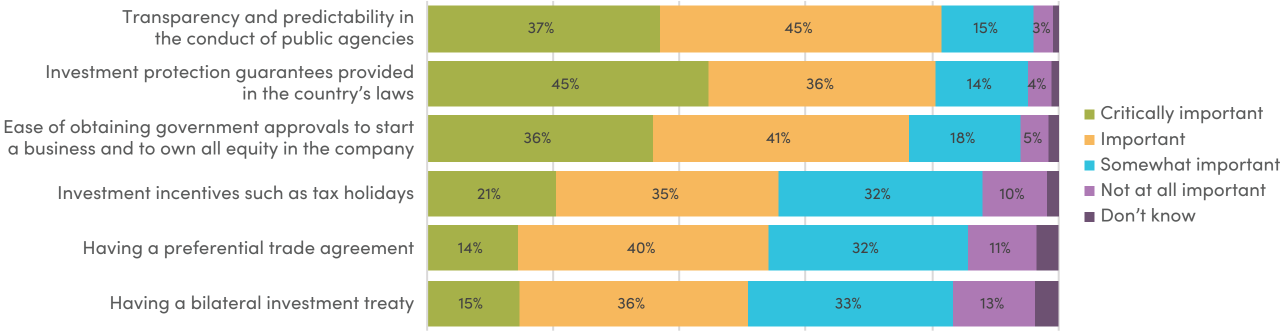
Figure 3.1. Factors Affecting Investment Decisions



Source: Computation based on the survey results from the World Bank's Global Investment Competitiveness Report 2019/2020, June 2020.

4. World Bank Group. 2020.

Figure 3.2. Importance of Regulatory Predictability and Efficiency to Investors

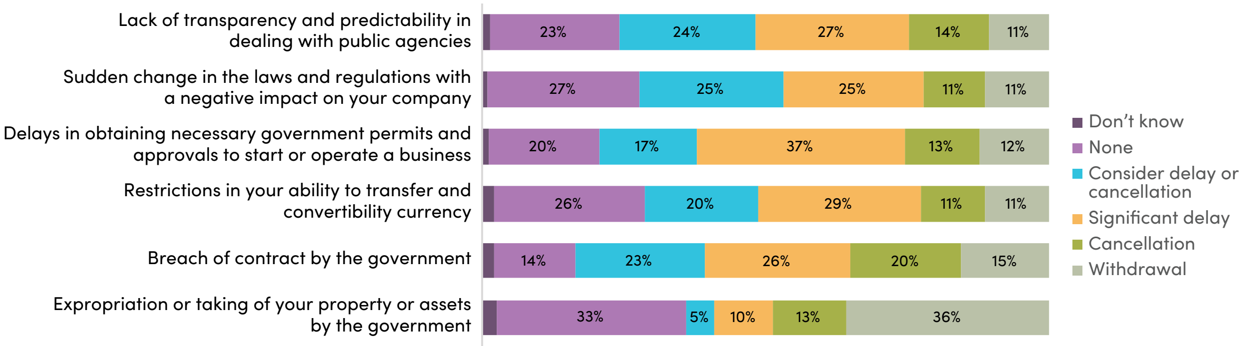


Source: Computation based on the survey results from the World Bank Global Investment Competitiveness Report 2019/2020, June 2020.

A lack of investment protection results in a failure to retain current investment and foster reinvestment. A lack of confidence among already established investors in a host country could lead them to cancel plans for expansion or reinvestment, or even to exit the country. According to the Global Investment Competitiveness survey (see figure 3.3), one in four investors who experienced a lack of transparency and predictability, sudden changes in laws and regulations, or delays in obtaining government permits and approvals, cancelled a planned investment or withdrew an existing investment due to political risks. More severe cases of political risk occur less frequently but with far greater impact. Only 13 percent of respondents experienced a breach of contract by the government, but 35 percent cancelled a planned investment or withdrew an existing one. While only 5 percent of respondents experienced expropriation, almost half had cancelled or withdrawn an investment.

Investment protection is therefore a critical element of a government's strategy to retain investments and attract new investments or reinvestments. In many economies, most of the total annual FDI inflows are made by investors already established in the host country—both in the form of reinvested earnings and new investments. UNCTAD estimates that the share of reinvested earnings in total FDI outflows fluctuates between 20 to 40 percent.[5] Although the significance of reinvested earnings may differ from county to country, in general, reinvestment represents an important component of FDI.

Figure 3.3. Regulatory Predictability and Efficiency's Impact on Investment



Source: Computation based on the survey results from the World Bank Global Investment Competitiveness Report 2019/2020, June 2020.

5. UNCTAD, World Investment Report 2022.

Even when de jure restrictions to foreign investment are minimal, governments should keep in mind that the way laws and regulations are implemented in practice is more important than what is written. De facto restrictions can deter private investment from operating effectively. A mechanism to ensure legal and regulatory compliance across government agencies and to promote effective problem solving for investors would help prevent investor grievances from escalating into legal disputes through timely identification and resolution. Such an approach would result in a more transparent and consistent investment climate, which would help address investors' main concerns.

Investment attraction and retention are influenced by profit opportunities as well as the level of risk in host countries. When investors incur fixed and irreversible costs to invest, uncertainty about the local conditions—including the political and regulatory framework—has a dampening effect that reduces investment response to new investment opportunities. Post entry, existing investors can choose to delay or contract investments in situations with heightened risks.[6] Empirical evidence indicates a negative relationship between host country risks and the reinvestment decisions of foreign investors. The riskier the business environment governing the operation of the private sector in a particular country, the lower the amount of reinvestment by foreign multinational investors.

Legal and Regulatory Environment

Following is an analysis of the legal and regulatory framework governing the business environment and foreign investment in Djibouti, Ethiopia, Kenya, Somalia, and South Sudan. It examines the binding constraints to private sector development and FDI along two critical dimensions:

1. **Overall business environment.** Encompassing factors such as ease of business entry, property rights protection, gender equality in law and regulation, judicial systems, digitalization of public services, and access to finance for enterprises.

2. **Foreign investment.** Covering market access restrictions, investment protections, incentives policy, local linkage requirements, and international investment agreements.

See appendix A for a comprehensive analysis.

Djibouti

In May 2022, Djibouti established the Secretariat of State to take charge of investment and private sector development. The agency implements the business climate policy, promotes investment, and fosters private sector development. It coordinates with the Ministry of Economy and Finance to ensure that the business environment is internationally competitive and conducive to private initiatives. It also identifies administrative reforms to remove obstacles to the proper functioning of the private sector.

6. A related issue is the effect of political risks on the financing mode of FDI, which has the potential to affect reinvestment. For example, Kesternich and Schnitzer (2010) show that high political risks clearly favor joint ventures to mitigate political uncertainty. The literature, however, suggests that partial ownership of foreign affiliates has a negative effect on internal lending from related firms in the multinational group and on engagement in integrated global operations (e.g., Desai et al. 2004). Antras (2009) finds that the share of activity abroad financed by capital flows from the parent country (thus including reinvested earnings and intrafirm borrowing) decreases the quality of investor protection in host countries. The conclusion is that activity monitoring abroad by the parent investor is more critical in settings where investor protections are weaker.

The 2023 Heritage Foundation Index of Economic Freedom classifies Djibouti as "mostly unfree," reflecting deficiencies in all measured areas, including rule of law and regulatory efficiency.[7] Djibouti's overall economic freedom score is 56.1—112th globally and 15th of 47 countries in the Sub-Saharan Africa region. While Djibouti's overall score is lower than the world's average, it is better than those of neighboring countries—Kenya's overall score is 52.5 and Ethiopia's is 48.3. The index groups indicators into four pillars: (1) rule of law; (2) government size; (3) regulatory efficiency; and (4) open markets. Djibouti's performance is notably weaker according to the rule of law indicators, including property rights, judicial effectiveness, and government integrity.[8]

Investment climate constraints include severe difficulties with licensing and registering businesses, registering property, enforcing contracts, resolving insolvency, and obtaining credit for investors. Djibouti maintains highly restrictive market access barriers in key service sectors, including legal, accounting, telecommunications, and financial services. The legal and regulatory frameworks lack adequate non-discrimination guarantees and substantive protections for investors.

Significant gaps remain between Djibouti's domestic laws and regulations governing investments and its international commitments. Successful AfCFTA implementation will require extensive legal and regulatory reforms to facilitate greater cross-border investment and trade. For instance, Djibouti's investment code does not sufficiently address areas including investment facilitation, protection, and sustainability based on the AfCFTA Protocol. Djibouti should also explore the possibility of establishing transparent grievance redressal mechanisms for investors.

Ethiopia

In 2020, Ethiopia adopted a new investment law as part of a broader government initiative to increase private sector participation in the country's economy.[9] On May 21, 2022, the Council of Ministers approved the new Investment Incentive Regulation (No. 517/2022), which addresses the tax and duty incentives applicable to investment in eligible sectors, including information and communication technology, hospitality, health, agriculture, transport, and logistics. In February 2023, the Council also adopted a new public private partnership (PPP) regulation.

The 2023 Heritage Foundation Index of Economic Freedom classifies Ethiopia as "repressed," reflecting deficiencies in all measured areas, including rule of law and open markets.[10] Ethiopia's overall economic freedom score is 48.3, with its economy ranking 155th globally and 38th of 47 countries in the Sub-Saharan Africa region. Its 2023 score is 1.3 points lower than the previous year's score. Its overall scores are lower than the global average and lower than the average of neighboring countries, with Kenya at 52.5 and Djibouti at 56.1. Ethiopia's performance is notably weaker according to the rule of indicators—property rights, judicial effectiveness, and government integrity—as well as the investment freedom and financial freedom sub-indicators of the open markets indicator.

FDI has enabled strong growth in the manufacturing industry, but diversifying Ethiopia's exports, enhancing its global competitiveness, and driving rapid industrial upgrading will require much greater investment. The underdeveloped financial sector and highly limited access to credit for small and medium

7. See: https://www.heritage.org/index/pdf/2023/countries/2023_IndexofEconomicFreedom-Djibouti.pdf.

8. The index evaluates economic freedom using 12 quantitative and qualitative factors, categorized into the four pillars. Each factor is graded on a scale of 0 to 100. The overall score is calculated by averaging the 12 factors, assigning equal weight to each.

9. Investment Proclamation No. 1180/2020, which repealed Investment Proclamation No. 769/2012.

10. See https://www.heritage.org/index/pdf/2023/countries/2023_IndexofEconomicFreedom-Ethiopia.pdf.

enterprises (SME) are major binding constraints preventing private sector expansion. However, promising reforms are currently underway to liberalize the financial sector. Ethiopia also maintains significant market access barriers through foreign equity caps, minimum capital requirements, and a non-transparent approval process for foreign investors. Legal protections for investors remain below international standards.

Kenya

The 2023 Heritage Foundation Index of Economic Freedom classifies Kenya as "mostly unfree," reflecting deficiencies in all measured areas, especially the rule of law indicators.[11] Kenya's overall economic freedom score is 52.5, making its economy ranking 135th globally and 29th out of 47 countries in the Sub-Saharan Africa region. Its overall score is below global and regional averages. Kenya's performance is notably weaker according to the rule of law indicators as well as the fiscal health sub-indicator of the government size indicators.

Despite its strategic location and infrastructure, which gives Kenya a strong platform to be a leading regional economic hub, its FDI inflows remain relatively low—far below the country's potential. The primary constraints to a conducive business environment include political instability around elections, a massive informal sector, and inadequate access to credit and other financial services by SMEs. Kenya imposes numerous market access restrictions across sectors, including mining, aviation, insurance, and telecommunications, to heavily promote local control and ownership. The legal framework provides limited protections to foreign investors until they obtain requisite approvals from authorities. Consequently, significant gaps persist relative to global standards, such as the AfCFTA protocol.

Somalia

Somalia exhibits severe governance deficits across all major metrics. Key hurdles to investment include legal uncertainty, widespread land disputes, and weak contract enforcement in an underperforming judicial system. Conflict and informality continue to dominate and constrain Somalia's human development and economy.

A new investment law improved investor protections, but considerable gaps remain when measured against international best practices. Somalia maintains unspecified market access barriers to foreign investors, encoded across multiple outdated laws. Its highly opaque approval system and procedures for foreign investors lack transparency and impose excessive compliance burdens. Despite Somalia's not yet ratifying AfCFTA, the forward-looking AfCFTA Investment Protocol provides an excellent reform blueprint for Somalia to attract greater export oriented FDI inflows to develop productive capacities. But simultaneous reforms are essential to improve the investment climate, strengthen governance, and restore economic stability.

South Sudan

Establishing a business in South Sudan can take several months. Opening a business requires interacting with multiple agencies, including the Ministries of Investment, Justice, Trade and Industry, and Finance and Planning. The 2009 Investment Promotion Act requires the Ministry of Investment to create a one-stop-shop investment center, however there is still no active website for this center. In 2021, the Ministry of Justice established a business registration website, but there are no data on its operations.

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11. See https://www.heritage.org/index/pdf/2023/countries/2023_IndexofEconomicFreedom-Kenya.pdf

Low levels of FDI, particularly the efficiency-seeking investments that South Sudan attracts, suggest a significant investment competitiveness challenge in the country. Investment competitiveness refers to the ability of a country to attract, retain, and integrate private investment into its economy. Enhancing investment competitiveness thus requires establishing a business environment in which both domestic and foreign companies can efficiently enter the market, expand operations, and develop more and better linkages with local, regional, and global economies. Investment competitiveness, while a key consideration for FDI in general, is crucial to attracting efficiency-seeking FDI, because such investments only flow into host economies that can contribute to a firm gaining a competitive edge in international markets.

Barriers to Women's Economic Participation

Across the Horn of Africa, legal and regulatory barriers constrain women from participating equally in the economy as entrepreneurs and employees. These constraints represent a significant loss of talent, productivity, and human capital. For example, legal gaps persist related to gender equity in pay, workplace protections, access to finance, rights to inheritance and property ownership, and protection from discrimination and harassment. There is room for improvement across indicators such as starting a business, getting a job, owning and managing assets, and accessing credit.

Removing obstacles to women's economic inclusion should be a policy priority. The legal framework must prohibit gender discrimination and protect women's rights in the workplace. Access to finance and productive resources such as land requires improvement through legal reforms. Initiatives for skills training, mentorship, and access to markets could also provide encouragement to women entrepreneurs. Family-friendly policies around parental leave and childcare also support women's labor force participation. The digital and financial inclusion of women will expand opportunities even further.

With supportive laws, policies, and programs, women can thrive as entrepreneurs, employees, and leaders. Such an approach would unlock women's full potential and accelerate economic diversification, job creation, and poverty reduction. The AfCFTA Protocol on Women and Youth in Trade provides guidance on impactful measures that countries can adopt.

Other Key Obstacles to Investments in the Region

In addition to the challenges described above, surveys conducted by the World Bank from 2013 to 2019 covering Djibouti, Ethiopia, Kenya, Somalia, and South Sudan provide useful insights into the HoA's main investment challenges.[12] Although some of these surveys are dated, their findings still appear relevant because they describe some of the key factors that influence local investors' choices regarding starting a business in this region.

Respondents cited access to finance as a leading constraint to investment expansion due to the high cost of borrowing, strict collateral requirements, and excessive certification and documentary requirements usually required by banks as a condition for granting loans. This situation compels businesses to mainly rely on their own capital to finance operations. Moreover, frequent climate shocks, such as droughts and floods, which plague this region, cause additional distress to businesses, especially the smallest, because of the need to commit additional financial resources to deal with production losses caused by such natural phenomena.

12. World Bank Enterprise Surveys Database: https://www.enterprisesurveys.org.

Access to finance seems to be a particularly serious constraint in Ethiopia, where over 40 percent of surveyed businesses reported difficulties in accessing credit. Currency restrictions adopted by the government—a consequence of the perennial shortage of foreign currency in the country—exacerbate the situation even further. One transaction involving the conversion of funds from the Ethiopian birr to hard currency (e.g., euros or U.S. dollars) can take up to several months. This presents a major obstacle to increasing production levels in an import-dependent economy that relies heavily on imported intermediate goods to manufacture its products.[13] Moreover, Directive No. FDX/77/2021, effective since December 1, 2021, establishes that in the allocation of foreign currency, Ethiopian banks must prioritize imports of essential products, currently divided into three categories.[14] Hence, each bank has to allocate and divide foreign currency reserves among its clients in different shares according to the priority level of goods indicated in the directive. Foreign supplies may wait a long time between the time when an order is placed and when they receive the payment and can arrange a shipment for goods not on a priority list.

In Somalia, only 18 percent of companies cite access to credit as an obstacle to operating a business, and yet over two-thirds of companies finance their working capital with internal sources, regardless of their size.[15] The situation is similar in South Sudan and Kenya (table 3.2).

Table 3.2. Highest Obstacles Affecting Business in the Horn of Africa

	Djibouti (2013)	Ethiopia (2015)	Kenya (2013)	South Sudan (2014)	Somalia (2019)
Access to finance	1.9	40.4	18.3	15.3	18
Access to land	0.8	4.6	0.4	7.2	30.9
Business licensing and permits	1.8	0	3	2.3	2.8
Electricity (access and/or cost)	48.8	10.1	3	9.9	N/A
Lack of partiality of courts	0.7	0.5	0.6	0.8	1.6
Corruption	12.6	7.1	7.7	6.8	12.8
Tax administration	1.3	6.6	4.1	1.6	N/A
High tax rates	13.4	7.6	4.1	7.5	4
Poorly educated workers	6.6	1.7	1.6	1.7	N/A
Informal sector practices	4	5.8	22.9	4.8	1.2
Customs and trade regulations	3.8	9.9	3.4	2.6	5.6
Transportation costs	2.6	3.9	2.9	5.3	4
Labor regulations	1.7	0.4	1.1	1.1	N/A
Political instability	1	0.4	17	30.4	6.4
Crime, theft, and disorder	0	0.9	0.6	2.8	N/A

Source: World Bank Enterprise Surveys Database: https://www.enterprisesurveys.org.
N/A = Not Available]

The banking systems in each of the HoA countries are characterized by a gap in the type of services offered. While larger companies and more limited microenterprises[16] can access specific financial instruments to address their capital needs, similar financial tools are less readily available to SMEs. Modern and

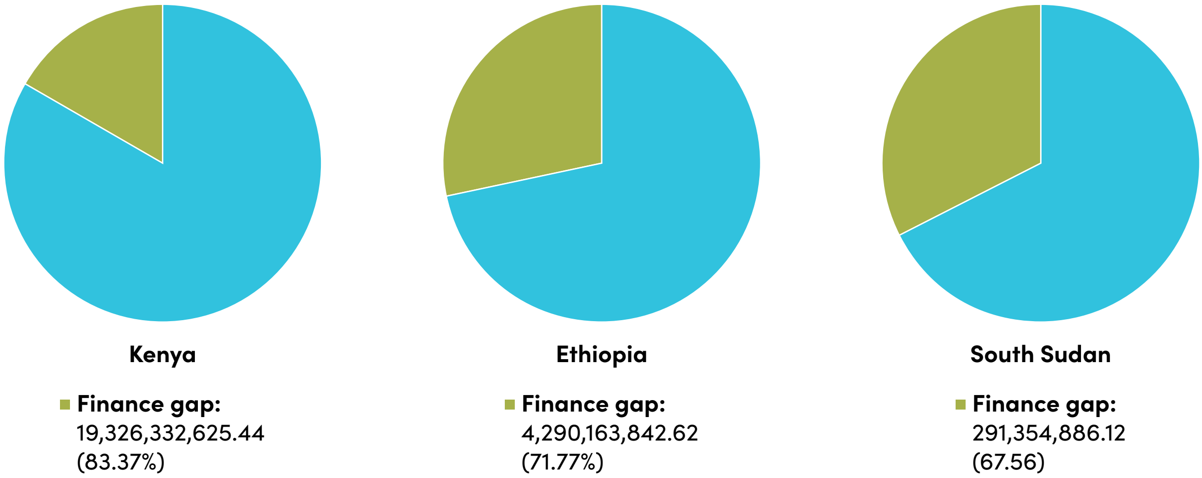
13. An example is the leather sector. The chemicals and other materials used in the tanning process are not available in the internal market and must be imported at a high price.

14. See https://nbebank.com/wp-content/uploads/pdf/directives/forex/fxd-77-2021.pdf. The first category of priorities includes pharmaceuticals and inputs for the manufacturing of edible oils and liquified petroleum gas. The second category includes inputs for agriculture, such as fertilizer, seeds, pesticides, and chemicals, as well as inputs fo manufacturing, such as raw materials and chemicals. The third category includes a longer list of products and services, including the repatriation of profits and dividend transfers.

15. See also Mustafe 2022.

16. This is due to the large diffusion of microfinance in the region.

Figure 3.4. Finance Gap on MSME in Kenya, Ethiopia, and South Sudan



Source: SME Financial Forum (2023), https://smefinanceforum.org

innovative financial solutions are needed to support expansion processes for these businesses, which are the region's strongest drivers of economic development, innovation, and employment. The Small Medium Enterprises Finance Forum,[17] a network of more than 240 banks, financial institutions, fintech companies, and development finance institutions that share knowledge about SMEs to promote their growth, calculates that the micro, small, and medium enterprise (MSME) finance gap is 83.27 percent of the current supply of financing in Kenya, 71.77 percent in Ethiopia, and 67.56 percent in South Sudan (figure 3.4).

Although there are no available data on Djibouti, alternative sources of information show similar results. A survey commissioned by the World Bank between July and August 2020, conducted on a sample of 200 formal and 100 informal businesses,[18] revealed that only 21 percent of MSMEs request a bank loan to fund their activities, despite the fact that the banking sector in Djibouti is very liquid and has enough resources to provide these companies with the financing they need.[19] This rate is even lower among women-owned businesses, with only 16 percent applying for a bank loan. The tendency to apply for a bank loan grows proportionally with the size of a company. The smaller the size, the less likely a company is to apply for bank credit. About 85 percent of respondents to the World Bank survey cite as a reason for the low bank loan rate a dissatisfaction with the interest rates charged by financial institutions.

Access to electricity is reportedly another major obstacle, especially in Djibouti, where nearly 50 percent of surveyed companies cite it as a key constraint. Similar results are observed in South Sudan. A more detailed analysis of the cost of utilities in HoA countries is presented later in this section.

Lastly, in Kenya, and to a lesser degree in Ethiopia, an additional challenge reflected in the surveys is the unfair competition exerted by the informal sector, which is particularly large in HoA countries. Because businesses in this sector do not register with tax authorities, they avoid taxation, allowing them to sell products and services at a more competitive price than formal businesses. This situation seems to be particularly challenging in Kenya and Ethiopia. A study published in July 2023 by the International Centre for Tax and

17. See https://smefinanceforum.org/data-sites/msme-finance-gap.
18. A2F Consulting LLC, 2021.
19. New African 2020.

Development in cooperation with the Ethiopian Ministry of Revenue[20] argues that the direct economic competition exerted by informal firms also influences the tax compliance behavior of formal firms in the country because to remain competitive with the informal sector, formal firms evade paying taxes, resulting in extensive lost revenue for the government. The study calls this phenomenon "adverse evasion spill over hypothesis," observing that its impact is higher on smaller enterprises.

Political Risk

A 2015 study by the World Economic Forum in collaboration with the Boston Consulting Group21 shows that approximately 20 percent of company executives regard political risk as the greatest disincentive to investing in emerging markets other than macroeconomic instability.[22] Political risk is the potential for political changes or instability in a particular geographic area to adversely affect business operations, including armed conflict, insecurity, government expropriation (land insecurity), and restrictions limiting the transfer of profits and convertibility of currency.[23] Such factors undermine the climate of confidence that investors need to make prudent decisions, dissuading them from investing in certain economies. Political risk is a particularly serious obstacle to attracting investments and fostering sustainable economic progress in HoA countries and the region because it causes the environment in which investors operate to become highly unpredictable. Stable and transparent regulatory frameworks and independent and reliable judiciary systems to settle disputes are prerequisites for investors to commit their resources in a foreign jurisdiction.

In terms of the risk of insecurity, the Armed Conflict Location & Event Data (ACLED), a mapping database of all reported political violence and protest events around the globe, shows that conflicts in the HoA are widespread and pervasive. ACLED ranks violence every country into three levels: extreme, high, and turbulent (table 3.3). All the HoA countries, except Djibouti, are categorized as high-risk, with Somalia having the highest risk rating, followed by Kenya due to the recorded peaks in political violence following the elections of August 2022 and attacks of al-Shabaab militants in recent years.[24]

Table 3.3. ACLED's Conflict Risk Ranking of Horn of Africa Countries

Country	Index Category	Index Ranking
Somalia	High	21
Kenya	High	22
Ethiopia	High	25
South Sudan	Turbulent	31
Djibouti	Low/inactive	195

Source: ACLED Index ranking.

Lack of Road Infrastructure

A lack of road infrastructure poses a particularly serious risk to HoA countries, where road networks are generally underdeveloped. Poor road infrastructure is often associated with insecurity, as bad road conditions oblige trucks to travel at low speeds and cause frequent breakdowns, which in turn increase the possibility of attacks on the road by thieves, robbers, and bandits. This hampers the smooth flow of trade, increases the cost of doing business, and contributes to the weak market integration of HoA countries. Because firms greatly depend on road infrastructure to conduct business, its absence significantly undermines the ease of doing business. It is difficult to trade successfully and at a low cost where road infrastructure is inadequate.

20. Yimam, Asmare, and Moore 2023.

21. World Economic Forum and The Boston Consulting Group 2015.

22. Macroeconomic instability is a condition characterized by protracted fiscal deficits, mounting outstanding loans, unfavorable balance of payments, declining foreign exchange reserves, persistent currency depreciation, and escalating inflationary pressure. All these factors lower the confidence of potential investors in an economy.

23. Anderson 2013.

24. ACLED 2023.

For logistics firms, poor transport infrastructure translates into high operational costs as they must spend enormous resources on fuel, the replacement of spare parts, repairs, and vehicle maintenance.[25]

High Cost of Utilities

Energy and digital technologies are widely recognized enablers of economic growth and labor productivity as well as drivers of innovation and international trade. Affordable, reliable, and accessible electricity is a precondition for industrial development and agricultural production,[26] and a major factor considered by investors in their decisions to invest, especially in energy-intensive manufacturing sectors or businesses.[27] At present, the HoA region hosts some of the countries in Africa with the highest electricity costs (table 3.4).

Table 3.4. Cost of Electricity in the Horn of Africa, 2022

Country	Electricity Cost for Business (US$ per kilowatt hour)
Somalia	0.65
Djibouti	0.28
South Sudan	0.25
Kenya	0.17
Ethiopia	0.02

Source: Authors' elaboration on data from the African Development Bank and Power Africa. South Sudan data drawn from UNDP and EIF 2023.

Somalia has the highest electricity costs in the region, followed by Djibouti, South Sudan, and Kenya. According to Power Africa, a U.S. government-led initiative that addresses one of the most pressing challenges to sustainable economic growth and development in Sub-Saharan Africa, electricity providers in Somalia charge up to US$0.65 per kilowatt (kWh) hour, mainly delivered through isolated diesel-powered grids.[28] Power generated by the few independent power producers operating in cities across the country is reportedly among the most expensive in the world.[29]

Djibouti faces similar challenges, which the country is trying to address through the development of renewable energy projects. It plans to cover its entire energy demand with renewable sources by 2035 by progressively reducing its energy imports from Ethiopia, which currently sources more than 80 percent of its electricity. On September 10, 2023, a wind farm was inaugurated in Ghoubet (59 megawatt [MW] per year), realized under a PPP scheme, while plans are ongoing for the construction of a solar plant in Grand Bara (30 MW) and a geothermal project in Fialéh (30 MW).[30] An interconnection project with Ethiopia financed by the African Development Bank in 2011 led to a 30 percent reduction of the price of electricity in 2014, which allowed Djibouti to rely on imported electricity at the relatively cheaper cost of US$6.5/kWh. The remaining needs are covered by electric power derived by fuel oil and diesel-fired thermal plants managed by Electricité De Djibouti, a public company under the Ministry of Energy.

In South Sudan, access to electricity is extremely limited, with a large financing gap hampering the development of affordable and clean energy for light industrialization. The country faces critical energy challenges, notably institutional capacity weaknesses and an inadequate institutional framework, which contribute to a deficit in power generation, distribution, and transmission infrastructure in addition to underinvestment, leading to low levels of access to electricity services. For example, in Juba, the current

25. In this regard, the HoAI's pillar 1) aims to fill some of the gaps in infrastructure along key economic corridors.

26. Byrne, Toly, and Glover 2009.

27. The following industries are typically considered energy-intensive: food, pulp and paper, basic chemicals, refining, iron and steel, nonferrous metals (primarily aluminum), and nonmetallic minerals (primarily cement). Together, these account for about half of all industrial-sector-delivered energy use (EIA 2016).

28. Power Africa is a U.S. government-led initiative that addresses one of the most pressing challenges to sustainable economic growth and development in Sub-Saharan Africa: access to electrical power. Power Africa provides coordinated support from the U.S. public and private sectors to add cleaner, more efficient electricity generation capacity for the benefit of people and businesses in Africa.

29. The Economist 2012.

30. AfDB, 2021.

institutional framework for the independent power producer company EZRA Group and energy supplier company JEDCO is not functioning efficiently, resulting in frequent power rationing.[31]

In Kenya, despite huge investments in geothermal, wind, and solar power to reduce costs, the price of electricity remains high by African standards. The high cost of energy in Kenya can be attributed to various factors, including expensive purchase power agreements, high fuel costs, multiple taxes and levies imposed on electricity bills, the foreign exchange market, value-added tax, and fuel cost adjustment; as well as a depressed growth in demand.[32]

Ethiopia has the lowest electricity costs in the region and is significantly investing in hydropower generation to lower costs further. Ethiopia has abundant renewable energy resources and the potential to generate massive amounts of power from hydroelectric, wind, solar and geothermal sources. Over the past 25 years, it has expanded its energy production capacity tenfold, and yet it continues to experience energy shortages as it struggles to meet its increasing population's demand for electricity. Since 2016, the government has taken considerable steps to attract private sector investment into the power sector to support its ambitious renewable power projects and is actively moving away from public generation investments toward independent power producer projects.

Lack of or Insufficient Statistical Capacity

Quality socioeconomic data and statistics are necessary tools for supporting investment decisions. Economic information helps investors better evaluate risks associated with investment projects and make prudent decisions. In most HoA countries, there is a need to improve the availability and quality of such statistics, as data are not available in a timely manner nor are they regularly updated, and therefore do not offer investors reliable representations of countries. This is particularly true for South Sudan, Somalia, and Djibouti, whose respective national bureau of statistics websites offer insufficient and outdated information. At the same time, economic data collected by private institutions, such as chambers of commerce, are insufficiently exploited and not systematically shared with the statistics bureaus to build more accurate economic profiles of HoA countries.

Fragmentation of Regulatory Information

Easy accessibility to regulations and procedures regarding investments is critical to business investment because it makes it easier to comply with the relevant formalities and thereby reduce the potential of incurring hidden costs. A characteristic common to all HoA countries is that regulatory information on investment rules (and associated tax regimes) is scattered across multiple internet sources and knowledge portals that do not simplify procedural steps for investors but rather, in many cases, add to the confusion. Such fragmentation makes it necessary to seek expert advice to navigate regulations. Djibouti, Kenya, and Ethiopia have established electronic portals to facilitate and expedite the completion of procedural steps to create an enterprise and obtain investment permits and specific licenses. South Sudan has established the One Stop Shop Investment Centre (OSSIC) in Juba as a physical single point of contact that brings key ministries and government agencies under one roof for the issuance of investment certificates to approved investors. The OSSIC also provides interested investors with pre-investment advice and counseling on how to process applications for investment certificates and relevant permits. However, this information is not accessible online because the OSSIC has yet to develop a website. In 2021, however, the Ministry of Justice

31. AfDB, 2023.

32. KAM, 2023.

launched an e-government portal[33] to improve the ease of doing business in South Sudan by automating the business registration processes for companies. But foreign investors rarely use the system; in most cases, they still engage local experts to register their businesses and obtain investment certificates at an average cost (US$1,000) that is much higher than in other countries in the region.[34]

Investment promotion agencies have a key role to play. The Ethiopia Investment Commission has developed an online portal where investors, once registered, can apply for investment permits, business licenses, tax holiday Incentives, and duty-free incentives for eligible projects. The Kenya Investment Authority has implemented a similar platform that provides a step-by-step guidance for procedures related to enterprise creation and operation, tax fulfillment, investments, and other procedures, including their legal bases and involved entities, requirements, and other information. In Djibouti, a one-stop shop, Guichet Unique des Entreprises,[35] operational since March 2017, allows economic operators to complete all the administrative and legal steps related to the creation of companies in the country online, offering access to all regulations needed to establish a business.[36] Other than the Kenya Investment Authority, which manages the e-Opportunities platform,[37] no HoA country agencies offer investor mapping systems that identify areas of investment opportunity open for joint ventures or PPPs. These investment promotion agency web platforms also do not offer comprehensive overviews of the types of investment available with the relevant formalities. For instance, each of these agencies has established special economic zones (SEZs) authorities[38] to manage authorization and license requests through separate internet portals. Additionally, there is no mechanism in place to guarantees a minimum period for obtaining government permits and approvals, which would discourage authorities from delaying responses.

Multiple Business License Requirements

As a condition for conducting business in their territories, most HoA countries require investors to obtain multiple licenses and permits from various government agencies or designated authorities (e.g., national states, regions, counties, and other local entities). In Somalia, for example, a complex system of expensive and multiple licenses established by the Company Registry[39] makes the conduct of business operations particularly challenging and highly discriminatory between local and foreign investors, as the latter are charged higher registration fees, disincentivizing them from investing in the country. In South Sudan, the effectiveness of the e-government (e-services) platform remains unknown. In most cases, investors seek specialized support from local experts or the use chamber of commerce to complete business registration processes due to the involvement of multiple national, state, and local entities, which make the process particularly lengthy and laborious The U.S. Department of State estimates that the registration process can take several months, with companies routinely approached to provide bribes to move the process forward.[40]

33. See: https://business.eservices.gov.ss/.

34. U.S. Department of State, 2023.

35. See https://www.guichet-unique.dj.

36. On November 17, 2022, Djibouti also launched a reform project for the Investment Code (No. 88/AN, February 13, 1984), coordinated by the secretariat of state in charge of investment and private sector development and the Ministry of Economy. The reform program, which benefits from the financial support of the European Union, aims at improving the country's business environment by developing a legal framework that strengthens investment security; ensures better coordination among institutions responsible for investment; and offers specific tax and customs incentives to attract investments, including FDI. The Secretariat of State in charge of Investment and Private Sector Development conducted a diagnostic of the provisions of the investment code at the end of 2022. This analytical work is ongoing.

37. See https://opportunities.invest.go.ke.

38. In Kenya, both a SEZ authority and an export processing zones authority are active.

39. See https://ebusiness.gov.so/fees.

40. U.S. Department of State 2023.

Limited Representation of Business Communities in Regional Policy Dialogues

Every HoA country currently hosts multiple business membership organizations (BMOs)—apex bodies representing private sector enterprises and their associations. BMOs play an advocacy role on issues of strategic importance to the protection and promotion of the interests of their members, responding to their needs through the provision of specific services and information. Members include Chambers of Commerce and Industry, as well as trade and industry associations (sometimes representing specific industrial sectors or clusters), small-scale enterprise associations, businesswomen's associations, and other similar organizations. Chambers of Commerce and Industry in the region mostly follow the British legal tradition, where companies are free to apply for their membership on a voluntary basis. Only in Djibouti, membership is mandatory (except for companies operating within the Djibouti International Free Trade Zone).

The Pan-African Chamber of Commerce and Industry, headquartered in Addis Ababa, represents BMOs at the regional level. It includes all the African Chambers of Commerce and Industry, but its representation of manufacturers' associations and other business organizations is more limited. Similarly, the Intergovernmental Authority on Development (IGAD) Business Council mainly represents national Chambers of Commerce and Industry in IGAD countries, while the participation of other BMOs is limited. The Common Market for Eastern and Southern Africa (COMESA) Business Council also represents a large portion of private sector organizations in HoA countries but does not include South Sudan, because this country is not a member of IGAD. The East African Community (EAC) Business Council, represents only Kenyan and South Sudanese private sector organizations.

4. Consultations with the Private Sector

To complement the analysis from the previous two sections, interviews were conducted with key national BMOs in each Horn of Africa country covered by this roadmap. Initial bilateral meetings were arranged with representatives from Djibouti, Ethiopia, Kenya, Somalia, and South Sudan since the end of July 2023. On September 19, 2023, representatives from all these countries participated in a workshop held in Addis Ababa to discuss the content of this roadmap. Organizations attending the workshop included the Ethiopian Freight Forwarders and Shipping Agents Association (EFFSAA), the Kenya National Chamber of Commerce and Industry (KNCCI), the Kenya Private Sector Alliance (KEPSA), the Kenya Association of Manufacturers (KAM), Kenya's Youth and Women in Trade and Business,, the Chamber of Commerce of South Sudan, the South Sudan Women Entrepreneurs Association, the Somali Chamber of Commerce, the Somali Industry Association (SIA), the Somali Women in Business Association, the Chamber of Commerce of Djibouti, the Djibouti Importers and Exporters Syndicate, the Djibouti Freight Forwarders Association, and the Djibouti Association of Women in Trade. The Ethiopia Chamber of Commerce and Sectoral Associations, the Addis Ababa Chamber of Commerce and Sectoral Association, and the Ethiopian Textile and Garment Manufacturers' Association, who were consulted during the initial preparation phases of the roadmap, were unable to participate to the September 19 workshop. Views and comments formulated by these organizations have been incorporated into this roadmap.

5. Goals

Based on the description of the current situation, this section defines the future outcomes that are necessary to contribute to the achievement of the HoAI vision statement (see section 2). Each goal is linked to the previously described challenges. It is important to recognize at the outset that PSE at the regional level requires a combination of intra- and intercountry actions that cannot extricated from one another.

Description of Goals

GOAL 1: Create a regional platform for regularly engaging business communities in the HoA for dialogue with national governments in relation to the development of common policies in the area of investments and use it as a vehicle to attract investment and promote the development of value chains into the region

The identification or creation of a regional platform in the HoA region is needed to regularly engage the business communities in the various countries in dialogue with HoAI governments. This effort should focus on developing common (regional) policies on economic development and investments. This platform could engage with other government branches in HoA countries to reform visa regulations to facilitate the movement of businesspeople in the region. It could also advocate for the introduction of specific training programs or forms of support for businesses (e.g., incubators, regional research, and training centers) to promote the development of companies or of special skills needed in key sectors of HoA economies.

As previously noted, several business councils have been established in the COMESA, EAC, and IGAD regions, which include BMOs in HoA countries, including the Pan-African Chamber of Commerce and Industry, a network of African Chambers of Commerce and Industry.[41] These platforms were set up by private sector actors as apex bodies to serve as a bridge for advocating and coordinating their interests at the regional level. Discussions with the private sector organizations consulted for the preparation of this roadmap emphasized the need to create a multi-stakeholder organization inclusive of representatives of key public sector agencies responsible for investment and trade promotion in coordination with existing bodies.

A potential model to consider for such an organization is Borderless Alliance (BA).[42] BA is a platform for direct dialogue among private and public sector stakeholders in West Africa, aimed at addressing critical bottlenecks to transport and trade by shedding light on trade inefficiencies through the identification and analysis of the most paralyzing obstacles faced by producers, traders, buyers, and investors in the region. The identification of these barriers is based on data provided by its members, complemented by additional information and data collected by trade advisors stationed at key border posts along West African corridors and operating within facilities called *Border Information Centres*. The findings of such analyses are published in publicly available reports and used to lobby decision makers in West African states, the Economic Community of West African States (ECOWAS), and the West African Economic and Monetary Union to

41. The African Business Council, created in 2020 and operational since June 2021, advocates for and represents the interests of the African businesses and the private sector in the entire African continent, serving as a platform for cooperation and dialogue with the African Union. the African Business Council is part of the architecture of the AfCFTA.

42. See https://borderlesswa.com.

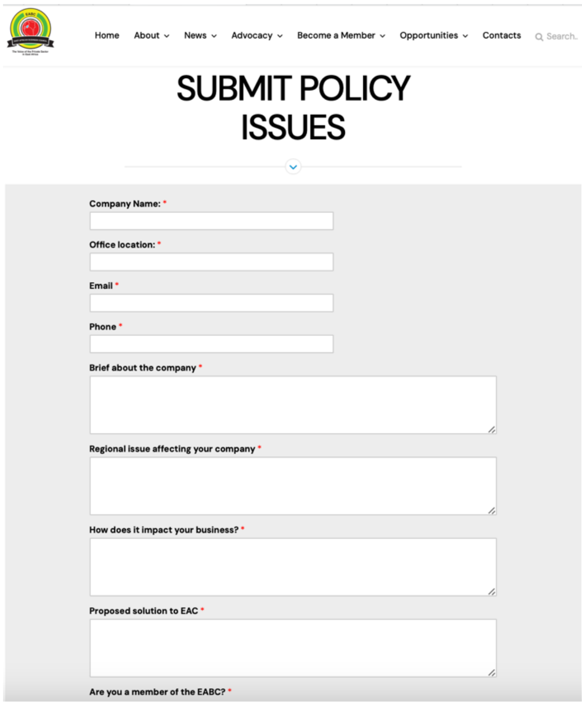
change their national and regional policies and adapt them to the needs of the private sector. BA is therefore not merely a platform to amplify the voice of the private sector at the regional level, but also a forum that promotes public-private dialogue at the national and regional levels to find solutions to the region's common challenges.

BA was launched in March 2010 as an initiative of the United States Agency for International Development (USAID), which funded the organization until it became partially self-sustainable. Annual membership fees, which range from US$200 for individuals to US$5,000 for corporate groups, fund about 20 percent of BA's current budget. National and regional associations can also become members of BA by paying a fee of US$500 and US$600 per year, respectively. The remaining BA budget is fudnded by external donors, including USAID; African Development Bank; Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ); and the Canadian Ministry of Foreign Affairs, Trade and Development; among others. While BA's activities are increasing financed with its own funds, the organization still remains largely dependent on resources from external donors, which are not always made available in a timely manner for the implementation of planned activities. Sustainability is therefore an issue, and a regional platform in the HoA risks facing similar problems.

A similar platform for the HoAI should put together the main private sector organizations and key government authorities responsible for promoting and attracting investments in the HoA countries. This would include investment promotion agencies, SEZ authorities, and Ministries of Trade. This platform should provide a permanent discussion forum for trade and investment development in the region and for the sharing of information and studies on market trends, trade and investment policies and regulations, and other programs to assist enterprises and investors in navigating HoA markets. The main universities and leading economic research centers in the HoA countries could also participate in it.

To establish this platform, a program should be launched to set up a permanent secretariat with a rotating chairmanship for each HoA country. Focal points should be established in the countries to coordinate dialogue with several organizations in each country and facilitate the elaboration of common positions to bring to the attention of the regional platform. In addition, a periodic investment forum should be organized on a rotational basis in each HoA country, at which representatives of the platform can meet with other public stakeholders, including Ministries of Finance, Trade, and Investment and SEZ authorities, to discuss policies related to the facilitation of investments in the region and collaboration opportunities for business and industry in the key sectors of HoA economies—such as agriculture, tourism, and construction. After this organization is established, a website should be developed that includes an online form for businesses in the region to submit policy concerns impacting their activities, which the organization can then discuss with the relevant policy organs. The EAC Business Council has a similar function on its website (see figure 5.1).

Figure 5.1. Online Form for Submission of Policy Issues



The new platform's website should include an "Invest-HoAI" page—an investment mapping and match-making tool. The tool will aid in the identification of areas of investment opportunity in the region that are open to joint ventures or PPPs, where project promoters can submit, after registration, investment proposals categorized under specific sectors (e.g., energy, agro-processing, fisheries, and logistics. Good examples for developing such a system include the InvestEU Portal[43] and the Kenya e-Opportunities[44] platform.

GOAL 2: Strengthen the national statistical capacities of HoA countries to guide investor decisions

A program should be launched to allow national bureaus of statistics and chambers of commerce in the HoAI to assist institutions in building statistical capacity, producing quality data, and harmonizing their working methods. This would improve statistical coordination, data sharing practices, and capability to produce comparable data. This program should include the development of harmonized methods to collect data on informal trade, which is key to accurate monitoring of intra-HoA trade, given the prevalence of the informal sector in the region's economy.

A program to harmonize national statistical capacities in Africa was launched in 2010 by the African Union Commission, the United Nations Economic Commission for Africa, and the African Development Bank, resulting in the Strategy for the Harmonization of Statistics in Africa, now in its second edition, covering 2017–26).[45] The strategy seeks to coordinate the working methods of the bureaus of statistics to generate timely, reliable, and harmonized statistical information that covers all aspects of political, economic, social, and cultural integration in Africa. Any support program addressed at reinforcing capacities of statistical institutes and other statistics-producing bodies in HoA countries should therefore be designed in line with this strategy.

GOAL 3: Harmonize business licensing processes through the adoption of a single business permit system that includes a trading license

As previously described, most HoA countries do not currently have a system in place to issue multiple business licenses from different administrative departments or levels. In some cases, such as Somalia and South Sudan, traders must obtain specific licenses to conduct import or export activities. In Kenya, despite the introduction of a single business permit in 2000—part of a reform package aimed at replacing the previous system of multiple local authority licenses—numerous licenses continue to exist. Indeed, Kenyan businesses must obtain multiple permits from county governments with varying fees based on county law, resulting in increased costs and administrative requirements.[46]

A regional framework should be developed to implement a unified business licensing system that incorporates a single business permit that includes a trading license. Such a system could establish a level playing field for potential investors in the HoA by streamlining the formalities required to start businesses across countries. This framework should focus on the consolidation of all existing licenses required to operate a business in each HoA country into a single comprehensive business permit, which also includes an import/export license. The system must adhere to a reciprocity criterion, ensuring identical business requirements in every HoA country for local and foreign investors from other HoA countries. This approach could be initially tested in select sectors to gauge its effectiveness.

43. See https://ec.europa.eu/investeuportal.

44. See https://opportunities.invest.go.ke/opportunities.

45. See https://au.int/sites/default/files/documents/34580-doc-34577-doc-shasa_ii_strategy_eng_full_web.pdf.

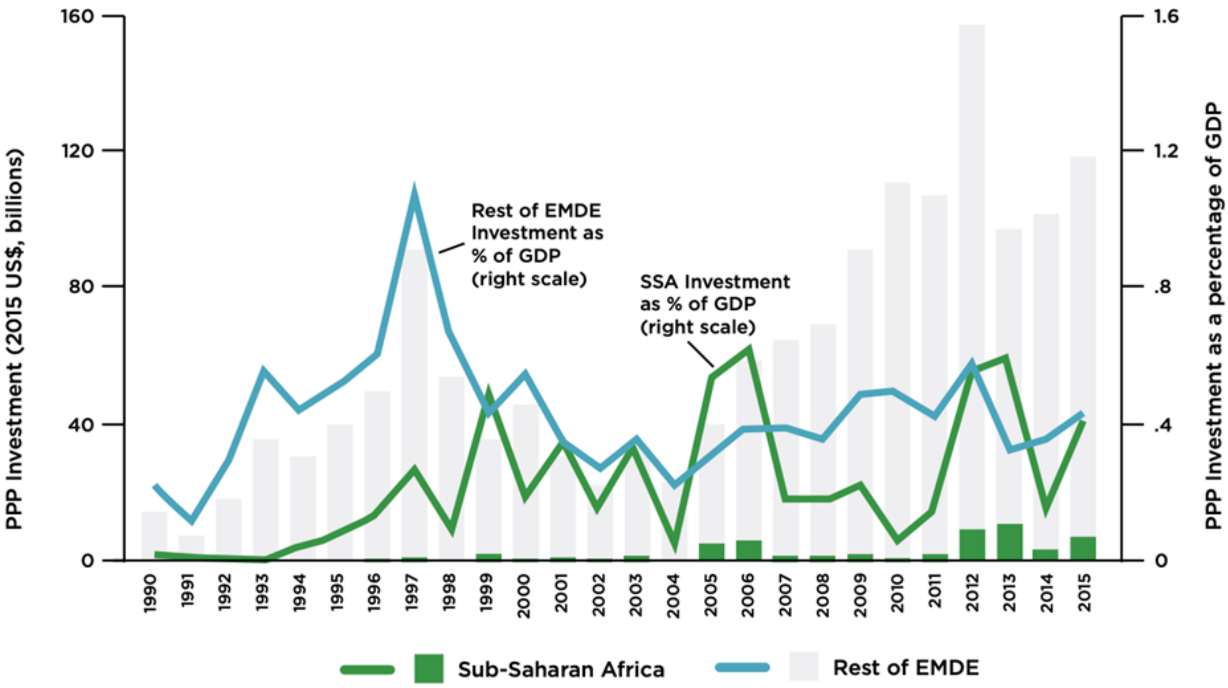
46. KAM 2020.

GOAL 4: Promote the adoption of PPPs for cross-border projects under the HoAI framework, in areas such as climate adaptation and mitigation, physical and digital infrastructure, agribusiness, livestock value chains, and trade facilitation

Inconsistent PPP regulations and frameworks among HoA countries constrain the development of projects spanning multiple countries. HoA governments can use PPPs to develop regional infrastructure projects and deliver public services through private sector involvement. To this end, a regional PPP framework should be developed as a strategic means to promote social and economic development across the region, particularly to address critical regional infrastructure gaps.

PPPs can play a critical role in closing financing gaps. Private sector development in the region requires the closing of financial gaps, especially given the complex fiscal scenario since the COVID-19 crisis. It is particularly important in priority areas under the HoAI framework, such as climate adaptation and mitigation, physical and digital infrastructure, agribusiness, livestock value chains, and trade facilitation. For example, the climate adaptation financing gap in Sub-Saharan Africa is an estimated US$12.4–13.1 billion[47] (see figure 5.2). Encouraging private capital mobilization and enabling private capital through investment climate improvements, partial risk guarantees, PPPs, and green bonds could facilitate greater private sector investment. For example, implementing the AfCFTA Protocol on Investment could improve the investment climate, and issuing green bonds[48] could offer alternative financing options to climate-friendly projects. By leveraging private sector resources in this way, the region could make significant strides toward achieving its development objectives.

Figure 5.2. Public Private Partnership Investments in Sub-Saharan Africa Compared with Other Emerging Markets and Development Economies



47. Tall et. al. 2021.

48. An example is Egypt's Inaugural Green Bond, conceived as a financial solution to meet the country's pressing need for environmentally sustainable investment. The bond was issued to finance clean transportation, renewable energy, pollution prevention and control, sustainable water and wastewater management, energy efficiency, and climate change adaptation.

Well-designed PPP regulatory frameworks can facilitate the mobilization of infrastructure financing and the optimal allocation of risks, in addition to ensuring sound public investment management. To this end, each country must develop (South Sudan) or review and harmonize national PPP frameworks, identify impediments to regional projects, clarify institutional roles, and develop harmonized regional PPP guidelines. These reviews should analyze PPP laws, regulations, and the roles of government institutions to diagnose gaps, inconsistencies, and constraints that inhibit regional PPPs. Regional frameworks should be benchmarked against international best practices and precedents from other regional institutions.

In the ECOWAS region, PPPs have been identified as a solution with the potential to drive investment in regional infrastructure and bridge the financing gap. The harmonization of national frameworks and coordination among country members are crucial. A recent study by the Canadian Pacific Consulting Services (CPCS)[49] highlights the need to harmonize national frameworks, fiscal management, and sector regulation to facilitate regional projects. To address these challenges, ECOWAS member countries agreed to harmonize legal and institutional frameworks. This process will culminate in an integrated regional framework for governing PPPs. Over the next 25 years, the ECOWAS regional infrastructure masterplan includes 201 projects addressing connectivity, digital development, energy (including renewable energy), and transport (air, rail, maritime, and shipping), with an estimated investment requirement of $122 billion. Given the limited public financing capacity of the region, additional financial inflows will be needed to bridge the infrastructure gap, making PPPs an essential tool to support regional development.

GOAL 5: Promote women's economic participation and legal parity with men

Legal barriers limiting women's ability to participate equally in the economy persist across many countries in the Horn of Africa region. The World Bank's Women, Business and Law index[50] reveals substantial gaps between women and men in areas such as starting a business, accessing credit, owning and managing property, and working after having children.

The World Bank's Women, Business and the Law reports analyzes the laws and regulations that affect women's economic opportunities in 190 economies. Scores are based on eight indicators: mobility, workplace, pay, marriage, parenthood, entrepreneurship, assets, and pension. A score of 100 means that a set of laws and regulations do not restrict women and are evenly applied to men and women. A score below 100 signifies legal barriers and gender-based differences that restrict women's full economic participation. A low score reflects additional obstacles for women in areas including starting a business, getting a job, owning property, and accessing credit. The report advocates for legal reforms to remove barriers to women's access to the same rights, resources, and opportunities as men (figure 5.3). In the 2023 report, Kenya received the region's highest score at 80.6, followed by Ethiopia at 76.9—both higher than the 72.6 average in Sub-Saharan Africa. The scores of Djibouti (71.3), South Sudan (67.5), and Somalia (46.9) reflect significant gaps.

To incrementally increase gender equality in business-related laws, a comprehensive legal gap analysis and development of a reform memorandum with targeted actions are needed. While legal reforms are a critical first step, changing social norms and providing women support to navigate new systems will also be essential to enabling their full economic participation. Efforts to improve legal gender equality and women's economic rights are aligned with inclusive growth. Removing barriers for women to participate equally in business will promote economic diversification, competitiveness, and demographic stability across the Horn of Africa region.

49. CPCS, 2020.

50. World Bank, 2022.

Figure 5.3. Horn of Africa Countries' Score in Women, Business and the Law Report 2023

Source: World Bank, 2022.

GOAL 6: Identify priorities for quick action, especially tax convergence

This goal should include the development of an assistance package for HoA countries for reforms aimed at increasing tax convergence. An example would be the adoption of a common framework for Double Taxation Avoidance Agreements (DTAA) among countries. Having the same income, profits, or capital gains taxed more than once for the same reason and over the same time period but by different tax jurisdictions is referred to as "double taxation." This causes investors to lose a portion of their revenues because they are obligated to pay taxes twice, both in the country where the income was earned and in their home country, where profits or a portion of profits are repatriated.

DTAAs prevent double taxation. Investors receive tax credits for foreign taxes paid in a country where income is generated, or the income earned abroad is exempt from taxation in the country of residence. These tools therefore aim to promote a country as an appealing investment location. DTAAs also offer tax exemptions. The relevant agreement must specify the terms and circumstances under which an investor may apply for such exemptions. DTAAs usually remain in effect indefinitely unless and until either party formally terminates them.

HoAI members should enter into reciprocal DTAAs to promote the development of intra-HoA investments. Members should first adopt a regional framework—such as a model law—to serve as a reference for member states in the negotiation of tax agreements based on global best practices, such as the Organization for Economic Co-operation and Development (OECD) Model[51] and the United Nations (UN) Model.[52]

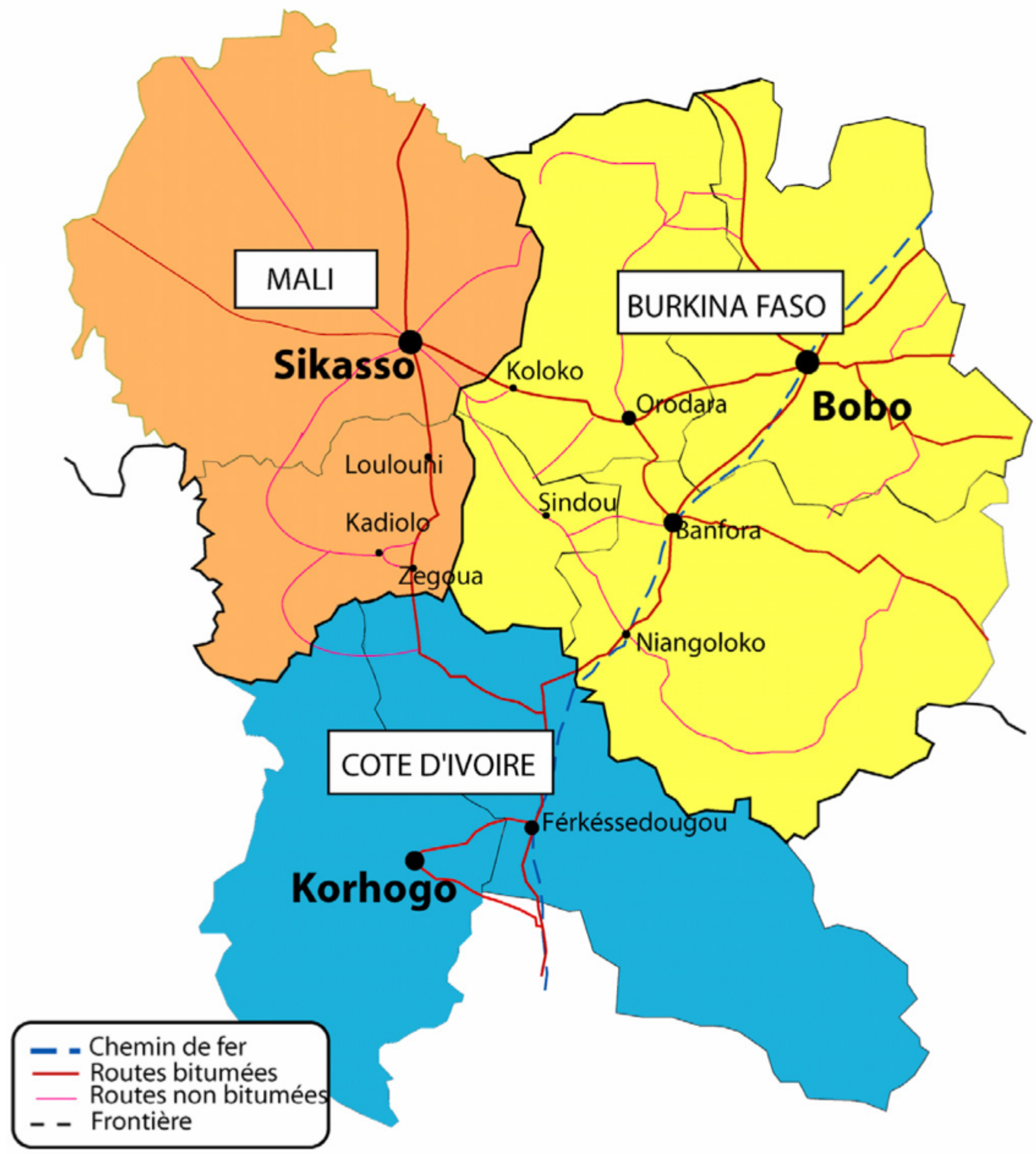
51. See https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2010_9789264175181-en#page1.

52. See https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf.

GOAL 7: Develop cross-border special economic zones (SEZs) at key HoA border areas

Cross-border SEZs are geographically designated areas set aside for specifically targeted economic activities. They are placed at intersections between two or more neighboring countries. The establishment of cross-border SEZs is still in its early stages in Africa. At present, only one project is in the pipeline, launched on January 17, 2012, by the Heads of government of Mali, Cote d'Ivoire, and Burkina Faso, who signed a tripartite agreement to create a framework for the development of the border regions of the "SKBo triangle"—a geographic area that includes the regions of Sikasso (Mali), Korhogo (Côte d'Ivoire), and Bobo Dioulasso (Burkina Faso). Six years later, on May 14, 2018, the Prime Ministers of the three countries met again in Sikasso to sign a declaration on the establishment of a cross-border SEZ, covering a 165,000-km2 surface area, seeking to attract—through a series of particularly generous fiscal incentives—private investment to exploit the region's cross-border agricultural and mining potential (figure 5.4).[53]

Figure 5.4. SKBO Special Economic Zone



Source: World Bank, 2022.

53. West Africa Brief, 2018.

Inspired by this initiative, at the Ethiopia–Kenya trade and investment forum held in March 2019 in Addis Ababa, the highest authorities of Ethiopia and Kenya agreed on a plan to develop a cross-border SEZ in Moyale,[54] although master planning has yet to commence. Cross-border SEZs can provide great stimulus to regional cooperation and economic complementarities among HoA countries, playing a significant role in attracting FDI in the region and fostering the development of cross-border trade and regional value chains. SEZ development should therefore be encouraged in key border areas in the region, where HoA states should allocate a portion of lands for this purpose, leveraging on PPPs to finance the construction of infrastructure, production units, and facilities within their perimeters through a build-operate-own (BOO) scheme or joint venture with a private company (domestic or foreign).

The main advantage of the BOO model is that it maximizes the economic returns of SEZs because the private sector usually has more capacity and experience to operate such facilities. On the other hand, the main disadvantage of such model is that governments lose complete control of the ownership of the zone. In SEZs developed in joint venture with private operators, governments retain some ownership control of the zone while at the same time making use of private sector expertise in their operation. Joint venture SEZs can be used if investments needed to finance their construction are not sufficient or if the private sector does not want to take on the complete risk of owning them (e.g., due to fears of political uncertainty). A joint venture model can act as a strong commitment device, ensuring that the government has a strong incentive to support the SEZ throughout its lifecycle. However, a main drawback of this model is the involvement of multiple agencies, which has the potential of stalling progress due to coordination issues.[55] Furthermore, to be successful, cross-border SEZs need a well-functioning governance system, with close collaboration among authorities on both sides of the border, efficient border posts, and adequate infrastructure that links the SEZ with ports and other regional logistics hubs.[56]

GOAL 8: Improve business entry, property rights, and access to finance

Promoting private sector development is crucial to sustainable and inclusive growth in the HoA region. Key actions to foster a conducive business environment include streamlining business registration, strengthening property rights, promoting women's economic participation, and expanding access to finance.

First, integrating government agencies into the registration process through enhanced coordination, coupled with full digitization of land records, will reduce red tape and information gaps for entrepreneurs. With transparent rules and procedures, firms can establish themselves more seamlessly. Second, legal reforms must ensure women enjoy the same economic rights as men. Assessing legal gender disparities and addressing gaps will empower female entrepreneurs to start and grow ventures. Targeted programs that expand access to credit for women-owned MSMEs will further unlock their potential. Overall, cutting red tape, securing property rights, closing gender gaps, and broadening financial inclusion will bolster the private sector's role as an engine of growth and jobs across the Horn of Africa.

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54. Mulata 2019.
55. Mangal 2019.
56. UNCTAD 2021.

GOAL 9: Strengthen market access, linkages, investment protections, and incentive regimes aligned to the AfCFTA Protocol on Investments

Catalyzing private sector-led growth is imperative for economic transformation across the HoA. A comprehensive policy agenda is required to improve the region's investment climate and fully leverage the private sector's potential. First, reducing barriers to foreign participation through a transparent "negative list" system would attract greater FDI inflows and associated capital, skills, and technology. Reforming investment laws and agreements to meet international standards on protections and dispute resolution would further spur investor confidence. Second, well-designed linkage programs could maximize positive spillovers from FDI to the local economy while strengthening industrial clusters and value chains. Investment promotion agencies have a key role to play in facilitating these linkages. Third, the effectiveness and value-for-money of investment incentives must be ensured through several good practices: simplicity and transparency in procedures, regular impact evaluations, and a centralized database. More broadly, establishing an attractive incentives framework aligned with national development objectives calls for an optimal balance between fiscal prudence and the need to address critical constraints and externalities facing investors.

A further condition for expanding intra-HoA investments is to harmonize investment regulations among HoA countries. On February 19, 2023, the Investment Protocol to the AfCFTA Agreement was approved during the 36th African Union Heads of State meeting in Addis Ababa. Article 5 of the Protocol establishes that existing bilateral investment treaties between AfCFTA state parties must be terminated upon the entry into force of the Protocol. By implementing the various provisions laid out in the AfCFTA Protocol on Investments, signatory nations stand to benefit through increased foreign direct investment, technology transfer, and access to larger regional markets.

Specifically, the AfCFTA Protocol on Investments requires member states to make their legal and regulatory frameworks comply to the Protocol by removing barriers to entry, increasing transparency, and facilitating cross-border investment and trade. Although Somalia and South Sudan have not yet formally completed the ratification process of the AfCFTA agreement,[57] they have signaled their intention to do so in the future. As such, all HoAI member countries can proactively begin the process of regulatory and institutional reforms to prepare for ratification, ensuring that they are ready to comply with the protocol's obligations once it enters into force. A capacity-building program could support the formulation and implementation of investment policies in HoA countries that would foster the expansion of intra-HoA investments, especially those aimed at increasing export-oriented businesses.

The reform discussions sparked by AfCFTA present an opportunity for African nations to make changes that go beyond public commitments under the agreement. For example, the Protocol on Investments contains provisions related to sustainable development, investment facilitation, and climate change. Its four central pillars (investment promotion and facilitation, protection, investor obligations, and state commitments), reflect an African-centered approach to global investment issues. The implications of each pillar and their interrelations will shape policy options and reforms for countries ratifying the Protocol.

57. South Sudan has not yet adopted the ratification law of the AfCFTA agreement, while Somalia completed the ratification process at the national level but has not yet deposited their ratification with the chairperson of the African Union Commission.

By embracing the AfCFTA agreement and undertaking serious reforms, HoAI members and other African nations will demonstrate their commitment to promoting intra-African trade and investment. The reforms and regulatory changes made will pay dividends through increased foreign investment, job creation, technology transfers, and accelerated industrial development across the continent.

GOAL 10: Adopt cluster development programs to promote regional value chains

Sectors of the economy in HoA countries that are dominated by SMEs, such as agriculture, industry, and services, face common challenges from limited access to finance, inadequate skills, and inappropriate technology. A cluster development program could help create intra-trade and technology transfer initiatives among SMEs across all HoA states. A cluster is a group of enterprises located within an identifiable and as far as practicable contiguous area, or a value chain that goes beyond a geographic area and that produces the same or similar products or complementary products or services. Enterprises in a cluster adopt similar or complementary methods of production, quality control, and testing, and have similar levels of technology and marketing strategies and practices.

The objective of a cluster program is to enhance the competitiveness of SMEs operating in a specific sector by aggregating them into groups, consortia, or cooperatives that will receive assistance to build their capacity for integration in intra- and regional trade. Participant groups will be offered specific training programs to empower them or to develop the skills they need to improve their working practices, increase productivity, or develop value addition and processing capacities. Additional support could be offered by creating trading centers and facilities and common facility centers (e.g., for testing, training, raw material depot, effluent treatment, and complementing production processes), and by helping these groups access tailored financial loans that can meet their needs. At present, a cluster pilot program of this type is being implemented in three Kenyan counties—Busia, South Teso, and Nzaui—for 62 cassava farmers and small-scale cassava processors, mostly women. The COMESA Federation of Women in Business coordinates the program.

Goals Performance Indicators

To monitor the implementation of this roadmap, business pulse surveys will be conducted in Djibouti, Ethiopia, Kenya, Somalia, and South Sudan every six months. These surveys will periodically gather insights from businesses on the main constraints to investment and trade in the region and how their perceptions regarding these constraints evolve over time. The surveys will help monitor how policy changes implemented through the roadmap are impacting private sector perceptions. As of September 17, 2023, a World Bank team had already prepared a draft of these surveys, which it intends to pilot in Ethiopia and Kenya and then progressively expand to the other HoA countries. Results from the pilot are expected in November 2023. The first round of surveys of Djibouti, Somalia, and South Sudan may be completed by early December 2023.

Proposed indicators for the roadmap goals, upon which surveys will be based, include:

- Access to finance (regulations enabled to facilitate access to finance);
- Clarity and ease of access to investment-related information;
- Availability of statistical data to inform investment decisions;
- Ease of business registration, licensing, and obtaining permits;
- Predictability of the regulatory and tax environment;
- Availability of educated workers; and
- Suitability of PPP frameworks.

6. Activities

Table 6.1 outlines how implementation of specific activities can help achieve the goals described in section 5. Because the roadmap will be implemented over a five-year period, the activity descriptions are broad and general; they do not include methodologies or approaches. The project concept notes, which will be developed during the start-up phase of the roadmap's implementation will include detailed depictions of how each activity will be implemented (see section 7).

Table 6.1. Goals and Activity Matrix

Goal	Activities
1. Create a regional platform to regularly engage public and private actors in dialogue related to the development of common investment policies	a. Support the establishment of a permanent secretariat and focal points in each HoA country
	b. Train the secretariat staff and the focal points to conduct advocacy activities at the regional level
	c. Support the development of a website for the regional platform that includes an investment mapping and matchmaking tool to identify areas of investment opportunity in the region
	d. Support the regional platform in the organization of an annual forum on trade and investment
2. Strengthen the national statistical capacities of HoAI countries to guide investor decisions	a. Mapp the statistical capacity needs of bureaus of standards, chambers of commerce, and other statistical institutes.
	b. Develop a methodology for the compilation of statistics on informal trade, and define roles for data collection needed to inform such statistics
	c. Deploy technical assistance activities to reinforce staff capacity at statistical institutes
3. Harmonize regional business licensing processes by adopting a single business permit system inclusive of a trading license	a. Map costs, bottlenecks, and the presence of discriminatory rules (for locals versus nonlocals) in business licensing processes in HoA countries, and propose recommendations to improve relevant frameworks and procedures
	b. Map the costs, bottlenecks, and presence of discriminatory rules (for locals versus nonlocals) in import/export licensing processes in HoA countries, and propose recommendations to harmonize relevant frameworks and procedures
4. Promote the adoption of PPPs for cross-border projects under the HoAI framework in areas such as climate adaptation and mitigation, physical and digital infrastructure, agribusiness, livestock value chains, and trade facilitation	a. Map impediments to regional projects and analyze differences in national PPP frameworks in HoA countries
	b. Based on the previous activity, prepare a harmonized regional PPP framework with guidelines to improve and harmonize the PPP framework in each HoA country
	c. Prepare regulatory changes to PPP frameworks in each HoA country to facilitate the adoption of PPPs in the development of cross-border projects
5. Promote women's economic participation and legal parity with men	a. Review regulations to ensure equal opportunities for women to access credit, start a business, and manage property
	b. Introducing paid parental leave regulations and other policies enabling mothers to remain in the workforce
6. Identify priorities to be quickly acted upon, particularly on tax convergence	a. Prepare an inventory of intra-HoA DTAA in each HoA country, and analyze gaps and differences
	b. Develop a model law of DTAA at the regional level to use as a reference for the elaboration of DTAAs in HoA countries
	c. Conduct an analysis of taxation levels and differences in special tax incentive regimes offered by each HoA country in SEZ and other special jurisdictions, and propose recommendations to improve the relevant framework

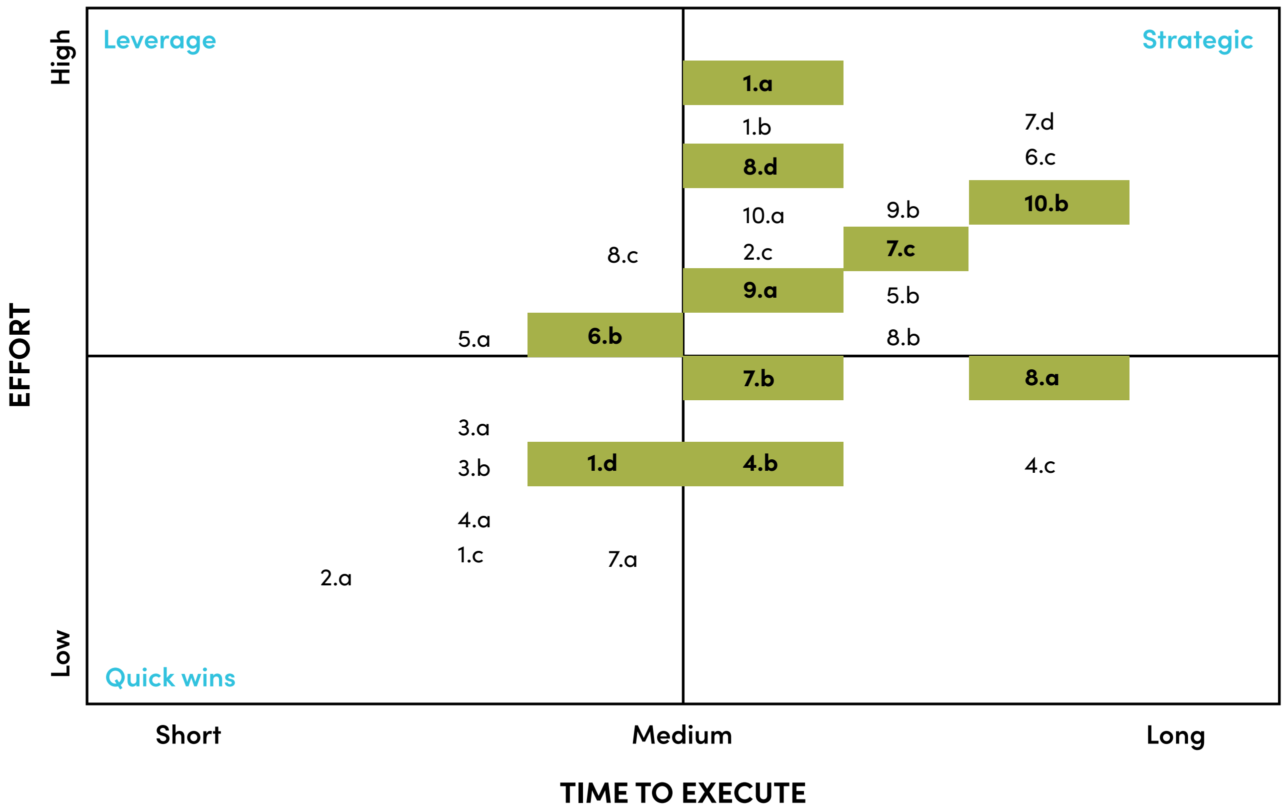
7. Develop cross-border SEZs at key HoA border areas	a. Develop a map of key border areas to establish a cross-border SEZ
	b. Develop master plans to delimit each planned SEZ and map the infrastructure needs (physical and digital) and public utility needs (e.g., electricity, water, banking, logistics, and information technology) to ensure their functionality
	c. Based on the analysis of 6c above, develop the enabling regulatory framework (e.g., bilateral or trilateral agreement, according to the number of states interested in the SEZ) with harmonized (tax and non-tax) incentives to grant to investors that settle in such SEZs
	d. Develop coordinated security management plans to protect against security threats that can prevent companies from installing or conducting business in cross-border SEZs
8. Improve business entry, property rights, and access to finance	a. Improve interagency coordination, and integrate all agencies involved in the business registration process
	b. Fully digitize the land titles and cadastral plans
	c. Develop a gap analysis to identify the legal differences between men's and women's access to economic opportunities
	d. Design programs to improve access to finance for MSMEs, especially women-owned firms and women producers
9. Strengthen market access, linkages, investment protections, and incentive regimes aligned to the AfCFTA Protocol on Investments	a. Conduct a gap analysis of investment-related regulations in HoA countries versus the AfCFTA Protocol to identify areas where reforms are needed
	b. Conduct capacity building activities to reinforce competences of government officials involved in the formulation and implementation of investment policies to foster the expansion of intra-HoA investments, especially those that increase exports
10. Adopt cluster development programs to promote regional value chains	a. Conduct a study to identify the territorial distribution (in two or more HoA countries) of MSMEs operating in the same or in complementary economic areas by aggregating them into groups to be offered programs aimed at developing their working, value addition, and processing capacities
	b. Develop a strategy aimed at helping the groups indicated in 10a access tailored financial loans able to meet their entrepreneurial needs

Prioritization of Activities

The activities described in the previous sections are organized here according to their prioritization and interdependency. Interdependency means that some measures can only be achieved after others have already been implemented. Prioritization is the process of evaluating the effort and time needed to implement an activity and the impact it will have on the goals compared with other activities. Activities that are easy to implement and have a substantial impact are given a higher priority than those that are difficult to implement and only bring small improvements.

The development of activities emerged from discussions and meetings with stakeholders from the HoA countries and development partners during the HoAI Addis Ababa workshop of September 19, 2023. During this workshop, multiple proposals were analyzed and discussed. As reflected in figure 6.1, the prioritization of these activities was based on participant reactions to proposed solutions to existing regional trade and investment development challenges discussed at the workshop. The lower left quadrant of the figure presents activities that are easy to implement (quick wins); the top left shows activities that can be quickly implemented but require greater effort. Activities on the top right require more effort and time to implement. Activities with the potential of offering substantial improvements are highlighted in green.

Figure 6.1. Prioritization of Activities Diagram



7. Implementation Schedule

This roadmap establishes a framework of activities to be implemented over a five-year period, with the short-term actions planned under the first year to be initiated as soon as possible. An implementation calendar will be developed to monitor the state of roadmap implementation in three phases:

1. **Start-up phase.** A fully operational governance structure is needed to manage and implement roadmap activities during the first six months of implementation, beginning January 2024.

2. **Delivery phase.** The delivery phase consists of the preparation of a detailed design, submission to donors, and launch of projects focused on roadmap implementation activities to be achieved over a period of five years. This phase starts with consultations among thematic working groups, convening government agencies from the HoA countries responsible for the detailed design of activities to be implemented to identify modalities and execution budgets. This is followed by the preparation of project concept notes for planned activities with budget estimates (resource plans) for their implementation, to be submitted to development partners and other donor agencies to secure funding. The last steps in this phase are the preparation of terms of reference for each project chosen for implementation and the launch of procurement and tendering procedures (in coordination with development partners) for the selection of consultants or agencies to implement each project. During this phase, the goal performance indicators described previously need to be thoroughly monitored through the proposed surveys to ensure that HoA countries interested in the planned roadmap activities are on track.

3. **Review phase.** This phase involves evaluating the extent to which the roadmap's goals have been met and how these achievements have impacted the perceptions of investors and businesses in the HoA region regarding the conduciveness of the business environment. This phase will start six months before the end of the period covered by the roadmap (June 2028).

8. Governance Structure

The proposed governance structure for managing and monitoring the implementation of this roadmap builds on a similar governance structure established in August 2022 for the HoAI Trade Facilitation Roadmap. This approach seeks to ensure efficiency and effectiveness, notably by avoiding duplication. In fact, as there is a close link between trade and PSE, the same governance structure is recommended for monitoring the implementation of this roadmap, with some adaptations. This structure was established by the HoAI Ministers of Finance in a Joint Ministerial Declaration, adopted on August 8, 2022.[58] It has three layers:

1. The **Policy Steering Committee** comprises the HoAI countries' Ministers of Finance and is coordinated by the Chairman of the HoAI Secretariat.

2. The **Regional Trade Facilitation Task Force** is responsible for reviewing, approving, and prioritizing programs of common (regional) interest to implement roadmap activities. The task force assembles proposals formulated by thematic working groups into coherent project concept notes (implementation frameworks for activities) and submits them to development partners with funding requests. These notes should include estimates of the financial and technical capacity needs for the implementation of each proposed activity. The task force comprises the HoA focal points in each state (or other person designated by the Minister of Finance of such states), the HoAI thematic leaders responsible for trade in each HoA country,[59] and two representatives from each HoA country—one from Customs and one from the Ministry of Transport.

3. **Three thematic (regional) working groups** focused on trade, transport, and customs and comprising representatives of each HoA country's Ministries of Trade, Transport, Customs, and Revenue Administrations, are tasked with conducting the technical work for the elaboration of specific proposals to inform the project concept notes prepared by the Regional Trade Facilitation Task Force.

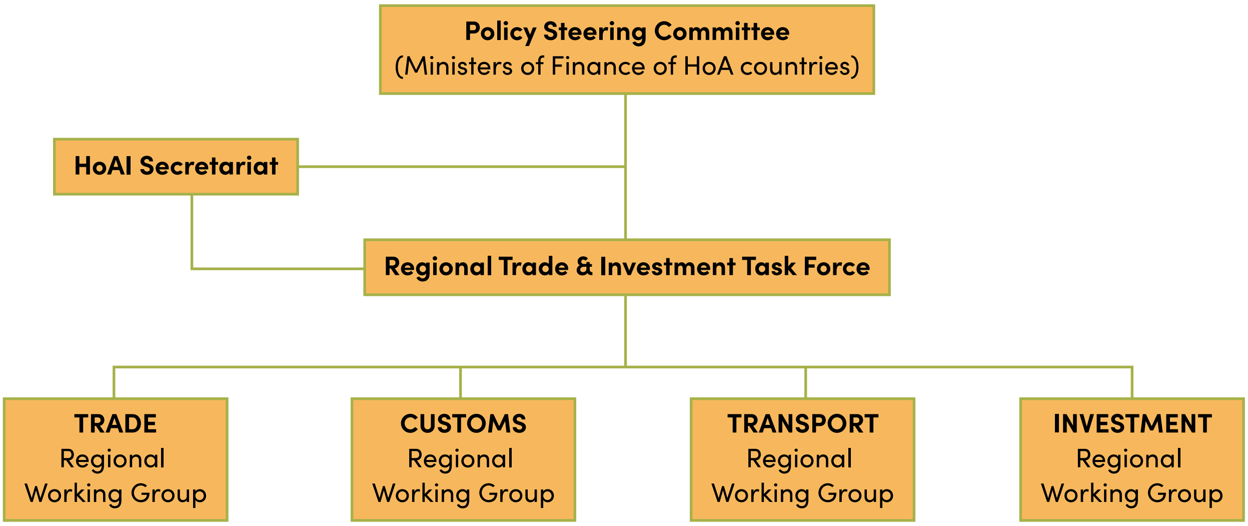
Table 8.1. Revisions to Governance Structure for Trade Facilitation Roadmap Implementation for the Management and Monitoring the PSE Roadmap

Existing Body	Type of Adaptation Required
Policy Steering Committee	None. Roles and functions remain unchanged.
Regional Trade Facilitation Task Force	Rename this body the Regional Trade and Investment Task Force and expand its composition to include one representative of each HoA country from the Ministry or other government authority responsible for investment, SMEs, and industrial policy planning.
Thematic (regional) working groups	In addition to the existing three working groups on trade, transport, and customs, establish a fourth working group comprising one representative from the ministries responsible for investment, SMEs, and industrial policy planning from each HoA country, in addition to one representative from each country's investment promotion authority.
HoAI Secretariat	Roles and functions remain unchanged.

58. On August 8, 2022, the Ministers of Finance of Djibouti, Ethiopia, Kenya, and Somalia signed a Joint Ministerial declaration through which they adopted the HoAI Trade Facilitation Roadmap. That declaration was subsequently joined by the Minister of Finance of South Sudan on October 26, 2022, with the signature of a specific addendum.

59. Most ministries responsible for trade also cover a significant portion of private-sector-related activities.

Figure 8.1. Governance Structure for the PSE Roadmap Management



HoA = Horn of Africa; HoAI = Horn of Africa Initiative.

The role of the HoAI Secretariat is simply to facilitate the organization of the meetings of the Regional Trade Facilitation Task Force and support the policy steering committee and the task force in the execution of their responsibilities regarding the preparation of the project concept notes and the implementation and monitoring of the Trade Facilitation Roadmap. At present, all HoA countries except Kenya have designated their task force members.

To avoid duplication of governance structures under the HoAI, it would be opportune to use the same governance structure developed for managing and monitoring the implementation of the Trade Facilitation Roadmap for the PSE roadmap. Suggested adaptations are outlined in table 8.1.

The revised governance structure is described visually in figure 8.1 and outlined in table 8.2.

Table 8.2. Functions and Responsibilities of Each Layer of the Governance Structure

Governance Layer	Functions and Responsibilities
Policy Steering Committee	• Supervises the overall implementation of the trade facilitation and PSE roadmaps • Guides the work of the Regional Trade and Investment Task Force
HoAI Secretariat	• Monitors roadmap implementation under the supervision of the Policy Steering Committee • Liaises with ministries, regional economic communities (e.g., COMESA, EAC, and IGAD), development partners, and other donor agencies for the launch and implementation of HoAI-related projects • Facilitates the organization of meetings and discussions between members of the Trade Facilitation Task Force and the thematic working groups
Regional Trade and Investment Task Force	• Responsible for the delivery of the roadmap • Supervises and coordinates the thematic working groups • Reviews, prioritizes, and approves proposals made by the thematic working groups for inclusion in the project concept notes • Addresses and resolves conflicting objectives and priorities
Regional Working Groups	• Working groups will work on the detailed design and preparation of the activities related to the goals described in this roadmap, to be submitted to the Regional Trade and Investment Task Force for inclusion in the project concept notes, which will be presented to development partners and other donor agencies for funding. The working groups will be established for each activity; they may include technical and trade facilitation experts to support implementation. Each HoAI country can establish national trade and investment task forces to coordinate its position and prepare the regional working group meetings.

9. Resource Mobilization

The human and financial resources needed to implement the activities described in the roadmap as well as the associated costs are not known at this stage. Similarly, given the short deadline for the preparation of this roadmap, the leading agency for the implementation of each activity proposed in the goals and activities matrix (table 6.1) has not yet been identified. Accordingly, the development of resource plans for each roadmap activity will constitute one of the activities to develop during the first year of the roadmap implementation schedule, i.e., in 2024. During this phase, adequate resources will be needed to organize workshops, build capacity, and conduct study tours. Development partners should make financial support available as soon as possible, preferably immediately following the validation of the roadmap.

10. Risks and Assumptions

In the context of this roadmap, a risk is defined as an uncertain threat that, if it occurs, can have a negative impact in the completion of an activity. An assumption is a sine qua non condition for the successful completion of each activity.

Table 10.1. Goals and Activity Matrix

Goal	Risks	Assumption
1	• Lack of agreement among BMOs about the kind of regional platform that should be established • Lack of agreement among BMOs on the governance mechanism for the management of the Investment Forum's regional platform/organization • Sustainability of the platform after development partners' financial assistance ends	Frequent coordination meetings (also virtual) are to be established between BMOs in the various HoA countries.
2	• Rotation of staff at statistical institute can compromise the results of technical assistance activities aimed at reinforcing staff capacities	Frequent interagency coordination meetings (at the national and regional level) are a prerequisite for ensuring that harmonized methodologies and data are developed for statistical purposes.
3	• Resistance by HoA countries to removing restrictions to business licensing processes, especially if tax revenues are lost	A strong political will is necessary to proceed with the harmonization of business licensing processes in the region.
4	• Distrust between the public and private sector that limits the use of PPPs in the region	Strong competences need to be developed by staff working at PPP units in HoA countries to make them capable of evaluating proposed PPP projects without the need to hire external experts for support.
5	• Resistance from entrepreneurs' organization to introducing paid parental leave regulations and/or policies enabling mothers to remain in the workforce because it is viewed as a reform that increases labor costs	Sensitization activities are needed to overcome resistance to regulations and policies that highlight the importance of measures to promote work-life balance
6	• Resistance by HoA countries to implement measures introducing tax reductions due to the fear of revenue collection losses	A strong political will is necessary to proceed with the harmonization of tax measures in the region in view of their convergence.
7	• Lack of agreement among HoA countries to identify the geographic areas where to establish cross-border SEZs • Lack of agreement among HoA countries to develop harmonized (tax and non-tax) incentives to grant to investors that settle in SEZs • Issues related to securing the land to be allocated for the development of SEZ	Each HoA country needs to make portions of land available for industrial use within SEZs, which may require the expropriation of land to local communities living in close proximity to borders.
8	• Difficulty finding an agreement with financial institutions to improve access to finance (e.g., reducing interest rates on borrowings)	Central banks need to be involved in discussions on the development of innovative financial tools.
9	• Delays in the ratification of the AfCFTA Protocol on Investments	A strong political will is necessary in HoA countries to respect engagements for strengthening market access, linkages, investment protections, and incentive regimes.
10	• Difficulty finding an agreement with financial institutions for groups identified during activity 10a for access to tailored financial loans	Central banks need to be involved in discussions on the development of financial tools.

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Appendix I

Investment Climate Assessment

Horn of Africa

August 2023

Introduction

This Appendix was developed with the purpose to provide the Horn of Africa Initiative (HoAI) member States with a tool to identify policy and legal reforms aiming at increasing private sector participation while improving the overall investment climate in each of the countries. The assessment and preliminary recommendations provided in this report can be primarily used by the governments of Djibouti, Ethiopia, Kenya, Somalia, and South Sudan to gain a deeper understanding of the complexity of the legal, regulatory, and policy challenges regarding private sector participation and foreign investment. As such, this report can be instrumental in prioritizing, calibrating, and sequencing investment framework reforms to improve the overall investment climate in the country. This report can equally be used as a foundational tool for stakeholders to structure and solidify the discussion around the business environment and investment policy agenda.

This report takes stock of each of the HoA countries' legal framework on business environment and foreign investment based on a comprehensive exercise of desk research of a significant number of laws, regulations, and procedures. The assessment provides an analysis of primary and secondary laws, regulations and procedures directly governing the business environment and foreign investment in each of the HoA countries. The analysis comprises two main areas of focus: (i) business environment covering the areas of business entry, property rights, gender equality, judicial system, digitalization, access to finance; and (ii) measures that are key constraints to private investment in the country along the investment lifecycle covering the stages of market access, protection and retention of the investment, investment incentives, linkages with the local economy, and international investment commitments.

The analysis conducted only looks at the text of legal instruments (*de jure*). The associated *de facto* practices are to be assessed at a later stage as to determine the level of implementation of the legal framework.[1] The mapping and review of the *de jure* procedures discussed in this report provides a comprehensive insight of the country's measures that impact business and investors. This assessment highlights the practical implications of the needed reforms. This assessment will have to be complemented by an exhaustive review of the *de facto* (or actual) application of the law which in many jurisdictions can be strikingly different leading to several procedural challenges negatively affecting the rule of law, inhibiting investors, and effectively discouraging private sector participation.

To assess the business and investment legal framework and the potential areas of reform, this report is structured into four sections:

Section 1 offers an economic performance overview of the HoA economies. It starts with an analysis of these economies' aggregate economic performance, before proceeding to look at the sectoral make-up, and their international trade and investment position. **Section 2** outlines overarching Investment Policy concepts to guide and frame the discussion around the objective and scope of a conducive investment legal regime that will assist the HoA economies in its efforts to improve the business environment and attract investment. **Section 3** focuses on the stocktaking and analysis of the business environment and the domestic and international investment legal framework in each of the countries, highlighting

[1] *De jure* procedures are the procedures as defined by the actual text of the law, while *de facto* procedures are those implemented in practice by officials or government agencies.

investment laws, regulations, and other investment-related legislation and procedures. Finally, **Section 4** provides a summary of recommendations for the government of the HoA countries to consider. Note that although the recommendations are specific and granular, they are based on desktop-based research only and have not been validated with any government agency or stakeholder involvement, nor have they been contrasted with the implementation of such measures on the ground. In order to determine the validity of such recommendations and the prioritization and time-horizon for each of the policy reforms, in-country validation is of outmost importance.

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1. Economic performance related to investment

Aggregate economic performance

As of 2023, 190 million people live in the Horn of Africa, producing $773 billion in gross domestic product (GDP) in current dollars (adjusted for purchasing power parity (PPP)).[2] Ethiopia is the largest country, accounting for 56 percent of the population and 51percent of GDP, and Kenya is the other major economy, accounting for 27percent of the population and 44percent of GDP (see Figure 1a). In contrast, Somalia, South Sudan, and Eritrea are much smaller economies, accounting for less than 5percent of the region's GDP and 15percent of its population in total. Djibouti and Kenya are both lower-middle countries according to the World Bank classification, with PPP-adjusted GDPs per capita of $6,890 and $6,570 respectively. Ethiopia, Somalia, and South Sudan are low-income countries, with PPP-adjusted GDPs per capita of $3,720, $1,370, and $516 respectively (see Figure 1b).

*Figure 1a: GDP, current prices**

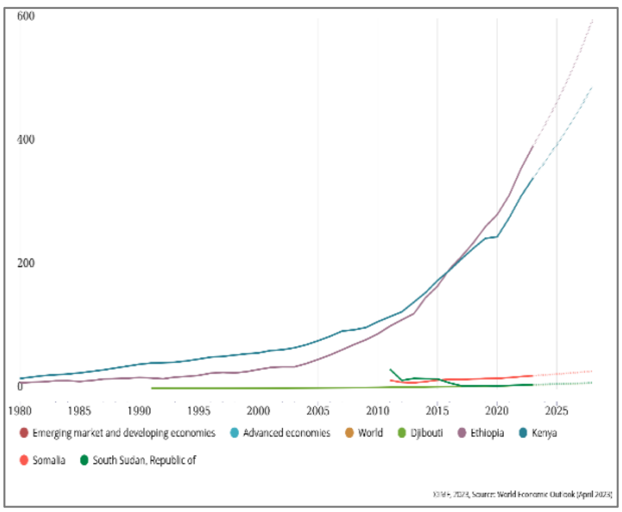
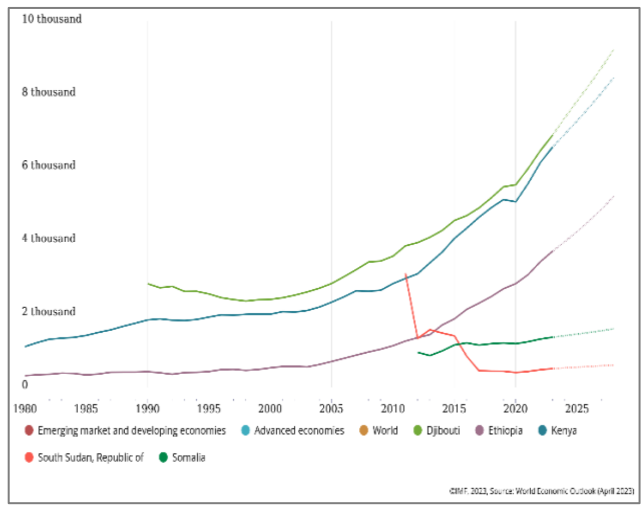


*Figure 1b: GDP per capita, current prices**

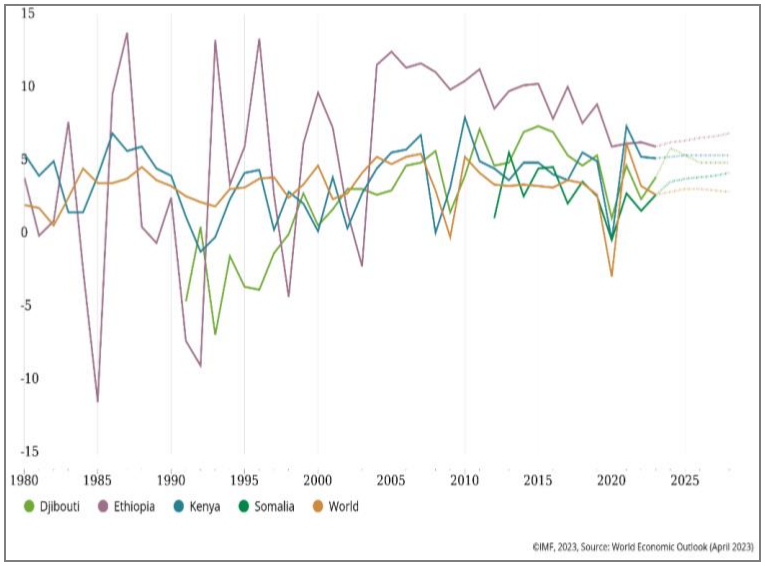


**Purchasing power parity; billions of international dollars*

Over the next five years, the International Monetary Fund (IMF) expects real GDP growth in the region to outstrip global growth (see Figure 2). Ethiopia is projected to have the highest real GDP growth, with annual growth rates of between 6 percent and 7 percent over the next five years. Kenya follows just behind, with annual growth rates of between 5 percent and 6percent over the next five years, whilst Djibouti, Somalia and South Sudan have wider variation in their projected growth, with annual rates between 2.8 percent and 5.5 percent.

[2] The key information in this section is taken from the data underlying the IMF's April 2023 World Economic Outlook (IMF 2023).

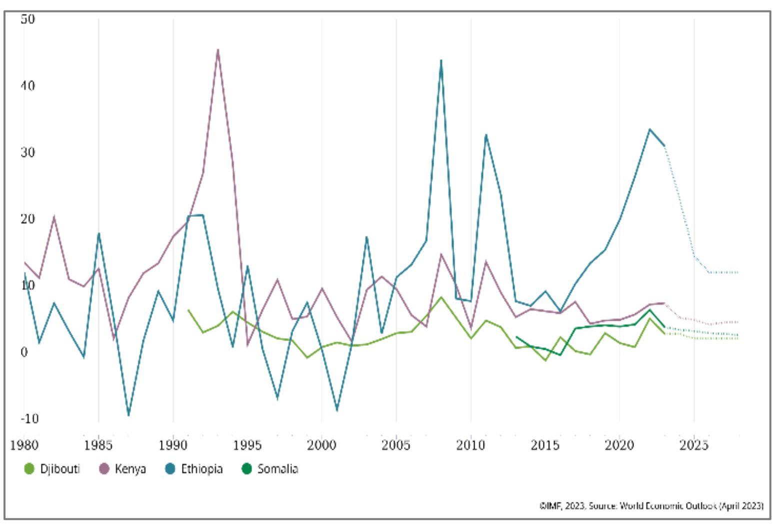
Figure 2: Real GDP growth



Note: This graph does not include South Sudan, where historic growth volatility would make it difficult to determine trends for other countries.

Ethiopia and South Sudan have seen significant recent inflation, with inflation this year peaking at 31.4 percent and 27.8 percent in each country respectively. Although the IMF projects that this inflation will reduce significantly over the coming years. Inflation is much less severe in Kenya, Djibouti, and Somalia, where inflation in 2023 is currently between 3percent and 8percent and is forecast to fall further (see Figure 3).

Figure 3: Inflation rate (average consumer prices, percentage change)

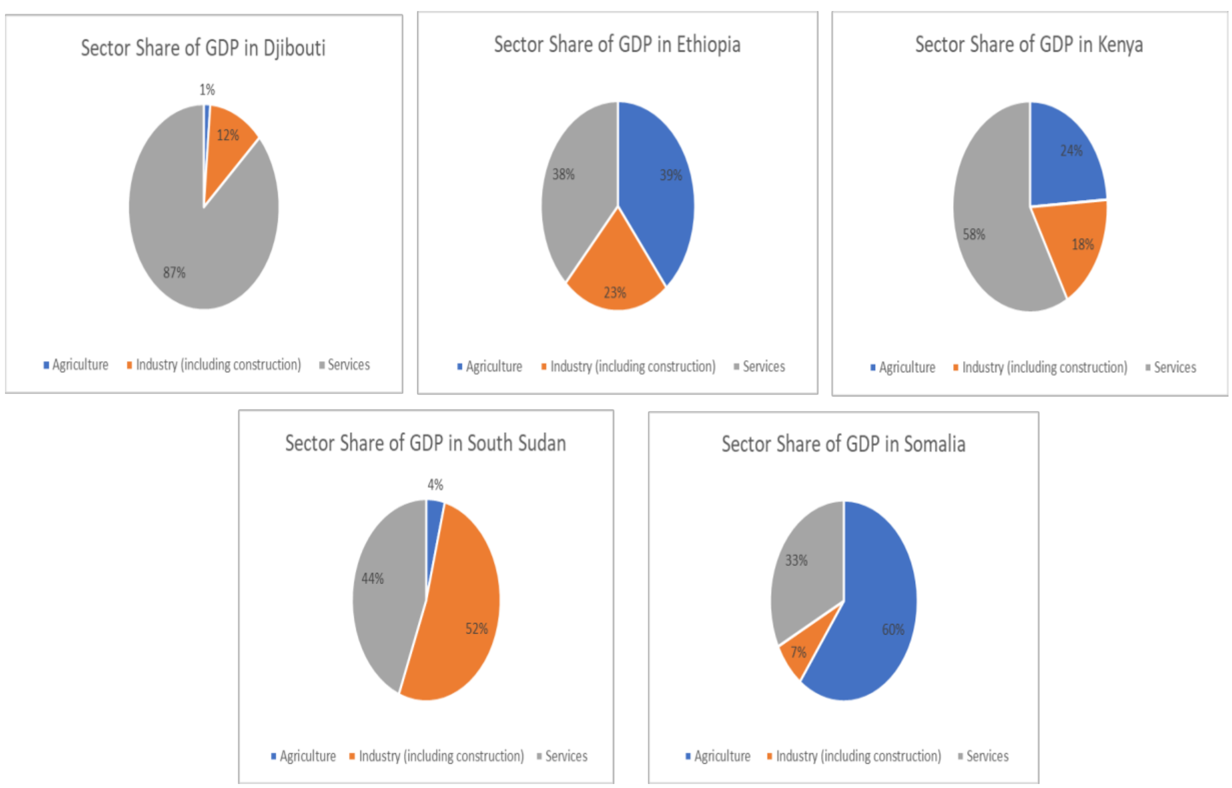


Note: This graph does not include South Sudan, where historic inflation volatility would make it difficult to determine trends for other countries.

Sectorial economic make-up

The five countries covered by this note have very different economies. As Figure 4 shows, **Somalia** is still a predominantly agricultural economy, with agricultural activities accounting for 60 percent of GDP, much of which is informal and focused on livestock. In contrast, whilst **Ethiopia** and **Kenya** still have substantial agricultural sectors, their services and industry sectors are fast-growing and expanding as a share of GDP. In Ethiopia, the agriculture sector's share of GDP shrank by 18 percent between 2006 and 2021, while the service and industrial sector's share grew by 0.3 percent and 19.1 percent, respectively. The construction sector is the main driver of industry growth, whilst service sector growth is driven by communication and transport services, hotel, and restaurant businesses, as well as wholesale and retail trading.[3] In Kenya, services now account for 58 percent of GDP and is a relatively well-diversified sector, with strengths in technology, communications, financial services, and tourism. **South Sudan** is a heavily oil-dependent economy, with 98 percent of the government's annual operating budget and 80 percent of its GDP derived from oil. **Djibouti**, on the other hand, is a services-centered city state, with services comprising 87 percent of its GDP, mostly focused on trade through its port complex.

Figure 4: Sectoral make-up of Horn of Africa Economies, 2021



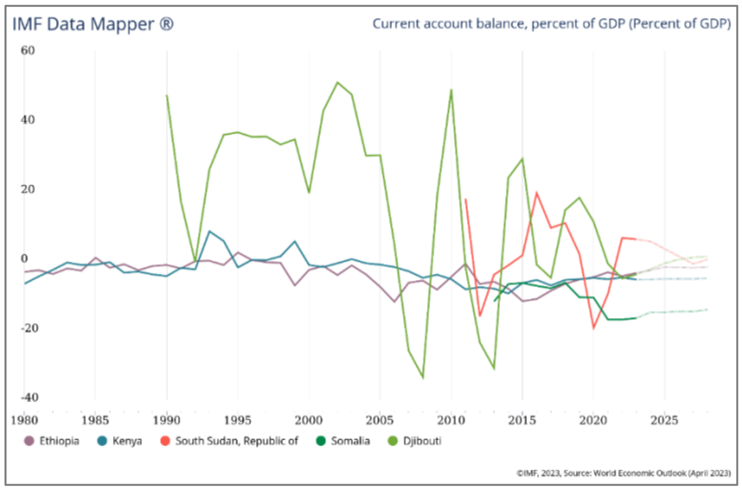
Source: United Nations, National Accounts Main Aggregates Database

[3] United States International Trade Administration 2022.

International trade position

South Sudan is the only country in the region with a positive current account balance (worth 6.3 percent of GDP in 2023) due to exports worth 63 percent of GDP in 2023 (mostly of oil). The remaining four countries all have negative current account balances, mostly in the single digits, except for Somalia which had a current account deficit of 16.4 percent in 2023 (see Figure 5). In the two major economies, exports were worth c. 10 percent of GDP (12 percent for Kenya and 9 percent for Ethiopia) and imports amounted to c. 20 percent of GDP (21 percent for Kenya and 19 percent for Ethiopia).[4]

Figure 5: Current Account Balances



Source: IMF

Each country has a varied and different set of trading partners (as Table 1 shows). China is a major exporter to all the countries in the region, being the biggest origin of imports for Ethiopia, Kenya, and Somalia and in the top three for Djibouti and South Sudan. India, Saudi Arabia, and the United Arab Emirates are also major exporters to the region. Export destinations are varied, with key destinations including United Arab Emirates, Sudan, United States, Uganda, and China. Intraregional trade plays a role (especially for the smaller economies of Djibouti and South Sudan) but is not a major factor in trade.

Table 1: Top 5 import and export partners for each country ($m in 2022)

	Ethiopia		Djibouti		Kenya		Somalia (estimated)		South Sudan (estimated)	
Export destinations	UAE	1036	Ethiopia	150	Uganda	896	UAE	161	China	216
	Sudan	898	Somalia	74	USA	604	Oman	160	Italy	131
	USA	399	Brazil	32	Netherlands	599	Saudi Arabia	138	Singapore	63
	China	236	Qatar	23	Pakistan	520	Nigeria	29	Japan	53
	Germany	196	Yemen	21	UK	465	Bulgaria	19	Russia	22
Import origins	China	3898	UAE	246	China	4024	China	1111	Uganda	642
	Saudia Arabia	1409	China	230	India	2200	India	966	Kenya	179
	India	1166	France	230	UAE	1748	Türkiye	409	China	166

[4] International Monetary Fund, *Africa Regional Economic Outlook*, April 2023.

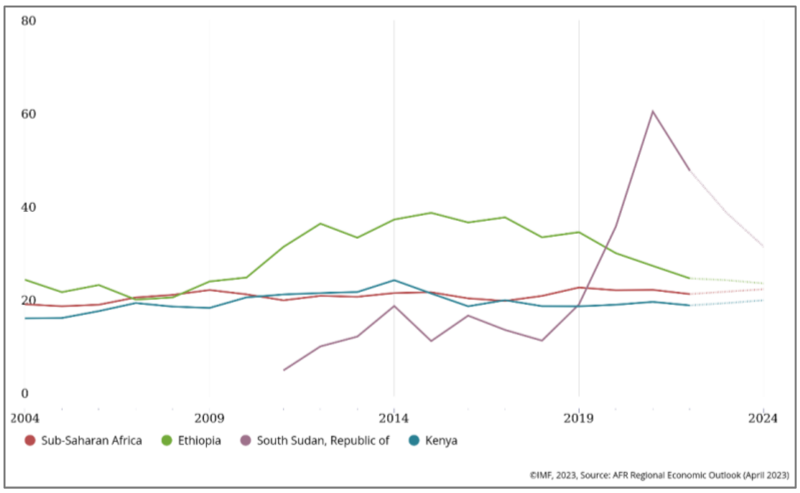
	Indonesia	679	Saudi Arabia	103	Saudi Arabia	1154	Oman	273	Sudan	74
	Kuwait	620	Türkiye	77	Malaysia	949	Kenya	144	USA	44

Source: IMF Direction of Trade Statistics 2022

Investment trends

In 2022, total investment as a percentage of GDP was higher in Ethiopia (25 percent) and South Sudan (49 percent) than the Sub-Saharan African median of 22 percent. In contrast, investment as a percentage of GDP in Kenya is 20 percent, lower than the sub-Saharan African median (see Figure 6). Much of the difference between the former two countries and Ethiopia is accounted for by the difference in FDI as outlined in further detail below.[5]

Figure 6: Total Investment as a percentage of GDP

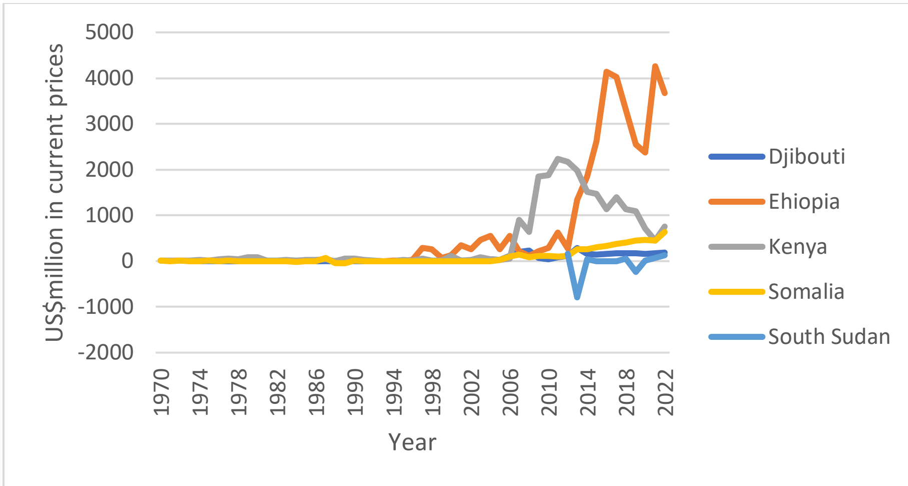


Source: African Regional Economic Outlook 2023

FDI inflows into the Horn of Africa have grown in the last decade, with total FDI net inflows reaching $5.38 billion in 2022 compared to $2.83 billion in 2012. As Figure 7 shows, FDI into Ethiopia has driven this trend, with $3.67 billion of FDI flowing (net) into Ethiopia in 2022, compared to $279 million in 2012. Rising FDI inflows into Somalia and Djibouti also contributed to this trend, albeit to a much less degree, whilst FDI inflows into Kenya have significantly fallen over the same period, from a high of $2.23 billion in 2011 to only $759 million in 2022.

[5] The IMF do not hold comparable investment data for Somalia and Djibouti.

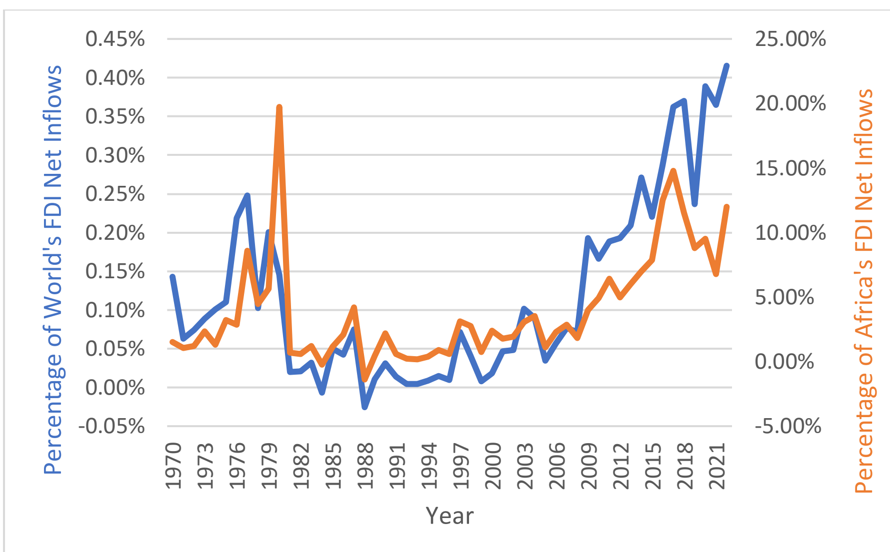
Figure 7: Total Investment as a percentage of GDP



Source: UNCTAD 2023 World Investment Report

The significant increase in FDI net inflows into Ethiopia has in turn led to the Horn of Africa comprising a rising share of global FDI net inflows over the last decade. This accounts for 0.4 percent of the World's FDI net inflows in 2022, compared to 0.2 percent in 2012 (see Figure 8). A similar trend can be seen in the importance of the Horn of Africa to African FDI, with the Horn of Africa now accounting for 12.0 percent of Africa's net FDI inflows, compared to 5.0 percent in 2012.

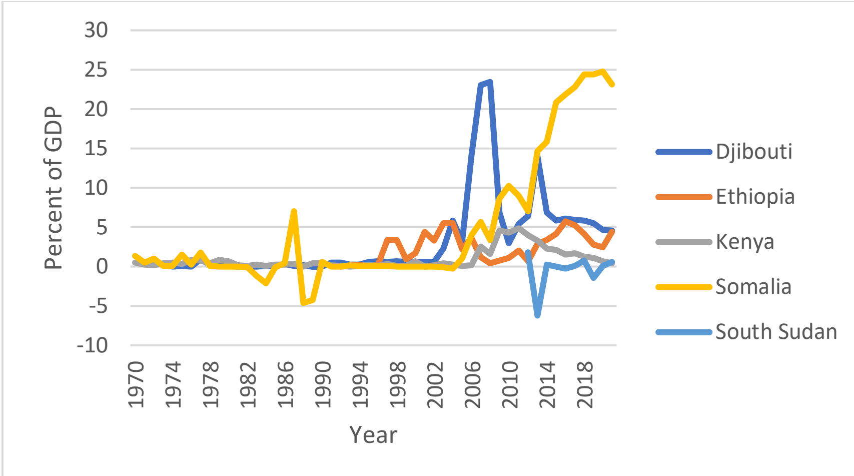
Figure 8: Horn of Africa's share of world and African FDI net inflows



Source: UNCTAD 2023 World Investment Report

Ethiopia accounts in absolute terms for the majority of the Horn of Africa's FDI net inflows. Somalia has the highest FDI net inflows as a percentage of GDP, with net inflows accounting for 23.1 percent of GDP in 2021. In contrast, FDI net inflows only account for c. 4 percent of GDP in Djibouti and Ethiopia, and only c. 0.5 percent of GDP in Kenya and South Sudan (see Figure 9).

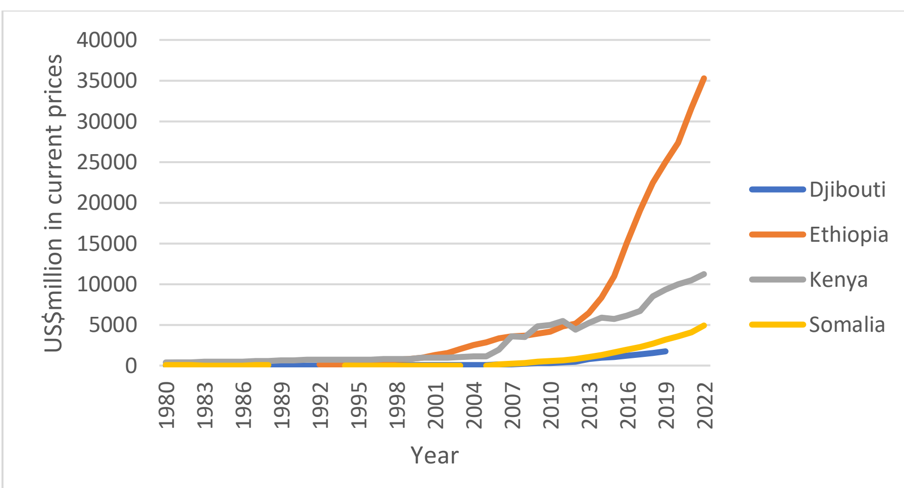
Figure 9: Horn of Africa's FDI net inflows as percent of GDP



Source: UNCTAD FDI Database

The dominance of Ethiopia can also be seen in FDI inward stocks. Ethiopia accounts for 69 percent of the Horn of Africa's FDI stocks in 2022. Rapid growth in Ethiopia's FDI stocks was the main factor behind the more than quadrupling of the Horn of Africa's overall FDI stocks in the last decade, which rose from $10.8 billion in 2012 to $51.4 billion in 2022. FDI stocks also rose in Kenya, Djibouti, and Somalia, but much less rapidly (see Figure 10). Relative to the size of its GDP, Somalia is the country in the group with the highest levels of FDI stocks, with FDI stocks accounting for 207 percent of GDP in 2022. In contrast, FDI stocks only accounted for 10 percent of Kenya's GDP, 33 percent of Ethiopia's GDP and 55 percent of Djibouti's GDP.[6]

Figure 10: Historic FDI inward stock in the Horn of Africa



Source: UNCTAD FDI Database
Note: UNCTAD has missing data for South Sudan.

[6] All in 2022, except for Djibouti where the last available data is from 2020.

The available data suggests that the nature of FDI is very different in each country and that intraregional FDI does not play a major role in determining aggregate FDI flows across the region. In Ethiopia, FDI is dominated by China, which accounted for 60 percent of newly approved FDI projects in 2019 across both manufacturing and services.[7] Saudi Arabia, Turkey, the United States, and India are also major investors.[8] Contrastingly, in Kenya, the top 6 providers of FDI are all African or European countries (see table 2a). Other African countries provided 45 percent of FDI stock, most of which was provided by Mauritius and South Africa. European countries provided 46 percent of FDI stock, most of which was provided by the United Kingdom and France. Regarding sectors, finance and insurance activities comprised the biggest sector receiving FDI, followed by information and communication activities and wholesale and retail trade (see table 2b).

Table 2a: Country origins of FDI stock in Kenya

Country	Percent FDI Stock provided
Africa	**45**
Mauritius	*21*
South Africa	*15*
Tanzania	*5*
America	**5**
Asia	**11**
Europe	**36**
UK	*12*
France	*8*
Netherlands	*5*
Australia and Oceania	**3**

Table 2b: FDI stock in Kenya by economic activity

Economic Activity	Percent FDI Stock provided
Agriculture, forestry and fishing	7.8
Mining and quarrying	2.6
Manufacturing	14.8
Electricity, gas and air conditioning supply	0.2
Construction	0.8
Wholesale & retail trade; repair of motor vehicles and motorcycles services	15.4
Transportation and Storage	2.2
Accommodation and food service activities	2.1
Information and communication	16.1
Finance and Insurance activities	33.2
Real estate activities	3.2
Professional, scientific and technical activities	0.8
Administrative and support service activities	0.8
Human Health and Social work activities	0.1
Other service activities	0.1

Source: Central Bank of Kenya 2020 Foreign Investment Survey

Data on the remaining countries are scarce. According to the African Development Bank, Djibouti's largest investors between 2003 and 2015 were the United Arab Emirates, Kuwait, Qatar, and the United States, who contributed 40 percent, 21 percent, 21 percent, and 7percent to greenfield investments, respectively. Germany and the United States were the main sources of FDI in Somalia, whilst South Sudan's limited FDI includes investments in coffee and financial services.[9]

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7 UNCTAD, *World Investment Report*, 2020.

8 United States Department of State, 2023.

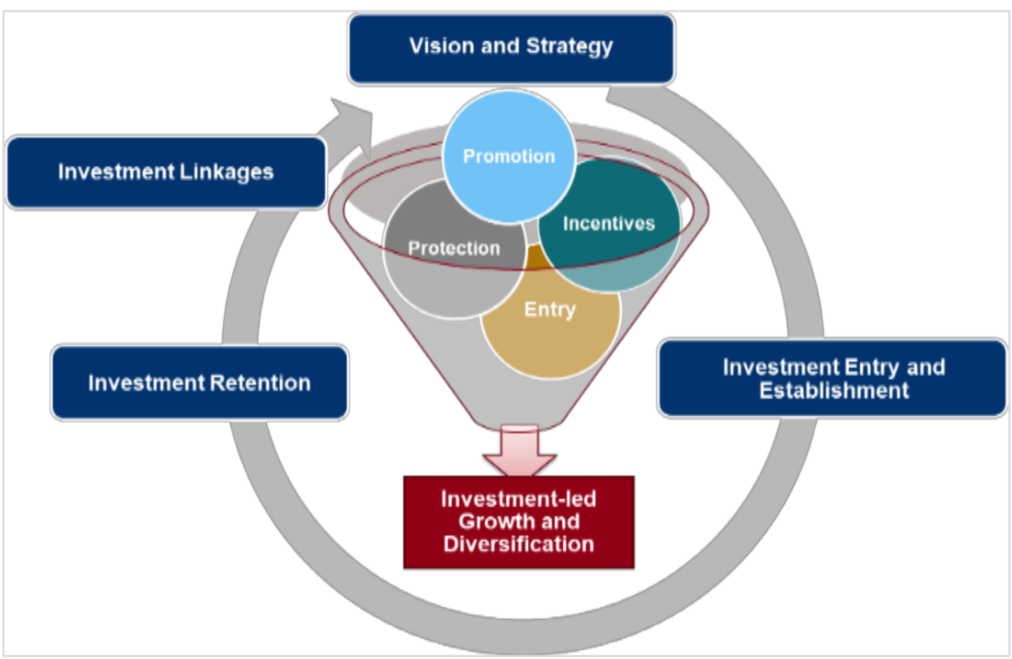
9 African Development Bank, 2023.

2. Investment climate framework

FDI can be instrumental in fostering productivity gains, supporting export diversification, and facilitating knowledge spillovers; but these benefits are not automatic. A coherent, well-conceived and implemented investment policy and promotion framework is essential to help a country to internalize its gains from FDI. Evidence from multiple jurisdictions confirms that successful economic upgrading and diversification depends on a country's ability to foster a wider range of opportunities for private economic activity, and on the ability of local companies to integrate into global production value chains. To the extent that FDI anchors the development of many of these value chains, attraction and retention become key factors in supporting a more diversified local economy.

The investment life cycle provides a practical framework to help understand the nature of problems that firms face at different stages of their engagement, and how investment policy reforms can help address them. Investment should not be conceived as a one-off transaction, but rather as a continuous relationship between the government and the private sector as well as between domestic and foreign investors. As depicted in Figure 11, the investment life cycle begins with the host country's investment strategy and policy priorities, moves to attraction, entry and establishment, retention and expansion, and finally cycles to linkages (local supplier development and integration of local firms into global value chains) where the focus is on rooting the benefits of FDI in the local economy.

Figure 11: The investment lifecycle



Source: WBG Investment Policy and Promotion Framework

It is also important to see private investment holistically, with foreign and domestic investment being inextricably linked. Effective investment policy does not choose between foreign and domestic investment but focuses rather on connecting them through domestic and global value chains. To this end, while this note focuses on policies to attract FDI (with the understanding that the policy and legal framework should not thereby prejudice domestic investment) it seeks also to affirm that the goals of attracting FDI are also to stimulate domestic investment and, critically, to anchor the benefits locally.

In defining an FDI vision and strategy for a country, recognizing that different types of investment are guided by different locational determinants and have different effects on socio-economic development is important. Four types of FDI can be identified depending on the key motivations driving investor locational decisions:[10]

i. **Natural resource-seeking investment** is characterized by firms seeking to access and exploit natural resources and raw materials located in the host country. This is the easiest type of investment to attract as investors will go to where the resources are found – however difficult the operating environment.
ii. **Domestic market-seeking investment** is driven by firms looking to deliver goods and services within the host country, and entails investments motivated by the size and characteristics of the domestic market of the host country. Access to larger markets beyond domestic borders, through regional economic communities, could also influence market-seeking investments.
iii. **Efficiency-seeking investment** is export-oriented and is characterized by investors seeking to increase their cost-efficiency and benefit from factors of production that improve their ability to compete in international markets. A typical example of efficiency-seeking FDI occurs when firms integrate international production patterns to maximize efficiency gains through global value chains.
iv. **Strategic asset-seeking investment** occurs when firms aim to consolidate or improve their positioning in a given market by acquiring strategic assets such as brands, human capital, know-how, or market share. In most cases, this type of investment entails the acquisition of an existing enterprise, with mergers and acquisitions as the typical mode of FDI entry in the host economy.

Each type of FDI brings about different kinds of benefits to the host economy. Each type of investment contributes differently to economic upgrading and generates different types of jobs. Investments in sectors associated with natural resource-seeking FDI, such as agriculture, generate mostly small-scale household/informal or low-skilled jobs. In contrast, investment activity in sectors like IT hardware or business services, which are often efficiency-seeking, will tend to generate higher-skilled, technology-intensive jobs. A review of investment policies in a number of emerging market countries which have traditionally received natural resource-seeking investments and seek to diversify their economies, almost invariably reveals multiple entry barriers and performance requirements that seem to be informed by and directed at the typology of investments they have historically received and not to attracting the different types of investments they profess to want to attract in order to diversify their economies.

Efficiency-seeking investment has the most transformative potential. While typically more difficult to attract, this type of investment can become more than a source of capital, creating new jobs that are more diversified and with greater productivity and value. These gains are not only facilitated through the transfer of technology and skills characterized by this investment, but also through its potential to support

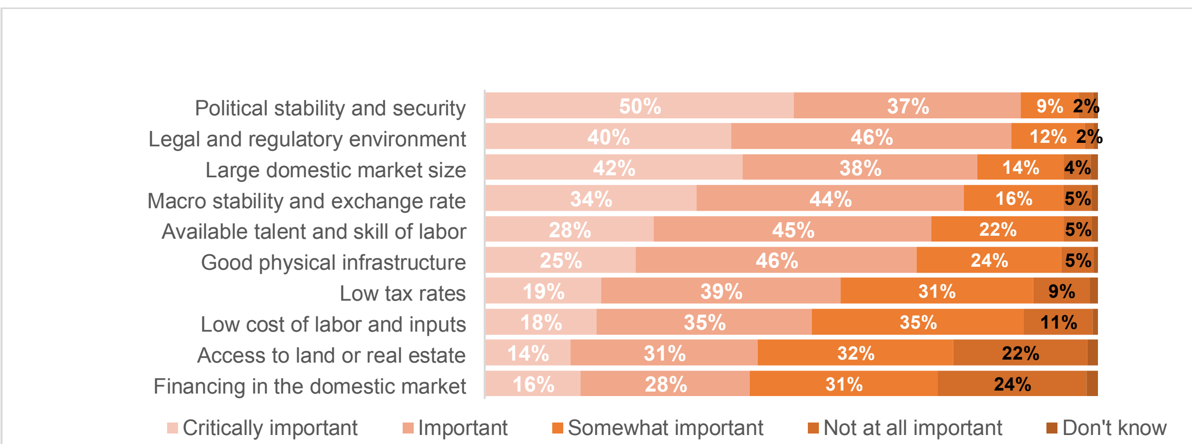
[10] Dunning, J. 1993. Multinational Enterprises and the Global Economy. Harlow Addison-Wesley.

economic diversification, particularly when investment encompasses non-traditional export sectors or insertion into global value chains.

Given that efficiency-seeking investment is the most mobile type of investment, the legal framework of the host country is essential as a promotional tool. Although investors differ on the relative importance of the factors affecting investment, to some degree, all of them play a significant role. For a country to be able to attract the desired type of FDI, it must ensure that each of the elements of the investment climate functions effectively and that together they form a coherent system which will allow not only for the attraction but also the retention and expansion of both domestic and foreign investment, while preserving legitimate domestic interests.

A country's legal and regulatory environment is one of the principal factors affecting investor location decision. According to the Global Investment Competitiveness (GIC) survey,[11] political stability and a business-friendly regulatory environment are the most important factors in investors' decision making (*Figure 12*). Political risks are wide-ranging and include the risk of expropriation, restrictions on the transfer and convertibility of currencies, the risk of breach of contracts, unpredictable and arbitrary actions, discrimination, and the absence of regulatory transparency. De-risking, or reducing project or country risk, can lead to the right risk–return profile and help attract private investment. Perception that the risk is too great can prevent investments that are commercially profitable and economically attractive from materializing.

Figure 12: Factors affecting investment decisions



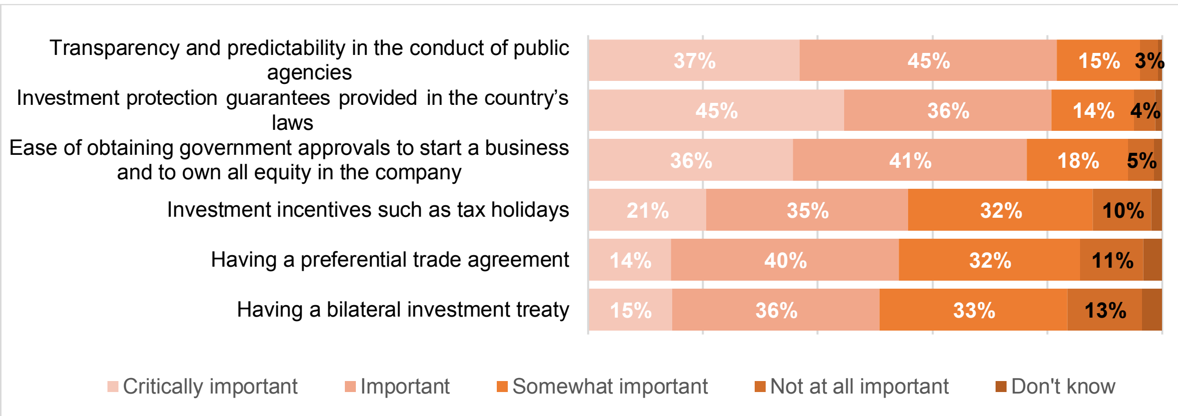
Source: Computation based on the survey results from the WBG Global Investment Competitiveness Report (2019/2020)

Political risk and concerns about the legal and regulatory regime in a country serve as the greatest possible deterrents to investment. More than three-quarters of investors surveyed encountered some type of political risk in their investment projects in emerging market countries. In severe cases, such as in the case of expropriation, about half of the investors canceled a planned investment or withdrew an existing one. Legal protection against such risk is usually provided by investor protection guarantees typically included in a country's domestic legal framework and its IIAs. In the GIC report's survey, 81

[11] World Bank Group. 2020. Global Investment Competitiveness Report 2017/2018: Foreign Investor Perspectives and Policy Implications. Washington, DC.

percent of investors rate country legal protections and 51 percent rate BITs as important or critically important in their investment decisions. Investors also seek predictability and efficiency in the implementation of laws and regulations. About four out of five investors surveyed rate the transparency and predictability of public agency conduct—and the ease of doing business—as important determinants of their locational decisions. More than one-third of investors rate these as critically important factors or potential deal-breakers. See *Figure 13* below.

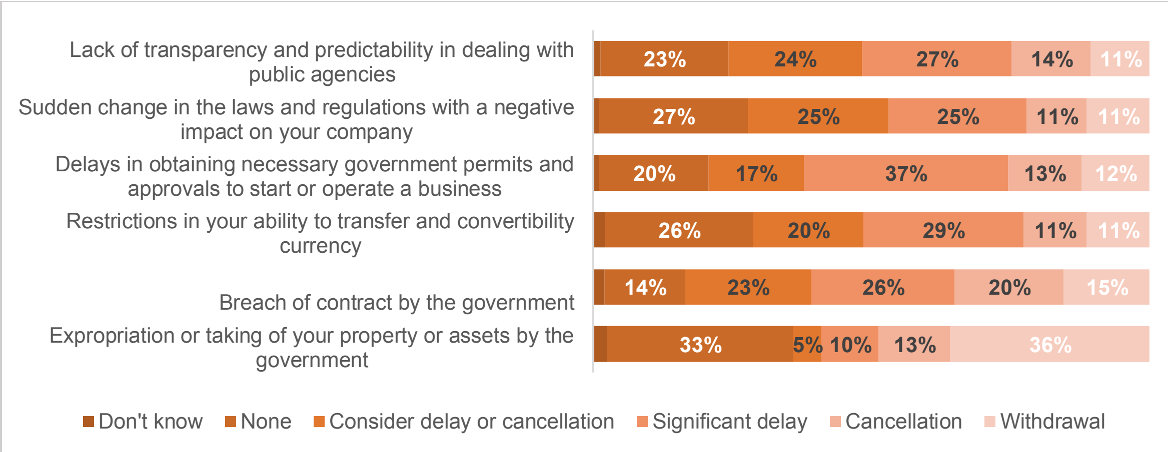
Figure 13: Importance of regulatory predictability and efficiency



Source: Computation based on survey results from the WBG Global Investment Competitiveness Report (2019/2020)

Lack of investment protection will result in the failure to retain current investment and foster reinvestment. Lack of confidence of already established investors may lead them to cancel their plans to expand or reinvest in the host countries, and sometimes to leave the country. According to GIC survey, as shown in *Figure 14*, one in four investors who experienced lack of transparency and predictability, sudden changes in the laws and regulations, or delays in obtaining government permits and approvals, canceled a planned investment or withdrew an existing investment owing to political risks. More severe cases of political risk occur less frequently but with far worse impact. Only 13 percent of respondents experienced breach of contract by the government, but 35 percent of those investors canceled a planned investment or withdrew an existing one. While only 5 percent of respondents experienced expropriation, almost half of them canceled or withdrew an investment.

Figure 14: Regulatory predictability and efficiency impact on investment



Source: Computation based on survey results from the WBG Global Investment Competitiveness Report (2019/2020)

Thus, investment protection should be a critical element of a government's strategy both to retain investment and attract new investment or reinvestment. In a significant number of economies, the lion's share of the total annual FDI inflows is made by investors already established in the host country – both in the form of reinvested earnings or new investments. UNCTAD estimates that the share of reinvested earnings in total FDI outflows fluctuate between 20 to 40 percent.[12] Although the importance of reinvested earnings may differ from county to country, it is generally agreed that reinvestment represents an important component of FDI.

Even when *de jure* the restrictions to foreign investment are minimal, governments need to consider that more important than what is written in laws and regulations is how these are implemented in practice. *De facto* restrictions can deter private investment from operating effectively. A mechanism ensuring legal and regulatory compliance across government agencies, and promoting effective problem solving for investors, would help prevent investor grievances from escalating into legal disputes. This is so by identifying them in a timely manner and attempting to resolve them early. This would result in a more transparent and consistent investment climate that would help address investors' main concerns.

Investment attraction and retention is influenced not only by profit opportunities but also the level of risk in host countries. When investors incur fixed and irreversible costs to invest, uncertainty about the local conditions - including the political and regulatory framework – has a dampening effect that reduces investment response to new investment opportunities. Post entry, existing investors can choose to delay or contract investments in situations with heightened risks.[13] Empirical evidence indicates that there is a

[12] UNCTAD. 2022. World Investment Report.

[13] A related issue is the effect of political risks on the financing mode of FDI, which potentially can affect reinvestment potential. For example, Kesternich and Schnitzer (2010) show that high political risks clearly favor joint ventures to mitigate political uncertainty. The literature, however, suggests that partial ownership of foreign affiliates has a negative effect on internal lending from related firms in the multinational group and engagement in integrated global operations (*e.g.,* Desai *et al.,* 2004). Antras (2009) finds that the share of activity abroad financed by capital flows from the parent country (thus including reinvested earnings and intrafirm borrowing) decreases the quality of

negative relationship between host country risks and reinvestment decisions of foreign investors. The riskier the business environment governing the operation of the private sector in a given country, the lower the amount of reinvestment by foreign multinationals.

investor protection in host countries. The intuition is that monitoring of activity abroad by the parent investor is more critical in settings where investor protections are weaker.

3. Investment climate assessment per country

This report takes stock of each of the HoA countries' legal framework on business environment and foreign investment based on a comprehensive exercise of desk research of a significant number of laws, regulations, and procedures. The assessment provides an analysis of primary and secondary laws, regulations and procedures directly governing the business environment and foreign investment in each of the HoA countries. The analysis comprises two main areas of focus: (i) business environment covering the areas of business entry, property rights, gender equality, judicial system, digitalization, access to finance; and (ii) measures that are key constraints to private investment in the country along the investment lifecycle covering the stages of market access, protection and retention of the investment, investment incentives, linkages with the local economy, and international investment commitments.

In a comprehensive reform process, governments should consider measures that go beyond this report and that play a key element in enabling private sector participation. This includes broader factors such as pollical stability and security, quality and predictability of the domestic regulatory environment, market size, macroeconomic stability and exchange rate, available talent and skills of labor, infrastructure quality, tax rates, cost of labor and inputs, and financing in the domestic market. Such topics are not covered in this assessment.

The analysis conducted only looks at the text of legal instruments (*de jure*). The associated *de facto* practices are to be assessed at a later stage as to determine the level of implementation of the legal framework.[14] The mapping and review of the *de jure* procedures discussed in this report provides a comprehensive insight of the country's measures that impact business and investors. This assessment highlights the practical implications of the needed reforms. This assessment will have to be complemented by an exhaustive review of the *de facto* (or actual) application of the law which in many jurisdictions can be strikingly different leading to several procedural challenges negatively affecting the rule of law, inhibiting investors, and effectively discouraging private sector participation.

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[14] *De jure* procedures are the procedures as defined by the actual text of the law, while *de facto* procedures are those implemented in practice by officials or government agencies.

Djibouti

I. Country context

As a small State with a population of less than one million, Djibouti has leveraged its strategic location at the southern entrance to the Red Sea, along some of the world's busiest shipping lanes. Over the past decade, Djibouti economy grew rapidly by over 6 percent per year, on average, driven by externally financed, large-scale investment in transport and port infrastructure, to make the most out of its strategic location and deep-water port to serve as key regional refueling, trade and trans-shipment center.[15]

Djibouti's economy is driven by a state-of-the-art port complex, among the most sophisticated in the world. Trade through the port is expected to grow rapidly in parallel with the expanding economy of the country's largest neighbor and main trading partner, Ethiopia. Djibouti has some natural assets that could be used for tourism, untapped marine resources that could support more artisanal fishing, and an infrastructure of undersea telecommunications cables from which it could develop new digital and service industries. Renewable energy could be another source of growth, as Djibouti has geothermal, solar, and eolian potential.

Despite some recent growth, the country faces enormous challenges. In 2017, an estimated 39 percent of the population lived below the lower-middle income poverty line (US$3.2 per day) and 17 percent in extreme poverty (below the international poverty line of US$1.9 per day). Heavy reliance on food imports is a key vulnerability for the country. Unemployment among youth continues to hamper growth. Djibouti's public and publicly guaranteed debt rose sharply from 37.5 percent of GDP in 2010 to peak at about 72 percent in 2017. The country is assessed at high risk of external debt distress.

The low levels of efficiency-seeking FDI suggests that investment competitiveness of Djibouti is weak. Investment competitiveness refers to the ability of countries to not only attract but also retain and integrate private investment into their respective economies. Enhancing investment competitiveness thus requires establishing a business environment in which both domestic and foreign companies can efficiently enter the market, expand operations, and develop more and better linkages with local, regional, and global economies. Investment competitiveness, while being a key consideration for FDI at large, it is particularly important for attracting efficiency-seeking FDI, as this type of investment will only flow into a host economy that can contribute to the firm gaining a competitive edge in international markets.

To fully harness its geographic advantages and maintain its competitiveness, Djibouti must focus on attracting private investments. A gradual diversification of the economy will enable Djibouti to attract higher level of foreign investment over the coming years. But this will require a strong reform mindset to create a conducive environment to foster private sector growth.

II. Constraints to private sector development

a) Overall business environment

[15] World Bank Group. 2021. Djibouti Economic Update.

The overall business environment in an economy depends on many factors, ranging from market size, macroeconomic conditions, and business regulations. A number of international benchmarks and surveys identify key constraints to a country's competitiveness and private sector development. In the last five years, the Government of Djibouti has recognized the role of the private sector to achieve its development goals and has made a considerable effort, with WBG support, to ease its investment climate.[16]

Results of multiple global benchmarking tools show that Djibouti's competitiveness is constrained by an overall cumbersome regulatory environment. There are several factors of Djibouti's main private sector development constraints. These include political instability; high levels of insecurity in the country; uncertainty in the protection of property rights; lack of separation of powers; high levels of bureaucracy to register a business; and low levels of digitalization of governmental services. Understanding the risks to the private sector in highly volatile environments will help tailor solutions to support the private sector development.

According to the World Governance Indicators (WBI), measuring the quality of the governance system from the perspective of the private sector and other non-government sources looking at indicators like Voice and Accountability, Government Effectiveness, Regulatory Quality, Rule of Law, Control of Corruption, and Political Stability, Djibouti performance falls below the Sub-Saharan regional average in all six indicators. Notably, the sub-indicators of Voice and accountability (14.01) and Rule of Law (16.35) exhibit significant weaknesses. Moreover, the majority of the sub-indicators exhibits a deterioration in the period of 2016 to 2021, except for Voice and Accountability and Government effectiveness, which has seen a slight improvement in this period (Figure 15).[17]

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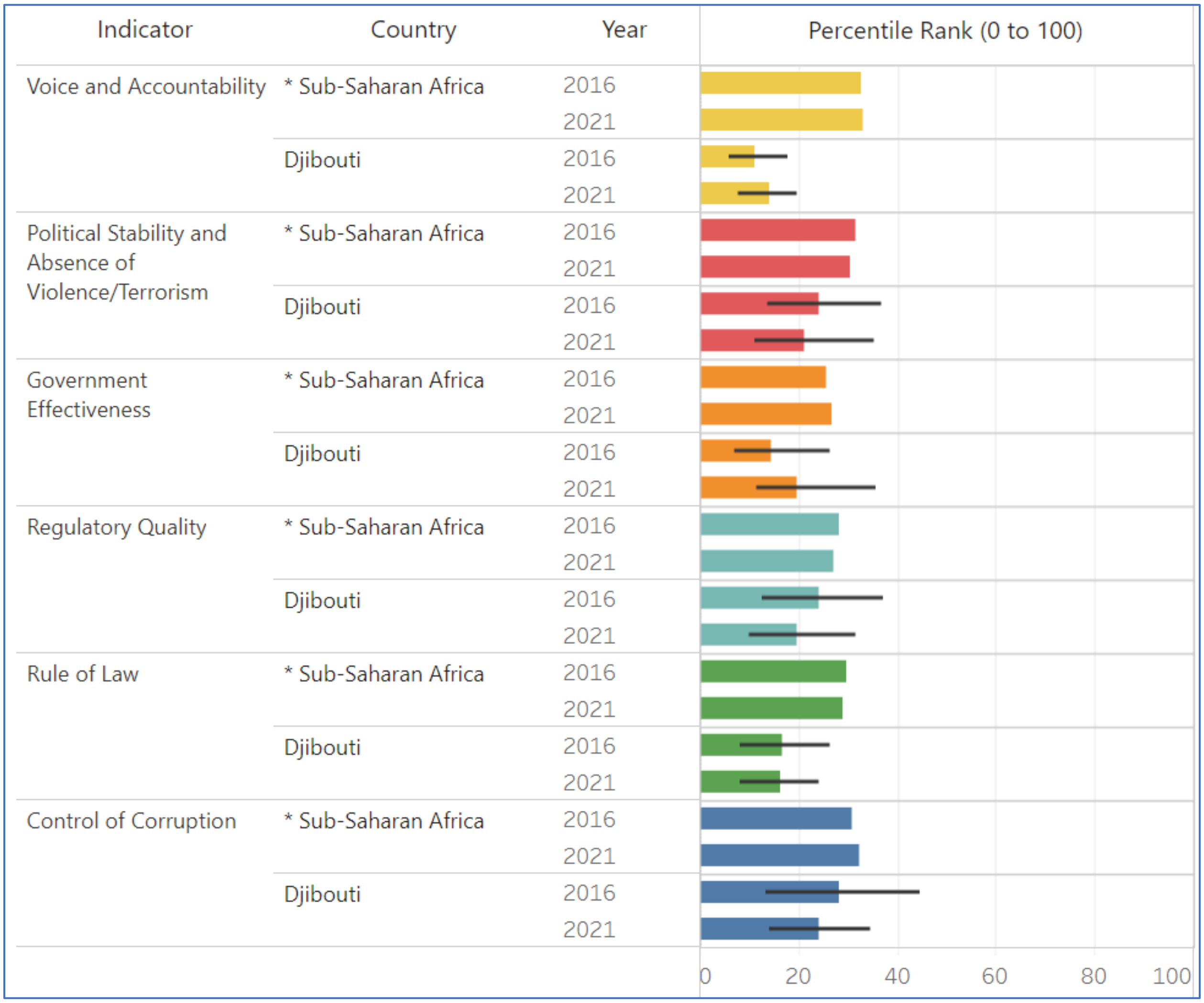
[16] World Bank Group, Country Partnership Framework for the Republic of Djibouti, 2021.

[17] https://info.worldbank.org/governance/wgi/

The World Governance Indicators report on six broad dimensions of governance over two hundred countries and territories over the period 1996-2021:

Voice and Accountability captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood of political instability and/or politically motivated violence, including terrorism. Government Effectiveness captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies. Regulatory Quality captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. Rule of Law index captures perceptions of the extent to which agents have confidence in and abode by rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

Figure 15: Djibouti's performance in comparison with the regional averages in the World Governance Indicators

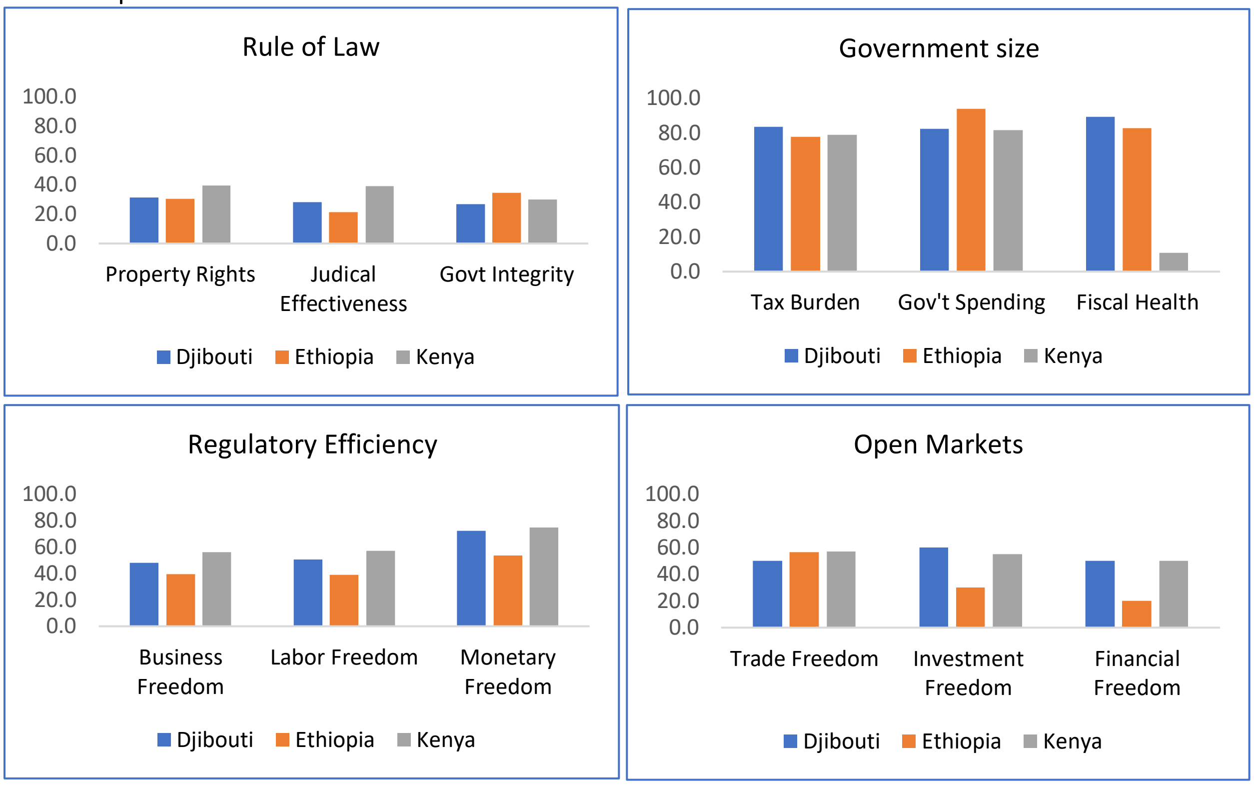


Source: Worldwide Governance Indicators, 2022.
Percentile Rank indicates rank of countries among all countries in the world. 0 corresponds to lowest rank and 100 corresponds to highest rank.

Djibouti is classified by the Heritage Foundation Index of Economic Freedom as "Mostly Unfree," reflecting deficiencies in all areas measured by the index, including the rule of law and regulatory efficiency.[18] Djibouti's overall economic freedom score is 56.1, making its economy rank 112th globally in the 2023 Index and 15th out of 47 countries in Sub-Saharan Africa region. Moreover, Djibouti overall scores its lower than the world average but it's better than the neighboring countries averages, Kenya (52.5) and Ethiopia (48.3). These indicators are grouped into four pillars: Rule of Law, Government Size, Regulatory Efficiency, and Open Markets. Specifically, Djibouti's performance is notably weaker in the Rule of Law indicators, including Property Rights, Judicial Effectiveness, and Government Integrity (Figure 16).[19]

[18] https://www.heritage.org/index/pdf/2023/countries/2023_IndexofEconomicFreedom-Djibouti.pdf
[19] The Index evaluates economic freedom using twelve quantitative and qualitative factors, categorized into the four aforementioned pillars. Each of the twelve economic freedom is graded on a scale of 0 to 100. The overall score is calculated by averaging these twelve economic freedoms, assigning equal weight to each.

Figure 16: Djibouti's Economic Freedom scores (1-100), in comparison with neighboring countries Kenya and Ethiopia

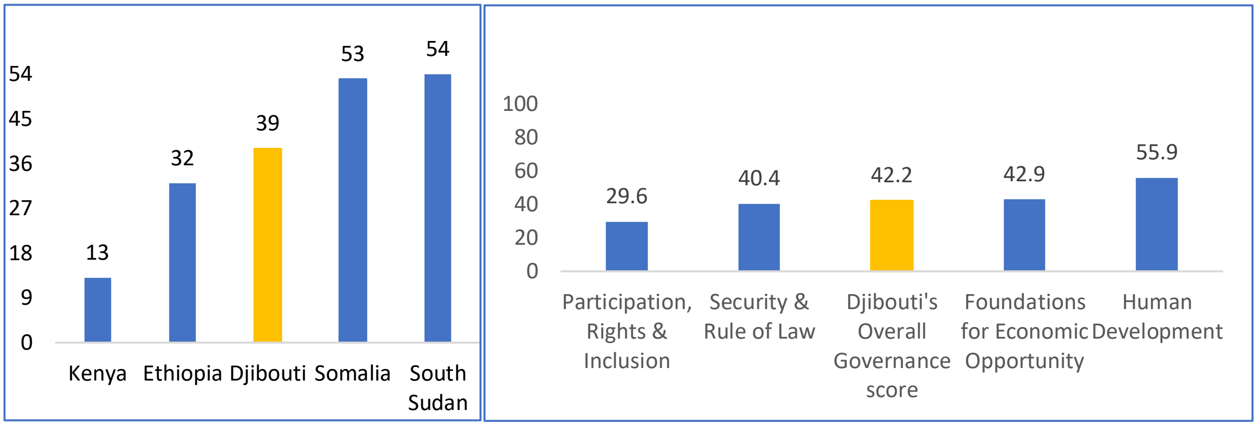


Source: Heritage Foundation Index of Economic Freedom 2023
Each twelve economic freedoms within these four categories (Rule of Law, Government size, Regulatory Efficiency and Open Markets) are graded on a scale of 0 to 100, where a higher score indicates greater economic freedom. The overall score is calculated by averaging the twelve economic freedoms, assigning equal weight to each.

In addition, according to the 2022 Ibrahim Index of African Governance (IIAG)[20] Djibouti has seen a slight overall improvement over the last decade. Djibouti ranks 39th out of 54 measured countries (Figure 17). Among the four main areas covered by the index, Djibouti ranks the lowest in the Participation, rights & inclusion subindex with 29.6/100. Notably, some of the lowest ranked areas covered by this subindex are: i) freedom of association & assembly; ii) protection against discrimination; iii) and equal access to public services for women. In addition, Djibouti ranks very low in other sub-indicators, such as disclosure and availability of public records and access to banking services.

[20] The Ibrahim Index of African Governance (IIAG) measures African governance performance in 54 African countries. The main areas covered by the Index are: i) security & rule of law; ii) participation, rights & inclusion; iii) foundations for economic opportunity; and iv) human development.

Figure 17. Djibouti's Performance in the Ibrahim Index of African Governance (IIAG) report 2022 and comparator countries.



Source: The IIAG Index

The IIAG scores quantify a country's performance for each governance measure each data year, expressed out of 100.0 (with 100.0 being always the best score). Rounded to one decimal point, scores are relative to each country's performance in relation to the other 54 African countries.

b) Business entry

In recent years, the Government of Djibouti has facilitated the business registration process by reducing the capital needed for investment, simplifying the formalities needed to register a new company, reducing the cost of registering a business, and by creating a one-stop shop for business registration.[21] However, there are several procedures conducted by other governmental agencies that are still not part of the one-stop shop for business creation, such as, Tax Office, Office of Intellectual Property, and the Social Security office. In addition, all business registration documents still need to be notarized to begin operations.

c) Property rights

The Constitution of Djibouti safeguards the right to private property in the country.[22] All property in Djibouti is part of the public domain, whether assigned to public use or not. There are no specific restrictions on foreign ownership of land.[23] However, legal, and regulatory procedures are often unevenly enforced and complex. Additional issues related to the quality of the land administration are: i) the immovable property registration agency, "Service des Domaines et de la Conservation Fonciere" does not have an electronic database for checking for encumbrances (*i.e.,* mortgages) available to the public; ii) the cadastral plans are still not in a digital format; and, iii) there is no an electronic database for recording boundaries, checking plans and providing cadastral information.

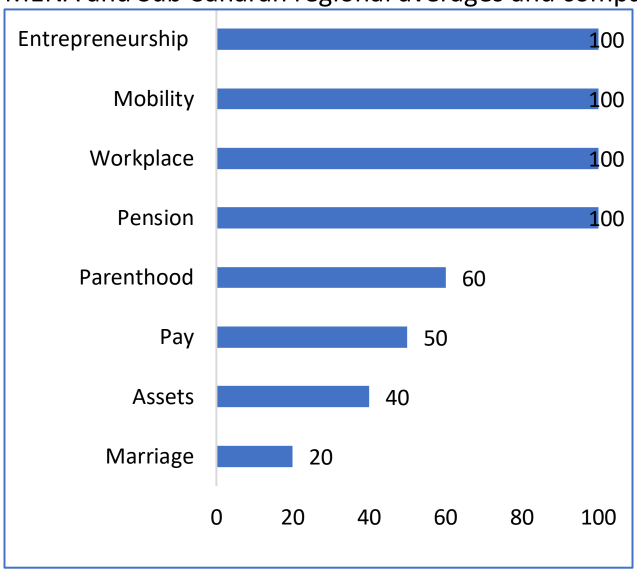
d) Gender equality

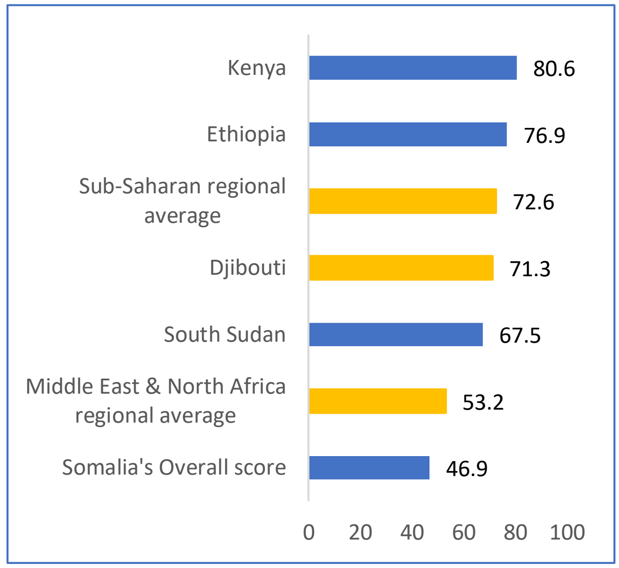
Djibouti scores 71.3 out of 100 in the Women, Business, and the Law indicator. The overall score for Djibouti is higher than the regional average observed across the Middle East and North Africa (53.2) and

[21] http://www.guichet-unique.dj
[22] Article 12 of the Constitution of Djibouti.
[23] BTI Transformation Index. 2022. Country report for Djibouti.

slightly below the Sub-Saharan regional average of 72.6 points. Djibouti performs perfectly in several areas, such as constraints on freedom of movement, laws affecting women's decisions to work, constraints on women starting and running a business, and laws affecting the size of a woman's pension. However, there are still some areas where Djibouti could consider improving legal reforms to advance equality for women. For instance, laws affecting women's pay, constraints related to marriage, laws affecting women's work after having children, and gender differences in property and inheritance (Figure 18). Specifically, Djibouti may consider the possibility to introduce parental leave in its legal framework and providing women the same rights to divorce and remarry as men.

Figure 18. Djibouti's Performance in Women, Business, and the Law report 2023 and comparison with the MENA and Sub-Saharan regional averages and comparator economies.





Source: Women, Business, and the Law 2023

Indicator-level scores are obtained by calculating the unweighted average of the questions within that indicator and scaling the result to 100. Overall scores are then calculated by taking the average of each indicator, with 100 representing the highest possible score.

e) Judicial system

The Judiciary of Djibouti is comprised by three main courts: Court of First Instance, Court of Appeals, and the Supreme Court. The country has also specialized its courts in different areas of law, for instance, criminal, administrative, commercial, and civil. The legal system of Djibouti is based on the Napoleonic French Code. A codified commercial code exists, and traditional Islamic Laws are also practiced alongside civil law. Some concerns regarding the Judiciary are: i) there is no visible separation of powers among the different branches of the Government, including the Judiciary; ii) the selection and appointment of judges and magistrates is largely in the hands of the President. For instance, Supreme Court magistrates are directly appointed by the president;[24] iii) scarce periodic training to judges and court staff; and iv) the information contained on the website of the Ministry of Justice and Penal Affairs of Djibouti is limited.

[24] BTI Transformation Index. 2022. Country Report for Djibouti.

f) Digitalization of public services

Djibouti's challenges surrounding private sector growth are compounded by the country's digital gap. Wider use of digital and e-governance platforms could help when it comes to consistency of implementation of public services. Providing clear information on regulations, requirements, and costs would help to reduce companies' transaction costs, especially for MSMEs, and lower legal uncertainty. Another concern in this area, is that MSMEs are not using digital financial services and continue preferring cash transaction instead.[25] The Government of Djibouti could explore ways to increase the production of advanced digital skills for both the public and private sector.

Digital connectivity is low also at the individual level. According to the Digital 2023 report produced by DataReportal organization,[26] internet penetration rate in Djibouti stood at 68.9 percent of the total population at the start of 2023. In addition, data from the Global System for Mobile Communications (GSMA Intelligence)[27] indicate that mobile connections in Djibouti were equivalent to 41percent of the total population in January 2023. Social media users in the country remained low, with an equivalent of only 8.3percent of the total population at the start of 2023. The low usage of internet limits the ability to expand the digitalization of public services. Unless corrected, the digital gap will tend to restrict the potential advances in the country's productivity.

III. Constraints to foreign direct investment

a) Market access

In Djibouti, a framework of laws and policies promote, regulate, and streamline investment activities in the country. The Investment Code adopted in 1984 (revised 1994) is the principal legislation concerning foreign investment in Djibouti. Other relevant laws in this regard include the following: The general public tax law, Law No 53 issued on 17 May 2014 on free zones, Law No 134 for 2011 on trade, Law No 179 for 2002 on Djibouti Chamber of Commerce, Law No 49 for 2008 on industrial and commercial ownership system of Djibouti, Decree No 271 for 2009 on the organization of industrial and commercial ownership system of Djibouti, Law No 159 for 2012 on the royalty of industrial and commercial ownership system of Djibouti.

Djibouti maintains several market access restrictions for foreign investments that are not provided in the Investment Code. Market access restrictions in Djibouti concentrate on various sectors and sub-sectors, limiting or altogether prohibiting foreign entities from establishing or operating within the host country. Focusing particularly on sectors such as business services, legal services, accounting and auditing, architectural services, communication, and many others, these restrictions encompass a wide range of prohibitions. For instance, in legal and accounting sectors, there is a notable prohibition on the establishment of foreign company branches or representations in the country. Mergers and acquisitions across borders are restricted, and the establishment of foreign companies as a legal entity is not permitted. Furthermore, there's a significant emphasis on the composition of company boards. A majority of board members are often required to be nationals or residents of Djibouti or professionals with local accreditation. Foreign individual enterprises are generally not authorized, and partnerships or commercial

[25] World Bank Group. 2021. Djibouti Country Partnership Framework.
[26] https://datareportal.com/reports/digital-2023-djibouti
[27] https://www.gsmaintelligneeded. ence.com

associations with foreigners are forbidden in many cases. This focus on national control is further emphasized in sectors like telecommunication and financial services, where foreign equity participation might be capped at a certain percentage, typically below 50percent. In essence, these restrictions manifest a protectionist approach by the host country to safeguard its domestic industries and maintain control over its internal markets.

The Commercial Code of 2012 explicitly restricts certain activities from foreign participations. In fact, these are sectors where the Government maintains a monopoly or majority ownership. For instance, national defense, public security, public health, energy distribution, communications, and transport organization are select sectors where foreign investment may not be allowed. Additionally, in the telecommunications sector, Djibouti Telecom (a government entity created in 1999 as an 'independent private law operator') holds the monopoly on national and international telecommunications activities.

The Investment Code uses a mandatory investment threshold as a pre-condition for foreign investors to obtain incentives in the country. But obtaining incentives is not mandatory. Foreign investors that do not seek incentives are not subject to a minimum investment requirement and they are allowed to proceed directly to company incorporation.

There are no restrictions on the foreign ownership of land. Law No. 177/AN/1991 on the organization of land, allows access to land ownership or lease for Djiboutian or foreign investors. Such purchase or lease of land can be obtained from the state or a private party (both natural and legal persons). There are no ownership restrictions for foreign investors. As a result, the foreign investor can buy and retain the land as long as they intend.

b) Investment protection

The provisions on non-discrimination for foreign investment enshrined in the national legislation are limited or not in line with international best practices. For instance, the Constitution of Djibouti under Article 18 guarantees the protection of foreigners and their assets in the country. Similarly, the Investment Code under Article 38 provides equal treatment under the law for all companies carrying out production activities in Djibouti. Merely providing equal treatment without mentioning the specifics of the non-discrimination, or most-favored nations (MFN) treatment does not conform with good practices and the international agreements signed by Djibouti.

The Investment Code does not explicitly guarantee the free transfer of funds in and out of Djibouti. Although this guarantee is not provided in the Investment Code, investors have mentioned that transfer of funds in Djibouti is often simple, and it is one of the key strengths for Djibouti in attracting FDI.[28] Additionally, Djibouti conforms to the mandates of sections 2, 3, and 4 in Article VIII of the International Monetary Fund (IMF) statutes which is a commitment to refrain from imposing restrictions on payments and transfers for ongoing international transactions unless faced with a balance of payments emergency. Good practice is to include an express provision in the Investment Code guaranteeing free transfer of funds in and out of the country.

The Investment Code provides a basic guarantee against unlawful expropriation. The Investment Code under Article 39 stipulates that no expropriation of any duration or extent can take place "without fair

[28] See US Investment Climate Statement, 2023, Djibouti and also reported in UNCTAD Investment Policy Review, 2013, Djibouti.

compensation for the damage suffered". But the provision in the Code provides that expropriation shall be carried out in public interest and in accordance with the due process except in case of urgent situations or in grave danger. But the law does not define what situations qualify as urgent or grave. The Investment Code nor other relevant laws provides criteria regarding how compensation will be calculated in case of an expropriation.

The Investment Code does not refer to the possibilities and procedures for arbitration in cases of disputes between a foreign investor and the Djiboutian state. In such cases, the Djiboutian Code of International Arbitration adopted in 1984 serves as the only reference. This code emphasizes that international agreements to which Djibouti has adhered take precedence over domestic laws. But Djibouti' network international agreements is quite small. There is no investor grievance mechanism in Djibouti to address any investor grievances before they escalate into a dispute. In 2020 Djibouti ratified the International Convention on Settlement of Investment Dispute (ICSID) and has been a member of the New York Convention on International Arbitration since 1977.

c) Incentives

Djibouti is missing a coherent structure for both awarding and overseeing investment incentives, aligned with its national development objectives. The investment code in Djibouti provides various incentives to investor. However, this is inconsistent with good practices. Administering incentives in an instrumental primarily meant for attracting, and protecting investments in the country is detrimental to the country's development objectives. Moreover, the investment code is also outdated as a reference document because several articles related to tax incentives have been amended by finance related laws, without an official consolidated version being adopted. Contradictory provisions can cause confusion among investors and may add discretion in the process of administering investment.

The investment Code outlines two primary types of tax benefits and incentives. For investments exceeding DJF 50 million (equivalent to USD 282,000) that result in the creation of permanent jobs is exempt from license and registration charges, property levies, industrial and commercial profit taxes, and corporate profit taxes. There's also an exemption from the internal consumption tax for imported raw materials. Such tax reliefs are valid for a decade from the date such business began its production in Djibouti. Typically, each company or investment has distinct incentives that are determined in consultation with the appropriate governmental departments. The lack of coordination with all pertinent ministries can lead to project delays. Furthermore, Djibouti has established several free zones aimed at boosting exports; here, businesses can avail a full tax waiver, both direct and indirect, for up to ten years.

Obtaining incentives in Djibouti is associated with an administrative approval and meeting minimum investment requirement. As stated above, investors must meet the minimum investment requirement USD 282,000. The investment regime in Djibouti is divided into Regime A and Regime B. Investors seeking incentives under Regime B must meet the minimum investment and must obtain an approval from the National Investment Committee. For foreign investors not covered by the Investment Code's tax incentives, can go directly proceed to the process of company incorporation as per the provisions of the Commercial Code. Additionally, investors intending to establish in the free zone may be subject to additional approvals from the Port and Free Zone Authority (APZF).

d) Linkages

The Djiboutian Investment Code only imposes performance requirement to create more local employment as a condition to receive investment incentives. The investment code guarantees investors the right to freely import all goods, equipment, products, or material necessary for their investments; display products and services; determine and run marketing policy and production; choose customers and suppliers; and set prices according to their business needs. Performance requirements are not a pre-condition for establishing, maintaining, or expanding foreign direct investments.

e) International investment agreements

Djibouti has signed Bilateral Investment Agreements (BITs) with at least 9 treaty partners as of 2023. Of these only 4 are currently in force.[29] The provisions in the BITs are standard in that they provide for national treatment as regards management, maintenance, use, enjoyment or disposal of investment, most-favored-nation status and compensation for war, national emergency, and other related losses. They also guarantee transfer rights and provide protection against arbitrary expropriation and prompt, adequate and effective compensation in the event of expropriation. The BITs of Djibouti usually bind the States to consent to international arbitration to ICSID or UNCITRAL if the investor requests it, and if the disputes cannot be settled through consultation or negotiations after a set period (typically a few months).

Table 3: Summary of Provisions in Djibouti's BITs (currently in force)

Provision	Analysis
Preamble	Reference to the creation of favorable conditions for the development of economic cooperation between the parties. Recognizing that the encouragement and reciprocal protection of investment will be conducive to the stimulation of business initiatives and the increase in prosperity in both countries.
Definition of investment	Broad asset-based definition which starts with the phrase "every kind of asset".
Definition of investor	Criteria of nationality or citizen or legal person constituted or incorporated under the laws of the other contracting party.
Admission & establishment	Admission clause model instead of the right to establishment clause.
Standard of treatment	Fair and Equitable Treatment, National Treatment, Most Favored National Treatment and Full Protection and Security to investments.
Expropriation	Allows expropriation under condition that it meets the 4 key criteria: public purpose; non –discrimination; prompt, adequate and effective compensation; and due process. Compensation based on fair market value, without delay and with interest.
Transfer of funds	Requirement for transfer of returns to be made in accordance with the laws, regulations and procedures prescribed by host state and MFN treatment.
Investor-State dispute settlement	Designation of ICSID and UNCITRAL for investor-state arbitration if disputes cannot be settled through consultant and negotiations. Any arbitral award is final and binding upon the parties to the dispute and that each contracting party

[29] Source: UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/countries/58/djibouti

	ensures the recognition and enforcement of the award in accordance with domestic laws.

Significant gaps exist between the domestic investment framework and its international commitments. The investment protection guarantees provided in the investment code do not conform with the international commitments of Djibouti. The Code does not sufficiently address key topics generally included in a modern code, especially in terms of investment treatment and protection or the obligations of foreign investors towards the country making it outdated. For Djibouti to close the gap between its domestic and international framework, significant reforms are required to its existing legal framework for investments in the country.

Djibouti is among the 46 member countries in Africa that have ratified the AfCFTA Agreement.[30] To reap the benefits of closer trade and investment relations, Djibouti will need to implement the various provisions of the Agreement, which requires action to align legal and regulatory frameworks. This will entail reforms to remove entry barriers, increase transparency, and facilitate investment and trade. These reform discussions, sparked by the imminent need to comply with the AfCFTA, may be an entry point for reforms that go beyond public commitments. For example, the Protocol on Investment contains a novel chapter on sustainable development and certain provisions on investment facilitation and climate change.

The Protocol on Investment of the AfCFTA Agreement has four interrelated pillars – investment promotion and facilitation, investment protection, investors' obligations, and other State commitments. The protocol embodies a quintessentially African response to global investment issues, with the first three pillars, along with efforts to reformulate investment protection, harking back to ground-braking regional treaties and some bilateral treaties in Africa. All four pillars entail specific but interrelated implications for the policy options of each country.

[30] Status as of Feb 2023, https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html

Ethiopia

I. Country context[31]

With about 123 million people (2022), Ethiopia is the second most populous nation in Africa but also one of the poorest. It is one of the fastest-growing economies in the region, with an estimated 6.4percent growth in FY2021/22. However, it also remains one of the poorest, with a per capita gross national income of $1,020. Ethiopia aims to reach lower-middle-income status by 2025.

Ethiopia has been experiencing the unprecedented social and economic impact of the pandemic. While exports and foreign direct investment rebounded in 2020/21 and jobs have been recovering, some lasting scars are likely to remain. Urban employment levels have not recovered fully, some households and firms continue to report income losses, and poverty is estimated to have increased.

Agriculture is the major driver of growth in the Ethiopian economy where over 70 percent of the population is employed, although the services and manufacturing sectors are fast-growing and expanding. The contribution of this sector to growth has slightly improved compared to previous years. However, frequent severe weather events alongside long-term impacts of climate change have undermined agriculture and pastoral livelihoods as well as food security. The 2022 drought was the worst in forty years, severely affecting millions in the southern and eastern parts of the country. Overall, more than 20 million persons are facing severe food insecurity in 2023. The agriculture sector's share of GDP shrank by 18 percent between 2006 and 2021, while the service and industrial sector's share grew by 0.3 percent and 19.1 percent, respectively.

Ethiopia has longer term record of growth over 15 years at an average rate of nearly 10 percent per year, one of the highest rates in the world. Among other factors, growth was led by capital accumulation, in particular through public infrastructure investments. Ethiopia's real gross domestic product (GDP) growth slowed down from FY2019/20 to FY2021/22 due to multiple shocks including COVID-19, with growth in industry and services easing to single digits.

Foreign investment is considered a major driver of industrial growth and economic diversification in Ethiopia. The government of Ethiopia has actively set forth policies and incentives to attract FDI, especially in export-oriented manufacturing sectors. Foreign investors can invest in all sectors positively listed under the Investment Proclamation and Regulation of Ethiopia, also excluding those reserved for the Ethiopian Government, Ethiopian national and domestic investors in the same laws. Ethiopia has attracted new FDI in manufacturing, which could create opportunities for local SMEs to link to global supply chains. Although China was one of the major sources of FDI (in garment and leather production), foreign investors from other economies have started investing more in Ethiopia's agro-processing, hotels and resorts, as well as its manufacturing activities.

Ethiopia has had a limited and undeveloped financial sector, but economic reforms are underway. Liquidity at many banks is limited, and commercial banks often require 100 percent collateral, making access to credit one of the greatest hindrances to growth in the country. Ethiopia is the largest economy in Africa without a securities market, and sales/purchases of debt are heavily regulated. The Government

[31] African Development Bank Economic outlook, 2022. World Bank Group. 2023. Africa's Pulse, No. 27, April 2023: Leveraging Resource Wealth During the Low Carbon Transition.

of Ethiopia has announced, as part of its overall economic reform effort, its intention to liberalize the financial sector. The government has already made good progress by allowing non-financial Ethiopian firms to participate in mobile money activities, introducing Treasury-bill auctions with market pricing, and reducing forced lending to the government on the part of the commercial banks. The parliament approved the establishment of a capital market in June 2021, and activities are underway to set up a capital market regulatory body and the stock market.

Ethiopia possesses a significant potential for increased investment competitiveness. Investment competitiveness refers to the ability of countries to not only attract but also retain and integrate private investment into their respective economies. Enhancing investment competitiveness thus requires establishing a business environment in which both domestic and foreign companies can efficiently enter the market, expand operations, and develop more and better linkages with local, regional, and global economies. Investment competitiveness, while being a key consideration for FDI at large, it is particularly important for attracting efficiency-seeking FDI, as this type of investment will only flow into a host economy that can contribute to the firm gaining a competitive edge in international markets. Significant new space for FDI opened in previously closed sectors: logistics, capital goods leasing, maintenance, bonded input warehouse, printing, and packaging – effectively contributing to creating new markets and catalyzing existing industry competitiveness. Opening the capital goods leasing sector marked the country's first financial sector shift.

II. Constraints to private sector development

a) Overall business environment

The private sector in Ethiopia is nascent. Ethiopia's main private sector development constraints are the existence of burdensome regulations, insecure property rights, limited access to credit and access to land. Results of multiple global benchmarking tools show that Ethiopia's competitiveness is constrained by an overall cumbersome regulatory environment. Global data sets reveal areas where there are cross-cutting shortcomings and potential for further reform.

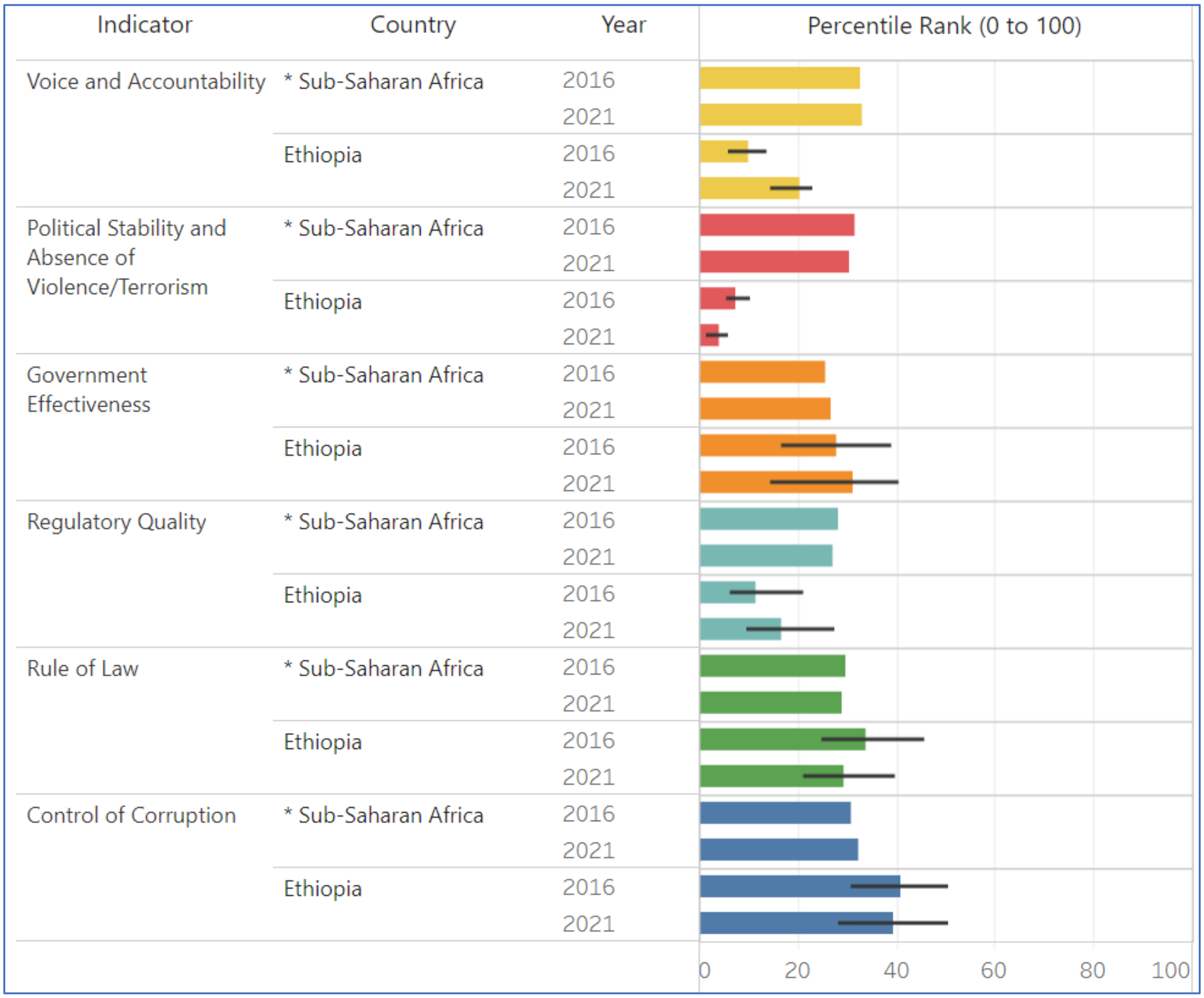
According to the World Governance Indicators (WBI), measuring the quality of the governance system from the perspective of the private sector and other non-government sources looking at indicators like Voice and Accountability, Government Effectiveness, Regulatory Quality, Rule of Law, Control of Corruption, and Political Stability, Ethiopia performs better than the Sub-Saharan regional average in the Government effectiveness, Rule of law and Control of corruption indicators. Notably, the sub-indicators of Political Stability and Absence of Violence/Terrorism and Rule of Law exhibit significant weaknesses and a deterioration in the period of 2016 to 2021 (Figure 19).[32]

[32] https://info.worldbank.org/governance/wgi/

The World Governance Indicators report on six broad dimensions of governance over two hundred countries and territories over the period 1996-2021:

Voice and Accountability captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood of political instability and/or politically motivated violence, including terrorism. Government Effectiveness captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies. Regulatory Quality captures perceptions of the ability of the government to

Figure 19: Ethiopia's performance in comparison with the regional averages in the World Governance Indicators



Source: Worldwide Governance Indicators, 2022.
Percentile Rank indicates rank of countries among all countries in the world. 0 corresponds to lowest rank and 100 corresponds to highest rank.

Ethiopia is classified by the Heritage Foundation Index of Economic Freedom as "Repressed," reflecting deficiencies in all areas measured by the index, including the rule of law and open markets.[33] Ethiopia's overall economic freedom score is 48.3, making its economy rank the 155th globally in the 2023 Index and 38th out of 47 countries in Sub-Saharan Africa region. Its score is 1.3 points lower than last year. Moreover, Ethiopia overall scores lower than the world average and the neighboring countries averages, Kenya (52.5) and Djibouti (56.1). These indicators are grouped into four pillars: Rule of Law, Government Size,

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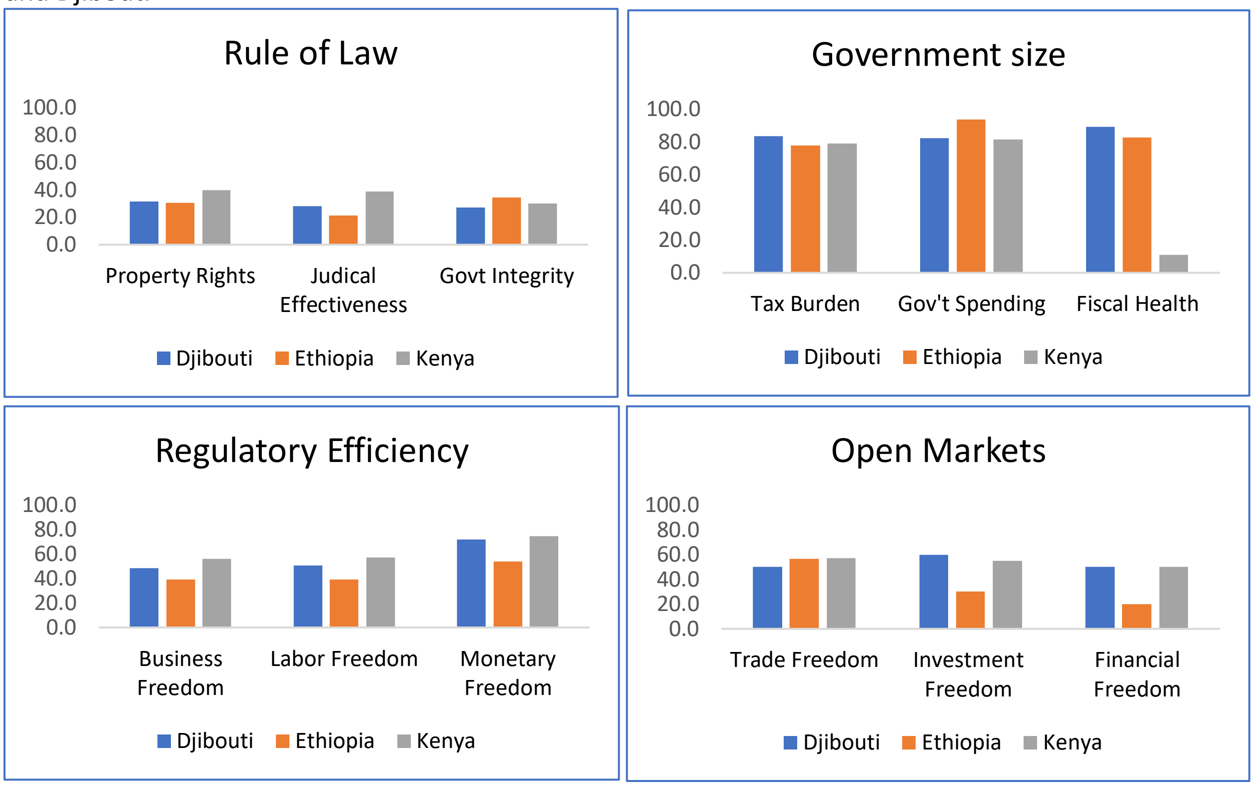
formulate and implement sound policies and regulations that permit and promote private sector development. Rule of Law index captures perceptions of the extent to which agents have confidence in and abode by rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

[33] https://www.heritage.org/index/pdf/2023/countries/2023_IndexofEconomicFreedom-Ethiopia.pdf

Regulatory Efficiency, and Open Markets. Specifically, Ethiopia's performance is notably weaker in the Rule of Law indicators (Property Rights, Judicial Effectiveness, and Government Integrity) and in the Investment Freedom and Financial Freedom sub-indicators of the Open Markets indicator (Figure 20).[34]

Figure 20: Ethiopia's Economic Freedom scores (1-100), in comparison with neighboring countries Kenya and Djibouti



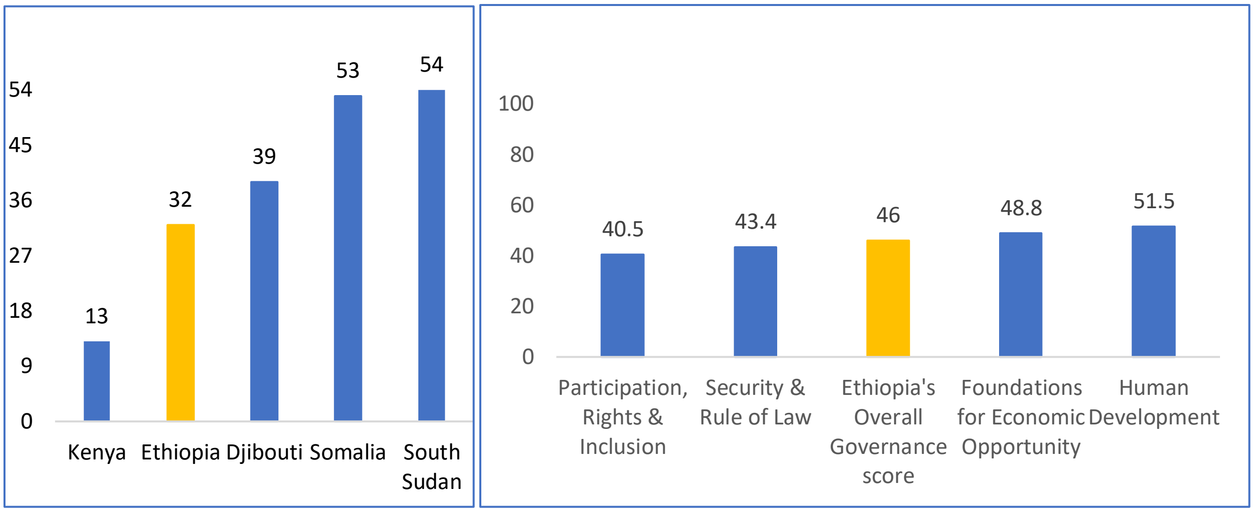
Source: Heritage Foundation Index of Economic Freedom 2023
Each twelve economic freedoms within these four categories (Rule of Law, Government size, Regulatory Efficiency and Open Markets) are graded on a scale of 0 to 100, where a higher score indicates greater economic freedom. The overall score is calculated by averaging the twelve economic freedoms, assigning equal weight to each.

In addition, according to the 2022 Ibrahim Index of African Governance (IIAG),[35] Ethiopia has seen an overall improvement over the last decade. Ethiopia ranks 32nd out of 54 measured countries (Figure 21). Among the four main areas covered by the index, Ethiopia ranks the lowest in the Participation, rights & inclusion subindex with 40.5/100. Notably, some of the lowest ranked areas among the four indicators are: i) equal access to public services; ii) digital rights; iii) equality before the law; iv) internet and computers, and v) access to banking services.

[34] The Index evaluates economic freedom using twelve quantitative and qualitative factors, categorized into the four aforementioned pillars. Each of the twelve economic freedom is graded on a scale of 0 to 100. The overall score is calculated by averaging these twelve economic freedoms, assigning equal weight to each.

[35] The Ibrahim Index of African Governance (IIAG) measures African governance performance in 54 African countries. The main areas covered by the Index are: i) security & rule of law; ii) participation, rights & inclusion; iii) foundations for economic opportunity; and iv) human development.

Figure 21: Ethiopia's Performance in the Ibrahim Index of African Governance (IIAG) report 2022 and comparator countries



Source: The IIAG Index

The IIAG scores quantify a country's performance for each governance measure each data year, expressed out of 100.0 (with 100.0 being always the best score). Rounded to one decimal point, scores are relative to each country's performance in relation to the other 54 African countries.

b) Business registration process

In 2021, the Government of Ethiopia made starting a business easier by launching an online platform for business registration licensing to enable individuals to register their companies and acquire licenses online.[36] Also, the Government amended the licensing law with the aim to eliminate the requirement to publicize business registrations in local newspapers, to allow business registration without a physical address and to streamline the business registration procedure.

However, Ethiopia's barriers to entry are still complex and costly. Some of the main entry barriers to starting a business are: i) an excessive use of business licenses; ii) unnecessary certification requirements; iii) high entry costs; iv) poor inter-agency coordination; and v) burdensome regulations.

c) Property rights

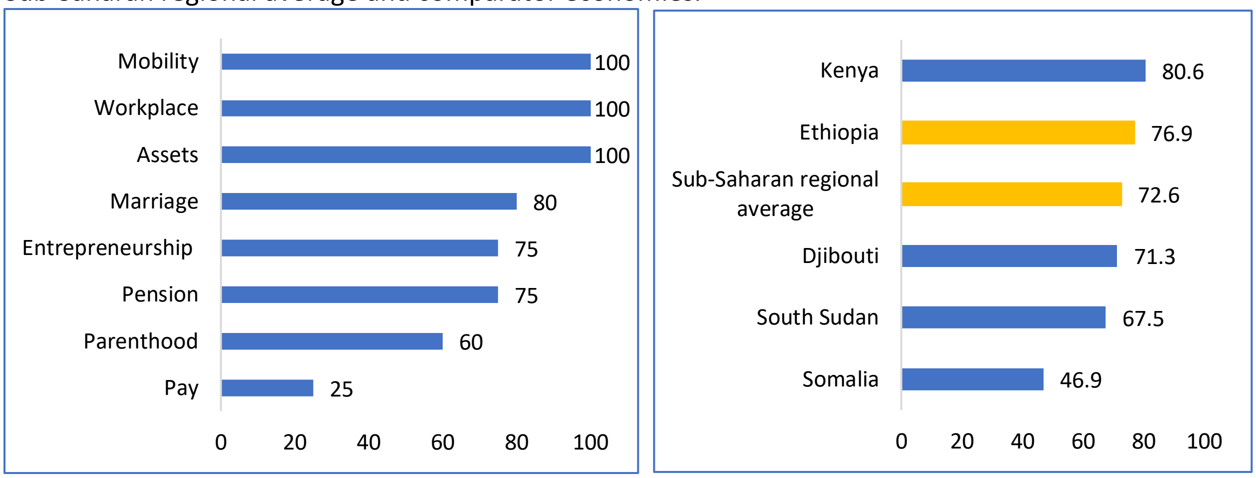
Adequate property rights are essential for private sector development as they provide a legal framework that allows individuals and businesses to own, use and transfer assets with confidence and security. In Ethiopia, inadequate lease terms, and an unclear regulatory framework around land allocation and leasing are major barriers to firm entry. Also, the high land-lease costs and lengthy times for land acquisition are some of the major reasons behind the failure to acquire leased plots and exclude many MSMEs from access to land. Additional concerns related to the quality of the land administration system are: i) the Addis Ababa City Administration Land Registration and Information Agency does not have an electronic database for checking for encumbrances (*i.e.,* mortgages) available to the public; ii) the land titles and the cadastral plans are still not in a digital format; and, iii) there is no an electronic database at the Cadaster Department for recording boundaries, checking plans and providing cadastral information.

[36] e-trade.gov.et

d) Women's economic participation

Ethiopia scores 76.9 out of 100 in the Women, Business, and the Law indicator. The overall score for Ethiopia is higher than Sub-Saharan regional of 72.6 points.[37] When it comes to constraints on freedom of movement, laws affecting women's decisions to work, and gender differences in property and inheritance, Ethiopia gets a perfect score. However, when it comes to laws affecting women's pay, constraints related to marriage, laws affecting women's work after having children, constraints on women starting and running a business, and laws affecting the size of a woman's pension, Ethiopia could consider reforms to improve legal equality for women. For example, Ethiopia may wish to consider mandating equal remuneration for work of equal value, allowing women to work in jobs deemed dangerous in the same way as men, and allowing women to work in an industrial job in the same way as men (Figure 22).

Figure 22. Ethiopia's Performance in Women, Business, and the Law report 2023 and comparison with Sub-Saharan regional average and comparator economies.



Source: Women, Business, and the Law 2023
Indicator-level scores are obtained by calculating the unweighted average of the questions within that indicator and scaling the result to 100. Overall scores are then calculated by taking the average of each indicator, with 100 representing the highest possible score.

e) Access to finance

According to a recent World Bank Group private sector diagnostic,[38] just 16percent of the private sector uses finance from banks for its activities. Private sector credit amounts to only 9percent of GDP, in contrast to the 20percent for Sub-Saharan Africa.[39] On the positive aspect, the Government of Ethiopia is planning to launch its first ever securities exchange in 2024. Low access to credit is explained by several reasons, such as: i) commercial banks often require 100percent collateral, making access to credit one of the greatest hindrances to growth in the country, especially for MSMEs; ii) underdeveloped financial infrastructure; iii) inadequate supply of a range of suitable financial products; iv) inadequate financial consumer protection; v) foreign participation in the financial sector is not permitted; and v) low levels of

[37] https://wbl.worldbank.org/content/dam/documents/wbl/2023/snapshots/Ethiopia.pdf
[38] World Bank Group. 2019. Country Private Sector Diagnostic: Creating Markets in Ethiopia.
[39] Ibid.

financial capability and awareness. In addition, nearly half of female managed firms identify access to finance as a major constraint compared with 19percent of male-managed firms.[40]

III. Constraints to foreign direct investment

a) Market access

Investment Proclamation number 1180/2020 and its implementing regulation number 474/2020 are Ethiopia's main legal regime related to FDI. These laws instituted the opening of new economic sectors to foreign investment, enumerated the requirements for FDI registration, and outlined the incentives that are available to investors. The Investment Proclamation allows foreign investors to invest in any investment area except those that are clearly reserved for domestic investors. A few specified investment areas are possible for foreign investors only as part of a joint venture with domestic investors or the government.

In recent years, the Government of Ethiopia passed a new Investment Law, acceded to the New York Convention on the Recognition and Enforcement of Arbitral Awards, amended its 60-year-old Commercial Code, and digitized the commercial registration and business licensing processes. Further, the new Law expanded the mandate of the Ethiopian Investment Commission (EIC) by allowing it to provide approvals to foreign investors proposing to buy existing enterprises. In this way, investment policy making shifted from being a technical issue to a core part of the government agenda. The EIC now also delivers "one stop shop" services by consolidating investor services provided by other ministries and agencies. Still, the EIC delegates licensing of investments in some areas: air transport services (the Ethiopian Civil Aviation Authority), energy generation and transmission (the Ethiopian Energy Authority), and telecommunication services (the Ethiopian Communications Authority).

Ethiopia has a regulatory framework governing market access for foreign entities seeking to establish a presence in the domestic market. The provisions pertain to ownership thresholds, establishment requirements, equity limitations, and other conditions for engaging in commercial activities within the jurisdiction. As per the Investment Proclamation No1180/2020, a set of provisions have been established to regulate foreign entities' entry and operations in the domestic market:

- Foreign ownership in new locally incorporated companies is limited to a maximum of 49 percent of the total equity. Foreign entities entering the domestic market are required to establish themselves as joint ventures, with a key condition that foreign ownership within these joint ventures shall not exceed 49percent of the total equity. Additionally, foreign entities are permitted to acquire existing domestic entities, subject to a maximum aggregate foreign ownership of 49percent of the total equity.
- Foreign entities are prohibited from acquiring a controlling stake in existing domestic entities and are not allowed to operate as sole proprietorships within the domestic market. Equity ownership by non-locally licensed professionals or firms is also subject to specific restrictions.
- Commercial associations between fully integrated practitioners and other professionals, as well as between not fully integrated practitioners and fully integrated professionals are restricted.

[40] Ibid.

- Shareholders within a foreign entity must hold local licenses. Foreign entities are mandated to obtain specific licenses or permits for market entry, potentially with distinct treatment compared to national services/suppliers.
- Minimum capital requirements for foreign entities differ from those applied to national services/suppliers (minimum capital of USD 200,000.00 for a single investment project, minimum capital requirement of USD 150,000.00 joint-investment project and USD 50,000.00 if the investment is made jointly with a domestic investor.
- Majority of the board of directors for foreign entities should be nationals of the jurisdiction. Moreover, the composition of the board of directors should comprise a majority of locally licensed professionals. Foreign entities are obligated to appoint a locally licensed professional as their manager.

b) Investment protection

The Investment Proclamation No1180/2020 is the primary legislation regulating investment in the country. Besides establishing the investment authority, its mandate, structure and functioning, the Proclamation establishes the rules for the access of foreign firms to the country, and process of license application. The Law also provides for the core protection investment guarantees as follows:

Table 4: Investor protection guarantees in Ethiopia legal framework

Investment Protection Guarantee	**How is it regulated in the Investment Proclamation?**
Expropriation	The Government may expropriate any investment undertaken under this Proclamation for public interest, in conformity with requirements of the law, and on a non-discriminatory basis. In case of expropriation of an investment, adequate compensation corresponding to the prevailing market value shall be paid in advance. The 2020 Investment Proclamation stipulates that no investment by a domestic or foreign investor or enterprise can be expropriated or nationalized, wholly or partially, except when required by public interest in compliance with the law and provided adequate compensatory payment.
Transfer of profits	Any foreign investor shall have the right, in respect of his investment, to remit their payments and earnings out of Ethiopia in convertible foreign currency at the prevailing exchange rate on the date of transfer. A domestic investor investing jointly with a foreign investor shall not be allowed to remit funds earned from the investment out of Ethiopia. Expats employed for investments carried out pursuant to this Proclamation whose permanent residence is outside of Ethiopia may remit, in accordance with applicable law, salaries accruing from their employment in convertible foreign currency at the prevailing exchange rate on the date of transfer.
Non-discrimination	The investment law allows foreign investors to invest in any investment area except those that are clearly reserved for domestic investors. A few specified investment areas are possible for foreign investors only as part of a joint venture with domestic investors or the government.

Dispute Settlement	Since 1965, Ethiopia has been a non-signatory member state to the International Centre for Settlement of Investment Disputes (ICSID) Convention. In November 2020, Ethiopia acceded to the UN Convention on The Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the New York Convention). The Constitution and the Investment Law both guarantee the right of any investor to lodge complaints related to their investment with the appropriate investment agency. If the investor has a grievance against a legal or regulatory decision, they can appeal to the investment board or to the respective regional agency. According to the new investment law, the investment dispute between the state and foreign investor can be resolved either through the courts or via arbitration, with the precondition of government agreement for resolution via the latter. Additionally, a dispute that arises between a foreign investor and the state may be settled based on the relevant bilateral investment treaty. In practice, investment dispute resolution can take years due to inadequate capacity in the court system.

Ethiopia has mechanisms in place to address grievances and disputes between investors and the government. The Federal Ethics and Anticorruption Proclamation combats corruption among government officials, and investors have the avenue to lodge complaints with relevant investment agencies. Disputes can be resolved through courts or arbitration, with government agreement for arbitration resolution. Ethiopia's accession to the New York Convention since March 2020 facilitates foreign direct investment by streamlining commercial arbitration agreements and the recognition of foreign arbitral awards. Additionally, a new Arbitration and Conciliation Proclamation aims to establish Ethiopia as an arbitration hub. However, companies operating in Ethiopia note that courts lack expertise and resources, leading to delays in commercial dispute resolution. To address this, the federal Supreme Court issued a Mediation Directive to expedite dispute resolution and reduce litigation costs.

c) Investment incentives

Ethiopia legal regime on investment offers a wide range of incentives. Investment Regulation 474/2020 retains the investment incentive provisions as outlined under the 2012 law. Accordingly, investors in manufacturing, agro-processing, and selected agricultural products are entitled to income tax exemptions ranging from two to five years, depending on the location of the investment. Additionally, investors in manufacturing; agriculture; ICT; electricity generation, transmission, and distribution; and producers who produce for export or supply to an exporter, or who export at least 60 percent of the products or services, are entitled to an additional two years of income tax exemption. Investors in renewable energy generation are eligible for 4-5 years of income tax exemptions. There are no special incentives for investments made by members of under-represented social groups such as women.

Establishment of industrial parks as duty-free zones is also considered as an incentive by the Government of Ethiopia. Industrial Park Proclamation 886/2015 mandates that the Ethiopian Industrial Parks Corporation develop and administer industrial parks under the auspices of government ownership. The law designates industrial parks as duty-free zones, and domestic as well as foreign operators in the parks are exempt from income tax for up to 10 years. Investors operating in parks are also exempt from duties and other taxes on the import of capital goods, construction materials, and raw materials for production of export commodities and vehicles. An investor who operates in a designated Industrial

Development Zone in or near Addis Ababa is entitled to two years of income tax exemptions, and four more years of income tax exemption if the investment is made in an industrial park in other areas, provided 80 percent or more of production is for export or constitutes input for an exporter. Industrial Parks can be developed by either government or private developers. In practice, the majority have been developed by the Government of Ethiopia with Chinese financing.

d) Linkages with the local economy

Ethiopian legal regime on investment does not provide for mandatory performance requirements. Foreign investors are required to comply with a $100,000 minimum capital investment requirement for architectural or engineering projects and a $200,000 requirement to projects in other sectors. For most joint investments with a domestic partner, the minimum capital investment requirement is $150,000. The minimum capital requirement is waived if the foreign investor reinvests profits or dividends generated from an existing enterprise in any investment area open to foreign investors; and if a foreign investor purchases a portion or the entirety of an existing enterprise owned by another foreign investor. There are no forced localization or data storage requirements for private investors. Local content in terms of hiring, products, and services is strongly encouraged but not required.

e) International investment agreements

Ethiopia has numerous international investment agreements (IIAs). Ethiopia is a member of the Multilateral Investment Guarantee Agency (MIGA), and it has bilateral investment and protection agreements with Algeria, Austria, China, Denmark, Egypt, Germany, Finland, France, Iran, Israel, Italy, Kuwait, Libya, Malaysia, the Netherlands, Sudan, Sweden, Switzerland, Tunisia, Turkey, and Yemen. Other BITs have been signed but are not in force with Belgium/Luxemburg, Brazil, Equatorial Guinea, India, Morocco, Nigeria, South Africa, Spain, the United Kingdom, and the United Arab Emirates. Ethiopia signed a protection of investment and property acquisition agreement with Djibouti. A Treaty of Amity and Economic Relations, which entered into force in 1953, governs economic and consular relations with the United States. There is no double taxation treaty between the United States and Ethiopia. Ethiopia has taxation treaties with fourteen countries, including Italy, Kuwait, Romania, Russia, Tunisia, Yemen, Israel, South Africa, Sudan, and the United Kingdom.

Table 5: Summary of Provisions in Ethiopia’s BITs (currently in force)

Provision	Analysis
Preamble	Development of economic cooperation between the parties. Recognizing that the encouragement and reciprocal protection of investment will be conducive to the stimulation of business initiatives and the increase in prosperity in both countries.
Definition of investment	Broad asset-based definition which starts with the phrase “every kind of asset”.
Definition of investor	Criteria of nationality or citizen or legal person constituted or incorporated under the laws of the other contracting party.
Admission & establishment	Admission clause model instead of the right to establishment clause.
Standard of treatment	Fair and Equitable Treatment, National Treatment, Most Favored National Treatment and Full Protection and Security to investments.
Expropriation	Allows expropriation under condition that it meets the 4 key criteria: public purpose; non –discrimination; prompt, adequate and effective compensation;

	and due process. Compensation based on fair market value, without delay and with interest.
Transfer of funds	Requirement for transfer of returns to be made in accordance with the laws, regulations and procedures prescribed by host state and MFN treatment.
Investor-State dispute settlement	International arbitration for investor-state arbitration if disputes cannot be settled through consultant and negotiations. Any arbitral award is final and binding upon the parties to the dispute and that each contracting party ensures the recognition and enforcement of the award in accordance with domestic laws.

In April 2020, Ethiopia became a member of the African Continental Free Trade Area (AfCFTA). The AfCFTA aims to create a single continental market for goods and services, with free movement of businesspersons and investments. Ethiopia is also a member of the Common Market for Eastern and Southern Africa (COMESA), a regional economic block, which has 21 member countries and has introduced a 10 percent tariff reduction on goods imported from member states. Ethiopia has not yet joined the COMESA free trade area, however. Ethiopia resumed its WTO accession process in 2018, which it originally began in 2003, but which later stagnated. Ethiopian standards have a national scope and applicability and some of them, particularly those related to human health and environmental protection, are mandatory. The Ethiopian Standards Agency is the national standards body of Ethiopia.

The Protocol on Investment of the AfCFTA Agreement has four interrelated pillars – investment promotion and facilitation, investment protection, investors' obligations, and other State commitments. The protocol embodies a quintessentially African response to global investment issues, with the first three pillars, along with efforts to reformulate investment protection, harking back to ground-braking regional treaties and some bilateral treaties in Africa. All four pillars entail specific but interrelated implications for the policy options of each country.

Kenya

I. Country context[41]

To unlock sustainable and inclusive growth, Kenya must address the key binding constraints of low investment. There has been a weak contribution of capital stock to GDP growth. Private sector investment, at around 15 percent of GDP (in 2000-2011 annual average) is below that of competitors. FDI at one percent of GDP in recent years is far below what could be achieved (*e.g.,* Tanzania and Uganda have attracted FDI of about five percent of GDP in 2001-2011 annual average).

Kenya has not been able to attract significant foreign investment in production capacities. FDI in high-productivity sectors can stimulate productivity enhancements in the economy, as technologies and knowledge can spill over to domestic firms. Productivity enhancements can come by attracting foreign firms to produce high-value goods and services in Kenya. FDI is needed to enhance manufacturing industries' ability to contribute to the economy and support technology upgrading. To improve base industries and support the increased complexity of their products, it is important to attract more complex anchor investors. Although some manufacturing sectors have received FDI, including beverages, chemicals, and electronic components, overall investment levels remain negligible relative to the market size and Kenya's strategic geographic location as hub and gateway to the wider region. Although it is widely believed to be possible for FDI performance to improve in the near term, the government needs to make a concerted effort to attract manufacturing FDI, especially in the strategic sectors.

Kenya's performance in attracting a relatively modest inflow of FDI relative to the size of its economy suggests a significant investment competitiveness challenge in the country. Investment competitiveness refers to the ability of countries to not only attract but also retain and integrate private investment into their respective economies. Enhancing investment competitiveness thus requires establishing a business environment in which both domestic and foreign companies can efficiently enter the market, expand operations, and develop more and better linkages with local, regional, and global economies. Investment competitiveness, while being a key consideration for FDI at large, it is particularly important for attracting efficiency-seeking FDI, as this type of investment will only flow into a host economy that can contribute to the firm gaining a competitive edge in international markets.

Reducing trade and investment restrictions, including through implementing Kenya's AfCFTA commitments, can bring large benefits. Kenya is playing a key role in the AfCFTA and stands to generate large gains from reducing tariffs and, especially, from reducing nontariff barriers and adopting trade facilitation measures, with many of the gains coming from the services sector. World Bank simulations suggest that the AfCFTA can increase exports by 40 percent, FDI by 92 percent, the number of formal jobs by 2.6 percent and real GDP by 4.9 percent (by 2035). Realizing these gains will depend on implementation of Kenya's ambitious services trade commitments under the AfCFTA, including through domestic regulatory reform to reduce the currently significant degree of restrictiveness.

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[41] African Development Bank Economic outlook, 2022. World Bank Group. 2023. Africa's Pulse, No. 27, April 2023: Leveraging Resource Wealth During the Low Carbon Transition.

II. Constraints to private sector development

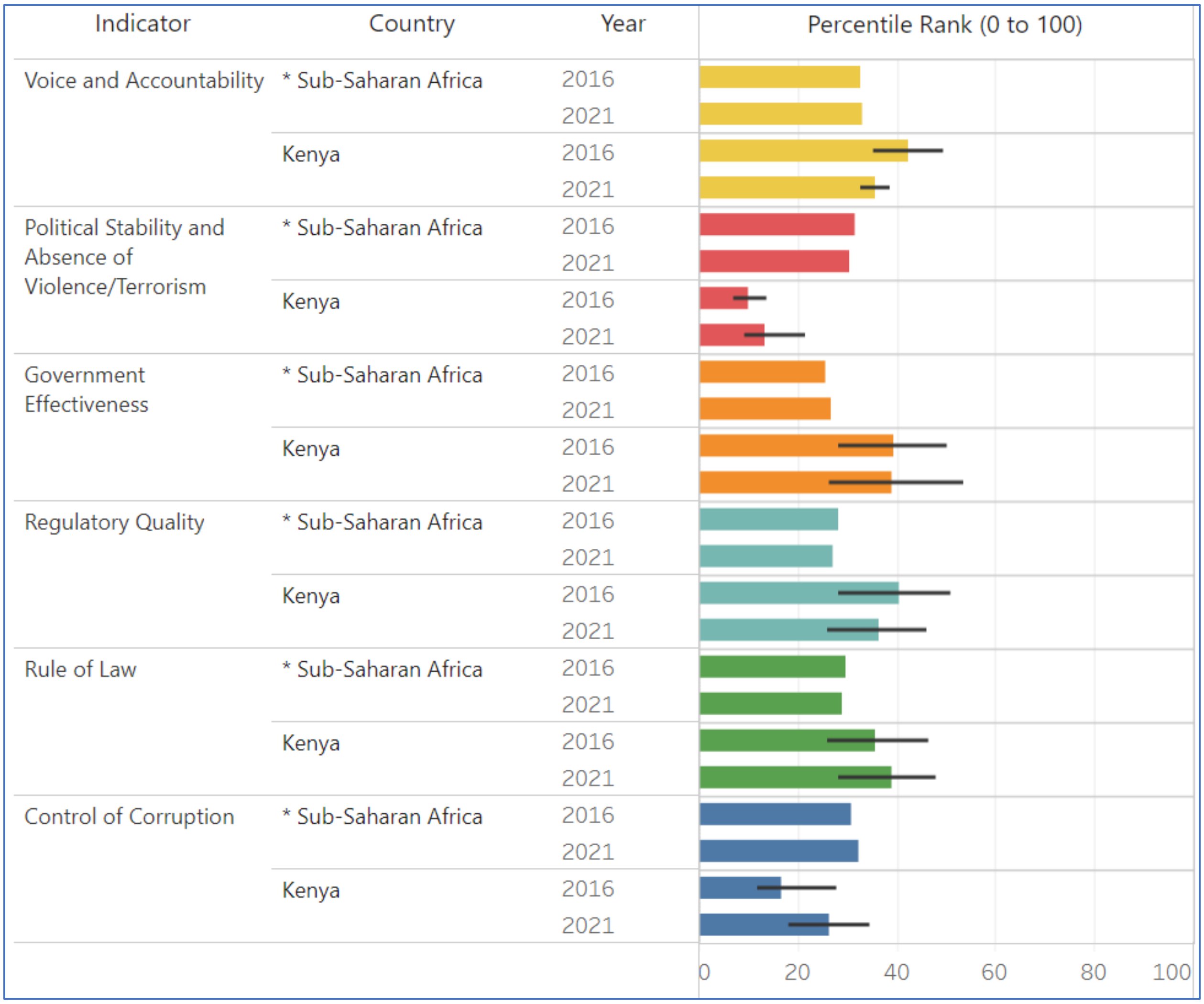
a) Overall business environment

The overall business environment in an economy depends on many factors, ranging from market size, macroeconomic conditions, and business regulations. Several international benchmarks and surveys identify key constraints to a country's competitiveness and private sector development. The main private sector constraints identified by different indicator sets in Kenya are access to finance, corruption, business entry, property rights, and equal access to public services for women.

According to the World Governance Indicators (WBI), measuring the quality of the governance system from the perspective of the private sector and other non-government sources looking at indicators like Voice and Accountability, Government Effectiveness, Regulatory Quality, Rule of Law, Control of Corruption, and Political Stability, Kenya performs better than the Sub-Saharan regional average in the majority of indicators, except for Political Stability and Absence of Violence/Terrorism and Control of corruption. However, both indicators have also exhibited an improvement in the period of 2016 and 2021 (Figure 23).[42]

[42] https://info.worldbank.org/governance/wgi/
The World Governance Indicators report on six broad dimensions of governance over two hundred countries and territories over the period 1996-2021:
Voice and Accountability captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood of political instability and/or politically motivated violence, including terrorism. Government Effectiveness captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies. Regulatory Quality captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. Rule of Law index captures perceptions of the extent to which agents have confidence in and abode by rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

Figure 23: Kenya's performance in comparison with the regional averages in the World Governance Indicators

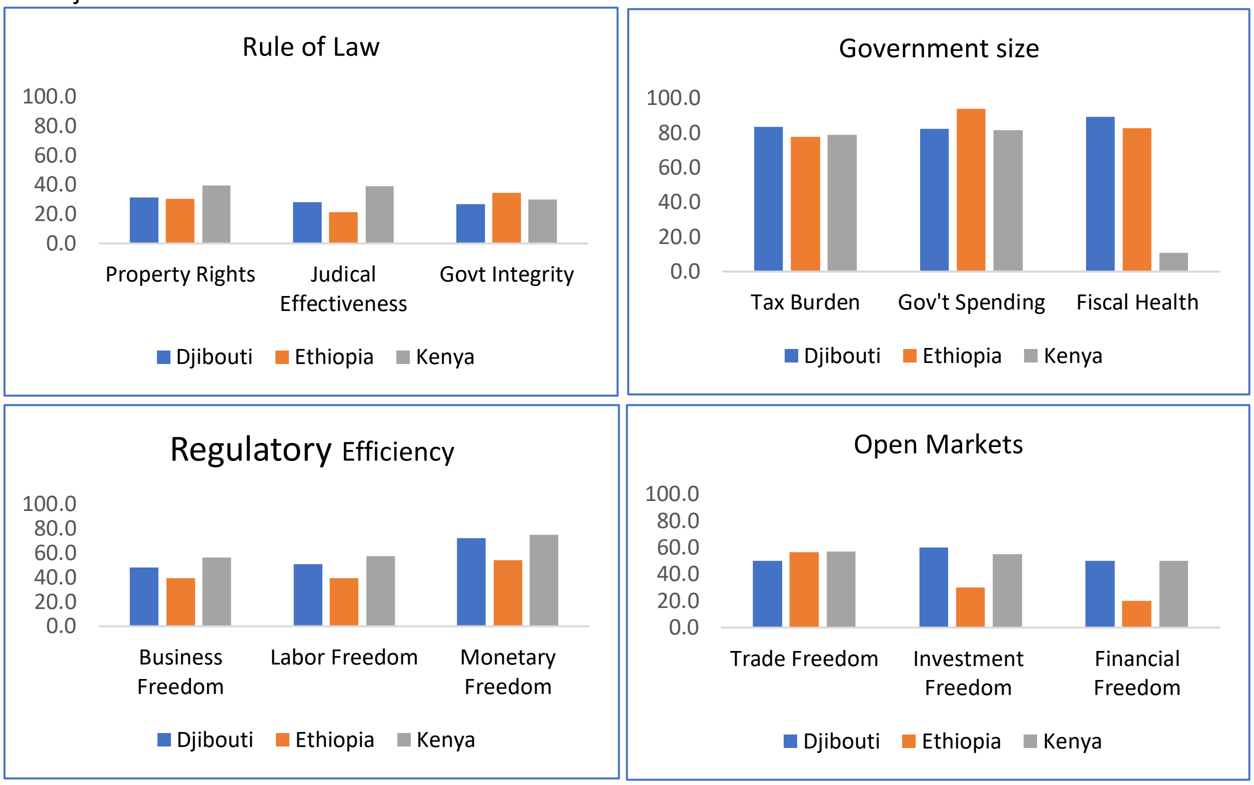


Source: Worldwide Governance Indicators, 2022.
Percentile Rank indicates rank of countries among all countries in the world. 0 corresponds to lowest rank and 100 corresponds to highest rank.

Kenya is classified by the Heritage Foundation Index of Economic Freedom as "Mostly Unfree," reflecting deficiencies in all areas measured by the index, especially in the Rule of law indicator set.[43] Kenya's overall economic freedom score is 52.5, making its economy rank 135th globally in the 2023 Index and 29th out of 47 countries in Sub-Saharan Africa region. Moreover, its overall score is below the world and regional averages. These indicators are grouped into four pillars: Rule of Law, Government Size, Regulatory Efficiency, and Open Markets. Kenya's performance is notably weaker in the Rule of Law indicators (Property Rights, Judicial Effectiveness, and Government Integrity) and in the Fiscal Health sub-indicators of the Government size indicator set (Figure 24).[44]

[43] https://www.heritage.org/index/pdf/2023/countries/2023_IndexofEconomicFreedom-Kenya.pdf
[44] The Index evaluates economic freedom using twelve quantitative and qualitative factors, categorized into the four aforementioned pillars. Each of the twelve economic freedom is graded on a scale of 0 to 100. The overall score is calculated by averaging these twelve economic freedoms, assigning equal weight to each.

Figure 24: Kenya's Economic Freedom scores (1-100), in comparison with neighboring countries Ethiopia and Djibouti

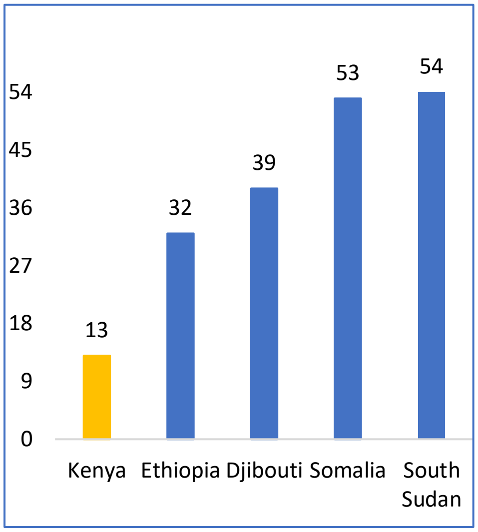


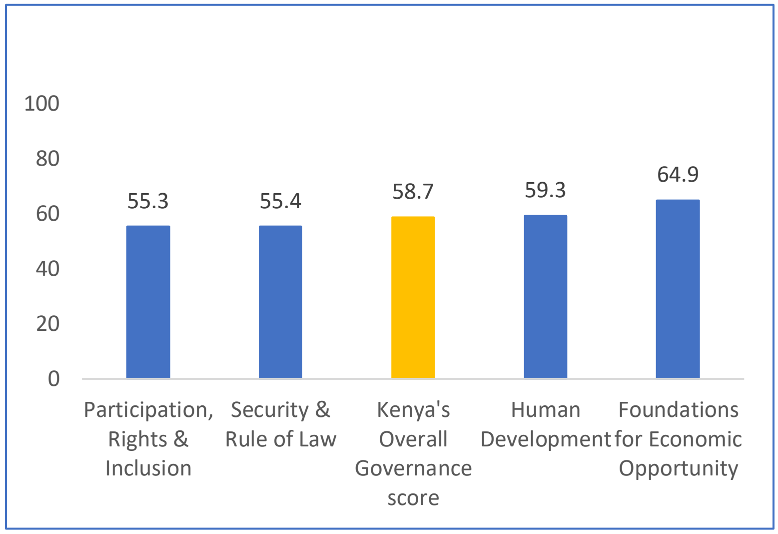
Source: Heritage Foundation Index of Economic Freedom 2023
Each twelve economic freedoms within these four categories (Rule of Law, Government size, Regulatory Efficiency and Open Markets) are graded on a scale of 0 to 100, where a higher score indicates greater economic freedom. The overall score is calculated by averaging the twelve economic freedoms, assigning equal weight to each.

In addition, according to the 2022 Ibrahim Index of African Governance (IIAG)[45] Kenya has seen an overall improvement over the last decade. Kenya ranks 13 out of 54 measured countries (Figure 25). Notably, Kenya's overall scores in the four main areas covered by the index are above the regional averages. However, the Security & Rule of Law indicator set has seen a slightly deterioration in the las ten years. Some of the lowest ranked areas among the four indicators are: i) equal access to public services for women; ii) equality before the law; iii) public procurement processes; and iv) absence of corruption in the public sector.

[45] The Ibrahim Index of African Governance (IIAG) measures African governance performance in 54 African countries. The main areas covered by the Index are: i) security & rule of law; ii) participation, rights & inclusion; iii) foundations for economic opportunity; and iv) human development.

Figure 25. Kenya's Performance in the Ibrahim Index of African Governance (IIAG) report 2022 and comparator countries.



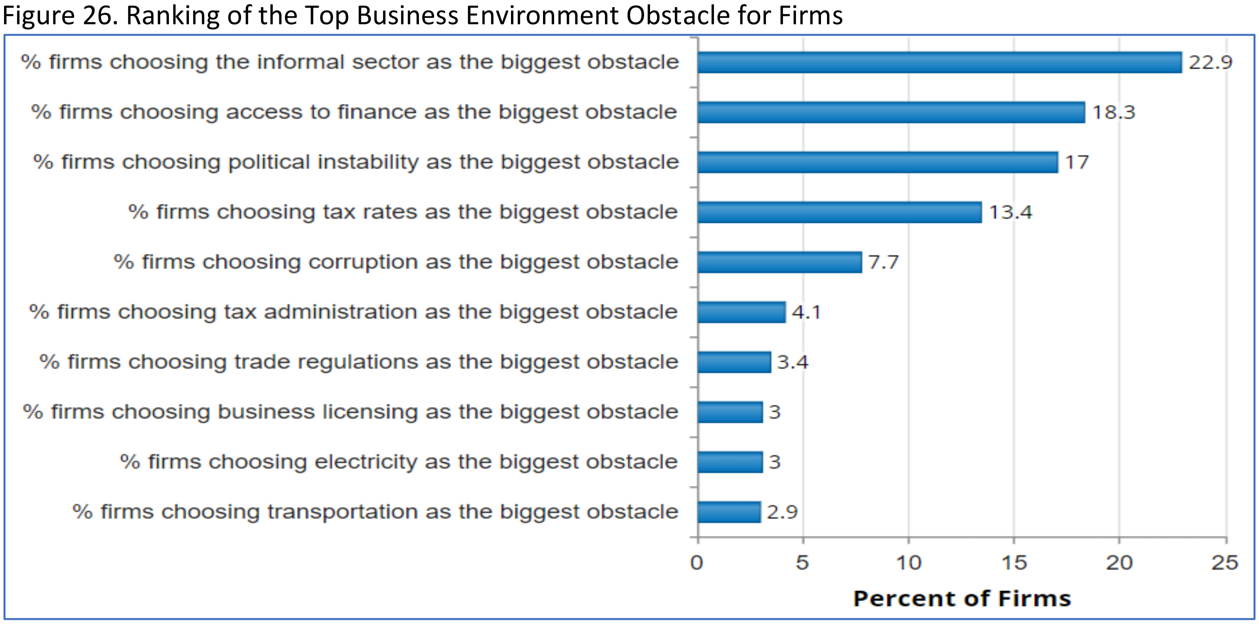


Source: The IIAG Index

The IIAG scores quantify a country's performance for each governance measure each data year, expressed out of 100.0 (with 100.0 being always the best score). Rounded to one decimal point, scores are relative to each country's performance in relation to the other 54 African countries.

Data from private sector surveys (World Bank, Enterprise Surveys (ES) 2018) identify the informal sector, access to finance and political instability as a major constraint to doing business. Specifically, ES data show that 22.9 percent of firms identified the informal sector as the biggest obstacle to doing business in the country, followed by access to finance (18.3 percent) and political instability (17 percent) (Figure 26).

Figure 26. Ranking of the Top Business Environment Obstacle for Firms



Source: World Bank, Enterprises Surveys 2018

b) Business entry

In 2020, the Government of Kenya enacted the Business law (Amendments) Act with the aim to improve the ease of doing business in the country by digitizing transactions, reducing formalities and documents required to complete transactions and reducing the costs of starting a business in Kenya. Some of the changes introduced by the Act are: i) the act amended the Law of Contract Act to provide for use of advanced electronic signatures; ii) it allows the registry of documents to be kept in electronic form; iii) it allows documents to be stamped by marks embossed or impressed by electronic means; iv) companies no longer require a company seal; and, v) it amended the Occupational Safety and Health Act with the purpose of no longer required companies with less than 100 employees to register and obtain a certificate of registration from the National Council for Occupational Safety and Health for the first twelve months.[46]

Despite all these legal changes, there are still some operational and practical concerns to the ease of starting a business: i) the lack of implementation capacity; ii) the lack of effective coordination among the various agencies in charge of business regulations; iii) size of the informal sector;[47] and iv) fully digitization of all companies records, among others.

c) Access to finance

Access to finance is a major constraint for MSMEs in the country. Despite there are no legal restrictions on domestic and foreign investors seeking credit in the domestic financial market, the existence of multiples banks, microfinance institutions and credit bureaus, MSMEs in the formal and informal sector mostly rely on their own resources and rarely have received funding from banks or microfinance institutions.[48] In addition, women own 61 percent of unlicensed MSMEs and 31 percent of licensed MSMEs in Kenya. However, female-run enterprises achieve much lower profits than male-run enterprises and have less access to credit.[49] The Government of Kenya ought to formulate initiatives aimed at enhancing credit accessibility for MSMEs and business led by women.

d) Digitalization of land records

Recently, the Government of Kenya introduced various amendments to several acts to improve the ease of doing business.[50] Among those, the Survey Act was amended to enable the use of electronic signatures, electronic processing of the seal of Survey of Kenya, electronic processing of documents including plans, surveyors to submit documents to the Director of Survey electronically, and electronic authentication of documents by the Director of Survey.[51] The Land Registration Act was also amended to provide for use of electronic signatures, allow electronic processing of instruments relating to land. However, the implementation of these reforms may take a while because land registries in the country are yet to create electronic records and become fully digitized.

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[46] http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2020/BusinessLawsAmendmentAct2020.PDF

[47] Enterprise survey data shows that 15% of firms identify the informal sector as a major constraint.

[48] World Bank Group. 2020. Kenya Investment Climate Reform Action Plan.

[49] KNBS (2016): MSME Survey and Enterprise Surveys 2018, which show that small firms identified access to finance as a major constraint.

[50] Business Laws (Amendment) Act of 2020.

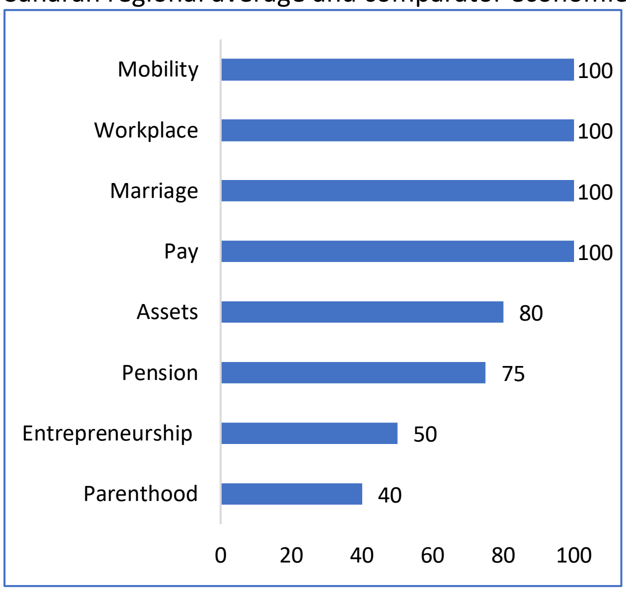
[51] Ibid.

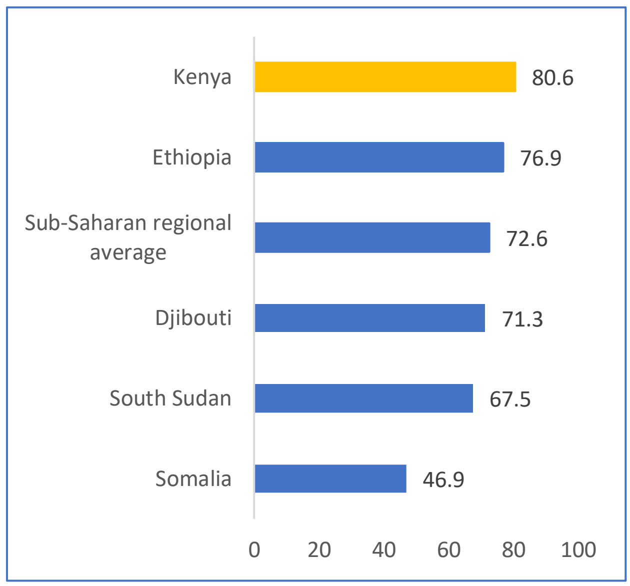
f) Women's economic participation

An economy is more dynamic, strong, and resilient when all citizens—women and men alike—can contribute equally. When laws restrict women's voice and agency, fail to protect them from violence, or discriminate them at the workplace and in retirement, women are less likely to participate fully in the economy and to contribute with their talent, knowledge, and skills. Economies that limit women's contributions cannot reach their full potential.[52]

Kenya scores 80.6 out of 100. The overall score for Kenya is higher than Sub-Saharan regional of 72.6 points.[53] When it comes to constraints on freedom of movement, laws affecting women's decisions to work, laws affecting women's pay, and constraints related to marriage, Kenya gets a perfect score. However, when it comes to laws affecting women's work after having children, constraints on women starting and running a business, gender differences in property and inheritance, and laws affecting the size of a woman's pension, Kenya could consider reforms to improve legal equality for women. For example, Kenya may wish to consider making paid leave of at least 14 weeks available to mothers, making the government administer 100 percent of maternity leave benefits, and making paid parental leave available. (Figure 5).

Figure 27. Kenya's Performance in Women, Business, and the Law report 2023 and comparison with Sub-Saharan regional average and comparator economies.





Source: Women, Business, and the Law 2023

Indicator-level scores are obtained by calculating the unweighted average of the questions within that indicator and scaling the result to 100. Overall scores are then calculated by taking the average of each indicator, with 100 representing the highest possible score.

[52] https://openknowledge.worldbank.org/server/api/core/bitstreams/e3f5880b-2fa2-4af3-8ef4-3c9469d60baf/content

[53] https://wbl.worldbank.org/content/dam/documents/wbl/2023/snapshots/Kenya.pdf

III. Constraints to foreign direct investment

a) Market access

In Kenya, a framework of laws and policies promote, regulate, and streamline investment activities in the country. The Investment Promotion Act of 2004 (Promotion Act) and the Investment Protection Act 1964, revised 2016 (Protection Act) are the key legislations responsible to foster a conducive environment for local and foreign investors. In alignment with this, the National Industrialization Policy 2011-2015 focuses on industrial growth and innovation. The Companies Act of 2015 provides guidance on the incorporation and operation of businesses. The Economic Processing Zones Act (2015) and the Special Economic Zones Act (2015) have been enacted to create zones that facilitate export-oriented investments. The Ministry of Industrialization and Enterprise Development's draft Strategic Plan (2013-2017) further emphasizes the government's commitment to boosting industrial and enterprise growth.

Foreign investors in Kenya are subject to several market access restrictions. Across all these restrictions, a recurrent theme is the safeguarding of local interests and the national economy, ensuring local control, and regulating foreign influence and competition. While some restrictions are undoubtedly for maintaining the strategic interests and security, others may be seen as protective measures against foreign investment. These barriers to investment may have negative ramifications, contingent upon the specific objectives and outcomes of each regulatory decision. They key sectors impacted by the restrictions include business services, communication, construction, distribution, financial services, health services, tourism, and transport services. Overall, restrictions focus on:

- Limiting or prohibiting the establishment of foreign entities.
- Capping the percentage of foreign ownership in domestic entities.
- Requiring a certain percentage or number of local professionals or nationals in governing boards.
- Instituting monopolies or granting exclusive rights to domestic entities in certain sectors.
- Imposing additional operational obligations on foreign entities.

The Promotion Act uses a mandatory investment threshold as a pre-condition for foreign investors to invest in the country. The Act stipulates that all foreign investors must invest at least USD 100,000 to receive an investment certificate and to access other benefits in the country. The stipulated minimum investment threshold applies irrespective of the sector. The reasons as stipulated for the use of minimum investment mandate in the law is threefold: 1) to optimize the positive impacts of FDI while curbing its possible downsides; 2) to prioritize the growth of the national private sector and safeguard smaller local businesses in specific vulnerable sectors; and 3) to guarantee that the provision of work permits for foreign nationals, offered as a perk to Investment Certificate holders, isn't exploited to inappropriately introduce overseas labor. The use of minimum investment requirement is generally not considered as good practice and it may have a negative effect on FDI in non-capital-intensive sectors.

Kenya imposes a burdensome investment certification process for foreign investors. The Act makes a formal distinction between domestic and foreign investors and requires the latter to apply for an Investment Certificate. Satisfying minimum investment requirement is a necessary pre-requisite to obtain an investment certificate. The investment certificate although considered as optional, it is associated with availing investment protection guarantees prescribed in the Protection Act and obtaining incentives under relevant laws.

Foreign investors in Kenya are subject to foreign equity restrictions in multiple sectors to promote local ownership and control.

- In accordance with the Mining Act (2016) in Kenya, Companies engaged in mineral dealings or conducting small-scale mining activities must ensure that at least 60 percent of their ownership is held by Kenyan nationals. When it comes to large-scale mining operations, which are determined based on certain capital expenditure benchmarks, the law mandates that such entities should list a minimum of 20 percent of their equity shares on a Kenyan stock exchange. This listing should be accomplished within three years from the start of production. These measures aim to ensure local participation and benefits from the country's mineral resources while still allowing for foreign investment and expertise.
- In Kenya's aviation industry, either the state or Kenyan citizens, or a combination of both, must possess at least 51 percent of the voting rights in any corporate entity or partnership. Meanwhile, according to the Merchant Shipping (Maritime Service Providers) Regulations of 2011, which falls under the umbrella of the Merchant Shipping Act of 2011, a maritime service license can only be issued to providers who are Kenyan citizens. If the licensee is a company, it must be a Kenyan-registered entity with over 51 percent of its shares owned by Kenyan citizens.
- The Insurance Act (Cap 487 of the Laws of Kenya) places the following restriction on the insurance industry. For insurance companies a minimum of one-third of the insurer's paid-up capital needs to be held by: a) citizens of an East African Community (EAC) Partner State; b) a partnership composed entirely of citizens from an EAC Partner State, or c) a corporate entity with shares solely owned by citizens of an EAC Partner State, the Kenyan government, or a mix of both. For insurance brokerage firms at least 60 percent of the company's paid-up share capital must be owned by a) Kenyan citizens, b) a partnership with all partners being Kenyan citizens, or c) a corporate entity with shares entirely owned by Kenyan citizens or the Kenyan government.
- Furthermore, the Insurance Act mandates that to be registered as an insurer, the entity must be incorporated under the Companies Act of Kenya. Additionally, at least one-third of its interest, be it shares, paid-up share capital, or voting rights, should be held by citizens of an EAC Partner State, partnerships wholly composed of EAC Partner State citizens, or corporate bodies with shares exclusively owned by EAC Partner State citizens or the Kenyan government. This emphasis on local ownership ensures that a significant portion of the insurance industry's benefits remain within the region and the country.

In Kenya, foreign investors and entities are restricted from holding freehold land ownership rights. Instead, they can acquire leasehold interests, which can last for a maximum duration of 99 years. Additionally, it's crucial to note that foreigners are expressly prohibited from engaging in transactions involving agricultural land. This policy aims to preserve and prioritize land ownership and agricultural resources for Kenyan citizens.

Only foreign investors satisfying the minimum investment requirement and obtain an investment certificate are eligible to a streamlined work permit process. Foreign investors receiving an investment certificate from the investment authority is entitled to three class D entry permits for management or technical staff and three class C, F, or G entry permits for owners, shareholders, or partners for a maximum period of two years. There is no clarity in the law regarding how work permits are issues for foreign investors who do not obtain an investment certificate.

b) Investment protection

Only foreign investors with approved investment certificates are eligible to receive investor protection in Kenya. The Protection Act (revised 2016) is the principal Act responsible for investment protection in Kenya complemented by other laws and regulations. Although, the Act provides some basic protections for transfer of currency and guarantees against expropriation, foreign cannot avail these protections until they obtain the investment certificate from the cabinet secretary responsible for finance and will be issued to a foreign investor if, inter alia, the investment value is at least USD 100,000.[54]

The principle of national treatment of FDI is not enshrined in law. In general, foreign investors receive the same treatment as domestic investors once established in Kenya. The main deviation from national treatment is in relation to access to agricultural land and other licensing restrictions. Most favored nation treatment is absent in the domestic laws of Kenya.

The guarantee to free transfer of funds and currency conversion stipulated in the legal framework of Kenya falls short of good practice. The Protection Act provides guarantee to freely transfer funds only out of Kenya provided they meet the obligations stipulated in the laws. Newer generation of IIAs provide this guarantee for bringing funds in and taking out of the country. The list of funds covered under the guarantee of transfer is quite limited. The Act also does not guarantee that the funds can be transferred without any undue delay.

In addition to the Protection Act, the constitution of Kenya also guarantees protection from unlawful expropriation. Under both laws, direct expropriation will be allowed only in cases of eminent domain or for other public purposes and are generally carried out with a payment of prompt compensation. The aspect of due process which is considered as a key requirement for the expropriation to be legal is covered under the Land Acquisition Act (2010). There is no express guarantee to cover indirect expropriation. Good practice is granting protection for both direct and indirect expropriation.

Kenya lacks a domestic framework for the settlement of disputes between investor and the state. Although Kenya is a member of the ICSID and participates in other forums such as the United Nations Commission on International Trade Law (UNCITRAL), there is no domestic legal framework that guarantees resolution of disputes through international arbitration. Having said that the Constitution of Kenya, specifically under Article 159, directs the Judiciary to encourage the use of alternative dispute resolution (ADR) methods in the justice process. This directive is further reinforced by the Civil Procedure Act (Chapter 21 of Kenya's laws). Additionally, the 2013 Nairobi Centre for International Arbitration Act sets the foundation for a regional hub dedicated to international commercial arbitration, introducing an arbitration court designed for ADR purposes and related activities.

[54] Bowmans law. 2022. An Overview of Policy and Regulatory Developments in East and Southern Africa, Foreign Direct Investment Regimes.

There is no investor grievance mechanism to resolve investors grievances in Kenya. While Kenya provides an investor aftercare service for through the KenInvest, there is no grievance resolution mechanism to capture any investor grievances at an early stage before they escalate into investment disputes.

c) **Investment incentives**

Kenya is missing a coherent structure for both awarding and overseeing investment incentives, aligned with its national development objectives. Moreover, there is an absence of a defined system for assessing special requests for incentives from investors. In some sectors, investors have found it difficult to obtain the incentives that should be available to them, inter alia due to poor coordination in government and bureaucratic and lengthy processes. As a result, potential investors with significant investment prospects have opted for other investment destinations due to the lengthy delays involved in seeking incentives and obtaining approvals. This has led to would-be investors with substantial investment opportunities choosing alternative locations, owing to the protracted delays they face in securing the requisite incentives.

d) **Linkages with the local economy**

Kenya's legal regime encourages discretionary application on performance requirements. According to the Protection Act, only investors that satisfy the net benefit criteria are issued an investment certificate. An investment certificate is a necessary pre-requisite to obtain incentives and also to avail all investment protection benefits under the laws of Kenya. Some of the key criteria for determining the net benefit test are the following:

- creation of employment for Kenyans;
- acquisition of new skills or technology for Kenyans;
- contribution to tax revenues or other Government revenues;
- transfer of technology to Kenya;
- an increase in foreign exchange, either through exports or import substitution;
- utilization of domestic raw materials, supplies and services.
- adoption of value addition in the processing of local, natural, and agricultural resources; and
- utilization, promotion, development and implementation of information and communication technology.

The Investment Authority may reject an investment certificate if any or all the performance requirements are not satisfied.

Kenya places a significant local content requirement for foreign investors involved in certain activities. Under the provisions of the National Construction Authority Regulations (2014) in Kenya, specific guidelines are set for foreign contractors. These contractors, which can be defined as companies either registered outside Kenya or those incorporated within Kenya but having over 50 percent ownership by non-Kenyan citizens, are mandated to collaborate with local Kenyan firms when undertaking projects. This can be achieved either through subcontracting or by forming joint ventures. Crucially, in such arrangements, local Kenyan firms should retain at least 30 percent ownership in the joint venture or represent 30 percent of the contract work's value. This regulation is designed to boost local participation in construction projects and ensure that a significant portion of the economic benefits remains within the country, while still enabling foreign knowhow and investment.

e) International investment agreements

Kenya has negotiated Bilateral Investment Agreements (BITs) with at least 21 treaty partners as of 2023. Of these 21 agreements only 11 are currently in force[55]. The provisions in the BITs are standard in that they provide for national treatment as regards management, maintenance, use, enjoyment or disposal of investment, most-favored-nation status and compensation for war, national emergency, and other related losses. They also guarantee transfer rights and provide protection against arbitrary expropriation and prompt, adequate and effective compensation in the event of expropriation. The BITs usually bind the States to consent to international arbitration to ICSID if the investor requests it, and if local remedies have been ineffective after a set period (typically a few months).

Table 6: Summary of Provisions in Kenya's BITs (currently in force)

Provision	Analysis
Preamble	Reference to the creation of favorable conditions for the development of economic cooperation between the parties. Recognizing that the encouragement and reciprocal protection of investment will be conducive to the stimulation of business initiatives and the increase in prosperity in both countries.
Definition of investment	Broad asset-based definition which starts with the phrase "every kind of asset".
Definition of investor	Criteria of nationality or citizen or legal person constituted or incorporated under the laws of the other contracting party.
Admission & establishment	Admission clause model instead of the right to establishment clause.
Standard of treatment	Fair and Equitable Treatment, National Treatment, Most Favored National Treatment and Full Protection and Security to investments.
Expropriation	Allows expropriation under condition that it meets the 4 key criteria: public purpose; non –discrimination; prompt, adequate and effective compensation; and due process. Compensation based on fair market value, without delay and with interest.
Transfer of funds	Requirement for transfer of returns to be made in accordance with the laws, regulations and procedures prescribed by host state and MFN treatment.
Investor-State dispute settlement	Designation of ICSID and UNCITRAL for investor-state arbitration. Any arbitral award is final and binding upon the parties to the dispute and that each contracting party ensures the recognition and enforcement of the award in accordance with domestic laws.

Significant gaps exist between the domestic investment framework and its international commitments. For Kenya to close the gap between its domestic and international framework, significant reforms are required to its existing legal framework for investments in the country.

[55] UNCTAD Investment Policy Hub.

Kenya is among the 46 member countries in Africa that has ratified the AfCFTA Agreement.[56] To reap the benefits of closer trade and investment relations, Kenya will need to implement the various provisions of the Agreement, which requires action to align legal and regulatory frameworks. This will entail reforms to remove entry barriers, increase transparency, and facilitate investment and trade. These reform discussions, sparked by the imminent need to comply with the AfCFTA, may be an entry point for reforms that go beyond public commitments. For example, the Protocol on Investment contains a novel chapter on sustainable development and certain provisions on investment facilitation and climate change.

The Protocol on Investment of the AfCFTA Agreement has four interrelated pillars – investment promotion and facilitation, investment protection, investors' obligations, and other State commitments. The protocol embodies a quintessentially African response to global investment issues, with the first three pillars, along with efforts to reformulate investment protection, harking back to ground-braking regional treaties and some bilateral treaties in Africa. All four pillars entail specific but interrelated implications for the policy options of each country.

[56] Status as of Feb 2023, https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html

Somalia

I. Country context

Somalia is in need to increase private sector participation in the country, including more FDI, and greater inclusion in global and regional value chains. A decade of political unrest has significantly altered the investment climate and the institutional quality in the country. Ongoing security issues in government-controlled areas, including Mogadishu, and political infighting and reshuffling detracts from progress on justice and security sector reform. While the outside powers such as the African Union[57] is helping tackle security threats in Somalia, setbacks to peacekeeping missions present a barrier to political stability.

Somalia's natural resources and strategic geographic position stand to attract natural-resource seeking investment as well as market-seeking investment. Somalia's tremendous human capital potential needs to be tapped and developed to be able to help enhance these opportunities. The new administration, which has indicated a commitment to rebuilding the Somali economy, has a great opportunity to catch the attention of investors by demonstrating commitment to openness and reform. The Government of Somalia should position itself to begin to attract market-seeking and efficiency-seeking investment, particularly in services and sectors such as energy.

The current economy of the country primarily depends on its large informal sector, foreign aid, and remittances from the Somali diaspora.[58] The key to unlocking the potential and sustainability of Somalia lies in a dynamic private sector, working closely with, and supported by, a strong government. Therefore, the Government of Somalia should not only focus on reforming the foreign investment law, but rather make efforts to put together a broad program to strengthen the overall investment climate of the country. Somalia needs to rebuild its private sector to be able to provide jobs and opportunities to the Somali population. FDI can complement the much-needed services and bring technology and capital to the country and assist in developing the private sector.

II. Constraints to private sector development

a) Overall business environment

Somalia's private sector continue to face serious obstacles. Some of the pressing challenges in which the private sector has been operating are: i) working in an insecure environment; political instability; weak legal and regulatory framework; weak institutions; weak access to credit; high costs of doing business; high levels of informality; among others. Understanding the risks to the private sector in highly volatile environments will help tailor solutions to support the private sector development.

[57] http://www.au.int/en/about/nutshell

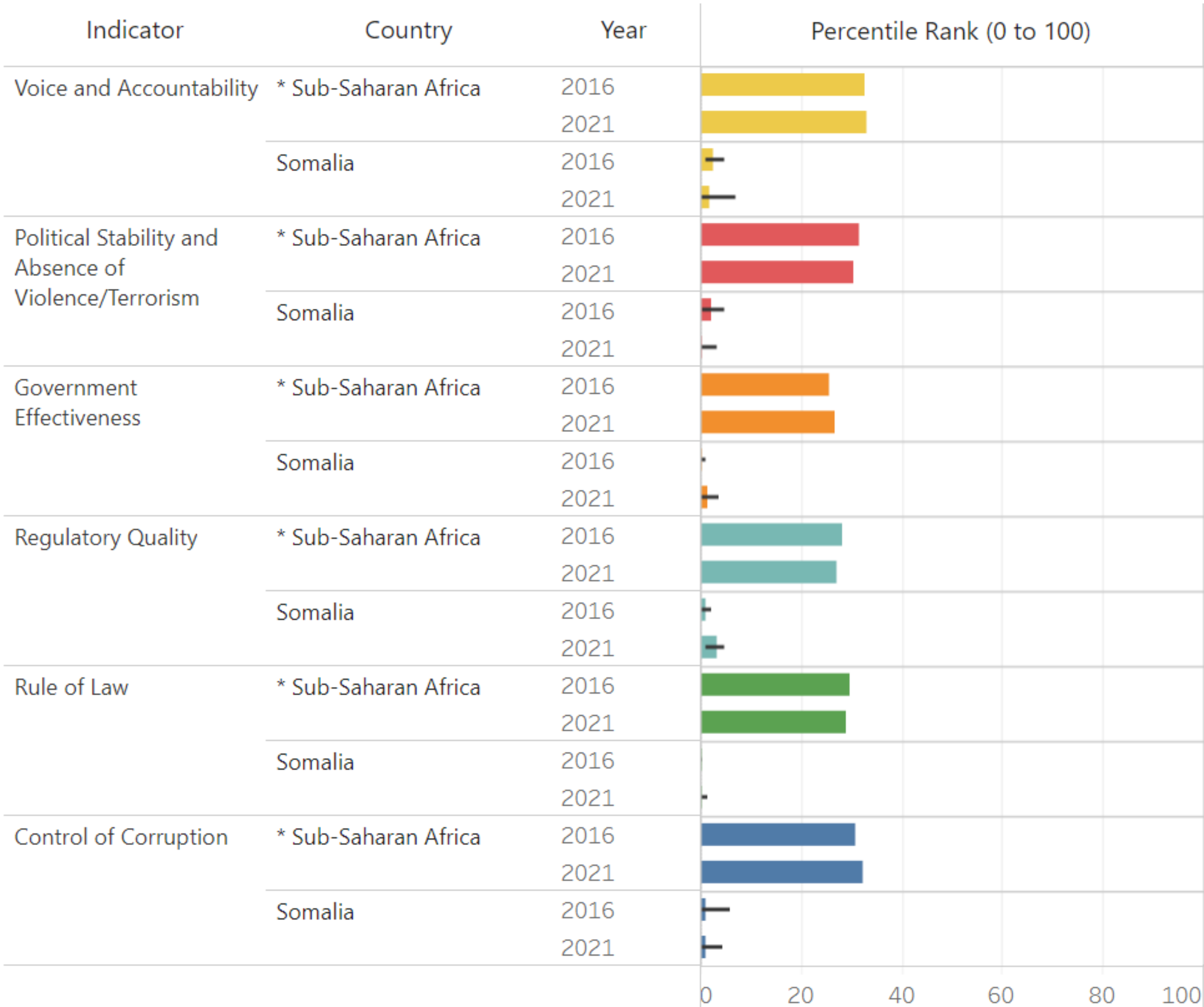
[58] Promoting economic growth and investment in Somalia, Adam Smith International, http://www.adamsmithinternational.com/explore-our-work/east-africa/somalia/growth-and-investment-in-somalia

Results of multiple global benchmarking tools show that Somalia's competitiveness is constrained by an overall cumbersome regulatory environment. Global data sets reveal areas where there are cross-cutting shortcomings and potential for further reform.

According to the World Governance Indicators (WBI), measuring the quality of the governance system from the perspective of the private sector and other non-government sources looking at indicators like Voice and Accountability, Government Effectiveness, Regulatory Quality, Rule of Law, Control of Corruption, and Political Stability. Somalia performance falls far below the regional average in all six indicators. Notably, Somalia exhibits a slight improvement in the indicators of Regulatory Quality and Government Effectiveness from the period of 2016 to 2021 (Figure 28). The WBI indicators use a scale of 0 to 100, where 0 represents the lowest rank and 100 represents the highest rank.[59]

[59] https://info.worldbank.org/governance/wgi/
The World Governance Indicators report on six broad dimensions of governance over two hundred countries and territories over the period 1996-2021:
Voice and Accountability captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood of political instability and/or politically motivated violence, including terrorism. Government Effectiveness captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies. Regulatory Quality captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. Rule of Law index captures perceptions of the extent to which agents have confidence in and abode by rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

Figure 28: Somalia's performance in comparison with the regional averages in the World Governance Indicators



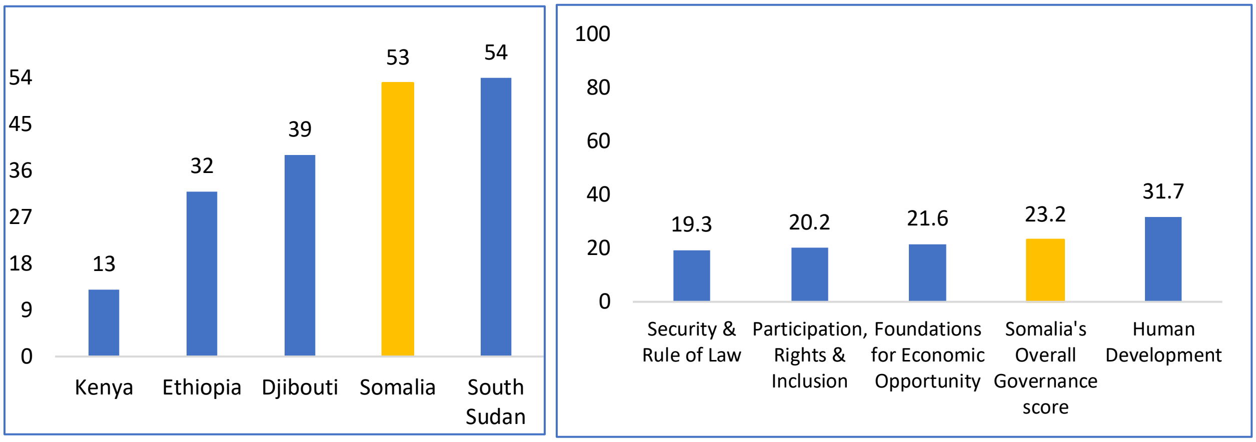
Source: Worldwide Governance Indicators, 2022.

Percentile Rank indicates rank of countries among all countries in the world. 0 corresponds to lowest rank and 100 corresponds to highest rank.

In addition, according to the 2022 Ibrahim Index of African Governance (IIAG) [60]and despite Somalia has seen an improvement over the last decade in almost all indicators, it continues to be ranked in the bottom of the IIAG indicators. Somalia ranks 53rd out of 54 measured countries (Figure 29). Among the four main areas covered by the index, Somalia ranks the lowest in the Security and Rule of law subindex with 19.3/100. Some of the lowest ranked areas covered by the Security and rule of law subindex are: i) accessibility of public records; ii) impartiality of the judicial system; iii) equality before the law; iv) anti-corruption mechanisms; and iv) public procurement processes.

[60] The Ibrahim Index of African Governance (IIAG) measures African governance performance in 54 African countries. The main areas covered by the Index are: i) security & rule of law; ii) participation, rights & inclusion; iii) foundations for economic opportunity; and iv) human development.

Figure 29. Somalia's Performance in the Ibrahim Index of African Governance (IIAG) report 2022 and comparator countries.



Source: The Ibrahim Index of African Governance (IIAG)

The IIAG scores quantify a country's performance for each governance measure each data year, expressed out of 100.0 (with 100.0 being always the best score). Rounded to one decimal point, scores are relative to each country's performance in relation to the other 54 African countries.

b) Legal uncertainty

In Somalia, unpredictability of the legal framework governing business activities is still a significant constraint to private sector growth. Uncertainty raises risks for investors and disincentives to private investment, especially foreign investment. Without a robust rule of law, business owners and entrepreneurs find it difficult to know what to expect when making economic decisions. The legislative system is very complex given that there are three legal systems in the country derived from Sharia, customary law, and codified legislation.

Much of the applicable legislation in Somalia were enacted in the 60s and 70s and have not been updated or enforced efficiently. For instance, Somalia still relies on a dated civil code (1974) or the Labor Code of 1972. Also, other pieces of legislation, such as the Family Law of 1975 is not enforced in courts. In family matters, Judges apply Sharia based on their own interpretation of the Qur'an. However, the Government recently enacted or is currently working on several laws and regulations, such as, the Customs regulations on valuation and declarations issued in September 2022; the Extractive Industry Income Tax law; the Electricity Act issued on March 8, 2023; the Company Act of 2019 and its regulations, etc. Despite the effort, more there is still to do in this domain.[61] For example, Somalia still does not have bankruptcy laws or laws addressing responsible business conduct.

In addition, the Government of Somalia does not make draft versions of relevant laws and regulations available for public consultation at any stage of the process. The consultative process is relevant when drafting laws and regulations for private sector development because it helps policymakers understand the needs and priorities of the private sector, ensuring that the proposed laws and regulations address the challenges and barriers faced by businesses; encourages investment by providing investors with certainty and predictability; supports entrepreneurship and innovation; and fosters partnerships between

[61] IMF. 2023. Somalia's Country Report No. 23/187.

the public and private sectors. By engaging with the private sector, policymakers can identify areas where laws and regulations can be streamlined, simplified, or eliminated to reduce the burden on businesses. Evidence shoes a positive relationship between the improvement of the regulatory environment through good regulatory tools, such as, public consultation, and aggregate investment (and economic growth), suggesting that countries stand to gain from a broad push for streamlining regulations and procedures affecting business.[62]

c) Business entry

In recent years, the Somali government introduced a new company law formalizing the legal requirements to register a company and launched the Somali Business Registration System (SBRS), which serve as a "one stop shop" business registration website, with the support of the World Bank Group.[63] Through the dedicated website of the SBRS of the Ministry of Commerce and Industry the entrepreneurs can search for a business name, check its availability, and register it. Also, they can register their businesses, pay the applicable fees, and obtain a business certificate and business license. The website offers training materials that explain in detail the steps for each of these services.

According to World Bank data, between April 2021 and April 2022, around 1,089 businesses registered on the SBRS during the pilot phase. Somalia targets registering about 5,000 businesses by December 2025, of which it aims to have 30 percent be women-led.[64] To accomplish this goal, the Government of Somalia must ensure the newly SBRS system is fully operational; continue to provide all the relevant training to the front-office staff operation the system and its external users; and engage in a continuous outreach campaign to educate the private sector with recent and future reforms and improvements in the services provided by the Ministry of Commerce and Industry. As part of the improvements to the registration process, the Somali Government should explore the possibility to include post-registration procedures in the SBRS, such as the registration process to become a member of the Chamber of Commerce.

g) Women's economic participation

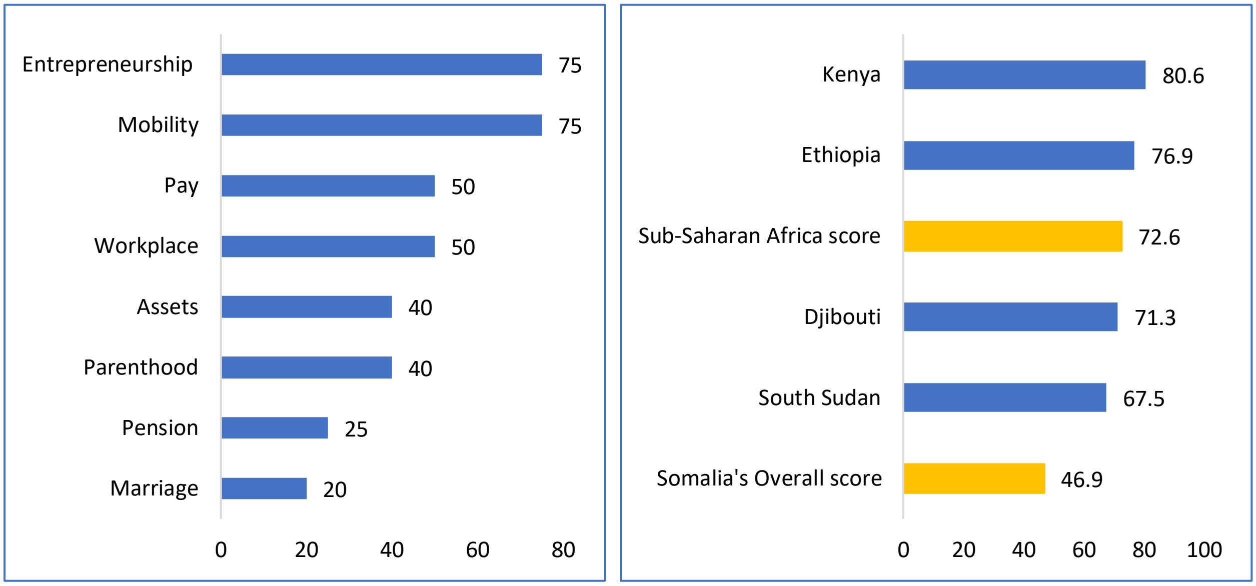
Equality of opportunity allows women to make the choices that are best for them, their families and their communities. However, equal opportunities in getting a job or starting a business do not exist when laws treat women differently. Legal restrictions constrain women's ability to make economic decisions and can have far-reaching consequences. Women may decide not to work in economies where the law makes it more difficult for them to do so, or where they may get paid less than men for doing similar jobs.

Somalia has an overall *Women, Business, and the Law* score of 46.9 points, performing far below the Sub-Saharan regional average of 72.6 points (Figure 30). When it comes to constraints on freedom of movement, laws affecting women's decisions to work, laws affecting women's pay, constraints related to marriage, laws affecting women's work after having children, constraints on women starting and running a business, gender differences in property and inheritance, and laws affecting the size of a woman's

[62] Eifert, Benjamin P. 2009. Do Regulatory Reforms Stimulate Investment and Growth? Evidence from the Doing Business Data, 2003-07. CGD Working Paper 159. Center for Global Development.
[63] https://ebusiness.gov.so/
[64] https://www.worldbank.org/en/news/feature/2022/06/27/going-digital-makes-life-easier-for-somalia-s-business-owners

pension, Somalia could consider reforms to improve legal equality for women. For example, Somalia may wish to consider enacting legislation to prohibit discrimination in access to credit based on gender; legislation on sexual harassment in employment; and legislation protecting women from domestic violence. As we can observe, there is room for improvement across all eight indicators.

Figure 30. Somalia's Performance in Women, Business, and the Law report 2023 and comparison with the Sub-Saharan regional average and comparator economies.



Source: Women, Business, and the Law 2023

Indicator-level scores are obtained by calculating the unweighted average of the questions within that indicator and scaling the result to 100. Overall scores are then calculated by taking the average of each indicator, with 100 representing the highest possible score.

d) Access to land

In Somalia, there are numerous of fraudulent titles and land disputes are common. A USAID recent report[65] found that land disputes are the overwhelmingly largest justice issue in Mogadishu that concretely relates to instability. The different justice pathways that land users take to find solutions for the land disputes show that none of the justice institutions can guarantee fair and accessible justice services. Part of this is the fact that the historical fault lines between clans, as they resulted from the historical movements in Mogadishu, still underpin the state-building attempt and are an integral part of all justice institutions[66]. The Land administration in Somalia is very weak and there is no specific Ministry that is responsible for land issues. In addition, the incipient digitalization of both the land titles and

The legal framework related to land is complex and include a combination of customary rules and traditions, codified legislation still valid from the colonial period, and Islamic law. However, there are many issues that are still no regulated, such as, i) there are no specific regulations regarding land leases; ii) there are no regulations on acquisition by foreign investors; and iii) lack of civil procedures for hearing property disputes. In addition, the current agencies that are in charge of the land administration (Land

[65] Expanding Access to Justice Program. 2020. Pathways and Institutions for Resolving Land Disputes in Mogadishu. Nairobi, Kenya: Pact and the American Bar Association Rule of Law Initiative.
[66] Ibid.

Management Department and the Urban Planning Department of the Municipality of Mogadishu) do not publish all the necessary data related to the list of documents that are required to complete any type of property transaction or accessing maps of land plots, the applicable fees, the service delivery standards and all the statistics tracking the number of transactions at the immovable property registration agency.

e) Judicial system

The justice system in Somalia is fragmented and derives from at least four sources: the Italian and British legal systems, customary principles, and sharia law. In some parts of the country, there is still no formal justice system. Most Somalis still rely primarily on traditional or clan-based dispute resolution or Sharia courts.[67] Currently, the Judiciary of Somalia continues to face several challenges: For instance: i) there are no courts dedicated to commercial disputes;[68] ii) lack of periodic training of court staff and judges; and iii) and the lack of publication of court's performance measurement reports and all relevant laws and regulations in a dedicated website and/or public boards of all court offices in the country.

III. Constraints to foreign direct investment

a) Market access

The domestic legal framework for investment in Somalia is regulated by the Constitution of the Federal Republic of Somalia, the Foreign Investment Law of 2015 (FIL), and the Investors and Investments Protection Act (IIPA) of 2023. The recently passed IIPA under Article 18 provides that in case of conflict between the IIPA and other laws, the IIPA shall take precedence. Similarly, the FIL under Article 24 ensures that foreign investors shall enjoy more favorable provisions which might be subsequently promulgated.

The market access and other related restrictions in Somalia are covered by multiple legislations. Article 21 of the FIL provides that sectors such as mineral research and extractives, military manufacturing, storage, disposal, and nuclear power in which the provisions of the FIL would not apply. Investment in these sectors will be subject to the Mining Code and Mining Regulations and any agreements reached in that effect between the foreign investors and the Somali government.

Somalia does not have a negative list of sectors where foreign investment is restricted or prohibited. There is no clarity whether 100 percent foreign equity ownership will be allowed in all sectors, or any restriction exists regarding the same. Generally, entry restrictions, when they exist, should be more specific and preferably be enumerated clearly in a Negative List.[69]

Somalia maintains certain limitation to market access in the services sector. Key barriers to market access include: (a) maximum foreign ownership in new locally incorporated company (49 percent) (Tourism); (b) maximum aggregate foreign ownership allowed for the acquisition of an existing domestic entity (49 percent) (Tourism); (c) number of firms or suppliers restricted by quantitative limits; (d) number of suppliers/licenses determined through ENT; (e) board of directors: at least one must be resident (Commercial banking); (f) technology transfer and training (of local staff) requirements (Air passenger and

[67] World Bank Group. 2018. Systematic Country Diagnostic, Federal Republic of Somalia.
[68] https://www.state.gov/reports/2023-investment-climate-statements/somalia/
[69] A negative list is a policy document presenting all restrictions or prohibitions to foreign investment in the country.

freight services) and (g) obligation to use local service providers (Maritime – Freight transport). In addition, market entry is not allowed in legal services and Maritime Sector (freight transport and auxiliary services).[70]

Foreign investors in Somalia are subjected to a discriminatory foreign investment approval process. According to Article 4 of the FIL, the foreign investment board is responsible for approving all investments entering the country. Foreign investors seeking entry in Somalia are required to complete forms for approval pursuant to Article 6 of the law. Once the application is received, the board will make decision of approval within 60 days, provided if the application is duly complete. The provision on approval mechanism is not in line with international best practices. The approval process gives the discretionary powers to the foreign investment board and government scrutiny will be exercised over all investment proposal.

b) Investment protection

Investment protection in Somalia is regulated by both the Foreign Investment Law (FIL) and the Investors and Investments Protection Act (IIPA). The principal purpose of the IIPA adopted in 2023 is to protect private investments in Somalia. This Act is complementing the investment protection provisions in the FIL. While the IIPA comparison to the FIL, improved the overall framework for investment protection in Somalia, it still does not conform to good practices in certain aspects.

Somalia's guarantee to ensure non-discriminatory treatment to foreign investors in the country is weak. Both FIL and IIPA presents weak guarantees on the principle of non-discrimination. Article 18 of the FIL provides that foreign investors have the same rights and obligations as the domestic investors. However, this guarantee is extended only to enterprises and does not make a reference to natural persons. Similarly, the IIPA maintains that the principles of non-discrimination shall be consistent with the international agreements and the domestic law of the country. As a result, some of the key elements such as commitment to a treatment no-less favorable than those accorded to domestic investors in likely circumstances is absent. In addition, both FIL and IIPA does not provide most-favored nation treatment guarantee.

Only foreign investors that satisfy the qualifying conditions prescribed by the government are eligible for certain investment guarantees. The IIPA under Article 9 provides fair and equitable treatment (FET) to foreign investors investing in the country. However, the Act stipulates that size of the investment, sector of operation and the impact of the investment on the society (net benefit) as qualifying conditions to receive such treatment. This is not good practice. Unlike most-favored nation treatment and national treatment which are relative provisions (i.e., guarantee protection relative to domestic or other foreign investors), FET follows an absolute standard. Therefore, irrespective of how domestic investors are treated, FET requires a minimum standard of treatment of foreign investors.

Somalia allows foreign investors to freely transfer funds in and out of the country in accordance with the laws and regulations of the country. The IIPA under Article 12 guarantees foreign investors the right to bring in and take out of the country all profits, proceeds from sale, payment of debt expenses, wages to foreigners among others. This illustrative list of items included is generally consistent with the IIAs of

[70] WTO-WBG, Services Trade Restrictions Database.

Somalia and good practices. The article also provides exceptions where government can delay repatriation to address compelling financial situation of the country.

The guarantees against unlawful expropriation presented in the legal framework of Somalia is consistent with good practices. Article 13 of the IIPA stipulates that expropriation is permissible only if such expropriation is carried out only for public purpose in accordance with due process of the law in a non-discriminatory manner and by providing prompt, fair and adequate compensation. The Article also guarantees that the compensation will be paid on the valuation based on free market value. Although, the IIPA provides protection against indirect expropriation it does not provide any clarifications regarding what actions under the interpretation of the law would be considered "indirect expropriation". Defining indirect expropriation is a practice that is consistent with the new generation of IIAs.

The adoption of IIPA has weakened the dispute resolution framework for foreign investors in Somalia. Under the recently adopted IIPA, Article 16 The IIPA provides that all investment disputes must be settled through amicable negotiations. In case if negotiations are not successful the parties may bring a claim in the judicial institutions in the country. If the parties are no satisfied with the outcome of the judicial process, they can bring claims under international arbitration. Mandatory requirement to exhaust all local remedies before resorting to international arbitration is not considered good practice. Contrary to the current law, the FIL under Article 19 (1) (c) provides expressly provides consent to the submission of dispute to the international arbitration through the ICSID or through the international agreements in force between Somalia and the foreign investor home country.

Weak dispute resolution provision is complemented by the ability of investors to resolve investor grievance before they escalate into a dispute. IIPA under Article 15 includes a specific provision on grievance management mechanisms to resolve grievances before they advance to the judiciary. It establishes a committee to manage all investment related complaints. However, the law does not explain the prominence of the dispute resolution provisions in the FIL and the international agreements to which Somalia is a signatory. Good practice provisions on grievance management include a specific reference to the mechanism along with the mandate and functions of the main lead agency in-charge of implementing the mechanism.

c) Investment incentives

There is a general lack of transparency in the incentives' regime in Somalia. Somalia offers various types of fiscal and financial incentives to investors. The lack of access to a central repository of incentives available to investors remains a key hurdle.

Access to land for investment is also considered as an incentive. The FIL under Article 15 stipulated that incentives shall include the ability to have long term leases for up to 99 years for substantial investment in accordance with the applicable legislation governing such incentives and facilities.

Certain types of incentives to investors in Somalia is pre-conditioned on the fulfillment of performance requirement. For instance, the investors operating in the export processing zones (EPZ) are required to export a certain percentage of their goods to earn an EPZ status. This EPZ status is a mandatory pre-requirement to access incentives (both fiscal and financial). Similarly, other conditions include earning a certain amount of money in foreign exchange through goods exported and employing a certain percentage of domestic employees (Somali citizens).

e) Linkages with the local economy

Somalia's legal regime encourages discretionary application on performance requirements. According to the FIL under Article 7, foreign investment that satisfies performance requirement will be given priority. Additionally, when the foreign investment board (the principal agency responsible for approving foreign investments in Somalia) evaluates an application for an investment certificate, the Authority must consider whether the investment meets certain performance requirements such as whether the investment will provide Somalia with new technology through transfer, use local human capacities and natural resources, and generates new earnings or savings of foreign exchange through exports, resource-based import substitution or service activities. The Investment Authority may reject an investment certificate if any or all the performance requirements are not satisfied.

f) International investment agreements

Somalia has signed only 4 bilateral investment agreements of which only two are currently in force. A review the two BITs signed by the Somalia shows these instruments include traditional elements of investment protection. They include an asset-based definition of investment, provide for post establishment most-favored nation treatment (MFN) and national treatment (NT), the protection from direct and indirect expropriation, guarantees the free transfer of funds and include an investor–State dispute settlement mechanism (ISDS).

Table 7- Summary of provisions in Somalia BITs currently in force

Investor Protection Guarantee	Analysis of Somalia's BITs with Germany and Egypt
Definition of Investment	Broad asset-based definition which starts with the phrase "every kind of asset".
Definition of investor	Criteria of nationality or citizen or legal person constituted or incorporated under the laws of the other contracting party.
National Treatment (NT)	Provides post-establishment NT
Most Favored Nation (MFN)	Provides post-establishment MFN
Fair and Equitable Treatment (FET)	Provides unqualified FET and full protection and security.
Currency Convertibility & Transfer	Provides that all transfers relating to investments in its Area of an investor of the other Contracting Party may be freely made without delay. It also defines the type or nature of payment and/or transfers covered.

Protection against Expropriation	Allows expropriation under condition that it meets the 4 key criteria: public purpose; non –discrimination; prompt, adequate and effective compensation; and due process. Compensation based on fair market value, without delay and with interest.
Dispute Settlement	Designation of ICSID and UNCITRAL for investor-state arbitration. Any arbitral award is final and binding upon the parties to the dispute and that each contracting party ensures the recognition and enforcement of the award in accordance with domestic laws.

With the adoption of the IIPA, Somalia has closed the gap between the domestic investment framework and its international commitments. While it is important and necessary for Somalia to close the gap between its domestic and international framework, it is also important to bear in mind that Somalia's BITs with Egypt and Germany (that are currently in force) were signed in the 1980s. Since then, there has been a significant improvement in international investment law and policy making. Considering outdated BITs as benchmarks cannot be an alternative to attract higher levels of FDI.

Although Somalia has not ratified the AfCFTA Agreement,[71] it is in the interest of the Government to fully implement the Agreement. As of Feb 2023, Somalia has not ratified the AfCFTA Agreement. However, in August 2020, the Somalia cabinet approved the AfCFTA for ratification to help spur trade with other African countries. To reap the benefits of closer trade and investment relations, Somalia will need to implement the various provisions of the Agreement, which requires action to align legal and regulatory frameworks. This will entail reforms to remove entry barriers, increase transparency, and facilitate investment and trade. These reform discussions, sparked by the imminent need to comply with the AfCFTA, may be an entry point for reforms that go beyond public commitments. For example, the Protocol on Investment contains a novel chapter on sustainable development and certain provisions on investment facilitation and climate change.

The Protocol on Investment of the AfCFTA Agreement has four interrelated pillars – investment promotion and facilitation, investment protection, investors' obligations, and other State commitments. The protocol embodies a quintessentially African response to global investment issues, with the first three pillars, along with efforts to reformulate investment protection, harking back to ground-braking regional treaties and some bilateral treaties in Africa. All four pillars entail specific but interrelated implications for the policy options of each country.

[71] Status as of Feb 2023, https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html

South Sudan

I. Country context

Since the onset of the civil war, the disruption of oil exports and the fall in global oil prices, South Sudan's economy has considerable suffered. The forecast for the economy in 2022, according to the World Bank, could grow by 3.5 to 5.0 percent in productive sectors including household processing and artisanal production if the peace process holds.[72] However, the implementation of the peace agreement is significantly behind schedule. The country is still facing the challenges of large-scale population displacement, widespread food insecurity, restricted humanitarian access, and catastrophic flooding.

The South Sudan economy is highly dependent on the oil sector and no new government programs have been instituted in the past year to diversify the country's economy. South Sudan dependence on oil accounts for nearly all of exports and 90 percent of government revenues.[73] Given the predominance of the petroleum industry to South Sudan's economy, the vast majority of investment opportunities exists in this sector. The agricultural sector is also seen as a critical industry for economic growth. In particular, South Sudan has the potential to become one of the largest exporters of gum Arabic in the word.

The prospects of FDI in South Sudan remain distant given the large infrastructure and governance needs and the limited resources. Although FDI inflows to the country increased from a negative value of USD -232 million in 2019 to USD 18 million in 2020, investment needs far exceed the available resources.[74] In a high risk, high cost, and low demand business environment, public investment can play a key role in facilitating FDI attraction. These public investments can lower costs in transport, raise returns, and sustain demand.[75] Besides oil and agriculture, other sectors that have attracted some investment include mining and infrastructure development. China, Malaysia, India, and Uganda are among the top countries investing in South Sudan.

The South Sudanese economy experienced a sharp downturn in 2020 and 2021, driven by a combination of shocks, such as, COVID-19, fall in oil prices and floods. Firms of all sizes felt the effects of these crises, especially micro, small and mediums size enterprises (MSMEs) and are still struggling to recover.[76] The private sector remains underdeveloped and is dominated by MSMEs. Nearly two-thirds of MSMEs are concentrated in Juba, mostly operating in the informal sector.[77]

Trade and investment climate in South Sudan improved slightly in the past year, but many challenges remain. The Revitalized Transitional Government of National Unity (R-TGoNU) continue to implement the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). The government of South Sudan welcomes foreign commercial activity and investment although political

[72] World Bank Group. 2022. South Sudan Economic Monitor: Towards a Jobs Agenda.
[73] International Monetary Fund. 2022. Country Report No. 22/266, 2022 Article IV Consultation and Second Review Under the Staff-Monitored Program.
[74] United Nations Conference on Trade, 2021 World Investment Report, 2021.
[75] World Bank Group, South Sudan Economic Monitor: Towards a Jobs Agenda, Fifth Edition, 2022.
[76] International Trade Centre (2022). Promoting SME Competitiveness in South Sudan: Targeted solutions for a resilient future. ITC, Geneva.
[77] https://documents1.worldbank.org/curated/en/154641621908323341/pdf/South-Sudan-Country-Engagement-Note-for-the-Period-FY21-FY23.pdf

violence, corruption, and poor transitional justice makes South Sudan a difficult place to do business. Other factors inhibiting investment in South Sudan include the lack of skilled and unskilled labor, limited physical infrastructure, and the inability to convert local currency into US dollars.

The low levels of FDI, in particular efficiency-seeking investment, that South Sudan attracts suggests a significant investment competitiveness challenge in the country. Investment competitiveness refers to the ability of countries to not only attract but also retain and integrate private investment into their respective economies. Enhancing investment competitiveness thus requires establishing a business environment in which both domestic and foreign companies can efficiently enter the market, expand operations, and develop more and better linkages with local, regional, and global economies. Investment competitiveness, while being a key consideration for FDI at large, it is particularly important for attracting efficiency-seeking FDI, as this type of investment will only flow into a host economy that can contribute to the firm gaining a competitive edge in international markets.

II. Constraints to private sector development

a) Overall business environment

The business environment in South Sudan presents numerous constraints that impede private sector development. Some of the most prominent challenges include limited access to finance, land tenure issues, weak judicial system, and gender inequality. These constraints collectively hinder the growth and competitiveness of businesses operating in the country. Resolving these issues is crucial to foster a more conducive environment for private sector development in South Sudan.

Results of multiple global benchmarking tools show that South Sudan' competitiveness is constrained by an overall cumbersome regulatory environment. Global data sets reveal areas where there are cross-cutting shortcomings and potential for further reform.

The country lags behind the regional average in the World Governance Indicators (WGI) associated with a good business environment. The World Governance Indicators assess the governance system's quality from the perspectives of the private sector and other non-governmental sources looking at indicators like Voice and Accountability, Government Effectiveness, Regulatory Quality, Rule of Law, Control of Corruption, and Political Stability. The South Sudan performance falls far below the regional average in all six indicators (Figure 31). Notably, the sub-indicators of Control of Corruption, Rule of Law, Regulatory Quality and Government Effectiveness exhibit significant weaknesses. Moreover, no significant improvements are shown over the period from 2016 to 2021, during which South Sudan has even seen slight deterioration in almost all indicators, except for Political Stability and Absence of Violence/Terrorism.[78]

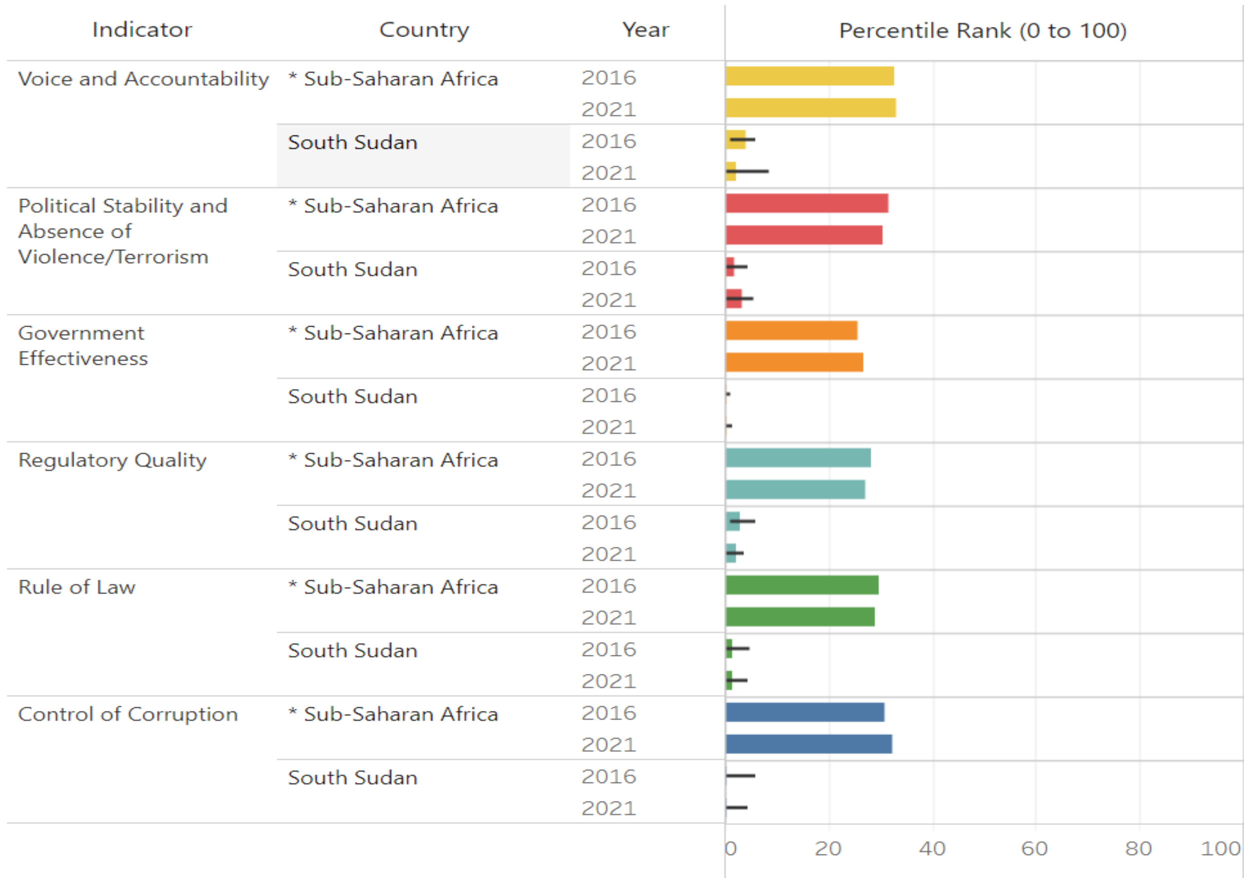
[78] https://info.worldbank.org/governance/wgi/

The World Governance Indicators report on six broad dimensions of governance over 200 countries and territories over the period 1996-2021:

Voice and Accountability captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.

Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood of political instability and/or politically motivated violence, including terrorism.

Figure 31: South Sudan's performance in comparison with the regional averages in the World Governance Indicators



Source: Worldwide Governance Indicators, 2022.
Percentile Rank indicates rank of countries among all countries in the world. 0 corresponds to lowest rank and 100 corresponds to highest rank.

In addition, according to a recent World Bank survey on businesses and enterprises in South Sudan,[79] businesses clearly and consistently identify four constraints as being most important to them: insecurity, lack of market access, poor access to finance, and poor access to electricity (Figure 32). Also, other constraints mentioned by the surveyed firms included infrastructure, water, regulation, skilled labor, and internet connection. About two in every five surveyed businesses say that each of these constraints is a

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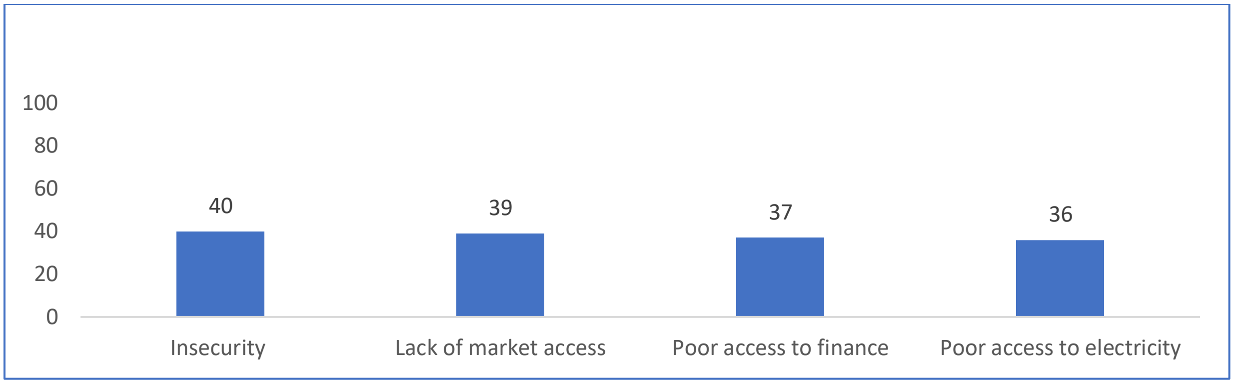
Government Effectiveness captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.
Regulatory Quality captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.
Rule of Law index captures perceptions of the extent to which agents have confidence in and abode by rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.
Control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.
[79] Finn, Arden, and Jan von der Goltz. 2020. "Insights from Surveys on Business and Enterprises in South Sudan: Jobs, Recovery, and Peacebuilding in Urban South Sudan –Technical Report IV." World Bank, Washington, DC. License: Creative Commons Attribution CC BY 3.0 IGO.

serious or very serious problem – far more than for other types of challenges. Businesses of different types and in different towns are remarkably consistent in identifying these four constraints as being the main challenges. Insecurity stands out among the four constraints in that it affects nearly all businesses. Lack of market access is notable given that the next most commonly mentioned constraints also relate to the ability to take products to customers: the availability of roads, and of transport facilities.

Figure 32. Four main constraints identified as a serious or very serious problem in South Sudan.

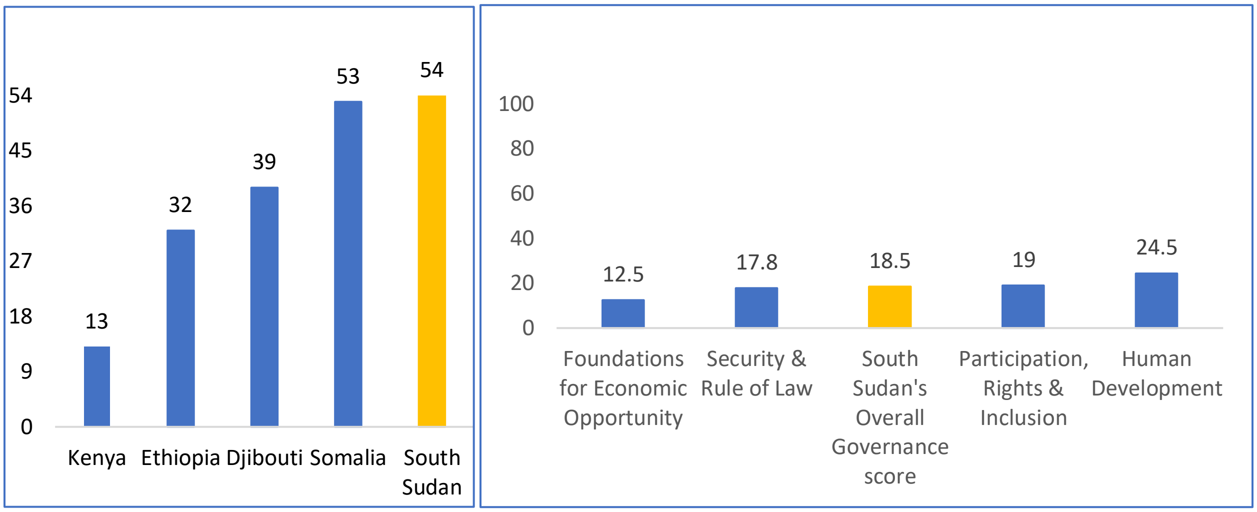


Source: Integrated Business Establishments (IBES) survey of 2019, World Bank

In addition, according to the 2022 Ibrahim Index of African Governance (IIAG),[80] South Sudan has seen an overall deterioration in all the indicators covered by the Index over the last decade. South Sudan is the lower ranked country in the Index (54 out of the 54 measured countries) (Figure 33). Among the four main areas covered by the index, South Sudan ranks the lowest in the Foundations for economic opportunity and Security & Rules of Law subindexes with 12.5/100 and 17.8/100 respectively. Notably, some of the lowest ranked areas among the four indicators are: i) equality before the law; ii) law enforcement; iii) accessibility of public records; iv) anti-corruption mechanisms; v) equality in education; among others.

[80] The Ibrahim Index of African Governance (IIAG) measures African governance performance in 54 African countries. The main areas covered by the Index are: i) security & rule of law; ii) participation, rights & inclusion; iii) foundations for economic opportunity; and iv) human development.

Figure 33: South Sudan's Performance in the Ibrahim Index of African Governance (IIAG) report 2022 and comparator countries.



Source: The IIAG Index

The IIAG scores quantify a country's performance for each governance measure each data year, expressed out of 100.0 (with 100.0 being always the best score). Rounded to one decimal point, scores are relative to each country's performance in relation to the other 54 African countries.

Although South Sudan has laws, regulations, and penalties to combat corruption, there is lack of enforcement. South Sudan ranks 178 out of 180 countries in Transparency International 2022 Corruption Perception Index. There are no specific laws that prevent conflict of interest in government procurement nor government measures to require or encourage private companies to establish internal codes of conduct prohibiting bribery of public officials. South Sudan acceded to the United Nations Convention against Corruption in 2015 and is not a party to the OECD Anti-Bribery Convention.

b) Access to finance

Access to finance is critically relevant to private sector development because it directly affects the growth, productivity, and sustainability of businesses and entrepreneurs. It also empowers businesses to invest, expand, innovate, and create jobs, contributing significantly to economic growth and overall development. Without adequate access to finance, many viable business opportunities may remain untapped, hindering a country's potential for economic progress and prosperity.

South Sudan's financial sector is small and undeveloped, with negligible levels of intermediation and private sector credit. While there are thirty-one banks operating in South Sudan, access to financial services is very limited. A recent World Bank survey on businesses and enterprises in South Sudan[81] discovered that about two in every five surveyed businesses have a back account, but hardly any have taken a bank loan over the past three years (2018 to 2020). Notably, borrowing is very rare even among large firms. Also, women-owned businesses are much less likely than others to have access to banking.

[81] Finn, Arden, and Jan von der Goltz. 2020. "Insights from Surveys on Business and Enterprises in South Sudan: Jobs, Recovery, and Peacebuilding in Urban South Sudan –Technical Report IV." World Bank, Washington, DC. License: Creative Commons Attribution CC BY 3.0 IGO.

Most businesses look to family and friends or own earnings to cover losses due to shocks. The low levels of bank credit are likely driven by the immense risk both lenders and borrowers face in a market afflict by ongoing conflict, but also uncertain consumer demand. Also, South Sudan does not have a stock market or any other system of exchange for financial assets.

In addition, according to a survey conducted by the International Trade Center in mid-2022,[82] limited access to finance constrains the capacities of firms to innovate and growth. The SME Competitiveness Survey shows that many businesses opt not to apply for loans because they expect to be rejected or are concerned about the complex application procedures.[83] Smaller firms tend to have limited collateral, making them ineligible to obtain loans. Among survey respondents, men-led firms were also more likely to record their finances and have a bank account than women-led firms.[84] In 2020, domestic credit provided to the private sector stood at only 1.9 percent of GDP, which is considerably lower than for other regional countries, such as Sudan and Uganda that had rates of 7.9 percent and 14.2 percent respectively. Also, 83 percent of the surveyed firms said that they require external finance, but they have never applied for loans. Alongside the challenges of access, companies need help to develop their financial literacy and financial management capacities. Low levels of financial literacy limit the range of financing options that firms pursue and make it harder for them to navigate complex loan applications.

Finally, according to the 2023 Investment Climate assessment of the US State Department,[85] South Sudan is one of the most underbanked countries. Most people hold their saving in cash. Banks usually only lend to businesses with well-documented contracts with international organizations.

h) Women's economic participation

Outdated regulations are still restrictive to women' participation in the economy. A legal environment that is in line with principles of gender equity and inclusion can foster economic growth by promoting economic diversification, reducing income inequality, improving financial stability and competitiveness, and countering the negative impact of demographic changes.[86] On the other hand, legal barriers that hinder a woman's ability to start a business, choose where to live, or obtain access to credit in the same way as her male counterpart also serve to delay economic progress by limiting an economy's ability to fully realize the potential of its labor force. Legal gender equality is therefore a prerequisite to enabling women's full economic participation, as women are unlikely to be able to or want to work in economies where the law makes it more difficult for them to do so.

The legal framework of South Sudan,[87] for example, set restrictions related to marriage, include provisions affecting women's work after having children, and impose constraints on women starting and running a business. It also establishes gender differences in property and inheritance and includes provisions affecting the size of a woman's pension.

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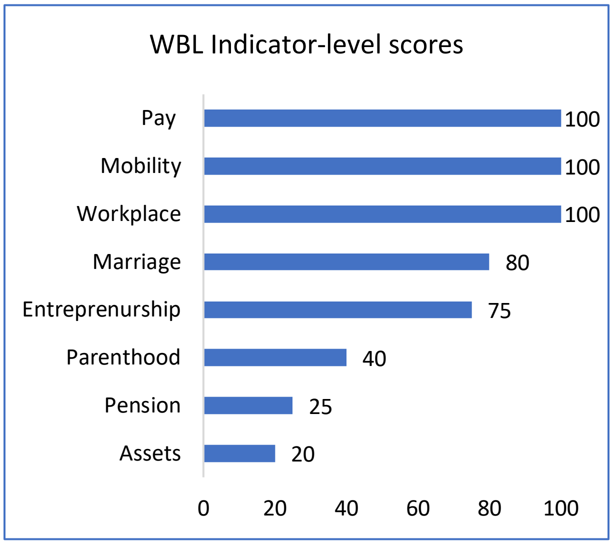
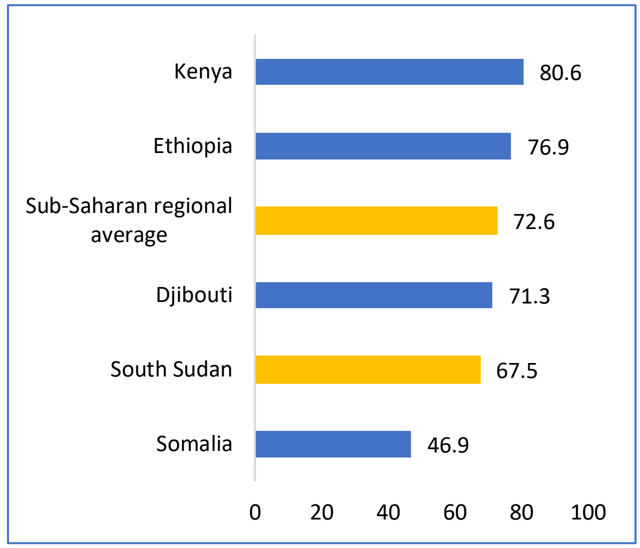
[82] https://intracen.org/news-and-events/news/business-survey-financial-access-can-unlock-innovation-for-south-sudanese
[83] Ibid.
[84] Ibid.
[8585] https://www.state.gov/reports/2023-investment-climate-statements/south-sudan/
[86] Bertay, Ata Can, Ljubica Dordevic, and Can Sever. 2020. *Gender Inequality and Economic Growth: Evidence from Industry-Level Data*. IMF Working Paper No. 20/119. Singapore: International Monetary Fund.
[87] Civil Procedure Act of South Sudan and the Labor Act of 2017.

Existing legal restrictions are reflected in the World Bank's *Women, Business, and the Law* Index.[88] However, it is also worth mentioning that South Sudan does well in some areas, including women's freedom of movement, ability to get a job in the same way as a man, and receiving equal remuneration for work of equal value for all genders (Figure 34).

Figure 34. South Sudan's Performance in Women, Business, and the Law report 2023 in comparison with the Sub-Saharan regional average





Source: Women, Business, and the Law 2023
Indicator-level scores are obtained by calculating the unweighted average of the questions within that indicator and scaling the result to 100. Overall scores are then calculated by taking the average of each indicator, with 100 representing the highest possible score.

c) Entry barriers

Establishing a business in South Sudan may take several months. Opening a business requires interacting with a multiplicity of agencies including the Ministries of Investment, Justice, Trade and Industry, and Finance and Planning. The 2009 Investment Promotion Act requires the Ministry of Investment to create a one-stop-shop investment center, however there is still no active website for this center.

In 2021, the Ministry of Justice of South established a business registration website,[89] with the aim to automate manual processes, increase accessibility to its services and improve the ease of doing business in the country. However, it is still not fully operational and the process to start a business is still very complex and bureaucratic.[90] For instance, an entrepreneur still needs to interact with several authorities to register a business and obtain a license to operate its company (*i.e.,* Business registry, relevant municipality, Ministry of Finance, Chamber of Commerce and Ministry of Labor). In addition, businesses in South Sudan often lack sufficient access to information, which limits their growth potential and ability

[88] https://wbl.worldbank.org/content/dam/documents/wbl/2023/snapshots/South-sudan.pdf
[89] https://business.eservices.gov.ss/
[90] https://www.state.gov/reports/2023-investment-climate-statements/south-sudan/

to react to changing market conditions, and they also lack access to digital technologies and the ability to use them.[91]

d) Judicial system

A strong and effective judicial system is relevant for private sector development because it promotes the rule of law by providing an impartial and independent mechanism for resolving commercial disputes and enforcing the law. This is critical for private sector development because it gives businesses the confidence to enter into agreements, invest and innovate, knowing that they can rely on the legal system to resolve and enforce those agreements if necessary.

According to a recent Justice Needs and Satisfaction Survey, conducted by the Hague Institute for Innovation of Law (HiiL) in partnership with the United Nations Development Program (UNDP),[92] every year, 1.75 million people in South Sudan face one or more legal problems. Sixty percent of these problems relate to land disputes, domestic violence, and crime. While 57% of all legal problems are resolved mainly through traditional systems, there is still a wide annual justice gap of unresolved legal problems. The inability to resolve pressing legal problems in a timely and fair manner in the court system can contribute to several issues, which can have significant implication for businesses. For instance: business uncertainty can deter investors and entrepreneurs from engaging in new ventures or expanding existing operations; international companies may be hesitant to enter markets with weak legal systems, as they may face difficulties in enforcing contracts; backlog of cases; diminished the rule of law, among others.

South Sudan's legal system comprises a blend of statutory and customary laws, lacking dedicated commercial courts, small claims courts and effective arbitration bodies to address business disputes.[93] Consequently, civil courts become the sole official recourse for settling conflicts between private parties. Moreover, the enforcement of judgements and awards suffers from weakness or even absence, compelling businesses to resort to informal mediation channels, often involving lawyers or tribal elders.

e) Land administration

Secure property rights and clear land registration processes encourage private investment and promote economic growth. Additionally, well-regulated land tenure systems provide stability, reduce disputes, and foster a conducive business environment, making it easier for businesses to thrive and contribute to overall economic development.

The legal framework for land administration in the country is comprised by the Constitution of 2011, the 2009 Land Act, the 2009 Government Act, and the 2009 Investment Promotion Act. However, there is lack of clear implementing policies and regulations and judicial interpretation of provisions which has undermined implementation of the Land Act and Constitution. In addition, there are no laws on mortgages, valuation, or the registration of titles. Also, there is a lack of awareness of the applicable legal framework in the country.

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[91] International Trade Centre. 2022. *Promoting SME Competitiveness in South Sudan: Targeted solutions for a resilient future.*
[92] https://www.undp.org/south-sudan/blog/south-sudans-judicial-reform-committee-heralds-hope-justice-sector
[93] https://archive.doingbusiness.org/en/data/exploreeconomies/south-sudan#DB_ec

The Land Act recognizes three general types of land in South Sudan: public, private and community.[94] However, ownership of land is often unclear, with communities and government often claiming the same property.[95] In addition, foreign ownership of land is still prohibited. Foreign nationals can only lease land for investment purposes, but there are no clear regulations governing how a business can access land for investment use.

III. Constraints to foreign direct investment

a) Market access

Investment entry or market access restrictions are special conditions applicable to foreign investors in particular sectors. It is usually not an issue for domestic investors, who, by definition, are resident in the country and can invest under the normal procedure generally defined in the law. Notwithstanding that generally speaking, an open market is recommended, governments may, as an exception, refuse admission to proposed investment under two grounds: (i) investment which is, in the considered opinion of the government, inconsistent with clearly defined requirements of national security; or (ii) investment which belongs to sectors reserved by the law to the government or to its nationals on account of the country's economic development objectives or the exigencies of its national interest.

Market access restrictions can also take the form of foreign ownership restrictions that prohibit or limit foreign investors to invest in certain sectors or to conduct specific activities up to a specific threshold. The restrictions are often foreign ownership ceilings of less than 50% to ensure a domestic majority in a joint venture. Reasons for foreign ownership ceilings may be to facilitate linkages to the local economy or ensure technology transfer and other spill-over effects. The effectiveness of this instrument is questionable though. Countries with foreign ownership restrictions often face the problem of fronting in which a citizen pretends to operate the business while the real owner is the foreigner. Fronting is very difficult to detect.

The South Sudan Companies Act of 2012 allows foreign private investment but conditioned to a joint venture with a domestic investor. Foreigners are permitted to invest in medium and large size companies on the condition that a South Sudanese has at least 31 percent share. Government officials will deny a business license to a foreign investor without such a local shareholder. According to the Private Security Companies Rules of 2013, private security companies operating in South Sudan must have a South Sudanese national hold of 51 percent share. In the extractive sector, companies must also have local partner, but the exact percentage of ownership required is not clear. As an exception, a foreign company that wants to establish a subsidiary in South Sudan is not subject to the local shareholder requirement.

Foreign businesses wishing to operate in South Sudan need to go through a screening process. According to the Investment Promotion Act of 2009, foreign investors have to apply for an investment certificate from the Ministry of Investment. Domestic investors may also apply for a certificate but if not granted, registration suffices. The investment certificate will only be granted against evidence that the project will benefit South Sudan society and economy. The Investment Promotion Act is silent on the specific

[94] Articles 9 to 12 of the Land Act of 2009.
[95] https://www.undp.org/south-sudan/blog/south-sudans-judicial-reform-committee-heralds-hope-justice-sector

procedure on how the screening application is to be reviewed. Since February 2022, the Ministry of Investment is issuing a new type of investment certificate but there is no information on how it operates.

Article 22 of Investment Promotion Act establishes the criteria which acceptance or refusal of the certificate will depend:

- Creation of employment for Southern Sudanese
- Acquisition of new skills and or technology for Southern Sudanese
- Contribution to tax revenues or the Government revenues
- Transfer of technology to South Sudan
- Increase in foreign exchange, whether through export or import substitution
- Production and utilization of domestic raw materials, suppliers, and services
- Adoption of value addition in the processing of local, environmental, natural, and agricultural resources using forward and backward linkages strategy
- Development of information technology for utilization, promotion, development, and implementation, information, and communication technology
- Contribution to the socio-economic and cultural amenities of the local communities
- Any other factors that the Authority considers beneficial to South Sudan

Although the criteria aim to be as towards the contribution to sustainable investment, there seems to be a certain amount of discretion in its implementation. It is not clear why some of the elements of the criteria need to be reviewed by the Authority rather than being left to market forces. This is the case, for instance, of the adoption of value addition or exchange rate. The establishment of specific criteria is beneficial as it gives certainty to the investor. However, criteria based on the justified need to create linkages and spillovers with the local economy needs to be considered carefully as such measures may discourage investment.

The issuance of the investment certificate grants investors, upon application, the necessary investment licenses. According to the Investment Promotion Act, an investment certificate shall set out the licenses that are necessary to the proposed investment and which the holder of the investment certificate would, on application, be legally entitled. The investor may be granted all licenses according to the investment certificate within twelve months after the investment certificate is issued.

Limitation in market access is also significant in the services sector. The following barriers are reported in the following sectors: (a) maximum foreign ownership in new locally incorporated company (69%); (b) maximum aggregate foreign ownership allowed for the acquisition of an existing domestic entity (69%); (c) number of firms or suppliers restricted by quantitative limits; (d) number of suppliers/licenses determined through ENT; (e) board of directors: at least one must be resident; and (f) national employees: minimum percentage required. Sectors: business services, communication services, construction services, distribution services, financial services, health services, tourism services, and transport services.[96]

Additional market access barriers include a limitation on the total number of foreign employees. Such limitation on the total number or share of foreigners employed per company covers intra-corporate transferees and other foreign employees of companies established in the country, whether locally or foreign controlled. Barriers also encompass the requirement of economic needs or labor market tests with

[96] WTO-WBG, Services Trade Restrictions Database.

regard to contractual service suppliers, independent professionals, and intra-corporate transferees; as well as limitation in the duration of stay initially allowed for foreign employees.

b) Investment protection

The Investment Promotion Act is the primary legislation regulating investment in the country. Besides establishing the investment authority, its mandate, structure and functioning, the law establishes the rules for the access of foreign firms to the country, and process of license application. The Law also provides for the core protection investment guarantees as follows:

Table 8. Investor protection guarantees in South Sudan legal framework

Investment Protection Guarantee	How is it regulated in the Investment Promotion Act?	Areas for improvement
Expropriation	No investment shall be confiscated nor be deprived of its property except in the public interest and only in accordance with the applicable laws, and against compensation equivalent to the true economic value of the expropriated project. Investors also have the right to access courts for the determination of the amount of compensation.	There is no explicit reference that expropriation includes also “indirect” expropriation. The most common form of indirect expropriation may result from measures that the State takes to regulate economic activities within its territory, even where such regulation is not directly targeted to an investment. In these cases, the legal title to the investment is not affected but the investment as such is.
Transfer of profits	Investors have the right to transfer abroad his profits, capital or proceeds resulting from the disposal over his shares or participation in the investment.	The provision does not contemplate the following two very important aspects: (i) the transfer should be made without undue delay, which means that the government cannot hold the assets for an extended period of time; and (ii) the transfer should be made in a freely convertible currency.
Non-discrimination	Foreign investors, employees, and workers, enjoy the same rights and be subject to the same duties and obligations applicable to nationals. No official, agency, law or other legal authority shall discriminate against investors from a particular country or give special treatment to prospective foreign	The Act includes both principles on non-discrimination: national treatment and most-favored nation treatment.

	investors based upon their country of origin or nationality.	
Dispute Settlement	Investors have the right to settle disputes in domestic courts or through arbitration under the rules of ICSID or any other applicable rule under IIAs.	South Sudan is not a state party to the New York Convention on the Enforcement of Arbitral Awards which diminishes the enforceability of arbitral proceedings in the country.

Even when *de jure* the main investor protection guarantees are granted, the Government of South Sudan may consider that more important than what is written in laws and regulations is how these are implemented in practice. *De facto* restrictions can merge deterring private investment from operating in in the country. For example, although South Sudan domestic law protects investors against expropriation and allows for full repatriation of profits, the country risk for expropriation and currency inconvertibility and transfer restrictions remains the highest in absolute terms as reported by Credendo (2022).[97]

Article 39 of the Investment Promotion Act establishes rules on dispute settlement but there is no provision on management of investor grievances. Where a dispute rises between an investor and the Government, all efforts shall be made to reach an amicable settlement. The Act is silent as to how this amicable settlement should be conducted. More importantly, the provision only refers to cases where a dispute already arose and there is no mechanism available for investors to address complains or grievances at an earlier stage before the grievance escalates into a legal dispute.

c) Investment incentives

Investment incentives are not the silver bullet of investment attraction. Incentives are a rather limited policy instrument that can only be effective under very specific conditions. In other words, not every development objective can be accomplished through incentives, and even when this is the case, incentives will only work if the overall investment climate is conducive. Therefore, before embarking on a new incentive program, it is very important to conduct a thorough analysis of what the critical obstacles to achieving a given objective are. Only when there is a clear market failure that can be addressed or mitigated through the incentive is it likely that such an undertaking will be successful. More often than not, such an analysis may reveal that other types of policy interventions are needed in order to accomplish a given objective.

South Sudan legal regime on investment offers a wide range of incentives. The Act, in its second schedule, provides for tax exemptions and concession in machinery and equipment, capital and net profits, as determined by the Investment Authority. The Act also provides for several fiscal incentives ranging from 20 to 100 percent of: initial allowance granted in the first year of production, start-up and

[97] Credendo currency inconvertibility and transfer restriction risk refers to the inability to convert and transfer out of the host country any funds related to the investment. Credendo risk of expropriation encompasses all discriminatory measures taken by a host government which deprive the investor of its investment without any adequate compensation; for the purpose of analyzing the expropriation risk, events of embargo, change of legal regime and denial of justice are included.

development costs, scientific research capital expenditure, training and capacity building expenditure, mineral exploration and drilling expenditure, granted on the cost base of an industrial building, and repairs and minor equipment.

Access to land for investment is also considered as an incentive. The Government of South Sudan and the local authorities will provide land for the investment in any of the priority areas under certain conditions: investment in agriculture (except forestry) no more than 30 years subject to renewal; plantation forestry no more than 60 years subject to renewal; quarrying will not exceed the life of the quarry; and mining will not exceed the lifespan of the mine and subject to renewal.

Additional incentives may be granted if decided by the Investment Authority. According to the Act, the Board of Directors will determine from time to time the schedule of incentives for the promotion of investment and eligibility criteria. The Ministry of Finance and Planning has the legal authority to approve tax exemptions.

f) Linkages with the local economy

Linkages between investors and domestic firms aim to maximize technology and knowledge transfer and increase domestic value addition, which would maximize the benefits of FDI. The creation of backward and forward linkages between FDI and other productive sectors of the local economy diffuses new technology, knowledge, and standards among local firms in host countries. However, FDI linkages and technology transfer do not happen automatically. A range of market failures and constraints faced by the investor, the local business community, and the host government may impede the forming of linkages. For linkages to happen, investment climate reforms and targeted investment policy interventions need to be geared towards creating linkages.

Research shows that linking FDI with the local economy helps to maximize the benefits of FDI on economic growth. While the positive impact of FDI on economic growth is well established, the next step is finding ways to maximize the benefits of FDI to an entire economy, and linkages is a big component of it. Ultimately linkages may lead to accessing regional and global value chains, increase in domestic value-added exports and economic diversification.

Weak competitiveness of local firms and information asymmetry are usually hindering the development of linkages. In order for linkages to happen, local companies, regardless of their size, must be ready to seize economic opportunities and be quick to integrate into the local operations of multinational corporations. This covers their attributes and capabilities in areas such as R&D, human capital, technology gaps, firm size, export behavior, firm location, and sectoral competition. Local and foreign companies may also simply have a limited knowledge of and access to each other, which can stand in the way of them forging productive partnerships.

South Sudan legal regime on investment provides for performance requirements. For example, the Labor Act of 2017 requires 80 percent of staff at different levels of management to be nationals. The Government also requires elevated work permits fees for foreign nationals. According to the Investment Promotion Act, as explained above, when the Investment Authority evaluates an application for an investment certificate, the Authority must consider whether the investment meets certain performance requirements such as whether the investment will provide South Sudan with new technology through transfer, use local raw materials and suppliers, and contribute to the local community. The Investment Authority may revoke an investment certificate due to breach of performance requirements.

Performance requirements are also prominent in the oil sector. The Petroleum Law of 2012 requires businesses, including contractors and sub-contractors, to acquire materials, equipment, machinery, and consumer goods produced on the local market, as long as they are of the same or "approximately the same" quality, available for sale and delivery in a timely manner, and no more than 10 percent more expensive than the foreign-produced equivalent. It also requires companies to use national services as long as they are similar to those available on the international market, and the prices are no more than ten percent higher. Finally, they are required to provide to the Ministry of Petroleum and Mining local content plans detailing local recruitment, employment and training and the transfer of skills, knowledge, and competence to South Sudanese citizens.

g) International investment agreements

Investment treaties are an important tool to attract foreign investment. To a great extent, the conclusion of such treaties can reduce political risk by creating a more conducive investment climate at the domestic level. As countries compete to attract FDI because of its potential benefits for the local economy, host government policies fostering regulatory certainty and predictability play a critical role in enabling the development and growth of private businesses. Literature has extensively discussed the extent to which FDI is impacted by investors' perceptions of political risks, which is closely related to regulatory certainty and predictability.

Political risk arises from the fact that host government actions can affect the profitability of a company's investment. Host governments vary in the predictability of their policies and regulatory environments and in the quality, effectiveness, and independence of their legal systems. Host counties that have unpredictable policies or unreliable legal systems may fail to attract the amount of FDI that they desire. Political risk, being one of the most important factors, is wide-ranging and includes the risk of expropriation, restrictions on the transfer and convertibility of currencies, the risk of breach of contract, unpredictable and arbitrary actions, discrimination, and the absence of regulatory transparency. Not surprisingly, these risks have been covered under traditional IIAs.

International Investment Agreements (IIAs) can help the investor to ensure the host country's commitment to maintaining the policies in place at the time of the investment. The combination of deterring adverse government actions and providing some insurance in the case that an adverse action occurs, for example through ISDS, lowers the expected losses from political risk to the investor. In addition to lowering the political risk related to investment, IIAs have a signaling effect to investors that the host country is offering a favorable investment climate. It could be said, thus, that IIAs enhance the legal environment for foreign investment in the host country, not only because the investment protection in IIAs that become part of the host country's domestic legal regime -at least for the investors covered in the IIA- but also because countries negotiating IIAs will most probably undertake the necessary legislative reforms to make the domestic legal regime consistent with the new investors' rights provided for in the IIA.

South Sudan has signed only two bilateral investment agreements (BIT) with United Arab Emirates (2019) and with Morocco (2017), either is in force. The text of both BITs is not publicly available. However, based on a review of the model BIT of Morocco and the model BIT of the United Arab Emirates, the following table contains a high-level overview of the provisions that might be in the BITs with South Sudan. Given that either BIT is in force, investors nationals from both of these countries do not get any additional benefits from the ones specified in South Sudan domestic legal framework. Given that South Sudan has no BITs in force, there has been no ISDS cases against the Government. South Sudan is also not a Member of the World Trade Organization, therefore other trade-related measures on investment do not apply to Government actions.

Table 9. Summary of provisions in Morocco and United Arab Emirates BITs

Provision	Analysis
Preamble	Reference to the creation of favorable conditions for the development of economic cooperation between the parties. Recognizing that the encouragement and reciprocal protection of investment will be conducive to the stimulation of business initiatives and the increase in prosperity in both countries.
Definition of investment	Broad asset-based definition which starts with the phrase "every kind of asset". Morocco BIT requires investments to contribute to the economic development of the host-State.
Definition of investor	Criteria of nationality or citizen or legal person constituted or incorporated under the laws of the other contracting party.
Admission & establishment	Admission clause model instead of the right to establishment clause.
Standard of treatment	Fair and Equitable Treatment, National Treatment, Most Favored National Treatment and Full Protection and Security to investments.
Expropriation	Compensation to be paid for expropriation prescribing the Hull Formula for calculation and payment of compensation. The provision includes both direct and indirect expropriation.
Transfer of funds	Requirement for transfer of returns to be made in accordance with the laws, regulations and procedures prescribed by host state and MFN treatment.
Investor-State dispute settlement	Designation of ICSID and UNCITRAL for investor-state arbitration. Any arbitral award is final and binding upon the parties to the dispute and that each contracting party ensures the recognition and enforcement of the award in accordance with domestic laws.

Although South Sudan has not ratified the AfCFTA Agreement, it is in the interest of the Government to fully implement the Agreement. To reap the benefits of closer trade and investment relations, South Sudan will need to implement the various provisions of the Agreement, which requires action to align legal and regulatory frameworks. This will entail reforms to remove entry barriers, increase transparency, and facilitate investment and trade. These reform discussions, sparked by the imminent need to comply with the AfCFTA, may be an entry point for reforms that go beyond public commitments. For example, the Protocol on Investment contains a novel chapter on sustainable development and certain provisions on investment facilitation and climate change.

The Protocol on Investment of the AfCFTA Agreement has four interrelated pillars – investment promotion and facilitation, investment protection, investors' obligations, and other State commitments. The protocol embodies a quintessentially African response to global investment issues, with the first three pillars, along with efforts to reformulate investment protection, harking back to ground-braking regional treaties and some bilateral treaties in Africa. All four pillars entail specific but interrelated implications for the policy options of each country.

4. Policy recommendations

Policy recommendations to foster enhanced investment climate

Addressing private sector constraints requires a comprehensive approach from governments, international community, and other stakeholders to foster a conducive business environment and promote private sector development, including foreign investment. The policy recommendations outlined in the following table are intended to provide actionable guidance to the governments of the countries in the Horn of Africa to enhance their investment climate and business environment in key legal and regulatory areas.

Note that although the recommendations are specific and granular, they are based on desktop-based research only and have not been validated with any government agency or stakeholder involvement, nor have they been contrasted with the implementation of such measures on the ground. In order to determine the validity of such recommendations and the prioritization and time-horizon for each of the policy reforms, in-country validation is of outmost importance.

Table 10: Djibouti: Matrix of policy reforms, and time frame

Business Environment reforms	Policy recommendations	Timeframe
Business entry	▪ Explore the possibility to include all governmental processes in the one-stop shop for business registration, including post-registration procedures, such as the registration of employees with the Caisse Nationale de la Securite Sociale. ▪ Promote the use of the company statute templates available online at the ODPIC website.	Medium-term
Property rights	▪ Ensure all the relevant information related to the list of documents, applicable fees, service delivery standards, relevant legal framework, and statistics of all the transactions conducted at the immovable property registration agency are updated and available both online and at the public boards of the agency. ▪ Develop an electronic database for checking encumbrances at the immovable property registration agency. ▪ Develop an electronic database for recording boundaries, checking plans, and providing cadastral information. ▪ Fully digitize the cadastral plans of the country.	Medium to long-term
Women's economic participation	▪ Develop a legal gap analysis to identify the legal differences between men's and women's access to economic opportunities (Review the Constitution, the Code du Travail, Code de la familie, Code Civil, and related legislations).	Short-term

Judicial system	▪ Review the legal framework of the Judiciary to introduce a clear process to select, appoint and promote judges. ▪ Develop judicial training programs that can be conducted periodically. ▪ Improve transparency in the Judiciary through the development of a dedicated website for the publication of judicial decisions, court performance measurement reports, relevant laws, and regulations, etc.	Medium-term
Digitalization	▪ Expand and promote the use of e-governance platforms for public services delivery. ▪ Explore ways to increase the production of advanced digital skills for both the public and private sector to increase for instance the use of financial services and e-government public services.	Medium to long-term
Market access	▪ Reduce entry barriers by revising the sectors restricted to foreign participation. Publishing a "negative list" would increases transparency and provides legal certainty on the applicable rules. In addition, it would also help the Government to revise and update the list of restricted sectors periodically.	Short to Medium-term
Investment protection	▪ Revise the investment code to include guarantees that are consistent with good practice and IIAs of Djibouti. ▪ Strengthen the provisions on non-discrimination guarantees. ▪ Include fair and equitable treatment ▪ Provide guarantee against unlawful expropriation to both direct and indirect expropriation with prompt, adequate and effective compensation. ▪ Strengthen transfer of funds with illustrative list of payments covered any exceptions to free transfer ▪ Strengthen dispute resolution mechanism to allow both domestic and international dispute resolution mechanisms (Arbitration, conciliation, and mediation) ▪ Strengthening the country's legal framework also entails to guarantee that the implementation of laws and regulations is done in a consistent manner and that any discretionary behavior of the government is avoided. ▪ Introduce an effective investor grievance mechanism to better manage critical investor grievances/problems, and to ensure a positive investment climate for established investors to re-invest in the country.	Short to Medium-term
Investment incentives	▪ Conduct Investment incentives review and cost benefit analysis to assess the effectiveness of the current incentive regime. ▪ Ensure that all incentives programs follow good international practices that will maximize its effectiveness while reducing unnecessary costs, *e.g.,* investment	Medium-term

	incentives should be linked to a clearly defined policy objective; the fiscal cost and risk for the government should be assessed on a regular basis; the process for applying for and granting investment incentives should be simple and minimize discretion; maintain a centralized and transparent database of all incentives provided by different agencies.	
Linkages	▪ Avoid introducing or administering any performance requirements that violate of international commitments of the country. ▪ Ensure that all linkages programs follow good international practices that will maximize the effectiveness of FDI in the local economy, e.g., before addressing any information gap, improving local firm competitiveness is a key pre-condition for linkages; investing in local supply development is an important step that governments can undertake; implement measures to improve the local enabling environment have many complementarities with the specific policies and programs for forging linkages.	Medium to Long-term
International investment agreements	▪ Consider negotiating and concluding IIAs with main trade and investment partners. Ratify the IIAs that Djibouti has signed with multiple treaty partners. ▪ Consider reviewing to domestic legal regime on investment to make it consistent with the international commitments of Djibouti. From the analysis conducted it is shown that there may be a gap between the domestic legal regime and the international legal regime in Djibouti. The domestic law should not contravene international law.	Medium to Long-term

Table 11: Ethiopia: Matrix of policy reforms, and time frame

Business Environment reforms	Policy recommendations	Timeframe
Business entry	▪ Improve inter-agency coordination and integrate all agencies involved in the business registration process in a one stop shop, for instance: the Ethiopian Revenue and Customs Authority, the Private organization employees' pension fund. ▪ Conduct a mapping exercise of all the current procedures to register a company in the country with the aim to identify the existing bottlenecks and further streamline the business registration procedure.	Short-term

Property rights	▪ Fully digitize the land titles and cadastral plans of the country. ▪ Conduct a legal gap analysis to clarify the legal rights around land allocation and leasing based on international best practices. ▪ Develop an electronic database for checking encumbrances at the immovable property registration agency. ▪ Develop an electronic database for recording boundaries, checking plans, and providing cadastral information.	Medium to long-term
Women's economic participation	▪ Develop a legal gap analysis to identify the legal differences between men's and women's access to economic opportunities (Review the Constitution, Civil Code, the Revised Family Code Proclamation, the Labor Proclamation, and other relevant regulations).	Short-term
Access to finance	▪ Ensure the newly created Capital Markets Authority enact and adopt all the necessary regulations, policies, and systems to be fully operational. ▪ Explore the option to create a credit bureau or credit registry. ▪ Assess the possibility to establish a collateral registry for movable assets. ▪ Develop training programs to increase financial capability and to raise awareness. ▪ Create programs to increase women entrepreneurs access to finance. ▪ Promote financial skills especially among women and the youth.	Medium to long-term
Market access	▪ Reduce entry barriers by revising the sectors restricted to foreign participation. Publishing a "negative list" would increases transparency and provides legal certainty on the applicable rules. In addition, it would also help the Government to revise and update the list of restricted sectors periodically. ▪ Eliminate limitation to foreign ownership and forced joint ventures with domestic companies. ▪ Eliminate minimum foreign capital requirements.	Short to Medium-term
Investment protection	▪ Revise the Investment Law and IIAs to ensure consistency of core protection guarantees consistent with good practice. ▪ Strengthen the provisions on non-discrimination guarantees. ▪ Include fair and equitable treatment ▪ Provide guarantee against unlawful expropriation to both direct and indirect expropriation with prompt, adequate and effective compensation. ▪ Strengthen dispute resolution mechanism to allow both domestic and international dispute resolution mechanisms (including ratification of ICSID Convention).	Short to Medium-term

	▪ Strengthening the country's legal framework also entails to guarantee that the implementation of laws and regulations is done in a consistent manner and that any discretionary behavior of the government is avoided. ▪ Strengthen the investor grievance mechanism to better manage critical investor grievances/problems, and to ensure a positive investment climate for established investors to re-invest in the country.	
Investment incentives	▪ Conduct investment incentives review and cost benefit analysis to assess the effectiveness of the current incentive regime. ▪ Ensure that all incentives programs follow good international practices that will maximize its effectiveness while reducing unnecessary costs, *e.g.,* investment incentives should be linked to a clearly defined policy objective; the fiscal cost and risk for the government should be assessed on a regular basis; the process for applying for and granting investment incentives should be simple and minimize discretion; maintain a centralized and transparent database of all incentives provided by different agencies.	Medium-term
Linkages	▪ Revise joint venture requirements. ▪ Support linkages programs that will maximize the effectiveness of FDI in the local economy, *e.g.,* before addressing any information gap, improving local firm competitiveness is a key pre-condition for linkages; investing in local supply development is an important step that governments can undertake; implement measures to improve the local enabling environment have many complementarities with the specific policies and programs for forging linkages.	Medium to Long-term
International investment agreements	▪ Consider reviewing to domestic legal regime on investment to make it consistent with the international commitments of Ethiopia. From the analysis conducted it is shown that there may be a gap between the domestic legal regime and the international legal regime. The domestic law should not contravene international law. ▪ Consider ratifying the ICSID Convention.	Medium to Long-term

Table 12: Kenya: Matrix of policy reforms, and time frame

Business Environment reforms	Policy recommendations	Timeframe
Business entry	▪ Ensure fully digitization of all companies records and procedures. ▪ Streamline the procedure of obtaining an advanced electronic signature. ▪ Promote the use of the advanced electronic signature for companies' registration procedures. ▪ Explore the possibility to introduce simplified corporation forms in Kenya's legal framework. ▪ Develop an extensive training program for all users of the new electronic systems introduced by the Business Law (Amendments) Act to increase its use. ▪ Improve inter-agency coordination and integrate all agencies involved in the business registration process in a one stop shop, for instance: Kenya Revenue Authority, National Industrial Training Authority (NITA), Directorate of Occupational Safety and Health Services,	Medium to long-term
Access to finance	▪ Develop programs to improve access to finance for MSMEs, especially women-owned firms and women producers.	Short-term
Property rights	▪ Ensure land registries are fully digitized. ▪ Explore the possibility to merge the Lands registry and Survey of Kenya databases in a single database or interlink them.	Medium to long-term
Women's economic participation	▪ Develop a legal gap analysis to identify the legal differences between men's and women's access to economic opportunities (Review the Constitution, the Employment Act, Law of Succession, Registration of Business Name Act, and Matrimonial Property Act, and other relevant regulations).	Short-term
Market access	▪ Reduce entry barriers by revising the sectors restricted to foreign participation. Publishing a "negative list" would increases transparency and provides legal certainty on the applicable rules. In addition, it would also help the Government to revise and update the list of restricted sectors periodically. ▪ Abolish the minimum investment requirement ▪ Consider abolishing the investment certification process even if it is optional. The alternative approach would be to introduce simple and streamlined entry process. Any investment in sectors that need addition scrutiny (i.e., investment in sensitive sectors) for national security reasons, the process must be based on an objective criterion that leaves little room for discretion.	Short to Medium-term

Investment protection	▪ Dissociate the requirement of obtaining an investment certificate to avail investment protections. ▪ Consider revising and consolidating the investment promotion and protection Acts to ensure consistency and clarity. ▪ Strengthening the country's legal framework also entails to guarantee that the implementation of laws and regulations is done in a consistent manner and that any discretionary behavior of the government is avoided. ▪ Eliminate discriminatory application of rules and regulations. Any type of government measure that subjects to a treatment that is different from those accorded to nationals is considered a discriminatory measure to FDI. These measures may result in subjecting foreign investors to disadvantages that are likely to deter foreign investment, and thereby undermine host-countries goals of investment for development. ▪ Introduce an effective investor grievance mechanism to better manage critical investor grievances/problems, and to ensure a positive investment climate for established investors to re-invest in the country.	Short to Medium-term
Investment incentives	▪ Conduct Investment incentives review and cost benefit analysis ▪ Ensure that all incentives programs follow good international practices that will maximize its effectiveness while reducing unnecessary costs, e.g., investment incentives should be linked to a clearly defined policy objective; the fiscal cost and risk for the government should be assessed on a regular basis; the process for applying for and granting investment incentives should be simple and minimize discretion; maintain a centralized and transparent database of all incentives provided by different agencies.	Medium-term
Linkages	▪ Avoid introducing or administering any performance requirements that violate of international commitments of the country. ▪ Ensure that all linkages programs follow good international practices that will maximize the effectiveness of FDI in the local economy, e.g., before addressing any information gap, improving local firm competitiveness is a key pre-condition for linkages; investing in local supply development is an important step that governments can undertake; implement measures to improve the local enabling environment have many complementarities with the specific policies and programs for forging linkages.	Medium to long-term

International investment agreements	▪ Consider negotiating and concluding IIAS with main trade and investment partners. Ratify the BITs that Kenya has been signed with multiple treaty partners that are currently not in force. ▪ Consider reviewing to domestic legal regime on investment to make it consistent with the international commitments of Kenya. From the analysis conducted it is shown that there may be a gap between the domestic legal regime and the international legal regime in Kenya. The domestic law should not contravene international law.	Long-term

Table 13: Somalia: Matrix of policy reforms, and time frame

Business Environment reforms	Policy recommendations	Timeframe
Legal framework	▪ Conduct a comprehensive review of the legal framework of Somalia to identify all the laws and regulations that need to be updated or enacted to further develop the private sector. ▪ Launch an extensive communication campaign on legal literacy to raise awareness of rights and duties for the business community.	Medium to long-term
Business entry	▪ Ensure the Somalia Business Registry System (SBRS) is fully operational. ▪ Explore ways of incentivizing the use of the SBRS, especially for women entrepreneurs by lowering the fees associated to online registration with the objective to meet the target to reach a total of 5,000 businesses by 2025 and 30% of women-led companies. ▪ Prepare an extensive and continuous outreach campaign to educate the private sector with recent and future improvements of the online services. ▪ Provide periodic training to the front-office staff operating the SBRS and the users of the system. ▪ Explore the possibility to integrate post-registration processes into the SBRS, such as the registration process to become a member of the Chamber of Commerce.	Medium to long-term
Women's economic participation	▪ Develop a legal gap analysis to identify the legal differences between men's and women's access to economic opportunities (Review the Constitution of Somalia, Family Law, Labor Code, and related legislations if applicable).	Short-term
Property rights	▪ Improve accountability and transparency of the Land Management Department and the Urban Planning Department of the Municipality of Mogadishu by ensuring all relevant information on the list of documents, associated fees, service delivery	Medium-term

	standards of the procedures conducted in those agencies are updated and publicly available. ▪ Ensure the Land Management Department publish periodically all relevant statistics tracking the number of transactions at the immovable property registration agency. ▪ Analyze the level of digitization of the land titles at the Land Management Department and the cadastral maps at the Urban Planning Department and based on that analysis, prepare a digitalization plan. ▪ Prepare a legal gap analysis of the current legal framework related to land to modernize it and include all international best practices in this field.	
Judicial system	▪ Conduct an in-depth assessment of court processes (especially for commercial cases) required by law in conjunction with the steps needed in practice to identify and address the underlying causes of delays with the objective of analyzing the possibility to specialize the court system per field of law (i.e., civil, commercial, labor, family, etc.). ▪ Further develop performance measurement mechanisms for judges, consider establishing objectives for judges and making promotions partly dependent on performance. For this purpose, collect statistics for every court of the Judiciary of Somalia and publish them. ▪ Further develop alternative disputes resolution mechanisms, such as, arbitration and mediation in the country.	Medium to long-term
Market access	▪ Revise the sectors restricted to foreign participation. Publishing a “negative list” would increases transparency and provides legal certainty on the applicable rules. In addition, it would also help the Government to revise and update the list of restricted sectors periodically. ▪ Consider abolishing the discriminatory screening process. Investment entry restrictions curtails FDI inflow. The alternative approach would be to introduce simple and streamlined entry process. Any investment in sectors that need addition scrutiny (i.e., investment in sensitive sectors) for national security reasons, the process must be based on an objective criterion that leaves little room for discretion.	Short to Medium-term
Investment protection	▪ Consider strengthening the investment legal framework by avoiding contradictory provisions between the laws responsible for foreign investment (FIL and IIPA). ▪ Strengthening the country’s legal framework also entails to guarantee that the implementation of laws and regulations is done in a consistent manner and that any discretionary behavior of the government is avoided.	Short to Medium-term

	▪ Eliminate discriminatory application of rules and regulations. Any type of government measure that subjects to a treatment that is different from those accorded to nationals is considered a discriminatory measure to FDI. These measures may result in subjecting foreign investors to disadvantages that are likely to deter foreign investment, and thereby undermine host-countries goals of investment for development. ▪ Clarify the mandate and role of the lead agency responsible for grievance mechanisms which addresses all investor grievances. An effective investor grievance mechanism not only helps governments better manage critical investor grievances/problems, but also ensure a positive investment climate for established investors to re-invest in the country.	
Investment incentives	▪ Ensure that all incentives programs follow good international practices that will maximize its effectiveness while reducing unnecessary costs, *e.g.,* investment incentives should be linked to a clearly defined policy objective; the fiscal cost and risk for the government should be assessed on a regular basis; the process for applying for and granting investment incentives should be simple and minimize discretion; maintain a centralized and transparent database of all incentives provided by different agencies.	Medium-term
Linkages	▪ Ensure that all linkages programs follow good international practices that will maximize the effectiveness of FDI in the local economy, e.g., before addressing any information gap, improving local firm competitiveness is a key pre-condition for linkages; investing in local supply development is an important step that governments can undertake; implement measures to improve the local enabling environment have many complementarities with the specific policies and programs for forging linkages.	Medium to long-term
International investment agreements	▪ Consider negotiating and concluding IIAS with main trade and investment partners. Ratify the BITs that Somalia has been signed with Turkey and Qatar. ▪ Consider reviewing to domestic legal regime on investment to make it consistent with the international commitments of Somalia. From the analysis conducted it is shown that there may be a gap between the domestic legal regime and the international legal regime in Somalia. The domestic law should not contravene international law.	Long-term

Table 14. South Sudan: Matrix of policy reforms, and time frame		
Business Environment reforms	Policy recommendations	Timeframe
Access to finance	▪ Encourage banking institutions to develop MSMEs and women-led firms finance products. ▪ Incentivize the use of bank accounts. ▪ Develop training materials to improve the financial literacy and financial management capacities, including on loan application processes of companies, especially MSMEs and women-led firms. ▪ Explore options to implement grant financing or develop mechanisms to facilitate remittance flows while the banking and financial sector continues to be developed. ▪ Explore the option to create a credit bureau or credit registry. ▪	Medium to Long-term
Women's economic participation	▪ Develop a legal gap analysis to identify the legal differences between men's and women's access to economic opportunities. ▪	Short-term
Business entry	▪ Promote and encourage the use of the newly business registration website and analyze if it complies with all international best practices in this area. ▪ Explore the possibility to include different governmental processes in the new business registration website or create a one-stop shop for business registrations. ▪ Increase transparency of information of the business registration process by enriching the content on the newly business registration website and amplifying information dissemination through public channels, including government agency public boards. ▪ Foster digital empowerment for South Sudanese companies by instituting specialized training initiatives designed to cater to their unique needs and requirements. ▪	Medium to long-term
Judicial system	▪ Prepare a comprehensive diagnostic that accurately assess the most critical structural constraints across the justice system, including the possibility to create a court or division of a court solely dedicated to hearing commercial disputes, small claims courts or fast track procedures and other alternative dispute resolution mechanisms.	Short-term
Land administration system	▪ Review the current legal framework on land administration and prepare a legal gap analysis to adapt it to international best practices.	Short to medium-term

	▪ Prepare communication and dissemination campaigns on land rights.	
Market access	▪ Revise the sectors restricted to foreign participation. A “negative list” approach would help the Government to revise and update the list of restricted sectors and investors to have legal certainty on what are the applicable rules. ▪ Consider eliminating domestic minimum capital requirements. To the extent possible and when feasible, such requirement of force joint ventures should be eliminated. These restrictions may be impeding foreign investors to invest in the country given the lack of a local partner. ▪ Consider eliminating the screening process. The alternative would be for the Investment Authority to adopt a more objective criteria that leave little room for discretion. This will improve the transparency of its decisions; and to discard those criteria that enter into the business model of applicants.	Short to Medium-term
Investment protection	▪ Consider strengthening the investment legal framework. This can be done by adding specific features to complete rules on expropriation, transfer of profits, and dispute settlement. Strengthening the country’s legal framework also entails to guarantee that the implementation of laws and regulations is done in a consistent manner and that any discretionary behavior of the government is avoided. ▪ Eliminate any type of discriminatory measure. Any type of government measure that subjects to treatment that is different from the accorded to nationals is considered a discriminatory measure to FDI. These measures may result in subjecting foreign investors to disadvantages that are likely to deter foreign investment, and thereby undermine host-countries goals of investment for development. ▪ In all policy decision implement the core principles for investment policy: non-discrimination, minimal restrictions, transparency, and rule-based framework. ▪ Consider the establishment of an investor grievance mechanism that goes beyond addressing the Investment Authority decisions to actions of all agencies in the government. An investor grievance mechanism helps governments better manage critical investor grievances/problems.	Short to Medium-term
Investment incentives	▪ Ensure that all incentives programs follow good international practices that will maximize its effectiveness while reducing unnecessary costs, e.g., investment incentives should be linked to a clearly defined policy objective; the fiscal cost and risk for the government should be assessed on a regular basis; the process for applying for and granting investment incentives	Medium-term

	should be simple and minimize discretion; maintain a centralized and transparent database of all incentives provided by different agencies.	
Linkages	▪ Ensure that all linkages programs follow good international practices that will maximize the effectiveness of FDI in the local economy, e.g., before addressing any information gap, improving local firm competitiveness is a key pre-condition for linkages; investing in local supply development is an important step that governments can undertake; implement measures to improve the local enabling environment have many complementarities with the specific policies and programs for forging linkages.	Medium to long-term
International investment agreements	▪ Consider negotiating and concluding IIAS with main trade and investment partners. From the analysis conducted, the Morocco Model BIT can be the model to follow as it reflects general good international practices. ▪ Consider reviewing to domestic legal regime on investment to make it consistent with the international investment regime. From the analysis conducted it is shown that there may be a gap between the domestic legal regime and the international legal regime in South Sudan. The domestic law should not contravene international law.	Long-term

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