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Preface

UNCTAD Investment Policy Reviews (IPRs) are intended to help countries improve their investment policies and familiarize governments and the international private sector with an individual country's investment environment. The reviews are considered by the Commission on Investment, Enterprise and Development of UNCTAD. The recommendations of the IPRs are then implemented with the technical assistance of UNCTAD. The support to beneficiary countries is delivered through a series of activities which can span over several years. Annex 1 summarizes the IPR process.

The Investment Policy Review of the Sudan, initiated at the request of the Government, was carried out through two fact-finding missions in January and February 2014, and is based on information made available to UNCTAD until June 2014. The mission received the full cooperation of the relevant ministries, departments and agencies, in particular the National Investment Authority, the focal point designated by the Government for this IPR. The missions also benefited from the views of the private sector, foreign and domestic, bilateral donors and development agencies, particularly the United Nations Development Programme (UNDP). A draft version of this report was discussed with stakeholders at a national workshop in Khartoum on 25 November 2014.

This report was prepared by the Investment Policy Reviews team under the supervision of Chantal Dupasquier, Chief of Section. Joerg Weber, Head, Investment Policies Branch, Division on Investment and Enterprise (DIAE), and James Zhan, Director of DIAE, provided overall guidance. The report was drafted by Patrick Daly, Maha El Masri and Kalman Kalotay. The report also benefited from substantive inputs from Massimo Meloni, as well as Hamed El Kady and Ana Constanza Conover Blancas of the International Investment Agreements (IIAs) Section managed by Elisabeth Tuerk. Comments and suggestions were also provided by UNCTAD colleagues under a peer review process, including Richard Bolwijn, Ariel Ivanier, Joachim Karl, Sergey Ripinski, Astrit Sulstarova and Paul Wessendorp. Juan Carlos Arguedas and Irina Stanyukova provided research and statistical support. The report was funded by the Government of Sweden.

Geneva, December 2014

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Abbreviations

ADR	alternative dispute resolution	ISDS	investor–State dispute settlement
BIT	bilateral investment treaty	ITUC	International Trade Union Confederation
COMESA	Common Market for Eastern and Southern Africa	LDC	least developed county
CSR	corporate social responsibility	MFN	most favoured nation
GVC	global value chain	NT	national treatment
DTT	double taxation treaty	OECD	Organization for Economic Cooperation and Development
EIA	environmental impact assessment	OIC	Organization of the Islamic Conference
EIU	Economist Intelligence Unit	OSS	one-stop shop
EU	European Union	PPP	public–private partnership
FAO	Food and Agriculture Organization of the United Nations	SFZ	Sudanese Free Zones and Markets Corporation
FDI	foreign direct investment	SME	small and medium-sized enterprise
FET	fair and equitable treatment	SOE	State-owned enterprise
FZ	free zone	TNCs	transnational corporation
GDP	gross domestic product	UNCAC	United Nations Convention on Combating Corruption
IBFD	International Bureau of Fiscal Documentation	UNCITRAL	United Nations Commission on International Trade Law
ICC	International Chamber of Commerce	UNCTAD	United Nations Conference on Trade and Development
ICSID	International Centre for Settlement of Investment Disputes	UNDP	United Nations Development Programme
ILO	International Labour Organization	UNWTO	United Nations World Tourism Organization
IMF	International Monetary Fund	VAT	value-added tax
IPA	investment promotion agency	VTC	vocational training centres
IPFSD	investment policy framework for sustainable development	WTO	World Trade Organization
IPR	investment policy review		

Key Messages

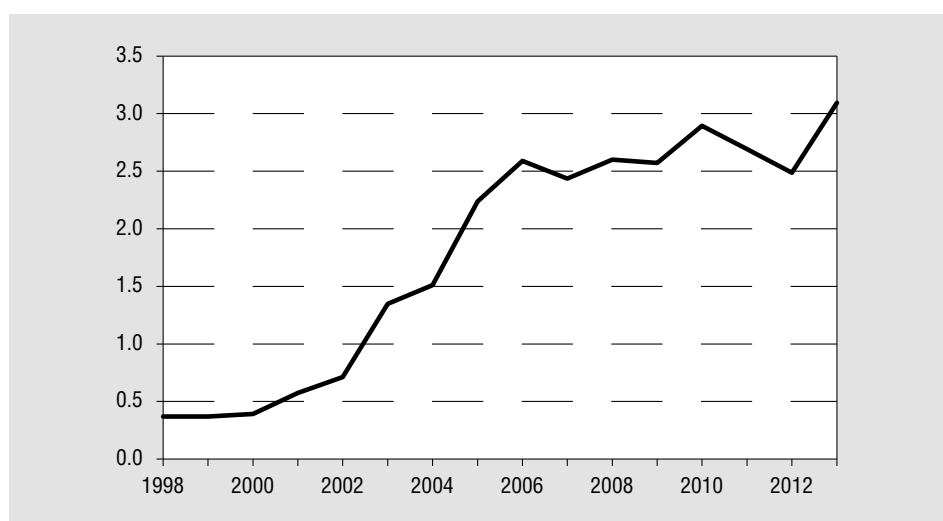
- Sudan has a significant but largely unexploited potential to attract foreign investors, notably due to ongoing internal conflicts. The country is also facing the consequences of the secession of South Sudan, in particular the loss of the bulk of its oil reserve. In this context, reassuring and rebuilding the trust of investors is essential to attract them to Sudan.
- By adopting national development plans and new legislation, Sudan has made efforts to diversify the economy and attract FDI into new industries. However, more is needed to build a transparent and predictable business environment.
- The analysis of the Investment Policy Review (IPR) completed by UNCTAD shows that Sudan has put in place a relatively open investment legislative framework with several of the existing laws being modern and in line with good practices. However, their implementation is often impeded by the absence of secondary legislation, insufficient institutional capacity and lack of coordination among different levels of the Government. This is notably the case for the FDI-specific, environment and competition regimes.
- Key remaining policy gaps include the need to clarify and streamline the process of investors' establishment, including access to land, and to review the tax regime to generate much-needed public revenue.
- The effectiveness of the recent legislative effort also relies on operationalizing the institutions foreseen in the law. In this regard, the anti-monopoly council and the anti-corruption commission are priorities.
- Further attention should also go to areas where improvement would be highly beneficial to the country. Examples include the development of free zones and local skills, in particular given the objective of reorienting and upgrading Sudan's participation in global value chains.
- In shaping future reforms, public-private dialogue should be improved and institutionalized. The participation of the private sector, both local and foreign, is essential to identify investors' needs and build a favourable business environment.
- Concomitant improvements in FDI promotion are required. Currently, different actors intervene in the process with little coordination. In addition, contrary to good practice worldwide, regulatory and promotion functions are mixed.
- Professional services provided by a dedicated institution would help Sudan face the challenges of investment promotion and channel FDI towards activities that contribute to meeting its national development objectives. This report consequently proposes the creation of an independent investment promotion agency (IPA).
- The functions of the new IPA would be developed in two stages: first, image building, investor targeting and facilitation; and second, investment aftercare, policy advocacy and business linkages. Sufficient human and financial resources, capacity-building and training of the staff are requirements for the success of the proposed strategy.
- Placing the National Investment Authority and the new IPA under the supervision of the High Council for Investment is a preferred option and would ensure better coordination in the first stage. An alternative option would be to establish, within the Authority, a dedicated FDI promotion unit conducting specific promotion activities but no regulatory functions.

Context

The Sudan is a country of extraordinary economic potential. It enjoys a strategic location at the confluence of the two Niles and has direct access to the Red Sea. The third-largest country in Africa,¹ its land is rich with mineral resources, notably gold, silver, iron, zinc, copper, chrome, uranium, gypsum, mica and other building materials, and benefits from favourable conditions for agriculture, including a varied climate, fertile soil, and water resources in the form of rains, rivers and underground water. The country's historical attractions, natural parks and seacoast are also assets for tourism development.

The Sudan attracted important amounts of FDI after the mid-2000s. FDI inflows totalled less than \$100 million per annum until 1998, then reached \$2.6 billion in 2006 (figure 1.1). Subsequently, they fluctuated but remained at a level generally surpassing \$2.5 billion per year. Over the period 2006–2011, the Sudan's inflows were surpassed only by Egypt in North Africa (and by Nigeria and South Africa on the whole African continent). As of 2011, the Sudan's inward FDI stock stood at \$24 billion, the fourth-highest in North Africa behind Egypt, Morocco and Tunisia (and the sixth in Africa; UNCTAD, 2014a).

Figure 1.1. FDI inflows to the Sudan, 1998–2013 (billions of dollars)



Source: UNCTAD (2014a).

The largest investment projects were concentrated in the oil industry, with some FDI in other industries. Although official data on FDI, including its distribution by industry and key impact indicators, are incomplete, estimates show that oil attracted the largest share of foreign investment. For instance, all but one greenfield projects of \$1 billion or above over the period of 2003–2010 were carried out by international oil firms (China National Petroleum, Petronas). However, several smaller projects of \$100–1,000 million took place in electricity (Bharat Heavy Electricals), mining (ASCOM Geology and Mining), telecommunications (Investcom), food (Bin Omeir Holding), hotels (Rotana Hotels) and building materials (RAK Ceramics) (UNCTAD, 2014b).

¹ Behind Algeria and the Democratic Republic of the Congo.

The largest investment projects were concentrated in the oil industry, with some FDI in other industries

The secession of South Sudan in 2011 strongly impacted the Sudanese economy. The associated loss of a large number of oilfields, in particular, resulted in a decline in GDP, a loss of more than half in budget revenues and a dramatic decrease in exports, which fell by two thirds (IMF, 2013a). Although official data collected in 2012 and 2013 suggest that FDI inflows remained at pre-secession levels (figure 1.1), it seems unlikely that there was no decline, given that the bulk of oil investment projects are located in the territory that now constitutes part of South Sudan. This might be due to a weakness in data collection. The shock was expected to be counterbalanced partly by the transitional financial agreement between the Sudan and South Sudan for the period 2013–2016.² However, the civil war in South Sudan has interrupted part of oil production in that country, thus affecting expected transfers (Deutsche Welle, 2014a; Market Research Reports, 2014). This added to chronically high inflation, which peaked at 48 per cent in March 2013 and is expected to remain above 20 per cent up to the end of 2016 (IMF, 2013a), and a shortage of foreign currency caused by various factors, including the economic sanctions imposed on the country since 1997.³

Development plans seek economic diversification. Oil and related activities remain important but the country has lost a significant share of its production. In an attempt to respond to its development challenges and obstacles to growth, Sudanese authorities have adopted national development plans and strategies. A twenty-five year strategy (2007–2031), setting out the long-term vision for sustainable development, recognizes the need to diversify the economy by supporting agriculture, manufacturing and the processing of agricultural goods as well as developing services, notably the tourism industry. The strategy is implemented through five-year national development plans, the second of which covers the period 2012–2016 and calls for improvements in the regulatory regime for investment and support to private sector development. The Sudan also adopted a three-year economic salvation programme, which comprises a set of concrete measures to cope with the consequences of the secession of South Sudan, including the development of productive capacities in non-oil industries.

Agricultural development is needed to achieve food security and generate export earnings. Agriculture represents 40 per cent of the country's GDP and 65 per cent of employment (Ministry of Agriculture, 2014, during the UNCTAD fact-finding mission). The sector has the potential to become a driver in attaining two concurrent development goals: 1) achieving food security through the production of basic staples (sorghum, millet and wheat), as well as the production of livestock, fish and poultry; and 2) increasing export revenue through the sales of cash crops (for example, cotton, groundnuts, gum Arabic sugar cane and alfalfa). Some FDI in agriculture is already in place, mostly oriented towards exports (for example by United Arab Emirates companies like GLB Invest and Amtaar). The GLB Alfalfa project, which is currently in an early stage of implementation, is expected once it reaches full capacity to lead to the irrigation of 78,000 hectares of land to produce alfalfa for the Gulf market. The plan is to create up to 400 jobs in the implementation phase, and 200 more in the longer term.⁴ The key challenge of the

² Under this agreement, the latter would provide the former with financing at the rate of \$750 million per annum. The agreement also comprises the payment of transit fees by South Sudan for the use of pipelines, refineries and ports which remain in the territory of Sudan.

³ A number of transactions involving goods and services of Sudanese origin as well as goods and services from the United States of America or from a United States national are currently restricted, which affects investment attraction.

⁴ Information provided to UNCTAD by the company during the fact-finding mission. For more details on the project, see "Lebanese farmland firm to invest up to \$800 million in Sudan", *Reuters*, 21 May 2013, <http://www.reuters.com/article/2013/05/21/sudan-lebanon-food-idUSL6N0E21Y720130521>.

industry remains, however, on how to support and attract investments to mitigate the country's food insecurity problem, which is reported to threaten 4 million people, mostly persons displaced by the conflicts. In this regard, recent studies have stressed the potentially beneficial role of developing inclusive models of agricultural development, which also have the potential to create jobs (FAO, 2013; World Bank and UNCTAD, 2014).

Mining can play a crucial role in exports and fiscal revenue generation. Mining currently represents about 2 per cent of Sudanese GDP, as reported by the Ministry of Mining and Minerals during the UNCTAD fact-finding mission. In 2013, gold generated an estimated 30 per cent of export revenues. The forecast for 2014 is 14 per cent, and this is expected to remain stable for the period 2015–2018 (Economist Intelligence Unit (EIU), 2014a). Mining development is indeed cited in the five-year national development programme and the three-year emergency economic programme as a way to compensate for the loss of foreign earnings after the secession of South Sudan and is consequently part of the country's overall strategy to re-focus the economy on non-oil industries. According to the Ministry of Mining and Minerals, a strategy for mining is under preparation, and the companies currently operating in the mining industry range from artisanal to large-scale entities. Foreign investors in the industry include Russian, Chinese, South African, British and Arab (including Jordanian, Moroccan and Qatari) companies.

Tourism is on the rise. In 2013, tourism attracted 591,350 visitors (including Sudanese expatriates) and brought \$735 million to the Sudan. Statistics show that these numbers have been steadily increasing since 2009 (Ministry of Tourism, 2014 during the UNCTAD fact-finding mission; UNWTO, 2014). Tourism has been undergoing a privatization process since 1993 and is among the top priorities in the 2012–2016 national development programme of the country. According to the Ministry of Tourism, all tourism-related companies have been sold to the private sector or are operating in a partnership with it. Examples of such partnerships include the Grand Hotel (leased to the Malaysian Villa for 25 years) and the Coral Hotel (a joint venture with a Kuwaiti company). Between 2002 and 2012, FDI from China, Egypt, India, Kuwait, Lebanon, Turkey, Qatar, Saudi Arabia and the United Arab Emirates, represented 43 per cent of total investment in tourism and related activities. These investments were mainly oriented towards meeting the needs of expatriate workers in the extractive sector.

Restoring political and macroeconomic stability will be key to achieving the country's diversification objectives. There is substantial theoretical and empirical evidence that factors such as political and macroeconomic stability are key determinants of the performance of developing countries in non-extractive industries in attracting FDI (Sachs and Sievers, 1998; Rogoff and Reinhart, 2003; Onyeiwu and Shrestha, 2004; Dar, Presley and Malik, 2004; Walsh and Yu, 2010). More generally, uncertainty related to the political and economic situation negatively impacts a country's economic and social development. In this respect, peace and stability remain pre-conditions for achieving the country's economic diversification and sustainable development objectives.

Significant improvements to the legal and regulatory framework for investment are also needed to attract FDI in support of diversification. While several initiatives to improve the legal and regulatory framework for investment have been undertaken, they have not yet yielded the expected results, as reflected in the country's international investment climate rankings.⁵

Significant improvements to the legal and regulatory framework for investment are also needed to attract FDI in support of diversification

⁵ The World Bank Doing Business Index ranked Sudan 153rd out of 189 countries in 2014, and 160th in 2015.

The goal of the Investment Policy Review is to assist the Government in its efforts to enhance the climate for FDI in order to achieve its national development objectives

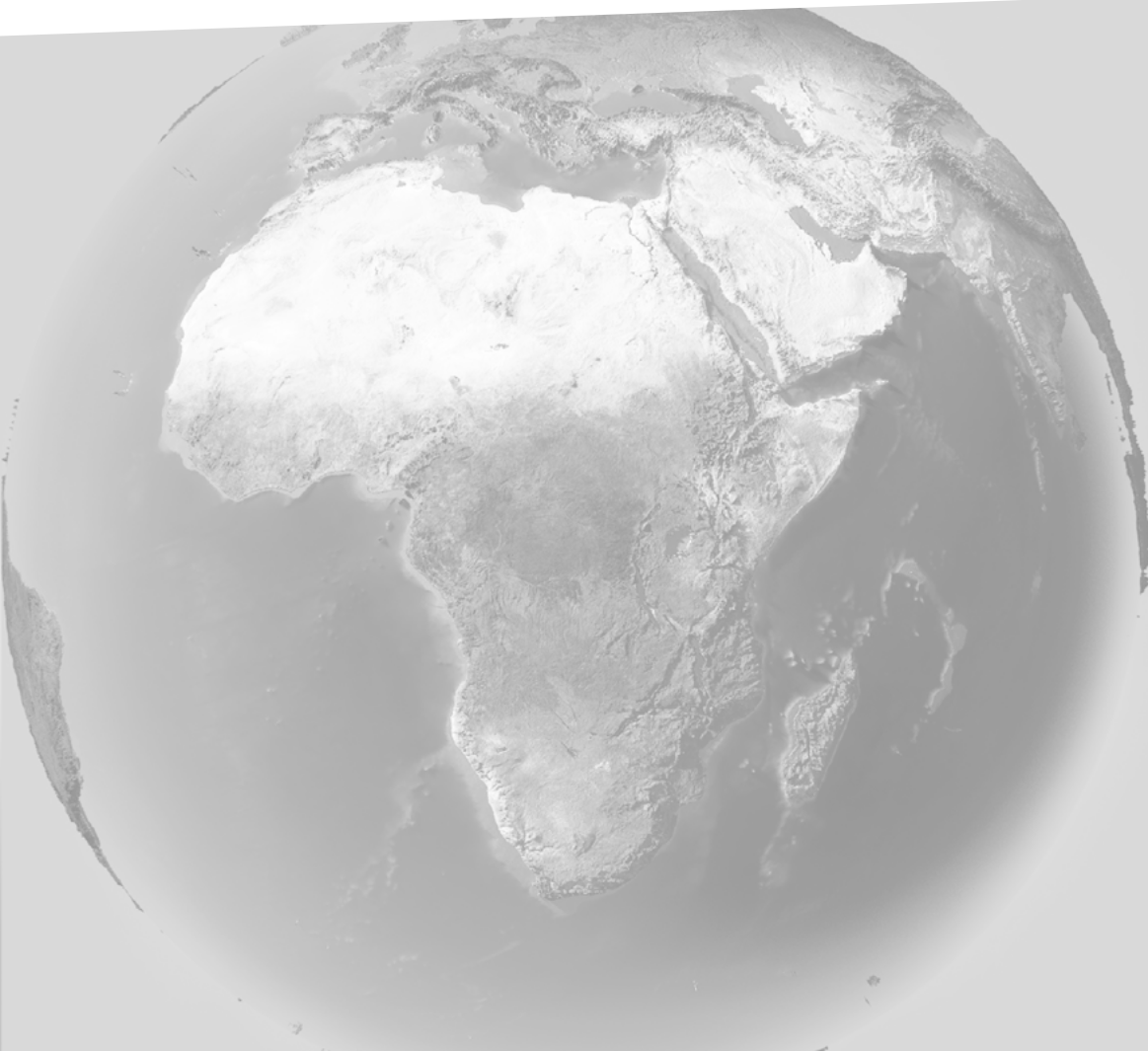
The goal of the Investment Policy Review is to assist the Government in its efforts to enhance the climate for FDI in order to achieve its national development objectives. While this Investment Policy Review (IPR) recognizes that FDI in the Sudan is affected by many additional challenges in areas such as infrastructure or trade facilitation, at the request of the Government it focuses on the legal, regulatory and institutional framework for investment as well as the country's investment promotion strategy and efforts. On this basis, it provides recommendations on how to improve them. The IPR is in line with the UNCTAD Investment Policy Framework for Sustainable Development (IPSPD), which consists of a set of core principles for investment policymaking, guidelines for national investment policies and guidance for policymakers on how to engage in the international investment policy regime (UNCTAD, 2012).

The analysis of the IPR shows that although the Sudan has put in place a relatively open investment legislative framework with several laws and regulations being modern and in line with good practices, issues regarding implementation remain. In this regard, the business climate is hampered by institutional weakness or the absence of regulations in a number of areas, in particular in the labour, environment and competition regimes. These issues are compounded by coordination challenges between the federal and the state levels of the Government, and the difficulties to enforce the laws in certain areas, notably land and anti-corruption. In this context, low fiscal revenues associated with an overly generous fiscal regime and high public spending on national security makes it difficult to allocate the resources required to strengthen public administration. Chapter 1 of this report analyses the current legislative and regulatory framework for investment and covers a range of areas and provides recommendations in order to help the country in building an open, transparent and predictable business environment for investors (see also annex 2).

Professional investment promotion by a dedicated institution would help the Sudan improve the country's image and facilitate investors' entry. Countries around the world spend increasing energy to improve and market the image they convey to investors. Image-building is particularly important in the context of State-building and economic development efforts of post-conflict economies. By mandate and structure, the Sudan's investment promotion agency (IPA), the National Investment Authority, plays a number of regulatory functions at the expenses of the promotional functions, including investor promotion, facilitation and image-building, which are typical of a modern IPA. In this regard, chapter 2 of this report thus analyses the current structure and functions of the main investment-related institutions in the Sudan, and identifies the ways to improve investment promotion, including through the establishment of a dedicated agency (see also annex 2). It also proposes an alternative option, which would consist of establishing a dedicated FDI promotion unit within the National Investment Authority. Endowed with appropriate human and financial resources, and not holding any regulatory functions, it could conduct the core primary functions of a classic IPA.

CHAPTER 1

The legal, institutional and regulatory framework for investment in the Sudan



The Sudan has put in place a relatively open investment legislative framework, in line with the privatization strategy started in the early 1990s. A new FDI-specific regime adopted in 2013 sets the principle of non-discrimination between nationals and foreigners, and is expected to open an important number of industries to foreign participation. The investors' access to the country in areas like labour and land are facilitated, with specific provisions applying to them.

However, regulatory and institutional weaknesses affect the implementation of the investment legislation.

The regulatory framework often lacks the clarity and operational details required. Secondary legislation is often absent, notably the environmental protection and competition regulations. At the institutional level, several entities provided for by the legislations are not established or are only functioning partially, notably in labour, competition and anti-corruption, due to a large extent to a lack of resources. When institutions are put in place, their mandate is sometimes overly ambitious and coordination issues arise between the federal and the state levels.

Some areas raise particular concern for investment.

For example, securing land titles in the Sudan is still problematic. The tax regime is complex, difficult to administer, and does not generate sufficient revenues to the State. Governance issues directly affect business but the legal framework to combat corruption is incomplete and anti-corruption initiatives are seldom effective. The labour regime also needs policy attention, particularly in the areas of labour rights and skills attraction. These elements strongly affect the quality of the business environment, and constitute impediments for the investors, thus impacting the fulfilment of the national development objectives of the Sudan.

The objective of this chapter is to provide recommendations to enhance the investment climate of the Sudan, and help it achieve its economic and social development objectives. It analyses the legal framework of selected investment policy and related areas, and provides recommendations on the basis of the goals described in the national development plans and of the principles of UNCTAD's IPFSD (see context and annex 2). It should be noted that the investment regulatory framework in the Sudan is marked by the federal structure of the country. The 2005 Interim Constitution defines the jurisdictions of the federal and the state levels, stating that where the

competencies are concurrent, the prevailing legislation is the one that "most effectively deals with the subject matter". In practice, federal laws serve as a general framework and provide the minimum standards, while state laws can grant more beneficial rights with regard to a specific subject matter. Taking this into account, this chapter will focus on the framework provided for by the federal laws but due attention is paid to the state level, wherever appropriate.

A. FDI-specific regulatory framework

The National Investment Encouragement Law of 2013 establishes the general regime for domestic and foreign direct investment in the Sudan. The Law is generally liberal in the provisions affecting foreign investment. The adoption on 1 December 2013 of the regulation complementing the Law, which lists the industries open to foreign participation, also results in further opening of the Sudanese economy to FDI, particularly in the services sector.

At the institutional level, the High Council for Investment and the National Investment Authority are the federal investment authorities responsible for investment. The High Council for Investment is the highest investment entity. It is chaired by the President of the Republic and comprises representatives of the authorities involved in investment policy, including government ministries. The National Investment Authority is headed by a Chairman appointed by the President of the Republic. The Council acts as the supervisory and approval body for the investment policy related suggestions of the National Investment Authority and exercises administrative control over it (budget, organizational structure, etc.). The National Investment Authority holds both regulatory and promotion roles for investment, which raises a series of issues, as discussed below and in chapter 2 in more detail.

1. FDI entry and establishment

The 2013 Investment Law defines three types of investment projects: national, strategic and State projects. Different regimes apply depending on this qualification. This chapter will only consider national and strategic projects, as the state ones are subject to a specific regime set by state laws and do not, in principle, comprise FDI.

A project is considered national when it fulfils certain conditions described in the 2013 Investment Law. In this regard, the project is national if it is developed in more than one state; foreign-owned, involving the participation of a foreigner or based on the licence granted to a foreign company; established on the basis of a specific agreement concluded with the Government of the Sudan; or covers the exploitation of natural resources of the Sudan. All projects in oil and mining, for instance, are considered national.

The definition of strategic projects and related incentives is wide and imprecise, which raises clarity issues and creates uncertainty for foreign investors. Indeed, although the definition of the strategic project has been clarified by the adoption of the regulation of the 2013 Investment Law, the characterization remains wide, and depends on the assessment of the National Investment Authority and the line Ministry. This creates uncertainty for the investors and raises serious concerns with regard to transparency, in particular since the National Investment Authority can grant non-specified additional incentives to strategic projects, beyond those it can grant to national investments.

The definition of FDI in the national legislation is not homogeneous. According to the information provided by the National Investment Authority, the investor can be either a natural or a legal person, and the invested capital is defined widely in the 2013 Investment Law. It includes any currency, local or foreign, or capital in kind, any property right, including intellectual property rights, as well as the profits on a project if recapitalized or reinvested in the investment project, its functioning, its modernization, its reconstruction or its extension. This reveals a contradiction with the provisions of the Foreign Exchange Regulation of 1999,⁶ according to which an investment only qualifies as FDI if 10 per cent or more of the shares of a resident or non-resident company are owned by a resident or non-resident foreigner.

The list of sectors admitting private and foreign investment in the new investment-related texts clearly states the desire to open the Sudanese economy. While there are no specific references to either open or closed industries in the 2013 Investment Law per se, the implementing regulation contains a positive list of activities

open to investment, which can be modified by the High Council for Investment.⁷ When foreign participation is admitted, there are no limits on the percentage of shares detained by the foreign entity, except when a public entity is involved in the company, and no minimum investment is required. In addition, no preference is granted depending on the nationality of the investors.

In practice, some industries remain restricted. Indeed, the Law on Public Procurement and Disposal of Public Assets of 2010 prohibits governmental entities from resorting to non-Sudanese entities for transportation, insurance, lease and buying of lands, and foreign exchange. The Company Registrar confirmed that foreigners can contribute up to 49 per cent of the shares of a company operating in trade, export and import activities. In addition, another type of indirect restrictions might appear during the post-establishment phase with certain mandatory operational requirements that might impede foreign businesses, for example in the banking industry (box 1.1).

The National Investment Authority reports that non-official intermediaries continue to assist investors in their establishments' procedures. They intervene at different stages of the establishment process of the investors, notably in areas such as land allocation.

The 2013 Investment Law also provides for a pre-screening of all investment projects by the National Investment Authority. The Authority's regulatory role includes a licensing function, which gives the Authority the possibility to effectively screen, as well as terminate any investment project. As per the terms of the 2013 Investment Law, obtaining a licence from the National Investment Authority is a prerequisite for all investment projects and provides access to a number of incentives. The licensing procedure is carried out at a one-stop shop (OSS) located at the National Investment Authority, where the representatives of all investment-related authorities sit with a delegation of powers from their line ministries. In principle, a preliminary licence is granted within one week

⁶ The Law on Foreign Exchange Dealing of 1981 is very brief, leaving the 1999 regulations to determine the regime of the Sudanese currency and of the foreign currencies in the country.

⁷ The sectors listed as open to private participation comprise oil, minerals, electricity, dams and renewable energies, agricultural, vegetal and animal production, industry, transportation, telecommunications, medical, health and environment services, infrastructure, roads and bridges, irrigation and excavation, construction, construction companies and housing, educational services, tourism, sea and river ports, land and air ports, freightage, unloading and storage, financial, management and consultancy services, information technology, culture and media.

Box 1.1. Specificities of the banking industry in the Sudan

The banking industry is open to foreign investment. As per the terms of the 2003 Banking Business Organization Act (article 7 (3)), the opening of branches or representation of foreign banks is subject to the approval of the Minister of National Economy and Finance upon recommendation of the Central Bank of the Sudan. Their headquarters also need to present a document stating that the bank will meet all its obligations in the country.

The Sudan applies an Islamic banking system which entails certain specificities. All banking operations are expected to be compliant with the sharia, The Central Bank indicated that Islamic banks and financial institutions are prohibited from dealing in fixed or predetermined interest rates, which are replaced by the principle of profit-and-loss sharing.

The High Sharia Supervisory Board has a supervisory role and checks the conformity of the banking operations, including of foreign banks, with the sharia. According to the Board, commissioners are located in all banks, be they foreign or domestic, publicly or privately owned, and constitute the first level of control to ensure the conformity of the banking operations. The Board constitutes the second level of control. If the banking operations do not comply with sharia requirements, sanctions consist of fines and administrative penalties, and involve both the personal responsibility of the managers of the bank and of the Central Bank. The fines can be transferred as a penalty to charitable organizations under certain circumstances.

Source: UNCTAD, based on fact-finding mission

to the investor when the project fulfils the criteria. These criteria are, however, not described in the 2013 Investment Law or in its regulation, which might prove problematic in practice. Valid for a period of two months, the preliminary licence might be renewed only once. The final licence is granted within a week of the presentation of the proof of the registration. There is no “silence is consent” rule; there must be grounds for refusal, and an appeal is possible in front of the High Council for Investment. The Council should then respond within one month. Valid for three years, the licence can be extended for two extra years maximum. The National Investment Authority has, however, indicated that after these five years, the project continues to benefit from the investment regime. However, no details on what this actually entails in practice were given. While the Authority and other ministries report that the OSS is in place and operational, other sources challenged this view during the UNCTAD fact-finding mission.

Further to the licencing by the National Investment Authority, registration is required for an investment to be considered as such and benefit from the provisions of the 2013 Investment Law. Registration is tantamount to incorporation and is done at the Company Registrar in the Ministry of Justice or in one of the 14 companies’ registration offices. These operate both electronically and by paper. The registries are public and can be consulted by anyone, provided that a fee is paid. The 1925 Companies

Law and the 1931 Business Law authorize the traditional forms of companies. Namely, these comprise: business names (one or two natural persons maximum operating in a specific industry), private limited liability companies (two persons or more), public limited liability companies (seven persons or more), branches of foreign companies and State-owned enterprises (SOE).⁸ These companies have legal personality and limited liability.

FDI entry and establishment procedures raise in practice a series of issues:

- The criteria to grant National Investment Authority licences and the documents required are not described either in the 2013 Investment Law or in its regulation. A procedures guide, which had been made available by the Authority on its website, is no longer available. Furthermore, the information was only provided in Arabic and it was not clear whether the authorities could request additional documents or administrative steps.
- As per the terms of the 2013 Investment Law and its regulation, the licence is submitted to the approval of the authorities on the basis of a technical, economic, environmental and social feasibility study, the exact

⁸ SOEs are defined as entities whose shares are fully owned by the Government and its bodies.

nature of which is not detailed. Such pre-screening of investment projects is not advisable, especially since an additional burden is imposed on national and foreign investors, who are required to undergo the regular authorization process.

- The power to grant and revoke the licence as well as the associated incentives (which include facilitation in access to land, and the possibility to freely repatriate capital and profits, as discussed in the sections below), gives the National Investment Authority an important regulatory function, thus making it the ultimate gatekeeper of any investment activity in the country. The 2013 Investment Law specifically states that, although technical aspects are still a responsibility of the ministries, the commissioners at OSS are under the administrative authority of the National Investment Authority. As discussed in chapter 2, this controverts its role as the agency responsible for investment promotion and could pose risks of conflict of interest and rent seeking. In addition, these powers overlap with those of the Minister of Justice (see below) with regard to incorporation, which adds, in practice, another layer of uncertainty for the investors.
- Overall, the 1925 Law grants important powers to the Minister of Justice, subject to criteria which are not clearly defined. The Minister of Justice can authorize or refuse the registration. An appeal is nevertheless possible against the refusal to incorporate the company, as per the terms of the 1925 Law. The Minister can also cancel the registration if the company is not considered to be compliant with the public interest. Although this is only possible with the approval of the Council of Ministers, and is considered liquidation, the criteria for this decision are not clear, as the public interest potentially uncovers a wide range of issues. Appeal is not a possibility either.
- Finally, from the current reading of the 2013 Investment Law, it is unclear whether its treatment and protection provisions (see below) would apply to those projects for which the licence period has expired. Indeed, although the National Investment Authority has mentioned that after this period the investment will still benefit from the investment regime, the 2013 Investment Law and its regulation do not state this clearly. This can create concerns for the investors in terms of transparency and predictability.

Recommendations:

- The Government of the Sudan should set objective criteria to define different types of investment projects, especially with regard to the strategic projects. For the time being, the National Investment Authority and the line Ministry have the discretion to decide which projects fall under which category, which raises serious transparency concerns and creates risks concerning the protection of the interests of both the country and the investors. Indeed, ad hoc definitions of investments on a case-by-case basis conflicts with the development objectives set by the Government of the Sudan of establishing a predictable legal and regulatory environment, which is also a key to attracting investors.
- As specified in the IPFSD (2.1.3), restrictions on foreign ownership in specific industries or economic activities should be clearly specified; a list of specific industries where restrictions apply (e.g. prohibitions, limitations) has the advantage of achieving such clarity while preserving a policy of general openness of FDI. Consequently, the Government of the Sudan should adopt a negative list approach comprising the industries closed or only partially open to foreign participation, with indications of the relevant thresholds that qualify investments as FDI.
- The definition of FDI should be harmonized across the national legislation, and include a detailed definition of qualifying criteria.
- The Government of the Sudan should remove the licensing by the National Investment Authority, and replace it by a mere registration of the investment projects for statistical purposes. Indeed, although it is normal for the Government to ensure public safety and interest, these concerns are better addressed at the authorization stage by ministries that have the expertise and competence in areas such as competition, environment and land.
- The Government of the Sudan should also clarify the incorporation procedure and make use of clear and objective criteria for the cases where the Minister of Justice can revoke the registration.

2. FDI treatment and protection

The principle of non-discrimination, which applies to domestic and foreign investors, is granted under the

2013 Investment Law. No instances of discrimination were identified in the legislation reviewed by UNCTAD or reported by investors.

No performance requirements are imposed by the 2013 Investment Law, but the investor is subject to a series of obligations during the validity period of a licence. Some are particularly unusual and burdensome. For instance, all infrastructure related to any investment project must be completed within one year, unless this period is specifically extended by the National Investment Authority. The investor must also fully exploit the land allocated within that same period. A detailed project implementation schedule has to be provided to the Authority and must be updated with the accomplished and remaining tasks, along with any necessary amendments. If the project ceases, notification must be given to the Authority within three months of the occurrence of the event. Inspections of the investment project site and the related documents can also be organized by representatives of the National Investment Authority and of the competent ministry and will have an impact on the continuation of the licence. This adds to the Authority's regulatory functions.

A list of sanctions is applied by the National Investment Authority in the case of a violation of the 2013 Investment Law. The Authority can, on the recommendation of the line Minister, and depending on the extent of the violation, issue a warning to address the reasons of the violation, and reduce or cancel the incentives granted to the investment project, including returning the value of the benefits obtained or it may decide to cancel the licence and the lease of the land granted. These decisions can be appealed before the High Council for Investment within a month, and can later be challenged in a domestic court.

As per the terms of the 2013 Investment Law, profits can be repatriated freely, while repatriation of the invested capital requires the Authority's approval. Investors can repatriate the profits, the cost of foreign capital and the loans provided the fulfilment of all legal obligations, notably tax and reporting requirements. Two additional conditions apply: the capital must be registered at the Central Bank of the Sudan and all the operations done via authorized banks. The documents required and the procedures to be followed are clearly described in the regulation of the 2013 Investment Law. Imports related to the investment project can be re-exported or sold or relinquished if the project is not fully implemented. The foreign capital is evaluated by

a Commission set by the Secretary General of the National Investment Authority. In case of disagreement, a claim can be made solely before the Commission. Appeal is not possible. The Investment Encouragement Commission of Khartoum also indicated that the investment project, once developed, can be sold, rented or inherited, but not divided, after obtaining the necessary approvals of the Authority.

Multiple foreign exchange rates exist and strict foreign exchange controls apply. According to the Central Bank, the following apply: a central rate and a commercial rate, applied within a range of +4/-4 per cent by the authorized entities. Measures were adopted to unify these rates and fill the current 30 per cent gap between them by the end of 2014. In practice however, the International Monetary Fund (IMF) indicates that there are four concurrent rates: a central rate, a commercial rate, and two additional ones that apply to wheat and gold. There is no interbank foreign exchange market (IMF, 2013b). The Sudanese pound cannot be imported or exported, except within specified amounts determined by the Central Bank. Residents and non-residents are authorized to open foreign currency accounts, buy and rent real estate, goods and services in foreign currency. However, it is forbidden to sell foreign currency if it is meant to be used in a direct investment or to buy immovable property or keep deposits inside and outside the country unless specifically authorized. Restrictions also apply on obtaining short-term financing from abroad and investing in securities.

The key concern for investors is the shortage of foreign currency in the country. As a result of the secession of South Sudan and the sharp decline in oil production and export, the country lost about two thirds of its foreign exchange earnings (IMF, 2013a). In this context, the Central Bank rationalizes demand for foreign currency by limiting liquidity available to importers (Central Bank of the Sudan, 2012).

Guarantees against expropriation are offered, though incomplete. A 2008 presidential decree specifically prohibits the expropriation of investors. The 2013 Investment Law prevents expropriation, which includes nationalization, confiscation and seizure of the assets and real estate of investment projects, except where there is public interest, and provided fair and immediate compensation is granted. No further criteria to determine the latter are found in the law, but the 1930 Expropriation Law states that public interest is "the use of the land to establish on it or underneath it facilities which will (...) be

used for public works accomplished by the municipality in the exercise of its mandatory prerogatives for the purpose of the project". The 1930 Law also details the procedure for granting compensation. However, it sets neither a time frame nor the relevant conditions. Indirect expropriation is not covered, and the consequences of certain acts, such as the revocation of the investor's licence in case of a violation of its obligations, are unclear.

The entity conducting the expropriation is responsible for finding agreements with the parties involved. If no agreement is reached, an arbitration committee is set up. The committee comprises the civil servant in charge of expropriation (as president) and one representative for each of the two parties involved in the case (the Governor of the state and the owner(s)). Appeal is not possible; however, parties might ask the Supreme Court to designate a person to review the decision. In practice, the National Investment Authority reports that a commission in the High Council for Investment deals with cases of land size reduction. The mechanisms under which it operates are not clear.

The 2013 Investment Law provides for the following alternative dispute settlement mechanisms, without formally distinguishing between investment and commercial arbitration:

- If the dispute falls within the framework of listed international agreements,⁹ the dispute settlement provisions of these agreements apply;
- If the dispute does not fall within the framework of the listed international agreement, the investment specialized court is competent, unless the parties agree to conciliation or arbitration.

With regard to investor–State disputes, ICSID currently reports two ongoing cases. The first involves Sudapet, the Sudanese oil SOE, as a claimant against South Sudan (ICSID, 2014a). The second opposes the Sudan as a respondent to the claim of a Lebanese-Jordanian investor, Michel Dagher (ICSID, 2014b). The claim was filed on the basis of the Jordan and Lebanon bilateral investment treaties (BITs) with the Sudan over the country's alleged failure to grant a

company (ultimately owned by this investor) frequencies for a wireless Internet network it had helped to build.

The 2005 Arbitration Law governs the general regime for commercial arbitration in the Sudan. Arbitration is considered international when the headquarters of the parties to the case are in different States, or when the subject of dispute is "connected" to more than one State. However, the definition of this connection is not provided for by the 2005 Arbitration Law, and would consequently need to be assessed on a case-by-case basis. The arbitration agreement must be in writing and can be concluded both before and after the dispute. Arbitration awards are legally binding and can be enforced automatically. If an issue arises with regard to the enforcement, a request can be made to the court which would have been competent if arbitration had not been chosen. The World Bank reports that, on average, it takes about 25 weeks to enforce a commercial arbitration award rendered in the Sudan, from the filing of an application to a writ of execution attaching assets (assuming there is no appeal), and 19 weeks for a foreign award (World Bank, 2010). The Sudan has not ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), which might hinder the enforcement of foreign commercial arbitral awards.

It is difficult to identify the number of commercial arbitration cases in the Sudan. Khartoum hosts a centre for commercial arbitration, which administers commercial arbitrations. The World Bank reports that most commercial arbitration cases in the Sudan have until now been ad hoc or under international arbitration institutions (World Bank, 2010), but without providing further details.

Recommendations:

- The licence compliance obligations imposed by the Sudan on the investors imply a strict control by the National Investment Authority at all stages of the project. In accordance with the IPFSD (2.1.8), performance requirements can be imposed to achieve legitimate public policy purposes as conditions to granting incentives. However, they should be proportionate and not constitute a deterrent for investors. In line with this, and along with the recommendation to abolish the licence, the Government of the Sudan can require investors to fulfil specific conditions to benefit from incentives under the 2013 Law; however, these conditions should be clearly stated and not constitute an excessive burden;

⁹ The Unified Agreement for the Investment of the Arab Capital in the Arab States (1980), the Riyadh Arab Agreement for Judicial Cooperation (1983), the International Centre for the Settlement of Investment Disputes (1965), the General Agreement for Economic, Technical and Commercial Cooperation among the OIC member States (1977) or any other investment-related treaty to which Sudan is a party.

- In line with the IPFSD (2.4.12), the granting and administration of incentives should be the responsibility of an independent entity or government ministry that does not have conflicting objectives or targets for investment attraction. In this regard, as part of the comprehensive review of the tax regime recommended in section D of this chapter, the Government should separate the regulatory and promotional functions currently held by the National Investment Authority (see chapter 2).
- Repatriation of capital and profits in the context of FDI is regulated and subject to a series of conditions which could be further detailed and made automatic to rely only on clear, objective and pre-determined criteria, and consequently not depend on the authorization of the National Investment Authority. This would help ensuring predictability and transparency for the investors.
- The Government of the Sudan should further describe the mechanisms for the compensation in case of expropriation, especially by including criteria for what the term “immediate” in the 2013 Investment Law entails, and taking into account international key principles. In addition, judiciary recourse against the decision of the arbitration committee deciding on the compensation should be made possible;
- Finally, as the Sudan is open to international commercial arbitration, the Government should envisage adherence to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to facilitate the enforcement of foreign awards.

3. International investment agreements

As of 3 November 2014, the Sudan had signed 35 BITs, 21 of which have entered into force. The Sudan signed its first BIT with Germany in 1963 and its most recent one with Turkey in 2014.¹⁰

The BITs signed by the Sudan follow the traditional elements of investment protection. They include an asset-based definition of investment, provide for post-establishment most-favoured 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). In the BIT with Indonesia, the free transfer obligation is subject to the prior payment of legal, financial and tax commitments. Only the BITs with Jordan and Oman do not afford NT to investments. With the exception of the BIT with Turkey, they also contain provisions on fair and equitable treatment (FET). Only the BITs with France, Oman and Qatar qualify the FET standard by reference to international law or principles of international law.

Most of the BITs concluded by the Sudan opt for a broad and unqualified FET standard. When not clearly defined, FET can be difficult to qualify and, while providing a maximum protection for investors, a country also risks suffering certain consequences. Indeed, claims brought to date by investors against States often include an allegation of the breach of this standard of protection.

Three BITs signed by the Sudan (Belgium-Luxembourg, Germany and Lebanon) include an umbrella clause. This clause requires the host State to respect any obligations assumed by it with regard to a specific investment (for example, in an investment contract). Such a provision effectively expands the scope of the BITs signed by the Sudan by elevating non-treaty obligations of the host State into the treaty.

Some of the BITs concluded by the Sudan contain sustainable development-oriented features. For example, half of the BITs analysed explicitly require investments to be made in accordance with host State laws. In turn, only the BIT with Belgium-Luxembourg contains a “not lowering of standards” clause for environmental protection and domestic labour legislation. Four BITs contain general public order and/or essential security exceptions (Belgium-Luxembourg, Germany, India and Qatar).

Seven of the 12 other IIAs the Sudan is party to include substantive investment provisions. These agreements are listed in annex 3. For instance, the COMESA Investment Agreement includes FET, NT, MFN and ISDS provisions, and imposes upon investors the obligation to comply with all applicable domestic measures of the member State in which their investment is made. It also provides for various flexibility mechanisms including a provision explicitly reiterating the right of host States to regulate investment for development purposes. The Organization of the Islamic Conference (OIC) Investment Agreement

¹⁰ The analysis of this section is based on the texts that were available at the time of this review. See annex 2 for a list of the 35 BITs of Sudan. To avoid double counting, the BITs that have been terminated or replaced are not counted as concluded BITs.

includes provisions granting MFN and NT to investors in OIC countries. At the same time, the Agreement includes important exceptions concerning the free transfer of funds and imposes obligations upon investors to refrain from all acts that may disturb public order or moral, and to refrain from exercising restrictive practices and from trying to achieve gains through unlawful means. The Unified Agreement for the Investment of Arab Capital in the Arab States permits the free transfer of funds and requires the parties to protect Arab investors and their revenues. The Agreement entitles Arab investors to unimpeded entry and residence within the territory of the Arab State in which the investment is made and provides for an Arab investment court to settle disputes arising from the application of the agreement.¹¹

There are also five international treaties which make a general reference to investment.¹² For example, the Eastern and Southern Africa–European Union Economic Partnership Agreement (ESA–EU EPA) aims at establishing and implementing an effective, predictable and transparent regional regulatory framework for investment in the Eastern and Southern Africa region, and the COMESA–United States Trade and Investment Framework Agreement (TIFA) establishes a council on trade and investment to work towards the removal of impediments to investment and to consult on specific trade-and investment-related issues of special interest to the parties.

Recommendations:

- The country's regime of IIAs could be modernized. While some IIAs signed by the Sudan contain sustainable-development-oriented features related to the transfer of funds, national security and the protection of environmental and labour standards, the goal would be to further align them with recent international best practice and ensure consistency with national development strategies. The checklist of topics to be scrutinized in revising or amending IIAs could be derived from the IPFSD.
- Preventing and managing investor–State disputes. While the Sudan is party to only one ISDS dispute,

more can be done to strengthen the capacity of Government officials in charge of investment policies to prevent and manage disputes, as these can prove to be costly for host States. UNCTAD stands ready to provide further technical assistance to the Government of the Sudan in these areas in the context of the follow-up implementation of the IPR recommendations.

B. Free zones

There are two free zones in the Sudan and plans to develop new ones. These are the Aljaily Free Zone and the Red Sea Free Zone (box 1.2), and 11 new zones are planned, according to the information provided to UNCTAD during the fact-finding mission.¹³ The regime for free zones is governed by the 2009 Free Zones and Free Markets Law. An implementing regulation was adopted on 18 May 2013. The authority responsible for the free zones is the National Council for Free Zones, which started operating on 1 January 2013. Headed by the Chairman of the National Investment Authority, the Council is administratively under the Authority's supervision, while it remains solely in charge for all technical and operational issues, for example licensing, in the free zones.

The objective of the free zones is to promote domestic and foreign investment in areas determined by the Council taking into account the country's development objectives. The activities conducted in these zones are, for the time being, based on expressions of interest by investors, and not determined by official planning.

Two types of companies operate in the free zones: the administration company and the investing companies. The administration company is licensed by the Council and has the status of an investment project; its regime is thus defined by the 2013 Investment Law. It is in charge of setting the infrastructure of the free zone in accordance with a specific agreement concluded with the Council, including notably a mandatory participation to the municipalities. The nature of this contribution has not been specified by the Council. The administration company can select the companies investing in the free zones, license them and

¹¹ On 21–22 January 2013 in Riyadh, the third Economic Summit of the Economic and Social Council of the League of Arab States adopted the Amended Arab Investment Agreement as suggested by the Council in its session of 6 December 2012.

¹² Arab Economic Unity Agreement, AU Treaty, COMESA Treaty, COMESA–United States TIFA, and ESA–EU EPA.

¹³ These free zones would be located in the following states: Gedalf, Red Sea, Qalb Al Allam, Kassala, Jezira, Khartoum, White Nile, Niyala, Fashel, Northern and Abidiya.

Box 1.2. Overview of the free zones in the Sudan

The Aljaily Free Zone and the Red Sea Free Zone are operated by the Sudan Free Zones and Markets Company (SFZ), a Sudanese publicly traded company established as the result of the merger of different governmental and private entities in 1993.

Red Sea Free Zone: Inaugurated in 2000, this zone is located 38 km south of Port Sudan (17 km south of Port Sudan Airport) and has a total area of 26 km². Its structural plan was finalized in partnership with a Chinese company. The Red Sea Free Zone comprises about 890 companies operating industrial, commercial and services activities. Sudanese investors own 80 per cent of these companies, and 20 per cent are foreign-owned.

Aljaily Free Zone: Inaugurated in 2007, and covering a total area of 26 km², the Aljaily Free Zone is strategically located 70 km north of Khartoum, west of the Khartoum Oil Refinery and in between the railway and the Aljaily-Atbara road. An Irish entity was involved in the preparation of its structural plan. The Zone numbers about 1,721 companies operating industrial, commercial and services activities.

Renting is the only option for lands in the free zones, while the real estate built on them is the property of the companies.

Source: UNCTAD, based on the Sudanese Free Zones and Markets Corporation (2011) and the National Investment Authority during the fact-finding mission.

collect the licensing fees and rents. The Council remains, however, responsible for the sanctions, notably for the delays in respecting the time frame. These sanctions might result in the withdrawal of the licence.

The investing companies can operate in a series of industries listed by the regulation.¹⁴ The Council indicates that 100 per cent foreign ownership is possible, with no restrictions on the industries. The investing companies benefit from a series of incentives during the validity period of their licence under the 2009 Law:

- The companies are exempted from corporate income tax, income tax on the foreign employees' salaries and bonuses, custom duties and taxes for all imports and exports outside the domestic market (with the exception of the services fees imposed by the Council), and from the fees, taxes and returns of their real estate inside the free zone;
- The goods inside the zones are exempted from all custom duties and taxes;
- The industrial products are exempted from custom duties within the limit of the value of the products and expenses involved in their production.

The Council has also indicated that additional incentives might be granted to industrial projects. An OSS to simplify the treatment of the custom duties is expected to be put in place in 2015.

The 2009 Law provides for free repatriation of the invested capital. The Council has indeed indicated that, contrary to investment in the customs territory of the Sudan, the free zones enjoy a special regime in this regard.

An investment regime specific to the zones is in place. Companies in the free zones also benefit from specific regimes with regard to the land and labour regimes (see relevant sections C and E). They are also guaranteed against nationalization, seizure, surveillance, expropriation, freezing or withholding of their funds in the free zone, which require a judicial writ. This poses a series of issues: the basis on which this judicial order could be taken is not specified, and there is no mention of compensation. In practice, the Council indicated that the only bases for expropriation would be a violation by the investing company of the 2009 Law, of the 2013 regulation or of the agreement concluded with the Government of the Sudan. It also clarified that compensation would be offered to the investing company, assumingly under the 1930 Law (see section A 2).

The Sudan adopted a sound, although traditional, model for its free zones, especially with the adoption of the 2009 Law and its regulation. However, some issues arise.

¹⁴ Industry, commercial and storage, services, agriculture, information, mining, tourism, and finance and banking. This list can be extended by the Council.

Although, as per the terms of the regulation, the impact of the project in terms of transfer of technology, employment creation and environment is to be taken into consideration when granting the licence to the investing company, the current incentives given to both the administration and the investing companies raise two correlated issues. On the one hand, it is not sure that they compensate the burden imposed on the administration companies which are responsible for setting up the whole infrastructure of the site, and on the other hand, they deprive the country from much needed fiscal revenue (see section D). Moreover, the types of incentives granted by the 2009 Law are mostly oriented towards encouraging exports. As the experience of several countries has shown, this could create an enclave effect for the free zones and limit their impact on the local economy, on entrepreneurship or economic diversification.

Recommendations:

- The Government should consider expanding the orientation of the free zones to the domestic market. Although an effort has already been made in this sense with the adoption of the regulation, these zones should further promote sustainable development goals. In such a model, incentives and export requirements would play a lesser role, the main drivers of investment being the quality of infrastructure services and regulations (UNCTAD, 2014a). The Government should also encourage improved corporate social responsibility (CSR) policies and practices.
- An additional step could also be for the Government of the Sudan to be more selective as to the economic focus of the zones and build a strategy to identify specific products that would be developed in the zones to move the country up in the value chain, thus using them as incubators.

C. Land ownership, registration and leasing

The land regime needs clarification and better institutional coordination. Land is a concurrent jurisdiction between the federal and the state governments according to the Constitution. As per the terms of the 2013 Investment Law, the states are responsible for registering, planning, mapping and publishing information on the land

available for agricultural, industrial and services projects. While foreigners can access land with the assistance of the National Investment Authority, the rules and conditions regarding private transactions are not clear, and institutional issues affect the allocation of state-owned lands. Moreover, although title registration is efficient and, as reported by the Authority, it is only possible if the land is not disputed, enforcement of property rights remains a challenge.

Foreigners can buy land through their investment project or if authorized by the Council of Ministers.

While the 1925 Land Settlement and Registration Law does not appear to distinguish on the basis of nationality,¹⁵ the National Investment Authority, the Investment Encouragement Commission of Khartoum and the 1994 Urban Planning and Disposition Law make use of such distinction for foreigners to acquire land in any part of the country. This applies not only to State-owned, but also to privately owned land.

State-owned and privately-owned lands can be, under different conditions, leased to private investors.

As per the terms of the 1994 Law, only State-owned land which is free of claims can be allocated to private parties. A lease or a usufruct contract is concluded between the Government and the private party. The rights and obligations of the private party must be contained in the contract. Typically, foreign investors looking to access land would seek the assistance of the National Investment Authority, which, in coordination with the states, can allocate land at a preferential price with a one-off payment system for the rent. The Authority reports that land is sometimes allocated free of charge, especially in the case of strategic investment projects. The Investment Encouragement Commission of Khartoum indicates that the lease is for a preliminary period of one year for industrial lands and three years in agricultural lands. It can then be renewed by periods of 33 years up to a cumulative 99 years. With regard to privately owned lands, the 1925 Law mentions both renting and usufruct, but without referring specifically to the nationality of the parties. The National Investment Authority has confirmed that renting to foreigners is allowed, but that the duration of the lease should not be less than 10 years.

Issues concerning land allocation to investors have, however, been reported. This is notably due to a lack of coordination between the federal and the state authorities.

¹⁵ Special provisions do apply however in the cases of the inheritance of a land owned by a non-Muslim.

The latter are often the owners of the land and can impose delays or effectively deny the allocation decision of the federal Government. An investment map, meant to identify available land, was supposed to have been drawn up in coordination with the authorities at all levels, but different Government sources have indicated that this was not the case. In the absence of an investment map, the National Investment Authority asks the state to provide a determined land on an ad hoc basis and the investor is, in practice, responsible for concluding the agreement directly with the state. The National Investment Authority indicated that the Council of Ministers recently established a committee comprising all relevant entities to identify the gaps in land allocation mechanisms and ways to correct them. The committee has, however, not yet presented its findings and conclusions.

Agricultural State-owned land is subject to a special regime. Agricultural projects' committees are set up in each state. The conditions of disposition are lighter than for ordinary lands, but the contract is firstly concluded for just a preliminary period. If the objectives are fulfilled during this period, a certificate has to be issued by the agricultural authorities to be presented to the land and registration authorities. The status of the land cannot be changed during the duration of the contract, unless compensation is provided as per the provisions of the 1930 Expropriation Law.

In the free zones, the regulation states that only rent of lands owned by the State or by the administration company is possible for both domestic and foreign investors. In the case of State-owned land, the National Council for Free Zones (the Council) reports that the durations of these leases are of 20 years for industrial projects and 15 for commercial projects. These periods are renewable up to 49 years as per the terms of the regulation, after which the Council of Ministers decides on the renewal on the basis of the recommendation of Council. The real estate built on the land becomes, according to the Council, property of the companies which can then be sold at the end of the lease.

Land registration is efficient. Land titles are registered at the Registration Offices, which are headed by the General Registrar of Lands appointed by the Head of the Judiciary. The cadastre, electronic in most cases as per the information provided by the Registrar, is maintained in Arabic or in English. The registration of land titles creates guarantees for its owner. Ownership titles can be transferred among Sudanese citizens through the land market, and the land

can be used collateral, provided it is registered. According to the World Bank Doing Business 2015, the Sudan ranked 46 (45 in 2014), with an average of six procedures over nine days to register a property at a cost of 2.8 per cent of the property value, which is a good performance by comparison with even the OECD member countries (4.7 procedures to register a property in 24 days and at a cost of 4.2 per cent of the property value) (World Bank, 2014).

Claims of ownership of lands by individuals and tribes often impede access to lands and obstruct the rights of both owners and tenants. This is true even when titles are registered but the issue is especially of concern for investors in rural areas, as in the cities titles are reportedly more secure.

Recommendations:

- The Government of the Sudan should carry out a thorough assessment of the existing coordination mechanisms between the federal Government and the states to evaluate the gaps in the land allocation mechanism. This assessment should take into the conclusions of the committee set up by the Council of Ministers.
- As regards the allocation of land for agriculture, particular attention should be paid to ensuring that sustainable development considerations are properly taken into account. In this regard, the allocation should respect the Principles for Responsible Agricultural Investment (PRAI) developed by UNCTAD in cooperation with FAO, IFAD and the World Bank (World Bank and UNCTAD, 2014).
- While reinforcing its control over the land, both at the federal and state levels, the Government should also envisage an information campaign to build the capacities of not only civil servants, but also of the public, on traditional rights' entitlements as provided for by Sudanese law, as well as land registration, thus contributing to raising awareness of the importance of title security.
- The question of the role of the National Investment Authority as both the regulatory authority with the power of granting land-related incentives and as the investment promotion agency of the country arises here again. If it is to retain its power to allocate lands, it should relinquish its investment promotion role, or serve only as a facilitator.

D. Taxation

Although taxation levels are generally low, the tax regime is complex and characterized by a wide array of industry-specific corporate income rates and incentives. Corporate income tax rates (called business profit tax) are 0 per cent for agriculture, 10 per cent for industry and 15 per cent for most services.¹⁶ The corporate income tax on banks recently increased from 15–30 per

cent (see below). Mining and oil are taxed at 30 per cent and 35 per cent, respectively. Dividends are not subject to tax. Other direct taxes include capital gains taxes on the earnings in the country, withholding taxes, rental tax, and a social development tax when exemptions are in place, notably under the 2013 Investment Law. Other taxes are stamp duties, transfer taxes, real property taxes and, in the case of a company owned by Muslim shareholders, *Zakat* at a rate of 2.5 per cent applied to the working capital, although no indication on the required percentage of shares

Table 1.1. Overview of the main corporate direct taxes

Type of tax	Rate
Corporate income tax	0% for agricultural companies, public and private educational institutions licensed as universities or general educational organizations, and registered charitable non-profit organizations 10% for industrial companies 15% for commercial, trading, service, real estate rental, fund management and insurance companies; 30% for mining companies, banks, cigarette and tobacco companies 35% for companies engaged in the exploration, extraction and distribution of oil and gas, and their subcontractors 2.5% minimum tax on annual turnover for telecommunication companies
Capital gains taxes	5% on gains from the sale of lands and buildings owned for at least consecutive three years 2.5% on gains from the sale of vehicles 2% on gains from the sale of securities, shares and bonds, subject to certain exceptions
Withholding taxes	No taxes on dividends Resident companies: 2% creditable withholding tax on import of goods 7% final withholding tax on payments to non-resident subcontractors for interest and other services 5% creditable withholding tax on payments to entities registered in the Sudan as branches of a foreign company Non-resident companies: No branch remittance tax 7% on interest payments 15% on royalty payments 15% on technical services fees 15% on management consulting fees
Rental tax	10% final tax on rental payments exceeding SDG 3,000 (equivalent to \$528 on 3 April 2014).
Social development tax	5% only on companies exempt from tax under the 2013 Investment Law or any other law
Social security	17% of the monthly salary of a Sudanese employee
Stamp duty	Rates vary on the type of instrument (more than 260)
Transfer tax	2% on transfer taxes
Royalties	7% on gold mining
<i>Zakat</i>	2.5% on the working capital of companies owned by Muslim shareholders

Source: UNCTAD (2014), based on information from the Taxation Chamber of the Ministry of National Economy and Finance during the fact-finding mission; Deloitte; IBFD (2013a; 2013b)/IMF (2013b).

¹⁶ The taxation regime in Sudan is set by a series of texts: the 2005 Interim Constitution, the 1986 Income Tax Law, the 1986 Capital Income Tax, the 1999 VAT Law, the 2001 Zakat Law, the 1986 Capital Gains Law, and the 2007 Social Development Law constitute the general regime. The 2013 Investment Law and the 2009 Free Zones and Free Markets Law create special regimes. In addition, Sudan is currently reported to have 17 double taxation treaties with Bahrain, China, Egypt, South Korea, Lebanon, Malaysia, Syria, Tunisia, Turkey, United Arab Emirates and United Kingdom of Great Britain and Northern Ireland, India, Indonesia, Qatar, Saudi Arabia, Iran and Pakistan as of February 2014.

is given (table 1.1). There is no labour tax, but the employer is required to contribute 17 per cent of the monthly salary of a Sudanese employee for social security.

Value-added tax (VAT) is generally rated at 17 per cent, and several industries are exempted from it. It is levied by and mostly for the federal Government, and 40 per cent of the total revenues are then transferred to the states. VAT applies to the supply of goods and services by taxable

persons in the country, as well as on the imports of goods and services into the Sudan. The rate increases to 30 per cent for telecommunication services, and an unusually wide range of activities are exempted: agriculture, banking and insurance services, rental, health, education, exports of fertilizer, chemicals, drugs, electricity, water, mining (including gold mining) and minerals, and investment-related exports. There is no refund scheme for non-resident companies.

Foreign investors benefit from a specific regime, which add to the low corporate income tax rates applying to certain industries. An initial depreciation allowance of 20 per cent is granted for the purchase of machinery or equipment to be used in production (IBFD, 2013a). Investors are also exempted from VAT on the imports for the capital equipment of national investment projects, subject to the approval of the National Investment Authority. As mentioned previously, investment projects that are considered strategic might benefit from additional fiscal incentives granted on a case-by-case basis by the Authority in coordination with the line ministry. This raises serious concerns with regard not only to their transparency, but also their effectiveness, which is difficult to monitor. To obtain at least partial compensation of the revenue loss associated with these incentives, the Government introduced a 5 per cent tax on companies that are exempt from taxes under the 2013 Investment Law or any other law.

Such differential tax treatment, both in terms of general rates and project-specific incentives, adds to an already complex tax administration. At the institutional level, the responsible authorities, that is to say, the federal Taxation Chamber of the Ministry of National Economy and Finance and the states' Ministries of Finance, are supposed to share tax collection responsibilities. In practice, in the absence of clearly defined collection and allocation mechanisms, taxes are levied by the federal Government alone. In this context, states have become increasingly dependent on its transfers (IMF, 2013a) and often impose new taxes and levies in order to finance their spending needs.

Tax rates remain generally low. Corporate income tax ranges from 0–15 per cent in the Sudan, except in certain industries. In comparison, the standard rate in neighbouring African and Arab countries is of 25 per cent in Egypt, 30 per cent in Ethiopia, Kenya (and 37.5 per cent for non-resident companies) and Nigeria (IBFD, 2014). The Sudan also faces challenges in collecting tax revenues. The country's tax-to-

GDP ratio is indeed very low (table 1.2). The IMF reports that in 2012, the Sudan collected 6.2 per cent of its GDP in tax revenue, while the simple average in the region was 17 per cent (IMF, 2013b). The Taxation Chamber indicated that one of the reasons explaining this low rate in the Sudan is the lack of computerization of the tax collection system. An initiative was recently launched to address this issue.

This is particularly problematic in the aftermath of the secession of South Sudan, which resulted in significant revenue losses. The Sudan is reported to have lost almost 55 per cent of its fiscal revenues after 2011. Measures have been taken to compensate the fiscal shock. As mentioned, the corporate income tax on banks was doubled from 15–30 per cent, the VAT rate and the social development tax increased by 2 per cent (OECD, 2012). Gradual removal of the subsidies in the framework of the 2012–2014 Emergency Programme is also under way. Consequently, the prices of diesel and petrol increased by 75 per cent, while cooking gas rose by 66 per cent. These subsidy cuts should in principle be reallocated to raising wages and social subsidies, notably support for poor families and health care (EIU, 2014). The Ministry of National Economy and Finance has set up a committee comprising all related entities, notably the National Investment Authority and the customs

Table 1.2. Tax revenues in selected African countries (in percentage of GDP)

Country	Year	Total revenue	Tax revenue
Sudan	2012	10.0	6.2
Algeria	2012	39.6	36.7
Central African Republic	2012	16.4	10
Chad	2012	26.4	17
Congo	2012	41.9	8.9
Democratic Republic of the Congo	2012	30.5	16.7
Egypt	2010	25.1	14
Ethiopia	2011	16.7	12
Ghana	2011	21.8	15
Kenya	2010	21.1	20
Morocco	2011	35.2	24.8
Tunisia	2010	29.5	20.4
Uganda	2011	14.8	12
United Republic of Tanzania	2012	21.8	14
Unweighted average, excluding Sudan		26.2	17

Source: IMF (2013a).

authorities, to review and assess current fiscal policies, their impact and define the way forward. The conclusions of this committee could not, however, be accessed at the time when this report was finalized.

Recommendations:

- A comprehensive review of the tax regime aimed at increasing total tax revenue, streamlining the current corporate tax rates, reducing incentives as well as increasing their transparency, is called for. In line with the IPFSD, incentives should be granted on the basis of clear, objective and pre-determined criteria, and associated with specific development goals. Their effectiveness should be measurable, and the Government of the Sudan should perform periodic cost–benefit analyses of their effectiveness.
- At the institutional level, the Government of the Sudan should reinforce the tax collection mechanism, while clarifying tax responsibilities between the different levels of Government. This would also improve the predictability of the regime vis-à-vis the investors.

E. Labour

Several issues affecting the labour regime require urgent policy attention. While Sudanese labour legislation contains several provisions protecting workers' rights,¹⁷ important gaps still need to be addressed. The Sudan has ratified seven of the eight core ILO Conventions, but issues persist with regard to freedom of association, the right to strike and child labour. At the institutional level, some entities foreseen in the law to perform labour inspections were never established because of the lack of resources.

Employment contracts allow for flexible hiring provisions. They are regulated by the 1997 Labour Law, and the duration of employment can be limited or indefinite; temporary contracts should not exceed a period of two years and cannot be renewed with the same establishment more than once. Contracts of apprenticeships are also possible

under the Labour Code, but are limited to a specific period of time. Seasonal work is also covered. The provisions of a contract violating the 1997 Law are considered null and void unless more favourable to the worker. A change in ownership of the company does not result in termination of the contract. A specific feature of the Sudanese regime is the extensive involvement of public employment agencies in the hiring process (box 1.3).

Wages cover not only the basic salary, but all the benefits given to the employees, except social security expenses paid by employers for their employees. This is defined in the 1974 Minimum Wage Law and the 1997 Labour Law, and is decided at the federal level. Their amount should be specified in the contract, and the basic salary should be increased annually by at least 5 per cent under the 1974 Law, which applies to all workers, except public sector employees, VET students, employees whose salaries are regulated by specific laws and seasonal agricultural workers. The Ministry of Labour and the General Federation of Trade Unions report that a tripartite committee comprising the General Federation of Sudanese Businessmen and Employers, the Union of Trade Unions and

Box 1.3. Employment agencies in the Sudan

Employment agencies in the Sudan are public entities that are extensively involved in the recruitment process of Sudanese workers. Authorization by the employer agencies is required for all vacancy announcements published in the press for companies with more than 10 employees (except for occasional workers), the employment of family members of the employer, key personnel, and released prisoners. All workers have to register with employment agencies, and it is impossible to recruit an employee who does not hold a certification of registration with the competent employment agency. Employment agencies can request Sudanese nationals seeking work to sit for a professional examination. They need to be notified upon the appointment of the person recruited and require the employers to provide receipts for any documents or certificates entrusted to them by their workers.

Private employment agencies can also be created, but only intervene for the employment of Sudanese abroad and foreigners in the country.

Source: UNCTAD, based on 1997 Labour Law and information obtained from the Ministry of Labour during the fact-finding mission.

¹⁷ The general regime is governed by the 1997 Labour Law; a specific regime applies to foreigners and is defined jointly by the 1997 Labour Law, the 2001 Law regulating the employment of the non-Sudanese and the 1994 Passports and Immigration Law. Under the 2009 Free Zones and Free Markets Law, the labour regime in the free zones must abide by an agreement between the employer and the employees.

the Ministry of Labour, and experts selected by the Minister of Labour, meets to discuss minimum wage increases.¹⁸

The 1997 Labour Law contains several provisions protecting workers' rights. It includes provisions regarding leave, sick leave, maternity leave and leave for special Muslim occasions. The sums owed to workers constitute a priority debt and should be settled before any other debts, but after the legal obligations. This has implications in case of bankruptcy, since it sets a clear order of process in the case of a restructuring or liquidation. Workers, their families and trade unions are also exempted from legal expenses during all stages of the proceedings of a dispute on the implementation of the provisions of the 1997 Labour Law, unless otherwise decided by the court when the decisions are not in their favour. In case of death, the family members of the worker are entitled to receive his wage, for example.

Subscription by the employer to the National Fund for Social Security of all employees is mandatory. Social contributions are paid by the employer directly to the Fund and represent 25 per cent of the monthly salary, 17 per cent of which is covered by the employer and 8 per cent by the employee. Periodical medical examinations of employees by the employer are also mandatory if the job they perform is listed in the 1990 Social Security Law.

Dismissal is provided for in the 1997 Labour Law for a wide range of reasons. Both parties can appeal the decision to terminate a contract within two weeks from the date of notification. The notice requirement is lifted under certain circumstances, for example in case of worker misconduct or if the worker was misled as to the nature of the contract of employment and its conditions. The notice period varies, depending on the length of the worker's prior engagement with the company. A prior request must be submitted to the Minister of Labour or the Governor of the state to lay off workers for economic or technical reasons. Their decision, taken on the recommendation of a tripartite committee comprising equal representation of the Government, workers and employers, should intervene within three weeks. Administrative silence becomes consent after four weeks.

The labour inspection regime is only partially implemented. According to the 1997 Labour Law, companies may be inspected by officials delegated by the Minister of Labour at any time. A federal consultative

committee on industrial safety foreseen in the law has not yet been put in place. In addition, neither the industrial safety inspectors nor the industrial safety committees provided for in the law have been established due to a lack of resources. The Ministry of Labour reports that an inspection plan was adopted in 2012 but it has not been implemented, again due to a lack of resources. Nonetheless it has been reported that regular inspections are conducted by the states, initiated at times by the federal Ministry of Labour. The Ministry indicates that inspections are conducted at the state level. However, some competencies are federal, for example the inspection for foreign labour. Companies can also be inspected when a specific event is reported. Private employment agencies are inspected annually. The objective of these inspections is notably to diminish the number of employer/employee disputes. It is, however, not clear how frequently these inspections are conducted.

Dispute resolution mechanisms require revision. Parties to litigation or arbitration are not required by law to consider or submit to any alternative dispute resolution before or during proceedings, except for collective disputes, which are referred by the Ministry of Labour to compulsory arbitration. The Ministry of Labour indicates that the objective is to shorten disputes and reduce their impact on production. However, the composition of the arbitration committee, headed by a representative of the judiciary, is unbalanced. Out of its five representatives, three are either from the public sector or represent it. This raises questions of independence and impartiality, particularly as the quorum is four persons. Decisions are made by a majority, are final and not appealable. In this regard, the International Labour Organization (ILO) has requested the Government of the Sudan to amend the 1997 Labour Law to ensure that this procedure is no longer compulsory (ITUC, 2010).

Labour rights and protection issues exist. In line with the ILO request, Sudan has initiated a process to revise the 1997 Labour Law and, following tripartite consultations, prepared a new draft labour law. Once adopted, the new law is expected to facilitate the ratification of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (ILO, 2014). In addition, the right to strike, provided for in the 2010 Trade Union Law, is difficult to enforce, given that they have to be approved by the Government. While the Ministry of Labour has reported that freedom to establish trade unions is guaranteed, only one trade union exists. Also, workers can be dismissed for illegal strikes (ITUC, 2010).

¹⁸ The current minimum wage is of SDG 425 (equivalent to \$75 on 27 August 2014) per month.

A specific labour regime applies to the free zones and markets. The relations between the employer and the employees in the free zones are regulated by a contract concluded between the two parties, a copy of which is transmitted to the National Council for Free Zones and Free Markets. The free zones authorities have indicated that this contract should contain minimum protection provisions in several areas, notably regarding minimum wage and leave. However, no legal source for this obligation could be identified, which creates uncertainty for the employees in the free zones. In case of disputes, specialized courts are to be established by the Head of the Supreme Court. Currently, there is a tribunal set in the Red Sea free zone and an expert for the Aljaily free zone.

Recommendations:

- The Sudan should continue its cooperation with social partners and ILO regarding observation of trade union rights and freedom of association. Not only would this improve the protection of workers in the country and the status of industrial relations, but it would also positively affect its FDI attractiveness. Transnational corporations are receptive to transnational advocacy networks and pressure from their home-country governments, trade unions and customers, who expect them to be socially responsible;
- Recourse to alternative dispute resolution mechanisms in case of litigation should be promoted. However, these mechanisms should be voluntary and provide sufficient guarantees of independence and transparency, notably in terms of balance in their composition;
- Shortcomings of the labour inspections regime should be addressed, which requires that adequate resources be allocated to the implementation of the current legislation on inspections. Efficiency gains can be secured by ensuring coordination and rationalization of inspection functions at the different levels of government.

F. Skills and foreign workers

The Sudanese regime is liberal with regard to hiring foreign workers but highly discretionary concerning residency permits, and no effective skills attraction or diffusion programme is in place.

Work permits for foreign workers are granted by the Minister of Labour based on a number of conditions: that no Sudanese employee is available to perform the work (labour market test), that the foreign worker obtains a residency permit, is more than 21 years old, and that no contradiction is found with the provisions of the 1997 Labour Law. Employment in hotels is restricted to foreigners, according to information provided by the Ministry of Labour. Priority is given to Arab and African workers. Work permits are valid for one year and are renewable. There is no limit to the number of times a permit can be renewed. The permit can be cancelled if the law is violated.

Investment projects benefit from special provisions for specific work and residence permits. As regards foreign workers, a system of quotas alleviates the above requirements. Although there are no key personnel schemes, the National Investment Authority and the Ministry of Labour have indicated that an investment project can recruit up to 20 per cent of foreign workers. The proof of expertise, along with the necessary diplomas, is required, but without a labour market test. This percentage is higher than in most countries, but it does not target the attraction of specific skills required in the country. Above this threshold, the general regime applies, and the employer bears the burden of proof in the labour market test. Strategic projects may benefit from extra percentages and up to 100 per cent of foreign workers can be recruited without the labour market test. A special regime applies in free zones, where no limitations on the number of foreign employees apply, and their entry and residency are facilitated.

Foreign workers associated with investment projects are not subject to social security rules. Although these provisions are meant as incentives, they are in practice detrimental to both the Sudan and foreign workers, as they reduce public revenues and deprive foreign employees from social security protection.

Residence permits are obtained separately from work permits, and the process is subject to uncertainty. The investor and his family benefit from entry and residence rights in the Sudan for the duration of the project, on the basis of the licence granted by the National Investment Authority. Their residence permits are granted for one or five years, and are renewable. All others must obtain entry visas as well as residence permit from the Ministry of Interior, which has indicated that a single window has been created to deal with investors' residency-related issues, notably

Box 1.4. Initiatives in support of skills development in the Sudan

The Ministry of Industry reports that there are currently nine vocational training centres in Khartoum, with 200 to 250 graduates every year. International initiatives have also been launched. The United Nations Industrial Development Organization (UNIDO) worked in 2007 and 2008 with Khartoum state on the rehabilitation of seven vocational training centres (VTC) and provision of apprenticeships programmes and skills upgrading courses with funding from the European Commission. All the training courses were certified by the Ministry of Labour and the Supreme Council for Vocational Training and Apprenticeships, and Khartoum state established a council for vocational training and technical education aimed at ensuring the sustainability of the project after its completion (UNIDO, 2014).

Partner countries also assist in the building of training centres. For example, the Ministry of Industry reports that an initiative was recently launched in Nile Valley state with the cooperation of India to establish a VTC with the participation of the public and the private sectors. The systematization of such a “triple helix” (private sector/government/educational institution) generally involves different ministries in the Sudan, both at the federal (Ministries of Industry, of Labour and of Social Affairs) and at the state level (Ministry of Finance).

Individual initiatives are also reported by the Ministry of Industry, notably encouraged by private companies, such as the Kenana Sugar Company (KSC) and the DAL Group.

Source: UNCTAD interviews during the fact-finding mission.

permits and entry and exit visas. The Minister of Interior can cancel an entry visa with no justification. Exit visas are also required for residents¹⁹ and can be granted upon proof of payment of the personal income tax, and can be refused if the person is accused of a crime or has debts towards a Sudanese national. Furthermore, any foreigner that the Ministry of Interior deems unwanted can be expelled, and the decision of the Minister of Interior is final and cannot be appealed.

The scarcity of skills is a problem affecting existing investors as well as future investment prospects. Two main issues have been reported with regard to the labour market: illiteracy, which affects mostly people working in micro-, small- and medium-sized enterprises and industries (MSME/I), as well as scarcity of vocational and professional skills related to weaknesses in the training system, which is more oriented towards traditional studies. Several public and private donor-led initiatives to increase the skills pool have been launched (box 1.4). Indeed, it has been often been reported that the job or skills mismatch is common in the Sudan and that companies often struggle to hire competent technical staff in the country, and thus have to recruit foreigners to do the work.

¹⁹ Those who spend more than three months per year in the country are considered to be residents.

No effective system is in place to ensure that the skills attracted are diffused to locals. The 2001 Law requires employers to progressively train and replace foreign workers with Sudanese workers, but this is not implemented in practice.

Recommendations:

- The preferential regime for investors should be retained. However, the Government of the Sudan should also establish clear, objective, pre-defined criteria regarding the recruitment of foreign workers. In particular, a scarce skills’ list approach may be devised, whereby only those skills not easily available locally, as determined periodically by employers, employees and the Ministries of Labour and Education, are secured a preferential channel, while others would continue undergoing the current labour market test. A study was conducted by the Ministry of Labour, the private sector and labour-related civil society, but its results were not accessible when this report was finalized;
- In addition, distinguishing between key personnel and workers might be of interest to the country, notably given the specificities of their functions. In this regard, a pre-determined number of key personnel permits could be associated with minimum investment amounts;

- The provision on excluding foreign labour from making social security payments might also be reconsidered. This could indeed constitute an additional source of revenue for the Government of the Sudan, as well as provide protection to foreign workers in the country;
- Before an exit visa is granted, a letter is required from the National Investment Authority stating that all requirements have been met. This is overly burdensome and is an additional task to be performed by the Authority. Therefore, the Government of the Sudan should alleviate this requirement;
- With regard to skills diffusion and training, the Government should replace the training obligation currently contained in the 1997 Labour Law with a mandatory training levy. In practice, this would translate into the payment by the companies employing a certain number of foreign workers of a specific amount corresponding to a percentage of their payroll to a training fund administered by a task force comprised of the Ministries of Labour and Education, with policy input from the private sector. Flexibility could be given to the companies to retain some funds for approved in-house training, and part of the revenue from the levy can be used to support industry associations to run joint programmes to ensure highly relevant training.

G. Competition and privatization

The Sudan has been undergoing a privatization process since 1992. Several presidential decrees to implement this policy were issued between 1993 and 2013.²⁰ One of the privatization channels employed by the Government of the Sudan is to open the shares of SOEs for trading to progressively privatize them. The number of remaining SOEs, or more generally publicly owned companies, is however, very difficult to assess and the Sudanese officials involved in the UNCTAD fact-finding mission were not able to evaluate it.

²⁰ However, no primary sources could be accessed with regard to the privatization policies.

The Government has adopted a legal and institutional framework for competition. The 2009 Competition and Anti-Monopoly Law refers to “entities, public or private, that are operating a commercial or services activity”. It is safe to assume that the 2009 Competition and Anti-Monopoly Law covers not only private companies, but also public ones, and does not exclude any industries. It forbids the abuse of dominant position, cartels and mergers that could lead to a trust. It also provides for the protection of consumers’ rights by forbidding deceitful or misleading practices, using techniques that limit their freedom and covert actions. At the institutional level, the Anti-Monopoly and Competition Council is defined by the 2009 Law as being an independent authority, but operating under the responsibility of a Minister designated by the President of the Republic, in practice the Ministry of Trade. It has a coordination function with the competition authorities of other countries, and is in charge of authorizing the mergers between different entities when this might create a trust. The criteria to define what types of mergers could create trusts is however not provided, which might in practice complicate control by the Council. The Ministry of Trade has reported that a threshold will be determined above which notification to the Council will be mandatory. Its level was, however, not communicated. The Council is entitled to investigate on the basis of specific claims or its suspicions, and sets its own procedure. Its decisions can be appealed before the Minister of Trade, then the Commercial Courts.

However, the Anti-Monopoly and Competition Council was only recently created – in 2013 – and is not yet operational. At the time of the UNCTAD mission, it was reported that its budget was being approved and that it should rely on two main sources: a share of the Government budget allocated by the Ministry of National Economy and Finance and the fines to be collected by the Ministry of National Economy and Finance to be then retransmitted to the Council. The criteria and procedure for the recruitment of its staff are also expected to be defined soon.

A law regulating conflict of interest could also play a role in ensuring a level playing field for all private sector actors. In addition to enforcing the Anti-Monopoly and Competition Law and Council, adopting a law on conflict of interest could be useful for the Sudan to accompany the privatization process and ensure fair competition among private sector stakeholders. The definition given to “conflict of interest” could be adapted to the context and needs of the country. Morocco, for example, introduced a provision

in this regard in its 2011 constitution (article 36), targeting notably public procurement.

Recommendations:

In order to improve the legal and institutional framework for competition, the Government of the Sudan should consider the following:

- Operationalizing the Competition and Anti-Monopoly Council, and allocating human and financial resource;
- Training the staff and board members of the Council, as well as commercial judges, to implement the 2009 Competition and Anti-Monopoly Law;
- Adopting and implementing the guidelines and regulations necessary to facilitate the implementation of the 2009 Competition and Anti-Monopoly Law;
- Adopting and implementing legislation on conflict of interests;
- Organizing workshops on the new competition policy, and competition issues and legislation to raise awareness in the public and private sectors of the importance and impact of the new legislation.

UNCTAD has developed long-term, worldwide expertise in providing technical assistance to developing countries in the formulation and implementation of competition policy for development and it stands ready to provide assistance to the Government of the Sudan in the context of the follow-up implementation programme to the IPR.

H. Environment

The 2005 Interim Constitution makes several references to the need to protect the environment in general, and more specifically, in the oil industry. Environmental protection is a concurrent power between the federal Government and the states, which means that the latter can adopt their own legislation. Institutionally, at the federal level, the Ministry of Environment and Physical Development is responsible for setting the policies, and the High Council for Environment and Natural Resources is in charge of coordination with the states. At the state level, states' Councils for the Protection of the Environment have been set up.

Any project which might have consequences on the environment and natural resources should undergo an environmental feasibility study. This study, which is in practice an environmental impact assessment (EIA), needs to be accredited by the evaluation and monitoring committee set up by the High Council for the Protection of the Environment and of the Natural Resources, in line with the 2001 Environmental protection Law. It should provide the following information: the expected impact of the project on the environment, the negative impacts that can be avoided during the implementation of the project and the alternatives for the said project. When the project is specifically related to non-renewable resources, the assessment needs to clarify whether it will have an impact on these resources on the long term and whether it will be possible to continue exploiting these resources even after the end of the project; it should also spell out the precautions taken to limit the negative impact of the project and limit it. In the oil industry, the Ministry of Petroleum indicates that the Exploration and Production Sharing Agreement (EPSA) contains the required provisions relating foreign and local investors for protecting the environment and meeting international standards when conducting petroleum-related operations.

A series of issues arise from the implementation of this requirement. Indeed, no secondary legislation specifies which typology of projects might have a negative impact on the environment and natural resources. In addition, some of the elements the assessment should include seem overly ambitious and difficult to evaluate. That is even more of importance, given that there is no separate authorization track for projects with different potential impacts on the environment. As a result, all project risks are assessed using the same criteria, although these might not be adapted or appropriate. Finally, no requirements regarding the entity performing the study are mentioned.

Inspections are carried out to implement the 2001 Law, but there is confusion as to which authority is competent to undertake them. According to the Law, inspections are undertaken of any entity, public or private, at the federal or at the state level, concerned with the protection of the environment. Inspectors can be authorized by an attorney to enter and search any place or entity, and inspections may also be conducted on the basis of a complaint. The High Council for Environment and Natural Resources has indicated that periodical controls are made for investment projects.

Recommendations:

To ensure effective environmental protection with regard to investment projects, the Government of the Sudan should consider the following recommendations:

- Set detailed criteria for projects to be subjected to the EIA, including differentiating projects depending on their level of potential risk and fast-track authorization for projects with low environmental impact;
- Build the capacities of the evaluation and monitoring committee accrediting the EIA and define the criteria for selection of the entities conducting the EIA;
- Clarify and rationalize the inspection regime and strengthen institutional coordination between the federal and the state levels.

I. Fight against corruption

Corruption is perceived as a strong deterrent to business in the Sudan. It is reported that private sector firms and foreign investors identify corruption as one of the main constraints for doing business in the country. In addition to other international rankings, the World Bank Worldwide Governance Index reports that in 2012, the Sudan scored below 10 on a scale of 0 to 100 for all indicators. For control of corruption its score was 0.96, sliding from 12.68 to 0.96 over a 10-year period (World Bank, 2013).

The Sudan has not ratified the key international legal instruments for the fight against corruption, and the national legal framework is incomplete. The Sudan signed the United Nations Convention on Combating Corruption (UNCAC) on 14 January 2005, but has not ratified it. It is also not a State party to the African Union Convention on Preventing and Combating Corruption. The national legal framework for the fight against corruption is fragmented and does not cover all the offences. While the 1991 Criminal Code criminalizes both active and passive bribery of civil servants, offences are insufficiently sanctioned²¹ A 1989 law on combating illicit (*haram*) and suspicious enrichment encourages whistle-blowing, but no protection is given to third parties. The Ministry of Justice has indicated that if not proven, the allegations of the whistle blower can be re-qualified as defamation.

²¹ Maximum two years' imprisonment, a fine and the repayment of the money obtained through corruption.

Multiple institutions are in charge of implementing anti-corruption legislation, with mixed results. Among these are the Departmental Accountability Council and the Higher Accountability Council; the General Auditor and the internal auditors in the line ministries under the authority of the Ministry of National Economy and Finance; the Department for Combatting Illicit and Suspicious Enrichment in the Ministry of Justice; the Public Property Prosecution Department in the Ministry of Justice and the Criminal Enquiry Department in the Ministry of Interior and/or Justice and the National Commission for Redress of Public Sector Grievances (NCR), which plays the role of ombudsman in the country. However, it is reported that the findings of the different institutions are seldom accompanied by adequate follow-up activities (U4 Anti-Corruption Research Centre, 2012). Finally, a 2012 presidential decree created an anti-corruption agency, which is not yet operational. No details on future functions, such as prevention, investigation, prosecution and sanction, were provided.

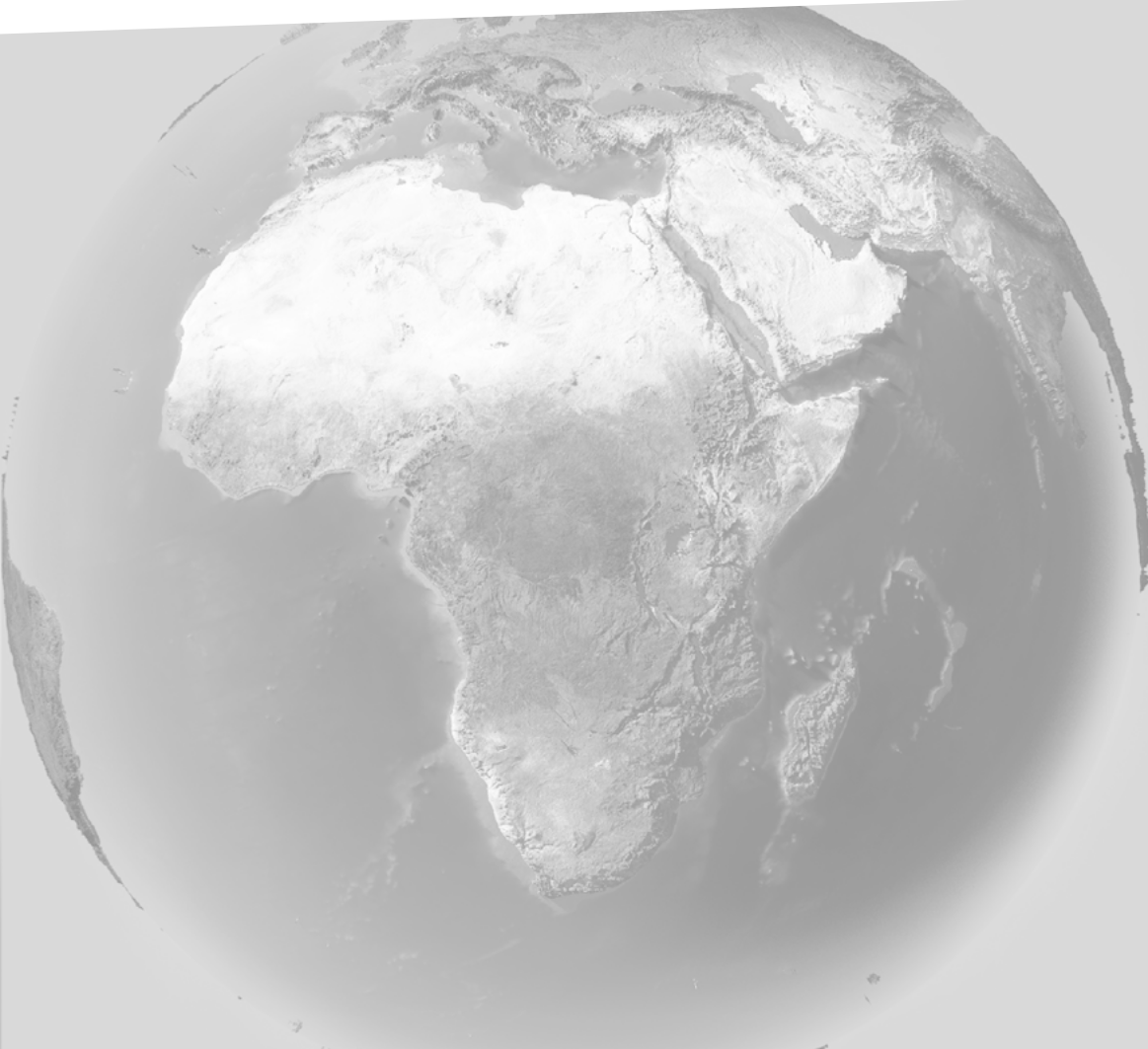
Recommendations:

In order to strengthen its legal and institutional framework and thus reassure investors and show its commitment to fight corruption, the Government of the Sudan should implement the following measures:

- Ratify UNCAC, and complete its legislation by adding provisions on major corruption-related offences such as embezzlement, reinforcing sanctions to make them dissuasive, detailing the mechanisms and extent of asset recovery; also include protection for whistle-blowers. The country might envisage full coverage under a specific anti-corruption law.
- Complete the establishment of the anti-corruption agency and clearly define its powers, while granting adequate human and budgetary resources to accomplish them. Given the multiplicity of authorities already involved in the fight against corruption, coordination mechanisms should be envisaged to ensure their efficiency. Building the capacities of the staff and ensuring their independence and protection is a key to success for the agency,
- Encourage private sector initiatives such as the adoption of internal codes of conducts with compliance officers to ensure their implementation.

CHAPTER 2

Towards a new institutional framework for FDI promotion and attraction



The increased importance of FDI for economic development, coupled with greater competition between locations, has made investment promotion a growing activity worldwide. Governments of developed countries, as well as those in developing countries and countries with economies in transition, are therefore increasing efforts to strengthen investment promotion functions on the national and subnational levels. The Sudan has set economic diversification as one of its key national development goals, and the country recognizes that FDI can support this objective. As discussed in chapter 1, in order to attract increased FDI inflows, the Sudan has introduced several improvements to the legal and regulatory framework for investment, including the adoption of a new investment law in 2013, which is expected to further open the economy.

The current efforts to improve the investment-related legal framework should be accompanied by concomitant improvements in FDI promotion. As a consequence of past and current conflicts, the Sudan's image abroad is often perceived as negative. Securing the interest of potential investors, particularly beyond the extractive industries, requires reassuring them about the country's safety and business-friendliness. In addition, given the specificities of the legal and regulatory framework for investment highlighted in chapter 1, those investors deciding to enter the Sudan will need to be accompanied in the pre-establishment phase and project-implementation process, and offered aftercare services in order to retain them and potentially generate further investment. All these functions require a dedicated investment promotion agency (IPA). However, for the moment, no such entity exists, and the relevant functions are carried out by the National Investment Authority, which mostly performs regulatory functions and is hampered by a lack of human and financial resources.

Professional services provided by a dedicated institution would help the Sudan face the challenges of investment promotion and channel FDI towards meeting its national development objectives. Beyond image building, investor facilitation and aftercare, active targeting will help the Sudan articulate its vision of development to foreign investors and attract those investments more likely to contribute to fulfilling its objectives. In time, a dedicated IPA could also carry out

more sophisticated functions typical of a full-fledged IPA. A business linkages programme would assist in developing the capacities of local enterprises to enter the value chain of established transnational corporations (TNCs), and a policy advocacy remit would allow the IPA to channel the needs and challenges faced by investors to the relevant policymakers or administrative units within the country and increase the competitiveness of the Sudanese business environment.

This chapter thus proposes the creation of an independent investment promotion agency. While describing the federal nature of the Sudan and the current institutional framework for investment promotion, which includes in particular the line ministries and the states, the chapter focuses on providing the Sudan with a road map for the establishment of a dedicated FDI promotion structure. In particular, it describes the recommended functions to be undertaken by the new IPA, as well as the tools which would enable it to perform them efficiently. Initially, the focus of the agency would be on FDI, but over time, its remit could be expanded to local investors, provided adequate financial and human resources are provided, and coordination with other relevant agencies and governmental authorities is ensured.

An alternative option would consist of establishing a dedicated FDI promotion unit within the National Investment Authority with no regulatory functions attached to it. While it is preferable to have separate institutions for investment promotion and investment regulations, some considerations (human, financial and policy constraints, for example) may make the creation of a new IPA unfeasible in the Sudan. If so, the establishment of a dedicated FDI promotion unit within the Authority, which can draw on the support of its other operational and administrative units, is a second option for the Government. The primary functions to be implemented would be those described in phase I below: image building, investment targeting and facilitation, in coordination with the line ministries and the state-level investment promotion agencies; and working closely with the High Council for Investment. Policy advocacy efforts could be coordinated by a staff member serving as a focal point for the other entities involved in FDI promotion. The number of staff needed is estimated at around 10 people. The operational details of the activities of the unit would be similar to those described in this chapter, but on a smaller scale.

A. Current FDI promotion structure and efforts

The the National Investment Authority currently performs some of the core functions of a traditional IPA. Several other institutions also take part in FDI promotion, including the line ministries and the states' IPAs. However, coordination among these different actors should be enhanced to increase the efficiency of investment promotion efforts.

1. National Investment Authority

According to the Investment Law of 2013, the National Investment Authority is the authority responsible for FDI promotion and regulation in the Sudan. As described in chapter 1, there are three types of investment projects: state, national and strategic. A project qualifies as national as soon as a foreign entity is involved, while the qualification of the strategic project is subject to a series of conditions described in the regulation. The Authority is solely responsible for national and strategic projects. According to the Investment Law, it has the following tasks:

- *Regulatory functions.* Among others, the National Investment Authority is responsible for: evaluating feasibility studies as well as granting and revoking licences for investment projects and all related operations (see chapter 1); granting incentives and exemptions, and issuing the related decisions in coordination with other competent authorities and in accordance with the country's policies; granting additional privileges to the projects in accordance with the conditions set forth in the 2013 Investment Law; recommending to the High Council on Investment which regions of the country are to be considered to be least developed; taking back the lands allocated to the investors if they are not used, and requesting data and information related to the investment projects;
- *Promotional functions.* These include the following tasks: preparing the investment priorities for submission to the High Council for Investment (see below); preparing the investment plan in accordance with Government policies and sectoral plans of the line ministries; providing investors with essential data and information on the country's policies

and procedures; preparing primary indicators for investment projects and promoting them; organizing conferences, workshops, exhibitions and seminars, and participating in them, in coordination with the competent authorities.

The structure of the National Investment Authority is a mixture of regulatory and promotional functions. The Authority took over from the former Ministry of Investment. In addition to its financial and human resources unit, the Authority is divided into the following different departments (see figure 2.1):

- *Promotions:* responsible for the negotiation of IIAs and the production of promotional material and information. This includes information guides and brochures for investors;
- *Coordination, Monitoring and Evaluation:* responsible for the coordination with the line ministries and relations with Sudanese states. It contributes to the development of the internal planning process by adding the input received from them. The department is also in charge of the incentives granted, mainly customs duty waivers, and visiting established investors to ensure that all equipment imported through an incentive scheme is in place and operational, and to measure how close the established project is to the project outlined in the feasibility study submitted by the investor to Investor Services and Technical operations (see below).
- *Investor Services and Technical Operations:* responsible for granting incentives, preparing and conducting the investors' site visits, and answering their queries and requests for information. It is also in charge of the coordination of the approval process, including the assessment of the feasibility studies submitted by the investors undertaken in coordination with the line ministries, and the allocation and pricing of land in which the states take a leading role. The National Investment Authority describes this approval process as fairly straightforward, as it operates a one-stop shop (OSS) approach through this department.
- *Planning and Policy:* responsible for investment mapping and investors' surveys, as well as of collection of data and information, research

and planning of investment-related policies in coordination with the line ministries. It is also in charge of National Investment Authority staff training. The information and data are collected from the feasibility studies submitted by the investors and the visits to the approved investment projects by the Coordination, Monitoring and Evaluation Department.

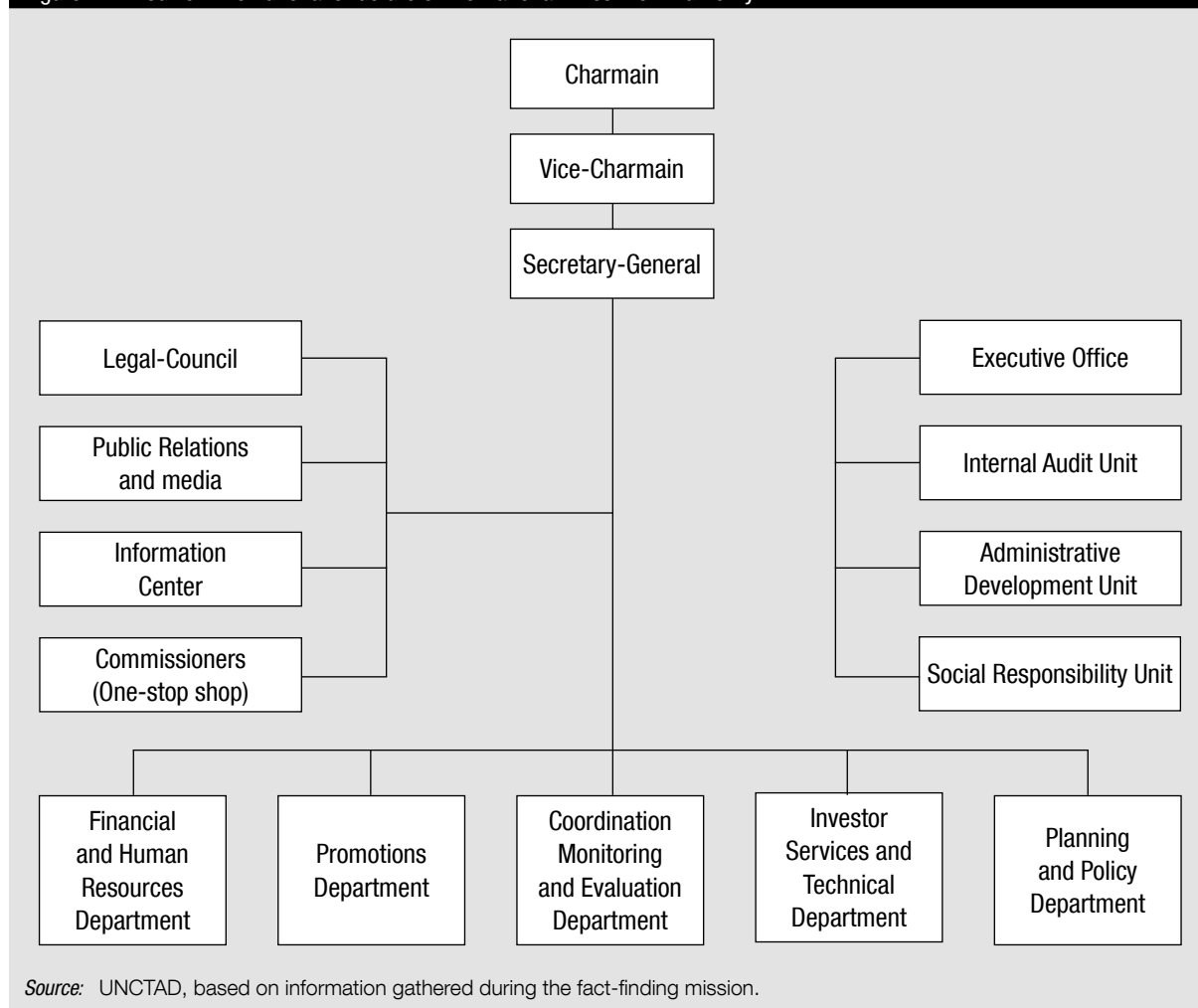
Although the National Investment Authority already employs some generic investment promotion tools, they often lack clarity and are outdated. The main ones are:

- *Website:* online until recently, the site was in Arabic with very limited information in English. The website of the Ministry of Investment, the authority replaced by the National Investment Authority, however, is still online both in English and Arabic but its information is mostly out of date. The Authority reports that it is currently working on the launch of a new website for which it has benefited from the assistance of RIA-COMESA experts. At the time of writing, this website was to be available both in Arabic and English before the end of 2014. The National Investment Authority has, however, no social media presence.
- *Promotional and information material:* the *Investor's Guide 2013* published by the National Investment Authority contains much-needed information for investors, including land prices, fees and broad areas of opportunity. The Sudanese Businessmen and Employers' Federation also produces promotional brochures. These documents are distributed to diplomatic missions in the Sudan and to the country's representations abroad; they are also used during promotional visits. Their focus is, however, very broad and the quality of communication could be improved.
- *Investors' forums:* the Promotions Department organizes an average of two investors' forums overseas per year and takes part in ministerial and presidential trips. In 2013, the Sudan was represented at business events in France, Germany and Italy, and in March 2014, representatives of 15 companies from Germany were invited to Khartoum for a German–Sudanese Economic Forum (Deutsche Welle, 2014b).
- *Investors' surveys:* an extensive investors' survey was conducted in 2010. Covering the period from 2000–2010 and published in March 2011, its main objectives were to set the basis for an investors' database, assess the economic and social impact of FDI in the country and provide recommendations on how to enhance them. However, the survey was conducted once and information was gathered from different sources. Although some of the recommendations are in line with those provided in this IPR, others are in contradiction and may not be in the best interest of the Sudan. In addition, it is not specifically aimed at improving investment targeting or aftercare services.
- *Investment mapping:* This is done in coordination with the states, but the last one took place in 2005 and is therefore outdated. According to the National Investment Authority, a new investment map is currently under preparation in coordination with the states, as reported during the UNCTAD fact-finding mission. This investment map aims at identifying investment opportunities and locations by compiling potential projects, as well as information about the surrounding environment such as land availability.

Human resources currently allocated to investment promotion in the National Investment Authority are limited. For example, the Promotions Department has only two staff members, too few to effectively implement the investment-promotion-related tasks assigned to it by the Investment Law of 2013, not to mention the production of all the related material. Overall, it was noted during the UNCTAD fact-finding mission that the National Investment Authority lacks personnel and expertise to conduct research on sectors and industries, produce a website and newsletters, and update them regularly, to plan visits for potential investors, and to speak at seminars and conferences, as well as to accompany Ministers or the President on overseas marketing events.

The 2014 development budget of the National Investment Authority adds ambitious functions and objectives. These include the operationalization of the High Council for Investment (see below), completion of the electronic treatment of operations, completion of the investment map, establishment of new free zones, investment promotion, entrepreneurship development, strengthening the framework for investment, enhancing

Figure 2.1. Current institutional structure of the National Investment Authority



the working environment, training and capacity-building, enhancing the business climate to create job opportunities for youth, investment-related studies and research, conducting a study to establish an investment guarantees fund, making an assessment of investment policies, and producing a free zones and free markets guide. At the time of the preparation of this report, this budget was pending approval by the federal Government.

2. High Council for Investment

By virtue of the Investment Law of 2013, the High Council for Investment is the highest investment-related authority in the Sudan. It is chaired by the President, and its membership comprises the Chairman of the National Investment Authority, which acts as Secretary

of the Council, and all the investment-related authorities, including governors of the states. The participation of the private sector is mentioned in presidential decree No. 106 of 2013 by the inclusion of the membership of five representatives of the Sudanese Businessmen and Employers Federation. However, it should be noted that membership of the Federation is a mandatory step of the incorporation process and prohibited to foreigners.

According to its mandate, the Council focuses on regulatory functions and sets priorities for investment promotion. The Council acts as the supervisory and approval body for investment policy-related suggestions of the National Investment Authority and exercises administrative control over it (budget, organizational structure and so forth.). Its responsibilities also include the determination

of the Sudan's overall investment strategy. However, the Council may also assign any of its powers to the Chairman of the National Investment Authority. Given its recent establishment and the absence of an activity report to date — with the exception of a report on its first meeting chaired by the President of the Republic (Sudaress, 2013; Alrakoba, 2013), it is difficult to assess how proactive a role the High Council will play in investment promotion, especially since it has not met frequently enough. The participation of the President in the Council is nonetheless an indication of the importance given to investment in the Sudan.

3. States' IPAs

The Sudan has both federal and state-level IPAs whose roles and responsibilities are clearly determined in the Investment Law of 2013. In theory, the National Investment Authority is responsible for the national and strategic projects, while the state-level IPAs are responsible for state projects. These are subject to a specific definition, as described in chapter 1 and above. Consequently and according to the law, the Authority should be the only entity dealing with FDI.

In practice, however, the division of labour is not so straightforward. FDI attraction and promotion are sometimes undertaken by state-level IPAs, following their own development plans and objectives. There is often little coordination with the National Investment Authority and some of the State IPAs have more resources than it does. An example is the Investment Encouragement Commission of Khartoum which is well resourced and staffed. The salaries of the Commission are three times those of the National Investment Authority, and seven staff members are allocated to the Promotions Department. The Commission is currently involved in setting up an investor database, a linkages programme, an incubator unit and a training programme for craftsmen. It has also established links to the domestic banking system to enable entrepreneurs to obtain finance and microfinance. Priority industries for the Investment Encouragement Commission are agricultural products, consumer goods, oil servicing, metal industries and energy providers.

4. Federal line ministries

By way of elaborating sectoral strategies and/or priorities, certain federal line ministries can also play a role in FDI promotion. The Ministry of Mining and Minerals has indicated that a sectoral strategy is currently under preparation. However, it is unclear to which extent

all the federal line ministries prepare such a strategy. In addition, it was reported during the UNCTAD fact-finding mission that, due to acute human and financial resources constraints, only limited follow-up is carried out by the line ministries once an investment project is initiated (Ministry of Environment, Forestry and Physical Development, 2014, during the UNCTAD fact-finding mission).

Ministries can also establish their own departments for investment, and advocate for specific sectoral investment laws. An example was given during the UNCTAD fact-finding mission by the Ministry of Agriculture, which has a dedicated department for investment operating under the Directorate for International Cooperation. However, it has mostly regulatory functions and is notably responsible for reviewing the investors' feasibility studies of the agricultural investment projects and following up on their implementation, in coordination with the states. The Ministry of Agriculture is currently promoting the adoption of a specific agricultural investment law which would establish a federal agricultural committee at the National Investment Authority and clarify the responsibilities in the licensing process.

5. Private sector

A decision by the Minister of Investment (16 December 2013) enables selected private sector entities to perform investment promotion functions. In cooperation with the National Investment Authority, these companies have been entrusted to carry out preliminary selection of investors, in coordination with the line administrative entities under the Authority's responsibility. In this regard, they can target and promote the country to local and foreign potential investors, follow up on the administrative procedures required for their establishment, as well as act as coordinators between the private and public entities, organize promotion events under the authority of the National Investment Authority and the line administrative entities, and gather and communicate to the Authority investment-related data. This initiative aims at countering the role played by non-official intermediaries during the establishment of investors in the country.

6. Assessment and recommendations

While several typical promotion functions of an IPA have been assigned to the National Investment Authority, some issues arise:

- **The National Investment Authority holds overlapping regulatory and promotion functions.**

This might create confusion not only for the staff, which performs very different functions, but also for the investors. More importantly, it raises concerns with regard to potential conflict of interest and transparency. Indeed, the National Investment Authority is at the same time the authority responsible for attracting the investment project, and licensing (screening) it, granting it incentives, allowing the repatriation of capital and profits, controlling its implementation and thus potentially sanctioning it. This is not in line with international best practice.

- **Most investment promotion functions carried out currently are related to the pre-establishment phase, and there is no proactive investment targeting.** Although the National Investment Authority is currently working on a new website, produces promotional brochures and relies on its diplomatic missions abroad and on the foreign representations in the country, it does not at the time of writing of this publication specifically target investors in line with an agreed specific strategy. In addition, in the post-establishment phase, the only activities performed vis-à-vis the investors are related to regulatory functions (for examples allowing the repatriation of capital and profits, or controlling the implementation of the project).
- **The tools currently used for investment promotion by the National Investment Authority, and the human and financial resources dedicated to it, are insufficient.** It appears that the tools used by the Authority are often outdated, as shown by the investors' surveys and the investment map, or are, in the case of the website and promotional brochures, not of sufficient quality compared with promotional material in competing locations to ensure FDI attraction. In addition, as described above, the number of staff dedicated to investment promotion is small, and the 2014 development budget for investment promotion projects has not been approved.
- **In addition, while several institutions are involved in investment promotion at both the federal and state levels, coordination is weak and efforts are scattered.** Even though the 2013 Investment Law provides for the National Investment Authority to coordinate with the investment-related authorities, both at the federal and at the state levels, it is

reported that communications between institutions often rely on personal relationships. Given the important role played by the states in the allocation of land to investors, it is essential that coordination of investment policy and promotion efforts rely on formalized and well-functioning mechanisms. In this regard, the operationalization of the High Council could prove an important step in addressing coordination failures. The Authority recognizes that this issue has not yet been addressed, despite efforts initiated by the High Council in this direction.

Recommendations:

Given the assessment of current FDI promotion institutions and practices, the Government of the Sudan should carry out the following:

- **Separate the regulatory and promotion functions currently held by the National Investment Authority.** While the latter would keep all the regulatory functions, all the FDI promotion functions currently held by the Authority would be separated and put in an independent publicly funded investment promotion agency (UNCTAD, 2013a). Indeed, international experience indicates that best performing IPAs have an exclusive mandate for promotion, and evidence shows that IPAs with both mandates tend to prioritize on regulation, become highly administrative bodies focusing on investment establishment processes (incentives and approvals) and devote fewer resources to business development. A study of 181 investment promotion agencies found that those which combine regulatory as well as promotion functions consistently underperform by comparison with those which have only promotional functions (World Bank, 2011). There are several reasons behind splitting regulatory and promotional tasks: it avoids conflict of interest, better serves the client (regulators are rule enforcers, while promoters are selling the attractiveness of the location and business opportunities) and both tasks require a different professional skill set (regulation requires civil servants, while promotion requires marketing and facilitation expertise and often a private sector background).
- **Develop the promotion functions and tools of the new IPA, and allocate sufficient human and financial resources.** Capacity-building and the training of the staff will also be essential. The

National Investment Authority has already made efforts to set priorities in this regard as it appears in the 2014 development budget, but these objectives should be streamlined to cover, in a first phase, image building, investment targeting and investment facilitation. A second phase would allow the development of investment aftercare, business linkages and policy advocacy.

- **Enforce coordination mechanisms among the different actors involved in FDI promotion.** In a first phase, this could be done via the full implementation of the mandate of the High Council for Investment. In other words, both the National Investment Authority and the new IPA would operate under the supervision of the High Council. At a later stage, the new IPA, the line ministries and the state-level IPAs should sign protocols of cooperation detailing the division of labour in a way that promotes each entity's interest without negatively affecting the country's overall investment promotion effort and projecting a unified message and voice to the outside world. Finally, involving the private sector in the Council could also be useful to ensure public-private dialogue, and thus understand and meet the investors' needs.

B. Allocating core functions to a dedicated FDI promotion agency

The importance of professional investment promotion is increasing, as it is becoming more sophisticated. This is reflected in greater attention paid by countries to FDI attraction efforts and the establishment of dedicated IPAs. The number of IPAs worldwide rose substantially in the 1990s. There are presently around 170 national IPAs and many more subnational ones (UNCTAD, 2011). Countries adopt strategies that go beyond a simple opening up to foreign investors and general promotion of countries, including image building and country branding. They are embracing targeted approaches by focusing on selected industries and activities, countries and companies. While the specific activities of IPAs

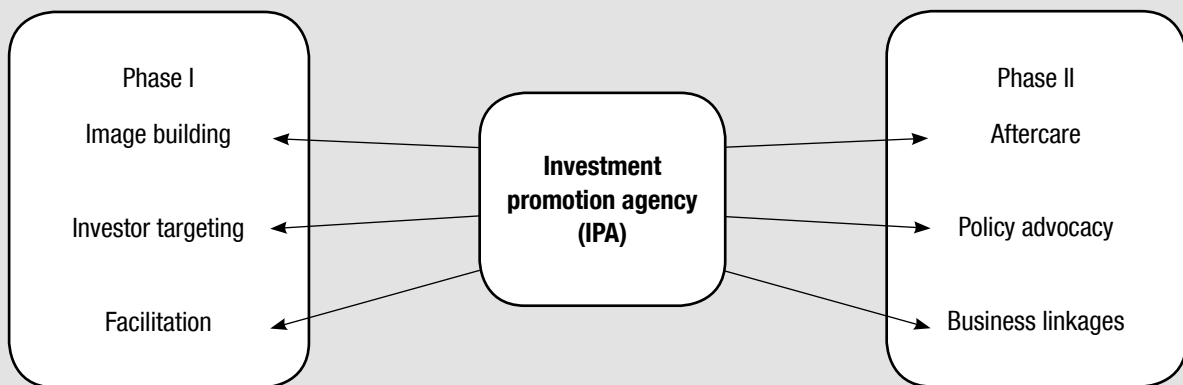
can differ significantly across countries, targeting approaches typically mirror the locational advantages and business opportunities of host countries and regions (UNCTAD, 2001).

Given the importance of reinvestment by established business, taking good care of existing transnational corporations is considered an important part of the investment promotion effort. For this reason, aftercare has grown to become a core function of IPAs, and nearly 70 per cent of them encourage investment through this type of services (UNCTAD, 2007). Other priority functions undertaken by more than half of the IPAs include the promotion of domestic investment and the provision of consulting services. A smaller number of IPAs are also entrusted with additional specialized tasks, such as promoting business linkages between TNCs and domestic investors, managing export processing zones (EPZs) and industrial estates, or assisting relevant public authorities in handling privatization matters.

A more recent development is the articulation of policy advocacy functions within the mandate of IPAs. Policy advocacy can be defined as IPA efforts to effect changes in regulations, laws, government policies and their administration, pertaining to fields such as investment, trade, labour, immigration, real estate, taxes, infrastructure, technology and education. The immediate goal of policy advocacy is to create a climate conducive to attracting and benefiting from FDI. When this is accomplished, policy advocacy also has the effect of enhancing dialogue and review of policy outcomes with stakeholders, including the investor community. This, in turn, contributes to better governance in investment promotion and to the ultimate goal of making FDI work for the socioeconomic development of the host country (UNCTAD, 2008a).

Through its initiatives to enhance the business climate to attract investors, the Government of the Sudan should emphasize the strengthening of FDI promotion by establishing a dedicated IPA. As described in section A, some promotion functions are already conducted by the National Investment Authority, but they need to be improved, streamlined and made more efficient. Establishing a dedicated IPA, adequately funded and staffed with investment promotion professionals, including staff with a private sector background, will help the Sudan attract investors and make progress towards its national development objectives.

Figure 2.2. Staged approach to developing investment promotion capabilities



Source: UNCTAD.

Given the level of sophistication and the wide range of IPA activities, a phased approach would better suit the needs of the Sudan. The following section suggests a two-phase approach: the first phase would consist of the development of core functions, including image building, investment targeting and investment facilitation. Provided a successful first phase, a second one would add other functions, notably aftercare, policy advocacy and business linkages (figure 2.2). To achieve the expected outcome of such an approach, sufficient resources, human and financial, will need to be allocated to the IPA, as stressed in section C 3.

1. Image building

For some potential foreign investors, knowledge and image of the Sudan may be non-existent or negative, and it is the role of the IPA to modify this perception and reassure them. Image building aims at correcting misperceptions and focusing on the positive aspects of the country, not only its resources, but also the efforts undertaken to improve the investment environment. In addition to the internal conflicts that the Sudan has been facing in the recent years and to the secession of South Sudan, there are a series of linguistic, cultural and operational difficulties faced by foreign investors wanting to set up operations in the Sudan. Consequently, the country needs to restore the trust and confidence of the foreign investors. As an image builder, the role of the IPA will be to make every effort to improve and channel the Sudan's image.

Image building is the first step that should be undertaken by the IPA to create a "Sudan brand" emphasizing the attractive features of the country. It is a general promotion effort, which means that it is not targeted at specific sectors, projects or investors. The strategic objectives of image building for the IPA are the following: to provide a strong and consistent message abroad, ensure consistency among the different messages that may be used by different entities and provide the basis for an investor-targeting campaign (see section B 2; UNCTAD, 2013a). It should highlight the advantages and opportunities of the Sudan in the broader perspective of its national development objectives, notably economic diversification. Some factors need to be taken into account, and focus should be put on them, for example the belonging to a regional community. In the case of the Sudan, and given its current FDI sources, emphasis should be put on it as being both an African and Arab country. Other elements include the promotion of the reforms adopted to enhance the business climate in the country. Image building is particularly important for countries like the Sudan that have suffered internal conflicts. Good examples include Rwanda, which has in recent years emphasized image building to attract investors.

Recommendations:

- a) Use a "Team Sudan" approach
 - **The IPA should become a federal focal point for the larger image building effort involving both the public and the private sectors.** This is notably

important with regard to the resources constraints of the Sudan, and given the investment promotion role already assigned to the High Council for Investment, the National Investment Authority, the states' IPAs and the federal line ministries. Indeed, investors are interested in knowing how important investment is to the Government and they closely observe how well coordinated and effective its efforts are. In addition, the input provided by the different governmental authorities allows covering various economic activities.

- **A coordinated approach with all authorities and individuals involved in promoting and facilitating investment in the Sudan should consequently be adopted.** This will range from the office of the President to the Ministry of Tourism and Wildlife and the Ministry of Foreign Affairs, which would play a role in spreading the image of the country abroad, either via promotional campaigns or the diplomatic missions. The private sector can be involved in different ways: foreign investors can participate in the effort by promoting their success stories in the country, while the Sudanese diaspora can use its knowledge of both the Sudanese context and the one abroad to transmit a positive image of the country.
- **Thus established, Team Sudan would be used as part of the promotional effort of the IPA.** For instance, the IPA should brief and debrief Sudanese official delegations' missions abroad, and participate in these when required. The Ministry of Foreign Affairs staff should also be regularly briefed on the FDI activities by the IPA, and the Sudanese embassies abroad should be supplied with information and promotional material. They should also be trained to get acquainted with the role of FDI in the economic development of the country and the factors that influence investors' decisions.

b) Develop the appropriate operational tools

- **The name of the IPA and a potential country slogan play a role in its image building.** Some countries, notably in the aftermath of internal conflicts, have used a slogan to impart a short, clear message to potential foreign investors and reassure them. For example, after the civil war, El Salvador used the slogan "El Salvador works".

- **A website and the use of social media are efficient tools that will ensure that the Sudan reaches a wide network of investors.** These tools are indeed increasingly used to develop and support a country's image to potential investors by promoting success stories and opportunities. Examples of professional investment promotion websites from which the Sudan could draw ideas to further improve the new website being developed with RIA-COMESA include those of Jamaica, Botswana and Ireland.²² Sufficient resources, both human and financial, should be allocated to build an attractive website and update it regularly. The site should in particular have the following key features:

- ✓ The text should be available in the languages most suited to the target investors. Apart from the mandatory Arabic and English language options, which are already used by the National Investment Authority on its new website, it may be useful to have short summaries in other languages such as Chinese, depending on the target countries envisaged by the Sudan and the main investors in the country.
- ✓ The text should be "customer focused" rather than "government speak" and include information on the factors that are relevant to investors, in particular key economic data, operating costs and conditions for businesses, and the investment regime. These should be presented in a clear and concise way, and present the operational details: which industries are open to foreign participation and applicable thresholds if any, company incorporation procedures, obtaining incentives and permits, etc.
- ✓ Industries specifically targeted or of potential interest, a summary of the key advantages and potentially successful experiences should be highlighted on the website. Emphasis should be put on testimonials from established foreign investors.
- ✓ Recent news on investment reforms, projects and improvements in international rankings should receive prominence.

²² See <http://www.jamaicatradeandinvest.org/>, <http://www.bitc.co.bw/>, <http://www.idaireland.com/>.

- ✓ Contact details to request information should be clear and made available. A dedicated person and a backup should be available to follow-up enquiries promptly.
- **A focused communication campaign should be a priority and should target an international and local audience:**
 - ✓ International: focused advertising in trade journals of the targeted sectors and industries (see section B 2), or public relations events associated with trade shows are more effective ways to reassure and attract investors than generalized publicity, which is very expensive and does not necessarily reach the right audience.
 - ✓ Local: image building aims at familiarizing the targeted audience with the activities of the IPA and encouraging the acceptance of FDI, notably to explain the need to mobilize public resources to undertake promotion efforts. Its objective is also to potentially attract employees and involve the wider business community in the activities of the IPA. This domestic image building will require regular reports on the activities of the IPA, success stories in the local media and a constantly updated website. Coordination with the line ministries and the states will also be essential.
- **Consideration should also be given to adopting a standard marketing image and message in all communication channels.** This includes the local and international media, the website and promotional material, and regular coordination meetings and briefings with the ministers and other governmental authorities operating internationally or meeting potential foreign investors.
- **Information packs, which can be easily updated, could be made available by the IPA, on paper and/or on the website.** The traditional printed “Investors’ Guides” and promotional brochures, which the National Investment Authority is already producing, can very quickly become outdated. Consequently, it is much more cost effective to develop an information pack composed of a folder with different inserts that can be easily produced and updated in-house. These would contain the essential information required

by a foreign investor and can be translated into as many languages as needed. Given that today most investors use the IPAs’ websites as their primary source of background information for a country they envisage as a potential investment location, these inserts can be uploaded on the website, or at least coordinated with its regular news and updates. These information packs are also useful when distributed widely to potential investors and during overseas visits, conferences and public relations events. This additional promotional material could, however, be developed at a later stage if the budgetary constraints limit the activities.

- **An online investment guide would be also a very useful tool.** Having an investment guide online is essential, as it allows a quick, easy and regular update at any time to reflect changes in legislation, infrastructure, costs or taxes, which are the main topics covered in an investment guide. To leverage the credibility of the information contained therein, it is desirable to prepare it with the help of international organizations, which add an additional level of quality control. One of the most developed and trusted mechanisms to prepare the Guides are the joint UNCTAD–International Chamber of Commerce’s (ICC) iGuides, which are developed at the request of governments and prepared jointly with them.²³ The Sudan has already submitted a request to UNCTAD to prepare an investment guide, which demonstrates the commitment of the country to improving FDI promotion.

2. Investment targeting

Investment targeting should aim at specific industries and projects that meet the national development objectives of the Sudan and offer investment opportunities. Investment targeting is generally built around the three following phases: identification of priority sectors and activities in line with national development objectives, selection of internationally competitive investment projects or opportunities within these priority areas and identification and targeting of potential international investors (UNCTAD, 2010).

²³ An example is the Rwanda iGuide, available at: <http://www.theiguides.org/public-docs/guides/rwanda>.

Targeting investors by promoting defined industries is a pre-condition for a successful investment-generation programme, as no country can be competitive in all areas. This is in line with best international practice; indeed, some industries provide better opportunities for investment in a given country than in others. For example, in 2005, Morocco embarked on a programme to switch economic policies from import substitution to more industrial and export-oriented activities. Consequently, the automotive and aeronautical industries, together with diversified phosphate and modernized agrifood activities, have become major engines of growth in the country. The Sudan, too, should consider limiting the number of industries for proactive targeted investment-promotion purposes.

In its national development plans, the Sudan has identified sectors or industries to diversify its economy. Given that the identified sectors or industries, namely agriculture, mining, oil and tourism, are open to foreign participation, they might serve as priorities for FDI attraction. If other sectors are envisaged, it is recommended that a small number of industries be identified and prioritized. Having identified the priority industries, the IPA will have to engage in investment targeting of investors/projects in accordance with national development goals and sustainable development objectives. In order to achieve this, it will need to embark upon professional investor targeting.

Recommendations:

- **Determine what types of investment the country requires.** A series of elements need to be taken into account and serve as criteria with the objective to constitute a portfolio of investment opportunities: their origin, size, activity, value, sustainability and competitiveness (UNCTAD, 2010a) notably vis-à-vis national development objectives. For example, in agriculture, the Sudan might want to attract large-scale investments with mostly export-oriented activities, or privilege more inclusive business models targeted at the domestic market. With regard to the origin, the Sudan might choose to target investors from the Arab League and COMESA, given the geographical proximity and in light of existing trade agreements.
- **Adopt a proactive targeting approach, conducted by trained staff, with the participation of the private sector.** A targeting or marketing strategy outlining how investors will be approached and

what follow-up mechanisms will be used should be established. The IPA's staff involved in investment targeting should be able to answer the queries of potential investors not only with regard to the project itself, but also concerning all business climate issues, including the legal and institutional framework, and the operational information such as the cost of labour and infrastructure. The role of the private sector, notably chambers of commerce, business associations and the Sudanese diaspora, is especially important when developing the criteria to select the type of investors or projects and in establishing contact with them.

- **Make use of investment targeting practices.** There are many ways to implement the targeting or marketing strategy: in-house, outsourced or through offices overseas and/or the diplomatic missions. IPAs which have the adequate human and financial resources have indeed opened offices in the target countries, for example the Moroccan IPA, AMDI, has offices in Europe, the Middle East and the United States, which is consistent with the investment and trade agreements of the country and its economic relationships.²⁴ These IPAs operate direct marketing via meetings with potential investors in their home countries. Based on information gathered at the fact-finding mission – that a representative office would soon be opening in Brazil – the Sudan has already started exploring this option. Other methods, some of which are already being applied by the National Investment Authority but need to be more targeted, include meetings through diplomatic missions abroad or during specific travel, mailshots or telephone calls. Investment fairs and seminars can also be organized by the IPA and are most efficient when targeting a specific industry (UNCTAD, 2010a).

3. Investment facilitation

Investment facilitation starts when an investor shows interest in a location and gets in contact with the IPA.

This is either because the company contacted the IPA first for an enquiry or assistance, or it was specifically targeted by the IPA and is showing interest. Investment facilitation serves two purposes: at the pre-decision stage, it helps the investor take the decision to invest and informs it about the establishment process, and at the post-decision stage,

²⁴ See <http://www.invest.gov.ma/?lang=fr&Id=47>.

it assists the investor in going through the establishment process. As described below, both stages have implications for the Sudanese IPA.

Recommendations:

- **Make full use of the website as a tool to inform potential investors before they get in direct contact with the IPA.** During the first phase, the role of the IPA is mostly to provide information to potential investors. It is important that the IPA maintain close contact with the investor. In the short term, and given the shortage of resources, the basis of this service could be supplied by a well-documented website, with international surveys and rankings, press reports, etc., included and updated regularly.
- **Establish a dedicated facilitation team.** The current Investor Services and Technical Operations Department of the National Investment Authority could serve as a basis to start a full investment facilitation service. Indeed, part of its activities currently consists in conducting investors' sites visits and answering their queries and requests for information. Its role should be expanded to providing assistance to investors concerning the administrative procedures in the establishment and start-up phases. This includes land allocation and import of equipment and materials. Several options can be envisaged to achieve this role (UNCTAD, 2010a):
 - ✓ Explaining to investors the different administrative steps and procedures that are needed to incorporate, obtain licences and permits, etc.
 - ✓ Adopting a one-stop shop (OSS) service for investors as an interface between the investors and different ministries and authorities.
- **The current OSS, focused on the National Investment Authority licence, should be developed into a full-fledged OSS.** Once the investment licence requirement is removed (see recommendation in chapter 1), the existing OSS could, with little or no budgetary implications, be upgraded to a full-fledged single window for investment, aimed at facilitating the establishment process and all the permitting requirements. In order for the OSS to provide efficient facilitation

services, it should provide a single interface for the investor to handle all transactions with the public administration in the country related to its investment operations. This requires ensuring the use of electronic communication and tracking tools allowing the investor, as well as the OSS managers, to monitor the status of any transaction and permitting requests, as well as intervene to address bottlenecks delaying the different processes. UNCTAD, through its e-Registrations system, has provided technical expertise and assistance in the establishment of such tools to a number of countries, and it stands ready to assist the Government of the Sudan in implementing a modern business registration infrastructure.

4. Investment aftercare

Investment aftercare, which takes place at the post-establishment phase, aims to ensure follow-up with investors once they have started their activities. It is different from the control of the performance requirements conducted by the regulatory authority, currently the National Investment Authority. The purpose of investment aftercare is to build a relationship with investors and to hear any concerns they may have, build knowledge on the projects and on the industries, and anticipate any problems that may affect the long-term viability of the projects. Regular interaction with existing investors also enables the IPA to promote new opportunities and initiatives for the local businesses (see section B 6, and gather investors' feedback on the issues they encounter (see section B 5).

Aftercare services can vary in scope and sophistication. Types of services that can be distinguished include:

- Basic administrative services such as support in obtaining and renewing permits;
- Support to the operations of companies, for instance in staff training, identifying economic partners²⁵ and increasing competitiveness;

²⁵ "These investment promotion agencies are instrumental in coordinating promotion activities and integrating support services for FDI at the national level. They provide one-stop services that cover marketing the country as an investment destination, identifying and targeting foreign investment, creating and managing databanks of potential foreign investors and local suppliers, providing matchmaking services to partners, organizing skills training for domestic entrepreneurs and providing post-investment services to investors" (UNCTAD, 2010b).

- More sophisticated strategic services, helping companies grow within their own network of corporate subsidiaries, for example, measures to help increase the local value added. (UNCTAD, 2010b; UNCTAD, 2007).

Investment aftercare obeys to the following rationale: an investor already present in the country may be likely to reinvest and consequently constitutes a potential source of FDI. A vital part of systematic investment aftercare is to seek expansions or new projects from the investor. Reinvestments can indeed amount up to 30 per cent of total FDI in developing countries and 70 per cent in industrialized ones (UNCTAD, 2007).

Recommendations:

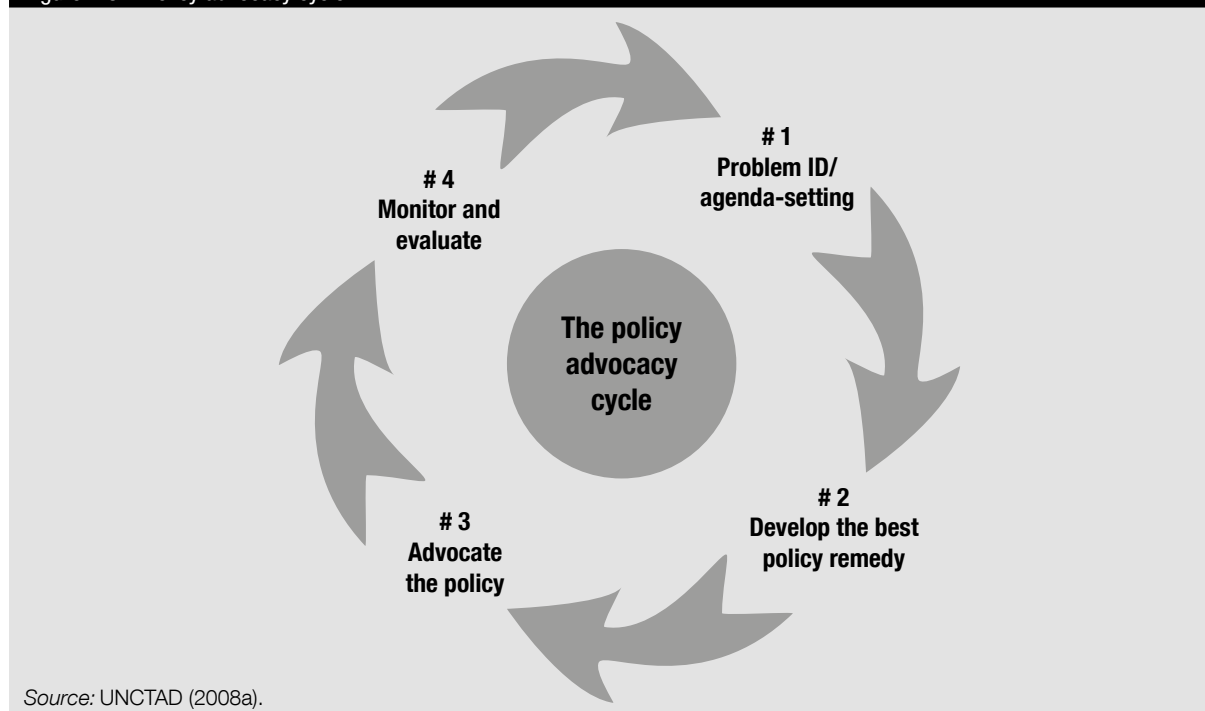
- **As the IPA develops, it should undertake aftercare services to retain and generate investment from established companies.** In this respect, some of the functions currently held by two existing departments of the National Investment Authority (the Coordination, Monitoring and Evaluation, and Planning and Policy departments) could be expanded and transferred to the new IPA. Indeed, these departments are currently responsible for

visiting investors, but only with a view to ensuring compliance with the requirements of the investment licence, and collecting data and information. Leaving the regulatory aspect of performance requirements to the National Investment Authority, these visits to investors could, in the framework of the new IPA, be used as a way to follow up with them during the implementation phase and to identify challenges and needs.

5. Policy advocacy

Policy advocacy is a productive way for IPAs to use the feedback from investors, in particular foreign ones, to improve the business climate in the Sudan and to shape better policies. While some initial policy advocacy efforts could be made during phase I with limited resources, a full-fledged policy advocacy initiative should be envisaged in phase II. It would be organized as a four-step process: identifying the issues; elaborating the appropriate solutions; advocating for the corresponding policy change; monitoring and evaluating results (UNCTAD, 2008a). Advocacy is a vital but sophisticated function of an IPA; for this reason, it is suggested that it be developed in the new IPA in stage II (figure 2.3).

Figure 2.3. Policy advocacy cycle



Consultations involving the domestic and foreign private sector should also be encouraged. It can indeed provide inputs in each of the four phases described above, notably by helping the authorities in understanding the full regulatory impact of the policies' changes sharing its experience from foreign countries where measures have been implemented, and playing a role in the monitoring and evaluation of the implementation by the authorities. It should be noted that currently in the Sudan, while nationals become automatically members of the Sudanese Businessmen's Federation, reported to participate in public-private consultations, after their incorporation, no such mechanisms currently exist with regard to foreign investors.

The policy advocacy efforts of the new IPA should also rely on the collaboration of the states' IPAs and the guidance of the High Council for Investment, as the supervisory body of both the National Investment Authority and the new national IPA. The states' IPAs should indeed contribute to the four phases of policy advocacy described above. In particular, in the identification of issues (phase 1) and elaboration of the policy remedies (phase 2), the new IPA should take into account the feedback of the states' IPAs and their contributions in terms of information collection and analysis from the investors, as part of the aftercare services.

Recommendations:

- **In stage II, the IPA of the Sudan should become an advocate for foreign investment, articulating deficits and solutions in policy, regulation and procedures to the Government.** Policy advocacy should involve all investment-related actors, both from the public and the private sectors. Indeed, the support and feedback of the latter is necessary to identify weakness, impediments and opportunities. A periodic survey of foreign, as well as domestic investors, in the country could provide a basic but effective tool to gather policy advocacy inputs. Likewise, information from aftercare meetings with investors should feed into the policy advocacy effort. However, the IPA should not be seen as a pro-business lobby group, but rather confine itself to those issues which directly impact on FDI in the chosen industries.
- **The Sudan should institutionalize public-private dialogue to ensure effective policy**

advocacy. While being undertaken by the policy advocacy department at the IPA and fed by the input received from the investment aftercare department, mechanisms could be added to channel the feedback of the private sector, both domestic and foreign. This could be translated into an institutionalization of this dialogue or, in the much longer term, the creation of a competitiveness council. The latter, established in many countries, is a private-public group which examines and monitors key issues which impact on the country's competitiveness such as labour, energy and transportation costs. This council would then have a solid basis on which to inform the Government on key steps to achieve competitiveness, and on ways to improve the environment for investment. Formalized dialogue with the private sector would also promote the involvement of investors in the Team Sudan approach recommended for investment promotion (section B 1).

6. Business linkages

Business linkages can have many positive effects, including the development of skills and know-how, and local value addition in global value chains (GVCs). Governments in many developing countries have consequently shifted their policies from local content quotas and mandatory transfer of technology to removing obstacles to encourage interaction between transnational corporations (TNCs) investing in the country and local SMEs (UNCTAD, 2013b; see box 2.1.). By linking foreign investors to local SMEs, business linkages can increase the local raw material and component content of TNCs' output and reduce imports. In addition, by meeting international supplier standards, local SMEs will be better positioned to address export standards and markets and will be exposed to international management techniques and technologies.

Increasing the participation in GVCs is indeed not sufficient per se; it needs to be accompanied by an upgrade of the value addition by local SMEs. Developing countries that have succeeded in experiencing higher GDP per capita growth also managed to increase the domestic value added of exports (UNCTAD, 2013c). This illustrates the importance of promoting business linkages in the Sudan and developing the capacities of local SMEs to serve as suppliers to the foreign investors.

Regarding linkages creation in the Sudan, a major difficulty arises from the inability of local SMEs to comply with international quality standards. This implies that their products can sell almost exclusively on the domestic market. Given that SMEs represent 93 per cent of the enterprises in the Sudan, excluding extractive industries and according to the information provided by the Ministry of Industry to UNCTAD during the fact-finding mission, (although the role of SMEs' in value added and exports is much more limited), it means that the large majority of economic establishments are automatically excluded from almost all possibilities to participate in the country's efforts to gain international competitiveness.

Access to finance remains a major constraint as well.

There are currently no specific financing mechanisms for SMEs, although microfinance initiatives have been adopted. For example, the Central Bank has issued instructions to all banks to establish microcredit units, the specific interest rates applied to small and micro-businesses (12 per cent, versus the ordinary business rates of 15 to 20 per cent) is still too high. In addition, the Ministry of Industry indicates that access to information on financing for SMEs is low, and small and micro-businesses often have recourse to traditional financing mechanisms.

Several initiatives have been launched to create a supportive legal and institutional framework for SMEs.

A "law for the regulation and improvement of SMEs" has been drafted and submitted to the National Assembly for approval. The draft law aims at supporting the development of Sudanese SMEs²⁶ and provides for the establishment of an "authority for SMEs", an objective of which is to assist SMEs in establishing business linkages with TNCs. In a first phase, the authority will be responsible for creating a database of existing SMEs. It will also facilitate training for SME employees in VET and research centres, and is tasked with encouraging the cooperation of international educational institutions to enhance local skills, and thus attract TNCs. The involvement of foreign investors in local educational and training facilities (in curriculum

development, mentoring, or work experience) will help embed the investor in the local community, and will promote the transfer of skills locally and the recruitment of local employees for the project.

In the Sudan, clustering initiatives have also been undertaken. For example, a cooperative of 83 carpentry, tanning and traditional shoe-making firms was established in the South of Khartoum. The Ministry of Industry provided support with the machinery, and the private sector established the infrastructure based on a loan of \$10 million from the Government of India. A new cluster is currently planned, supported by the Sudanese Business and Employers' Federation in West Darfur State.

Recommendations:

- **The IPA should be an integral part of the current initiatives in support of SME development.** The role of the IPA in this effort is crucial, as it is in a unique position to link FDI to the local economy. A 2013 UNCTAD survey has shown that nowadays more than 40 per cent of the IPAs target foreign investors, specifically on the basis of their potential to link up with the local economy (UNCTAD, 2013d). An IPA is best positioned to lead this, given its direct access to foreign investors, its understanding of their mandate and needs, and the rationale behind choosing the location. It can also intervene in the shaping of FDI policies because of its role in policy advocacy (see section B 5; UNCTAD, 2013b).
- **The linkages programme should be conducted jointly by the new SME agency and the IPA.** The IPA should cooperate closely with the planned authority for SMEs. As part of the IPA's investment aftercare function, a unit or at least one staff member in the aftercare department would during the starting phase be responsible of the promotion of business linkages, notably by using the tools and mechanisms developed by the planned authority for SMEs to prepare for a successful integration into GVCs and by building the local supply capacity. In this regard, a number of best practice policy lessons for the establishment of successful business linkages programmes should be considered, as shown in box 2.1. The business linkages promotion unit of the IPA should, in addition, link with the cluster programmes already initiated by the Ministry of Industry and the Sudanese Businessmen and Employers Federation.

²⁶ Given that the text could not be accessed, the description relies exclusively on information provided by the Ministry of Industry during the fact-finding mission. The draft SME law aims at enhancing access to finance for SMEs, protecting them from dumping, assisting them in attracting capital investment, granting them privileges with regard to land, water, electricity and telecommunications at a nominal price, giving them priority in public procurement if their quality production is equivalent to imported one and providing fiscal incentives.

Box 2.1. Good practice steps in business linkage promotion

1. Set up partnerships
 - Identify partner institutions (donor agencies, SME development centres, business associations, etc.).
 - Establish institutional framework for partnership, setting out objectives and roles for each partner.
2. Map value chain opportunities
 - Map TNC value chain challenges and needs; evaluate capacity of local firms to select target sectors.
 - Select TNCs that require a critical amount of inputs and services that could be sourced locally.
3. Tailor support measures and advocate reforms
 - Identify support measures that create incentives and commitment for both TNCs and SMEs.
 - Facilitate discussion between the private sector and policymakers to remove policy-related barriers.
4. Monitor and evaluate
 - Establish a monitoring and evaluation system with clear indicators that measure effectiveness and efficiency of the programme.
 - Communicate reports to future prospective stakeholders, including foreign direct investors.

Source: UNCTAD (2013b).

C. Improving the effectiveness of the FDI promotion effort

1. Improving the collection and use of FDI data and investor information

The Sudan lacks the mechanisms to collect accurate data on FDI and investors' operations that are relevant to inform policymaking. Currently, there is no investor database at the National Investment Authority, and information on FDI is taken from investors' feasibility studies (see chapter 1). Consequently, it is based on the investors' own estimates of future investment and employment rather than regularly conducted investor surveys. This makes the accuracy of FDI data problematic and does not allow the use by policymakers of reliable information on the impact of investment on development.

Data and information should be collected using different tools and should be easily accessible and published regularly. Key tools include regular investor surveys, formal and informal visits, interviews with investors and round tables. Indeed, investors' surveys and site visits provide useful information such as the number of jobs created, allowing the measurement of the spillover produced, and thus improving the planning process of

the IPA. Cooperation and coordination between federal and the state agencies, and with the private sector is required to establish and keep the investors' database up to date. As already mentioned in this chapter, the database thus constitutes an essential tool for strengthening the operations of the IPA, including its planning, aftercare, policy advocacy and monitoring functions.

The Government of the Sudan has acknowledged the weaknesses in FDI data and investor information collection. Consequently, it has requested UNCTAD to provide training support in this area. A first capacity-building activity was conducted in September 2013. Beyond introducing key tools and international practices to the Sudanese authorities in charge of statistical and FDI data collection, the activity has resulted in the country's commitment to develop a new survey of FDI inflows, including information relevant to assess FDI impact, in line with international standards.

2. Strengthening planning, monitoring and evaluation

A Team Sudan approach is desirable to plan for investment promotion. The National Investment Authority is mandated to undertake regular planning, but it is hampered by the current lack of data and a potential absence of coordination among authorities. This activity would consist of semi-annual plans, linked to the Five-year National Plan, and coordinated with the

line ministries dealing the investment issues and with State planning. Improved planning coordinated with the Presidency, ministries and states involved in the Team Sudan, as informed by up to date and relevant data, would allow a more focused FDI promotion programme to be undertaken, even within the limited resources, and better policy advocacy (figure 2.3).

Planning should set long-term objectives. With respect to priority sectors, for instance, a number of years will be required for investment-targeting efforts to show results (see section B 2). Investment promotion priorities cannot change every year, as the IPA needs to develop the required knowledge regarding both the sectors they are going to promote and the potential target investors from those sectors. In this regard, promotional activities need to be planned and budgeted over a five-year period to match the time frame of Government plans, rather than on an annual basis, and the planning process for FDI promotion and facilitation requires a long-term perspective.

Policymaking should be dynamic and integrate the outcome of effective monitoring and evaluation mechanisms. Once the IPA is fully operational and the data and information collection mechanisms are in place, monitoring and evaluation will serve to readjust policies and practices as necessary. It can also be used to monitor and evaluate the impact of the investment projects, vis-à-vis the national development objectives and the priority industries.

Monitoring and evaluation should extend to the activities of the IPA. The results of monitoring and evaluation could be published to demonstrate the effectiveness of the IPA. Through the use of a simple cost-benefit analysis, the IPA should be able to demonstrate to the Government and the wider business community in the Sudan the effectiveness of a properly staffed and funded Agency in achieving national development objectives. There are several ways for IPAs to put in place effective monitoring and evaluation mechanisms, and UNCTAD can provide further technical assistance to the Sudan in this area, based on the experience gathered throughout the world (UNCTAD, 2008b). For instance, in countries such as Ireland, which have a long history of FDI, project proposals have been pre-selected by the IPA for support if preliminary calculations suggested that over a subsequent seven years promised returns to the country were at least four times the amount of support (IDA Ireland, 2014).

3. Increasing resources and building capacities for investment promotion

Current resources for investment promotion are insufficient. At the time of writing of this report, the 2014 development budget of the National Investment Authority had not been approved by the Government of the Sudan, which has serious consequences for its activities. Indeed, although what can be described as the “functioning budget” (covering the staff salaries and the operational expenditures) has been granted, project funding is not sufficient to ensure that the mandate of the Authority will be fulfilled. Increasing the budget devoted to investment promotion is a pre-condition for the professionalization of investment promotion in the Sudan that is required to achieve the ambitious economic diversification objectives set by the Government. Although the expenditure envisaged can be costly in a first phase, the benefits of the country as the result of a successful FDI promotion strategy should compensate for it. The monitoring and evaluation mechanisms discussed above would ensure that this is the case.

A well-qualified, well-trained and well-remunerated staff is crucial for successful FDI promotion. Resources should be used not only to develop the new IPA and its projects, but also to attract, and above all, retain a skilled staff. Different sets of skills are required, depending on the departments in the recommended IPA, with a shared knowledge on the principles of FDI. Staff should also include some experts coming from the private sector, whose experience would prove beneficial in dealing with the investors, as they would be more likely to understand business concerns. Competitive work conditions and salaries should be offered. In this regard, an option would be not to consider IPA staff as civil servants, in order to provide more flexibility in the recruitment and wages, and increase the attractiveness of these jobs for employees from the private sector.

Continuous training and capacity-building of the IPA staff is essential. The IPA staff needs to address foreign investors with technical knowledge, problem-solving skills and understanding of the issues they encounter at different stages of the investment process. Consequently, substantial training and capacity-building will be required, the overall objective being that the IPA staff develops a mindset oriented towards the requirements of cost-effective business, while understanding the requirements

for investments to be sustainable and meet the national development objectives of the Sudan. Some training requirements should be common to all personnel, notably foreign language courses, while others should be specific and tailored to the activities conducted by each unit within the departments. These training sessions should be provided on a continuous basis.

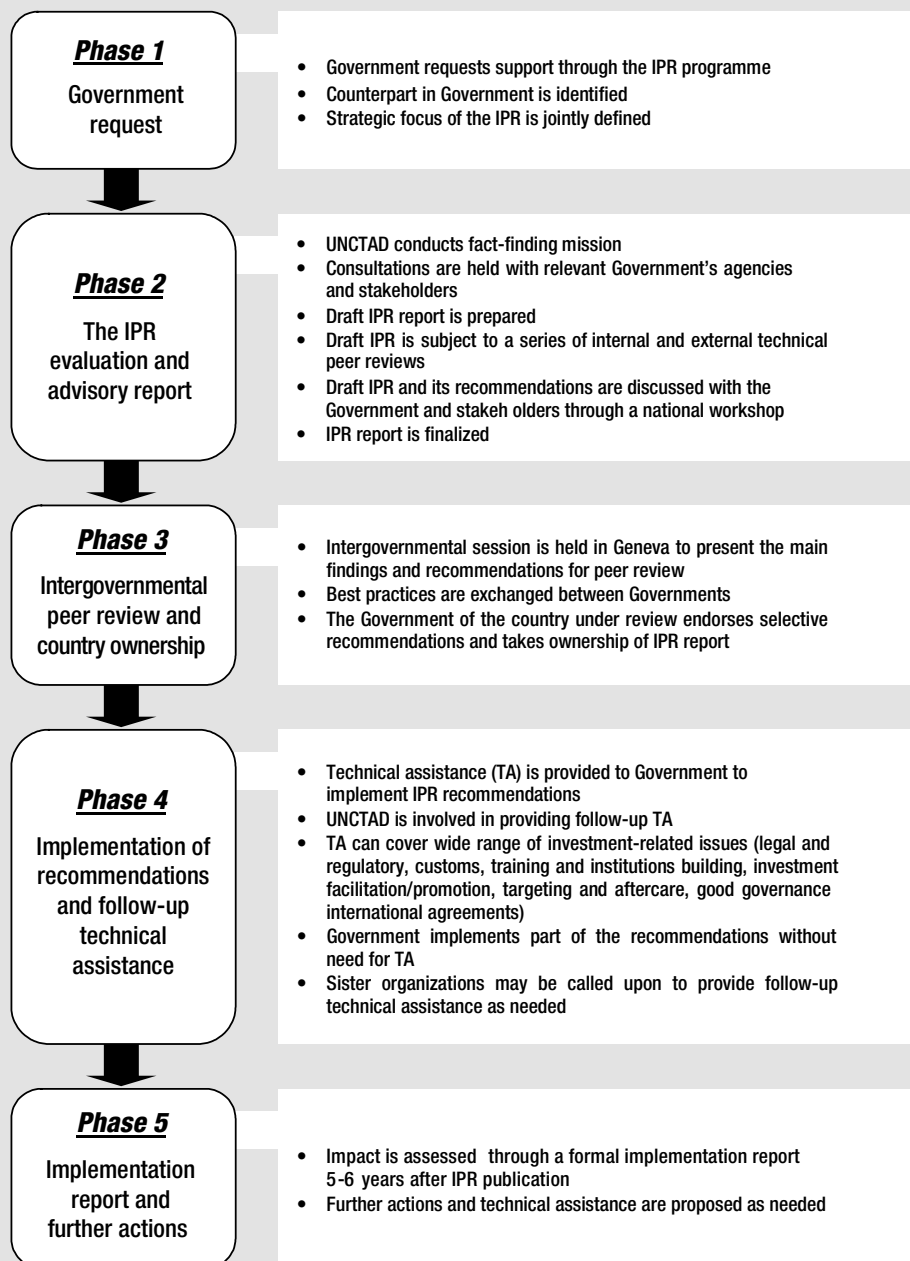
Training and capacity-building could consist of two parts. An induction training course in investment promotion for all IPA staff followed by more intensive training courses in targeting, facilitation and aftercare techniques for IPA staff assigned to these functions. Consideration should also be given to training in investment promotion for key actors from the civil service and administration, including diplomats.

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ANNEX 1. The IPR process

Source: UNCTAD, 2008

Note: For additional details about the IPR programme, see <http://unctad.org/ipr>.

ANNEX 2. Summary of recommendations

What	Why	How
I. Enhancing the investment climate	Most of the existing investment-related laws and regulations are modern and in line with good practice. However, the business climate is hampered by institutional weaknesses and/or the absence of implementation regulations in a number of areas, including environment and competition. Securing land titles in the Sudan is still problematic. The tax regime is complex, difficult to administer and does not generate sufficient revenues to the State. The free zones regime is not fully in line with the national development objectives of the Sudan. The legal framework to combat corruption is incomplete and anti-corruption initiatives are seldom effective. The labour regime also needs policy attention, particularly in the areas of workers' rights and skills development. These elements strongly affect the quality of the business environment and constitute impediments for the investors, thus affecting the fulfilment of the national development objectives of the country.	1. FDI-specific legislation 1.1. Clarify FDI entry and treatment criteria by adopting objective, clear and pre-defined criteria for strategic projects to further specify the regulation; harmonizing the definition of FDI across all laws and regulations; defining in a list the industries and sectors closed to, or only partially open to, foreign participation with indications of the threshold (negative list) on the basis of the one in the regulation; adopting clear, objective and pre-defined criteria for granting of incentives; and abolishing the authorization of the repatriation of capital and profits by the National Investment Authority 1.2. Simplify FDI establishment procedures by removing the screening of investment projects, replacing the current licensing of the National Investment Authority with the registration of investment projects and establishing clear and objective criteria for the exceptional cases of removal of the registration by the Minister of Justice 1.3. Improve investors' protection against expropriation by clarifying further the compensation mechanisms, making appeals against the decision of the arbitration committee possible and facilitating enforcement of foreign arbitral awards by adhering to the 1958 New York Convention 1.4. Separate the regulatory and promotional functions of the National Investment Authority 1.5. Modernize the IAs regime by aligning the new BITs or those up for renewal with international best practices and national development objectives, and preventing and managing investor-State disputes by strengthening the related government capacities 2. Free zones 2.1. Re-orient the free zones to further meet national development objectives by orienting them towards the domestic markets and using them to move up the country in the global value chains, while promoting sustainable development 2.2. Revise the exclusion of workers from social security rules 3. Land Clarify and secure land titles by assessing and strengthening coordination mechanisms among relevant government authorities; reinforcing control over land and conducting information campaigns to raise awareness traditional rights' entitlements, taking into account the findings and conclusions of the committee set up by the Council of Ministers and clarifying the role of the National Investment Authority in granting land-related incentives versus its role of an investment promotion agency (IPA) 4. Tax Review the tax regime to increase revenue, notably by reducing incentives and reinforcing the tax collection mechanism, and taking into account the findings and conclusions of the committee set up by the Ministry of National Economy and Finance 5. Labour 5.1. Address the remaining problems in the protection of workers' rights, including labour inspections and the cooperation with the social partners and the International Labour Organization (ILO) regarding the observation of trade union rights and freedom of association 5.2. Modernize the foreign labour regime by: submitting the recruitment of foreign workers to clear, objective and pre-defined criteria following a scarce skills approach, distinguishing between key personnel and other workers, and developing local skills, notably by replacing the training obligation by a mandatory training levy 5.3. Revising the exclusion of the foreign labour from the payment of social security

ANNEX 2. Summary of recommendations (continued)

What	Why	How
II. Strengthening the FDI promotion institutional framework	Given the challenges the Sudan has to face with regard to investment attraction, the current efforts to improve the legal framework should be accompanied by concomitant improvements in FDI promotion. Currently, by mandate and structure, the National Investment Authority performs a number of regulatory functions at the expense of promotional ones, including investor promotion, facilitation and image building, which are typical of a modern IPA. In addition, the human and financial resources allocated are insufficient. While taking into account and using the current structure and functions of the institutions involved in FDI promotion in the Sudan, a new IPA will allow the development of professional promotion to help the country improve its image and facilitate investors' entry. A staged approach in two phases would allow ensuring effective FDI promotion while taking into account the human and financial constraints the new IPA will need to deal with. An alternative option would consist of the establishment of an FDI promotion unit within the National Investment Authority with no regulatory functions and conducting specific promotion activities.	6. Competition 6.1. Strengthen the legal framework by enforcing the 2009 Anti-Monopoly and Competition Law and adopting a law on conflict of interest 6.2. Operationalize the institutional setting by allocating sufficient resources, including well-trained staff, to the Competition and Anti-Monopoly Council 7. Environment Scale up environmental protection by defining the criteria to undergo an EIA, differentiating the investment projects according to their level of potential risk and building the capacities of the EIA accrediting committee 8. Fight against corruption 8.1. Complete the legal framework to fight corruption, notably by ratifying UNCAC and criminalizing key corruption-related offences 8.2. Operationalize the institutional framework to fight corruption, notably the Anti-Corruption Agency, by allocating sufficient human and financial resources, creating a coordination mechanism among the authorities involved 9. Establish a new IPA Create an independent publicly funded IPA to separate the regulatory and promotion function of the National Investment Authority or establish an FDI promotion unit that no regulatory functions but conducts specific activities at the Authority 10. Develop the functions and tools of the new IPA in two stages 10.1. Stage I – mandatory functions for effective FDI promotion 10.1.1. Build up and spread an attractive image of the Sudan by adopting a Team Sudan approach and developing appropriate tools (slogan, standard marketing image, launching and improving the new website, use of social media, communication campaign, information packs, online investment guide and so forth) 10.1.2. Set up investment targeting to identify competitive industries in line with the NDP, select investment projects/opportunities and target potential investors 10.1.3. Build up investment facilitation to accompany investors after they have expressed an interest in the country; develop the appropriate tools (make full use of a well-documented website, establish a dedicated facilitation team, and turn the current OSS into a fully fledged OSS) 10.1.4. Use existing resources to initiate a preliminary policy advocacy effort 10.2. Stage II – additional functions for effective FDI promotion (provided stage I has been successfully implemented) 10.2.1. Develop investment aftercare to ensure follow-up with investors post-establishment; certain functions already existing in the National Investment Authority could be transferred to the investment aftercare department in the new IPA 10.2.2. Set up fully fledged policy advocacy to improve the investment climate by using investors' feedback (initial efforts can be started during stage I, see 10.1.4) and institutionalizing public-private dialogue with all the stakeholders 10.2.3. Increase the local value addition by stimulating business linkages, ensuring the participation of the new IPA in initiatives to support small and medium-sized enterprises (SMEs) and upgrading the local SME (in cooperation with the future SME Agency)

ANNEX 2. Summary of recommendations (continued)

What	Why	How
II. Strengthening the FDI promotion institutional framework	Given the challenges the Sudan has to face with regard to investment attraction, the current efforts to improve the legal framework should be accompanied by concomitant improvements in FDI promotion. Currently, by mandate and structure, the National Investment Authority performs a number of regulatory functions at the expense of promotional ones, including investor promotion, facilitation and image building, which are typical of a modern IPA. In addition, the human and financial resources allocated are insufficient. While taking into account and using the current structure and functions of the institutions involved in FDI promotion in the Sudan, a new IPA will allow the development of professional promotion to help the country improve its image and facilitate investors' entry. A staged approach in two phases would allow ensuring effective FDI promotion while taking into account the human and financial constraints the new IPA will need to deal with. An alternative option would consist of the establishment of an FDI promotion unit within the National Investment Authority with no regulatory functions and conducting specific promotion activities.	11. Guarantee the efficiency of the new FDI promotion institutional framework 11.1. Improve the collection of investor information and FDI data by: developing a database of investors in cooperation with federal and state government agencies and the private sector; and modernizing FDI data collection based on international best practice 11.2. Strengthen planning, monitoring and evaluation by adopting semi-annual plans based on national development objectives, establishing monitoring and evaluation mechanisms for the activities of the IPA based on international best practice and readjusting the plans based on outcomes when necessary 11.3. Increase resources and build capacities for investment promotion by setting up competitive work conditions and salaries for the IPA staff, building their capacities and organizing training sessions 11.4. Enforce coordination mechanisms among the institutions involved in FDI promotion by fully implementing the mandate of the High Council for Investment and signing protocols of cooperation between relevant institutions

ANNEX 3. List of the Sudan's bilateral investment treaties

Countries involved	Status	Date of signature	Date of entry into force
Turkey	Signed (not in force)	30 April 2014	
South Africa	Signed (not in force)	7 November 2007	
Burundi	Signed (not in force)	5 November 2007	
Mauritania	Signed (not in force)	8 July 2007	
Italy	Signed (not in force)	19 November 2005	
BLEU (Belgium-Luxembourg Economic Union)	Signed (not in force)	7 November 2005	
Lebanon	In force	9 September 2004	21 April 2007
India	In force	22 October 2003	18 October 2010
Tunisia	In force	08 October 2003	24 September 2006
Switzerland	Signed (not in force)/new proposal currently under negotiation	24 October 2002	
Bulgaria	Signed (not in force)	3 April 2002	
Chad	Signed (not in force)	23 March 2002	
Netherlands	Signed (not in force)	12 March 2003	
Kuwait	In force	4 November 2001	28 February 2004
Algeria	Signed (not in force)	24 October 2001	
Eritrea	Signed (not in force)	5 October 2001	
Egypt	In force	8 July 2001	1 April 2003
United Arab Emirates	In force	18 March 2001	16 March 2002
Djibouti	In force	25 November 2000	12 November 2005
Jordan	In force	30 March 2000	3 February 2001
Ethiopia	In force	7 March 2000	15 May 2001
Bahrain	In force	22 March 2006	16 July 2006
Syrian Arab Republic	In force	7 January 2000	1 September 2001
Oman	In force	25 October 1999	28 May 2002
Islamic Republic of Iran	In force	7 September 1999	19 October 2001
Yemen	In force	10 August 1999	28 March 2003
Morocco	In force	23 February 1999	4 July /2002
Malaysia	In force	14 May 1998	3 October 2002
Qatar	In force	3 June 1998	12 December 2001
Indonesia	In force	10 February 1998	25 May 2002
China	In force/new proposal currently under negotiation	30 May 1997	1 July 1998
Libya	Signed (not in force)	15 December 1990	
France	In force	31 July 1978	5 July 1980
Romania	Signed (not in force)	8 December 1978	
Germany	In force	7 February 1963	24 November 1967

ANNEX 4. List of the Sudan's regional and international investment agreements

1. Agreement on Arab Economic Unity (League of Arab States) (Arab Economic Unity Agreement) (1957)
2. Agreement on Investment and Free Movement of Arab Capital among Arab Countries (1970)
3. Netherlands–Sudan Economic and Technical Cooperation Agreement (1970)
4. Agreement on Economic and Technical Cooperation between the Government of the Kingdom of the Netherlands and the Government of the Democratic Republic of the Sudan (Netherlands–Sudan Economic and Technical Cooperation Agreement) (1970)
5. Unified Agreement for the Investment of Arab Capital in the Arab States (1980), amendments introduced in 2013
6. Agreement on Promotion, Protection and Guarantee of Investments among the Member States of the Organization of the Islamic Conference (OIC Investment Agreement) (1981)
7. Treaty Establishing the African Economic Community–African Union (AU Treaty) (1991)
8. Treaty establishing the Common Market for Eastern and Southern Africa (COMESA Treaty) (1993)
9. Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and Its Member States, of the Other Part (Cotonou Agreement) (2000)
10. Agreement between the Common Market for Eastern and Southern Africa (COMESA) and the United States of America concerning the Development of Trade and Investment Relations (COMESA–United States TIFA) (2001)
11. Investment Agreement for the COMESA Common Investment Area (COMESA Investment Agreement) (2007)
12. Interim Economic Partnership Agreement between the European Union and Eastern and Southern Africa (ESA–EU EPA) (2009)

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