A Roadmap for Responsible Economic Engagement in Sudan

By Annie Callaway
November 2018

This brief provides an overview of relevant existing frameworks that businesses can use as guideposts to responsible economic engagement in Sudan.

Background

Despite the lifting of U.S. sanctions in 2017, Sudan has descended into the worst economic crisis in its 62 years of independence, as discussed in the Enough Project's accompanying report, "Sudan's Self-Inflicted Economic Meltdown: With a Corrupt Economy in Crisis, the Bashir Regime Scrambles to Consolidate Power." Twenty-nine of these years have been ruled by the violent kleptocratic regime of President Omar al-Bashir, during which time the country consistently dedicated more than 75 percent of its budgetary resources to the defense and security sectors, while allocating an average of just 10 percent each to the development of its rich agricultural and livestock resources and to the health and education of its people. Grand corruption destroyed Sudan's national assets and infrastructure, including one of Africa's largest railway networks and earliest national airlines and commercial fleets.

Persistent mismanagement of the economy and corruption by Sudan's Islamist ruling elites combined with ongoing deadly conflicts and forced displacement of civilians in the resource-rich southern and western regions of the country and violent repression of dissent elsewhere make Sudan unattractive and risky to potential investors and businesses. Adding to the risk factors are UN Security Council sanctions and Sudan's continued designation by the United States as a State Sponsor of Terrorism (SST), due to the ruling Islamists' role in hosting terrorist groups in the country during the 1990s and their continued ambiguous attitudes toward the Islamic State, al-Qaeda, and these terror networks' regional affiliates in Africa.

Sudan is facing a moment of reckoning with important geopolitical consequences. Businesses considering investment in Sudan face a similar reckoning: they can choose to follow global standards to act responsibly prior to and during any engagement with Sudan, or they can turn a blind eye as Sudan's regime continues to deliberately run the country's economy into the ground, leaving its citizens to suffer. With some countries eager to re-establish economic ties unencumbered by human rights, anti-corruption, or other responsible business and investment protocols, the impetus for companies from Western, Chinese, Indian, and other Asian companies to also engage hastily with Sudan may be strong, but it should be resisted in favor of more responsible approaches.

Although businesses—including private companies in all sectors and financial institutions—may seek to seize what they view as ground-level investment opportunities in a country with vast natural resource wealth, these steps should only be taken in line with international standards and principles and with a clear awareness of the range of risks. This range includes (but is not limited to): early and frequent assessments of salient human rights risk factors; keeping abreast of site- and project-level hazards to health, safety, and the environment; and monitoring and mitigating for red flags associated with corruption along the supply or value chain.

Why to Engage

When conducted in a responsible manner, specific transactions or broader investment can be both feasible and an opportunity for businesses to serve as a pillar for rebuilding credible, transparent institutions in Sudan.

Re-engagement, by U.S. businesses in particular following the lifting of sanctions, has the potential to contribute to the necessary economic and political reforms sorely needed to restore credible institutions and democracy for the country's citizens while providing a solid foundation upon which stability can be maintained. With Sudan due for elections in 2020 and speculation already mounting that President al-Bashir will take the necessary steps to cling illegally to power, a united front of businesses committed to investing responsibly and resisting corruption can provide leverage to ensure the country can weather this challenge.

How to Engage

There is no lack of existing frameworks or resources to guide responsible business in corrupt and fragile environments. Those referenced here do not represent the full range, but the key points highlighted are meant to guide potential investors through some of the core components of responsible business as they relate to the Sudan context. Companies should work closely with counsel and other experts to design specific approaches relevant to their size, sector, and the location within Sudan of any proposed activities. Companies also remain bound by other legal restrictions applicable to Sudan, including U.N. Security Council-imposed sanctions related to Darfur as well as considerations connected to money laundering, particularly related to the gold sector, and Sudan's status as a SST, as designated by the U.S. government.

Resources

The following provides an initial guide to some of the key resources to consider when planning new economic engagements in Sudan or assessing ongoing ones.

U.N. Guiding Principles for Business and Human Rights (link)

- Key points: Businesses have a responsibility, independent of States' obligations, to protect human rights and should consider the risk of causing or contributing to gross human rights abuses as a legal compliance issue. They should conduct ongoing human rights risk assessments, including incorporating meaningful consultation with potentially affected groups and other relevant stakeholders, and seek to identify salient risks within their value chains, a concept that is broader than just supply chains. Businesses should also take steps to prevent, mitigate, and remedy negative impacts from the salient risks while tracking the effectiveness of their systems and actions.
- The Guiding Principles consider "human rights" to be what is set forth in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the eight International Labour Organization core conventions.
- The United States, United Kingdom, and several European countries have issued National Action Plans that focus on more specific implementation issues relevant to businesses based in these countries to ensure alignment with other obligations.

Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (link)

- Key points: Enterprises should contribute to economic, environmental, and social progress with a view to achieving sustainable development and curbing human rights abuses and corruption. They should also develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between themselves and the societies in which they operate.
- Every OECD Member State has established a National Contact Point for implementation of the Guidelines, both to provide advice and to serve as a mediator when complaints are raised regarding the activities of specific businesses.

OECD Due Diligence Guidance for Responsible Supply Chains (link)

- Key points: This five-step framework for due diligence in minerals supply chains calls on businesses to 1) establish strong company management systems, 2) identify and assess risks in the supply chain, 3) design and implement a strategy to respond to identified risks, 4) carry out independent third-party audits of supply chain due diligence at identified points in the supply chain, and 5) report on supply chain due diligence.
- This guidance has launched a broader "responsible business agenda" at the OECD and the development of similar frameworks for other sectors.

Equator Principles (link)

- Key points: These principles offer an independent framework, adopted by 93 financial institutions in 37 countries, for determining, assessing, and managing environmental and social risk in project finance. The Principles are primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making. Member institutions provide an annual report on implementation.

International Finance Corporation (IFC) Performance Standard 7 on Indigenous Peoples and Free, Prior, and Informed Consent (FPIC) (link)

- Key points: Regardless of whether a project triggers an official FPIC process under the IFC, companies looking to invest, especially in extractives projects, should engage—early and continuously throughout the project lifecycle—in a process of acquiring and maintaining community consent to operate. This should be approached as a good-faith negotiation, not just a consultation or education campaign, in which communities have the right to refuse all or part of the project. This process should be considered part of the company's ongoing risk assessment and management structure.
- The IFC has established a Compliance Advisor Ombudsman to provide guidance and hear complaints concerning possible violations of the Standards.

Financial Action Task Force (FATF) Recommendations (link)

- Key points: These international standards are designed to curb money laundering and terrorist financing by increasing transparency and enabling countries to successfully take action against illicit use of their financial system.
- FATF has developed guidance documents on specific risks for money laundering and terror financing, including through the gold trade, corruption, and recruitment of fighters, all of which are significant issues in Sudan.
- Countries establish financial intelligence units, and countries that are not FATF members work through FATF-style regional bodies, which also conduct evaluations of implementation. Sudan is a member of such a body, known as MENA-FATF.

UK Bribery Act, 2010 (link)

- Key points: Section 7 of this act provides a statutory defense to a bribery offense committed in order to retain, gain, or secure an advantage in business. Adequate procedures are a subjective test, and the UK Bribery Act guidance states it will be a test for the courts to apply. However, the guidance to the act states adequate procedures ought to be proportionate to the bribery risks an organization faces. With Sudan currently rated 175 out of 180 countries in the Transparency International Corruption Perceptions Index, the risk of bribery is very high, and measures should reflect this.
- Companies are encouraged to publish, ideally on their website, their anti-corruption and anti-bribery policies and the measures they will take in order to counter corruption.