



Raising private finance for public infrastructure in Sub-Saharan Africa: Exploring Infrastructure Mutual Funds and Islamic Finance

Augustine Edobor Arimoro¹, Abba Amsami Elgujja², Abba Amsami Elgujja³
University of Roehampton London, United Kingdom¹; King Saud University Medical City^{2,3}
augustine.arimoro@roehampton.ac.uk¹

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ABSTRACT

Sub-Saharan Africa (SSA) lags other regions of the world as far as critical infrastructure is concerned. Even though the region has great potential, the governments in the region are constrained by budget deficits and competing demands for state resources. With limited access to foreign finance for private sector-led infrastructure procurement in most economies in SSA, this article examines how innovative financial products can be developed to unlock domestic finance for infrastructure. The article adopts a law and development approach. The article recommends the development of infrastructure mutual funds and Islamic finance as alternative sources for infrastructure finance in SSA. This recommendation is based on Prof YS Lee's adaptability to socio-economic conditions theory.

1. Introduction

With less than eight years to the United Nations Agenda 2030 on Sustainable Development Goals (SDGs), there is a need for Sub-Saharan Africa (SSA) to take urgent steps to close the infrastructure gap in the region. The region's enormous potential is not in doubt (Berg, Blankespoor, & Selod, 2018). However, with the impact of the Coronavirus (COVID-19) pandemic on the global economy in the last two years, there is a lot of room for catching up now if recovery is considered (Anago, 2021). Traditional public finance for infrastructure requires the public authority to fund all the infrastructure needs of the state (Spohr, Wikströma, & Eriksson, 2022; OECD, 2015). If the private sector were engaged, it would only be for contractual purposes and not for funding the project.

Furthermore, because of the massive capital outlay required for funding infrastructure projects, governments around the globe find it challenging to solely fund all infrastructure

procurement due to budget constraints and competing needs for public funding (Arimoro, 2018). Therefore, there is no doubt that alternative sources for funding infrastructure are critical if countries must reduce their infrastructure gap. This challenge is one that policymakers in the (SSA) region must deal with, given that the region lags behind other regions of the world when the infrastructure deficit is considered (Arimoro, 2021). Following the above, there is a need to differentiate between infrastructure funding and infrastructure finance for clarity. At the same time, infrastructure funding refers to government-backed funding for infrastructure via budgetary allocations. Financing is the more appropriate term for private sector-backed infrastructure procurement (Beecher, 2021). Infrastructure in this article refers to 'the physical structures and networks that deliver the requisite services to various sectors and communities...Broadly, infrastructure includes water supply, sewage, housing, roads, bridges, ports, power, airports, railways, and urban services...' (Kumari & Sharma, 2017: 49).

This article discusses access to infrastructure finance in SSA, the challenges faced by the regional governments, and the opportunities presented if the proper steps are taken to create and maintain a healthy framework that supports private sector participation in infrastructure procurement. It has been noted, and rightly so that as far as access to finance for infrastructure is concerned infrastructure has not yet attained the status of a viable asset class for financial institutions (The World Bank, 2021). This issue means unlocking infrastructure finance, especially in developing regions like SSA, is critical if the funding gap for infrastructure in the sub-region is bridged. Some of the challenges identified in infrastructure finance in the region include and are not limited to an underdeveloped financial market and the lack of capacity to finance long-term projects. Furthermore, the sincerity of the regional governments and the support mechanism they provide is always in doubt. SSA is for the governments to partner with developed countries of the world 'such as Germany, Japan, Sweden, Netherlands. However, it has been argued that a possible solution to the infrastructure deficit is the top ten countries in infrastructure ranking..' (Azolibe & Okonkwo, 2020). With respect, this is not feasible. If the countries of SSA desire to make a difference, the solutions to the problems of infrastructure in SSA must emanate from within SSA (Lee, 2017).

This article discusses the overarching issues around the infrastructure deficit in the SSA region and the problem around unlocking private sector-backed finance for long-term infrastructure procurement. The paper is both descriptive and prescriptive. The need to seek innovative approaches to finance infrastructure is also not in doubt (Kirwan, 1990) and is the main crux of the discussion in the paper. If SSA countries are to bridge their infrastructure gap, they must be strategic like other sub-regional blocs. For example, in Europe, there has been a call for creating and promoting sustainable market environments for infrastructure finance (Paterson-Jones, 2019).

2. Literature Review: How Innovative Finance Can Aid Infrastructure Development in Sub-Saharan Africa

A collaboration with the private sector is considered the practical solution to the problem of infrastructure deficit (Spohr, Wikströma, & Eriksson, 2022; Anago, 2021), but raising private finance for infrastructure remains a challenge (Calitz & Fourie, 2010; Arimoro, 2022). Infrastructure procurement makes FDI for infrastructure procurement in Africa unattractive due to specific cost risks. ((Kuru & Artan, 2020) Arimoro (2022) points out that wish list fees

are usually in local currency. Nevertheless, the impetus to attract foreign direct investment (FDI) to SSA remains (Traore, Muchie, & Worku, 2020; Horvat, Bendix, Bobek, & Skoko, 2021). Besides, funds invested in infrastructure projects are usually denominated in United States dollars.

There have been suggestions to leverage the pension assets managed by several pension fund administrators on the continent (Anago, 2021). While this appears to be a viable solution to the scarcity of domestic finance for infrastructure, there are restrictions on the maximum amount invested in infrastructure development. For example, South Africa had to amend Regulation 28 of the Pensions Fund Act to improve private participation in infrastructure procurement (Current Affairs ZA, 2022). The significant problem is that Pension Funds are cautious about investing in infrastructure funds, given the fact that few infrastructure securities have attained strong enough ratings (Macomber & Armerding, 2018)

Innovative practices must be adopted (Badu, Owusu-Manu, Edwards, & Holt, 2011). It is pertinent that given the peculiarities of the SSA region, whatever approaches are adopted must take into cognizance strategies that are workable in the region (Salami, 2011). Salami (2011) supports adopting the European Union financial regulatory framework in Africa to create financing opportunities. However, the problem with this suggestion is that templates from the world's developed regions rarely work in the African context (Arimoro, 2019). (2019) identifies the weakness in institutional structures synonymous with African economies as the bane of using templates crafted in the Global North.

Furthermore, the weakness of the financial markets in SSA poses additional problems with using frameworks from the Global North (Assefa & Mollick, 2017). Similarly, Flora & Yeung (2018) note that apart from South Africa, the other economies in the African continent have weak financial markets. Following the above, the quest to develop domestic investments in infrastructure in SSA must take into cognizance the weak financial markets in the region.

Furthermore, it is trite that infrastructure is considered a catalyst for sustainable economic development (Ojo, 2020). Sustainable infrastructure implies systems that meet citizens' essential service needs (Bradlow, 2015). This article, therefore, identifies the need to develop a framework that suits and is unique to the SSA region and one that would create an enabling environment for domestic funding of infrastructure. The article relies on the adaptability to socio-economic conditions theory formulated by YS Lee.

3. Adaptability to Socio-economic Conditions Theory

Professor YS Lee's groundbreaking research in law and development is well recognized (Ghebremusse, 2019). Lee's seminal work entitled 'General theory of law and development (Lee, 2017) formulates the adaptability to socio-economic conditions theory. The study reviews how South Korea developed its economy by applying appropriate legal and economic frameworks. Furthermore, the relationship between law and institutions in the quest for economic development cannot be overemphasized.

The adaptability to socio-economic conditions theory recognizes that law is an effective tool for development (Lee, General theory of law and development, 2017). Law and institutions are essential tools for development (Airey & Toufayan, 2022). Law can be used as an instrument of social and economic change (Vorster, 1985). Airey and Toufayan (2022) note that law legitimizes economic thinking and policy-making. There is a direct correlation between

investor interests and sound legal frameworks (Akisik, 2020). Significantly, the law creates an enabling business environment and provides investors and fund lenders confidence. There cannot be an effective financial market in SSA for providing the platform for private investors to access the much-needed capital for investments that are not hinged on appropriate legislation. It remains to be stated that law must take into reckoning the peculiarities of any given jurisdiction to be effective (Lee, 2022).

Taking the South Korean example into perspective, Lee suggests a different approach to the discussion on law and development that was an offshoot of Western ideas (Lee, 2017). Lee identified the weakness of the former law, and development approaches failed because of its predominantly neoliberal ideas of what development should look like (Ghebremusse, 2019). For example, traditional law and development focused on ideas such as privatization, commercialization, and trade liberalization, emphasizing the rule of law (Lee, 2022). Those approaches, rather than developing the Global South's economies, resulted in impoverishing the people and widened the gap between the rich and the poor (D'Souza, 2022). The argument is that Western neoliberal development ideas have not worked in the Global South (Pollio, 2021).

Lee's idea of what law and development should focus on as far as the developing world is concerned can be summed up in his adaptability to socio-economic conditions approach (Lee, 2017). It is trite that 'law may not be effective if it does not conform to the socio-economic conditions on the ground' (Lee, 2017: 444). Lee argues that socio-economic conditions such as social, political, economic and cultural conditions determine the successful operation of law (Lee, 2017). For example, religious and social norms in certain countries directly influence the law's operation. Laws that seek to legitimize usury or interest by asset management companies or financial institutions are deadlocked because interest is considered haram in SSA countries which Muslims dominate. However, enacting the law is to grow financial markets and facilitate the necessary economic development. The Qur'an in chapter 2:279 states that charging interests is oppressive and exploitative. Therefore, an appropriate approach would be introducing *Shari'ah*-compliant banking (Lee, 2017). Following the above, countries with similar socio-economic conditions can learn from each other and try to implement favourable structures that have become victorious in a peer country. This issue is as opposed to merely borrowing templates from the Global North.

4. Unlocking Domestic Finance for Infrastructure and the Concept of Sustainable Finance

An enabling that the financial markets of SSA have what it takes to serve as a meeting point for investors and lenders to unlock domestic funding for infrastructure, an enabling environment must be created (Setyowati, 2020). A sustainable system that incentivizes the financial market to offer the needed support for growth and economic development must be prioritized (Thistlethwaite, 2014). This issue leads to the question, what is sustainable finance? The term is common among those concerned with political supervision, regulation, and macro-management (Kuhn, 2022). Other factors triggered in the developed economies, the concept of sustainable finance, and SSA's efforts towards ensuring sustainable finance can be linked to the need to unlock the domestic market for the private sector-driven infrastructure procurement.

Investors and lenders, apart from wanting an assurance that their funds are protected, look forward to returns on investment. In this wise, the public authorities in SSA must take steps to stimulate changes that can boost the financial markets in the region (Zeidan, 2022). Considering the need for socio-economic adaptability, whatever changes are made must conform to the socio-economic and cultural needs of the SSA region.

5. Sub-Saharan Africa's Infrastructure Deficit

A massive infrastructure deficit plagues SSA. SSA has a shortage of critical infrastructure, which has been made worse by the COVID-19 pandemic (Kato, 2021; Arimoro, 2022). Nearly all critical sectors, such as transportation, energy and water, suffer from severe shortages in SSA (Kodongo & Ojah, 2016). To put it mildly, the infrastructure needs of SSA exceed \$93 billion annually (The World Bank, 2017). The approach in this section of the paper highlights areas that require attention. As such, the paper does not merely repeat previous discussions. It is not in doubt that the infrastructure gap in Africa is enormous (Goodfellow, 2020). The situation in SSA countries is even more problematic as the subregion's infrastructure deficit raises a cause of concern when compared with peers around the globe (Goodfellow, 2020). Although this is not to say that there are no infrastructure assets in the sub-region, the argument is that the limited infrastructure assets in SSA countries affect the quality of life of those countries (Nyikos & Ermasova, 2021).

Furthermore, the advent of the COVID-19 pandemic and the financial strain that it imposes on the governments of SSA countries make the partnership between the public and private sectors inevitable (Anago, 2021). So long as inadequate infrastructure plagues the countries in the SSA region, achieving total economic growth will remain a lofty dream. It has been argued, and rightly so, that policymakers must see the shortfalls in infrastructure assets as an opportunity to partner with the private sector for efficient procurement and maintenance of those assets (Arimoro, 2022). There is, therefore, a need to take proactive and innovative measures to deal with the region's infrastructure problem (Arimoro, 2022).

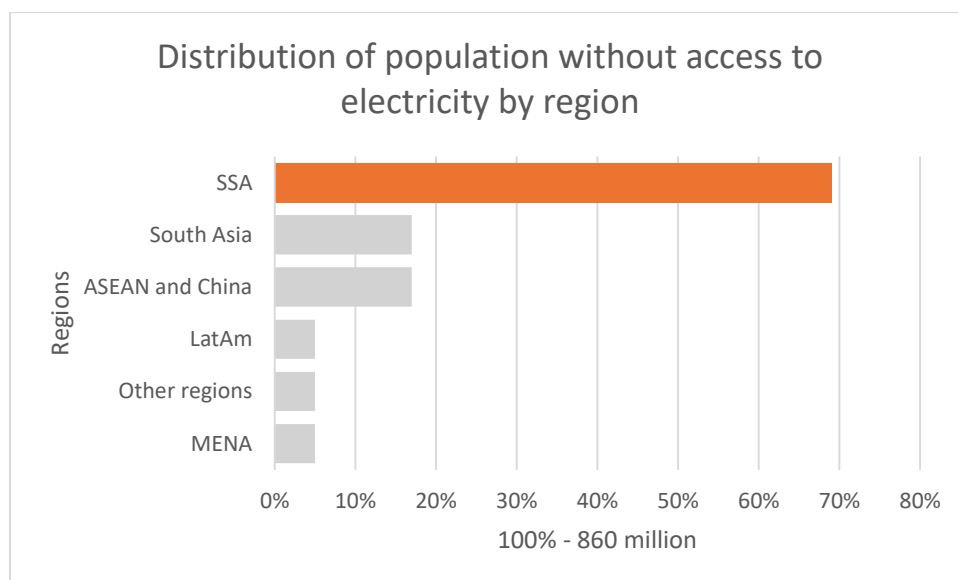


Figure 1: Distribution of population without access to electricity, Source: Author with data from McKinsey & Company

Figure 1 shows the world's population distribution without electricity access. The available data shows that more than two-thirds of the world's population resides in SSA (Lakmeharan, Manji, Nyairo, & Poeltner, 2020). Many communities in SSA are not connected to the grid. According to Lakmeharan et al. (2020), 'Even those who have electricity generally use very little of it: in Mali, for example, the average person uses less electricity in a year overall than a Londoner uses just to power their tea kettle.' (para: 1).

For Africa and SSA, the problem is not only about the shortage of crucial infrastructures such as energy, water, and transport. There is the issue of poor maintenance and underinvestment (Collier & Cust, 2015). SSA countries lag behind the rest of the world in 'the coverage of key infrastructure classes, including energy, road and rail transportation, and water infrastructure' (Lakmeharan, Manji, Nyairo, & Poeltner, 2020: para 1). The SSA sub-region is ranked at the bottom of all the developing regions as far as all sectors of infrastructure stock are concerned, despite the region housing nearly one-seventh of the world's population (Calderón, Cantú, & Chuhan-Pole, 2018). The infrastructure gap in the region relates to quality, quantity, and infrastructure access.

Despite Africa's abundant hydropower resource, a steady power supply remains a significant challenge, especially in SSA countries. While Mutiiria *et al.* (Mutiiria, Ju, & Dumor, 2020) argue that SSA countries need to invest more in energy infrastructure supply, they do not discuss how this can be achieved. As of 2019, there were 759 million people without electricity, and three-quarters of that figure live in SSA countries (Burton, 2021). Africa's electricity consumption is considered extremely low compared to other developing regions. The electricity supply cost is high, and most citizens do not afford the tariffs (Blimpo & Cosgrove-Davies, 2019). Given that nearly 600 million people in SSA countries lack adequate access to electricity (Timmermans & Birol, 2021), the need to deal with energy poverty in the sub-region must be a priority for the regional governments. As urgent, policymakers consider alternative energy sources such as solar and wind power plants (Timmermans & Birol, 2021).

The transport sector in SSA is not without challenges. It is argued that 'modern transport is an essential ingredient for development, allowing the movement of labour, supplies and goods, and enabling citizens to access key resources and services' (Schwela & Haq, 2013: para 1). Apart from South Africa, road transportation in the rest of the SSA countries is in a poor state (Arimoro, 2018). Again, poor road infrastructure in SSA countries has been a major contributing factor to the high level of traffic accidents (Jones, Walsh, & Appiah-Opoku, 2016). The poor state of the roads in the rural areas impacts the costs of transportation of raw materials to towns and cities. Also, it affects the income of most rural dwellers as some of their products perish for the inability to convey to the markets on time (Porter, 2014). Rail infrastructure is another area of concern for the region. The shortage of adequate railway linkages in SSA countries accounts for the pressure on the road networks (Josa & Magrinyà, 2018), affecting the networks' durability.

5.1 Bridging the Infrastructure Gap

SSA countries must address critical areas that directly impact citizens' quality of life. Key areas such as energy, water and transport should have priority. While focusing on achieving Agenda 2030/Sustainable Development Goals (SDGs), countries in the sub-region must achieve the goals strategically. Without prioritizing, it will amount to doing too many things at the same time, which, more often than not, hampers effectiveness. More so, financing the SDGs will

require SSA countries to embark on significant levels of public spending (Cirolia, 2020) (Arimoro & Elgujja, 2019).

The African Development Bank estimates that the continent's infrastructure financing needs will be as much as \$170 billion annually by 2025, with an estimated gap of around \$100 billion yearly (Kato, 2021: para 7). While the PPP model is becoming attractive to governments in the world and SSA, the attraction of lenders to PPP projects in Africa due to foreign exchange risk is waning (Arimoro, 2019). Therefore, in addition to being strategic in identifying which sectors must be prioritized, if SSA countries are to reduce their infrastructure gap, they must become innovative in their quest to unlock domestic funding for infrastructure projects.

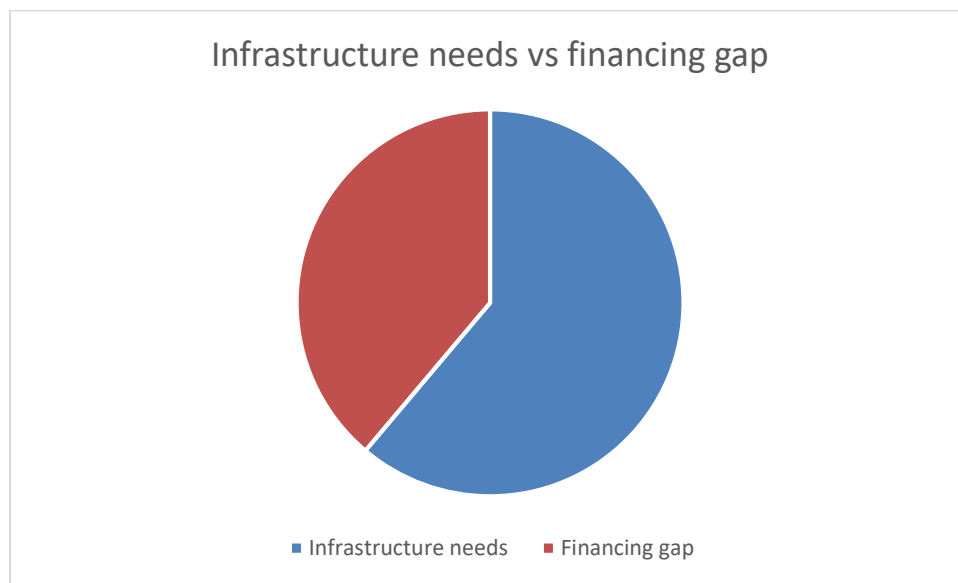


Figure 2 Infrastructure needs vs financing gap in SSA, Source: Author's analysis with data from the African Development Bank

Fig 2 shows the SSA's infrastructure investment gap compared to the financing gap. The region's infrastructure needs have widened over time. The investment needs have increased to about USD130-170 billion a year, with a financing gap of about USD 68 – 108 billion annually (Arbouch, Canuto, & Vazquez, 2020).

6. Accessing Finance for Infrastructure in Sub-Saharan Africa: The Challenges

Besides South Africa, the capital markets in SSA are largely underdeveloped (Pottas, 2021). While there have been some significant improvements in markets like Nigeria, Kenya and Ghana, the need to diversify the channels for funding infrastructure cannot be overemphasized. The impact of COVID-19 on African economies has been enormous (Anago, 2021). The outlook at present is not too optimistic. The private sector will have to play a significant role in financing infrastructure (Eyraud, Pattillo, & Selassie, 2021). It is noted that at present, the private sector in Africa generally is not involved much in providing finance for the delivery of infrastructure, with the World Bank reporting that investment in infrastructure with private sector participation in SSA countries fell from \$15 billion in the year 2012 to \$5 billion in 2019 (Eyraud, Pattillo, & Selassie, 2021).

Although SSA is a large market and presents excellent investment opportunities, there are not enough bankable projects. The lack of attractive projects means that the private sector will continue to show apathy to projects that are more politically oriented than those which will directly impact the economy and guarantee consistent returns on investment (Arimoro, 2017). Furthermore, currency exchange risk puts off foreign investors and lenders (Eyraud, Pattillo, & Selassie, 2021). Another challenge worth considering is 'exit risk.' Due to the problem of weak institutions in SSA, it is difficult to assure investors that they can exit the market when they want to. This weakness is common in underdeveloped financial markets as well. Addressing these challenges will require enhancing business regulatory and legal frameworks in SSA countries (Soyeju, 2017).

From the domestic front, most SSA countries' banks and financial institutions are rarely willing to lend money for the long term. Accessing funds for periods above a 15-year tenure is usually hard to come by. Given that infrastructure funding sometimes requires tenures of between 20 – 30 years, sourcing finance from domestic banks that prefer to make short-term loans has been a primary concern (Arimoro, 2022). Since the 1990s, several reforms in the banking sector in many SSSA countries have contributed to the efficiency of banking systems (Mlachila, Park, & Yabara, 2013). However, the challenge lies in long-term lending and not in the organization of the banking systems and ensuring that banks remain liquid. The banking sector in SSA countries must make the needed changes to meet the needs of a rapidly growing population with social demands (Giordano, Losch, Minsat, & Solignac-Lecomte, 2015).

From the preceding, safeguards would need to be put in place to restructure banking in SSA countries to allow for long-term financing of infrastructure projects. It is argued that a 'well-established framework for financial stability, surveillance, and policy formation' (The World Bank Group, 2019: 5) is vital for the development of the banking sector in SSA. Furthermore, a well-developed legal framework and dispute resolution mechanisms are essential for growth in the banking sector.

7. How Innovative Instruments Can Be Used to Bridge the Finance Gap

In line with Lee's theory, SSA countries need to adapt strategies to raise the much-needed capital to back private sector investment in public infrastructure. Innovative financing refers to a range of non-traditional mechanisms to raise finance for development (Girishankar, 2009). This model ensures that private finance can be channelled toward developing public assets (Keohane & Madsbjerg, 2016; Sandor, 2011). This paper argues that SSA countries will be better served by looking at templates that have worked well in other regions with similar socio-economic conditions (Puri, 2010). In this section, the paper discusses measures taken by some countries in the Global South to boost private finance for infrastructure.

7.1 Infrastructure Mutual Funds

India is an excellent example of using infrastructure mutual funds to support private sector finance for infrastructure (Gnanasekar & Malini, 2015). For example, a recent study shows that Africa gains more if the continent can leverage dedicated institutions and funds in building capacity for infrastructure procurement (Lisinge, 2020). Mutual funds attract unsophisticated investors worldwide (Moreno & Rodriguez, 2013). Given that most SSA countries' populations are classified as mainly within the low-income category (The World Bank, 2020), mutual funds can appeal to most of the population better than high-entry

threshold infrastructure funds exclusive to ultra-high net worth investors. With the right incentives for savings, SSA economies can implement legislation to allow investors to save a certain percentage of their income and profits in infrastructure mutual funds.

Figure 3 below shows the performance of five different infrastructure mutual funds in India. In one year, the least performing fund, Kotak Infra and Eco Reform, returned at least 82.82 per cent, while the best performing fund, Quant Infrastructure, returned over 100 per cent. Because of the volatility of the equity market in SSA countries, there has been more interest in alternative investment instruments and for investors to diversify their portfolios (Okoboi, 2020).

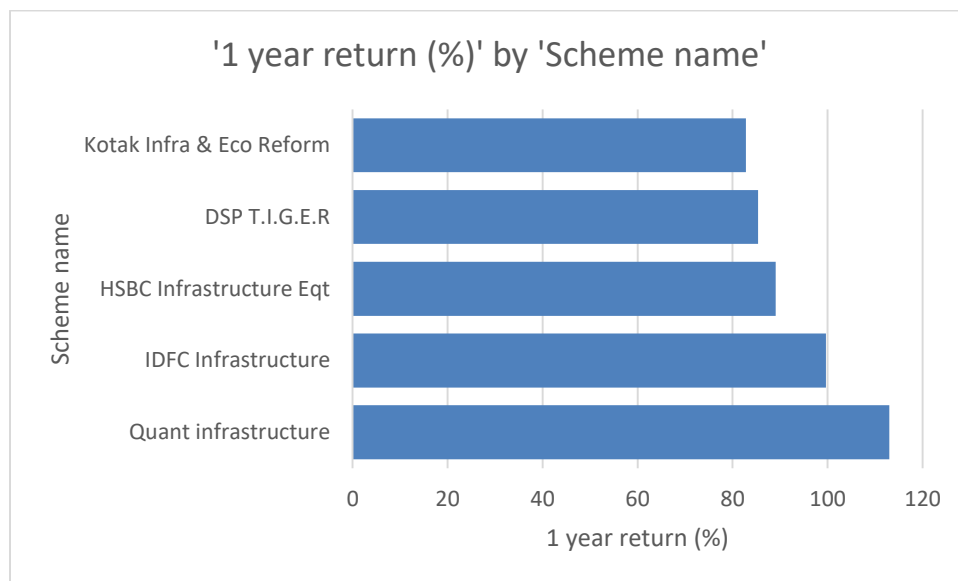


Figure 3. Performance of selected Infrastructure Mutual Funds in India in 2020. Source: Author's analysis; with data from Economic Times India

One of the benefits of adopting infrastructure mutual funds in SSA countries is that such funds would appeal to a broader market., it will present an opportunity for savings with potential returns better than what the money market can offer. Domestic savings in infrastructure mutual funds can boost the economies of SSA countries (Cerde, Fuentes, García, & Llodrá, 2020; Adam, Musah, & Ibrahim, 2017). More importantly, the funds invested in the mutual funds can be invested in developing critical infrastructure. Where legislation makes it clear that such funds are channelled to infrastructure procurement, it will create a sense of ownership of public infrastructure by ordinary citizens. This issue contradicts the privatization idea engineered by the World Bank and the International Monetary Fund (Weiss, 1998). Privatization is bound to fail when the population feels it is an opportunity for the wealthy and mighty to take over public assets (Gray, 1987).

7.2 Islamic Finance

There is a large population of Muslim faithful in SSA countries (Basedau & Schaefer-Kehnert, 2019). It is estimated that about 30.2 per cent of the population of SSA is made up of Islamic adherents (Singh, 2022). It is not strange that Islamic finance is now appreciated as an alternative source for financing infrastructure procurement (The World Bank, 2017). Islamic

finance in its modern form can be traced to the Islamic Bank, which was established in Egypt in 1963 (The World Bank, 2017). Simply put, Islamic finance refers to a way of managing money that keeps with the moral principles of Islam. It covers saving, investing, and borrowing to buy a home (Bank of England, 2021: para 1). The moral principles referred to here are the principles of the *Shari'ah*. Muslims consider investments in interest-bearing instruments as non-*Shari'ah* compliant and, therefore, *haram*. To explain how Islamic finance works: when an investor invests in a *Shari'ah*-compliant instrument, the fund manager is not to deposit or invest the money in an account or portfolio that pays out interest. Instead, the funds are used for trading or for any lawful business activity that attracts a profit. In essence, investors in *Shari'ah*-compliant instruments get a return for their investment in profits and not as interests (*riba*). The Islamic financial system is not known as a mortgage. A unique mechanism can be carried out so that financial transactions are not called usury. The investor buys the property with the bank. The investor pays the bank for his share of the property and additional fees for living on the property. This scheme in Islam is called *musharaka* (Bank of England, 2021).

According to the World Bank (2015), Islamic finance 'has emerged as an effective tool for financing development worldwide, including in non-Muslim countries (World Bank, 2015). Furthermore, markets across the globe have developed evidence to prove that *Shari'ah*-compliant finance is now a part of the mainstream global financial system (World Bank, 2015). If one considers the massive population of the Muslim community in SSA and their apathy towards convention banking and finance, incorporating Islamic financial instruments into private finance for infrastructure in SSA countries cannot be overemphasized. There is a variety of Islamic financial instruments that can be explored by fund managers and investors alike. These are discussed below.

7.2A Islamic Mutual Funds

Islamic mutual funds (sometimes called ethical funds) invest in shares of joint-stock companies, and those companies usually distribute profits earned via gains in the share value. The nature of the companies invested in must be *halal*, for example, construction or procuring equipment for hire. Such funds do not invest in any instrument that attracts interest or involves gambling (Aims, 2021).

7.2B Ijara Funds

The *ijarah* funds invest in such sectors as real estate, vehicles or machinery, usually leased to users, while the fund owns the assets. Users pay rentals for the use of the assets. And the profit from the business is shared among subscribers to the fund (Aims, 2021).

7.2C The Sukuk Bond

Unlike traditional bonds, the *Sukuk* is an instrument in Islamic finance meant to fund large-scale infrastructure procurement. Unlike conventional funds that may invest in various sectors, the *Sukuk* is restricted to investments in infrastructure development. Investors in the bond receive rental income as opposed to interest.

When used for infrastructure finance, the originator of the *Sukuk* will be the public authority, while the members of the public who subscribe to the fund would be the investors (World Bank, 2015). Nigeria is an excellent example of *Sukuk* financing infrastructure procurement in

SSA. In 2017, the federal government of Nigeria introduced an ₦100 billion *Sukuk* bond which was expected to pay a rental income of as much as 16.47 per cent per annum every six months (Arimoro, 2018).

8. The Role of Law and Legal Frameworks

In designing a framework for unlocking local finance for infrastructure in SSA countries, policymakers must deal with the issue of 'burdensome regulation and bureaucracy' (Economist Impact, 2021). A sound legal framework is critical for bridging infrastructure deficits (Hsueh & Chang, 2017). Governments in SSA countries must crystalize their policy objects by creating suitable frameworks to allow the private sector to fund infrastructure procurement. As such, a proper regulatory framework must be put in place to ensure that both the public sector agents and representatives of private-sector interests do not engage in acts capable of impeding the objectives set by the government.

8.1 Clear Policies

Policies are developed based on ideas that reflect the changing needs in society. They may come from a variety of sources. Sometimes, they emanate as electoral promises from the party that wins an election. However, the problem with SSA countries is that policies are sometimes not well-thought-out. Therefore, this paper argues for the need to ensure that policies reflect societal needs and are developed, bearing in mind the needs of the local environment.

In policy-making, the public sector must consider the overarching needs of the population (Masuku & Macheka, 2021). Policies must be clear so that they can be effectively carried out by state institutions (Alasuutari & Qadir, 2013). While policies are developed, there should be a deliberate strategy to ensure they are sustainable (Berger, 2010). As such, the governments in SSA countries are better off considering what works effectively in other similar jurisdictions rather than just borrowing templates from developed economies which usually do not work in the Global South.

The questions that policies need to address must be clear-cut. For example, what measures need to be implemented to support commercial banks lending money for long-term infrastructure projects? Another example is how citizens can be encouraged to subscribe to long-term investments. Obvious questions such as the above can serve as the foundation for developing policies unique to the local environment. Policies are, therefore, the sound foundation upon which laws and legal frameworks are built.

8.2 Why a Sound Legal Framework is Important to the Private Investor

The legal framework for private sector involvement in infrastructure procurement refers to all laws and regulations governing the process. This process should cover procurement, fundraising, project implementation and the operational phase of all public infrastructure projects. Therefore, the legal framework must be well thought out. While the law is a tool for the policymaker to drive economic development (Ginting, Sembiring, Siregar, & Abduh, 2017), there are essential factors that private investors consider before committing to any market. In recent times, SSA countries have begun to address critical factors such as the ease of doing business. For example, South Africa launched its "National Invest One-Stop" in March 2017. The One-Stop-Shop is a focal point of the South African Government to 'shorten and simplify administrative procedures and guidelines for foreign companies wishing to invest in South

Africa' (Investment Policy Monitor, 2017: para 1). Also, Nigeria launched a second "National Action Plan on Ease of Doing Business" as a part of the federal government of Nigeria's medium-term Economic Growth Recovery Plan (EGRP), intending to build a globally competitive economy (Daka, 2017). These lofty plans by both the government of South Africa and the federal government of Nigeria are geared toward making both countries investment-friendly hubs. It is not enough to have lofty goals. Investors need the assurance that the public sector is committed to the goals and that investments will be protected. This issue is where legislation comes in. For example, one recent piece of legislation in Nigeria that demonstrates the government's intention to be committed to enhancing the business environment is the Companies and Allied Matters Act 2020 (CAMA 2020). The CAMA 2020 was signed into law on August 7, 2020. The CAMA contains several innovative provisions making establishing and running companies in the country easier. Several of the hitherto bottlenecks under the now-repealed CAMA 1990 have been removed.

Furthermore, it is noteworthy that institutional investors (such as pension fund managers and insurance companies) rely on impact legal frameworks to make the most out of the assets that they manage (Freshfields Bruckhaus Deringer, 2021). Where commitments regarding guarantees and government incentives are backed by legislation, it demonstrates the political will of the public authority to protect assets invested in infrastructural development backed by private finance. It is essential that whatever reforms are to be introduced to aid the financial institutions in SSA to flourish, the reforms must consider the socio-economic setting of SSA countries (Gakunu, 2007).

8.3 How to Structure Effective Legal Frameworks

It is not enough to merely pass Bills on infrastructure regulation into law. Legislation should effectively ensure that policies work. For example, the United Nations Commission on International Trade Law (UNCITRAL) Legislative Guide on Privately Financed Infrastructure Projects (United Nations Commission on International Trade Law, 2001), recommends that '...host countries wishing to promote privately financed infrastructure projects...' follow principles that ensure 'transparency, fairness and the long-term sustainability of projects.' Furthermore, the document recommends the removal of 'undesirable restrictions on private sector participation in infrastructure development.' Although the UNCITRAL document essentially makes recommendations for the regulation of concessions, transparency and fairness recommendations ensure that the financial market is open to long-term lending for infrastructure.

Legislation should provide incentives for savings. One of the challenges to economic development in the SSA region is a weak savings culture (Mlachila, 2016). The law can be used as an instrument to encourage a savings culture. In Muslim-dominated areas of the SSA region, the principles of the *Shari'ah* might as well be relied upon in this direction (Joseph, 2018). The importance of savings as a driver for economic growth and a prerequisite for the sustainability of the economy is not in doubt (Costa-Font, Giuliano, & Ozcan, 2018). The South Korean example of how a high savings rate helped to sustain a solid and continuous economic development is one of the reasons behind the economic revolution in that country (Donghyun & Donghyun, 1998). If the financial institutions in SSA have lendable funds, a savings culture has to be embedded in the region. Furthermore, the governments in SSA may provide through legal structures for a percentage of the incomes of companies to be set aside annually as savings

in infrastructure-linked investment instruments with a long-term maturity. Following the above, legislation should cover taxation and other fiscal measures.

9. Conclusion

SSA countries cannot afford to play the ostrich due to the SSA's infrastructure deficit and the infrastructure funding challenges (Gbadegesin, Ojekalu, Komolafe, & Oyewole, 2020; Wethal, 2019)). The COVID-19 pandemic has added more pressure to the problem of budget constraints in nearly all the countries in SSA (Anago, 2021; Arimoro, 2022; Hassan, 2022). It is high time that the policymakers in the region took advantage of the massive population in SSA (Munemo, 2012). The potential market must provide more investment opportunities (Möykkynen & Pantelias, 2021). Any investment instrument developed to support infrastructure finance must be one that appeals to the market in SSA (Lee, 2017). In line with Lee's adaptability to socio-economic conditions theory, investment instruments must have objectives to encourage savings and be in tune with the realities in SSA communities (Lee, 2017). The article identifies Islamic finance as a viable solution to the funding problem for infrastructure. The Muslim population and ethical investors in SSA countries will show interest in non-interest-yielding financial instruments. For example, the success of the *Sukuk* bond in Nigeria can be replicated in other countries in SSA.

Furthermore, future law-making must be focused on achieving development policies. Law must be used as a tool to achieve economic growth. The legal framework for infrastructure development must consider the need to provide an environment that will suit and drive the appetite of the investing public. Again, tax incentives and other fiscal measures should be used to encourage savings. It is recommended that the public authority makes room for the development of financing instruments such as infrastructure mutual funds and Islam finance to unlock domestic finance for infrastructure.

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