

The Protection of Non-Economic Interest in Investment: The Case of Ethiopian Investment Laws

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Abstract:-The main purpose of this paper is to analyze the protection of non-economic interest groups under Ethiopian investment laws. In international perspective; there are many non economic interest groups and they may be protected differently in different investment laws. Ethiopia is not also an exception to this fact and there are many non economic interests in Ethiopia which seek the protection of investment laws. But there are many problems under Ethiopian investment laws and the practice with regard to giving protection to the non economic interests. They are not well protected and face challenges from the investors in the time of doing their investment activities. Such kinds of activities may be endangering for healthiness and security of non economic interests.

Finally this paper concludes that Ethiopia had better amend investment laws and follow up its practice on the protection of non economic interests in the investment.

Key words: Investment, non-economic interest, proclamation, Ethiopia

I. INTRODUCTION

States in the world have objectives to bring economic development. To achieve this objective, they allowed different investors to conduct different investment activities in their different economic sectors. As we know investment in general has the ultimate goal to accelerate the economic development of a country and improve the living standards of its people¹. To conduct investment activities to achieve the said goals, investors particularly foreign investors may be encouraged to expand investment, strengthening domestic production capacity increasing the inflow of capital, and speeding up of transfer of technology to the host country². Even if the country has the objective of bringing economic development as a whole but there are other non economic interests that cannot be seen separately from the economic interests such as human rights, environment protection, social protection and political sovereignty in general. One or in another way these non economic interests have close relationship with the economic interest i.e. with investment. But there are many problems which arise from the investment activities that are against these non economic interests. To give protection for such kinds of non economic interests, states may conclude agreement or may enact independent

¹ Mohammed Ibrahim Ahmed, Integration Of Environmental Safeguards Into Ethiopian Investment And sectoral Laws,p.113

² Ibid

their domestic laws, in this case domestic investment laws. When we come to Ethiopia, she is not also an exception to the above objectives of countries to bring economic development and she has an experience with regard to the investment activities. Ethiopia has also tried to enact investment laws to regulate investment activities and to protect non economic interests.

Having said so, in this paper focus on the meaning and concept of investment, the concept of non economic interests and among the non economic interest such as the protection of human rights, environment, and social and political sovereignty under international in general and under Ethiopian investment laws in particular will be discussed in detail.

Finally, conclusion and recommendation will be forwarded.

II. THE MEANING AND CONCEPT OF INVESTMENT

The word “ investment” has no a clear cut definition or a unanimously accepted definition rather it fluctuates from time to time or having different meaning upon the attitude of different scholar in the field or any other conditions. There are factors that affect the definition of investment such as the nature of economic transactions, the nature or type of investors, the nature of the objectives what are going to be achieved³ and as the nature of international economic relations has changed in the investment.⁴ These factors may determine the definition of investment whether to be broad or narrow. Definition may serve many purposes⁵ such determining the scope, jurisdiction and the rights and obligations of investors or other concerned bodies in the transaction of investment, and to define investment different countries may set different criteria. States being together may enact treaty regarding investment. Hence these investment treaties may adopt different techniques for defining an investment. Some contain exhaustive lists, others contain illustrative lists⁶. Such kinds of criteria may be difficult to set an appropriate definition of investment that can be unanimously accepted in the world.

³ united nations conference on trade and development, international investment agreements: Key issues Volume I United nations New York and Geneva, 2004,p.113

⁴ Ibid. p.144

⁵ Ibid.

⁶ M. Sornarajah, the international law on foreign Investment, third edition,p.337

Having these facts in mind, it is better to see some of the definitions of investment. One of the definition of investment is that “investment” is the employment of funds with the aim of getting return on it. In general terms, investment means the use of money in the hope of making more money. In finance, investment means the purchase of a financial product or other item of value with an expectation of favorable future returns. Investment of hard earned money is a crucial activity of every human being. Investment is the commitment of funds which have been saved from current consumption with the hope that some benefits will be received in future. Thus, it is a reward for waiting for money. Savings of the people are invested in assets depending on their risk and return demands⁷. This definition has been given from the perspective of money or finance for the seeking of further profit or return by investing on it. We use the saving money to day on different activities to get a reward from our activities in the form of profit or return. Another definition of investment in the perspective of economy, according to Mugurel Gabriel Sorin Pop, he stated that investment in tangible, intangible and financial assets, having the ability of generating income / profit, determine companies to move along as much money as possible in the present (including money borrowed from banks) for new investments, in anticipation of future profits⁸. This definition of investment seems to include much concepts and it seems a broader definition.

When we see the definition of investment at international perspectives a great variety of assets are included today in the definition of investment and broad definitions appeared in national investment codes and international instruments. A narrow approach was followed by earlier agreements which were aiming at the gradual liberalization of capital movements and preferred to enumerate the transactions covered by these agreements. Today, most international investment instruments, in particular investment protection treaties, adopt a broad definition of investment⁹, due to the presence of variety of investment areas, technologies, investors and others. It is equally elemental that capital is fungible and investment of capital takes a multitude of forms in the world today. In recognition of this reality, the definitions of “investment” in contemporary treaties tend to be broad and open-ended, with a list of specific types of covered investments that is indicative rather than definitive. Recent U.K. treaties define investment as “every kind of asset”, introducing the list of specific forms of investment with the indicative phrase “and in particular, though not exclusively . . .” Recent French BITs use a similarly broad definition, roughly translated as “all assets, such as property, rights and interests

of every nature,” that similarly introduces an indicative list¹⁰. Hence as we understand from such definitions of investment; it is possible to say that the definition of investment can be varied from time to time due to different conditions as discussed above but in legal sense all activities are not investments rather the legally recognized ones.

With regard to its concept, the concept of investment defines a complex and controversial economic and financial category while in practice it represents an operation of changing and increasing the initial patrimony. The investment is in fact the purchase of an asset in the hope of making a profit¹¹. Upon this fact; the following are some concepts of investment. The first one is *economic investment* which states that addition to the capital stock of the society. The capital stock of the society is the goods which are used in the production of other goods¹². This will bring economical change to the society and increase their means of income.

The second concept of investment is financial investment and refers to the allocation of monetary resources on investment activities to gain profit or for the seeking of return over a given period of time¹³. This means that an exchange of financial claims such as bonds and shares, securities, etc. People invest on their debenture, shares, and life insurance for seeking of further income, profit, premium, interest or dividend.

Investment has its own objectives and the practice of investing has been increased from time to time due to its importance to the people. These objectives may be financial objectives such as safety, profitability, and liquidity and personal objectives such as family commitments, status, dependents, educational requirements, income, consumption and provision for retirement¹⁴ etc. These are very important objectives what the people want to achieve in the investment activities. In addition to this investment has also important elements such as Risk (chance of loss), Return (profit) and Time (it gives a chance for an investor to reevaluate the risk or return in his investment activities and make him how to act in his investment activities in the future)¹⁵.

III. THE CONCEPT AND MEANING OF NON-ECONOMIC INTERESTS IN INVESTMENT

Under the concept and meaning of investment, we have discussed the economic interest of investment. But here we are going to discuss about the non economic interests in investment such as social protection, human rights,

⁷ Introduction of investments and portfolio management <<shodhganga.inflibnet.ac.in.>bitstream>> access at April 30,2018

⁸ Mugurel Gabriel Sorin Pop, The Investment Process And Its Financing, Annals of the University of Petroşani, Economics, 12(2), 2012, 193-204,p.193

⁹ Catherine Yannaca, Yannaca-Small, Investment Division, OECD Directorate for Financial and Enterprise Affairs, Definition of Investor and Investment in International Investment Agreements, Understanding Concepts and Tracking Innovations, 2008.p.48

¹⁰ Barton Legum, Defining Investment and Investor: Who Is Entitled to Claim? 12 December 2005, Paris Room 1, OECD Headquarters, Paris.p.1

¹¹ Mugurel Gabriel Sorin Pop,p.194

¹² Introduction Of Investments And Portfolio Management,p.3

¹³ Ibid,p.4

¹⁴ Ibid

¹⁵ Ibid,p.8

environmental concerns/protection¹⁶ and political sovereignty. It is better to understand and elaborate what non economic interest mean.

The phrase non economic interest may be understood in different ways in different legal systems or in different scholars. Even if there are different definitions for non economic interest...for this purpose it means an interest on something which cannot be valued in terms of money. With regard to the issue of investment activities there are many non economic interests that need to be protected such as political sovereignty, social protection, human right protection and environmental protection. Hence let's see these non economic interests in detail separately.

3.1. Political sovereignty

Before analyzing the concept of political sovereignty in line with the concept of investment, it is important to discuss what political sovereignty means. The concept of sovereignty is one of the controversial and argumentative ideas in political Science and International law. Even if it is controversial, different meanings have been given to it. Here is one of the meanings of sovereignty i.e. having ultimate authority over a territory, with absolute right to govern¹⁷, having the legal power to issue the final commands¹⁸ and the decision making power to any matter of the state. Political sovereignty is a vague and indeterminate term even if it is this, according to According to Professor Gilchrist, "The political sovereign means the sum-total of influences in a State which lie behind the law. In modern representative government we might define it roughly as the power of the people". In other words by political sovereign in the representative democracies, we mean the whole mass of the people or the electorate or the public opinion¹⁹.

Having these concepts as a bridge, let's see the concept of political sovereignty in with investment in general and in Ethiopia in particular.

In international perspective, there is a The United Nations Commission on Transnational Corporations (UNCTC) draft code on multinational corporations and which stated that it maximizes the contributions of transnational or border cross corporations to economic development and growth and minimizing the negative effect of such corporations on the other concerned bodies like host states. This code is based on the premise of group of eminent persons on multinational corporations promote economic development and their negative activities against the interest of others must

avoided²⁰. This draft code impose a duty on multinational corporations not to interfere in the domestic affairs of host states and they should not be the bridge for home states to influence the host states. The home states may encourage multinational corporations to interfere in the domestic politics of host states for the purpose of being ensured a pro-business government has been elected. The inspirations of Articles of this Draft Code are that the fear of developing countries those transitional corporations may use their economic power to influence their domestic politics.²¹ The involvement of multinational corporations in the domestic politics of host states may bring change of regime, problems and unfavorable conditions for these host states²². Different Codes of conduct usually forbid multinational corporations from interfering in the domestic politics of host states. But, such interference is necessary to ensure that the multinational corporation's interests are represented to the host state. The issue concerns the boundary between proper and improper interference²³. In understanding of such facts in now a day, many instruments prohibited the involvement of multinational corporations in the domestic politics of host states²⁴ to keep their rights and political sovereignty.

The inspiration for these articles is the fear on the part of developing states that transnational corporations will use their economic power to influence domestic politics. There was also the fear that they would induce their home states to interfere with the internal politics of host states to bring about political climates favorable to them, as they did in the past. The often cited instance is the overthrow of the government of Allende in Chile, which had been democratically elected, by a coup engineered; it is alleged, by foreign business groups with the covert support of a foreign government. Many instruments now include a prohibition on the involvement²⁵.

Under the concept of customary international law, states are not obliged to admit foreign investment in all sectors of activities in the host state. States are free to exclude or admit foreign investment in certain sectors of activities. The foreign investment may be admitted or acted on the basis of the law of the host state²⁶. But the foreign investment may be prohibited from participating in some sensitive areas like politics...by the host state for the purpose of keeping their security and sovereignty. With regard to the establishment of contract with foreign investment, in many cases the contract is concluded between the host state and the investor²⁷.

Upon these facts when we come to Ethiopia, Ethiopia is also not an exception to this fact. She has her own experience of political sovereignty in line with the concept of investment.

¹⁶ M. Sornarajahs (professor of law), the international law on foreign Investment, p.55

¹⁷ Che Guevara, Sovereignty, <<<https://www.chegg.com/homework-help/definitions/sovereignty-53>>> access at April 30,2018

¹⁸ Pooja, <<Con www.politicalsciencenotes.com/articles/5-different-kinds-of-sovereignty/256>>access at April,29,2018

¹⁹ Ibid

²⁰ M. Sornarajah (professor of law), the international law on foreign Investment, p.243

²¹ M. Sornarajah p.244

²² M. Sornarajah .p.71

²³ M. Sornarajah, p.71

²⁴ M. Sornarajah, p.148

²⁵ Ibid

²⁶ Christoph Schreuer, investments ,international protection, p.42

²⁷ Ibid

Even if Ethiopia has bilateral treaty with regard to investment, she has also domestic investment laws to regulate the investment activities in Ethiopia whether the investors are foreign or domestic ones. Regarding to this point, Ethiopia has no a single law that protects her political sovereignty rather the laws are found in different investment or other laws as part of other laws. The purpose of these domestic investment laws is to regulate both the entry as well as the operation of foreign investment in the host country is to enlarge the scope for domestic control²⁸. Among the domestic laws of Ethiopia, the FDRE Constitution is one of them. It is the supreme law of the land²⁹ as per Art.9 (1) and no domestic law contradict this Constitution. Under this constitution, we cannot get a clearly stipulated provision about political sovereignty in connection with the concept of investors/investment. Even if Ethiopia has recognized investors in the Constitution as per Art.40(6), but with regard to the role of investors' activity in Ethiopia, it is not clearly indicated in the Constitution whether they act in the political arena of Ethiopia or not. But it is possible to infer such kinds of concepts from the constitution by interpretation. As we infer from Art.38 (1) of the Constitution³⁰, the right to vote and to be elect is given only for nationals of Ethiopia. According to this provision non nationals of Ethiopia are excluded from the right to vote and to be elected in the Ethiopian political affairs. Upon this fact as its name indicates foreign investors are not nationals of Ethiopia and due to this they cannot participate in the political election of Ethiopia. Hence from this, we understood that Ethiopia protects her political sovereignty from the external influence. If Ethiopia allowed these foreign investors to participate in the domestic political affairs of Ethiopia, then Ethiopia does not only encounter the negative impact from the investors but also from the home state of these investors. The home state may interfere in the political affairs of the host state, Ethiopia; in case, the home state may be highly strong in economy and can easily bring influence to Ethiopia through these foreign investors. In addition to this with regard the political objectives of Ethiopia, according to Art.88 of the FDRE constitution³¹, it provides a duty to the government to promote and support the people's self-rule, respect and create unity, fraternity and equality among the nation nationality of Ethiopia. Due to this the political objectives of Ethiopia are highly give emphasis on her own national and on the basis of these facts, foreign investors cannot raise the question of identity and self rule in Ethiopia. Rather they are allowed to perform their investment activities upon the contract what they conclude with Ethiopian government. This provision also shows that Ethiopia wants give protection to her political sovereignty Beyond this when we see the .external policy of Ethiopia as per Art.86(4) of the FDRE

constitution³², Ethiopia give priority for the respect of Ethiopian people's interest and sovereignty before adopting or ratifying international agreements such as bilateral investment agreements. If, for example a certain investment bilateral agreement is found in against of Ethiopian sovereignty, it is going to be rejected due the its contradiction with this constitution. When we examine the investment laws of Ethiopia like investment proclamation No.769/2012, do not clearly show the role of investors in the Ethiopian Political affairs. This implies that the investors whether foreigner or domestic ones, are not clearly allowed or prohibited in the participation of Ethiopian political affairs in these proclamations unless we inferred from the above justifications. But when we read the investment proclamation No.769/2012 starting from Arts, 11 and onwards, it determines how the investors are registered and licensed in Ethiopia. This proclamation also determines the investment areas reserved or allowed for investors particularly for foreign investors how they act and perform in what kinds of investment activities in Ethiopia. In most cases foreign investors are allowed to participate in economic affairs and they should be registered and licensed to participate in such economic activities. From this concept we can understand that investors are not allowed to participate in different investment activities in which they do not have been registered and licensed in Ethiopia by the concerned body. Upon these ideas or issues, there is not any indication in the proclamation that allows the investors to participate in political affairs of Ethiopia by having license and this implies that they are not allowed to participate in the domestic political affairs of Ethiopia. According to this interpretation Ethiopia wants to keep her political sovereignty.

Therefore political sovereignty is the non economic interest that needs protection from the involvement of certain organs particularly from foreign investors in the affairs of domestic of a host state.

3.2. *Social security/protection*

Understanding and defining of social protection is not the same from time to time or country to country. Rather it varies in different reasons. Because social protection is a field of enormous scope and the nature of the facts that we focus³³, and this may vary its definition. Among the definitions of social protection one of them is the following:

“Social protection refers to the public actions taken in response to levels of vulnerability, risk and deprivation which are deemed socially unacceptable within a given polity or society³⁴”

It is possible to understand from this definition that society may face different kinds of problems or risks and the public

²⁸ Tesfaye Abate, Investment Law Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute, p.122

²⁹ The Constitution of Federal Democratic Republic of Ethiopia, Ethiopia Pro.No.1/1995 Federal Negarit Gazeta, Addis Ababa Ethiopia, see Art.9 (1).

³⁰ Ibid, Art.38(1)

³¹ Ibid, Art.88

³² Ibid, Art.86(4)

³³ Andy Norton, Tim Conway and Mick Foster, Social Protection Concepts And Approaches: Implications For Policy And Practice In International Development, p.21

³⁴ Ibid, p.22

action may be taken as a response for such problems to protect the interest of the society. The other definition will be, Social protection consists of human-capital oriented public interventions, to assist individuals, households, and communities better manage risk, and to provide support to the incapacitated poor³⁵. In the context of investment, both domestic and foreign investors may bring problems or risks to the surrounding community or society in the time of doing their investment activities and this may be against the interest of the society. Due to this the government or any other legally responsible body such as nongovernmental organization or both being together³⁶ may take actions against such wrong activities of investors to save the society. It is important to register that social policy is inextricably linked to economic policy, and not a residual category of public policy dealing with welfare.

Good social policy is increasingly needed to provide the investment needed for a cohesive, dynamic society with a skilled and healthy workforce³⁷. Hence the society has a great role for the economic development of a country and Investors should not affect the interest and healthy conditions of the society to keep such work force and the society as a whole. In addition to this companies or corporations that are participated in the investment activities should not negatively impact the society rather the reality is that a company that develops actions on social responsibility tends to be more competitive, strengthens its sales, due to its good image and builds customer loyalty. However, sometimes its impact cannot be expressed by real facts and it does not become apparent in the short term³⁸. This implies that these companies are expected to do honestly and being to loyal to the community. Their activities should not harm the interest of the society whether directly or indirectly. They should also respect the appropriate norm, culture of society and style of societal interactions or relationships. Corporations or investors have also a duty of social responsibility and it is the obligation of decision makers to take actions which protect and improve the welfare of society along with their own interests³⁹.

When we come to Ethiopia with regard to social protection under her domestic and bilateral investment laws, there is no a single proclamation or law which is stipulated for the purpose of giving social protection. But it does not mean that there is no any law that governs the investment activities in line with social protection. Hence we can get provisions regarding social protection in different laws of Ethiopia such as in the constitution and subordinate laws like investment proclamations with respect to their regulations and directives.

³⁵ Steen Lau Jørgensen Julie Van Domelen, Helping the Poor Manage Risk Better: The Role of Social Funds, December, 19,

³⁶ Ibid, p.21

³⁷ Ibid

³⁸ DESUR: Developing Sustainable regions through responsible SMEs, Corporate Social Responsibility: Good Practices & Recommendations, p.7

³⁹ Archie B. Carroll, International Journal of Corporate Social Responsibility 2016, << <https://doi.org/10.1186/s40991-016-0004-6>>> access at Janu.12,2018

According to the FDRE constitution⁴⁰ as per Art.90, it is possible to infer the idea of social protection from this provision. As we understand from this provision, the interest of society should be protected in a manner that their religious views, culture political views should not be prejudiced by external or any other body and in addition to this upon the resource permit of the country, the policy of the country shall have the aim to provide access to public health, education, clean water, food and social security. With regard to the protection of culture, independently, it has been stated under Art.91 of the FDRE Constitution⁴¹. As this provision clearly states that it imposes duties on the government to support for the protection of society's culture to be equal and protect their dignity in line with the concept of fundamental rights. With regard to the observance and protection of these provisions, it is not only imposed on the government but also on other concerned bodies like Ethiopian citizens, political organizations, other associations as well as on their officials as it is stipulated under Art.9(2) the FDRE Constitution⁴². To relate this concept in line with investment activities on the issue of social protection, it is possible to argue that the investors can be the element of other associations as per Art.9 (2). Because the term 'Association' is wide in scope and can include the investors under it. Hence upon these facts, it is possible to say that the investors whether foreign or domestic shall protect the society's culture, dignity, environmental health, clean water and so on to keep the health of societies in the time of doing their investment activities. Societies should not be exposed for dangerous activities or products of investments. The products of the investors/investment must be healthy and fit with the society's interest. In addition to this, when we examine the investment laws of Ethiopia regarding the social protection, when we see the preambles of Environmental Impact Assessment Proclamation⁴³ No.299/2002, Environmental Pollution Control proclamation⁴⁴ No.300/2002, Environmental Protection Organs Establishment

Proclamation⁴⁵ No.295/2002 and investment proclamation⁴⁶ No.769/2012 which is amended in some part of it by proclamation No.849/2014, in addition to the economic development, they provided and stated about the social development of Ethiopia. From these proclamations of investment, we can understand that society cannot be developed unless protected well. When we read the provisions

⁴⁰ The Constitution of Federal Democratic Republic of Ethiopia, Ethiopia Pro.No.1/1995 Federal Negarit Gazeta, Addis Ababa Ethiopia, Art.90

⁴¹ Ibid, Art.91

⁴² Ibid, Art.9(2)

⁴³ Environmental Impasct Assessment Proclamation No.299/2002, Fderal Negarit Gazeta, Addis Ababa, Ethiopia

⁴⁴ Environmental Pollution Control proclamation⁴⁴ No.300/2002, Fderal Negarit Gazeta, Addis Ababa, Ethiopia

⁴⁵ Environmental Protection Organs Establishment Proclamation No.295/2002, Negarit Gazeta, Addis Ababa, Ethiopia

⁴⁶ investment proclamation No.769/2012, Negarit Gazeta, Addis Ababa, Ethiopia

of each proclamation, even if they did not clearly stipulated social protection by inferring the term itself, but by interpretation, hence it possible to say that social protection is guaranteed under these proclamations in some cases. But in all of these proclamations the protection of society is not well addressed in detail. In addition to this the roles of investors whether domestic or foreign with regarding to giving social protection is not clearly indicated except in some areas like doing impact assessment before commence their investment activities independently on the issue of social protection.

Ethiopia in now a day has a desire to bring economic growth or development at country level. Due to this she opens herself to be a destination for foreign investments⁴⁷. To perform such kinds of activities, Ethiopia concludes treaty with a certain responsible body or state. This treaty which is concluded between Ethiopia and another state on the issue of investment will become to the integral part of the law of the land on the basis of Art.9 (4) of the FDRE Constitution⁴⁸, through ratification and enforced like other laws in Ethiopia. To illustrate this, Ethiopia has concluded bilateral investment treaty with China⁴⁹ in 1998. When we examine this treaty it mainly focus on the economic development and protection of investors but it does not set grounds or provisions clearly regarding the protection of society. Hence this treaty has gaps on the issue of social protection and does not give place for social protection.

Beyond this Ethiopia has also ratified different human right instruments such as Universal Declaration of Human Rights (UDHR) as it clearly indicated under Art.13(2) of the FDRE Constitution and upon this, as per Art.22 and 25 of this declaration it clearly sets the protection of the society⁵⁰ by stating that :

Everyone, as a member of society, has the right to social security and is entitled to the realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. Upon this provision we understand that society should be protected to keep their interest as a whole from different disturbance or straits such as from the wrong investment activities like creating security problems to their peace living and from culture disturbance. Even if Ethiopia has ratified this declaration of human right, it is not well enforced in Ethiopia due to weak initiation of the government.

So in general even if Ethiopian investment laws have grounds regarding social protection but it is not detail and sufficient.

3.3. Human right protection

⁴⁷ Asamnew D, Gizaw, Ethiopia's Bilateral Investment Treaties and protection of the environment, April, 7, 2017

⁴⁸ Supra note, 37. Art.9(4)

⁴⁹ Bilateral Investment Treaty Agreement between Ethiopia and China Signed in 1998.

⁵⁰ United Nations Universal Declaration of Human Rights, 1948 see Art.22

Human Rights, by definition, are a universal moral right. Something which all men everywhere, at all times ought to have, something of which no one may be deprived without grave affront of justice, something which is owing to every human being simply because he is human⁵¹. This implies that human rights are not given from government rather from the nature due to simply being of a human. Governments are the principal duty bearers of obligations of human rights such as duty to respect (not to interfere with their enjoyment), protect (restricted from violation of human rights or to ensure that third parties do not interfere with the enjoyment human rights) and fulfill (to fulfill facilities for the full enjoyment of human rights)⁵².

With regard to the concept of investment, there is an increasing literature on the obligations of multinational corporations to abide by human rights standards in the course of its activities in a host state. Among the obligations of multinational corporations, it includes not to support and initiate for human right violations to gain benefit and not to abuse labor forces in against of their human rights⁵³. This means that these corporations must perform their investment activities in consideration and with respecting of human rights. But there will be a greater concern with the impact of the activities of multinational corporations on human rights, economic development and the rights of indigenous communities in the host states⁵⁴. Hence these corporations may violate human rights and such violations must be maintained by legislation. The notions of corporate liability for human rights violations have also been slow in evolving. The international rules on bribery have also been slow to evolve. There may be justification in the view that this slow progress was caused in part by opposition to the recognition of such liability by corporations, which have delayed the formation of binding rules through the formulation of soft law prescriptions⁵⁵. This fact is the basic one that may bring a violation of human rights. Only looking and wanting economic affairs/fruits without considering human right is nothing and unfruitful. Such kinds of human right violations may be brought due to the failure of the state from performing its obligations regard to human rights. Beyond this, with regard to the new concern of Bilateral investment treaties, the globalization protests against multilateral investment agreements were generated by the fact that these agreements showed little concern for the human rights interests involved in foreign investment. There shall be safeguard measures regard to human rights.

⁵¹ Abiyou Girma Tamirat, the Police and Human Rights in Ethiopia, <<https://www.abysinnialaw.com/blog.../1475-the-police-and-human-rights-in-ethiopia>>> access at April, 30, 2018

⁵² Ibid

⁵³ M. Sornarajah, the International Law on Foreign Investment third edition, p.181

⁵⁴ Ibid

⁵⁵ Ibid, p.146

According to the According to Amnesty International Human rights Guidelines for Companies, corporations are duty bound to protect human rights in their operations and the Guide line provides the following important principles to corporations with regard to protecting human rights in the time of doing their activities⁵⁶. *These are: All companies should adopt an explicit policy on human rights which includes public support for the Universal Declaration of Human rights; All companies should ensure that any security arrangements to protect human rights and are consistent with international standards or law enforcement; All companies should take reasonable steps to ensure their operations do not have a negative impact on the enjoyment of human rights by the communities in which they operate; All companies should ensure that their policies and practices prevent discrimination based on ethnic origin, gender, sex, colour, language, and national or social origin, economic status, and religion, political or other conscientiously held beliefs. All companies should ensure that their policies and practices prohibit the use of chattel slaves, forced labour, bonded child labourers or coerced prison labour; all companies should ensure that their policies and practices provide for safe and healthy working conditions and products*

Upon these facts or principles, transnational corporations should consider and protect the human rights by taking appropriate care. The above principles shows that how transnational corporations act their investment activities with respect to the protection of human rights.

When we come to Ethiopia with regard to giving protection for human rights in line with investment activities, as we know investment is essential for development and development is now a day becomes the right of the people in general. Under the FDRE Constitution⁵⁷ the right to development is recognized under Art.43 as part of the fundamental rights..This right also recognized under Art.22 of the African Charter on Human and Peoples' Rights (Banjul Charter)⁵⁸as human right to which Ethiopia is a party. Therefore, this right is the basic right of the nation, nationalities and peoples of Ethiopia that should be protected from the violations of investors. Even if development is important, it should not be done at the expense of human rights .Beyond this Ethiopia also ratified the major international human right instruments such as International Covenant on Economic, Social and cultural rights (ICESCR) and International Covenant on Civil and Political rights (ICCPR) and these instrument have been agreed between states for the purpose of giving protection to human rights. For example according to ICESCR as per Art.7 it justifies that states parties to this convention is duty bound to recognize the rights of everyone to enjoyment for favorable conditions in the work area which ensure whether the workers have been

paid fair wages and equal payment for equal work, protection of their health and safety conditions and also leisure, rest and limitation of working hours⁵⁹. The FDRE constitution also gives emphasis for the protection of human rights under its Chapter three and imposes obligations on different organs or bodies to give protection to human rights⁶⁰ as per Art.13 (1) in particular and Art.9 (2) in general. Upon these provisions of the Constitution particularly based on Art.9 (2), investors are duty bound to give protection to human rights during their investment activities. But in now a day in Ethiopia there are many right s which are violated by investors and government. Even if the human rights are provided in different legislations like under the FDRE Constitution, treaties in some cases in some other proclamations, but when we see their enforcement in practice they are not well protected and we did not see any remedy that has been given for the violations of these rights. For example there are many investors in our country Ethiopia that participate in different investment areas. These investors employ the Ethiopian labor force in low wages or salary. But when we examine the above human right treaties what Ethiopia has ratified, it dictates that employs should obtain wages in proportion of their work or they have the right to get equal wages for equal work. However in against of these treaties the employees are paid 23 ETB or \$0.84 per a day as I have witnessed in some investment areas such as in the construction sector. More investors that come to our country are labor intensive ones and they employ with low wages as indicated above. The employs worked in a tiresome or laborious work, but they have been paid low wage. The wage paid to them and the works which are done by these employs are not proportional. The tiresome works have been done by cheap labor force of Ethiopia and they are exploited highly. The government of Ethiopia also does not give protection for such violations of rights by its legislation. When we see the labor proclamation No. 377/2003,it does not specify or determine the minimum wage⁶¹ which they are going to be paid rather it lefts for the discretion power of employers in this case investors. The investors are free to pay how many they want to pay to the employs and I have witnessed in Ethiopia the number of non-employment persons are increased in Ethiopia from time to time due to the absence of employment opportunities in Ethiopia. Due to this fact these persons have no opportunity rather than surrendering themselves with low wage payment to such investors and their human rights have been violated by both the government in case it does not give guarantee or give protections through laws and the investors, they deduct and paid low wages for the employees. Here I do not want to give emphasis for the protection of economic interest of workers rather the non economic aspect from such failures of protection of economic interest such as when they are paid low wages, then they will

⁵⁶ Tesfaye Abate,p.251

⁵⁷ The Constitution of Federal Democratic Republic of Ethiopia, Ethiopia Pro.No.1/1995 Federal Negarit Gazeta, Addis Ababa Ethiopia,Art.43

⁵⁸ African Charter on Human and Peoples' Rights (Banjul Charter),Art.22

⁵⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR)Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27,see Art.7

⁶⁰ See supra note 54, Art.13(1)

⁶¹ Labor Proclamation No. 377/2003,Negarit Gazeta, Addis Ababa, Ethiopia

lose the other non-economic aspects of human rights like these employees may not consider themselves as equal with the other person i.e. they will feel inferiority, they will not feel as they have equal reputation with other persons and they will consider themselves as useless persons. Due to the payment of low wages, their non-economic human rights such as the right to health and then the right to life may become endangered. So they will lose such kinds of human rights which cannot be measured in terms of money but the most important rights which can be the base for economic rights. But with regard to giving protection in the human rights, it is not clearly stated in the given investment proclamations in Ethiopia. When we read the investment proclamation No. 769/2012 and its amendment 849/2014, do not clearly set the protection of human rights from unhealthy investment activities. Even if Ethiopia has recognized human rights under her constitution and human right treaties like ICCPR and ICESCR which are ratified by Ethiopia on the basis of Art.9(4) of the FDRE Constitution, however in line with the investment activities, she does not give emphasis to the protection of human rights. There are no clearly indicated remedies for the violation of human rights by investors under the investment laws of Ethiopia. Hence there are gaps regarding in this issue to give protection to human rights during investment activities in different economic sectors of Ethiopia. In general human right is one of the non-economic interests that must be protected from any violations unless otherwise clearly indicated by the law.

3.4. Protection of Environment

The word 'environment' may be defined differently in different fields of studies. In the respect of this paper, the legal definition of environment is important to delineate the scope of the subjects, determine the applicability of legal rules and establish the extent of liabilities when harm occurs⁶². Different legal documents such as treaties, domestic legislation, guidelines and code of conduct define the environment differently⁶³. One of the definition of environment is "Environment is sum total of water, air and land interrelationships among themselves and also with the human being, other living organisms and property"⁶⁴. This implies that environment may include different kinds of things in it as part of its definition and shows also how they interrelated themselves in the environment. From this definition we can infer the subject matters and scope of the environment. Upon this fact having the definition of environment in mind, Environmental protection is a practice of protecting the natural environment on individual, organization controlled or governmental levels, for the benefit of both the

environment and humans⁶⁵. This refers that environment should be protected in order to have a comfort and healthy environment. Environment may be damaged or polluted by different factors such as overconsumption, emitting poisonous gases or smokes to the air, mix different polluting things/factors with water like wastage of industries in the area of investment and make this water available to the consumption of living things. These kinds of dangerous activities may impose different problems on living things.

In international perspective, there are attempts of having international agreements on environmental protection. When we see Art.14 of Treaty Establishing the Latin American Integration Association, it states that member countries requires to "take into consideration, among other matters, scientific and technological cooperation, tourism promotion and preservation of the environment"⁶⁶. According to this treaty, particularly on the basis of this provision, member states are duty bound to keep and preserve the environment so as to make it comfort and healthy. In addition to this, in now a day a protection of environment became a sensitive issue in most countries of the world. Due to the increase of populations, investors from time to time, the healthiness of environment becomes in question. In this factor the environment be damaged or polluted. Hence upon these facts states are duty bound to give protection to the environment such as by regulating investors through law. This is because investors may harm the environments simply by focusing their interest on the profit only. Beyond this, according to the convention on Environmental Impact Assessment as per Art.2(1) of the convention it states that "the parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from prepared activities"⁶⁷. This provision implies that the member states either individually or being together should stand to the protection of the environment by taking different measures on those factors which pollute or bring problems to the environment. These problems may be transboundary and may affect the neighbour country. The measures may be determining the standards of emitting, make fit the investment activities that fit with the clean and healthiness of the environment or change industries from smoking to non smoking in the area of investment. Such kinds of investment activities i.e. industries with no smoking is not only important in the host state but also in the home or other states.

When we come to Ethiopia, Ethiopia is also not an exception of the other countries with regard to giving protection to environment. Under the FDRE Constitution as per Art.44, it recognizes the rights of the people to live in clean and healthy environment⁶⁸. This refers that environment must be protected

⁶²Tsegai Berhane and Merhatbeb Teklemedhn, Environmental Law Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute, 2009, p.1

⁶³Ibid

⁶⁴Definition of Environment -New Age International <<www.newagepublishers.com/samplechapter/001773.pdf>>.access at April 30, 2018

⁶⁵ Environmental protection, <<

https://en.wikipedia.org/wiki/Environmental_protection>> access at April 30, 2018

⁶⁶ Treaty Establishing the Latin American Integration Association, see Art.14

⁶⁷ The convention on Environmental Impact Assessment, see Art.2(1)

⁶⁸ Supra note 54, see Art.44

so as to help the people to live in it in a better condition. Unless we protect the environment, we cannot protect the rights of the people to in clean and healthy environment. Hence this constitution gives guarantee for such rights of the people. In addition to this as per Art.92 and 9(2) of this Constitution⁶⁹, by cumulative reading both provisions, it imposes obligations on government, Associations, citizens, political bodies and other officials are duty bound to give protection to the environment. In particular the government of Ethiopia is duty bound to give protection for the environment as per Art.92 (1) and 92(4).According to this provision, the government shall endeavor to ensure that all Ethiopians to live in a clean and healthy environment. This implies that there may be different factors that pollute the environment in the country like wastes of industries or from the investment activities. These environmental polluting activities may change the healthy and clean environment to unhealthy and unclean. This affects the safe living conditions of the people. Hence upon the above provisions the government is duty bound to prevent and protect such kinds of polluting activities to save the right of the people to live in clean and healthy environment by enacting laws, regulations, strategies and environmental policies⁷⁰. In addition to this Constitution, there are also other subordinate laws which are enacted to give protection for the environment. Among these one of them is Environmental Impact Assessment Proclamation⁷¹ No.299/2002, when we read its preamble; it dictates about the protection of environment in accordance with the FDRE Constitution and it imposes obligations to conduct impact assessment on those who are interested to conduct project on the environment on which there is a need of conducting environmental impact assessment in the project. This impact assessment is done before the projects have been commenced but in accordance Art.14 of this proclamation, the environmental protection Authority has jurisdiction to monitor its implementation after the commencement of the project. But this proclamation without subsidiary laws, the EIA Proclamation can hardly produce any of its intended results as most of its provisions are too general to be applied without further administrative refinement⁷².Unclear and vague laws may bring problems during enforcement to the environment protection. Environmental protection must not be seen as an easy task and role; rather it must be seen seriously and protected effectively. Environment should not be seen as an ordinary thing rather it is everything and our life one or in another thing depends on it. If we degrade, pollute or contaminate our environment, then our health and the right to live in a clean and healthy environment will be in question. Hence the responsible organs/bodies particularly the

government should be care regarding standing to the protection of the environment. This is because environment may be highly polluted by different factors particularly from the wastage of the investment activities such leather fabric, cement fabric in Ethiopia are the major fabrics that bring environmental pollution. When we take the cement industry in Ethiopia the workers and the community that live around the industry have attacked highly in different diseases such as, Respiratory Health problems, contamination of food by the dust of the cement industry⁷³.Environmental characteristics such as presence of rain and outdoor wind speed may affect cement dust exposure⁷⁴ to the environment and this indirectly affects the community's health. This true particularly in Addis Ababa by Muger cement fabric that cause problems to the surrounding society and the community faced health problems of respiratory⁷⁵. In practice this shows that the role and habit of the government with regard to giving protection to the environment is low and weak in Ethiopia. In general we have great non economic interest from the environment which cannot be valued in terms of money. It is just everybody obtains a priceless value from the well protected environment. Therefore environment is one of non economic interest to the community and it should be well protected during the time of maximizing economy in the investment activities.

IV. CONCLUSION AND RECOMMENDATION

4. 1. Conclusion

Investment is one of the major economic activities that every country wants to have it for their economic development. There are different persons such as domestic and foreign investors participated in the investment activities in different countries. Even if the investment activities are important to bring economic development but they are also dangerous if they are well not well regulated. Due to this, these investment activities violate and bring problems on non economic interests such as on human rights, environmental, social and political sovereignty for the purpose of succeeding their interest. As it has been discussed in the paper, investment activities polluted the environment and this brought the health problems like respiratory health problems and reek to the surrounding community. Hence in the surrounding of such communities water, air, their food polluted and generally their health has been affected. These are the major problems in Ethiopia in practice. The government of Ethiopia did not protect such problems which are caused by the investment activities and the government seems negligent regarding to giving protection to such non economic interest. In addition to this, even if Ethiopia has enacted different investment laws, these laws do not address the protection of the non economic interest in detail and clearly. In other words the laws have

⁶⁹ Ibid, see Arts.92 and 9(2)

⁷⁰ The Federal Democratic Republic of Ethiopia Environmental Protection Authority, GEF Portfolio Identification Document December 2011 Addis Ababa, Ethiopia.

⁷¹ Environmental Impact Assessment Proclamation No.299/2002,Federal Negarit Gazeta, Addis Ababa, Ethiopia

⁷² Dejene Girma Janka, Environmental Impact Assessment In Ethiopia: Laws And Practices, Tuscaloosa, Alabama 2012,p.226

⁷³ Zeyede Kebede Zeleke, Respiratory Health among Cement Workers in Ethiopia, Dissertation for the degree philosophies doctor (PhD) at the University of Bergen 2011,p.27

⁷⁴ Ibid,

⁷⁵ Ibid

gaps on the issue of protecting non economic interests. Rather they emphasis on the aspect of economic matters. The protection of these non economic interests have been seen negligently particularly in practice.

4.2. Recommendation

In this paper I have discussed the protection of non economic interests at international level in general and under Ethiopian investment laws in particular. I have raised many problems and the presence of legal gaps on the issue of the protection of non economic interest. Having this in mind, I will give the following recommendations for the raised problems.

- ❖ Most problems or violations of non economic interests are brought due to the weak performance of the government in Ethiopia. The government does not give quick remedies for those harmed groups like by respiratory health problems such as societies that live in the surrounding of Cement fabric. Hence the government whether regional or Federal is better to be active with regard to giving protection non economic interests such as concerns of environment, human right and society.
- ❖ Investment laws of Ethiopia particularly investment proclamation 769/2012 and other proclamations related to investment activities such as environmental impact assessment proclamation No. 299/2002 have gaps and are not clear to give protection to non economic interests. The protection of non economic interest are not well guaranteed by inferring the term themselves in the proclamation rather focus on the economic aspect. Therefore the investment laws of Ethiopia should be revised to give protection for non economic interest in a well defined manner in addition to promote of our economic interest.
- ❖ When we read the investment proclamations of Ethiopia such as proclamation No. 769/2012, it does not clearly set grounds of accountability for investors if they violate the non economic interests. Depending on this fact, the investment proclamation of Ethiopia should be revised and set grounds of accountability and responsibility to investors. This helps them to respect and protect the non economic interests in the time of doing their investment activities in Ethiopia.
- ❖ There is no strong organ which stands in protection of non economic interests in Ethiopia. But it does not mean that there is no an organ to give protection like to some of the non economic interests like environment protection authority but weak performance. Hence there must a strong organ/ body that can give protection for all non economic interests. The non economic interests should be given great emphasis for protection in case they are not minor things rather they are the base for economic interests. In addition to this there is a human right commission in Ethiopia but it is so weak with regard to giving human right protection. Therefore by

having such kinds of weak institutions in Ethiopia, it is impossible to give guarantee for such kinds of non economic interests. Therefore this organ must strong enough to give protection for human rights not to be violated by investors in Ethiopia. It must follow up the investment activities in Ethiopia to check whether they are performing their activities in line with human protection or not. That is why human rights may be violated like child exploitation, reputation abasement of the society etc.

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