



COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

**THE NEED OF RULE FOR DOMESTIC INVESTORS
COMPENSATION/GUARANTEES AGAINST POLITICAL RISKS:
THE CASE OF POLITICAL VIOLENCE**

Thesis submitted in partial Fulfillment of the requirements for the Degree of Master of Laws
(LLM) business law program at the school of Law, Addis Ababa University

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September, 2020

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ACRONYMS:

MIGA.....	Multilateral Investment Guarantee Agency
IAIGC.....	The Inter-Arab Investment Guarantee Corporation
AIECGC.....	The Arab Investment and Export Credit Guarantee Corporation (Dhaman)
PRI.....	Political Risk Insurance
ER	Expropriation Risk
ATI.....	African Trade Insurance
OPIC.....	Overseas Private Investment Guarantee Corporation
DCA.....	Development Credit Authority of the United States Agency for International Development
DFC.....	U.S. International Development Finance Corporation
FDI	Foreign Direct Investment
ART.	Article
EIC	Ethiopian Investment Commission
BUILD.....	Better Utilization of Investments Leading to Development
NBE.....	National Bank of Ethiopia
FY	Fiscal Year
EDC	Export Development Canada
EDA	Export Development Act
ECIC	Export Credits Insurance Corporation
ECA	Export Credit Agency
NBE.....	National Bank of Ethiopia
ICIEC	Islamic Corporation for Insurance of Investment and Export Credit
PVT	Political Violence and Terrorism Insurance Policy
BIPPTs	Bilateral Investment Promotion & Protection Treaties
WIPO	World Intellectual Property Organization
PROC.NO.....	Proclamation Number

ACKNOWLEDGEMENT

I would like to express my special thanks of gratitude to my advisor Assistant professor Martha Belete for her aspiring guidance, invaluable constructive criticism and friendly advice throughout the course of this research paper. Secondly i would also like to express my heartfelt thanks to Tsehay Insurance S.C. for sponsoring me through my journey of graduate school.

Finally, I am very much thankful to my parents and friends who helped me a lot in finalizing this research paper.

DECLARATION

I hereby declare that the title “The Need of Rule for Domestic Investors Compensation/Guarantee against Political Risks: The Case of Political Violence” is my own original work which has not been presented for any degree or examination in any University and the sources used have been duly acknowledged and cited.

Declared by: Desalegn Beyene Woldemariam

Signature -----

Date: -----

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2020

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ABSTRACT

In Ethiopia, there has been social and political unrest in many parts of the country that causes massive loss of human life and destruction of investment assets/properties. These situations not only hinder the flow of investments and the growth of an economy it also entails a huge economic loss in the country. Both foreign and domestic investors in Ethiopia are facing political violence risk challenges, though most foreign investors (especially those that have BIT protection) have the protection of investment guarantee against political violence through different way, there is no formal and rule based compensation scheme for domestic investors. Actually Ethiopian law has made provisions for protection against expropriation and currency risk; it however, has failed to provide protection against political violence.

Thus the main purpose of this research is to assess the existence of laws or regulation for domestic investments against political violence risks adopted to protect and guarantee domestic investors investment in the form of political violence guarantee scheme. The finding of the researcher indicates that there is no explicit political violence risk guarantee scheme established to protect domestic investors' investment in Ethiopia. The researcher also found the existence of some informal kind of protection, which is not based on law where the government is not forced to act accordingly to protect domestic investors' investment. In addition, as per the interview conducted with the Ethiopian Investment Commission officials they believe in the importance of the establishment political violence risk guarantee against domestic investments.

Based on the present situation of the political instability in the country, future possible challenges and other countries experience the researcher recommends that the state regulator should work on establishing the political violence insurance market pool at national level as well as to incorporate the standard of Full Protection and Security in the legal frame work in order to promotes and protects domestic investment in Ethiopia.

CHAPTER ONE

INTRODUCTION

1.1. BACKGROUND OF THE STUDY

Political violence causes massive loss of human life, destruction of assets/properties, and entails a huge economic loss and expansive political instability in the short and/or long run out of it in the country. These may have a devastating effect in the long-term development vision and legitimacy of the state.

In recent years, there has been a serious of terrorist attacks and civil unrest or substantial political instability around the world. These events can have a devastating effect on people, business operations, and properties¹. No country in the world can consider itself free from terrorism and political violence. Both are increasing at an alarming rate and create damage and cause great fear to the international community and investors as well.²

The desire to increase domestic investment may be impaired and adversely affect investments if the government does not have the mechanisms to protect and guarantee investors especially in the event of political risks.³ It also hampers the implementation of domestic policies⁴. Many companies look to terrorism and political violence insurance to help mitigate the financial impact, which can include property damage and business interruption⁵.

Some Governments introduced terrorism and political violence insurance schemes, pools or funds as a gap filling and last resort measure that apply when and/or where political violence and terrorism insurance cover is unavailable by insurance companies' or in case of exclusions in the insurance policies, based on the specific needs of their countries reality in order to mitigate the deep impacts in their economy⁶. Other countries have also a scheme where compensation is paid directly by the government⁷.

¹Michelle Hurley, 'Understanding the Nuances: Terrorism and Political Violence Insurance Coverage'

²FikruTsegaye, 'Terrorism and Political Violence' (Ethiopian Business Review, 6 February 2018, No. 17).

³Molly Zohn, 'Filling the Void: International Legal Structures and Political Risk in Investment'(2007), Vol. 31, Art. 4, Fordham Int.l L. J.231.

⁴ Ibid

⁵ Hurley(n1)

⁶ hannover re, 'Political Violence/Terrorism'(2017)<<https://www.hannover-rueck.de/1133518/political-violence-and-terrorism-2017.pdf>>accessed 29 December 2019.

⁷ Piers Gregory and Clive Hassett, 'Structuring global insurance programmes for terrorism and political violence', (2012).

Ethiopia, despite the continued economic growth and reform, there have been aged ethnic grievances among different ethnic groups in the country surrounded by elite disagreements in various political issues in the country which is a potential threat to the stability and unity of the nation⁸.

Under the current circumstances, politically motivated attacks and civil unrest in Ethiopia keep threatening business organizations⁹.

Crisis Group has monitored Ethiopia closely since 2009, when it warned that “despite continued economic growth and promised democratization, there is growing discontent with ethnically defined state and rigid grip on power and fears of continued interethnic conflict”. Since then, and particularly after 2014, the country has become still more restive partly because political liberalization – in a setting where authorities previously governed with a strong hand – has freed the population to object to perceived wrongs, sometimes in ways that have fed violence¹⁰.

According to some experts, as a result of the expansive and interrelated nature of the political violence and Terrorism risk, in countries like Ethiopia, political violence and terrorism exposure is above the insurance companies’ capacity to fairly underwrite the risk in assessing the frequency and establish severity¹¹.

Thus, they recommend the government to cover those risks by providing political risk insurance pools/schemes¹². In addition; some suggests that, though insurance companies provide political violence cover for investors, those policies have wider exclusion sections that are not covered by insurers¹³. So, according to them there should be some arrangement by government that designed to fill the gaps¹⁴.

The recent wave of social and political unrest in many parts of the country has triggered a move to extend insurance policy to cover damage resulting from politically-related violence perils; for greater protection and responsiveness to investors¹⁵.

⁸ International Crisis Group, ‘Managing Ethiopia’s Unsettled Transition’(2019)Africa Report N°269.1

⁹ Tsegaye(n 2)

¹⁰ International Crisis Group (n 8)

¹¹ Tsegaye(n 2)

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ P Gregory et. al., (n 7)

Informal Government guarantee or compensation for domestic investors against political violence, which is not contemplated institutionally or by regulatory framework not only changes with the change of government it does not have a permanent and long lasting effect for the investment environment as a whole and for the domestic investors specifically¹⁶. Thus, it should be institutional and rule based.

Even from an individual investor perspective, guarantee/compensation scheme are the main tools for attracting Investors, and to create enabling investment environment¹⁷. Thus, as like the policies and the strategy of investment incentives to attract investment and investors, political risk guarantee/compensation schemes may also serve as a potent tool for attracting investment by motivating investors¹⁸.

Guarantee/compensation schemes should be one part of the investment policy to encourage private investments in order to enable national investors to expand their investment as well as to moving away. Investment guarantees and the public and private institutions that provide them positively influence investment flows to the country¹⁹.

Accordingly, it has been recommended that The National Bank of Ethiopia or the state regulator should work on establishing the terrorism, political violence insurance market pool at national level²⁰.

Therefore, this paper reviews some of the arrangements that should be considered for insuring these risks and reviews the approaches that should be considered. In particular, introduce pooling arrangements. These arrangements may be by direct government financial support, or to cover only up to the limit of the particular arrangement, or some other way. It will also examine how the programme should be structured and what coverage should be provided.

¹⁶ OECD, 'Checklist for Foreign Direct Investment Incentive Policies'(2003).10

¹⁷ Kathryn Gordon, 'Investment Guarantees and Political Risk Insurance: Institutions, Incentives and Development' (2008)OECD Investment Policy Perspectives, 92

¹⁸ Ibid

¹⁹ Ibid

²⁰ Tsegaye(n 2)

1.2. RESEARCH QUESTIONS

1. Do the Existing Investment Laws of Ethiopia regulate the issue of domestic investors' compensation/ guarantee against political violence?
2. What insurance coverage's are provided to investors by Ethiopian Insurers for damage resulting from politically-related violence's in Ethiopia?
3. What is the international experience on the regulation of compensation to investors against political violence?
4. Is that necessary to regulate political violence guarantee for domestic investors in the current situation of Ethiopia?
5. What legal and institutional arrangements are in place in Ethiopia for domestic investors' asset damage due to the act of political violence?

1.3. OBJECTIVE OF THE STUDY

1.3.1. General Objective

The general objective of this study is to examine the need of rules for domestic investors' guarantee/compensation against political violence in Ethiopia.

1.3.2. Specific objective

- To give a general overview over political risks and political violence in particular and effect on domestic investors' investment.
- To analyze the favored nature of compensation/guarantee scheme for domestic investors' in Ethiopia.
- To assess the experience of some countries on compensation/guarantee scheme for investors' against politically-related violence.
- To examine the legal and institutional arrangements regarding compensation scheme for domestic investors in the event of political violence in Ethiopia.

1.4. STATEMENT OF THE PROBLEM

Historically in the late 1960's the concept of political risk is mostly associated with the taking over the foreign subsidiaries of multinationals by the newly independent countries in order to overcome their lack of capital²¹.

“Today’s political risks are not the classic risks associated with communist takeovers or post-colonial outbursts of anti-foreign sentiment. They are more subtle, arising from legal and regulatory changes, government transitions, environmental and human rights issues, currency crises, political violence and terrorism. Because these risks are subtle (often occurring at the same time as the government is declaring the country “open for business” they are often hard to manage”²².

Ethiopia has a fastest economic development with a progressive GDP growth rate in Africa. This growth has been mostly dependent up on government investment in infrastructure, as well as the agriculture and service sectors²³.

Even though Ethiopia’s investment policy has changed severely over the past years and shows progress toward eliminating extreme poverty, still remains one of the poorest countries in the world²⁴. Despite reducing the extreme poverty rate from about 46% in 1995 to 23.5% in 2016, Ethiopia still has more than 25 million poor people²⁵. It is political environment has affected the investment climate dramatically.

According to the African Development Bank Report on Macroeconomic performance of Ethiopia, among others, due to the civil unrest and political uncertainty existing in the country has shown a decrease of the real GDP growth from 2017/18²⁶.

In many studies political risks, especially political instability has been a major harmful factor that would hinder the flow of investments and the growth of an economy. Investors still face a number of risks in relation to their investments due to political instability in different developing countries²⁷.

²¹ Alba Kruja and Blerta Dragusha, ‘The Impact of Political Risk on Foreign Direct Investment’ (2014) *Iliria Int’l Rev.* 79.

²² *Ibid* 74, as written by Wilkin, Minor (2001)

²³ <https://theodora.com/wfbcurrent/ethiopia/ethiopia_economy.html> accessed on 21 December 2019.

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ African Development Bank Group, ‘African Economic Outlook: Ethiopian Economic Outlook’ (2019)

²⁷ Charlotte-Sophie Picker, ‘The Development of South African Investment Protection Law – Legal Protection of Foreign Investments’ (2017) (Thesis LL.M.) School of Advanced Legal Studies 3.

Therefore, in order to build and maintain trust and confidence in the investment climate of the country as a whole, the Government of Ethiopia must to formulate the mechanisms to solve political risks that address investors' concern of security and compensation issues.

There are various mechanisms adopted by different jurisdictions to protect their investors against political risks, including political violence. Among them Political Risk Insurance (PRI)²⁸, Multilateral Investment Guarantee Agency (MIGA), and direct government support are the main guarantee/compensation schemes adopted especially by developed nations to protect their investors investment in developing countries. This is mostly done through private and public insurers, international agreements, and/or domestic legislations²⁹. They are typically included under “*investor protection guarantees*”³⁰.

In Ethiopia, unlike foreign investors (investors protected through BIT), despite the existence of implicit and informal form of protection there is no legal as well as institutional framework of compensation scheme against political violence risks to protect domestic investors investment except investment guarantees and protection in case of expropriation risks³¹.

An informal and a Non-institutionalized method of action is mostly dependent up on the willingness of the government and it may not be asked as a right rather it gives a sole discretionary power to the government since there is no law that force the government to do so. Moreover, on domestic investors view point, they may have no knowledge whether they are compensated or not, and also they do not have knowledge on the extent of compensation, if any.

Thus, this research hopefully contributes in fulfilling the knowledge gap in the area and shows the importance of establishing a legal framework and institutional structure of compensation/guarantee scheme against political violence risks for investments of Ethiopian investors.

²⁸ KausarHamdani, Elise Liebers, and George Zanjani, ‘An Overview of Political Risk Insurance’ (2005) Federal Reserve Bank.

²⁹ Ibid

³⁰ The investment policy and promotion unit of the World Bank Group, ‘Increasing Investment Retention and Expansion and Investor Protection’.

³¹ Investment Proclamation, Proc. No. 1180/2020, Federal NegaritGazeta, 26th Year No. 28, (hereinafter cited as the Investment Proclamation), Art. 19

Because, without compensation scheme destruction or the business interruption of investment due to political violence has not only disrupt business operations, damage assets or endanger employees and impact on a firm's profitability, but it also has an adverse effect on the economy of the state and significantly decrease domestic investments and investment inflow of the country.³²

1.5. LITERATURE REVIEW

Mass Public demonstrations against governments and overwhelming increases in political instability are becoming increasingly more apparent. The possibility of disruption and loss of investments due to social unrest has becoming a reality³³.The threat of violence is not restricted to the assets of the investor but also extends to the person of the investor³⁴.

Political violence risk refers to losses from damage to, or the destruction and disappearance of, tangible assets and politically motivated acts of war or civil disturbance in the country, including revolution, insurrection, coups d'état, sabotage, and terrorism. It is also caused by an interruption of project operations essential to the overall project financial viability and obligations to lenders³⁵.

In this dynamic world security situation has been very difficult to understand, control and mitigate risks³⁶. Not having strong protection guarantees in the domestic law makes investors vulnerable to politically related wrongful acts against their investment without domestic remedy or recourse. It is very difficult for a country to assume retention and expansion without compensation scheme for investors against political violence³⁷.

There is a direct relationship between investor protection and investment retention and expansion. Enhanced levels of investor protection will boost investment opportunities³⁸.

³² A Krujaet. al., (n 21)90

³³ <https://www.chubb.com/benelux-en/for-businesses-brokers/terrorism-political-violence-insurance.aspxnsuran>> accessed on 25 December 2019.

³⁴ Christopher Lakpini, 'Political Risks and Protection of Investors under Nigerian Law' (2018) Bowen University. 9 : as cited by Christoph S., 'Full Protection and Security' (2010) Journal of International Dispute Settlement p. 2)

³⁵ A Krujaet. al., (n 21) 80

³⁶ James Lloyd, 'Terrorism Insurance and Political Violence', <https://www.jlt.com/insurance-risk/credit-political-security-risk/security-risk/terrorism-and-political-violence>> accessed on 27 December 2019.

³⁷ The investment policy and promotion unit of the WB Group(n 30)

³⁸ Ibid

Unfortunately, there are still several countries that have yet to set up compensation scheme against political violence especially in sub Saharan Africa.

However, some countries are adopting investors' protection guarantees against political violence as per their specific situations. And often use guarantees as one tool of attracting investors. As a result, it will make investor confidence high to stay and expand their investment as well as for to establish a new investment for new investors³⁹.

In Ethiopia most foreign investors (especially those that have BIT protection) have the protection of investment guarantee against political violence through multilateral treaties, by bilateral treaties, and/or by international agreements and through other mechanisms. However, domestic investors have no any such formal mechanisms in the country. For instance, Ethiopia has ratified the Multilateral Investment Guarantee Agency Treaty (MIGA) on September 21, 1990 by Council of State Decree No. 39/90. This convention provides political risk insurance (or guarantee) for certain noncommercial risks to investments in developing countries. Thus, the convention gives additional protection to foreign investors in Ethiopia. Though it has multifaceted impact and more critical in importance in developing countries like Ethiopia, unlike economic and financial risks, political risks especially the case of political violence risk on local investment has not studied extensively may due to the lack of data and lack of much concern on the area⁴⁰.

There is no domestic research paper conducted before which has direct relationship with this research title. However, there is an indirect research paper conducted by different researchers mainly concerned with the possible guarantee schemes to foreign investors investing in developing countries against political risks (It includes losses related to Nationalization, Expropriation, Political violence, Inconvertibility of foreign currency, Breach of contract and the like). It was an Article conducted by Kathryn Gordon in 2008 on Investment Guarantees and Political Risk Insurance: Institutions, Incentives and Development. This research addresses the issues on the legal and institutional framework of investment guarantee programs against political risks especially for international investment projects located in developing countries.

³⁹ Ibid

⁴⁰ A Krujaet. al., (n 21) 73

By this it will address issues on the need of regulation on the issue, if so, what necessitated, what should the mechanisms, insurance provided by insurers in Ethiopia, extent of coverage in Ethiopia.

Therefore, this research paper opens the door for further study, and highlights the investment situation in Ethiopia, and it also included interview of Ethiopian Investment Commission officials as well.

1.6. SCOPE OF THE STUDY

This research will focus on the need of rules for domestic investor's compensation against political violence in the investment environment of Ethiopia and it does not assess the case of foreign investors working in Ethiopia. This is because, they have guarantees/compensation schemes whether by multilateral treaties and/or bilateral treaties, or through other related international standards/laws. Therefore, the study mainly focuses on the analysis of The Investment Proclamation Proc.1180/2020 regarding investment guarantees and protection provided to investors, other related laws and literatures as well as the analysis of experience of other countries related to the issue.

1.7. SIGNIFICANCE OF THE STUDY

This research study, as it is conducted on the issue of compensation schemes to domestic investors against political violence and as it's a recent issue it gives legal input to the legislative organs and it would initiate further study on the subject matter. It also has an importance to domestic investors as they are the immediate beneficiary of the study and it will pave the way to protect their interests in case of politically motivated attacks on their investment. Moreover, it will also give highlight on whether there is a need for the adoption of a new legal framework or not, and if need be, what considerations should be put in place.

1.8. LIMITATION OF THE STUDY

This research will focus on the need of rules for domestic investor's compensation against political violence in the investment environment of Ethiopia. Even though, international literatures and different journals are available especially in soft copy, there is lack of domestic literatures written with regard to domestic investor's compensation against political violence in Ethiopia.

There is also a difficulty of easily finding the interviewees in the Ethiopian Investment Commission as they were occupied by different responsibilities.

1.9. RESEARCH METHODOLOGY

The research methodology for this research is doctrinal and qualitative research method. It is not a comparative study. The researcher has used applicable investment law as primary sources to assess the legal framework of investment guarantee/compensation scheme to domestic investors against political violence in Ethiopia. The researcher also uses Books, literatures, journals, and related researches written on the topic as secondary sources in order to give an overview on the concept, form, experience of countries (since the research paper is not a comparative study, experience sharing is not for the purpose of comparison rather it is to show in what way that countries go through on political risk guarantee scheme) and issues related to investment guarantee/compensation scheme against political violence. Even if the research is more of doctrinal, since the researcher conducted interview with concerned EIC officials and legal department makes the research a little bit of doctrinal and empirical. As the Ethiopian Investment Proclamation no. 1180/2020 Art.19 says nothing about investment guarantee against political violence except in case of expropriation and currency risk; the interview help a lot to understand practically what the EIC is doing with regard to domestic investors investment guarantee schemes against political violence.

1.10. ORGANIZATION OF THE STUDY

This thesis work organized as follows. It contains five chapters. Chapter one contains the Introduction part of the research paper. Chapter two of the study contains General overview on political violence, political risk, and the concept of investment guarantee schemes. Chapter three of the study contains analysis of investment sector performance in Ethiopia and other countries experience. Chapter four contains political risk insurance coverage by Ethiopian insurers and the legal frame work of political risk guarantee in Ethiopia and the exploration of the legal significance. Chapter five contains conclusion and forward some recommendations.

CHAPTER TWO

2. GENERAL OVERVIEW OF POLITICAL RISKS AND THE CONCEPT OF INVESTMENT GUARANTEE SCHEME

2.1. GENERAL OVERVIEW OF POLITICAL RISKS

2.1.1. THE MEANING AND CONCEPT OF POLITICAL RISKS

Before we embark on the definition and concept of political risk, it is important to give a short clue on the meaning and concept of political violence and violence in general. Political violence is a subset of violence in general⁴¹. However political violence and violence in general have some difference between them though their distinction is very blurred in content perspective⁴². The main concept of political violence common to various authors is that it challenges and tests the legitimacy of existing political power⁴³. Violence in general may be an isolated outbreak by private acts which can be controlled by security forces and have minor risks and costs; whereas Political violence has a wider scope and severity which can't be managed by a mere police force⁴⁴.

Political violence is, thus, the use of force by a group with a political and/or economic purpose or motivation with the intent of changes either within the political system, or of the system as a whole that involves a high level of cost in terms of damage to property and/or injury to persons⁴⁵.

So, the concept of political violence accommodates the existence of a crisis of the legitimacy of political authority and it also includes resistance to attack by government through its security forces⁴⁶.

Groups participate in political violence may be governments, rebels (they are political organizations whose goal is to counter, replace or separate from an established national governing regime through violent acts), militias, ethnic groups, active political organizations, and civilians (for instance; labour unions, political party supporters, journalists, ethno-regional or religious communities, students, etc.)⁴⁷.

⁴¹ Perry Mars, 'The Nature of Political Violence', (J1975), Vol. 24, No. 2, 227.

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ 'Definitions of Political Violence, Agents and Event Types', 1<https://www.acleddata.com/wp-content/uploads/2015/01/Definitions-of-Political-Violence_2015.pdf>accessed on 13 January 2020.

⁴⁶ Mars (n41) 228

⁴⁷ Definitions of Political Violence,.....(n45)

Now before addressing the issues related with political risks it is important to know what we mean by risk in the investment operations. Risk is any uncertainty with respect to investments or the possibility of loss that has the potential to adversely influence the financial welfare of an investor⁴⁸. There are also investment risks like a political risk that adversely affect the investment return of an investor. Investments are exposed to various types of such risks. Investment risk can be defined as the probability or likelihood of occurrence of losses relative to the expected return on a given investment⁴⁹.

In the investment sector, the investor, apart from the normal financial costs and risks (like credit risk, market risk and uncertainty of the investment climate, etc.) associated with any kind of foreign or domestic investment; there are also other factors those which determine the risk of investment flows. These additional risks include currency risk, culture risk, and the major one is political risks⁵⁰. Among them political risk has been recognized as the main risk which could affect the investment growth from both the investors and government perspective⁵¹. These different expressions of political risks are; government expropriation/nationalization, fund remittance control/transfer risk, different governmental policies, legislations and regulations that hamper the investment operation, and political violence⁵². This results in a greater exposure to political risk for the investment project.

The concept and history of political risk is associated with the political events of 1960's between new independent countries and foreign subsidiaries of multinational corporations⁵³. In this period of independence from colonialization, those countries started to taking over the foreign subsidiary corporations to overcome their lack of capital through confiscation, expropriation and nationalization⁵⁴. This led most developed countries and those companies to recognize the issue of political risk as a critical concern⁵⁵.

⁴⁸ <<https://www.finra.org/investors/learn-to-invest/key-investing-concepts/reality-investment-risk>> accessed on 16 January 2020.

⁴⁹ <<https://economictimes.indiatimes.com/definition/investment-risk>> accessed on 16 January 2020.

⁵⁰ Guy Leopold Kamga Wafo, 'Political Risk and Foreign Direct Investment' (1998), Lizenziatenarbeit, Faculty of Economics and Statistics, University of Konstanz, 21

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid 14

⁵⁴ Ibid

⁵⁵ Ibid

These increased concerns about political risk gave birth to a variety of economic studies related to the methods or approaches used to assess scientifically the political risk⁵⁶.

Though various definitions of political risk are available; for the purpose of this paper, definition provided by Brinkis is very important. He defines political risk as “... *the probability that business will ... suffer losses ... as a result of stakeholders within a political system’s (in)actions or reactions to events, decisions and policies...*”⁵⁷.

So, political risk refers to the risk or probability of occurrence of some political event(s) to pursue certain political or economic objectives, and which have an effect on the value of the physical asset, the earnings and profitability of a given investment⁵⁸.

2.1.2. TYPES OF POLITICAL RISKS

2.1.2.1. EXPROPRIATION RISK

Expropriation Risk is a type of political risk in which countries mostly state on their legal documents⁵⁹. ER is deprivation of the tangible property of business ownership of an investor by a government permanently for the public purpose and results the payment of compensation⁶⁰.

Comparing with other types of political risks, expropriation has been the most common category of political risks in the early 1980s having significant claim for insurers in terms of claimed value, and the number of claims of expropriation risks becoming low until the mid-1990s⁶¹. Expropriation can be a mass expropriation, or sector specific or selective motivated by specific political or economic considerations⁶².

⁵⁶ Ibid 15

⁵⁷ R Essel and F J Mostert, ‘Political Risk Factors in South Africa: Sources, Analysis and Insurance Flexibility’[2013] (Vol.3), Risk governance & control: financial markets & institutions, 34

⁵⁸ KamgaWafo (n50) 18

⁵⁹ Diana Restrepo, Ricardo Correia and Javier Población, “Political Risk and Corporate Investment Decisions” (2012) JEL 03 Business Economic Series, 5

⁶⁰ Ibid

⁶¹ Ibid

⁶² Ibid

2.1.2.2. OPERATIONAL POLITICAL RISK

Operational risk, unlike expropriation risk deprivation of ownership is not applying; rather it is related with policies (e.g. macroeconomic policy), changes in legislation (like changes in taxes and royalties), regulation and governmental procedures that affect the investment outcome of investors. It is an expropriation of profit, not loss of asset⁶³. Thus, we can state that OPR is a result of unpredictability of government policy and actions that directly affect the firms 'operation. Just like expropriation risk, operational political risk can be driven by political, economic or both motivation⁶⁴.

2.1.2.3. TRANSFER RISK

Transfer risk is concerned with the government denial of repatriation of capital and other returns from the investment⁶⁵; such as payments, technology, loan principal, dividends or interests by legal means⁶⁶. This may be done through sovereign default (it is an official statement made by the government that it will not pay debts) or capital control (it refers to restrictions on foreign investors to repatriate their capital goods, remittance of funds, and etc.) mechanisms⁶⁷. However, the interest of free transfer of capital by foreign investors from their investment return by ensuring their investment protected from transfer risk, as well as the host state need to control and regulate capital outflow⁶⁸ becoming a fundamental issue of conflict of interest this day.

2.1.2.4. POLITICAL VOILENCE RISK

Political violence risk is a risk of politically motivated violent acts that lead to the destruction of the physical assets of an investment or makes the investment non-operational for a long period of time.

⁶³Ibid 9

⁶⁴Ibid 7

⁶⁵ZakariyasBerhanu Tufa, 'Foreign Capital Outflow Regulation Under Ethiopian BITs and Domestic Investment Laws' (2018), Haramaya Law Review 7, 76

⁶⁶DRestrepo et. al., (n 59) 9

⁶⁷Ibid

⁶⁸Zakariyas (n65)

This risks are mainly caused by civil disturbance from within the country, such as revolutions, coups d'état, insurrections, terrorism, sabotage and other acts of violence that have a detrimental effect on the material assets of the investment project⁶⁹. It also includes company or sector specific violence risks like sabotages or terrorist acts, strikes and riots⁷⁰.

Political violence has a direct and indirect consequence on investments. It has the direct effect of destruction of investment assets (fixed and human) as well as the indirect effect of the business interruption and the earnings the asset generates, decline of the value of the firm's asset due to the economic collapse over the period of war, and the increase of operating costs to secure the investment against violence attack through different ways such as insurance cover and surveillance costs⁷¹.

Thus, violence risk is nowadays overwhelmingly recognized as an important aspect of political risk and insurance coverage offered to investments in order to protect from risks associated with political violence⁷².

2.2. THE CONCEPT OF INVESTMENT GUARANTEE SCHEME

2.2.1. GENERAL CONCEPTION OF INVESTMENT GUARANTEES

Before addressing the issues related with investment guarantee against political risks, it is important to briefly discuss what is meant by investment and investment guarantees and why such guarantees have been established for investors in general.

Even if there are different definitions of investment upon the attitude of different scholar in the field, for this research purpose, according to the Ethiopian Investment Proclamation, Investment means expenditure of capital in cash or in kind or in both by an investor to establish a new enterprise, or to acquire, in whole or in part, or to expand or upgrade one that already exists⁷³.

⁶⁹Said El-Naggar (ed), *Investment Policies in the Arab Countries: Investment Guarantees: The Role of the Inter-Arab Investment Guarantee Corporation* as written by Abdel Rahman Taha (Papers presented at a Seminar held in Kuwait, 1989) 109

⁷⁰DRestrepo et. al., (n 59) 10

⁷¹Ibid

⁷²Ibid 5

⁷³Investment Proc. (n31) Art 2 sub 1

Besides, the proclamation defines an investor as a domestic or a foreign investor having invested in Ethiopia⁷⁴.

On the other hand, for the purpose of investment, an investment guarantee is an insurance against noncommercial risks, by an investment guarantee agreement with an investor, provided for an investment in a given country as compensation for losses sustained by his investment (it may be for loss of asset or/and business interruption), against pre-designated guarantee premiums⁷⁵.

2.2.2. SOURCES OF INVESTMENT GUARANTEE SCHEMES

The main decisive factor for investors whether to invest or not to invest in a given country is determined, among others, by favorable investment opportunities (high financial returns), by a favorable investment climate (political, economic, institutional and legal conditions)⁷⁶ and by the noncommercial risks provided in the country⁷⁷. Noncommercial risk insurance often provided by private insurance companies; or publically by multilateral institutions such as MIGA, and bilateral institutions through government export credit agencies or National Investment Guarantee programs⁷⁸.

Recently there are certain investment guarantee schemes to meet investors' needs by addressing more comprehensive risk mitigation requirements in order to optimize risk sharing⁷⁹.

Below the main investment guarantee schemes will be described.

2.2.2.1. NATIONAL INVESTMENT GUARANTEE SCHEME

It is categorized under a public PRI provider. Almost all national investment guarantee programs established with the very purpose of providing a general service to their citizens', to promote export and protect an investment outside the investor's country rather than generating profits as a basic objective⁸⁰.

⁷⁴ Ibid Art 2 sub 4

⁷⁵ S El-Naggar (n 69) 102

⁷⁶ Ibid 99

⁷⁷ Ibid 100

⁷⁸ Hannah Mayer, 'Political risk insurance and its effectiveness in supporting private sector investment in fragile states'[2018] 7 IGC.

⁷⁹ Theodore H. Moran, 'International political risk management;The Brave New World', The International Bank for Reconstruction and Development / The World Bank Group, (Washington,(2004) 206

⁸⁰ S El-Naggar (n 69) 103

As a result, most of the programs receive uninterrupted government support from the public treasury on grounds of protecting the national interest⁸¹. However, some countries act as insurers of last resort, whereas others actively make their support⁸².

The political risks coverage mostly revolves around risks of nationalization and confiscation, political violence (such as wars, insurrection, revolution, civil strife and related disturbances), and inconvertibility or transfer risk⁸³.

Today, many countries have created investment guarantee programs to help their national investors overcome concerns about political risks. These national programs are, among others, the United States Overseas Private Investment Corporation (OPIC) (actually the agency now dissolved and replaced by the U.S. International Development Finance Corporation (DFC), the United Kingdom Export Credits Guarantee Department (ECGD), the Japan Export Insurance Division of the Ministry of International Trade and Industry (EID/MITI), Canada Export Development Corporation (EDC) and the Germany Treuarbeit. In addition, France, Australia, Austria, Belgium, the Netherlands, Finland, Norway, Italy, Sweden, and Switzerland have also their own investment guarantee schemes⁸⁴. Though these national programs are criticized by some professionals in their rigid eligibility criteria and restrictive underwriting policies, however, they have been successful in alleviating their respective investors' fears as well as in protecting their interests by offering political risk coverage's for their national investors⁸⁵.

For instance, DFC provides certain political risk insurance and financial service/loan guaranty program to US investors in order to achieve the goal of the agency (i.e. to promote the development assistance objectives of the government and to facilitate private investment in less-developed countries)⁸⁶. It is a self-sustaining governmental agency⁸⁷.

⁸¹ Ibid

⁸² HMayer (n 78) 12

⁸³ S El-Naggar (n 69) 103

⁸⁴ Leigh P. Hollywood, 'MIGA: Long Term Political Risk Insurance for Investments in Developing Countries' (1992), 17 Vol., 63No., Palgrave Macmillan Journals, 258.

⁸⁵ Ibid

⁸⁶ John S. Diaconis, 'Political Risk Insurance: OPIC's Use of a "Fiduciary Agent" to Facilitate Resolution of Subrogation Claims' (1989), 23Vol.,1No., American Bar Association,p.272

⁸⁷ Ibid

Under political risk program, it provides risks of expropriation, currency inconvertibility, and⁸⁸ political violence (such as war, revolution, insurrection, civil strife, rebellion, civil war, vandalism, sabotage, strikes, and riots)⁸⁹.

2.2.2.2. MULTILATERAL INVESTMENT GUARANTEE SCHEME

Despite the importance of national investment guarantee agencies, there are also some multilateral investment guarantee options as one method of guaranteeing foreign investments. These are regional institutions or, an international multilateral institution undertakes to insure foreign investments against the noncommercial risks⁹⁰. As national investment guarantee programs they assume more risks than private insurers and not driven by commercial concerns⁹¹. The major multilateral investment insurance institutions are: Multilateral Investment Guarantee Agency (MIGA), African Trade Insurance (ATI), Islamic Corporation for Insurance of Investment and Export Credit (ICIEC), The Arab Investment and Export Credit Guarantee Corporation (Dhaman)⁹², the Inter-American Development Bank, the Asian and African Development Bank⁹³ and etc.

There are various international and regional multilateral investment guarantee institutions that have a good experience in political risk insurance. However it is very difficult to discuss all experiences at a time. Therefore I have chosen three institutions one from international institution with long time experience that is Multilateral Investment Guarantee Agency (MIGA). It has a long period of experience and well developed guarantee scheme. It is the largest multilateral political risk insurance provider in developing economies. And it has a comparative advantage in its international experience in guaranteeing political risks including political violence risks.

⁸⁸ Ibid 274

⁸⁹ MIGA WIPR Report, The Political Risk Insurance Industry, (2010), Chapter 3three, 56.

⁹⁰ S El-Naggar (n 69) 102

⁹¹ HMayer (n 78) 12

⁹² MIGA WIPR Report (n89) 55

⁹³ HMayer (n 78) 11

The other two regional institutions are African Trade Insurance Agency (ATI) and The Arab Investment and Export Credit Guarantee Corporation (AIECGC).ATI is one of a regional multilateral institution providing political risk and related insurance in Africa in order to reduce the political risks and costs of doing business in Africa. Whereas AIECGC has a good experience that can be lesson in investment guarantee system. Below we will discuss each of them.

2.2.2.2.1. AFRICAN TRADE INSURANCE AGENCY (ATI)

It was established in 2001as a risk mitigation tool for credit and political risks in its member countries⁹⁴. ATI has the purpose, among others, to attract investments and facilitate trade in Africa by removing political and credit risk. It provides export credit insurance, political risk insurance, investment insurance and other financial products⁹⁵.

Regarding political risks it insures against *Expropriation of assets, Currency inconvertibility, Damage or business interruption due to war or civil disturbances, Contract breach or default on an arbitration award by a host government, Non-payment by a host government/public institution, Unilateral cancellation of operating license or contract, Refused reimbursement for a performance, bid or other pre-paid project bond, and Trade embargoes or sanctions imposed by the Security Council of the UN*⁹⁶. Till 2018 it insures an average of 1% of the member countries' GDP per annum, and it has a size of coverage up to USD 146 million⁹⁷. It has 15 members including Ethiopia, the African Development Bank and UK Export Finance, and works with its key partners (such as banks, investment corporations, reinsurers, and donors)⁹⁸.

The agency recognized equity investment or companies and medium- to long-term infrastructure loans as are eligible investments. However, such investments must be located minimum of in one of the member countries⁹⁹.

⁹⁴ <<https://newafricanmagazine.com/12505/>> Accessed: 24-02-2020.

⁹⁵ <<https://www.devex.com/organizations/african-trade-insurance-agency-ati-38653>> Accessed: 12-03-2020.

⁹⁶ <<http://www.ati-aca.org/our-solutions/our-products/investment-insurance/investment-insurance-facts/>>Accessed: 12-03-2020.

⁹⁷ Ibid

⁹⁸ <https://www.devex.com> (n95)

⁹⁹ <http://www.ati-aca.org> (n96)

2.2.2.2.2. MULTILATERAL INVESTMENT GUARANTEE AGENCY (MIGA)

Regarding an international investment guarantee scheme, the need of developing country more capital and limited domestic capital as well as the decrease of foreign investment in developing country due to noncommercial or political risks on many projects associated with investments enables the establishment of multilateral investment guarantee agency (here after, MIGA) in 1988; though the concept was traced back to 1948¹⁰⁰. MIGA was formed as a member of World Bank group with the aim of guaranteeing foreign investment against political and noncommercial risks in developing countries for its members and conduct development work, besides the provision of ancillary consultancy services¹⁰¹.

Political risks covered by MIGA are, among other, the risks of currency convertibility and transfer restriction, government expropriation/nationalization, confiscation, breaches of contract, war, revolution or civil strife, terrorism, and the non-honoring of financial obligations¹⁰². And it is the biggest and largest provider of PRI among the multilateral investment insurance institutions.

2.2.2.2.3. THE ARAB INVESTMENT AND EXPORT CREDIT GUARANTEE CORPORATION (AIECGC)

The corporation interchangeably also called as Dhaman¹⁰³. It is an autonomous regional multilateral investment and export guarantee for the Arab world. It accommodates all Arab countries and certain Arab financial institutions as a member of the corporation. It was established in 1974 by twenty-one Arab countries as signed by a multilateral convention¹⁰⁴.

It has the objective of promoting the flow of trade and investments in the Arab countries as well as to enhance the Arab countries knowhow on investment through different ancillary services (i.e. through technical support services to member countries and in issuing intensive researches related to investment concerned with financing and promoting investment)¹⁰⁵.

¹⁰⁰ L. P. Hollywood (84)

¹⁰¹ S El-Naggar (n 69) 104

¹⁰² Ibid

¹⁰³ The Arab Investment and Export Credit Guarantee Corporation Annual Report of 2018, p.1

¹⁰⁴ Ibid

¹⁰⁵ Ibid

As a result, it offers political risk insurance for risks of breach of contract, risk transfer, expropriation and nationalization, and political violence (such as military actions and civil disturbances) to Arab and foreign investments invested in Arab countries; as well as providing non-commercial and commercial risk guarantee to Arab export credit¹⁰⁶. Moreover, AIECGC has its own underwriting policies, types of projects and investments eligible for guarantee, conditions of eligibility, the investment's gestation period, amount of coverage and guarantee premiums¹⁰⁷. It has also succeeded, in building confidence of Arab investors to invest where ever they want in the member countries with no fear of political events that may result in losing the invested capital and its return¹⁰⁸.

2.2.2.3. PRIVATE POLITICAL RISK INSURANCE SCHEME

Political risk insurance issued by private political risk insurer is an efficient source of protection against the related risks of an investment by providing a more stable business and investment environment relating to political risk factors¹⁰⁹. The provision of this type of cover by private insurers emerged from the marine insurance coverage's provided to exporters and shipping lines in the early 1970's and, it has been offered protection against confiscation, expropriation/nationalization of assets, currency inconvertibility, export credit, political violence insurance and etc¹¹⁰. Depending on the risk, it might be long term or short term coverage¹¹¹.

An insurance coverage against Political Violence, among others, includes war, terrorism, and civil Disturbances for losses resulting from the damage of tangible assets or business interruption of both domestic and international investments. Private insurance providers are profit making institutions and offers protection for various risks either for political perils alone or comprehensive nonpayment cover, with more responsive to customer needs for product variations¹¹².

¹⁰⁶ <<https://www.oecd.org/fr/sites/mena/competitivite/ismed-international-financial-institutions.htm>> Accessed: 26-03-2020.

¹⁰⁷ Ibid

¹⁰⁸ <<http://dhaman.net/en/our-products/>> Accessed: 03-03-2020.

¹⁰⁹ R Esseletal.,(n57) 36

¹¹⁰ Douglas A. Paul, 'New Developments in Private Political Risk Insurance and Trade Finance' (1987), 21 Vol., 711.

¹¹¹ <https://content.naic.org/cipr_topics/topic_political_risk_insurance.htm> Accessed: 12-03-2020

¹¹² MIGA WIPR Report (n89)

The private sector insurance is characterized by its independence from government policy decisions and more of a competitive based. As a result, it is more flexible and responsive in underwriting policy and conditions as well as in payment of premium by insurance holders¹¹³. The private insurers, unlike the public and multilateral investment guarantee providers, lack the resources to provide the long-term commitments of programs and are constrained by the need to be profitable¹¹⁴.

Generally, the public and private insurers, subject to the difference in definitions and terminology, commonly offer political risk insurance against expropriation, currency inconvertibility, and political violence, non-honoring of Sovereign Financial Obligations, currency Inconvertibility and Transfer Restrictions, and breach of Contract¹¹⁵.

2.3. THE OBJECTIVES AND ELIGIBILITY TO INVESTMENT GUARANTEE

2.3.1. THE OBJECTIVES OF INVESTMENT GUARANTEE

Motivations driving the public and private investment insurance market are significantly different. This can be reflected in the cover they are able to provide¹¹⁶. Accordingly, various investment guarantee providers have specific objectives depending on their own establishment purposes. As we discussed in the section on sources of investment guarantee schemes there are categories of National and multilateral investment guarantees as well as the private investment insurance providers.

National investment guarantee programs are established with the very purpose of providing a general service to their citizens. They have the objective to promote their economy and protect an investment outside the investor's country, instead of generating profits as a basic objective. They fill the gaps where private sector insurers 'are unavailable or incomplete'¹¹⁷. In addition, they have strict mandates from their governments to serve national interests and are bound by foreign policy considerations.

¹¹³ D A. Paul (n110) 712

¹¹⁴ Ibid

¹¹⁵ MIGA WIPR Report (n89) 57

¹¹⁶ Ibid 56

¹¹⁷ Kathryn Gordon (n17)

On the other hand, multilateral investment guarantee providers like MIGA have broad developmental goals like guaranteeing foreign investment against noncommercial risks in developing countries for its members and provision of ancillary consultancy services to all its members¹¹⁸. Similarly, the regional multilateral investment and export credit guarantees providers such as AIECGC, among others, has the main objective of promoting the flow of investments between the member countries by providing investment guarantees against non business risks¹¹⁹. Private providers, however, have the main objective of making profit out of insurance coverage.

In general, public investment insurances main objective is guaranteeing their citizens 'foreign investments against noncommercial risks; and multilateral investment guarantee providers major objectives are, by and large, to promote private investment of their members by providing long term insurance coverage against noncommercial risks¹²⁰. Whereas, private insurance providers' main objective is profit making and more responsive to customer needs for product variations.¹²¹

2.3.2. INVESTOR, INVESTMENT AND RISKS ELIGIBLE FOR GUARANTEE

Multilateral investment guarantees and Publicly-sponsored PRI always have eligibility requirements and sometimes target clients for investors, investment projects and risks.

2.3.2.1. INVESTOR ELIGIBLE FOR GUARANTEE

Most countries that provide political risk insurance or investment guarantees set nationality or other association created under the laws of one of the member-countries as a requirement¹²².

For instance, The Arab Investment and Export Credit Guarantee Corporation (AIECGC) the investor who is eligible for coverage are the national of a member state other than the host country for a natural person; and in case of a juridical person, his shares must be substantially owned by nationals of member states, and his seat of control must be situated in one of the member states¹²³.

¹¹⁸ S El-Naggar (n 69) 104

¹¹⁹ Ibid 105

¹²⁰ MIGA WIPR Report (n89)

¹²¹ Ibid

¹²² E. H. Van Eeghen, 'Multilateral Investment Guarantees, Section of International and Comparative Law Bulletin' (1961), 5Vol.3No., 39.

¹²³ Ibid

The corporation convention also extends its guarantees to firms outside its member states, as far as half of the capital of these firms is owned by Arab¹²⁴ citizen or corporation.

Accordingly, the developed countries like Australia, Austria, France, Netherlands, and Turkey offer coverage for foreign corporations with domestic presence; whereas, Belgium, Canada, Germany, Italy, the United Kingdom and the United States provide political risk cover for the overseas subsidiaries of domestic companies¹²⁵.

2.3.2.2. INVESTMENTS ELIGIBLE FOR GUARANTEE

Most investment guarantee or PRI providers when deciding which investments qualify for coverage they use a variety of assessment criteria: Such as; the project that promote the economic cooperation, *the economic and financial viability of the project; home country impacts (e.g. on domestic employment); host country development impact (e.g. employment; linkages)*¹²⁶.

The programs sometimes identify target clients that they commonly attempt to attract by offering special products¹²⁷. For instance, among the 13 OECD countries 12 of them have special mission for target clients. These target clients are small and/or medium-sized enterprises offering special products stick to their needs¹²⁸.

In the AIECGC guarantees for an investment project is provided to new or the purchase of existing assets and projects in the contracting countries whether equity and portfolio investment or whole ownership of the investment (direct or indirect) for 10 years and 15 years' extension period against noncommercial risks¹²⁹. Arab and non-Arab Investments, and cross-border investments are eligible for guarantee as far as the investment projects are invested or hosted by Arab countries¹³⁰. However, the investor, in order to be eligible for guarantee, must get a prior approval from the government of the host country for both implementation of the investment and its guarantee¹³¹.

¹²⁴ Convention establishing The Arab Investment and Export Credit Guarantee Corporation (2016), Art. 17, p.16,17

¹²⁵ Kathryn Gordon (n17) 98

¹²⁶ Ibid 99

¹²⁷ Ibid

¹²⁸ Ibid

¹²⁹ <<http://dhaman.net/en/our-products/credit-and-political-risks-re-insurance>> Accessed: 08-03-2020.

¹³⁰ Ibid

¹³¹ S El-Naggar (n 69) 107

2.3.2.3. RISKS ELIGIBLE FOR GUARANTEE : -

The AIECGC Convention under Article 18 lays down three general noncommercial risks of category eligible for insurance¹³². These are: expropriation and nationalization, inconvertibility, wars¹³³, and all public civil disturbances (*such as revolutions, coups d'état, insurrections and acts of violence of a public character and politically motivated acts of terrorism and sabotage having the same effect*)¹³⁴.

Accordingly, MIGA on its part provides currency inconvertibility and transfer restriction, expropriation, war and civil disturbance, breach of contract, non-honoring of sovereign financial obligations as noncommercial risks of category eligible for insurance¹³⁵.

From the above noncommercial risks eligible for insurance; Political Risks insured; among others, include: a) currency inconvertibility and transfer restrictions; b) confiscation, expropriation, nationalization; c) political violence; 4) default on obligations such as loans, arbitral claims, and contracts¹³⁶.

Different countries who provide political risk insurance more or less categorize noncommercial risks eligible for insurance in the same manner. One difference that does emerge is terrorism risk in some countries covered separately, however, in many other countries terrorism risk is insured under the coverage of political violence¹³⁷. The detail of what those risks is discussed under section of types of political risks, above.

¹³² Ibid 108

¹³³ Ibid

¹³⁴ Convention (n124) Art. 18 sub 1(d)

¹³⁵ Antonio Barbalho, 'Examining Political Risk Insurance -Risk Mitigation for PPP Projects', Multilateral Investment Guarantee Agency World Bank Group, 11

¹³⁶ Kathryn Gordon (n17) 98

¹³⁷ Ibid

CHAPTER THREE

3. PERFORMANCE OF INVESTMENT SECTOR IN ETHIOPIA AND EXPERIENCE OF SOME COUNTRIES ON POLITICAL RISK GUARANTEE/INSURANCE

3.1. ANALYSIS OF INVESTMENT PERFORMANCE IN ETHIOPIA

Ethiopia, under the FDRE government, after 1990's follows a free market economic policy and thus opens the door to all private investments and attracts foreign direct investment (FDI) into the country in an effort to improve the country's business and investment considerably. Following this policy, the government has privatized many government enterprises and various economic reform as well as a broad investment protection and incentive measures have been taken in many economic sectors.

The government provides various income tax exemption incentives depending on sector and type of investment they engaged in non-discriminatory manner; especially for investors investing on government priority areas¹³⁸. In addition, import duty and export duty exemption, loss carry forward is also provided as per customs laws of the country for investments who can contribute a lot for the development of the national economy¹³⁹.

The government of Ethiopia set sectors such as agriculture, agro-processing and manufacturing as a priority sector since it is believed that they promote national development agenda of the government through export¹⁴⁰, by thus to alleviate unemployment rate of the country. They have also a strategic importance to avert foreign hard currency shortage of the country¹⁴¹.

For instance, when we see investment performance of Ethiopia in the FY 2017/18 period it shows a 231.2% growth up from last year by making 1,550 private projects operational through regional and federal Investment bureaus; which have a total investment capital of Birr 25.9 billion with 190.8% growth annually¹⁴².

They have created 36,214 temporary and 332,003 permanent job opportunities; compared with the previous year performance it shows 270.5% and 1,502.9% growth respectively¹⁴³.

¹³⁸ Ethiopian Investment Commission, 'An investment guide to Ethiopia' (2017), 16.

¹³⁹ Ibid

¹⁴⁰ Ibid 31

¹⁴¹ Ibid

¹⁴² The NBE, Annual Report of 2017/2018, P.95

¹⁴³ Ibid

Out of the total investment projects 54 were foreign that accounts Birr 5.2 billion capital and registering Birr 95.9 million average capital per project, and 1,496 or 96.5% were domestic and have a capital of Birr 20.7 billion or 80 percent of the project having an average capital of Birr 13.8 million per projects¹⁴⁴. This indicates how the domestic investment projects were less capital intensive than foreign projects¹⁴⁵. Investment to GDP ratio in the period has increased to 34.1 percent¹⁴⁶.

In the year 2018/19, Ethiopia as a country registered Birr 9 billion investment capital from 976 private investment projects¹⁴⁷. From these 63 projects were foreign with Birr 1.2 billion capital and has Birr 17.7 million average capital investment; whereas 913 (93.5 %) were domestic with Birr 7.8 billion investment capital and has average capital investment of Birr 8.6 million¹⁴⁸. In effect 22,631 permanents and 10,541 temporary job opportunities created for employees¹⁴⁹. In this fiscal year Investment to GDP ratio has shown 35.2 percent increment¹⁵⁰.

As a whole, over the period of 2014/15 to 2017/18 years at least in average investment performance shows certain growth, however 2018/19 fiscal year performance especially from the performance of 2017/18 fiscal year shows significant decline in all investment particulars. For instance, in terms of number of investment projects declined by 37.0%, in investment capital by 65.4%, in permanent and casual workers job creation by 93.2% and 70.9% respectively¹⁵¹. With respect to Investment to GDP ratio though starting from 2017/18 fiscal year there is an increase but when we see it from 2014/15 up to 2016/17 fiscal year it shows in average 4% decrease.

Regarding domestic-foreign relationship domestic investments are higher in terms of number of projects while foreign investments have higher capital investments or more capital intensive than domestic one.

¹⁴⁴ Ibid

¹⁴⁵ Ibid

¹⁴⁶ Ibid, p.1

¹⁴⁷ The NBE, Annual Report of 2018/2019,P.105

¹⁴⁸ Ibid

¹⁴⁹ Ibid

¹⁵⁰ Ibid, p.1

¹⁵¹ The NBE (n155) 106

3.2. EXPERIENCE OF SOME COUNTRIES ON POLITICAL RISK GUARANTEES

There are countries who have a rich experience in providing investment insurance to their domestic investors that have the purpose to protect their investments, by thus to protect and promote their national economy. Actually the purpose of those political risk guarantee of these selected countries are not for domestic investments (since they have almost no political risk issues internally), instead they provide an investment guarantee to their investments found in developing country like Ethiopia, as there is a high degree of politically related violence's. In Africa it is very difficult to find such experience. I have tried to access literatures written on guarantee against political violence risk for local investments in Africa but it is not accessible. And as I have examined the investment and other related laws of different African countries, despite the prevailing political instability in many parts of the continent, it is not possible to say that there is rule based guarantee for domestic investor's investment against political violence risks.

Therefore, though these selected countries have no similar approach in governing investment guarantee with Ethiopia, since the coverage they provide already applies in developing country or in Africa and due to accessibility reason I have chosen three countries which have a well-developed investment guarantee scheme and who have a huge economy that is U.S.A, Germany and Canada as discussed below.

3.2.1. U.S INTERNATIONAL DEVELOPMENT FINANCE CORPORATION (DFC)

As of 20 December 2019, US Overseas Private Investment guarantee has been led by OPIC investment insurance agency¹⁵². It was established as an independent governmental agency in 1971 following the report of the International Private Investment Advisory Council (IPIAC)¹⁵³.

The report has states the need for the establishment of the Overseas Private Investment guarantee Corporation with the role of the government to encourage American private investment which is the major generator of economic development¹⁵⁴, and also the goal to promote the development

¹⁵² <https://en.wikipedia.org/wiki/Overseas_Private_Investment_Corporation> accessed:29-02-2020.

¹⁵³ Ibid

¹⁵⁴ Ibid

assistance objectives of the government as well as to facilitate private investment in less-developed countries with full faith and credit of the U.S government¹⁵⁵.

This program other than investment insurance it also provides Loans and Financial Guarantees, Investment Fund Guarantees, Contractor Bid, Performance, and Advance Payment Guarantees, Contractual Disputes Coverage, Assets and Business Income Cover as well as Customs Bond Coverage's¹⁵⁶.

The program provides guarantee for political risks like Currency Inconvertibility, Expropriation and political violence¹⁵⁷ in above 160 countries. It insures investment projects in developing countries and emerging markets. As per the program all OECD Countries are ineligible¹⁵⁸. Among others, in order to qualify for the guarantee, the investor must have 25% or more voting share ownership in the entity as well as a U.S. owned/controlled investor plus the project must not have a negative impact on U.S. labor and jobs same to the environment¹⁵⁹. In addition, the investment project should be registered before investment made, developmental, new, or for expansion, and in eligible countries¹⁶⁰. U.S. small business who owns a minimum of 25% of the overseas project has guaranteed up to 65% of the total project cost¹⁶¹. OPIC generally covers all political risks or selected risks for the maximum term of 20 years and for maximum of 90% of the insured project. For initial investment it is extended to the maximum of 270 % of the investment project¹⁶².

OPIC had launched Connect Africa Initiative in July 2018 which aimed to fund more projects especially in Sub-Saharan Africa countries in the infrastructure, technology, and energy investments to support economic growth and regional security of the continent¹⁶³.

For instance, it grants loan through the initiative for some sub-Saharan African countries; such as Botswana, Gambia, Sierra Leone, The Democratic Republic of the Congo and Uganda for the development of different investment projects in infrastructure, mining, and power sector¹⁶⁴.

¹⁵⁵ Ibid

¹⁵⁶ J S. Diaconis (n86)

¹⁵⁷ Trade and Investment Insurance System in Individual Countries: Trade and Investment Insurance System in the U.S.A, Section 3, Chapter I,14.

¹⁵⁸ Ibid

¹⁵⁹ Ibid

¹⁶⁰ Ibid

¹⁶¹ <https://en.wikipedia.org> (n165).

¹⁶² Trade and Investment Insurance System in Individual Countries (n167) 15

¹⁶³ <https://en.wikipedia.org/wiki/Overseas_Private_Investment> accessed: 30-02-2020.

¹⁶⁴ Ibid

However, with all of its success in bringing development of U.S. businesses both at home and abroad, OPIC was dissolved on 20 December 2019 and merged with the Development Credit Authority (DCA) of the United States Agency for International Development and forms the U.S. International Development Finance Corporation (DFC)¹⁶⁵.

DFC was established by the bipartisan Better Utilization of Investments Leading to Development (BUILD) Act of 2018, and signed on October 5, 2018 by Donald Trump, US President; In order to consolidate and modernize OPIC and DCA service as well as to insert new financial tools with an increased investment cap of \$60 billion¹⁶⁶.

The main purpose however is to make US investors to deeply engage in the conventional government-funded aid projects in developing countries, and to compete with state-led overseas investments (especially China's growing investments abroad) in the third world countries¹⁶⁷.

Accordingly, the major changes made by DFC, among other, it include: the doubling of the investment cap to \$60 billion, addition of new financial tools (such as equity financing, technical assistance, and feasibility studies), the ability to use local currency loans and first-loss guarantees to reduce risk, expanding partnership opportunities with foreign investors as a preference rather than as a requirement, prioritization of low- and lower-middle income countries (such as Latin America, Sub-Saharan Africa, the Indo-Pacific, and emerging markets), a seven-year authorization, enhanced alignment with U.S. foreign policy in close coordination with the U.S. Department of State¹⁶⁸.

DFC is also committed to continuing other OPIC's services under this new corporation scheme including generating income for debt reduction, and Connect Africa Initiative announced under OPIC¹⁶⁹.

¹⁶⁵ <https://en.wikipedia.org/wiki/Overseas_Private_Investment_Corporation> accessed: 02-03-2020.

¹⁶⁶ https://en.wikipedia.org/wiki/U.S._International_Development_Finance_Corporation#Political_Risk_Insurance accessed: 07-03-2020

¹⁶⁷ Ibid

¹⁶⁸ Ibid

¹⁶⁹ Ibid

3.2.2. GERMAN INVESTMENT INSURANCE

The service of public investment insurance against political risks in Germany began in the 1960's; and political risks such as: expropriation, nationalization, breach of contract by importing country government, political violence (war, insurrection and other armed conflicts), transfer risk, and payment embargoes coverage has been given¹⁷⁰.

However, the investment, in order to be eligible for guarantee, it must be located in Germany, it must be developmental (i.e. an investment which has a positive effect on the host country either through transfer of knowledge or capital etc) and reflect German interest in its execution as well as economically viable, the project should be environment friendly, the investment has to be for new plant and equipment (but it must be before the investment is started), or for expansion of the existing project¹⁷¹.

Moreover, bilateral investment treaties with the host state are mandatory though it is not sole criteria. This is especially true in case the host country is in a difficult political and economic situation¹⁷².The areas of extractive industries (like oil or natural gas), service sector (like financial leasing), energy, vehicle construction and infrastructure are the main government guarantee priority areas¹⁷³.The coverage extends up to fifteen years and for additional period of five years without the limitation on investment value guaranteed.

Regarding type investments exploration and production sharing agreements (EPSA), endowment capital, quasi participation loans and rights, and equity investments are eligible for the guarantee¹⁷⁴. An investment of acquisition of shares in a company is not eligible for the coverage¹⁷⁵.

¹⁷⁰ Deutsche Bundesbank, 'Insurance of outward FDI in Germany', Information note prepared for the CGFS working group FDI in the financial sector (2003), J2-2, 1-2

¹⁷¹ Heike Drillisch and Nicola Sekler, Investment Guarantees: Concept, Critics and Alternatives(World Economy, Ecology & Development Assoc. (WEED,Berlin2004) 10

¹⁷² H Drillisch et al., (n182) 5

¹⁷³ Ibid 7

¹⁷⁴ Deutsche Bundesbank (n181) 2

¹⁷⁵ Ibid

3.2.3. EXPORT DEVELOPMENT CANADA (EDC)

Canada's Export and Investment Insurance to date led by Export Development Corporation (E.D.C.) by Export Development Act (EDA); and it is an independent or financially self-sustaining corporation working with a commercial principle¹⁷⁶. Thus make profit through insurance coverage premium and fees as well as loan interests¹⁷⁷. It has the main goal of helping domestic investors' investment and exports as well as enhancing economic growth of Canada¹⁷⁸.

It offers political risk insurance, guarantees, export credit insurance, financial and risk management services¹⁷⁹. It was first established by Export Credits Insurance Act of Canada in 1944 and creates Export Credits Insurance Corporation (ECIC) and then the Act changed to Export Development Act in 1969¹⁸⁰. In 1993 the act further modified to include other services like working capital guarantees, domestic insurance, and equity¹⁸¹.

It also offers lending services as well as guarantees¹⁸². EDC provides coverage for investments insurance against political risks such as expropriation, transfer of funds, repossession, government refusal of payment, and political violence (like war, insurrection, revolution and related disturbances) up to the period of five years for assets with a coverage of 90% of the loss incurred while 10 years for equity investment having a coverage of 90% of incurred loss¹⁸³.

Regarding eligibility, investments that are eligible for guarantee, among others, include physical assets held overseas, direct investment in foreign subsidiary or with joint venture, loans guaranteed by sovereign borrowers or issued directly to sovereign borrowers, and loans issued to a joint venture or foreign subsidiary that are beneficial to Canada; whereas eligible investors are private sector companies, and lending institutions¹⁸⁴. It has contributed more than 4% of Canada's GDP¹⁸⁵.

¹⁷⁶ Trade and Investment Insurance System in Individual Countries (n167) 17

¹⁷⁷ Ibid

¹⁷⁸ <<https://rmid-oecd.asean.org/export-development-canada-edc/>> accessed: 22-03-2020

¹⁷⁹ Ibid

¹⁸⁰ Trade and Investment Insurance System in Individual Countries (n167) 17

¹⁸¹ Ibid

¹⁸² Ibid 18

¹⁸³ <<https://rmid-oecd.asean.org/export-development-canada-edc/>> accessed: 09-03-2020

¹⁸⁴ <<https://rmid-oecd.asean.org/export-development-canada-edc/>> accessed: 10-03-2020

¹⁸⁵ EDC, EDC at Glance, (2015), Highlight performance of 2014, p.9

CHAPTER FOUR

4. POLITICAL RISK INSURANCE COVERAGE BY ETHIOPIAN INSURERS AND THE LEGAL FRAME WORK OF POLITICAL RISK GUARANTEE IN ETHIOPIA

4.1. POLITICAL RISK INSURANCE COVERAGE BY ETHIOPIAN INSURERS

In Ethiopia, by the NBE establishment (as Amended) Proc. No. 591/2008, financial institutions including insurance companies are licensed and supervised by NBE¹⁸⁶. In effect NBE issued various directives, guidelines and manuals to regulate and supervise the activity of Insurance companies of Ethiopia. Insurance business in Ethiopia has been a sector opened only for Ethiopian nationals until Insurance business (Amendment) Proc. No. 1163/2019 is promulgated and come into force on 9 January 2020. Under sub article 1 of article 10 of this amended proclamation, a foreign national of Ethiopian origin or organization or jointly owned by foreign nationals of Ethiopian origin are allowed to acquire the share of Ethiopian insurer or to open a new insurance company¹⁸⁷.

As of December 2019, sixteen privately owned insurance companies and one state owned Insurance Corporation are operating in Ethiopia with a total number of 568 branches all over the country. Among them, 84.5 percent of the total branches were private insurers while the rest are branches of a public enterprise¹⁸⁸. From all, 53.7 percent of branches are located in Addis Ababa¹⁸⁹. Except some insurance company, most of them are engaged in both general insurance and long term (life) insurance businesses. Ethiopian insurance sector produced a gross written premium of birr 9.1 billion from both general and long term (life) class of insurance businesses¹⁹⁰. With respect to total premium portfolio, in the above period, the life insurance class of business takes birr 0.5 billion while birr 8.6 is accounted for general insurance business¹⁹¹.

¹⁸⁶ The National Bank of Ethiopia Establishment (as Amended) Proclamation, Proc. No. 591/2008, Federal Negarit Gazeta, 14th Year No. 50, Art. 5 (7)

¹⁸⁷ Insurance business (as Amended) Proclamation, Proc. No. 1163/2019, Federal Negarit Gazeta, 26th Year No. 6, Art.10 (1)

¹⁸⁸ The NBE (n160) 54

¹⁸⁹ Ibid

¹⁹⁰ Tsehay Insurance S.C., Annual Report of 2018/2019,P.4

¹⁹¹ Ibid

The total capital of all insurers increased by 49.5 percent and becomes Birr 8.2 billion¹⁹². Out of the total capital, 68.3 percent was the share of private insurers while 31.7 percent accounts for the public insurer, Ethiopian Insurance Company (EIC)¹⁹³. However, in Ethiopia the insurance sector is still at infant stage; its contribution to GDP is still below 1% having limited diversity of insurance products¹⁹⁴.

Insurance is a way of protecting oneself from financial loss¹⁹⁵. It is a kind of risk management in which one pays a premium (fee) to the insurer (which can be the state, a bank, or any other designated financial institution) in order to receive a stipulated payment in the event of losing whatever has been insured, due to an accident, or any other event in which the insured (policyholder) does not have a hand¹⁹⁶. Under Ethiopian law, there are three types of insurances; Insurance against damages, Insurance of liability for damages, and Insurance of persons¹⁹⁷.

In terms of products of insurance coverage, Ethiopian insurance companies render different types of insurance products in the general (non-life insurance) and long term (life and related insurance) insurance business products which have different policy terms and conditions. The major general insurance business policies that Ethiopian insurers cover are: Property Insurance, Bonds, and Liability Insurances. These covers, among others include Motor Insurance, Marine Insurance, Pecuniary Insurance, and Engineering Insurance products with a number of standard insurance policies under each type of cover. Among the many types of insurance, in this paper, we are specifically looking at Political risk insurance coverage in Ethiopia.

Ethiopian insurers offer Political risk insurance coverage under Political Violence and Terrorism Insurance Standard Policy (PVT).

¹⁹² Ibid

¹⁹³ Ibid

¹⁹⁴ Ibid

¹⁹⁵ Richie B., Types of Insurance in Ethiopia (June, 2019).

¹⁹⁶ Ibid

¹⁹⁷ Ibid

Every investment is greatly influenced by political factors of the country depending on the unique and specific characteristics of investment; (i.e. the level of investment, mode of investment and risk premium requirements¹⁹⁸ where it operates which increase exposure to risks¹⁹⁹.

Political violence causes loss of life and mass destruction of assets of an investment which in turn entails business interruptions of investment²⁰⁰. In Ethiopia the eruption of politically motivated violence in different parts of the country having an adverse human and economic damage coupled with the potential threats is a pushing factor for a domestic investor to have a protection²⁰¹. As a result, investors look to insurance coverage for political risks to manage the exposure and to conduct their business profitably without incurring unnecessary risk. Political risk insurance is thus one mechanism or investment protection system, for a domestic investor, which allows managing risks, responding to investment destruction and business interruptions as a result of political violence²⁰².

Accordingly, most Ethiopian insurance companies offers Political Violence and Terrorism Insurance Standard Policy (PVT) for risks of: act of Terrorism; sabotage; riots, strike and/or civil commotion; malicious damage; insurrection, revolution or rebellion; mutiny and/or coup d'état²⁰³; which is developed by their respective reinsurers and prepared by insurance companies with minor customization and then to be approved by NBE²⁰⁴.

Thus, these PVT insurance coverage not only prevents the investor from suffering material damages and allows him to reinvest the capital as soon as possible but it has a significant role in protecting and promoting the flow of investment as a whole and in building confidence of domestic investors to invest where ever they want in the country as well as mitigating risks²⁰⁵.

¹⁹⁸ Guy Leopold K. (50) 22

¹⁹⁹ Alba Kruja et al (21) 81

²⁰⁰ Majeshiya Wazee, Facts about...., p. 1,...<<https://library.fes.de/pdf-files/bueros/kenia/01399.pdf>> accessed on 3 January 2020

²⁰¹ Tsegaye(n 2)

²⁰² Ibid

²⁰³ Tsehay Insurance (S.C.) and Nib Insurance Company (S.C.),Political Violence &Terrorism Insurance Policy.

²⁰⁴ Interview with Ato Daniel Girma, Division Manager, Reinsurance Division, and Indalkachew Zelekew, Department Manager, Reinsurance and Underwriting Department Tsehay Insurance (S.C.), Interviewed on April 3, 2020.

²⁰⁵ Charlotte-Sophie Picker (27) 9

But, many of PVT insurance offered by Ethiopian insurers exclude risks of: war and civil war, and loss or damage directly or indirectly caused by seizure, confiscation, nationalization or expropriation²⁰⁶.

However, insurers offer coverage for these excluded risks on a stand-alone basis that tailored to meet individual customer's specific demands (many of them called it the "*bespoke*" or *tailor made insurance*)²⁰⁷ on case by case bases as these damages are explicitly excluded under the relevant insurance policies²⁰⁸.

The rationale behind the exclusion is most reinsurance treaties (which is the source of insurance policy standards of insurance companies) provides a political risks exclusion clause of war and civil war including invasion, act of foreign enemy, and hostilities or warlike operations, as well as nationalization or expropriation²⁰⁹. Thus, sometimes due to the discrepancy of direct insurance policy wordings with reinsurance contracts led to a serious dispute between the insurers and their insured in case of risk materialization, In the interpretation of events as a political risk²¹⁰. Ethiopian insurers' view the risk of political violence as too high, thus they shy away from underwriting PVT insurance cover, except for high profile and big customers²¹¹

That is why most insurers in Ethiopia put in their policy territorial limit condition in order to avoid high risk areas²¹². The policy has high deductions (excess) and customers pay higher (expensive) premium comparing with other types of insurance products²¹³. Sometimes there is misunderstanding between insurers and customers in case of risk materialization, in the interpretation of events as a political violence risk²¹⁴. She added that there needs to be local expertise and capacity.

²⁰⁶Interview with Ato Tibebe Tesfaye, Chief Executive Officer, Global Insurance (S.C.), and Indalkachew Zelekew, Department Manager, Reinsurance and Underwriting Department Tsehay Insurance (S.C.), Interviewed on April 10, 2020.

²⁰⁷ Kathryn Gordon (17) 103

²⁰⁸Interview with Ato Daniel Girma, Division Manager, Reinsurance Division, and Indalkachew Zelekew, Department Manager, Reinsurance and Underwriting Department Tsehay Insurance (S.C.), Interviewed on April 10, 2020.

²⁰⁹Interview with Ato Daniel Girma, Division Manager, Reinsurance Division, Tsehay Insurance (S.C.), Interviewed on April 10, 2020.

²¹⁰ African Reinsurance Corporation, *The African Reinsurer*, 26th Edn., (2012), 7

²¹¹ Interview with W/ro Selamawit Yonas, Division Manager, Claims Department, United Insurance Company (S.C.), Interviewed on February 11, 2020.

²¹² Ibid

²¹³ Ibid

²¹⁴ Ibid

Therefore according to W/ro Selamawit the aforementioned issues are significant gaps that should be addressed.

In addition, this insurance policy indemnifies the insured only for ascertained net physical loss or property damage, occurring within the policy period up to the policy limit, directly caused by one or more of the above risks²¹⁵.

Any form of consequential loss or damage excluded from insurance coverage²¹⁶. Thus, not only limited to cover certain risks rather than full political violence risks, but also, the coverage of insurance does not extend to loss of business interruption caused by one or more those perils. From investors' perspective, most domestic investors are not interested to enter political violence insurance for their investment. Because they' are unfamiliar with such insurance cover and view this type of cover as it's not important for them. Domestic investors also disinterested to buy PVT insurance cover because of its short term tenure²¹⁷.

Insurance companies have a problem on ensuring quick and quality services to their clients in case of claim happen²¹⁸. The overall burden of the claim process falls up on the clients; It has a lengthy and bureaucratic claim process and claim settlements²¹⁹. This in effect will create client's dissatisfaction and hardship.

Moreover, insurance companies most of the time selective to insurance products that they offer to their clients, among others, depending on the loss ratio of each class of business or experience of the particular risk²²⁰. Plus, policy words are not easy to understand for policyholders and the general public.

Smaller and domestic investors in developing nations having emerging market investment like Ethiopia are less accustomed to purchasing PVT insurance cover despite the high political risk challenges and global demands for PVT cover increases²²¹.

²¹⁵ Tsehay Insurance (S.C.) and Nib Insurance Company (S.C.) (214)217, Interview with Ato Tibebe Tesfaye, Chief Executive Officer, Global Insurance (S.C.), and Indalkachew Zelekew, Department Manager, Reinsurance and Underwriting Department Tsehay Insurance (S.C.), Interviewed on April 10, 2020.

²¹⁶ Ibid

²¹⁷ Interview with W/ro Selamawit Yonas, Division Manager, Claims Department, United Insurance Company (S.C.), Interviewed on February 11, 2020.

²¹⁸ Temesgen Azize, Challenges and Opportunities of Insurance Business in Ethiopia, (2015), Thesis MBA , 26.

²¹⁹ Ibid

²²⁰ Ibid

²²¹ Hannah Mayer (78) 8

The availability of PVT cover remains low and there is no regulatory requirement to purchase PVT insurance for both investors and debt-holders, such as banks²²². In Ethiopia, the sector is still undercapitalized and weak. For instance, Ethiopian Insurance sector contribution to GDP is less than one percent²²³.

4.2. THE LEGAL FRAME WORK OF POLITICAL RISK GUARANTEE SYSTEM IN ETHIOPIA

Investments made in developing countries like Ethiopia has been susceptible to different kinds of political and economic volatility and in effect prone to different kinds of political risks. As most investments are established for a long period of time with a very expensive investment establishment and operation costs it is difficult to dispose the investment asset whenever the economic interest is threatened by the political instabilities. There by strong and sustainable regulatory framework which provides adequate protection and guarantee to investors is required. And it has a paramount importance for the economic growth of any nation as well as a particular essentiality for Ethiopia, as it's a developing country vulnerable to various political risks.

On the contrary, the lack of effective regulation of investment guarantee breeds insecurity and impede investor confidence to undertake long term investment decisions in fixed assets²²⁴. According to the country watch website to the world, Ethiopia's country overview of 2019, Ethiopia's political risk index rated as 4 (four) out of 10 (ten)²²⁵. It shows the correlation between political risks and economic development as well as the low level political stability of the country or relatively a higher level of political risk country. The political risk index rated based on, among others, the criteria of: the country's political stability and representation, democratic accountability, jurisprudence and regulatory transparency, economic risk, security and crime, risk of conflict, human development, and investment considerations²²⁶. The document defined Political risk index as it is a proprietary index by measuring the level of risk to governments, investors, and corporations by referring to synergy of political and economic factors²²⁷.

²²²Ibid

²²³ <https://tradingeconomics.com/ethiopia/insurance-company-assets-to-gdp-percent-wb-data.html>

²²⁴ C.M. Lakpini, 'Political Risks and Protection of Investors under Nigerian Law' (2018), Bowen University

²²⁵ <<https://countrywatch.com/Content/pdfs/reviews/B38TZ965.01c.pdf>> 27

²²⁶Ibid

²²⁷Ibid

Regulatory frame work for investor's protection and guarantee mainly refers to those provisions of law which protects an investor against political risks such as political violence, currency risk, breach of state contracts, and expropriation²²⁸. Most countries in order to encourage investments have enacted laws which provide protection to investors against political risk since the amount of investment which the economy attracts taken as it's the indicator of economic growth²²⁹.

Accordingly in Ethiopia there are various provisions contained in different laws of the country that directly or indirectly dealing with political risks, within its legal framework, which attempts to provide protection to both domestic and foreign investors. Thus in this chapter it will be examined Ethiopian law particularly the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) (Proc. No. 1/1995, here after 'the Constitution'), the Ethiopian Investment Proclamation (Proc. No. 1180/2020), and Expropriation law (Proc. No. 1161/2019), to determine especially the extent to which domestic investors investments are protected from political risks under Ethiopian law.

Let's see some of the guarantee and protections provided to investors in the domestic legislations of Ethiopia.

4.2.1. THE FDRE CONSTITUTION

The Constitution confers on every citizen of Ethiopia has the right to acquire and own private property anywhere in the country²³⁰. Private property further defined in the constitution to mean any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common²³¹.

Furthermore, the constitution guarantees every Ethiopian citizen to have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital²³².

²²⁸ C.M. Lakpini (228)

²²⁹ NwoguTochi, 'The Legal Framework For The Protection of Investments in Nigeria in Comparison in China' (2008) LL.M thesis, Central European University, Budapest

²³⁰ The Constitution of the Federal Democratic Republic of Ethiopia Proclamation, Proc. No. 1/1995, Federal Negarit Gazeta, 1st Year No.16, Art.40 (1).

²³¹ Ibid, Art. 40 (2)

²³² Ibid, Art. 40(7)

This ownership right includes the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it²³³.

In this provision the Constitution, though not expressly, excludes foreigners from the right to own immovable property as it restricts the right of ownership to citizens of Ethiopia. Actually this intention of the law is expressly provided by other substantive laws of the country too (see articles 390 to 393 of our Ethiopian Civil Code). However, exceptionally a foreign investor or a foreign national treated as domestic investor shall have the right to own immovable property necessary for his investment and one dwelling house but excluding land²³⁴. The Constitution stated that the particulars of these general features of private property will be specified by law.

Thus, FDRE constitution provides guarantees of the ownership right of private property to acquire, to use, to dispose of it as prescribed by the law and ensure the private investors use of land as well as guarantee against expropriation except for the public purpose subject to compensation in advance to the value of the property²³⁵. However, the ownership of land and all natural resources is to the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange²³⁶.

There are three known definition of land, that is, natural, artificial, and statutory²³⁷. The natural definition refers the solid part of earth where the plants grow²³⁸. Artificial definition of land refers to the solid part of earth surface and everything that is permanently affixed to the soil²³⁹. And statutory definition includes the earth and everything that is permanently affixed to it but exclude minerals²⁴⁰. The Ethiopian constitution seems to follow the natural sense of definition of land. In addition, the words “labour” and “permanent improvements” in the Constitution shows that the definition of land is in terms of capital or labour such as the right to use land, lease right, etc. rather than the right to sale or exchange which is legally prohibited in Ethiopia²⁴¹.

²³³ Ibid

²³⁴ Investment Proclamation (31) Art.18

²³⁵ The Constitution (234) Art. 8

²³⁶ Ibid, Art 40(3)

²³⁷ Derik- Ferdinand O.I.and Okolo P.O., ‘The Concept of Dualism of Title to Land in Nigeria’ (2015) 5 (2) American International Journal of Contemporary Research, 179

²³⁸ Ibid

²³⁹ Ibid

²⁴⁰ ibid

²⁴¹ Elias N. Stebek, Muradu Abdo and Hailu Burayu, ‘Property Rights Protection and Private Sector Development in Ethiopia’ (2014), 8, Private Sector Development Hub, Ethiopian Chamber of Commerce and Sectoral Associations.

In sum, as per the constitution, expropriation of any sort of private property is compensable, regardless of whether it is movable or immovable or tangible or intangible. But this compensation for expropriation is allowed only to the extent of loss of the labor or capital value that is added to lawfully possessed land that has been expropriated not for expropriated land²⁴². In other word compensated for the property on the land, not for the land itself²⁴³.

The Constitution also guarantees right of access to justice. Thus everyone (whether Ethiopian citizen or a foreigner) has the right to bring a justicable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power²⁴⁴. So it vests in the Courts the power of determining disputes between private person and the government in respect of the civil rights and obligations of such private persons. Therefore by virtue of this provision, the Ethiopian Courts have the powers to protect private persons from any action of government which affects the civil rights and obligations of such persons²⁴⁵.The Constitution declares establishment of an independent judiciary (Article 78/1), and the judicial powers, both at Federal and State levels, are vested in the courts (Article 79).

4.2.2. ETHIOPIAN INVESTMENT PROCLAMATION

In various investments policy documents, like industrial development policy and strategy that are dealing with investment recognized the private sector investment as an engine of the country's economy in stimulating economic growth, creating employment opportunity and in reducing poverty²⁴⁶. It also discusses the main role that the domestic investors to play²⁴⁷.

The investment proclamation defines domestic investors as an Ethiopian national; An Enterprise incorporated in Ethiopia and wholly owned by Ethiopian National; The Government; a Public Enterprise; A cooperative society established as per the relevant law; A Foreign National or Foreign Enterprise treated as domestic investor as per the relevant law or international treaty ratified by Ethiopia; and

²⁴² Ibid, 26, 27

²⁴³ Ibid

²⁴⁴ The Constitution (234) Art. 37 (1)

²⁴⁵ Ibid

²⁴⁶ Taye A., 'Digest of Ethiopia's National policies, Strategies and Programs' (2010). Forum for Social Studies, Addis Ababa, Ethiopia.

²⁴⁷ Ibid

An Enterprise incorporated in Ethiopia jointly between any investor specified as Ethiopian national and enterprise, government, public enterprises and cooperatives as well as a foreign national/enterprise treated as domestic investor; who has invested capital in Ethiopia²⁴⁸.

This new proclamation unlike the previous one has an expanded definition of domestic investor that includes not only foreign nationals treated as domestic investors under separate laws but also extended to foreign enterprises accorded a domestic investor status²⁴⁹. The law when it says a foreign national or foreign enterprise treated as domestic investor as per the relevant law it refers to different domestic legislations related to them. For example, as per a proclamation to Provide Foreign Nationals of Ethiopian Origin with Certain Rights to be exercised in their Country of Origin (Proclamation no. 270/2002, sub article 5 of article 5) foreign nationals of Ethiopian origin also be treated as a domestic investor. Currently also a foreign national of Ethiopian origin or organizations are allowed to invest in the financial sector (banks, insurance companies and micro finance institutions) of Ethiopia, a sector which previously allowed only for investors of Ethiopian national. Furthermore, according to Insurance business (Amendment) proclamation (Proc. No. 1163/2019, sub article 1 of article 10) a foreign national of Ethiopian origin or organization or jointly owned by foreign nationals of Ethiopian origin are allowed to acquire the share of Ethiopian insurer or to open a new insurance company as like Ethiopian national investors.

The investment proclamation also provides protection for both domestic and foreign investors. The proclamation in terms of investor's protection provides four guarantees to Investors which are:

4.2.2.1. GUARANTEE AGAINST EXPROPRIATION

Every state for economic, political, social or other reasons has the right under international law to take the property held by nationals or foreigners through expropriation or nationalization²⁵⁰. It is an inherent right of any sovereign state²⁵¹.

²⁴⁸ Investment Proclamation (31) Art. 2(5)

²⁴⁹ Ibid

²⁵⁰ UNCTAD (United Nations Conference on Trade and Development), International Investment Agreements II (2013), Series, United Nations, p.1.

²⁵¹ Warchuk P.A., 'Thinking compensation for expropriation' (2015) 48 UBC Law Review 655 at 657

However, the taking of property is significant risk that any investor may face in a country in its investment. Thus guarantee against expropriation or nationalization has much importance in alleviating political risks an investment.

Guarantee against expropriation of property or investment is one of an investment protection mechanism²⁵². Accordingly, Ethiopian investment proclamation, grants guarantee against expropriation to any investment²⁵³. The investment expropriated only for the purpose of public interest, up on due process of law subject to adequate compensation in advance by taking into account the market value of the property²⁵⁴. Thus for expropriation to be legal, the conditions that the property must have been taken for a public purpose, must not be discriminatory, must be done in accordance with due process, and must be accompanied by compensation should be satisfied. If any of these conditions are not fulfilled, then the expropriation will be illegal²⁵⁵ and which gives rise to responsibility of the state both under international and domestic law²⁵⁶.

Adequate compensation implies a compensation which is exactly equivalent to the value of the investment taken²⁵⁷. And in the event of any dispute with government regards to the investment the proclamation gives the investor the right of access to justice by judicial bodies or through arbitration (particularly for foreign investors)²⁵⁸.

This proclamation, unlike the previous repealed proclamation, does not provide guarantee against nationalization. The repealed investment proclamation provides the interchangeably use of the word “nationalization” with the word “expropriation” and it is similar effect on compensation²⁵⁹. According to w/t Meron Ameha the new investment proclamation seems to makes a difference by leaving the word “nationalization” in order to avoid redundancy since both words have the same meaning in international legal instruments and in Ethiopian situation²⁶⁰.

²⁵² Dreyer Swart, ‘Legal Protection of Foreign Investment in South Africa’ (2016), LLM Thesis, Faculty of Law, University of Pretoria, 27

²⁵³ Investment Proclamation (31) Art. 19

²⁵⁴ Ibid

²⁵⁵ SrishtiJha, ‘Expropriation: A crisis in International Law’ 13 (2001) Student Advoc. 123 at 124

²⁵⁶ Kolo A., ‘Managing Post-Privatisation Political and Regulatory Risks in Nigeria- a Law and Policy Perspective’ (1999), op. cit., 49

²⁵⁷ Ekwueme K.U.K., ‘Nigeria’s Principal Investment Laws In The Context of International Law And Practice’ (2005), 49 journal of African Law, 191.

²⁵⁸ Investment Proclamation (31) Art. 25 - 28

²⁵⁹ Investment Proclamation, Proc. No. 769/2012, Federal Negarit Gazeta, 18th Year No. 63, Art. 25 (3)

²⁶⁰ Interview with W/t Meron Ameha, Senior Legal Officer, Ethiopian Investment Commission, Interviewed on April 27, 2020.

Though the term expropriation and nationalization are often used interchangeably, they do not have the same meaning.

Expropriation refers to property-specific or enterprise-specific taking where the property rights remain with the State or are transferred by the State to other economic operators²⁶¹, while nationalization refers to massive or large-scale takings of private property in all economic sectors or on an industry or sector –specific basis²⁶².

4.2.2.2. GUARANTEE AGAINST CURRENCY RISK

Currency risk refers to a situation where the host states currency is severely devalued or declared inconvertible or the risk that profits, loan repayments, return on capital or other distribution will be prohibited from transfer outside the host stat²⁶³

It arises where the host state's national bank actively imposes exchange control as a matter of monetary policy²⁶⁴ or/and lacks foreign exchange to convert the local currency to foreign currency²⁶⁵. There by countries impose restrictions on the free flow of capital as a common measure to stabilize their economy in time of crisis²⁶⁶.

Any foreign investor, as it has the main goal of making profit from the investment, need to repatriate its capital and the investment returns from the host country to another country. As a result, free transfer of funds has been critical question of foreign investors before investing in any capital importing country²⁶⁷. On the other hand, host countries, though they want to attract foreign investments, at the same time since they have shortage of foreign currency they restrict or set pre conditions of capital outflows in their domestic legislations in order not to affect the balance of payment of the state due to high repatriation of capital²⁶⁸.

²⁶¹ UNCTAD (250) 5

²⁶² Ibid, 5 – 6

²⁶³ James R.A., & Manuel J.G., 'An Integrated Approach to International Energy Investment Protection' p.7.

²⁶⁴ Ibid, 7 - 8

²⁶⁵ Ibid

²⁶⁶ Federico L.P., 'The International regulatory regime on capital flows and trade in services' p.3.

²⁶⁷ Zakariyas Berhanu (65) 75

²⁶⁸ Ibid

Accordingly, The Ethiopia investment law, as per sub article 1 of article 20, grants foreign investors to repatriate their investment returns such as profits, dividends, principal and interest payments on external loan, proceeds from the transfer of shares or partial/total ownership of the enterprise to another investor and the sale, capital reduction or liquidation of the enterprise, payment related to technology transfer and collaboration agreement, compensation for expropriation or nationalization of foreign investment in convertible currency at the existing exchange rate.

Therefore, the provision protects fundamental interest of a foreign investor the right to transfer funds, attributed to the investment, out from Ethiopia to a Foreign State subject to the right of the State to deduct tax from the accrued dividends or profit or from the remittance of the proceeds of sale or liquidation of the enterprise before the transfer²⁶⁹. The list of the provision seems to allow the repatriation of current account funds rather than free transfer of capital or in kind repatriation²⁷⁰.

The protection to transfer funds in convertible currency do not extend to a domestic investor who seeks to convert local currency to foreign currency, the provision rather provides protection only for foreign investors. The law clearly prohibits domestic investor and local partner in a joint investment to remit funds out of Ethiopia²⁷¹; however, the law is not clear whether the foreign national with permanent resident in Ethiopia and foreign nationals of Ethiopian origin can repatriate their investment return to abroad.

4.2.2.3. RIGHT OF ACCESS TO JUSTICE AND DUE PROCESS

For an investor who has grievance in respect of his investment or in the decisions of any federal government executive body, the proclamation gives the right to submit a complaint to the appropriate investment organ and then to submit a complaint to the board of the commission for an investor who is not satisfied with the decision of the Commission²⁷².

²⁶⁹ Zakariyas Berhanu (65) 78

²⁷⁰ Ibid

²⁷¹ Investment Proclamation (31) Art. 20 (2)

²⁷² Investment Proclamation (31), Art. 25,26

Thus according to the law any investor has the obligation to follow exhaustion of those administrative remedies before requesting for the next investment dispute settlement alternatives by the law in the event of investment dispute such as consultation or negotiations, arbitration or access to judicial body.

4.2.2.4. WAYS OF INVESTMENT DISPUTE SETTLEMENT

Article 28 of the proclamation provides investment dispute settlement alternatives in the event of any investment dispute. The provision gives priority to consultation or negotiations in the event of any investment dispute between the State and an investor notwithstanding the right of an investor access to judicial body²⁷³. Thus, parties may through consultation or negotiations arrive at a settlement which makes both parties benefit mutually²⁷⁴. It is where negotiations fail that the dispute could then be referred to other judicial power, or to an arbitration tribunal (in case of foreign investment)²⁷⁵.

A dispute settlement through arbitration is provided only for foreign investments²⁷⁶. It also confer an option for a foreign investor to choose means of dispute settlement whether through a competent body with Judicial Power or by arbitration by putting the choice as final to the exclusion of the other²⁷⁷. However the law has failed to state anything about the applicable procedure for the arbitration.

4.2.3. EXPROPRIATION LAW

As already stated, the government has the power of expropriation of private property for public purpose with the payment of commensurate compensation in advance based on the provision of the Constitution²⁷⁸. This constitutional concept has been specified by different subsequent legislations such as Expropriation of Landholdings for Public Purpose, Payments of Compensation and Resettlement Proclamation (Proc. No. 1161/2019, here after expropriation law), the Lease Proclamation(Urban Lands Lease Holding Proclamation No. 721/2011), and Investment proclamation (Investment proclamation No. 1180/20) together with the accompanying regulations.

²⁷³ Ibid, Art. 28 (1)

²⁷⁴ NwoguTochi, 'The Legal Framework For The Protection of Investments in Nigeria' (2008), 16.

²⁷⁵ Investment Proclamation (31), Art. 28

²⁷⁶ Ibid

²⁷⁷ Ibid, Art.28(2)(3)

²⁷⁸ The Constitution (234) Art. 40 (8)

However, the main law regarding expropriation is the Expropriation Proclamation who has the aim to expropriate land for investment or public purpose with compensation based on due process of law²⁷⁹. The proclamation expropriate private property based on principles of expropriation such as, public purpose, compensation and resettlement assistance compensation (similar compensation for similar property and economic loss in the same area), and due process of law²⁸⁰.

Accordingly, the proclamation defines public purpose to mean: “decision that is made by the cabinet of a Regional State, Addis Ababa, Dire Dawa or the appropriate Federal Authority on basis of approved land use plan or; development plan or; structural plan under the belief that the land use will directly or indirectly bring better economic and social development to the public²⁸¹.”The law here broadly interprets the notion of public purpose when the government wants to expropriate land from any land holder. Thus, unlike the previous expropriation law, in this new law the public purpose defined broadly and in a uniform approach without distinguishing investors from non-investors. This is reflected under the provision which provides that “..... *belief that the land use will directly or indirectly bring better economic and social development to the public*²⁸²”.

Here the Public purpose is taken to include the purpose that promote the general welfare and prosperity of the whole community rather than things that directly beneficial to the public²⁸³.

Regarding compensation for expropriation, the law recognized compensation for the labor or capital-borne fruits over the land at the time of taking (including displacement compensation and assistance as well as economic loss compensation) while the lost right to use and enjoy the land not compensable²⁸⁴.

²⁷⁹Expropriation of Landholdings for Public Purpose, Payments of Compensation and Resettlement Proclamation Proc. No. 1161/2019, Federal Negarit Gazeta, 25th Year No. 90.

²⁸⁰ Ibid, Art. 11, 12, 19 and 20

²⁸¹ Ibid, Art. 2(5)

²⁸² Ibid

²⁸³ Elias N. Stebek, et al., (242) 23, 24

²⁸⁴ Ibid 29

4.2.4. PROTECTION AGAINST POLITICAL VIOLENCE RISK

As indicated above in the Ethiopian legal frameworks there are provisions that one would find in international investment instruments with some variations. The law however does not contain certain political risk guarantees. For the purposes of this research discussion it is imperative to not only assess the provisions contained in the law but also assess which are not included at all²⁸⁵. The most important that are not found in the law is guarantees against risks of political violence. As it is pointed out in chapter two of this research political violence risk, among others, covers risks such as revolutions, coups d'état, insurrections, terrorism, sabotage and other acts of violence within the country that affects the direct material assets of the investment project as well as business interruption of the investment²⁸⁶.

Investments are vulnerable and hugely affected during the periods of political violence. This contributes for the lack of investor confidence to invest in a country where political related instability prevailed due to the threat of loss of his investment by the violence. For instance, in Ethiopia from 2015/16 and the following years because of political instability and public riot several public and private properties and investments were attacked and totally destroyed.

Many complaints and comments forwarded, by investors who affected their investment over the political problem in the country, to government body especially to federal and regional investment bureaus that to compensate them²⁸⁷. Similarly, factory and transport owners whose buses and trucks were attacked and burnt down during public riot, asked the government through their associations to assist and rehabilitate them²⁸⁸.

Ethiopian law, though offered protection against expropriation and currency risk for investors, it does not provide protection against political violence. In addition, in Ethiopia there is no political violence insurance coverage before 2016²⁸⁹.

²⁸⁵ Dreyer Swart (252) 41

²⁸⁶ S El-Naggar (n 69) 109

²⁸⁷ Ethiopian Reporter Newspaper English Version, 3 December 2016,.

²⁸⁸ Ibid

²⁸⁹ Ethiopian Reporter Newspaper Amharic Version, 3 November 2016, and Interview with Ato Indalkachew Zelekew, Department Manager, Reinsurance and Underwriting Department Tsehay Insurance (S.C.), Interviewed on April 10, 2020.

As a result, in order to fill the gap, the government obliged to put a direction to establish a stream committee²⁹⁰. Accordingly, a committee was established who screen out and investigate the value of damage sustained on investors' investment asset as well as evaluate the authenticity of the reports of investors²⁹¹. The committees were established from the Commercial Bank of Ethiopia, Development Bank of Ethiopia, Ethiopian Insurance Corporation and Ethiopian Investment Commission to come up with summary report of damage sustained²⁹².

Based on the report of this committee, government paid millions of money for investment attacked and destroyed due to political violence's during the period through Development Bank of Ethiopia²⁹³. Although I have tried to access the findings of the report and the amount paid to those investors, they are not willing to give and they reason out that it is an internal document not an official one.

According to my interview with W/t Meron Ameha, a senior legal Officer at EIC, In Ethiopia there is no explicit rule (except PVT insurance coverage by insurance companies) that create guarantee arrangement to protect domestic investors investment against political violence risk rather an informal and one-time compensation arrangement by a provisional committee was made as gap filling²⁹⁴. She added that in the informal mechanisms there is no law that force the government to act accordingly thus there should be rule based and institutional²⁹⁵.

The past and the existing tendency of social and political unrest in many parts of the country, the very importance of investment for the development of the national economy as well as the deep interest of government to attract investment and to create enabling investment environment has been a pushing factor for a government to deeply think about political violence risk guarantee scheme in the country.

²⁹⁰ Interview with Ato Samuel Assefa, Directorate Director, Investment Project Facilitation and Aftercare Directorate, and W/t Meron Ameha, Senior legal Officer, Investment Treaties and Legal Affairs Directorate, Ethiopian Investment Commission, Interviewed on April 27, 2020

²⁹¹ Ibid

²⁹² Ibid

²⁹³ Ibid

²⁹⁴ Interview with W/t Meron Ameha, Senior legal Officer, Investment Treaties and Legal Affairs Directorate, Ethiopian Investment Commission, Interviewed on April 27, 2020

²⁹⁵ Ibid

Thus an informal and un institutionalized compensation to investors against political violence risk by government should be avoided and instead there must be some guarantee arrangements designed to fill the gaps which introduce coverage to guarantee sustainable growth and handle risk by the government.

So, the interviewees believe in the importance to establish guarantee scheme for domestic investments affected due to politically related violence in the country. However, the Ethiopian Investment Commission still does not give attention to protect domestic investor against political violence.

Therefore, if there is no formal and legal based compensation mechanism, there is no legal way to appeal to the administrative and/or judicial for reviewing or contesting decisions on the compensation and/or amount of compensation provided to domestic investors.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

CONCLUSION

In Ethiopia despite the implementation of various economic and political reforms, and the continued economic growth, ethnic based conflicts and political insecurity has been remaining unchanged. In an environment of political uncertainty there is a danger of decline for investment that eventually affects the growth of an economy. It is detrimental to decisions of investment. Sustainable investment environment therefore depends not only on the presence of a healthy economy and availability of resources/markets but also on the degree of political stability of the country. The presence and continuity of political related instabilities or risks thus disturbs the performance of the investment and its expansion as well as the economy.

These challenges require the Government to adjust some of its protection for domestic investors' investment in order to create an environment in which they can conduct their business profitably and without incurring unnecessary risk.

The main decisive factor for investors whether to invest or not to invest in a given country is determined, as like the favorable investment opportunities and climate, by the guarantee of noncommercial risks provided in the country. Usually noncommercial risk insurance often provided by private insurance companies; or publically by multilateral institutions (such as MIGA), through bilateral treaties, and/or National Investment Guarantee programs/scheme. Accordingly today there are certain investment guarantee schemes to meet investors' needs by addressing more comprehensive risk mitigation requirements in order to optimize risk sharing.

The national investment guarantee programs mostly established, among others, with the objective of providing a general service to their citizens, to promote and protect their domestic investment instead of generating profits as a result government support from the public treasury on grounds of protecting the national interest. Some countries act as insurers of last resort, whereas others actively make their support. There are also multilateral investment guarantee and private insurance coverage options as one method of guaranteeing investments against political risks.

In Ethiopia though both foreign and domestic investors are facing political violence risk challenges, there is no formal and rule based compensation scheme for domestic investors. Ethiopian law has made provisions for protection against expropriation and currency risk; it however, has failed to provide protection against political violence. In addition it does not contain the standard of Full Protection and Security as contained in most Bilateral Investment Agreement to guarantee domestic investors right to compensation during their investments are attacked and destroyed due to political violence. However foreign investors have been guaranteed well through various multilateral and bilateral treaties. The provisions in the domestic legislations thus give an additional protection for foreign investors since they are already guaranteed by different international instruments, by their respective home country national investment guarantee agencies, and BITs.

An extra economic factor that is political violence risks hugely affects the overall investment climates of Ethiopia. As a country in order to manage risks, to respond to investment destruction and interruption of business due to political violence having a comprehensive investment protection system has a significant importance. Therefore to create an enabling environment for domestic investors, it is essential to have a legal frame work concerning noncommercial risk guarantees especially political violence risk guarantee, that incorporate all those things.

The Government to achieve the goal of enhancing economic performance in the country as well as to attract and build the confidence of domestic investment some sort of insurance guarantee scheme should established as a duty to domestic investors is very important. Therefore if the government enact a law that oblige domestic investors to have insurance cover against political violence risks, the investor's decision to proceed with the investment would increase.

RECOMMENDATIONS

Based on the above discussions and findings of this study the researcher point out the following recommendations:-

- The occurrences of politically related violence are escalating from time to time, and damages to investments due to political instability in the country are dangerously discouraging investments. Moreover Ethiopia is rated as a higher level of political risk country. Therefore, as like Vehicle Insurance against Third Party Risks law, the government should regulate a system for facilitating the provision of (mandatory) investment insurance scheme or political violence risk insurance for domestic investors' investment by Ethiopian insurers, and require domestic investors to have insurance coverage against political violence risk.
- For foreign investments, beyond the protection and guarantee available under domestic legislation, they have additional guarantees against non-commercial risks of investment including political violence risk guarantee is given under international standards, BITs and Multilateral treaties (such as MIGA). However, domestic investments does not have political violence risk guarantee by government. In addition, insurance coverage by Ethiopian insurers has different policy exclusions, the lack of accessibility and capacity; they are constrained by the need to be profitable (urban based service). Thus, in order to create an enabling investment environment to local investments and to fill the gaps in the country's insurers, the government should avoid an informal compensation mechanism to domestic investors who their investments are affected by political instability; instead a strong legal and regulatory framework that promotes and protects domestic investment is required. Specifically, the government should incorporate the standard of Full Protection and Security as contained in most Bilateral Investment Agreement in order to guarantee domestic investors right to compensation during their investments are attacked and destroyed due to political violence.
- National investment guarantee structure like political violence insurance pool arrangement, that facilitates or provides guarantee/compensation which able to handle risks, provide advice and give expertise opinion to the government on the issue, should be established under the Ethiopian Investment Commission.

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