

The Role of Investment Laws in Strengthening Corporate Social Responsibility: Ethiopia's Investment Regime in Focus

Irana Boki (LL.B, LL.M in Commercial Law)
Lecturer of Law at Bule Hora University, Ethiopia

Abstract

This article investigates the existing investment treaty practice with regard to the respect and incorporation of the social dimension (Corporate Social Responsibility, CSR) of the investments. It is identified that the concept of CSR got momentum at global level since 1960's under different legal instruments in the form of guidelines, compacts, principles, and code of conducts. These laws are soft laws because they cannot bind the investor to abide by the standards of CSR. As a result, criticism emerged against the existing investment laws and the global community move to respect and incorporate the CSR standards to the operative body of the emerging agreements. After a long debate and challenges, International Investment Agreements (IIAs) started to respect and incorporate the CSR to their main body in different ways as the core obligation of investors and their investments in host state since 2000. IIAs are composed of various instruments which in themselves are pure investment agreements, and others are those which have investment provisions but dealing with trade or other areas of law. It is identified that there is no similarity among the emerging IIAs in a way of incorporating the CSR. Some of these IIAs impose an obligation to comply with CSR standards directly on the investor; where as the other types are imposing an indirect obligation on the investor through the instrumentality of host states. Ethiopia started to conclude BITs with other countries since 1964 and currently there are 35 BITs. Majority of these BITs have no provision which recognize CSR. Only certain BITs of the country which have concluded during 2016-2019 attempt to incorporate CSR as core obligation of investor. The investment proclamation of the country also stipulates the obligation of investors to comply with domestic laws and environmental standards. This shows that the emerging investment laws at global and Ethiopia's levels in most cases are contributing a lot to strength and promote CSR.

Keywords: corporate social responsibility, investor, investment, business firm, investment agreements, standards, etc

DOI: 10.7176/JLPG/100-01

Publication date: August 31st 2020

1. Introduction

Investment is considered as one of the engines of the economic development of the hosting state. Investment can take place both as Foreign Direct Investment (FDI) and Domestic Investment forms. In order to be benefited from the investment of capital made by the investor in a certain country, investment needs to be regulated well through the instrumentality of different but interrelated legal frameworks. Accordingly, FDI is mostly regulated by International Investment laws regarded as International Investment Agreements (IIAs) along with domestic laws of the hosting state and supplemented by general rules of international laws.¹ IIAs take various forms such as Bilateral Investment Treaties (BITs), Free Trade Areas (FTAs), Double Taxation Treaties (DTTs), and Economic Partnership Agreements (EPAs).² Domestic investment, on the other hand, is purely regulated by domestic investment laws supplemented other related domestic laws. International and domestic investment laws have a role in regulating the conducts of both the companies (investor) and the host state especially with regard to the rights and duties.

Traditionally, IIAs were concluded primarily to realize the economic benefits of the stake holders and ignorant of the non economic aspects of the investment.³ Considering the economic role of FDI and the counter political risk posed by the host state, the world community comes up with international investment laws so as to protect and promote the investment through the incorporation of various clauses which oblige the host state to refrain from interfering in the activities of the investor.⁴ The international investment laws, composed of different agreements as stated here in above, incorporate both substantive and procedural provisions as far as the protection of FDI is concerned. Most of these IIAs incline towards furthering the advantages of the investor and restrict the regulatory power of the host state. As a result, the existing international investment laws are criticized by the states,

¹ Andrew Newcombe, Law and Practice of Investment Treaties; Standards of Treatment, available at; WWW.kluwerlaw.com, assessed on April 30, 2020

² Mark Proksch,(2008): International Investment Agreements: Issues and Considerations for ASEAN, UNESCAP available at <https://www.oecd.org/investment/investmentfordevelopment/46485529>. accessed on May 15/2020

³Yulia Levashova,(2018): The Accountability and Corporate Social Responsibility of Multinational Corporations for Transgressions in Host States through International Investment Law, Utrecht Law Review Volume 14, Issue 2, available at, <https://www.ssrn.com/abstract=3204456> accessed on May 15/2020

⁴Ying Zhu, (2017): Corporate Social Responsibility and International Investment Law: Tension and Reconciliation, NJCL, pp. 93

international organizations, and scholars. However, since 1960s there are attempts to integrate the social aspects of the investment to different legal instruments in order to benefit the identified stakeholders including the business firm itself.¹ This emanates from the fact of the increasing recognition of the roles of investors in the protection of social welfare of host state such as human rights, environmental protection, labor rights, anti corruption, etc. This results in the development of the concept of Corporate Social Responsibility (CSR) of the investors.² CSR is understood to be the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner, and thereby establish better practices within the firm, create wealth and improve society.³

In response to the adverse effects of the companies (investors) to the social aspects of the host state, various soft laws such as the United Nations Draft Code for Transnational Corporations, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO Tripartite Declaration), and the OECD Guidelines for Multinational Enterprises (OECD Guidelines) are developed along with the new development in the emerging IIAs.⁴ Generally, the role of IIAs is still low with regard to strengthening the CSR of Transnational Corporations despite the existing emergence of new IIAs which aim at clearly stipulating the obligations of companies towards the social aspects in the host state.

The investment laws (regime) of Ethiopia are composed of Bilateral Investment Treaties (BITs), Investment Proclamation, and the respective regulation. Until April 2020, Ethiopia has signed 35 BITs with different countries.⁵ Most of these countries are the developed countries of which eight of them are the top ten main sources of FDI to Ethiopia during 2011/12.⁶ Almost all of these BITs of the country are influenced by the capital exporting countries and emphasize highly on the protection and promotion of the investment and ignorant of the obligations of the investor in general and the social responsibility in particular. From the very nature, investment agreements are considered as soft laws and the domestic laws of the country as hard laws as far as the regulation of the obligation of the investor is concerned.⁷

Ethiopia's BITs along with the domestic investment laws and other related laws such as environmental, and anti corruption laws attempt to regulate the conducts of both the foreign and domestic investors. This does not mean that the existing investment laws are adequately regulating the rights and duties of the investors in a balanced way. Mostly, the BITs of the country are inclined towards protecting and promoting the interests of the investors to the cost of the social benefits of the country and her citizens. There are continuous complains and voices heard through different media outlets with in the country from the peoples who are residing around the location of companies both foreign and domestic companies with regard to the adverse impacts they posed on these people in various ways. Such problems might arise from lack of comprehensive legal frameworks and poor administration of the laws.

Thus, this article attempts to analyze the role of investment legal frameworks with regard to strengthening the CSR in the strategy and decision making of business firms in the host state towards the stake holders by imposing pertinent human rights, environmental, labor, employment, taxation, technology transfer, and anti corruption standards. Special emphasis is made to the Ethiopia's investment laws as far as the social responsibility of the companies operating investment activities in the country is concerned. Accordingly, IIAs, Ethiopia's BITs and the domestic investment laws of the country are the subject matter of investigation owing to the aforementioned core components of the CSR as the social dimension of the business firm obligations and responsibilities.

2. Methods

In this article, the analytical type of qualitative research method is employed. The analytical type of research is best to critically examine the role of existing investment legal frameworks concerning the CSR of companies in the host state. Mostly, the content analysis focused on the analysis of existing legal frameworks relating to the protection and promotion of investments at international, and national level is made so as to clearly identify the role of the investment legal frameworks in general and the Ethiopia's investment laws in particular and accidentally to investigate into the legal gaps, if any.

¹Cristina A. Cedillo Torres, Mercedes Garcia-French, Rosemarie Hordijk, Kim Nguyen, Lana Olup,(2012): Four Case Studies on Corporate Social Responsibility: Do Conflicts Affect a Company's Corporate Social Responsibility Policy?, Utrecht Law Review, Volume 8, Issue 3, URN:NBN:NL:UI:10-1-112903, pp. 51

²Alice De Jonge, (2011): Transnational Corporations and International Law: Accountability in the Global Business Environment (Edward Elgar Publishing) p. 1-2.

³The ISO 26000 Working Group on Social Responsibility identifies organizational governance, (2017)environment, human rights, labour practices, fair operating practices, consumer issues and community involvement as core issues. Resolution 3, Sydney,

⁴Zhu Y. (n4) pp.95-96

⁵UNCTAD,(n33), available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/67/ethiopia#bits> accessed on May 15/2020

⁶Martha Belete and Tilahun Esmael, (2014): Rethinking Ethiopia's Bilateral Investment Treaties in Light of Recent Developments in International Investment Arbitrations, Mizan Law Review, Vol.8, No.1

⁷Zhu Y. (n4) pp. 94

Finally, the data is critically analyzed using qualitative method of data analysis.

3. The Concept of Corporate Social Responsibility (CSR)

3.1. Definition of CSR

It is difficult to define CSR in a single and comprehensive manner owing to different factors. As a result, it does not have a universally accepted definition. It can also be named as ‘corporate accountability/responsibility’, ‘corporate ethics’, ‘corporate citizenship’, or ‘responsible entrepreneurship.’¹ Commonly, CSR can be understood as ‘a mechanism by which firms/companies held accountable and integrate social, economic, and environmental concerns of stakeholders into their strategies, decision making, and values so as to bring sustainable development’.² Thus, it can be taken as a tool by which firms of any size which operate a business in the society can be responsible to the society on both voluntary and legal basis various basis. It can also serve as a mechanism of striking a balance between the rights and obligations of the firms as incorporated in the investment agreements to some extent and to rectify the long existing imbalances between the two.

For the sake of this article, the term ‘CSR is defined as the responsibilities and obligations of firms/investors towards the environmental, human rights, labor, taxation, and anti corruption standards as incorporated to investment legal frameworks’.

3.2. Historical Emergence of CSR in Investment Agreements

CSR is an emerging issues incorporated to certain investment laws or agreements of the contemporary world. Traditionally, CSR is considered as the voluntary initiation of the firms towards the social, environmental, and economic benefits of the stake holders.³ This shows that most of the investment agreements are influenced by this understanding and highly emphasized only on the rights of the investor and obligations of host state. This finally leads to the rise of criticisms against the investment agreements from different organs and thereby causes the move for incorporating the social dimensions of investment as the core obligations of the firms investing in a certain country to the newly emerging investment and trade agreements.⁴ Various efforts were made since 1970 up on the adoption of International Code of Conducts for Trans National Corporations (TNCs). The shift of ideology from considering CSR as voluntary and self initiative of the firms to the legalization of CSR gets a momentum since 2000s.⁵

The emergence of CSR is strengthened through different legal instruments in the form of guidelines, code of conducts, declarations, and etc. Some of these legal regimes are considered as soft laws since they cannot override the provisions of the binding investment agreements which emphasize highly on the protection of the rights of the firms/investors. In order to respond to the imbalances of the existing investment agreements, new trends of investment treaty practices are emerged by emphasizing on the CSR of the firms either directly or indirectly. Some of the first investment and trade related agreements which incorporate CSR as the part and parcel of the legal obligations of the firms are Joint Declaration of EU-Chile Associations of Investors of 2003, the US-Chile Trade Agreement of 2004, the Eu-California Economic Partnership Agreement of 2008, and the Canada-Peru Trade agreement of 2009.⁶ In most of these agreements, CSR is incorporated only to the preambles and not made the operative part of the document. But, gradually the emerging investment agreements started to incorporate CSR to the main body of the document.⁷ Then after, CSR become the concern of newly emerging investment treaties of the contemporary world with regard to the human rights, environmental, labor; transfer of technology, taxation, consumer protection, transparency, illicit practices and anti corruption standards.

Generally, despite the existing problems with regard to the majority of investment agreements as far as the clear stipulation of CSR, there is an improvement in the understanding and implementation of CSR by the firms and states under the recently concluded investment treaties. Thus, the emergence of CSR under the investment agreements is recent and still infant in its stage of development. Those investment agreements of the contemporary world which recognize CSR as the core obligation of the firms have the great role in strengthening the concept. Currently, CSR is taken as a strategy of the firms to undertake business in the society ethically, environmental friendly, and beneficial to societal development.

¹Paul Hohnen, (2007): Corporate Social Responsibility: An implementation Guide for Business; International Institute of Sustainable Development, pp. 4

²Ibid

³Rafael Peels, Elizabeth Echeverria M., Jonas Aissi, and Anselm Schneider,(2016): Corporate Social Responsibility in International Trade and Investment Agreements: Implications for states, business and workers, ILO Research Paper No. 13, pp. 13

⁴Levashova Y. (n4) pp. 42

⁵Leila choukroune, (2018): Corporate Social Responsibility and Foreign Direct Investment: The Indian Investment Treaty Approach and Beyond; Transnational Investment Dispute management, Volume 15, Issue 2,

⁶ILO Research Paper (n13) pp. 16

⁷For further understanding, it is possible to look at the Canada Model BIT of 2009, Indian Model BIT of 2015, and American Model BIT of 2012

3.3. Principles of CSR

The legalization and implementation of CSR primarily guided by the core principles of universal application along with the specific principles of the business firm which varies from firm to firm as the case might be. The guiding principles of CSR might be classified as basic and sub-categories.¹ The major Principles of CSR are sustainability, accountability, and Transparency. This means that the decision making process of the business firm must be focus on the societal dimension of the business and take into action the future use of finite resources, recognizing the side of effects of its decisions and operations and take responsibility for the same towards the society, and the report of the business firm with regard to the external impacts of its acts must be free from any illicit and deceiving practices.²

Generally, within the context of these core principles of the CSR, business firms are expected to comply the other principles such as promoting ethical behaviors, respecting international expectations, exceeding legally binding norms, reflecting the precautionary approach, and respecting human rights standards.³ In addition, the 1999 and 2011 editions of OECD Guidelines for Multi National Enterprises listed various principles which guide the strategy and decision making of TNCs. Thus, the operation and decision making of the business firm must be guided by these and other relevant principles in order to benefit the concerned stake holders and the firm itself.

3.4. Significance of Implementing CSR

Despite the existing dilemma as to the definition and emergence of CSR, it can be regarded as the responsibility of businesses consists of legal, ethical, economic, and social expectations of the society from a firm operating business in their locality.⁴ Implementing CSR within the strategy of the firm benefits both the firm itself and the society.⁵ Since the societies are the victims of the acts of the firm, they have to benefit from the performance of the firm and the firm must be obliged to consider societal interests in its decision and strategy. The more the firm gives consideration for the societal interest by implementing CSR standards, the more it is benefited and become famous and friendly in the market in general and within such society in particular. Overall, proper implementation of CSR in the strategy and decisions of the business has mutual benefits both for the community at large and the business itself in various aspects.

In short, implementing CSR in business's strategy and decision can have the role of sharing the negative consequences of the industrialization, creates close relationship/interdependence between society and the firm, contributes to transfer of technology, helps the firm to get qualified employees, contributes to the fight to alleviate poverty, protects the environment and enhances the sustainability of human rights protection, and contributes to the sustainability of overall corporate goals.⁶ Generally, proper recognition, implementation and follow up of CSR in investment agreements, national policy, and firm's strategy and decisions can produce the aforementioned significance and the other for all stakeholders including the business firm itself.

4. CSR under International Investment Agreements (IIAs)

IIAs are one of the international legal frameworks regulating foreign investment. IIAs are the primary public international law instruments governing the promotion and protection of foreign investment. Such agreements can take multilateral, regional, or bilateral forms of agreement as the case might be. There was an attempt to come up with a comprehensive and binding Multilateral Investment Agreements (MIAs). However, due to the disagreements between developing and developed countries, the attempt is failed and as a result there is no multilateral investment treaty comparable to multilateral trade agreements.⁷ In most of the existing IIAs, more emphasis is given for the protection of the rights of the firms/investors in order to promote the flow of investment. The existing IIAs guarantee various rights of an investor in host state including the procedural right to institute an action against host state before international tribunal where the latter is found not respecting its obligations towards the former. Such IIAs give insignificant consideration for incorporating the counter obligations of the investor in host state.⁸ The concern given for CSR is less and considered as the voluntary and self initiative strategy of the firms towards the stakeholders beyond the shareholders. Initially, CSR is emerged and well known within the national/domestic laws.⁹

¹David Crowther and Guler Aras, (2008) Corporate Social Responsibility, Ventus Publishing ApS, PP. 14

²Ibid, pp. 14-16

³United Nations Environment Program (UNEP), (2011): Corporate Social Responsibility and Regional Trade and Investment Agreements, pp. 15-17

⁴Carroll A. Corporate Social Responsibility, (1999): Evolution of A Definitional Construct; available at: <https://journals.sagepub.com/doi/abs/10.1177/000765039903800303>, accessed on May 16, 2020

⁵Mohammed A., Reham I., and Ehab K.,(2014): The Impact of CSR on Firm Performance:Evidence from a Mena Country, Journal of Corporate Ownership and Control, Vol.12, Issue 1, pp. 762

⁶Maimunah Ismail,(2009): Corporate Social responsibility and its Role in Community Development: An International Perspective , Journal of International Social Research, Vol. 2, No. 9, pp. 204-207

⁷International Institute for Sustainable Development,(2012): Investment Treaties and Why they Matter to Sustainable Development,

⁸Levashova Y. (n3) pp. 42

⁹United Nations Conference on Trade and Development (UNCTAD),(2001) Social Responsibility; Series on issues in international investment

The national trends concerning the CSR in countries of the world influence the international treaty making trends. As a result, CSR started to be considered as the core obligations of the firm towards the society in which it operates the business. It is after this time that CSR is started to be made part and parcel of the emerging IIAs.¹ It is incorporated to such agreements currently either in binding or non-binding ways. It is binding on the investor while incorporated to the agreement as the core/operative part of it and none binding where put in the preamble. The move for the incorporation of CSR in either of the above stated forms to the emerging investment agreements is highly influenced by various soft laws such as guidelines, principles, or code of conducts. Accordingly, UN Draft Code of Conduct for TNCs illustrates various issues related to the obligations of TNCs towards the societies where they run the business.² Similarly, OECD Guideline for TNCs clearly stipulates the responsibilities and obligations of the TNCs towards the society, employers, environment, human rights, taxation, anti corruption, etc.³ Again, the Ten Principles of UN Global Compact,⁴ and the UN 2011 Guiding Principle and Business and Human Rights,⁵ are the other legal instruments contributing to the incorporation of CSR to the main text of certain emerging IIAs. This shows that such and other international legal and Para legal instruments serve as the base for the emerging investment and trade agreements to focus on CSR and thereby to spread and strength it.

Incorporating CSR provisions to investment agreements is one way of strengthening it. The best mechanism to strength the CSR is incorporating it to the investment agreements in the form of binding way by incorporating to the main/operative body.⁶ Generally, IIAs are composed of more than 3600 agreements composed of BITs and treaties with investment provisions⁷, customary international law, and general principles of law. This article emphasize on only selected samples of emerging BITs which incorporate CSR to their operative/main body directly and indirectly to the preambles and other ways so as to reveal how far the investment agreements have roles in strengthening CSR. The BITs emerging within the past fifteen years incorporate the concept of CSR either indirectly or directly by precisely addressing it in the operative part of the BITs. The following paragraphs attempt to precisely reveal the role of selected IIAs in strengthening CSR especially through incorporation of it to the emerging BITs.

In most of IIAs, emphasize is given for the incorporation of CSR indirectly by imposing duties on the contracting states to force the investor to comply with CSR standards. As an example, the BIT between Australia and Hong Kong states that,

*“The Parties affirm the importance of each Party encouraging enterprises operating within its Area or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party”.*⁸ (Emphasis added)

This type of provision imposes an obligation primarily on the contracting parties to promote responsible business firm in their jurisdiction towards the incorporation and implementation of the concept in the strategy and decision making. This is the indirect way of imposing CSR on the investor. Generally, indirect way of imposing the CSR on the investor might pose difficulties where the host states tried to force the investor to comply with such international standards. Despite such and other difficulties emanating from the IIAs’ provisions indirectly incorporating the CSR, the emerging IIAs has a great role in strengthening the concept. In addition, the investment agreements between Australia and Indonesia,⁹ the BIT between Argentina and Japan,¹⁰ the BIT between Argentine and United Arab Emirates,¹¹ and the BIT between Canada and Benin¹², are some of the emerging IIAs incorporating indirectly the obligations of the investor towards the fulfillment and compliance with CSR standards in the host state. Such and similar IIAs have attempted to recognize and strengthen the utilization of CSR standards within the strategy and decision making of the business firm so as to ultimately benefit the stake holders.

agreements, UN, New York and Geneva, pp. 3

¹Id

²UNCTAD, Volume 1, 1996, pp. 161-171

³OECD Guideline on Trans National Corporations (TNCs), (2011): Revised editions, pp. 19-63

⁴ United Nations, ‘UN Global Compact, (2005): The Ten Principles; available at: <https://www.unglobalcompact.org/what-is-gc/mission/principles>, accessed on May 5, 2020

⁵United nations Human Rights Commission (UNHRC), ‘Guiding Principles on Business and Human Rights’, UN Doc.HR/PUB/11/042011, available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, accessed on May 5, 2020

⁶Levashova Y.(n3) pp. 41

⁷UNCTAD, Investment Policy Hub, available at <https://investmentpolicy.unctad.org/>, accessed on May 5, 2020

⁸The BIT between Australia and Hong Kong, Article 16, 2019, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/4893/australia---hong-kong-investment-agreement-2019-> accessed on May 6, 2020

⁹ Australia -Indonesia BIT, 2019, Article 14.17, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/4890/australia---indonesia-cepa-2019-> accessed on May 6, 2020

¹⁰ Argentina-Japan BIT, 2018, Article 17, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3871/argentina---japan-bit-2018-> accessed on May 6, 2020

¹¹ Argentine- UAE BIT, 2018, Article 17, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3819/argentina---united-arab-emirates-bit-2018-> accessed on May 6, 2020

¹²Canada- Benin BIT, 2013, Article 16, available at: <http://investmentpolicyhub.unctad.org/Download/TreatyFile/438> accessed on May 6, 2020

On the other hand, some of the emerging IIAs and Model BITs, directly incorporate the concept of CSR and oblige the investor and the investment to comply with the international standards of CSR. As an example, the BIT between Brazil and United Arab Emirate states that;

*“Investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the Host State and the local community, through the adoption of a high degree of socially responsible practices, based on the voluntary principles, and standards set out in the OECD Guidelines for Multinational Enterprises.”*¹ ...emphasis added

Unlike the first categories of emerging IIAs elaborated here above, this type of provision in IIAs directly incorporates CSR as the core obligation of the investor and investment in the host state towards the stake holders. Under such type of investment agreements, the business firms are directly obliged to take into consideration and comply with internationally recognized standards of CSR. Sub-article 2 of the aforementioned BIT at hand specifically obliges the investor and investment to comply with the human rights, environment, labor and employment, tax, and other standards so as to contribute to the sustainable development of the host state and to create mutual trust and cooperation with the stakeholders. Similarly, the BIT between Brazil and Ethiopia,² the BIT between Brazil and Republic of Guyana,³ the BIT between Belarus and India,⁴ the BIT between Brazil and Suriname,⁵ the BIT between Brazil and India,⁶ Model BIT of India,⁷ Model BIT of Belgium- Luxembourg,⁸ and Model BIT of Netherlands,⁹ are some of the emerging IIAs which impose an obligation directly on the investor and investment with regard to the recognition and implementation of CSR standards in the host state. The provisions of these and other similar IIAs directly oblige the business firm to respect and incorporate various components of CSR such as human rights, environment, labor and employment, taxation, technology transfer, and anti corruption standards to its strategy and decisions.

Generally, the emerging IIAs play great role in strengthening the concept of CSR in business firm's strategy and decision making. In doing so, such IIAs follow two mechanisms so as to make the CSR the part and parcel of operative part of such investment agreements. These are; indirect mechanism by imposing the duty on the contracting parties to force the investor and investment in their jurisdiction to respect and execute the standards of CSR, and directly imposing the duty on the investment and the investor to respect and execute the internationally recognized components of CSR in the host state so as to ultimately result in the existence of sustainable development in the host state.

5. CSR under Ethiopia's Bilateral Investment Treaties (BITs)

Until now, Ethiopia has signed around 35 BITs with various countries.¹⁰ However, till now the country has no Model BIT and as a result, there are discrepancies among the BITs of the country even within the same subject matter. The overall investigation made into the existing BITs of the country with regard to the recognition of CSR as the core obligation of the investor and investment in the host country, revealed that majority of these BITs are totally ignorant of the CSR at all.¹¹ On the other hand, certain BITs of the country tried to incorporate the concept of CSR to the text almost in three ways. Firstly, the incorporation of the concern for certain aspects of CSR such as environment, health and labor to the preamble of the BIT as non binding part of the investment agreement. As an example, the BIT between Ethiopia and Finland, states in its preamble that ‘the contracting parties are desiring for the respect of labor, health, environment, and safety measures, conclude the agreement for the promotion and

¹Brazil- UAE BIT, 2019, Article 15(1), available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/4896/brazil---united-arab-emirates-bit-2019>-accessed on May 6, 2020

²Brazil-Ethiopia BIT, 2018, Article 14, available at : <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3816/brazil---ethiopia-bit-2018>- accessed on May 6, 2020

³Brazil- Guyana BIT, 2018, Article 15, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3864/brazil---guyana-bit-2018>- accessed on May 6, 2020

⁴Belarus- India BIT, 2018, Article 12, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3839/belarus---india-bit-2018>- accessed on May 6, 2020

⁵ Brazil- Suriname BIT, 2018, Article 15, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3815/brazil---suriname-bit-2018>- accessed on May 6, 2020

⁶ Brazil- India BIT, 2020, Article 12, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/4910/brazil---india-bit-2020>- accessed on May 15, 2020

⁷India Model BIT, 2015, Article, 12, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements>, accessed on May 6, 2020

⁸Belgium Model BIT, 2018/19, Article 18, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements>, accessed on May 6, 2020

⁹Netherlands Model BIT, 2019, Article 7, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements>, accessed on May 6, 2020

¹⁰UNCTAD,(n34), available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/67/ethiopia#bits> accessed on May 05/2020

¹¹For further understanding, it is possible to look at the Ethio- China BIT, Ethio- Algeria BIT, Ethio- Germany BIT, Ethio- Swiss BIT, Ethio- Russia BIT, Ethio- France BIT, and etc. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/67/ethiopia#bits>, accessed on May 6, 2020

protection of investment in their respective jurisdictions¹.

Secondly, certain BITs of the country incorporated the concept of CSR to the operative part of the agreement not in general concept but by splitting to certain parts as general obligations of the investor and investment and by focusing on environmental, corporate governance, and labor standards. An example of such BITs of the country is the BIT between Ethiopia and United Arab Emirates,² and the BIT between Ethiopia and Qatar³. The provisions of these BITs clearly impose a duty on the investor and investment to recognize and execute the standards of environmental protection, labor, health, and safety in the host state. Thirdly, there is a BIT which incorporates directly the concept of CSR to the main/operative body of the agreement in its general term. An example is, the BIT between Ethiopia and Brazil which states that;

“Investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the host State and the local community, through the adoption of a high degree of socially responsible practices, based on the principles and standards set out in this Article and the OECD Guidelines for Multinational Enterprises (MNEs) as may be applicable on the State Parties”⁴ ...emphasis added

Furthermore, sub-article of this investment agreement incorporates the specific obligations of the investor and investment to comply with the human rights, development, labor and employment, and other standards in the host state. This type of BIT of the country directly imposes an obligation on the business firm to adhere to the internationally recognized standards of CSR in all endeavors in the jurisdiction of host states.

Generally, the overall survey and look into the BITs of Ethiopia reveal that the country’s treaty making practice uses these three approaches in an attempt to balance the rights and duties of investor and investment in the jurisdiction of host state and mandates the host state to govern those internationally recognized standards through the instrumentality of domestic policy and legislative autonomy.

6. CSR under Ethiopia’s Domestic Investment Laws

‘Ethiopia’s domestic investment laws’ here refer to the Investment Proclamation No. 1180/20 and the council of ministers’ regulation issued on the basis of the proclamation itself. It is obvious that there can be mainly two types of investments in a certain country, namely foreign and domestic investment. Likewise, Ethiopia’s proclamation at hand gives a clue to the existing of the possibility for these two types of investments as recognized there in.⁵ With regard to the protection and promotion of foreign investment it is clear that primarily governed by the BITs and other investment related provisions, and the regulation and protection of pure domestic investment is governed by the domestic legal frameworks. The proclamation at hand states that “it shall apply to all investments carried out in Ethiopia except to investments in the prospecting, exploration and development of minerals and petroleum.”⁶

With regard to the imposition of the obligation of CSR on investments of any nature, the close analysis of the proclamation shows that it employs two approaches. The first approach is employing only general term like ‘socially and environmentally responsible investment’ in stating the objectives of the proclamation⁷. The second approach is after using general terms like this, illustrating the possible areas where the investor/its investment shall focus in imposing the duty on the investors/investments directly⁸. In a later case, the proclamation states that; *“All investors shall give due regard to social and environmental sustainability values including environmental protection standards and social inclusion objectives in carrying out their investment projects”*Emphasis added

In addition, the proclamation at hand obliges all investors, both foreign and domestic, to comply with domestic laws of the country.⁹ Various domestic laws can be mainly expected to be observed here under. For example, environmental, labor/employment, human rights, tax, and anti corruption laws can be considered here as far the obligation of the investor is concerned with regard to CSR. Generally, this domestic investment law of the

¹ The preamble of the agreement Between Ethiopia and the Republic of Finland, 2006, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1474/ethiopia---finland-bit-2006-> accessed on May 6, 2020

² The agreement to promote and protect investment between Ethiopia and UAE, 2016, Articles 11-13, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3736/ethiopia---united-arab-emirates-bit-2016-> accessed on May 6, 2020

³ The agreement to protect and promote investment between Ethiopia and Qatar, 2017, Article 14, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/4923/ethiopia---qatar-bit-2017-> accessed on May 6, 2020

⁴ The BIT between Ethiopia and Brazil, 2018, Article 14, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3816/brazil---ethiopia-bit-2018-> accessed on May 6, 2020

⁵Investment Proclamation No. 1180/20, Article 2(4) available at: In an attempt to define the term ‘investor’ it states that it means a domestic or foreign investor; this in itself can suggest the possibility for the classification of investment into foreign and domestic by considering the definition given for domestic and foreign investors separately by the proclamation itself.

⁶Ibid, Article 3

⁷Ibid, the preamble, and Article 5(8)

⁸Ibid, Article 54(2)

⁹Ibid, sub-article 1

country tries to recognize and adhere to certain components of CSR irrespective of the nature of the investment/investor. However, things might become confusing and challenging where the need arise to implement this proclamation on these and other points directly to the foreign business firms in case the BITs for which its home state is a signatory with Ethiopia has not recognized the CSR or on the basis of the standard of Most Favored Nations Treatment (MFN) even if its home state has not signed BIT with Ethiopia.

7. Results and Discussions

Business firms play significant role in contributing to the economic development of the capital importing/host state. The IIAs primarily aim at promoting and protecting the investor and its investment in the host state. Traditionally, IIAs are inclined totally towards the protection and guarantee of the rights of the investor. Investor has the right to exercise the protection and guarantees under IIAs against host state before international arbitration tribunal through dispute settlement procedure. The social dimension of the investment is not considered under these investment agreements and become the subject matter of arguments among host states, international organizations, and other stake holders. The activities of investor in host state can pose different adverse effects on the state itself and its citizens in various aspects especially with regard to environment, human rights, and labor standards. As a result, there was an attempt to strike a balance between the rights and duties of the investor in host state through the incorporation of provisions to such effect in IIAs. This can be taken as the main effort to model the subsequently coming IAAs to balance such issues, and to provide a policy making space for the host state concerning the environment, human rights, labor and other standards.

The existing regime of IIAs has certain role in holding investors accountable for their deeds which violate these and other standards which might themselves be part of the IIAs and investment contracts. Especially, those IIAs emerging after 2000 start to clearly recognize and incorporate to their main body the CSR as one of the core obligations of investors in host state. The close analysis of the IIAs reveals that there are various approaches followed by countries in incorporating the CSR issue to such agreements. The first is to put it only under non operative part (preamble) of the agreement. Such way of recognizing the concept of CSR has no binding effect on the investor and the mere inclusion of it to the preamble has no role in strengthening the concept. Under such agreements, the investor has no obligation towards the respect and implementation of CSR in its strategy and decisions. Such type of IIAs which recognize the concept only under the preamble are not more than non to CSR obligations.

The other approach is to make CSR part and parcel of the main body/operative part of the agreement. This mechanism is further practiced by directly or indirectly in imposing an obligation on the investor in host state. Some of the emerging IIAs have imposed the primary duty on the state to force the investor to comply with the standards of CSR. This is the indirect way of obliging the investor to be held accountable for the violation of the recognized standards. The challenge of such type of IIAs is that it is not easy for host state to comply with such requirement in forcing the investor to do so. The effect of such provisions is that the state has to take necessary actions through internal rules and procedures so as to make the investor/investment to abide by internationally recognized standards of CSR. If the state fails to comply with this requirement, such IIAs has a limited effect and has no significant role in strengthening CSR.

On the other hand, it is identified that in several emerging IIAs, there are provisions which imposed obligations on the business firm directly to abide by the standards of CSR in host state. In doing so, some of the IIAs employed general and broad languages which encourage investors and investments to incorporate CSR to their strategy and decision. In such type of IIAs, the provisions has no more effect than encouraging the investors and investments to voluntary abide by the standards of CSR. Again, in some of the emerging IIAs, the obligation imposed on investor and investment with regard to CSR is to abide by 'internationally recognized standards'. In such type of IIAs, it can be said that reference is made to the international instruments which provide standards such as OECD Guidelines, UN Principle for Responsible investment, the ISO-26000 Social responsibility, the Global Compact, and the others. The other types of emerging IIAs provide a specific reference to the particular CSR standard for which the investor and investment should comply with. Under such IIAs, investors and their investments are required to comply with the identified CSR standard and thereby to bring sustainable investment in the host state.

In most of these IIAs, there is no clear definition given to CSR other than referring it as 'internationally recognized standards'. Absence of clear definition of CSR under the agreements might pose a challenge when the court attempts to interpret. Generally, various difficulty can arise from the emerging IIAs which attempt to incorporate CSR to their main body in various ways as stated here in above. The issue of making the investor accountable for failure to comply with the CSR standards is one of such challenges. This might arise from the fact that some IIAs put explicit reference as to where the case can be brought against the investor and its investment in such non compliance, where as some of the emerging IIAs which have provisions obliging the investor to comply with CSR standards remain silent as to which court can entertain if the case is brought against the non performing investor and its investment. Despite these challenges in implementing IIAs provisions dealing with CSR, it is

possible to deduce that the emerging IIAs have a great role in strengthening the concept of CSR in businesses' strategy and decisions.

When we come back to the treaty practice of Ethiopia with regard to the recognition and incorporation of CSR to investment agreements and laws, it is identified that only little portion of the total investment agreement attempt to adhere to the concept. Of the total BITs the country has signed, it is only Ethiopia-Brazil BIT which in a clear and precise language imposes a duty on the investors and investments to comply with the standards of OECD guidelines so as to contribute to the sustainable development of the host state. In addition, it illustrates the duties of the investors and their investment to comply with in host state. In such circumstances, the investor is obliged to give due emphasis for the realization of the CSR standards while designing strategy and decision making. Non compliance with these standards can be a ground to bring a case against the non performing investor and its investment before the competent tribunal.

Some of the Ethiopia's BITs attempt to recognize and incorporate the concept of CSR indirectly by explicitly obliging the investor and its investment to comply with human rights, environment, labor, tax, corporate governance, and etc standards. Such BITs do not directly deal with the general aspect of CSR, rather they deal with specific standards for which the investor and its investment is held accountable in case there is derogation from the standards. However, majority of the countries BITs are totally ignorant of the concept of CSR and totally deal with the rights and protections guaranteed to the investors and their investments. The close look into the BITs of the country show that these BITs started to be concluded by Ethiopia and the other states after the concept of CSR got wider recognition at international level under various legal instruments. Despite this general fact, Ethiopia's BITs are far from recognizing and incorporating the social dimension of the investment in host state. This might be attributable to different factors for which further investigation is needed. Generally, it is identified in this article that some of the BITs of the country concluded especially after 2016 attempt to recognize and incorporate CSR. This shows that, these BITs have a role in strengthening the concept of CSR so as to strike a balance between the rights and duties of the investor, and to respond to the frequently heard complaints against investors with regard to environmental pollution, human rights violations, and labor related disputes.

Furthermore, the domestic investment law of the country imposes an obligation on both domestic and foreign investor to comply with domestic laws of the country such as environmental, human rights, and labor laws. The investors and their investment in the country are obliged to adhere to the environmental policy, environmental protection laws, environmental impact assessment laws, and labor or employment laws of the country so as to operate a business in the country. This is an indication of the fact that not only the BITs, but also the other domestic investment laws of the country have a significant role in strengthening the concept of CSR.

8. Conclusion

For long time, the purpose of IIAs is considered as protecting and promoting the rights of foreign investor in host state. As a result, there is imbalance between the economic and social dimensions of an investment because the provisions of IIAs totally incline towards the guarantee of the investor and its investment not the duties that can emanate from running business firm. Owing to various critiques emanating from different organs, the global community calls for the shift toward striking a balance between the rights and obligations of foreign investor in host state since 1970's. Accordingly, OECD Guidelines, UN Compacts, ISO 26000-Social Responsibility, UN Principle for Responsible Investment, and UN Guiding Principles emerged along with the standards of CSR. Then after, since 2000 various IIAs in the form of BITs clearly start to respect and incorporate to their operative part provisions obliging the investor in one way or another to incorporate the CSR standards to strategy and decision making. These standards specially emphasize on human rights, environmental, labor, taxation, and anti corruption standards.

In doing so, the emerging IIAs followed a varied approach in obliging the investor. Some of IIAs directly impose an obligation on the investor and its investment to comply with internationally recognized standards and standards specifically referred there under. On the other hand, certain IIAs impose an obligation directly on the host state to force the investor and investment in its jurisdiction to adhere to the standards of CSR. Generally, it is possible to deduce that the emerging IIAs have a great role in strengthening CSR and promote it to the level best as required when we compare to the previous investment treaty making practices.

Ethiopia has signed around 35 BITs with different countries. Majority of these BITs are ignorant of the social dimension of the investment and totally guarantee protection for the investor and its investment. As a result, some of the investments in the country do not paid an attention to the society in which they operate a business. There are complains about the pollution of the environment which gives rise to different health and safety problems, human rights violations, and labor disputes. The foreign investors focus only on the BITs which their home state signed with Ethiopia and such BITs are far from obliging the investors and as a result they are not responsible on that basis.

However, the recently concluded BITs of the country started to respect and incorporate the duties of the investors and their investments to comply with CSR standards. Certain BITs of the country clearly impose a duty

on the investors and their investments to adhere to the standards of CSR. In addition, the domestic investment law (proclamation) also clearly obliges both foreign and domestic investors to comply with domestic laws and adhere to the human rights, environment and labor standards. Therefore, it is possible to conclude here that the investment laws of the country including some BITs as identified here in above have a great role in strengthening and promoting the full realization of CSR standards.

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