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Solomon Emiru Gutema
Wollega University, School of
Law, Nekemte, Ethiopia

Harnessing life insurance for ensuring sustainable development in the Ethiopian federation: Challenges and prospects

Solomon Emiru Gutema

Abstract

In the Ethiopian political history, democratic constitution was enacted in 1995 for the first time following the paradigm shift in the political ideology from unitary to federalism. The enactment of the 1995 FDRE Constitution opened the new era in political, social, economic and cultural aspects of the nations, nationalities and peoples of Ethiopia. It guarantees the right to sustainable development in all sectors including political, economic, social, and cultural aspects. To ensure the right to sustainable development the same constitution imposed a constitutional duty on three wings of government organs both at federal and regional level. Hence, the objective of this research is to evaluate the extent to which life insurance is harnessed by the Ethiopian government in promoting sustainable development. In addition to this it explores the possible prospects and challenges in utilizing life insurance for ensuring sustainable development under the federalist Ethiopian legal system. Therefore, to achieve, its purpose this research uses secondary data sources which includes government policies and laws in the area of life insurance. So, it is doctrinal research which employs qualitative research methodology. The research findings showed that there is a legal and practical problem both on the sides of government and the people in harnessing life insurance for strengthening sustainable development in the Ethiopian federation. In conclusion, guaranteeing human rights do not hold water without ensuring the right to health and thereby the right to life. Ensuring the right to health is hardly possible without guaranteeing the right to have life insurance. Consequently, ensuring sustainable development is very difficult without guaranteeing and practicing the right to have life insurance.

Keywords: Life insurance, sustainable development, Ethiopia

Introduction

The Concept of Insurance in Ethiopia

Concerning Ethiopia, no one knows when and how the insurance business begun in Ethiopia (Ermias, 2013) ^[4]. According to *"Markets of the World"*, although a systematic study of Adulis has not been completed, it has already proved that the Greek merchants reached this thriving port south of Massawa in the 1st Century (Ibid). During that time, it is believed that some form of Marine Insurance was used probably "General Average" along Rhodian Lines (Ibid). But the practice of insurance service in its modern sense is a recent phenomenon which is said only to have been started in the early 1920s (Ibid). Generally, the evolution of modern institutionalized financial system in Ethiopia started in 1905 following the establishment of the first bank by historically reminiscent name of Bank of Abyssinia (Ibid). This Bank introduced for the first time in Ethiopian financial systems history of banking services and instruments such as deposit accounts and export financing (Ibid).

But following the massive codification of Ethiopian laws in 1960; the first Commercial Code which incorporates some parts dealing with the matter of insurance was enacted (Commercial Code Ethiopia, 1960, Article 654-714) ^[2]. This code claims, "The conditions on which physical persons or business organizations may carry on insurance business shall be provided by law" (Ibid, Art 656). So, the code defines the term insurance (Ibid, Article 654), forms of insurance contract or insurance policy (Ibid, Article 657 and 658), Rights and duties of the parties (Ibid, Article 663-673), period of limitation to claim for the rights related to insurance which is restricted to two years (Ibid, Article, 674), and types of insurances like insurance against damage, as well as, insurance of person which includes life insurance (Ibid, Article, 115-147).

During the *Derg* Regime, the Government nationalized all financial institutions in the country and created three specialized banks (excluding the central bank) and one insurance company. Private ownership of financial institutions was prohibited.

Correspondence

Solomon Emiru Gutema
Wollega University, School of
Law, Nekemte, Ethiopia

Hailu (2007) ^[6] summed up the condition of insurance industry in Ethiopia during the *Derg* era as follows.

The insurance sector during the command economic system was characterized by monopoly of the sector by the government, lack of dynamism and innovation, volatile premium growth rates ... and reliance on a couple of classes of insurance business (motor and marine) for much of gross premium income. The nationalization of private insurance companies, the restrictions imposed on private business ventures, and management of the insurance sector ... had significant adverse impact on the development and growth of Ethiopian insurance industry.

The only insurance firm, the Ethiopia Insurance Corporation, was responsible for provision of all types of insurance services. Hence, insurance business didn't contribute much to development in Ethiopia during the *Derg* regime (from 1974-1991).

Following the paradigm shift from socialist to market economic system in 1991, Ethiopia reformed her financial services industry. The reform measures included comprehensive restructuring of government owned financial institutions and opening the sector for local private equity participation (Ermias Tizazu, 2013) ^[4]. The three governments owned banks and one insurance company inherited from socialist regime were made autonomies in terms of managing their business and recapitalized (Ibid). While there was no change in the role of Commercial Bank of Ethiopia (as short-term financier), Development Bank of Ethiopia (as provider of medium - and long-term development finance) and Ethiopian Insurance Corporation (as provider of both general and life insurance services), Construction and Business Bank has been allowed to engage in short-term financing activities (Ibid).

Consequently, presently a number of insurance companies both public and private are established and supporting sustainable development in Ethiopia in various manners following the 1995 FDRE Constitution which declare and allow free market policy (FDRE Constitution, Article 40 and 41). As a result, the insurance industry in general and life insurance in particular have paramount importance in harnessing sustainable development as per the spirit of the FDRE Constitution and other specific legislations.

Meaning and Types of Insurance under the Ethiopian Legal System

Insurances/Assurance may be created through contract of insurance in various areas like Property insurance, Motor insurance, Liability insurance, Marine, aviation and transit insurance, health insurance, life insurance etc. Accordingly, Article 654 (1) of the Commercial Code of Ethiopia defines insurance as follows:

Insurance (policy) is a contract whereby a person, called the insurer, undertakes, against payment of one or more premiums, to pay to a person, called the beneficiary, a sum of money where a specified risk materializes.

According to this definition, insurance is a contract between two or more persons in which one person called the insurer, agrees to pay the agreed amount of money or compensation to another person, called the insured, or the beneficiary where the insured property is lost or destroyed (in cases of property insurance), or where the insured person incurs civil liability (in cases of liability insurance) or where the insured person dies or suffers bodily injury or falls ill (in case of insurance of persons) (Fasil and Merhatbeb, 2009). The

insurer undertakes this obligation for consideration, called premium payable by the insured person (Ibid).

Article 654(2) of the same code provides that a contract of insurance may be concluded in relation to "damages" covering risks affecting property or arising out of the insured person's civil liability. These types of insurance are generally referred to as indemnity insurances, in which the insurer's obligation is to pay compensation, which is always equal to damage (Ibid). Similarly, sub-Article 654(3) of the same commercial code provides that a contract of insurance may also be made in respect of human person's life, body or health in which the insurers' obligation is to pay the amount agreed upon (the sum insured). This is a type of insurance in which the principle of indemnity or compensation is not applicable since, human life or body does not have a market value, hence the name non-indemnity insurance (Ibid).

Hence, Article 654 of the Ethiopian Commercial code gives a clue for us that insurance can be broadly categorized as insurance against damage which consists of insurance of objects (Ibid, 675) and insurance of liability for damages (Ibid, 685) and the other category of insurance is insurance of person which comprises of Life insurance (Ibid, 691) and insurance against accidents and illness (Ibid, Article 711) as explained pursuant to Article 654(3) of the Ethiopian Commercial code. But this research gives its emphasis on Life Insurance, as its purpose is to assess the use of life insurance in harnessing sustainable development in Ethiopia. Accordingly, the definition of life insurance and its contributions in harnessing sustainable development will be explored under the federalist Ethiopian legal system hereunder.

Harnessing Life Insurance for Ensuring Sustainable Development in Ethiopia

Normally, before clarifying the contributions of life insurance in ensuring sustainable development, it is better to elaborate the two phrases one by one. Accordingly, the concept of life insurance is recognized and guaranteed under various laws including the FDRE Constitution, Commercial code of Ethiopia and other specific laws. Firstly, under Article 691 and 692 of the Ethiopian Commercial code of 1960, the term life insurance is defined as follows respectively:

A life insurance is a contract whereby the insurer undertakes against the payment of one or more premiums to pay to the subscriber or to the beneficiary a specified sum on certain conditions dependent upon the life or death of the subscriber or third party insured.

The insurer who enters into a life insurance undertakes to pay a specified capital or life interest provided the insured person is alive at a date fixed in the policy.

The insurer who enters into insurance for the event of death undertakes to pay, on the death of the insured person a specified capital or life interest to those having rights from the insured person or to the beneficiary named in the policy.

Moreover, the term life insurance is defined under other specific laws. For instance, pursuant to Article 2(23) of Insurance Business Proclamation No.746/2012;

"Life insurance means a contract whereby the insurer undertakes, against the payment of premium, to pay to the insured or to any beneficiary a specified sum on certain conditions dependent upon the life or death of the insured."

As it can be deduced from these two definitions given above, life insurance is made in respect of human person's

life, body or health in which the insurers' obligation is to pay the amount agreed upon (the sum insured) up on the occurrence of life or death. As a result, life insurance reduces worry and fear, both before and after loss. For instance, if family heads have life insurance for adequate amount to cover the future needs of their families, they are less likely to worry about the financial security of their dependents in the event of their premature death. Persons insured for long-term disability do not have to worry about the loss of earnings if a serious illness or accident occurs. Therefore, life insurance reduces worries and fears among the family members. According to the UN Conference on Trade and Development held in 1982 ^[14], besides the benefits that accrue directly to individuals and their families, a strong life insurance market can aid development by:

- a) Contributing to social stability by permitting individuals to minimize financial stress and worry;
- b) Reducing financial burden on the state of caring for the aged and for those made financially destitute because of the death of family bread winners; and
- c) Mobilizing domestic savings and serving as a source of development funds.

Accordingly, as a social and economic device, life insurance is a method by which a group of people may cooperate to ameliorate the loss resulting from the premature death of members of the group/family as one can deduce from the above explanations; as well as, life insurance can also serve as a vehicle through which individuals can save money for emergencies and for retirement (Ibid). Therefore, life insurance has paramount importance in ensuring and implementing the constitutional right to have sustainable development under the FDRE Constitution (FDRE Constitution, Article 43).

On the other hand, there is no common definition for the concept of sustainable development like the term insurance. But the best accepted definition is that says, "*Sustainable development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*" (Brundtland Commission, 1987)^[1].

Another definition was given by the Swiss 'Monitoring of Sustainable Development Project (MONET Project Report, 2001)^[12] as follows:

'Sustainable development means ensuring dignified living conditions with regard to human rights by creating and maintaining the widest possible range of options for freely defining life plans. The principle of fairness among and between present and future generations should be taken into account in the use of environmental, economic and social resources.'

Kofi Annan the former secretary General in his statement to the 53rd session of the commission on Human Rights on 9 April 1997 defined the right to sustainable development as follows:

"Truly sustainable development is possible only when the political, economic and social rights of all people are fully respected. They help to create the social equilibrium which is vital if a society is to evolve in peace. The right to development is the measure of the respect of all other human rights. That should be our aim a situation in which all individuals are enabled to maximize their potential of society as a whole."

From the above definition the concept of sustainable development is all inclusive that requires implementing the political, social, economic, cultural, and environmental rights those guaranteed under the constitution and international treaties in holistic and balanced manner to satisfy the needs of the present and future generations.

For this reason, the entrenchment of life insurance business is inextricably interwoven with the concept of sustainable development. Since, the premium collected from life insurance will be accumulated in the hand of insurers, and can serve as source of finance for new business, it may generate employment opportunities, creates more favorable credit for borrowers and it can also minimize the financial disruption to business caused by the death of key employees and owners (UNCTD, 1982)^[14]. Furthermore, it warrants family welfare after the death of the bread giver. As a result of these reasons, life insurance enhances; social security, family welfare, economic growth, health care, investment, and savings. Thus, life insurance plays a great role in ensuring sustainable development in various manners. Generally, duty is imposed on government to ensure social and economic development of the peoples. To the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security (FDRE Constitution, Article 90). Accordingly, government must support the expansion of the life insurance and makes the public at large the beneficiary of this insurance policy. This may enhance the social security in particular and promotes sustainable development in general. Since sustainable development is encompasses all types of development including political, socio-economic, environmental, and cultural development. Moreover, socio-economic development cannot be ensured unless, the government provides public health, education and other social services; allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian and life insurance contributes to these socio-economic rights and development in many ways as explained hereinabove.

Statements of the Problem

Insurance in general and life insurance in particular, as a mechanism of transfer of risk has great economic and social benefits to the individual insured, his family and the country in general. But insurance in general and life insurance in particular haven't given enough attention both by the government and the public in the past and even today, the attention given for the same sector, especially life insurance is far from satisfactory.

But upon the flourishing of federalism and enactment of the 1995 FDRE Constitution, the right to have sustainable development was constitutionally granted for all nations, nationalities and peoples of Ethiopia (FDRE Constitution, Article 43(1)). Accordingly, duty is imposed upon government organs to enforce socio-economic rights and ensure social security for the whole nations, nationalities and peoples, as much as possible or to extent the resources of the country permit (Ibid, 13, 43 and 90). Following this, the FDRE Constitution incorporates numerous golden principles which supports and guarantees the right to have health care, the right to education, the right to development, the right to employment, the right to have improved living

standards, the right to food, clean water, the right to have social security and generally the right to have sustainable development (Ibid).

Consequently, life insurance is interlinked and intermingled with all these guarantees elaborated hereinabove. Because, life insurance supports sustainable development in various way like ensuring family welfare; entrenching the culture of saving; encouraging investment; ensures makes education rights and the right to health care affordable for the children of the deceased; annuity for the aged people and thereby warrants the continuity of their income even after the old age, disability and illness; used as a and means of transferring ownership. Furthermore, by providing a measure of financial security to individuals, life insurance products help and stabilize the economy, as well as, it encourages large scale projects (UN Report (2007) ^[15]). So, it is possible to say the FDRE Constitution guarantees the fundamental rights and freedoms, which comprises of political, socio-economic, and environmental cultural and thereby incorporates a lot of constitutional principles, which claims for ensuring political and socio-economic transformation in the Ethiopian federation. To fulfill these multifaceted duties i.e., to implement, protect and fulfill these political and socio-economic rights, the three wings of governments both at federal and regional levels are considered as duty bearers (FDRE Constitution, Article 13). Therefore, this researcher claims that life insurance has immense contributions in supporting the enforcement and fulfillment of these political rights, human rights and socio-economic rights and thereby warranting sustainable development. Accordingly, if life insurance is entrenched, it enhances social security and ensures economic growth and thereby fostering the right to health, education, warranting human rights protection, respect and fulfillment by the government, and therefore, *ensuring sustainable development is very difficult without guaranteeing and practicing the right to have life insurance.*

But the great problem is lack of comprehensive, timely and codified laws in current Ethiopian federalist legal system in order to harness this life insurance to support sustainable development as guaranteed under the FDRE Constitution for the nations, nationalities and peoples of Ethiopia. The other problem is lack of public awareness about the existence and advantages of life insurance in Ethiopia. Moreover, the other problem is that the life insurance and other financial institutions are exclusively reserved for domestic investors or practiced only by the government and the domestic investors, as to ensure political and economic independence based on the justification of “infant industry” principles (Proclamation No. 769/2012). This may affect the affordability and accessibility of life insurance for the public at large, since the sector is monopolized by domestic investors. Furthermore, attitudes of the peoples may be the other problems; as people may not interested in life insurance for the reason of their religion, culture, personal characteristics and others. Therefore, all these problems are retarding the attempts of utilizing life insurance in warranting sustainable development in Ethiopia.

Objectives

The main objective of this research is to evaluate the extent to which life insurance is harnessed by the Ethiopian government in promoting sustainable development and specifically to determine the possible prospects and

challenges in utilizing life insurance for ensuring sustainable development under the federalist Ethiopian legal system.

Methodology of the Research

This research is doctrinal which employs a qualitative research methodology relying essentially on secondary data sources on document analysis which includes government policies and laws in the area of life insurance, The FDRE Constitution of 1995, other relevant laws and government policies, other relevant laws and government policies, as well as, it highlights the prevailing practices in utilizing life insurance for enhancing social security.

Results and Discussions

Undoubtedly the FDRE Constitution accommodates various constitutional promises under the guise of fundamental rights and freedoms (FDRE Constitution, Chapter Three). Among these constitutional promises the FDRE Constitution recognizes socio-economic rights and human rights as the base of the constitution itself (Ibid). Socio-economic rights are generally those rights that contain claims to an adequate standard of living and include the right to work under just and favorable conditions, the right to social security, the right to health, the right to housing, the right to food, and the right to education (Sisay Alemahu, 2010) ^[11]. Additionally the FDRE Constitution incorporates long listed human rights and democratic rights guarantees like the right to life, the right to security of person, the right to liberty, prohibition against inhuman treatment, right of person arrested, right of person accused, right to equality, the right to access to justice, freedom of Association, freedom of assembly, the right to self-determination, the right to property, Economic, Social and Cultural Rights, Environmental rights and others (FDRE Constitution Article 14-44).

Moreover, the FDRE Constitution gives recognition for the international treaties ratified by Ethiopia as binding laws to ensure human rights centered sustainable development; and thereby warranting social security through different mechanisms like enhancing life insurance schemes. Accordingly, “All international agreements ratified by Ethiopia are an integral part of the law of the land” (Ibid, Article 9(4)). Furthermore, the FDRE Constitution gives a guide line in which these constitutional guarantees are interpreted. So human rights, socio-economic rights, and democratic rights recognized under chapter three of the same constitution must be interpreted in line with the international human rights instruments, declarations and treaties in case of gaps, confusions and contradictions in the laws and constitution. It says, “The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia” (FDRE Constitution Article 13(2)).

Pursuant to Article 13(1) of the FDRE Constitution the duty to enforce these constitutional guarantees and international human rights instruments and treaties ratified by Ethiopia, for the purpose of ensuring sustainable development and guaranteeing social security, for the public at large; are imposed up on the three wings of government as, “All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter.”

Accordingly, based on these constitutionally imposed duties, the Ethiopian government has been taking a number of measures to ensure social security of citizens through establishing different financial institutions, like banks and insurances. So, these insurance companies give security for the objects/property and human beings. Accordingly, the life insurance has paramount importance for establishing family in case of premature death in the family members; ensure health care and education rights, plus warranting the continuous of income during old age, disability and in case of annuity. Therefore, the government has a constitutional duty to provide life insurance services for the public at large; and thereby fulfills its duty to respect, enforce and fulfill the right to have social security, health care, education, shelter, food, development, employment, clean environment, and thereby guarantee the right to sustainable development.

To make this discussion clearer, respecting and enforcing the human rights guarantees recognized under the FDRE Constitution and International treaties ratified by Ethiopia have inherent relationship, as well as, inseparable with the concepts of sustainable development under the Ethiopian federation and everywhere in the world. For instance, Articles 14 and 15 of the FDRE Constitution guarantee an inviolable and inalienable right to life which would be devoid of much breath without protection of the rights to food, shelter, health care, education and generally the right to have social security. On the other hand, the human rights, like the right to life, food, shelter, health care, and in general the right to have sustainable development cannot be fulfilled without ensuring the right to have life insurance; especially in developing country like Ethiopia.

As a result, ensuring sustainable development through enhancing the social security of the society and guaranteeing social security, through different mechanisms like by establishing life insurance is recognized, as one can infer from the spirits of the FDRE Constitution. But harnessing life insurance to promote sustainable development in the Ethiopian federation is retarded by a number of legal and practical problems as analyzed in the following manner.

Lack of Comprehensive Laws in Harnessing Life Insurance for Guaranteeing Sustainable Development

Nowadays Ethiopia is practicing federalism, but still she is using the Commercial code which was enacted before half of a century in connection with the matter of insurance in general and life insurance in particular. That means the 1960 Commercial code of Ethiopia is not repealed all in all at this time. These may have a number of problems in relation to utilizing life insurance for sustainable development.

Firstly, though laws are enacted perpetually, updating the laws from time to time, through repeal and amendment, is also not a matter left for options; to cope up with the changes occurs in politics, economy, social, environmental and globalization. So, if we see the 1960 commercial code of Ethiopia, it cannot be managing the matters of life insurance at this time appropriately. Since this code is too old to control the affairs of life insurance in Ethiopia at this time. Additionally, it was enacted under the system of absolute monarchy and system of feudalism, while today Ethiopia is following democratic federalism and system of free market in the line of developmental state ideology. So, this code must be repealed completely and a new federal

oriented commercial code must be enacted. Consequently, the issues of life insurance will be managed appropriately under the same code and other specific laws.

Inconsistencies of Laws as Hindrance to Use Life Insurance for enhancing Sustainable Development The FDRE Constitution and the Commercial Code of Ethiopia (On Ideology and Time)

Ethiopia is still using the 1960 codes; the civil code of 1960, the commercial code of 1960, civil procedure code 1960 and criminal procedure of 1960. Though some attempts have been ongoing, it is far from satisfactory since these important codes are not yet repealed and replaced by federal oriented codes or laws till today. Some codes are revised by enacting specific proclamation, and some codes are pending at the stage of draft like the draft federal criminal procedure code and the attempt to enact a new commercial law by the Ethiopian government. But none of these attempts are not comprehensively and consistently completed, so it is not as such fruitful to guarantee the socio-economic transformation and in that way warranting sustainable development.

Accordingly, the matters of life insurance in Ethiopia are mainly governed under the 1960 commercial code under its Article 691-712. But if one explores about the affairs of social security police which encompasses the matter of life insurance is incorporated under the federal constitution of Ethiopia (FDRE Constitution, Article 41,89 and 90). These constitutional guarantees claim about the right to have sustainable development through various governmental schemes, among which life insurance is the most important one. But it is too difficult to practice life insurance which is governed under the monarchical code i.e., the 1960 code to implement the constitutional guarantees recognized under democratic federal state like Ethiopia. Hence, it is hardly possible to enforce the rights to have sustainable development granted under FDRE Constitution, through utilizing life insurance by using the commercial code of Ethiopia at this time.

The Civil Code and Commercial Code (On Formality of Life Insurance Contract)

Furthermore, there is inconsistency between the civil code and commercial code of Ethiopia on the form of insurance contracts in general and life insurance in particular. As per Article 1725(1) Civil code the insurance contract must be in written form as follows.

Article 1725 Contracts for a long period of time

The following contracts shall be in writing

- a) *Contracts of guarantee; and*
- b) *Insurance contracts*
- c) *Any other contract in respect of which such form is required by the law.*

But pursuant to Article 657(1) commercial code, the form which the insurance contract must be fulfilled is not clear enough.

Art. 657. - Proof of contract of insurance.

1. *The contract of insurance shall be supported by a document called an insurance policy.*
2. *The policy may only be varied in writing by documents called endorsements.*
3. *The insurer and beneficiary shall be bound where, prior to the signature of the policy or endorsements, the insurer hands to the beneficiary a document setting up*

a provisional guarantee until the policy or endorsement is signed.

But as per Article 657(1) commercial code, the insurance contract must be supplemented by the insurance policy, and the insurance contract must be performed as per the insurance policy pursuant to Article 667(3) of the commercial code; as well as, the insurance policy must contain the details of the insurance and it must be signed pursuant to Article 659(1) of the same code.

Based on these Articles one can understand that the insurance contract must be concluded in written form. According to the civil code, Article 1725(1), the contract of insurance must be concluded by the parties and signed, as well as, it must be affirmed by two witnesses pursuant to Article 1728 (1) of the civil code. Accordingly, the close look at of these provisions of commercial code and civil code are not consistent. Because practically the subscriber fulfilled the proposal and discuss with the insurer or insurance company; if they agreed, the insurer fulfilled the insurance policy and the manager signed and put the seal of the insurer and gives to the subscriber and thereby the insurance contract is formed.

Clearly, pursuant to Article 1727(1) and 1728(1) of the civil code, the insurance contract must be concluded in written form; the signature of the parties must be exist on the same document; as well as, it must be supplemented by witnesses. But according to Article 657,658 and 659 of the commercial code, it differs. Fulfilling proposal, preparing the contract, through a document called as policy and this policy must be signed and sealed.

Hence, there is apparent contradiction between the civil code and commercial code on the way insurance contract is formed. When we see the practices the federal high court decisions on these inconsistent provisions, it resolves these inconsistencies between commercial code and civil code based on the principles of “The Special Law prevails over the General Law”. Therefore, the federal high court, decided that the commercial code must be applied to the matters of insurance including its forms; as it manages the issues of insurance in general and life insurance in particular as one conclude from the decisions of the federal high courts on many cases like the case (For instance, *EIC v Oromiyaa Bureau of Education (Federal High Court, File Number 21665, Awash Insurance Co. vs. Saleni Joint Venture Federal High Court, File number 23204, etc.)*)

On the other hand, the federal Supreme Court cassation bench, decided that Article 1725(1) civil code is workable for a contract which endures for long period of time; but the contract of insurance is formed only for one year as it passed decision on the case between “*Salinileks Partnership vs Awash Insurance Company, File No. 23703*”. But the researcher argues that the decision of this cassation bench doesn’t seem appropriate. As this court based its decision on the title of Article 1725 (1) civil code only; which says contracts for a long period of time. The consequence of this decision is disastrous as it excludes the affairs of life insurance which endures for a long period of time. Even though, Article 1725 civil code uses the title which claims a contract for a long period of time, the supreme court cassation bench must not repeal or derogates from the strong word which precisely puts that insurance contract must be concluded in written form pursuant to Article 172 (b) of the civil code.

Therefore, there are legal inconsistencies between civil code and commercial code under the Ethiopian legal system on the issues of formation of life insurance. As a result, the lack of legal clarity on the issues what formal requirements must be fulfilled to have a valid, enforceable and acceptable life insurance contract, is the most decisive one to harness life insurance in guaranteeing sustainable development. Since, formality requirement is not a matter left to option in case of life insurance. Generally, the contract will be subject to the formalities in the Civil Code at the peril of nullity (Belay Nemaga as cited in Fekadu Petros, 2008) ^[5]. Hence, the formality requirement of insurance in general and life insurance in particular must be determined in order to make the formality for life insurance comprehensive and genuine to enhance the sense of security of the subscribers and beneficiaries of life insurance directly and thereby promotes sustainable development under the federalist Ethiopia.

The Civil Code and Commercial Code (Heirs vs. Beneficiary or succession Issues)

The other discrepancy observed is that between the commercial code and civil code on the matter governing the beneficiary of life insurance. As prescribed in Article 827 of the Civil Code, life insurance could or could not constitute a hereditary estate as explained hereunder.

Art. 827. — Things making up inheritance. — Life insurance

- (1) *Monies due in performance of a contract of life insurance to which the deceased was a party, shall form part of the inheritance where the deceased has not determined the beneficiary or the insurance is made to the benefit of the heirs of the deceased without any other indication.*
- (2) *In other cases, they shall not form part of the inheritance.*

The important issue here is how life insurance would make up inheritance pursuant to the 1960 civil code of Ethiopia? Two importance criteria must be fulfilled to consider life insurance as parts of succession/ inheritance as one can deduce from the above Article. First if the subscriber didn’t identify any person as a beneficiary of life insurance or second, if the life insurance is made to the benefit of heirs of the subscriber without any other indication.

But the Ethiopian Commercial code of the 1960 treats the same issues differently, in the following manner.

Art. 701. Beneficiary of insurance policy

1. *An insurance policy for the event of death may be made to the benefit of specified beneficiaries.*
2. *The following persons shall be deemed to be specified beneficiaries notwithstanding that they are not mentioned by name:*
 - A) *The subscriber’s spouse, even where the marriage took place after the policy was entered into.*
 - B) *The subscriber’s children, whether or not born at the time when the policy is entered.*

Pursuant to the civil code provision, Article 827, the money to be collected from the insurer upon death of the subscriber forms part of the inheritance, only and only, if the subscriber didn’t designate his/ her beneficiary of the life insurance. But if beneficiary is specified, it can’t be part of inheritance of the subscriber/ the deceased. But the

commercial code makes the spouse and children beneficiary of life insurance even though they didn't mention by name. There is no unanimity in decisions of courts of various levels regarding the rule under Article 701(2) of commercial code are concerned (Ibid). Some courts make this provision applicable to all cases. If the subscriber buys life insurance for his friend, some courts make his wife and his children beneficiary of the life insurance. These courts, mainly base their arguments on the expression of the law that says the subscriber's spouse is beneficiary even if the marriage is concluded after the policy was entered and also the subscriber's children are beneficiaries even if they are not mentioned by name (Commercial code, Article 701(2)). Other courts do not accept this argument and the bases their decision on Article 827 Civil code of Ethiopia as explained above.

According to the Federal Supreme Court, it is only the person who is indicated as beneficiary who is going to collect the money (Ibid). The spouse shall be beneficiary only when the subscriber makes her/him beneficiary, even the insurance is entered before the conclusion of the marriage. The subscriber must indicate that his wife or her husband shall be beneficiary of the life insurance. Likewise, he/she must indicate that the insurance is made to the benefit of his/her children without indicating their name. If a spouse or the children are not indicated in this manner and if another person is appointed as beneficiary, they have no chance of becoming beneficiaries (Ibid).

Therefore, this discrepancy and the attempt of the Supreme Court to give a clue that it is better if the legislature revise these old laws comprehensively and in a consistent manner. These types of inconsistencies between the commercial law and civil code cannot be resolved by the attempt of Supreme Court cassation decision. The condition of having such incompatibilities among laws on the issues of life insurance may affect the support that life insurance has in substantiating sustainable development in Ethiopia. Parties may enter into irrelevant court proceeding based on these different legal provisions and even the decision given by the federal Supreme Court to resolve this matter is not as such satisfactory to have consistent laws on the issues of beneficiary of life insurance upon the death of the subscriber.

The Investment Policy as a problem to Utilize Life Insurance for Sustainable Development

Under the Ethiopian policy and laws of investment, some areas are exclusively reserved for Ethiopian nationals (Investment Proclamation No.769/2012, Article 7 and Regulation No.84/2003, Article 3). Among these reserved areas of investment insurance in general including life insurance is exclusively reserved for domestic investor in Ethiopia (Regulation No.84/2003, Article, 3 and under the schedule attached). The reason for excluding foreign investor from certain areas of investments is to support the domestic investors, for protecting national interest, national security and the like. But it has negative impact on economic liberalization. It limits the competition since it is only reserved for domestic investors. Therefore, whether the life insurance service given by domestic investor is affordable or not, qualified or not, accessible or not, feasible or not the citizens have the duty to use it as there is no option left for them i.e., means it is monopolized by the domestic investors and the government. But if it is allowed for both domestic and foreign investors, there is various options for citizens to access to life insurance as they like.

This may support sustainable development in multifaceted ways.

Religion and Culture as Hindrance to Life Insurance

Because of their culture, religion or attitude peoples may have negative perception towards life insurance. Ethiopians have good culture of practicing which is similar to the modern life insurance services; they have been using "*IKub* and *Idir*" starting from the time immemorial (Meseret Wondaferaw, 2003) ^[10]. For instance, in the case of "*Idir*" people form an association where by each members contributes affixed sum, normally to a common fund from which predetermined compensation are paid to members up on occurrence of unforeseen events such as death of family members or relatives (Zekarias, 2010) ^[16]. So, the Ethiopian, peoples give their attention to these traditional institutions which functions similarly to the function of modern insurance; hence peoples give value to these traditional institutions rather than to the insurance in general and life insurance in particular for the sake of their culture.

It is also acknowledged that people have attitudes toward almost everything - religion, politics, clothes, music, and food (Kotler, 2008) ^[9]. For instance, religion historically has provided a strong source of cultural opposition to life insurance as many religious people believe that a reliance on life insurance results from a distrust of God 's protecting care (Zekarias, 2010) ^[16]. According to the research conducted by Zecharias, majority of Muslims oppose life insurance as it affects the trust they have on Allah (Ibid). Thus, all these resistance to life insurance because of religion beliefs, culture and even personal attitude retards the development of life insurance directly and erodes its contributions to sustainable development indirectly.

Conclusions and Policy Recommendations

Generally, based on the findings of this study, life insurance has paramount importance in harnessing sustainable development in Ethiopia and any other country. Since, it secures the family welfare in case of premature death, ensures health care for the public at large, strengthening social security through various schemes like pensions and annuity, enhancing culture of saving among the public, advancing investments, generate the government revenue through taxation, and thereby promotes sustainable development.

Though, the FDRE Constitution of Ethiopia appropriately handled and guarantees the constitutional rights of sustainable development; the specific laws and codes must be consistently enacted to serve for the spirits of this constitution on the same issue. Unfortunately, there are a number of challenges to harness life insurance for guaranteeing sustainable development under the current federalist state of Ethiopia. These challenges encompass inconsistencies of laws, since still the imperial commercial code is active whilst Ethiopia has been practicing federalism by under the federal oriented constitution. On the other hand, these old laws like commercial codes and civil codes are incompatible on the area of life insurance, like on the area of formality, determining beneficiary of life insurance in case of succession and the like. Again the decisions of Federal Supreme Courts on these inconsistent areas of commercial code and civil code is either not appropriate enough by itself or fail to bring a practical change in the day to day practices of the people concerning with life insurance and other cases.

The other problem is concerning with the investment policy of Ethiopia; as it blocks foreign investors and makes the area of insurance including life insurance reserved areas for domestic investors only. This may reduce the competitions and makes life insurance fragile, and reduce options for the insurance buyers and thereby decreases its contributions in enhancing sustainable development.

Moreover, there are challenges in connection with religion, culture and attitudes of the people at large in relation with life insurance. Some of the religion followers oppose or never ready to practice this life insurance policy as a result that they consider it as one act of violating the trust they have on Allah or God. On the other hand, the people of Ethiopia, prefers to follow their traditional institution to ensure social welfare. Practically “*Ikub* and *Idir*” are practiced and accepted before the Ethiopian people far better than the life insurance for the same purpose.

To sum up this discussion, the FDRE Constitution incorporated various golden principles which supports life insurance for guaranteeing sustainable development as life insurance is among the measure which can be taken to insure social security as one can infer from Article 41, 43 and 89 of the FDRE Constitution which incorporates “Economic, Social and Cultural Rights”, “The Right to Development” and “The Principle of Economic Objective” alternatively. Whereas, the inconsistencies exist among the constitution and other special laws, as well as, the practices like religion, culture and attitude of the people at large retards the harnessing of life insurance for sustainable development under the Ethiopian federation.

In conclusion, in order to ensure sustainable development, the right to healthy, human rights, political rights, economic rights, social rights, cultural rights and environmental rights must be enforced in a balanced manner. But the attempt of enforcing all these verities of development in balanced manner in the way that care for the present and future generation doesn't hold water without having comprehensive, consistent and timely updated laws, as well as, without creating public awareness to manage the affairs of life insurance appropriately in Ethiopia.

As a policy recommendation, the writer would like to warn the Ethiopian parliament to amend or repeal these old and inconsistent laws like civil code and commercial code and thereby re-establish the affairs of life insurance inline of the FDRE Constitution and modern globalization. Rather than attempting to resolve these legal and practical problems through the decisions of the federal Supreme Court cassation panel and enacting specific laws like proclamations on specific areas of these old codes; changing them all in all is the best possible remedy, as the researcher believes. Continuously, it is better if the Ethiopian parliament enact a new commercial code, civil code, criminal procedure code, civil procedure code and others in the way of federal oriented legal system rather than molding and conserving the monarchical oriented codes and following the most centralistic legal system at this stage.

In addition, since reserving everything for domestic investors is not as such fruitful in the long run economic effect in this era of globalization; the government must liberalize the insurance business in general and life insurance in particular to promote sustainable development. Hence, the researcher recommended that the sector of insurance must be allowed or open for foreign investors to enhance its practices and business.

Furthermore, the Ethiopian Insurance Company (EIC) must take serious measures to create public awareness through

advertising, teaching, opening various branches for life insurance, creating various means in order to accommodate those who oppose life insurance because of their religion, culture and attitude as much as possible.

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