

THE RULE OF LAW AND INVESTMENT CONFERENCE: INVESTIGATING MOTORS FOR DEVELOPMENT

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SCHOOL OF DIPLOMACY, REPUBLIC OF DJIBOUTI



The importance of promoting the rule of law as relates to investments and development has gained recognition in recent years. Promoting the rule of law requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, public participation in decision-making, access to information, access to justice, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

According to the *World Investment Report 2014*, published by the United Nations Conference on Trade and Development (UNCTAD):

“Foreign investment flows into Africa increased by 4 per cent to \$57 billion, driven by international and regional market-seeking and infrastructure investments. Expectations for sustained growth of an emerging middle class attracted Foreign Direct Investment (FDI) in consumer-oriented industries (...). So far, African global value chain (GVC) participation is (however) still mostly limited to downstream incorporation of raw materials in the exports of developed countries.’

“Mobilizing investment requires political commitment to overcome substantial barriers at various levels: Adequate regulatory frameworks are needed in order to give investors the necessary confidence. In order to achieve this, the national state has to balance the interest of attracting (and securing) international investment while promoting peace and security for its population. The most appropriate approach for achieving both is adherence to and promotion of the rule of law while creating incentive structures for investors to act sustainably and to respect national social development goals, empowerment policies, labor standards and human rights.

Whereas the shared contents of human rights and the investment disciplines relate among others to non-discrimination, due diligence, procedural fairness, equity and proportionality. Good governance centers on questions of democratic legitimacy, transparency, participation, accountability and predictability.”

It is against this backdrop that the Konrad Adenauer Stiftung under the auspices of its Rule of Law Program for Sub Saharan Africa in collaboration with the Development and Rule of Law Programme (DROP) of the University of Stellenbosch (South Africa) and the Office of the President of the Republic of Djibouti convened a stakeholders’ conference from the Horn of Africa to deliberate on, define and contribute towards the promotion of regulatory measures in the field of investments for sustainable development of the region and the African continent as a whole.

It was clear from the deliberations that increase in foreign investments on the continent is likely to be followed by greater number of investment disputes hence the need for precise, robust and progressive regulatory and protection mechanisms for both the investors and the local population.

This conference reviewed some of the national, regional and international investment protection mechanisms available and their impact on the continent to date. It was noted that capital-importing states, mainly the developing and emerging countries, submit themselves to international rules on the treatment of foreign investments primarily with the aim of promoting sustainable development of their economies, whereas the Capital-exporting states aim to comprehensively protect their businesses against political risks in host states through the application of relevant rules of international law. This increased level of legal certainty is intended to attract greater foreign investment on the part of the emerging economies and guarantee returns on the part of the investors.

The conference which was officially opened by H.E. Mr. Mohamoud Ali Youssouf, Minister of Foreign Affairs and International Cooperation, Republic of Djibouti brought together lawyers, investment experts, policy-makers and representatives of various chambers of commerce drawn from Djibouti, Kenya and Uganda. The Head of Mission of the Federal Republic of Germany, Amb. Wolfgang Piecha, experts from Germany, Morocco and a Legal Counsel from the Permanent Court of Arbitration, PCA Mauritius Office also graced the forum.