HAWASSA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF LAW

PRIVATE COMMERCIAL DISPUTE SETTLEMENT IN ETHIOPIA: LEGAL FRAMEWORKS AND INSTITUTIONAL PRACTICES OF ARBITRATION IN ADDIS ABABA

LL.M THESIS IN COMMERCIAL LAW

BY

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HAWASSA ETHIOPIA

November, 2024

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LLM THESIS SUBMITTED TO THE SCHOOL OF LAW, COLLEGE OF LAW AND GOVERNANCE, SCHOOL OF GRADUATE STUDIES, HAWASSA UNIVERSITY, HAWASSA, ETHIOPIA

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAW IN COMMERCIAL LAW

HAWASSA ETHIOPIA

November, 2024

COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF GRADUATE STUDIES, SCHOOL OF LAW

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This is to certify that the thesis entitled "**PRIVATE COMMERCIAL DISPUTE SETTLEMENT IN ETHIOPIA: LEGAL FRAMEWORKS AND INSTITUTIONAL PRACTICES OF ARBITRATION IN ADDIS ABABA**" was submitted in partial fulfillment of the requirements for the degree of LLM with specialization in Commercial Law at the Graduate Program of the School of Law, and was carried out by MEKIT ZELEKE ALEMAYEHU ID No: GPCLR/0005/15 under my supervision. Therefore, I recommend that the student fulfill the requirements and, hence, submit the thesis to the school of law.

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This LLM thesis title has been submitted for examination with my approval as thesis Advisor.

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We, the undersigned, members of the Board of Examiners of the final open defense by MEKIT ZELEKE ALEMAYEHU have read and evaluated her thesis entitled "Private Commercial Dispute Settlement in Ethiopia: Legal Framework and Institutional Practices of Arbitration in Addis Ababa" and examined the candidate. This is, therefore, to certify that the thesis has been accepted in partial fulfillment of the requirements for the degree.

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Name of External Examiner Signature Date

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SGS Approval Signature Date

DECLARATION

I hereby declare that this LLM thesis on "Private Commercial Dispute Settlement in Ethiopia: Legal Framework and Institutional Practices of Arbitration in Addis Ababa" is my original work and has not been presented for a degree in any other university, and all sources of material used for this thesis have been duly acknowledged.

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I hereby certify that all the corrections and recommendations suggested by the Board of Examiners are incorporated into the final Thesis entitled Private Commercial Dispute Settlement in Ethiopia: Legal framework and Institutional Practices of Arbitration in Addis Ababa" by Mekit Zeleke

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ACKNOWLEDGMENT

First I would like to express my deepest appreciation to my advisor Dr. Yidneckachew Ayele for his continuous support and guidance starting from the proposal to the final submission of this paper. Achievement of this research wouldn't have possible without the remarkable contributions of the legal experts of the arbitration center in Addis Ababa including Mr Nigussie Tezazu Director General of civil Justice Administration Deputy Director General in the minister of Justice Thank you all for your kindness hospitality and for benevolently giving various vital data for the study. Lastly, I would like to say thank you to all my friends, classmates and my beloved families for their invaluable support throughout the preparation of this thesis.

Thank you all.

ACRONYMS AND ABBREVIATIONS

ADR – Alternative Dispute Resolutions

AAA- American Arbitration Association

AACCSA- Addis Ababa Chamber of Commerce and Sectorial Association

CC- Civil Code of Ethiopia

CPC- Civil Procedure Code of Ethiopia

ECCSA- Ethiopia Chamber for Commerce and Sectorial Association

EMAC- Ethiopian Mediation and Arbitration Centers

FDRE – Federal Democratic Republic of Ethiopia

ICC- International Chamber of Commerce

LCLA- London Court of International Arbitration

ICSID- International Convention on the Settlement of Investment Disputes

UNCITRAL- United Nations Commission on International Trade Law

ABSTRACT

Today Arbitration has emerged as a significant mechanism for resolving commercial disputes, especially given the growing complexity of domestic and international business transactions. To meet this, Ethiopia introduced a legal reform through Proclamation No. 1237/2021. This legal reform aims to modernize Ethiopia's arbitration legal and institutional framework by providing a governing regime and recognizing institutional arbitration practice. This thesis based the objective of critically examines the impact of this newly introduced on the commercial arbitration landscape in Ethiopia, with a particular focus on how it has shaped the development and operation of commercial arbitration institutions in Addis Ababa. It compares the current arbitration legal framework with the previous legal regime, emphasizing the Civil and Procedure Codes. In addition, the thesis assesses and identifies the practical and legal challenges that arbitration centers face following the 2021 legal reform, to achieve these objectives; the thesis employed Within the qualitative research design, the socio legal research methodological approach in a blend of both doctrinal and non-doctrinal legal research. Along with legal analysis, key informant interviews were conducted with relevant individuals and experts involved in the subject of the study and arbitration institutions included in the study. These primary sources along with secondary sources were thematically analysed and triangulated in this thesis. Accordingly, the thesis shows that while the legal reform has facilitated the development of institutional arbitration, there are significant gaps. These gaps include legal and practical. the legal is not having clear regulations for establishing arbitration centres and also the problem conflict arbitration law and other laws, the practical challenge is resources and awareness With these findings, the thesis recommends the implementation of a clearer regulatory and amending thus conflicting part of the legation, and for practical challenges investing in awareness and supporting institutional capacity to ensure a more robust and effective environment for arbitration.

***Keywords**; private commercial dispute settlement, arbitration*

Table of Contents

CHAPTER ONE

INTRODUCTION

1.1. BACKGROUND OF THE STUDY

The application of private dispute settlement methods, such as commercial arbitration, to resolve disputes between parties has experienced a notable popularity that enabled a substantial expansion of global commerce and investment.[1] Consequently, there has been an increase in contractual agreements between parties, with a primary emphasis on how disagreements are to be resolved. Alternative dispute resolution, particularly arbitration, has brought greater favors and is chosen by numerous parties as their preferred method of dispute resolution.[2] The rationales underlying this choice may differ depending on the specific characteristics of the transaction; however, the principal factors driving the preference for private dispute settlement are its inherent flexibility, cost-effectiveness, and ability to afford greater party autonomy.[3]

Alternative dispute resolution (ADR) mechanism involves various methods, such as negotiation, mediation, or arbitration.[4] Arbitration, which is one of the prominent ADR mechanisms, is not clearly defined by international instruments including UNCITRAL and the New York Convention. These instruments' international legal framework left the decision for the tribunal to define and characterize the meaning of arbitration.[5] However, the New York Convention provides basic elements that a tribunal should consider while defining arbitration, including party consensus, only private matters way and finality of the decision of the arbitrator to settle disputes through arbitration.[6]

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[1] Walter Matti private justices in a Global Economy: From Litigation to Arbitration (2001) IO Foundation and the Massachusetts Institute of Technology.2.

[2] Tekce Hagos Bahta 'The Ratification of New York Convection in Ethiopia towards Efficiency and Avoidances of Divergent Paths' (2021) Volume .15 Mizan law review 467

[3] Fekadu petors 'underling Discscons Between ADR ,Shimilie, and Arbitron ,A critical Analysis' (2009) Vol 1(1) Mizan LR 119

[4] Scott Brown, Christine Cervenak and David Faireman' Alternative Dispute Resolution Practitioners Guide 2

[5] United Nation, International Commercial Arbitration dispute Settlement (2005) UNCTAD/EDM/Misc.232/Add.38

[6] Ibid

The private dispute resolution mechanism, in the modern legal regime of Ethiopia, has not been established as a separate legal framework. The Ethiopian Civil Code and Civil Procedure Code, along with some other laws, have provided the legal basis to administer both the substance and procedures of arbitration and conciliation for more than 50 years.[7] Through time, several legal developments have happened in the country that acknowledged and enabled private dispute resolution mechanisms, such as arbitration. Principally, the FDRE constitution acknowledges the role of private parties in solving personal disagreements using traditional or religious laws and practices based on their consent.[8] The constitution enabled individuals to find ways to solve disputes between themselves through ADR mechanisms, including arbitration. [9]Likewise, specific legislations, such as the Chamber of Commerce establishment proclamation 341/2003, the revised commercial code, the revised family code and the Ethiopia Commodity Exchange proclamation No. 550/2007, recognize and adopt private dispute resolution mechanisms based on the agreement of parties involved, mainly arbitration.[10] Especially, the establishment of arbitration centers as non-profit entities in Ethiopia is recognized under the Civil Code and other legislation.[11]

Even if the previous scattered legal regime recognized the importance of private dispute settlement, mainly arbitration, they failed to provide detailed procedures and implementation mechanisms for private dispute settlement.[12] In addition, the law was hardly clear and did not fit with international laws and standards, which became the main reason for the legal reform within the framework of international laws.[13] By considering these limitations and to provide with a more efficient and effective means of private dispute settlement, especially commercial and investment disputes, the Ethiopian government enacted Proclamation Number 1237/2021.

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[7]Ibid

[8] Constitution of the Federal Democratic Republic of Ethiopia Proclamation No 1/1995. (21st August 1994) Federal Negarit Gazeta, 1st Year No. 1. Addis Ababa Article 34(5)

[9] Dawit Worku The legal and Institutional and The future of Arbitration in Ethiopia: Prospects, Challenges and Possible Solution Electrical Journal 2www.scribd.com on January 2,2024

[10] Gidey Belay Assefa 'The concept and History of Arbitron in Ethiopia(January 2021) 'SSRN Electronic Journal

[11] Dawit Worku (n 9)

[12] Alemayeheu Yismawu Demamu,The need to established a workable modern and Institutionalized commercial Arbitration in Ethiopia' (2015) Vol.4. No.1 Hararmaya Law Review .38

[13] Gidey Belay Assefa (n 10)

This proclamation, which came into effect on 1st June 2021, repealed the previous laws and established a new legal framework for arbitration in the country. The effect of the new Ethiopian legal framework concerning private commercial disputes emphasizes the progress and the shift towards greater legal clarity and objectivity in addressing commercial disputes through arbitration and other forms of ADR.[14] The goal of this legal reform is to make the legal process cheaper and simpler especially for commercial and investment matters. The reform assumes that private commercial dispute resolution has the potential to promote the ability of the involved parties to make their own decisions based on domestic and international agreements and practices that Ethiopia follows as well.[15] With this, it introduces an explicit definition and structured arbitration procedures, which have had an understanding impact on the efficiency and effectiveness of commercial arbitration in the country.[16] It also has the role of fostering a fit environment for cross-border commerce and investment.[17] The reform also considers the advantages of having an advanced arbitration legal framework and practices consistent with international standards to attract international investors, who seek a stable legal environment for dispute resolution, and encourage the growth of international commercial relationships.[18]

This thesis investigated the legal framework and practices of arbitration to influence private commercial dispute settlement in Ethiopia, by emphasizing the newly introduced legal reform. Particularly, it aims to assess the legal and practical dynamics of institutional-based arbitration practices following the introduction by considering recent legal reforms on arbitration under Proclamation No 1237/2021.

[14] Dawit Worku (n.9)
[15] Proclamation no 1237/2021'Aritration and Conciliation ,Working Procedure Proclamation 'Federal negarit gazzete,27th Year no 21,Addis Abeba,2th April 2021.Article 3(1).
[16] Tecle Hagos Bahta,(n.2)
[17] Ibid
[18] Id 494

1.2. STATEMENT OF THE PROBLEM

Ethiopia has witnessed comprehensive legal reforms since 2018, particularly concerning the private sector's role in the economy and the legal system. The issuance of Proclamation No. 1237/2021 marked a critical landmark aimed at enhancing out-of-court dispute resolution, including arbitration, for businesses.

According to Sahilemariam, the Ethiopian business community prefers settling their commercial disputes through private dispute resolution rather than through public or ordinary courts.[19] It is due to private dispute resolution saving time and cost in addition to its simple procedure as compared to the ordinary courts.[20] Nevertheless, until 2021 the legal framework in Ethiopia did not provide adequate and up-to-standard legal and institutional framework for private dispute resolution, including arbitration. Previously, private commercial disputes in Ethiopia were governed by the Civil Code and the Civil Procedure Codes. Even if these laws recognized the importance of private dispute resolution including commercial arbitration, they did not have a compressive legal framework to govern this matter. [21] According to Aron Degol, these previous laws did not clearly define arbitration and its scope and suggest their amendment.[22] Hailgabriel G.Feyessa also argues that the previous laws provided extensive and unlimited power to Ethiopian courts over commercial arbitrations as opposed to the international principle.[23] In addition, the previous legal formwork lacks international standards, and detailed procedures for private dispute resolution and business promotion that necessitated the reform, mainly concerning arbitration.[24]

By considering these problems, Ethiopia introduced a reform on its private dispute resolution mechanism by adopting an umbrella proclamation no 1237/2021. This reform shows the government's desire and efforts to advance its legal framework, and attract more foreign investment and businesses by encouraging efficient and business-friendly private dispute

[19] Sahlimariam Wodajo Mamo, 'Commercial Arbitration in Ethiopia :Challenge and prospects' (2018) 34(3) Ethiopian Journal of Law 67
[20] Ibid
[21] Alemayeheu Yismawu Demamu.(n.12) 56
[22] Aron Degol,Arbitration in Ethiopia: law and practice(2nd end ,oxford University press 2020) 45.
[23] Hailgebriel G Feyissa 'The role of Ethiopian Court In Commercial Arbitration '(2010) Vol.4 No.2 Mizan law Review
[24] Ibid

settlement practices and updating old laws.[25] This new proclamation introduced several changes to the arbitration process. For instance, it allows parties to choose their arbitrators freely, rather than being limited to the list of arbitrators maintained by the court.[26] The scope of application of the law expanded to be applied to domestic and international arbitrations for commercial matters by limiting the intervention of the court, which is allowed only when the law permits. Additionally, the new law comes up with the establishment of private and public arbitration centers, allows for the enforcement of ad hoc measures ordered by the arbitrator and provides parties with a more effective means of safeguarding their rights during the arbitration process.[27] These new arbitration-friendly provisions are intended to support the arbitration process and increase the benefits of arbitration in Ethiopia.[28]

Despite the improvements, there are still some areas that require further clarity and understanding. For instance, there is a conflict between the provisions of the proclamation with other active laws, especially investment law, regarding the appointment of arbitrators for international disputes. According to Investment Regulation No.474/2020, Article 4(31), the activities of lawyers and consultants, including foreign arbitrators, are reserved for domestic investors only.[29] The approach of the Proclamation addresses domestic arbitration but may not adequately cover international arbitration proceedings conducted in Ethiopia. Ambiguities in the application of the proclamation to international arbitrations could create challenges for parties engaged in cross-border disputes. In addition, even if Article 18 of the proclamation recognizes the establishment of private and public arbitration centers, the country lacks a specific Regulatory Framework to govern and administer arbitration centers. This absence could challenge transparency, accountability, and consistency in the functioning of arbitration centers, including their registration, and regulation and ensuring that the reform

[25] Mehrteab and Getu Avocates LLP 'Legal update; Highlights of key change and interdictions made by The New Arbitra tion and Conciliation Proclamation' (may 10, 2021). mehretableul.com accessed on January 2,2024 https://mehrteableul.com/index.php/insights/news-and-updates/item/37-legal-update-highlights-of-key-chanages-and-introductions-made-by-the-new-arbitration-and-conciliation-proclamation

[26] Tecle Hagos Bahta,(n.2)

[27] Muluken Seid' Ethiopians New Arbitration Law: An Overview of Major Changes (May, 1, 2021)

[28] Abdisa Beriso Dekebo 'the meaning of new era for commercial Arbitration in Ethiopia: making Ethiopia Arbitration friendly? (July 2023). Vl. 7 Hawassa university journal of law.154

[29] Investment Incentive and Investment Areas Reserved for Domestic Investors Regulation No 474/2020,(Federal Negarit Gazeta,3 September 2020) art 4(31)

serves its intended goals of facilitating efficient private dispute settlement mechanisms and promoting business and investments in the country.

This thesis investigates how the newly introduced legal framework addresses the challenges and inconsistencies in institutional arbitration practices, particularly concerning the interplay between investment regulations and arbitration laws. It also involves what legal measures are necessary to enhance the effectiveness, transparency, and governance of arbitration centers in Ethiopia, particularly in Addis Ababa. It analyses and discusses the development of the legal framework of arbitration, arbitration institutions and its challenges in the Ethiopian legal system, by exploring the law and practice. This thesis demonstrates the practical implications of the new legal reform in comparison with the previous legal framework, particularly the changes in arbitration and arbitral institutions, along with their legal and practical problems.

1.3. OBJECTIVE OF THE STUDY

1.3.1 Main objective

The main objective of this research is to investigate the legal reforms affecting private commercial dispute resolution in Ethiopia, with a focus on the development, and implications of arbitration institutions and practices in the post-2018 reforms of Ethiopia, based on the experiences of Addis Ababa.

1.3.2 Specific Research Objectives

In particular, the following are specific objectives of the study: -

- To assess the legal framework of private commercial dispute settlement mechanisms in Ethiopia, mainly arbitration.
- To investigate the development and current state of arbitration institutions and practices following the recent legal reforms in Addis Ababa.
- To critically analyze the practical and legal challenges faced by arbitration institutions in Addis Ababa, considering the new legal environment.

1.4. RESEARCH QUESTION

Consistent with the above specific research objectives, the following are the research questions of this thesis: -

- How does Ethiopia's legal framework regulate private commercial dispute settlement mechanisms, particularly arbitration and arbitration institutions?
- How have the recent legal reforms influenced the development and current practices of arbitration institutions in Addis Ababa?
- What are the legal and practical challenges faced by arbitration and arbitration institutions in Addis Ababa and their implications?

1.5. RESEARCH METHODOLOGY AND DESIGN

To answer the above research questions and meet the intended objectives, this thesis uses qualitative research design and socio-legal research methodology. The thesis considered qualitative research design since the nature of its research objective is related to John Smith's recommendation, including a more narrative understanding of the phenomenon being studied.[30] Accordingly, the thesis intends to investigate private commercial dispute settlement to gain a detailed understanding of the legal and practical phenomenon of arbitration; its qualitative research design meets this goal by offering rooms to document rich qualitative narratives and empirical evidence about arbitration legal and practical phenomenon in Ethiopia, and Addis Ababa in particular.

Within the qualitative research design, the thesis employed socio legal research methodology, by involving both doctrinal and non-doctrinal legal research approaches. Mainly, the thesis uses doctrinal legal research methods to critically explore Ethiopian legal frameworks on private commercial dispute settlement mechanisms, especially arbitration. By identifying the legal documents, the thesis critically investigates the legal documents along with other relevant legal and academic sources by discussing and analyzing major changes introduced in arbitration and arbitration institution. In addition, the thesis employs non-doctrinal methodological approach to interrogate the legal framework in the practical arena and

[30] John Smith, "Qualitative research methodologies" (oxford university press2020).45

investigate arbitration and arbitration institution legal and practical challenges. For this purpose, the thesis makes use of semi-structured interviews with stakeholders and document analysis methods to analyze the current legal changes and practices of arbitration institutions and the related legal issues.

1.5.1 Data Source and Methods of Data Collection

This thesis collected and analyzed primary and secondary sources. Primary sources include legal documents and interviews. Apart from collecting, documenting and analyzing the legal documents relevant to private dispute settlement mechanisms, mainly arbitration, the thesis researcher process involved semi-structured interviews. Based on a generic guide, it is conducted among key stockholders, including lawyers and experts on arbitration in Addis Ababa. Particularly, the interview focused on institutions, lawyers and experts relevant to the subject of the thesis, such as Chamber of Commerce, and Ethiopian Mediation and Arbitration Centers in Addis Ababa. In addition, the interview includes officials and experts of the Ministry of Justice with the intent to investigate and draw practical insights into how the regulatory agency implements the newly introduced proclamation and administers and regulates the operation of the arbitration institutions. While analyzing the empirical evidence documented through the socio-legal research process, the thesis also uses secondary sources, such as books, reports, articles and research findings, to answer its research questions and draw legal and practical insights into arbitration.

1.5.2 Sample Size and Sampling Technique

The geographical scope of this thesis is limited to Addis Ababa since it is the primary center for business and economic activity of the country. Besides, most of the arbitration institutions operate in Addis Ababa, where their office and experts are accessible. In addition, the principal regulatory agency with the mandate to implement legal reform and regulate arbitration institutions the Ministry of Justice is located in Addis Ababa. However, the research findings may relate beyond Addis Ababa which could explain the national legal and practical issues of private dispute settlement, mainly arbitration.

The sample size of the interview is defined by the availability of arbitration centers in Addis Ababa. Due to the absence of the newly registered intuitions after the new proclamation,

based on the Ministry of Justice response, the already established, available and functional arbitration institutions, mainly Addis Ababa Chamber of Commerce, Ethiopian Arbitration Center and Ethiopian Mediation and Arbitration Center, were selected and included in the semi-structured interviews. By using a purposive sampling technique, the study selected the participants for the semi-structured interviews from these arbitration institutions and the Ministry of Justice by considering their relevance and expertise to the subject matter.

1.5.3 Data analysis

The thesis considers a qualitative data analysis approach, by utilizing and focusing on the descriptive, narrative, and exploratory analysis techniques that are categorized and thermalized to answer the research objectives. Additionally, documentary and legislative analysis complement the interview data, providing a comprehensive insight into the practical implementation of arbitration institutions in Ethiopia particularly in the Addis Ababa commercial dispute resolution environment.

1.6. SIGNIFICANCE OF THE STUDY

This thesis has much significance to the development of legal research along with particular legal and practical insights into the subject of private dispute resolution mechanisms, mainly arbitration in Ethiopia and particularly in Addis Ababa. Firstly, it analyzes and documents the legal framework of arbitration in Ethiopia; then it investigates and explores the legal and practical issues of arbitration in Addis Ababa that might contribute to the legal and institutional framework of arbitration. Secondly, it serves as a foundation for further research on similar topics.

1.7. SCOPE AND LIMITATION OF THE STUDY

This thesis delves into the examination of legal reforms affecting private commercial dispute resolution in Ethiopia, focusing on the development, implementation, and implications of arbitration institutions and practices in the post-reform era in Addis Ababa. However, it will not extend to the management or social aspects of arbitration centers.

1.8. ETHICAL CONSIDERATION

In the process of the data collection and analysis, the researcher keeps the ethical principles and guidelines of Hawassa University. Participants directly and indirectly involved in the study. Therefore, all key informants of the study were informed about the purpose of the study and its confidentiality. Before fieldwork, the researcher secured an official letter from the School of Law of Hawassa University. During the fieldwork, the researcher sought the individuals' and institutions' willingness and permission for an interview by showing the letter. While also recording their voice, the researcher requested their permission. Finally, the recorded voice interviews were transcribed and analyzed with utmost care to avoid misinterpretation of the data and provide accurate and unbiased information.

1.9. ORGANIZATION OF THE STUDY

The thesis investigates how private commercial disputes are settled in Ethiopia, by focusing on arbitration legal frameworks and practices of arbitration institutions in Addis Ababa. It is organized and presented in five chapters. The first chapter introduces the background of the study including the research problem, objectives, research methods, the importance of the study, scope and its limitations. The second chapter delves into the key concepts and theories of private commercial dispute settlement. It defines private commercial dispute settlement including arbitration, its advantages, the theory behind and other related topics. The third chapter analytically discusses the legal framework for private commercial dispute settlement, mainly arbitration. This analytical discussion covers international agreements and Ethiopian laws such as the FDRE Constitution, civil code, civil procedure code, available and relevant proclamations, and other laws related to the study. The fourth chapter discusses arbitration practices in Addis Ababa by analytically exploring how the newly introduced law is applied in addition to the legal and practical challenges it faces. Finally, the thesis provides concluding remarks based on the study's key findings for improving private commercial dispute settlement, mainly arbitration in Ethiopia and particularly in Addis Ababa.

CHAPTER TWO

KEY CONCEPTS AND THEORIES OF ARBITRATION

2.1 INTRODUCTION

This chapter examines the key concepts and theoretical foundations of private commercial dispute settlement, with a specific focus on arbitration. Arbitration plays a crucial role in resolving commercial disputes by offering advantages such as efficiency, flexibility, and confidentiality. This chapter defines arbitration, highlights its advantages, and discusses essential concepts and theories. It also addresses the key issues in private commercial dispute settlement, especially in the context of Ethiopia.

2.2. PRIVATE COMMERCIAL DISPUTE SETTLEMENT

Private commercial dispute settlement can be understood in different ways depending on time and context.[31] Generally, dispute resolution processes fall into two broad categories judicial dispute resolution (in courts) and private methods like Alternative Dispute Resolution (ADR).[32] ADR has become more popular due to its simplicity, cost-effectiveness, and efficiency in handling disputes, particularly civil and commercial disputes. This is true globally, including in Ethiopia.[33] The term private commercial dispute settlement is a combination of four concepts private (alternative), commercial, dispute, and settlement. The word private refers to resolving conflicts outside of traditional courts through private means. The term commercial does not have a single universal definition, as international agreements, such as those by UNCITRAL and the New York Convention, leave the definition of "commercial" open to interpretation.[34] Some define it broadly to include any transaction that parties agree is commercial, while others depend on national laws for clarification.[35] A

[31] Steven C Alternative to litigation of international Dispute ,the international Lawyer (1989) Vol.23No.1 American Bar Association 'http://www.jstor.org/stable/40706229, on March 2,2024

[32] Robert M. Cover, "Dispute Resolution: A Foreword," (1979).Yale law Journal of Dispute Resolution, Vol. 88, No. 5. pp. 910-915.

[33] Tecle Hagos Bahta. Amicable Dispute Resolution in Civil and Commercial Matters in Ethiopia: Negotiation, Conciliation and Compromise(September 2019) MIZAN LAW REVIEW, Vol. 13, No.1 p,2

[34] United nation, (n 5)

[35] Ibid

simpler approach defines commercial as business transactions between parties.[36] The term dispute refers to a conflict between two or more parties, often involving claims of right.[37] Settlement is the resolution of the dispute, either by agreement between the parties or through a third party's intervention, such as an arbitrator.[38]

In principle, private commercial dispute settlement refers to methods used by parties to resolve business-related disputes outside the traditional court system, often through methods like arbitration, mediation, and negotiation.[39] Among these, arbitration stands out because it leads to a binding decision enforceable by law. In Ethiopia, arbitration has become more significant in commercial disputes, particularly after the introduction of new legal reforms

Many countries have their laws governing private dispute settlement, and international bodies like the United Nations Commission on International Trade Law (UNCITRAL) provide model laws on arbitration and conciliation and set parameters for countries on making their national laws.[40] The most common types of private commercial dispute settlement methods include negotiation, conciliation, mediation, and arbitration for the purpose of this thesis, the focus will be on commercial arbitration.

2.2.1. Negotiation

Negotiation is the oldest, most common, and simplest form of dispute resolution.[41] It involves a direct discussion between the parties without a neutral third party. The parties control the entire process, from the initiation to the outcome.[42] Negotiation has four key elements first it is a voluntary process, second it involves bilateral communication, third it

[36] Giuditta Cordero-Moss, The Arbitral Tribunal's Power in Respect of the Parties' Pleadings as a Limit to Party Autonomy On Jura Novit Curia and Related Issues, in Limits to Party Autonomy in International Commercial Arbitration (2016) 289, 293
[37] John Andrew Fairs. An Analysis of The Theory and Principles of Alternative Dispute Resolution (June 1995) University of South .29
[38] Id.45
[39] ANNECTO legal limited www.annectolegal.com accessed on February 28,2024
[40] United Nation commission on international trade lawhttp://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671 _Ebook.pdf (accessed on march, 2024) (Hereinafter referred to as UNCITRAL ML arbitration)
[41] Roger Fisher and William Ury, Getting to Yes: Negotiating Agreement without Giving In (Penguin Group, 1981).56
[42] Ibid

aims to resolve disputes related to the interests or rights of the parties, and the fourth its objective is to reach an agreement through joint decision-making.[43]

2.2.2. Mediation

The common private commercial dispute resolution method is mediation involves a third party, known as a mediator, who helps the disputing parties negotiate a settlement. While the terms mediation, conciliation, and facilitation are sometimes used interchangeably, the core idea remains the same.[44] Mediation, as defined by The United Nations Commission on International Trade Law (UNCITRAL) model law, is a process where a third party assists the parties in reaching an amicable settlement without imposing a solution.[45] Mediation is thus a form of negotiation facilitation, with the outcome determined by the parties, not the mediator.

2.2.3. Arbitration

Arbitration is the most prominent method of resolving commercial disputes, especially at the international level.[46] Despite its widespread use, there is no universally agreed-upon definition of arbitration. According to the New York Convention, arbitration is a private process where parties agree to submit their dispute to one or more arbitrators.[47] The arbitrators make a decision (award), which is legally binding and enforceable.[48] Arbitration is widely used in commercial disputes because it offers privacy, flexibility, and finality. In arbitration, the disputing parties voluntarily submit their case to an arbitrator, who makes a binding decision. This decision, or award, can be enforced by the courts.[49] Arbitration is thus a quasi-judicial process where a neutral third party resolves the dispute without involving the state judicial system.[50]

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[43] John Andrew Fairs(n.36)
[44] Id 58
[45] http://zvr.univie.ac.at/fileadmin/user_upload/inst_zvr/Mediation/WS_2013_14/Alexander_Meta_Model_DRQ_2008_1 .pdf (accessed on March 10, 2024)
[46] Mustill & Boyd, "The Law and Practice of Commercial Arbitration in England " .(1989) 2nd ed., 41
[47] United Nation.(n 5)
[48] Mustill & Boyd(n.45)
[49] Ayinla , Adedebayo and Ahmad ,"An Appraisal of the Nexus and Disparities between Arbitration and Alternative Dispute Resolution" (ADR)(NAUJILJ 8 (1) 2017) 187
[50] Ibid

2.3. COMMERCIAL ARBITRATION

Defining commercial arbitration globally is challenging as no single definition applies universally. Arbitration is widely used in both domestic and international commercial disputes, yet, despite its significance, the term "arbitration" lacks a clear, universally accepted definition. For example, Article II, paragraph 1 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides a framework, stating that parties must recognize an agreement in writing under which disputes are submitted to arbitration. However, the Convention does not define what arbitration actually is.[51] Similarly, the UNCITRAL Model Law on International Commercial Arbitration avoids providing a fixed definition of arbitration, considering such a task "unnecessary" and difficult to formalize. Instead, UNCITRAL recommends leaving the definition of arbitration to national laws and arbitration tribunals, allowing these bodies to adapt definitions based on changing circumstances and the specific needs of the parties involved.[52] This flexibility allows arbitration to remain responsive to different legal systems and evolving commercial practices, ensuring that it continues to serve as an effective method for dispute resolution.[53]While arbitration lacks a universal definition, the New York Convention (1958) outlines key elements that help define it. These include: (1) arbitration as a mechanism for resolving disputes, (2) arbitration being based on the consent of the parties, (3) the use of private procedures in arbitration, and (4) the fact that arbitration leads to a final and binding determination of the parties' rights and obligations. These components provide a practical framework for understanding arbitration, even in the absence of a formal definition.[54]

The term "commercial" also lacks a universally accepted definition in arbitration. Early on, in the 1927 Protocol on Arbitration Clauses, there was no clear consensus on what constitutes a "commercial" dispute. This ambiguity arises from the difficulty in defining "commercial" across different legal systems and contexts. As a result, countries were given the authority to

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[51] United Nation, International Commercial Arbitration dispute Settlement (2005) UNCTAD/EDM/Misc.232/Add.38

[52] United Nation, (n 5)

[53] Report of the Working Group on International Contract Practices on the Work of its Third Session,A/CN.9/216,paras.15-18, 17; Report of the Secretary-General: Possible Features of a Model Law on International Commercial Arbitration, A/CN.9/207, paras. 29-30

[54] Ibid

define "commercial" according to their national laws.[55] The New York Convention supports this approach, recognizing that each country may have its own understanding of what constitutes a commercial dispute.[56]However, in 1986, the UNCITRAL Model Law on International Commercial Arbitration attempted to provide a broader interpretation of the term "commercial." According to this model law, the term "commercial" should be given a wide interpretation to cover matters arising from all relationships of a commercial nature, whether contractual or not. These include relationships involving trade transactions, supply of goods or services, distribution agreements, investment, banking, construction, consulting, joint ventures, and other forms of business cooperation. This expansive view ensures that arbitration can handle the full spectrum of commercial disputes in today's globalized economy.

In Ethiopia, the older Civil Code and Civil Procedure Code did not provide a clear definition of "commercial" in the context of arbitration. However, with the introduction of the Arbitration and Conciliation Proclamation, the term "commercial" has been explicitly defined. This new legislation clarifies that commercial disputes cover disagreements related to buying and selling goods or services, partnerships, construction, consulting, investments, banking, and other business-related activities. [57]This legislative development aligns Ethiopia's arbitration framework with international standards, making it easier for the country to handle both domestic and international commercial disputes. Commercial arbitration is particularly appealing because of its flexibility and its ability to cater to the specific needs of businesses. Key advantages include the international enforceability of arbitral awards, the confidentiality of proceedings, and the freedom for parties to select a neutral seat of arbitration and appoint arbitrators of their choice.[58] Commercial arbitration can be conducted in two primary ways first through statutory arbitration, such as in investment treaties or under the provisions of specific laws, or by agreement, where the parties include an arbitration clause in their contract or a separate submission agreement. These agreements must generally

[55] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXXII/treaty1.asp accessed on march 15 2024
[56] Ibid
[57] Proclamation No. 1237/2021 (n 15) the preamble
[58] Nigel Blackaby, Constantine Partasides, Alan Redfern, and Martin Hunter, Redfern and Hunter on International Arbitration(2009) 5th edn, OUP paras 1.86-1.98

be in writing, and the parties can choose whether the arbitration will be ad hoc (without institutional rules) or institutional (under the rules of an arbitration institution).[59]

2.4. ADVANTAGES OF ARBITRATION

Arbitration offers several advantages over traditional court litigation in resolving private commercial disputes. The first advantage is party autonomy in arbitration Parties have the freedom to choose arbitration over the state justice system. [60]They control the initiation, procedure, and even the choice of arbitrators. The process is entirely voluntary from start to finish.[61] The second advantage of arbitration is flexibility the parties in arbitration can modify the procedures to fit their needs, allowing for a faster and more efficient resolution compared to court processes.[62]

The third advantage of arbitration is cost-effectiveness arbitration is generally cheaper than traditional litigation, as it avoids lengthy court procedures.[63]The fourth advantage of arbitration is confidentiality arbitration offers privacy, protecting sensitive business information from public disclosure. This is especially important in commercial transactions where maintaining business secrets is crucial.[64] The last advantage of arbitration is international enforcement arbitration awards are enforceable across borders under the New York Convention, making it easier to settle international disputes.[65]

2.5. THEORIES AND PRINCIPLES OF ARBITRATION

Arbitration, as a dispute resolution mechanism, is structured around several foundational theories and principles that differentiate it from traditional litigation. This structured approach includes basic frameworks such as Contract Theory, Economic Efficiency, and principles like Party Autonomy and Confidentiality. Together, these elements form a unique mixture that promotes efficient, private, and adaptable dispute resolution. This section

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[59] Prof Paul Obo IDORNIGIE, SAN PhD, FCIS, FCI Arb (UK) + Principles & Techniques of Alternative Dispute Resolution (ADR).3

[60] Misganaw Gashaw. "The Room For Alternative Dispute Resolution Techniques In Tax Disputes: Comparative Perspective and Lessons For Ethiopia" (Mekelle University School of Law, 2012)p.12-14,

[61] Ibid

[62] Born, G. B. "International Commercial Arbitration" Kluwer Law International (2014) .16

[63] John Smith, Arbitration costs. Practical Guides (Hart Publishing 2020)

[64] Ibid

[65] Redfern, A., & Hunter, M. "Law and Practice of International Commercial Arbitration" (2015) Sweet & Maxwell

explores into these foundational concepts, exploring how arbitration meets the demands of modern commercial and international disputes.

2.5.1. Contract Theory and Principle of Party Autonomy

Contract theory plays active role in arbitration by clarifying how arrangement parties and enforce agreements. This concept, rooted in economics, law, and philosophy, revolves around the idea of mutual agreement.[66] Parties enter contracts voluntarily to distribute risks, define rights, and fulfill their obligations in a business context.[67] This voluntary nature forms the backbone of arbitration.

In arbitration, contract theory shapes the dispute resolution process significantly. Parties often include arbitration agreements as clauses in their business contracts, reflecting their desire for private and efficient dispute resolution.[68] These agreements let parties customize their process, specifying details like whether arbitration is mandatory, which the arbitrators will be, where the arbitration will occur, and which procedural rules will apply. By structuring agreements this way, contract theory allows parties to tailor the arbitration process to meet their unique needs, ultimately reducing costs and avoiding lengthy litigation.[69]

This flexibility is crucial, especially in international commerce, where companies direct different legal systems. Unlike litigation, where courts impose rules and outcomes, arbitration empowers parties to design their resolution process according to their specific business interests.[70] This reliable framework, built on mutual consent, helps create predictability in resolving disputes.

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[66] Richard. A. Posner ' Economic analysis of law; (2003) , Aspen Casebook series wolters Kluwer eighth edition
[67] Ibid
[68] Friedman, D. 'Law's order: What economics has to do with law and why it matters' (2014). Princeton University Press.5
[69] Richard. A. Posner(n 66)
[70] Mnookin, R. H., Peppet, S. R., & Tulumello, A. S" Beyond Winning: Negotiating to Create Value in Deals and Disputes". (2010) . Harvard University Press

The principle of party autonomy further improves this dynamic. It gives parties the freedom to shape the arbitration process according to their needs.[71] They can decide on everything from selecting arbitrators to determining the location and language of the arbitration, as well as the governing procedural rules, This principle ensures that the parties' will overcomes, offering a level of control that traditional court litigation does not.

Party autonomy is particularly important in international arbitration, where parties from different legal backgrounds may have various preferences. By allowing them to design the process, party autonomy helps businesses resolve disputes efficiently and in a way that aligns with their commercial interests. International laws and institutions recognize this principle.[72] For example, the New York Convention and the UNCITRAL Model Law mandate that courts respect the parties' choices regarding their arbitration process.[73] If a court finds that party autonomy has not been honored, it may refuse to enforce the arbitral award. Under the New York Convention, a court can deny enforcement if the arbitration process disregards the parties' agreement.[74]

Additionally, party autonomy allows parties to select the substantive law governing their disputes whether that is national law, international trade law, or transnational principles based on the nature of the dispute and their preferences.[75] By choosing the applicable law, parties ensure that the legal framework aligns with their commercial objectives.

The relationship between contract theory and party autonomy empowers parties to take charge of the arbitration process. This mixture enables them to create a flexible and efficient system that meets their needs and opportunities. Arbitration thus becomes not just a legal tool but a strategic approach to minimizing conflict and fostering cooperation.

[71] Dworkin, R. "The Theory and Practice of Autonomy." (1988) Cambridge University Press.

[72] R. Jones, *International Arbitration and the Principle of Party Autonomy* (2020) 55-70.
[73] United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments in 2006),
[74] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
[75] Dworkin, R(n 71)

2.5.2. Economic Efficiency and Cost-Effectiveness Theories

Economic theory examines how individuals and institutions allocate resources and provides insights into how parties choose dispute resolution methods that are cost-effective, time-efficient, and utility-maximizing.[76] A core principle of this theory is the minimization of transaction costs, which encompass legal fees, court appearances, and potential reputational damage associated with resolving disputes.[77] In this context, arbitration emerges as a preferred alternative to traditional litigation due to its generally less formal and faster process, offering an economically efficient choice for parties seeking to conserve both financial and temporal resources.

For instance, a business facing a commercial dispute may select for arbitration not only for its expedited nature but also to minimize the time away from core operations. The structured and expected timelines essential in arbitration help check delays commonly associated with litigation, aligning with economic theory's focus on utility maximization.[78] Furthermore, by selecting arbitrators who are knowledgeable about specific industries or commercial practices, parties can modernize proceedings, concentrating on related issues without unnecessary formalities. This efficiency inspires businesses to view arbitration as a practical alternative, enhancing resource maximization and fostering continuity in operations.[79]

Efficiency theory matches these economic principles by emphasizing the best allocation of resources with minimal waste, particularly through the lens of Pareto efficiency where no party can be made better off without making another worse off.[80] In arbitration, this theory explains why arbitration is often seen as a greater method for resolving disputes compared to litigation. Arbitration effectively reduces the costs associated with continued court battles, including legal fees, lost business opportunities, and the emotional toll of lengthy disputes.[81]

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[76] Mankiw, N. G.” Principles of microeconomics”(2014). Cengage Learning
[77] Ibid
[78] R A Posner, Economic Analysis of Law (8th edn, Wolters Kluwer 2014).
[79] Ibid
[80] Varian, H. R. Intermediate microeconomics: A modern approach. (2014). WW Norton & Company.23
[81] E G Cohen, ‘Efficiency and Effectiveness in Arbitration’ (2009) 32 International Journal of Arbitration, Mediation and Dispute Management 95

Moreover, the process of arbitration encourages open and honest information flow among parties, facilitating well-informed decisions by arbitrators and minimizing misunderstandings or delays.[82] This transparency contrasts with litigation, which often entails lengthy discovery processes that can extend dispute resolution timelines.[83] The existence of pre-agreed arbitration clauses in contracts further incentivizes parties to act in good faith, promoting early negotiation and cooperation to avoid the costs of formal arbitration hearings.

By assimilating economic and efficiency theories, it becomes clear that arbitration serves as a more economically efficient and resource improved alternative to traditional litigation. It enables businesses to save resources, avoid excessive legal fees, and resolve disputes quickly all while maintaining commercial relationships and fostering continued cooperation. Consequently, arbitration's focus on efficiency and cost-effectiveness positions it as a valuable tool for parties aiming to achieve optimal outcomes in their dispute resolution efforts.

2.5.3. Efficiency and Resource Optimization

Efficiency theory in arbitration is grounded in the idea that disputes should be resolved with minimal waste of time and resources, emphasizing a balanced approach that benefits all parties.[84] At the heart of this theory is Pareto efficiency, meaning an outcome is reached without disadvantaging any party.[85] Unlike traditional litigation, which can be drawn out through costly processes, arbitration minimizes procedural burdens by avoiding lengthy discovery phases and excessive appeals, thereby reducing legal fees, preventing lost business opportunities, and falling the emotional and reputational fee of long disputes. This efficient approach allows parties to attain beneficial outcomes faster, making arbitration an attractive choice for those seeking both financial and temporal efficiency.[86]

[82] Ibid
[83]Ibid
[84] Varian, H. R. Intermediate microeconomics: A modern approach. (2014). WW Norton & Company.23
[85] Ibid
[86] E G Cohen (n 81)

Efficiency theory also highlights transparency and assistance in arbitration, emphasizing the importance of open information exchange for well-informed decision-making.[87] Arbitration promotes clear communication, which gaps with the more inflexible procedures of litigation. This openness allows arbitrators, often chosen for their subject matter expertise, to hold the dispute's technicalities quickly and exactly, stopping misunderstandings and delays. For instance, in cases where a technical issue is central, an arbitrator with specialized knowledge can efficiently guide discussions, ensuring that both parties understand the issues fully and that the process remains focused and precise. This approach makes arbitration effective, especially for commercial disputes where industry-specific insights can substantially impact outcomes.[88]

Besides, including arbitration clauses in contracts signals a commitment to efficient and fair dispute resolution, often incentivizing early negotiation and cooperation, thus reducing the need for formal hearings. For example, parties aware of their commitment to arbitrate may attempt to reach a mutually beneficial agreement through negotiation or mediation, lessening the time and costs associated with formal proceedings.[89]

Incorporating these principles of cost reduction, resource optimization, and open communication, efficiency theory supports arbitration as a practical and preferred method for commercial dispute resolution. By offering a more efficient alternative to litigation, arbitration allows businesses to resolve conflicts quickly, avoid unnecessary expenses, and maintain continuity in their operations, supporting long-term commercial relationships and development trust and cooperation among parties.[90]

2.5.4. Access to Justice and Inclusivity

Access to Justice Theory supports the idea that everyone should have the right and ability to participate in legal processes and protect their rights, regardless of their financial capacity,

[87] Mnookin, R. H., Peppet, S. R., & Tulumello, A (n 70)
[88] R A Posner (n 78)
[89] E G Cohen (n 81)
[90] R A Posner (n 78)

education, or social standing.[91] This theory stresses the need to break down walls that hinder individuals or smaller entities from effectively crossing or even entering the legal system.[92] In the context of arbitration, this theory addresses the limitations of traditional litigation, which is often time-intensive, procedurally complex, and financially prohibitive.[93] By offering a modernized and comparatively inexpensive process, arbitration becomes an alternative that widens access to legal redress, particularly for those who might otherwise be discouraged from seeking justice due to the prohibitive costs and time associated with court cases.[94]

Arbitration, line up closely with the concept of Access to Justice Theory by assisting quicker simpler dispute resolution that reduces operation costs and procedural burdens. For example, the use of arbitration allows small businesses or individual claimants to resolve conflicts without the need to undergo lengthy and costly court proceedings, which often deter less financially robust parties from pursuing their legal rights. For these entities, the ability to participate in a dispute resolution process without the fear of crippling legal fees or drawn-out delays represents a significant step towards equitable access to justice. Arbitration thus democratizes dispute resolution by allowing more parties to seek fair outcomes without financial or procedural obstacles often seen in litigation.[95]

Access to Justice Theory also highlights the importance of fairness, transparency, and inclusivity within the arbitration process.[96] The arbitration framework allows parties to choose arbitrators who possess specific expertise in the subject matter, building a more informed decision making process that levels the playing field by reducing information irregularities often seen in traditional litigation. The presence of arbitrators skilled in areas relevant to the dispute, such as commercial practices, intellectual property, or technical

[91] Treves, R., Gottschalk, H., & Mégret, F. (Eds) (2019).The Oxford handbook of international adjudication Oxford University Press
[92] Ibid
[93] Sarat, A. & Felstiner, W. L. F. "Access to Justice: A sociological perspective. In R. Banakar & M. Travers (Eds.), An Introduction to Law and Social Theory." (2018). Hart Publishing (pp. 167-185)
[94] Ibid
[95] F S Shetreet and J Sibley, 'Access to Justice and the Role of Arbitration' (2012) 45 Journal of Dispute Resolution 105
[96] Stipanowich, T. J. Arbitration: The 'New Litigation' (2010). Harvard Negotiation Law Review, 15, 1-66

industries, ensures that arbitration decisions are based on understanding of the context. This expertise not only improves the truthfulness of outcomes but also makes the process more accessible and transparent for parties who may lack in-depth legal knowledge but require clarity in the procedure.[97]

Furthermore, Access to Justice Theory emphasizes inclusivity, advocating for mechanisms within arbitration to support parties from diverse backgrounds, including marginalized or underrepresented groups. Recognizing this, many arbitration institutions have introduced measures to make the process more inclusive and accommodating. For instance, organizations like the ICC provide multilingual support, interpreter services, and accessible arbitration rules designed to address the needs of international participants. Such measures ensure that language barriers or cultural differences do not prevent parties from engaging meaningfully in the arbitration process. Additionally, flexible procedural options, like expedited hearings and digital submissions, are designed to cater to parties with varying levels of financial and logistical resources, making arbitration viable for those who may lack the resources typically needed for formal litigation.[98]

Inclusivity covers to procedural fairness, as Access to Justice Theory highlights that arbitration should be simple, transparent, and adaptable to the needs of all parties involved. The theory calls for a transparent arbitration framework, where parties have full information on their rights, the available procedures, and the potential outcomes. This transparency encourages trust in the arbitration process, reassuring parties that they are entering a fair and impartial system. Moreover, Access to Justice Theory champions equitable opportunities for all parties to present their cases without being disadvantaged by procedural complexities, financial disparities, or cultural obstacles. By facilitating a cooperative approach and encouraging open communication, arbitration fosters a climate of trust that is conducive to fair resolutions and reduces the adversarial nature often found in traditional litigation.[99]

[97] ICC, 'Arbitration Rules and Multilingual Support in Access to Justice' (ICC, 2021) https://iccwbo.org accessed 25 October 2024
[98] Ibid
[99] Shetreet and Sibley (n 91)

In this way, Access to Justice Theory positions arbitration not merely as an efficient and cost-effective alternative to litigation but as a fundamental tool for democratizing access to justice. Arbitration exemplifies these values by making dispute resolution accessible, fair, and efficient. Consequently, arbitration becomes a mechanism that not only conserves resources for parties but also contributes to social equity, bridging gaps in access to legal recourse and enabling a more inclusive approach to justice in both local and international commercial settings

2.5.5. Adjudicative and Restorative Justice Balance

Theories of adjudicative and restorative justice in arbitration create a balanced framework that addresses both legal and relational needs, providing to parties requiring formal resolutions as well as those listing ongoing relationships. Adjudicative justice in arbitration emphasizes the application of structured, rule based processes, similar to court judgments, where decisions are final, enforceable, and grounded in legal principles.[100] This is particularly critical for parties in commercial disputes who rely on the legal clarity and consistency that arbitration awards provide. The adjudicative approach ensures that each party's rights and obligations are determined with reference to established legal standards, creating a reliable outcome comparable to a court judgment, yet within the private forum of arbitration.[101] For parties seeking definitive and binding resolutions without the exposure and time demands of public litigation, adjudicative justice within arbitration provides a highly effective option.[102]

In contrast, restorative justice theory within arbitration considers the relational dimension of disputes, focusing on the healing of relationships and encouraging collaboration and mutual understanding.[103] Restorative justice moves away from transfer blame or punishment, aiming instead to address underlying issues and promote dialogue.[104] This is especially relevant in

[100] Stipanowich, T. J. (n.92)
[101] Braithwaite, J., & Pettit, P. Not just deserts: A republican theory of criminal justice (1990).Clarendon
[102] P C Sanderson and R E McEwen, 'Adjudicative Justice in Arbitration: Binding Decisions for Commercial Disputes' (2021) 46 Arbitration International 123
[103] Braithwaite, J. "Restorative justice & responsive regulation" (2002) Oxford University Press
[104] Ibid

arbitration when parties share an ongoing relationship, such as business partners or collaborators who may prioritize reconciliation and future cooperation. For instance, in disputes where the need to maintain or rebuild a working relationship is as important as the legal outcome, restorative justice principles in arbitration create a space for open communication and problem solving before proceeding to a formal award. Incorporating restorative elements like preliminary mediation offers the flexibility to address the root causes of conflict, enabling parties to reach resolutions that foster healing while respecting each side's needs and interests.[105]

The dual approach offered by arbitration allows it to help both the legal function of issuing enforceable decisions and the social function of relationship preservation. By combining adjudicative and restorative justice theories, arbitration provides a inclusive solution that meets the legal and personal dimensions of disputes. Arbitration thus put up structured legal outcomes and also facilitates constructive discussion, creating a system that upholds enforceable results without disregarding the importance of relational integrity.[106] Through this balance, arbitration becomes a versatile mechanism, offering both the finality of adjudicative justice and the reconciliatory benefits of restorative justice. This unique blend makes arbitration a preferred choice for complex, multidimensional disputes where the stakes are both legal and relational, allowing parties to resolve conflicts effectively and continue future interactions harmoniously.[107]

2.5.6. Autonomy and Procedural Control Theories in Arbitration

Autonomy theory in arbitration is grounded in the principle that parties should retain control over the framework and mechanisms used to resolve their disputes, reflecting a commitment to self-determination and procedural flexibility.[108] This control is one of the unique advantages arbitration holds over traditional litigation, offering parties the freedom to modify their dispute resolution process by selecting key elements such as the procedural rules,

[105] J Derry and A M Grossman, 'Restorative Approaches in Arbitration: Healing and Reconciliation in Business Disputes' (2020) 15 Journal of Dispute Resolution 78
[106] Ibid
[107] P C Sanderson and R E McEwen,(n 98) 75
[108] Hong-Lin Yu, Commercial Arbitration (2014) 69

arbitrators, language, and venue of the arbitration.[109] By giving parties a direct hand in structuring the process, arbitration not only respects their autonomy but also meets specific needs that litigation typically cannot address.[110]

One of the most significant benefits of autonomy in arbitration is its role in international disputes, where parties may come from distinct legal systems and cultural backgrounds. Autonomy enables them to circumvent the challenges and unpredictability associated with foreign courts, such as potential biases, jurisdictional hurdles, and procedural differences. By selecting neutral arbitrators with expertise relevant to their case and tailoring procedural rules to suit their specific circumstances, parties can avoid the influence of unfamiliar legal standards and ensure a fair, efficient process.[111] This flexibility also builds trust in the arbitration process, as parties feel that they are actively involved in shaping their dispute resolution journey, which increases the likelihood of compliance with the final award.[112]

Moreover, autonomy theory in arbitration promotes procedural fairness by allowing parties to participate in designing the dispute resolution process, rather than being mere recipients of a pre-established system. This involvement can enhance parties' sense of ownership over the process and its outcomes. When parties have had a say in structuring the arbitration, they are generally more satisfied with the results and more likely to view the decision as legitimate, fostering a positive atmosphere for voluntary compliance.[113] For instance, choosing an arbitrator with expertise in a specific industry or technical field not only expedites the process but also assures parties that their case will be understood in depth.[114]

Autonomy in arbitration also aligns with the principle of informed consent, which is integral to maintaining a fair and trustworthy process. Parties are encouraged to fully understand their rights, the details of the arbitration procedure, and the implications of various potential

[109] C. Chatterjee, The Reality of Party Autonomy Rule in International Arbitration,(2003) 20 J. INT'L ARB. 539, 540
[110] Gary Born, International Commercial Arbitration (2nd edn, Kluwer Law International 2014) 141
[111] Julian Lew, Loukas Mistelis, and Stefan Kröll, Comparative International Commercial Arbitration (Kluwer Law International 2003) 78
[112] Nigel Blackaby and Constantine Partasides, Redfern and Hunter (n 58) 250
[113] Jan Paulsson, The Idea of Arbitration (Oxford University Press 2013) 34
[114] Margaret Moses, The Principles and Practice of International Commercial Arbitration (3rd edn, Cambridge University Press 2017) 67

outcomes before formally consenting to arbitration. This focus on transparency builds confidence in the process, as both sides enter arbitration with a clear understanding of their roles, rights, and the procedural structure.[115] Thus, autonomy in arbitration is not merely about control; it is about fostering an environment where parties are empowered to make informed choices and feel actively engaged in the resolution of their disputes.

In principle, autonomy theory emphasizes the importance of self-determination in arbitration, allowing parties to shape their dispute resolution process in a way that reflects their unique needs and values. By preserving their control over essential aspects of the arbitration, parties gain satisfaction, procedural fairness, and enhanced compliance with the outcome, all while avoiding the rigidity and limitations often seen in court litigation. This empowerment makes arbitration a robust and appealing alternative, particularly in commercial and international contexts where flexibility and trust are paramount.

2.5.7. Neutrality and Impartiality in Arbitration

Neutrality and impartiality theories in arbitration are foundational to ensuring a fair and credible dispute resolution process, particularly essential in an international context where diverse legal, cultural, and jurisdictional influences can impact perceptions of fairness. Neutrality theory argues that arbitrators must remain free from any conflicts of interest and make decisions solely based on the merits of the case and the applicable legal framework, maintaining the integrity of arbitration.[116] This theoretical framework affirms that both the appearance and reality of impartiality are crucial, as any suggestion of bias or undue influence can undermine the legitimacy of the arbitration outcome, leading to challenges in enforcement and diminishing trust among participants.[117]

International arbitration institutions, including the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA), embed neutrality principles

[115] Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration (5th edn, Sweet & Maxwell 2009) 152
[116] Menkel-Meadow, C. Values and consequences: An introduction to economic analysis of law and legal institutions.(2008) Aspen Publishers
[117] Gary Born(n 110)

in their procedural rules to mitigate perceived biases. Arbitrators in these institutions are mandated to disclose any possible conflicts of interest before their appointment, thereby enhancing transparency and accountability. For instance, the ICC's Rules of Arbitration mandate full disclosure of any relationships that could affect impartiality, giving parties the opportunity to object if they suspect any predisposition.[118] This right to challenge appointments ensures that arbitrators not only avoid conflicts of interest but also appear unbiased, a critical factor for maintaining the trust of all parties involved. The LCIA similarly imposes disclosure obligations and permits parties to remove arbitrators on grounds of perceived bias, promoting a process seen as impartial and thus more likely to yield compliance with arbitral awards.[119]

The concept of procedural transparency complements neutrality by reinforcing the legitimacy of arbitration through visible, unbiased processes. Institutional codes of conduct for arbitrators, such as the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration, outline the standards of neutrality, impartiality, and integrity that arbitrators must uphold throughout the arbitration process. These guidelines ensure that arbitrators act free of any favoritism and prescribe rigorous standards for conducting proceedings that prevent undue influence. This system of checks and balances underscores the importance of maintaining not only impartial arbitrators but also transparent procedures, thus preserving the credibility of arbitration as a viable dispute resolution method.[120]

Neutrality theory further highlights the planned selection of arbitrators from culturally or legally neutral backgrounds, especially in cross-border disputes, as a means to foster trust in the arbitration process. In such cases, parties often choose arbitrators unaffiliated with either party's jurisdiction, reducing concerns of local bias and ensuring a more balanced decision-making environment. This approach is especially prevalent in high-value commercial

[118] International Chamber of Commerce, ICC Rules of Arbitration (2021), Art.11(1)
[119] London Court of International Arbitration, LCIA Arbitration Rules (2020), Art 10
[120] International Bar Association, IBA Guidelines on Conflicts of Interest in International Arbitration (2014)

arbitrations, where neutrality and objectivity are critical for parties seeking impartial resolutions without the uncertainty of foreign court proceedings.[121]

Through neutrality and impartiality, arbitration offers a structured yet flexible mechanism that meets parties' expectations of fairness and promotes voluntary compliance. When arbitrators are bound by principles of neutrality and the process is transparent, the arbitration outcome gains legitimacy, increasing the likelihood of adherence and avoiding the need for enforcement actions in courts. Neutrality theory, therefore, upholds arbitration as a distinct dispute resolution mechanism that effectively balances procedural control with trustworthiness, making it a respected alternative to traditional litigation.[122]

2.5.8 Confidentiality and Privacy Protection in Arbitration

Confidentiality and privacy are necessary supports of arbitration, particularly in commercial disputes where sensitive business information, such as proprietary data, trade secrets, and financial details, is often disclosed. The confidentiality principle emphasizes the need for a secure, private framework, which allows parties to freely exchange information without fear of public exposure or reputational harm.[123] This expectation of privacy fosters trust between parties, enhancing their willingness to disclose sensitive information and supporting a more collaborative approach to dispute resolution, a vital factor in the efficacy and appeal of arbitration over traditional court proceedings.[124]

The principle of confidentiality has been widely adopted across major international arbitration institutions, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the American Arbitration Association (AAA), which incorporate confidentiality provisions within their procedural rules. For instance, Article 22(1) of the ICC Arbitration Rules obligates parties to keep all awards and materials related to the arbitration confidential, thus embedding confidentiality as a procedural

[121] Nigel Blackaby and Constantine Partasides, Redfern and Hunter(n 58 210
[122] Jan Paulsson (n 113) 75
[123] Kyriaki Noussias, Confidentiality in International Commercial Arbitration, A Comparative Analysis of the Position(2010) under English, US, German and French Law Berlin Heidelberg http://www.springer.com/us/book/9783642102233 (accessed on march 12, 2024)
[124] Gary Born (n 110) 121

norm.[125] Similarly, the UNCITRAL Model Law endorses confidentiality, enabling parties to preserve privacy while reinforcing neutrality and impartiality by preventing external influence on the arbitration process.[126]

In practice, confidentiality in arbitration often extends beyond the hearings themselves to cover pre-arbitration negotiations and post-award enforcement processes. By agreeing to confidentiality provisions at the outset, parties ensure that procedural documents, testimonies, and arbitral awards remain private.[127] This includes any informal communications exchanged during the proceedings, allowing parties to candidly discuss potential resolutions without risking public exposure.[128] This process not only preserves business interests but also maintains the integrity and neutrality of arbitration by protecting it from external scrutiny and influence.[129]

In commercial arbitration, confidentiality acts as a safeguard against reputational damage, protecting companies from the possible public impact of negative information. Such protection is vital in competitive industries where disclosure of confidential data could impact a company's market position or financial stability. By guaranteeing that arbitral awards remain private, confidentiality also moderates the risk of public pressure or hostile response, encouraging parties to comply with awards voluntarily rather than seeking to escape or challenge unfavorable outcomes. This practice reinforces the finality and enforceability of arbitral decisions, a key advantage of arbitration as an alternative dispute resolution method.[130]

Furthermore, many arbitration agreements openly include confidentiality clauses, obligating parties to maintain privacy regarding all aspects of the arbitration. These agreements may include specific confidentiality requirements for arbitrators, who are often bound by

[125] International Chamber of Commerce,(n 118) Arts 22(1)
[126] United Nations Commission on International Trade Law,(n 73) Arts 34
[127] MPG Alternative dispute resolution mechanisms: Arbitration and Mediation Jun 01,2021 www.mahanakornpartners.com/ (accessed on march 12, 2024)
[128] Ibid
[129] London Court of International Arbitration,(n 119) Arts 30
[130] Nigel Blackaby and Constantine Partasides, *Redfern and Hunter(n 58) 315*

professional codes of conduct to uphold the confidentiality of proceedings.[131] This obligation extends to any information disclosed during arbitration, including the final decision, which arbitrators must keep confidential unless otherwise agreed upon by the parties. Such measures ensure that arbitration remains a secure forum for resolving disputes with minimal risk of sensitive information being misused or publicly disclosed, thus maintaining its appeal as a reliable, private alternative to litigation.[132]

Overall, confidentiality and privacy protection are integral to the effectiveness of arbitration, particularly within commercial contexts where maintaining discretion is crucial. By upholding these principles, arbitration provides a secure, trusted forum for dispute resolution, where parties can safeguard their proprietary information and reputations. This assurance of confidentiality encourages cooperation and supports the finality of arbitral awards, solidifying arbitration's role as a respected and effective means of resolving complex commercial disputes.[133]

2.5.9 Doctrine of Separability and Kompetenz-Kompetenz in Arbitration

The doctrines of separability and Kompetenz-Kompetenz are foundational to arbitration, preserving its independence and ensuring that arbitrators can resolve disputes without premature court interference. These principles collectively support the independence of arbitration by securing the arbitration agreement's validity and the arbitrators' authority, regardless of the challenges posed to the original contract or their jurisdiction.

The doctrine of separability establishes that an arbitration clause is distinct from the main contract in which it is embedded. This separation implies that even if the main contract is later found void or unenforceable, the arbitration clause survives independently, preserving the parties' original intention to arbitrate disputes.[134] For instance, if a contract is deemed void due to misrepresentation, the arbitration clause remains enforceable, allowing the

[131] Negesse Asnake Aylew "The position of duty of confidently in alternative dispute resolution (ADR) process in Ethiopia :(October, 2015) Mekelle University School of law and Amsterdam University facility of law 22
[132] Jan Paulsson (n 113)98
[133] International Bar Association, (n 120)
[134] Phillip Landolt, 'The Inconvenience of Principle: Separability and Kompetenz-Kompetenz' (2013) 30 Journal of International Arbitration 511

arbitrator, rather than a court, to resolve the dispute over the contract's validity. This doctrine protects arbitration from becoming entangled in contract disputes that might otherwise be used as a tactic to derail the arbitration process. By preserving the enforceability of arbitration agreements independently from the contract's fate, separability reinforces the legitimacy and durability of arbitration as an alternative to court litigation.[135]

In practical terms, separability is vital to the functionality of arbitration, ensuring that disputes proceed through arbitration as intended by the parties, without bypassing judicial debates over contract validity. The doctrine is widely recognized and enshrined in major arbitration laws and institutional rules, such as the UNCITRAL Model Law on International Commercial Arbitration, which stipulates that the invalidity of a contract does not affect the enforceability of an arbitration clause within it.[136] This autonomous status of arbitration clauses is fundamental in upholding the reliability and predictability of arbitration as a private, binding forum for dispute resolution.[137]

The doctrine of Kompetenz-Kompetenz further solidifies arbitration's autonomy by empowering arbitrators to control their jurisdiction.[138] Under this doctrine, arbitrators have the authority to rule on whether they can adjudicate a dispute, including the validity, scope, and applicability of the arbitration agreement. Kompetenz-Kompetenz limits early court intervention, enabling arbitrators to assess jurisdictional challenges independently and proceed without unnecessary delays. By doing so, this doctrine ensures that jurisdictional challenges do not disrupt or delay the arbitration process, preserving procedural efficiency and momentum.[139]

Kompetenz-Kompetenz also underscores the trust placed in arbitrators as competent authorities capable of managing their own cases, reflecting a broader respect for arbitration's procedural autonomy within the international legal framework. In practice, this doctrine

[135] Nigel Blackaby et al., Redfern and Hunter(n 58) 178
[136] United Nations Commission on International Trade Law,(n 73) Art 16
[137] Gary Born (n 110) 247
[138] Abdisa Beriso Dekebo(n 28).141
[139] Julian D. M. Lew, Loukas A. Mistelis, and Stefan Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 247

empowers arbitrators to address objections to their authority at the outset, reinforcing arbitration's reputation as a streamlined and self-sufficient alternative to litigation. Many international arbitration jurisdictions recognize and enforce Kompetenz-Kompetenz, including under the UNCITRAL Model Law and national statutes, which commonly restrict court intervention in the early stages of arbitration unless a clear issue of enforceability or jurisdiction arises.[140]

Together, the doctrines of separability and Kompetenz-Kompetenz minimize judicial intervention, allowing arbitration to function with a high degree of independence and self-governance. By preserving the enforceability of the arbitration agreement and enabling arbitrators to assert jurisdiction, these doctrines sustain the efficiency, credibility, and autonomy of arbitration as a dispute resolution mechanism, promoting it as a preferred alternative to the often adversarial and public nature of court proceedings.[141]

2.5.10 Doctrine of Minimal Court Intervention in Arbitration

The doctrine of minimal court intervention is a cornerstone of modern arbitration, ensuring that judicial involvement is limited to essential functions, thereby preserving arbitration's autonomy, efficiency, and appeal as a self-contained dispute resolution process.[142] This principle recognizes arbitration as a distinct, alternative opportunity for dispute resolution, designed to function independently of the court system, with court intervention permitted only in strictly defined circumstances.[143]

In practice, the doctrine reserves judicial intervention for critical stages, such as enforcing an arbitral award, addressing significant procedural irregularities, or appointing arbitrators when parties cannot agree.[144] This restrained approach minimizes disruptions and preserves

[140]Pierre Mayer and Audley Sheppard, 'Final Report on the Relevance of the IBA Rules of Evidence' (2000) 16(1) Arb Intl 13
[141] Jan Paulsson, (n 112) 103
[142] Alemnew Dessie, 'The Extent of Court Intervention in Arbitration Proceedings: Ethiopian Arbitration Law in Focus' (2019) 2 Sch Int J Law Crime Justice 54
[143] Gu, W. "Judicial Review Over Arbitration in China: Assessing the Extent of the Latest Pro-Arbitration Move by the Supreme People's Court in the People's Republic of China"(2008-2009)Wisconsin International Law Journal, (27), pp. 225-231
[144] Alemnew Dessie(n 142)

arbitration's procedural momentum, safeguarding its intended advantages of confidentiality, expedience, and finality. The minimal intervention principle has been widely adopted by arbitration-friendly jurisdictions and is enshrined in both the UNCITRAL Model Law and the New York Convention, which mandate that national courts should only intervene in instances where procedural fairness or enforceability is at stake.[145] For instance, under the UNCITRAL Model Law, Article 5 expressly limits the role of courts to functions provided within the Model Law, thus preventing unnecessary judicial interference and reinforcing the self-sufficiency of arbitration as a dispute resolution mechanism.[146]

This doctrine is particularly valuable in international arbitration, where parties from diverse legal systems seek neutrality and predictability, free from the procedural complexities of foreign courts. For example, in enforcing an arbitral award, courts are bound by the principles outlined in the New York Convention, which allows refusal of enforcement only on narrow grounds, such as issues of public policy or significant procedural unfairness.[147] This adherence to limited intervention enhances the credibility and reliability of arbitration as a binding, private alternative to litigation, ensuring that judicial oversight does not compromise the arbitral process's integrity.

Minimal court intervention also upholds the finality of arbitral awards, as courts are generally reluctant to inversion them unless serious procedural issues arise, such as violations of due process or substantial injustice. This limited role reduces the likelihood of protracted legal battles after arbitration, allowing parties to rely on arbitration for swift and definitive resolutions. For instance, courts in jurisdictions such as England and Singapore consistently apply the principle of minimal intervention by emphasizing the finality of arbitral awards and minimizing opportunities for judicial appeal.[148]

Ultimately, the minimal court intervention doctrine is essential to arbitration's effectiveness and appeal. By confining judicial roles to essential supervisory functions, the doctrine

[145] Nigel Blackaby et al., *Redfern and Hunter(n 58)305*
[146] United Nations Commission on International Trade Law,(n 73) Art 5
[147] Ibid 330 UNTS 38 Art. V
[148] Gary Born (n 110) 377

reinforces arbitration's procedural autonomy and ensures that parties' decisions to arbitrate are respected. This restraint encourages confidence in arbitration as a streamlined, private, and binding method of dispute resolution, free from the complexities and delays of the traditional court system.[149]

[149] Jan Paulsson (n 113) 136

CHAPTER THREE

LEGAL FRAMEWORK OF PRIVATE COMMERCIAL DISPUTE SETTLEMENT

INTRODUCTION

This chapter explores the historical evolution and the current legal framework governing private commercial dispute settlement in Ethiopia, with a particular focus on arbitration. Key legal instruments, such as the FDRE Constitution, the Civil Code, the Civil Procedure Code, and Proclamation No. 1237/2021, as well as international laws like the New York Convention are the backbone of this framework. These laws have established arbitration as a preferred method for resolving private commercial disputes both domestically and internationally. This chapter will also explore the evolution of the legal framework, emphasizing how Ethiopia's alignment with international arbitration standards enhances its commercial arbitration landscape.

3.1. HISTORICAL OVERVIEW OF PRIVATE DISPUTE SETTLEMENT IN ETHIOPIA

Ethiopia's dispute resolution methods have traditionally been deeply rooted in non-judicial or traditional mechanisms.[150] Systems like Shimgilina among the Amhara and Gadaa among the Oromo were pivotal in resolving conflicts in pre-modern Ethiopian society. [151]These systems can be seen as precursors to modern arbitration, combining features of mediation, conciliation, compromise, and arbitration. They were prevalent, particularly in rural areas, where judicial systems were less accessible.[152] These traditional methods were not only effective in maintaining peace within communities but also in resolving commercial disputes. In many cases, merchants in both rural and urban areas utilized these systems to resolve business conflicts.[153] Even after the formal introduction of Western-style dispute settlement

[150] Hailegabriel G. Feyissa. (n 23),273
[151] Tilahun Teshome' "The Legal Regime Governing Arbitration in Ethiopia" (2007), Ethiopian Bar Review, 1(2), .117-118
[152] Ibid
[153] Alula, Pankhurst & Getachew Assefa Grass-roots Justice in Ethiopia: the Contribution of Customary Dispute Resolution. (2008) Addis Ababa, CFEE

systems, traditional mechanisms remained popular because of their efficiency, cost-effectiveness, and ability to preserve business relationships. [154]Thus, traditional arbitration-methods played a significant role in Ethiopia's dispute resolution culture before the modern legal framework was established.[155]

By the mid-20th century, Ethiopia still lacked a formal legal framework specifically governing private commercial dispute settlement. It was only with the introduction of the 1960 Civil Code and the 1965 Civil Procedure Code that formal arbitration provisions were codified into Ethiopian law. However, these early legal frameworks were primarily domestic focused and did not address the complexities of international commercial arbitration.

3.2. LEGAL FRAMEWORK OF ARBITRATION IN ETHIOPIA

3.2.1 International Legal Framework

Ethiopia has made significant steps in aligning its arbitration laws with international standards. One of the most critical steps was its accession to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards through Proclamation No. 1184/2020.[156] This convention mandates that Ethiopia recognize and enforce foreign arbitral awards, provided that such awards meet the conditions outlined in the convention. As a member of the convention, Ethiopia is now obligated to follow key principles, such as the recognition of written arbitration agreements and the enforcement of arbitral awards unless the agreement is deemed null or unenforceable under Ethiopian New York Convention's application in Ethiopia is based on two key conditions reciprocity and commerciality.[157] First, the principle of reciprocity limits the convention's application to disputes involving contracting states like Ethiopia. This means that Ethiopia is only required to recognize and enforce arbitral awards from other signatory countries. Second, the convention applies only to disputes that are considered commercial under Ethiopian law.[158] The adoption of these provisions through the 2020 proclamation marked a significant step in harmonizing

[154] report by USAID Ethiopia Commercial Law & Institutional Reform and Trade Diagnostic,(2007) .60
[155]Hailegabriel G. Feyissa.(n 23),273
[156] Proclamation No 1184/2020 A proclamation to Provide for the Accession of Ethiopia to Convention on the Recognition and Enforcement of Foreign Arbitral Award (Federal Negarit Gzeta 2020)
[157] www.africanbuesiness.com accessed on march 17, 2024
[158] www.hsfnote.com accessed on march 17 ,2024

Ethiopia's arbitration framework with international standards. Also Ethiopia's ratification of the ICSID Convention demonstrates the country's commitment to resolving investment disputes through arbitration.[159] This treaty further strengthen Ethiopia's arbitration framework, particularly in the context of foreign direct investment. By adopting international treaties like the ICSID Convention and the New York Convention, Ethiopia is now better equipped to handle disputes involving international parties and cross-border commercial transactions.

Ethiopia's alien the UNCITRAL Model Law on International Commercial Arbitration is another important development.[160] The Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021 incorporates key elements of the UNCITRAL Model Law, ensuring that Ethiopia's arbitration framework follows international standards. This alignment enhances Ethiopia's reputation as an arbitration-friendly jurisdiction and strengthens its legal infrastructure for private commercial dispute settlement.

3.2.2. The FDRE Constitution

The FDRE Constitution, as the supreme law of the land, provides the foundation for all legal frameworks in Ethiopia, including thus governing private dispute settlement.[161] Although the Constitution does not explicitly mention arbitration, several provisions implicitly support its use. For instance, Article 37 of FDRE constitution grants individuals the right to bring justiciable matters to a court of law or any other competent body with judicial power.[162] This provision suggests that arbitration, as a competent body, can be utilized as a means of dispute resolution.Additionally, Article 34(5) allows parties to resolve personal or family disputes through customary or religious law, provided that both parties consent. Article 78(5) further empowers the House of Peoples' Representatives (HPR) or State Councils to establish customary and religious courts to ensure access to justice. These provisions demonstrate the Constitution's recognition of private dispute settlement mechanisms, including arbitration, for civil and personal matters.

[159] Hailegabriel G. Feyissa(n.23)
[160] Abdisa Beriso Dekebo(n 28).141
[161] The Constitution of the Federal Democratic Republic Of Ethiopia (n 8), art 9(4
[162] Ibid art 37

3.2.3. Codes and Proclamation

For the past fifteen years, the primary sources of Ethiopian arbitration law have been the 1965 Civil Procedure Code (CPC) and the 1960 Civil Code (CC). The 1965 Civil Procedure Code, specifically Articles 315-319, provides detailed guidelines on initiating arbitration, appointing arbitrators, and enforcing arbitral awards. However, these provisions have been updated by the recent Proclamation No. 1237/2021, which modernized Ethiopia's arbitration framework. The 1960 Civil Code, under Title XX, Articles 3325-3346, outlines the substantive rules governing arbitration agreements, detailing the conditions under which such agreements are valid and enforceable. These provisions played a crucial role in commercial transactions, particularly where arbitration clauses were included to resolve disputes. [163]These codes, however, were designed primarily for domestic arbitration and applied not just to commercial disputes, but to all civil matters.[164] One significant limitation was their lack of clear substantive and procedural rules, which created confusion for parties involved in arbitration. Moreover, these laws did not adequately address the scope of arbitrability and what issues could be settled through arbitration. As a result, the system allowed for extensive court intervention, which undermined the efficiency and independence of arbitration proceedings.[165] Since the enactment of the Civil Code and Civil Procedure Code, additional proclamations have been introduced to encourage private dispute settlement, particularly arbitration. For instance, the new Commercial Code under Articles 208, 328, and 657 supports arbitration in commercial cases, Similarly, the Revised Federal Family Code (Articles 118-122 and 228) allows for arbitration in family disputes, while the Ethiopia Commodity Exchange Proclamation No. 550/2007 recognizes arbitration as a valid dispute resolution mechanism in Article 6(7). Moreover, the Mining Operations Proclamation No. 678/2010, under Article 78, and the Labour Proclamation No. 1156/2020, Article 144, provide for arbitration in disputes arising from their respective sectors, all of which imply a growing acceptance of arbitration in Ethiopia.[166]

However, these laws lacked the detailed procedures and scope necessary for modern

[163] Hailegabriel G. Feyissa(n.23).301
[164] Ibid
[165]LEX Africa Ethiopian arbitration law challenge www.lexafrica.com accessed on march 19 2024
[166] Dawit Worku (n 9)

arbitration, creating gaps that led to practical challenges. The Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021 was introduced to address these gaps. This proclamation repeals parts of the Civil Code and Civil Procedure Code relating to arbitration, aligning Ethiopian arbitration law with international standards such as the UNCITRAL Model Law.[167] It applies to both domestic and international commercial activities, and provides specific and detailed procedures for arbitration, further modernizing the Ethiopian legal framework for private dispute settlement.

3.3. THE INSTITUTIONALIZATION OF ARBITRATION IN THE ETHIOPIAN LEGAL FRAMEWORK

In Ethiopia, several arbitration institutions have been established by law to facilitate arbitration proceedings, playing a crucial role in the country's dispute resolution framework. One of the primary institutions is the Addis Ababa Chamber of Commerce and Sectorial Associations (AACCSA) Arbitration Institute, established under General Notice No. 90/1947 and later reinforced by Proclamation No. 341/1995, which governs the Chamber of Commerce and Sectorial Associations. This institution handles disputes relating to commercial and industrial matters between its members, providing a forum for arbitration of business-related disagreements.[168]

A second key institution, also established under Proclamation No. 341/1995, is the Ethiopian Chamber of Commerce and Sectorial Associations (ECCSA). The ECCSA was a non-governmental organization that offered both arbitration and mediation services for commercial, labor, construction, and family disputes with Ethiopian substantive laws. However, its functions were curtailed following the enactment of the Charities and Societies Proclamation, which resulted in its dissolution.[169]

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[167] Fekadu Petros, (n.3)

[168] General Notice No 90/1947. Addis Ababa Chamber of Commerce and Sectorial Associations Establishment; Proclamation No 341/1995: Chamber of Commerce and Sectorial Associations Establishment Proclamation (Federal Negarit Gazeta, 1995).

[169] Proclamation No 341/1995.Chamber of Commerce and Sectorial Associations Establishment Proclamation (Federal Negarit Gazeta, 1995); Proclamation No 621/2009: Charities and Societies Proclamation (Federal Negarit Gazeta, 2009).

Another significant institution is the Ethiopian Mediation and Arbitration Center (EMAC). This center was founded by Ethiopian lawyers to provide private dispute settlement services, specifically targeting commercial and family disputes. EMAC plays an important role in offering an alternative to the court system, particularly in commercial disputes where swift resolution is often critical.[170]The Ethiopia Commodity Exchange Authority, established under Proclamation No. 550/2007, is yet another institution with arbitration powers. This authority is responsible for enforcing rules and providing facilities for an Arbitration Tribunal, tasked with resolving disputes between its members and clients. The creation of such authority highlights the growing institutionalization of arbitration in Ethiopia, particularly in sectors like commodities where swift and efficient dispute resolution is essential.[171]In addition to these institutions, the Ministry of Justice, through the Civil Cases Administration Directorate, has the authority to enact laws and oversee arbitration for government organs and public enterprises. The Ministry's role in overseeing arbitration ensures that disputes involving state actors can be resolved efficiently while maintaining fairness and transparency.[172]

The legal framework for arbitration institutions was further developed with the introduction of Proclamation No. 1237/2021. Article 18 of the Proclamation introduces new approaches to the establishment of arbitration institutions, allowing both private and government owned arbitration centers. This is a significant shift from previous laws, as it provides for a regulatory framework that ensures supervision, licensing, and the setting of criteria for arbitration centers. Recently the mandate to supervise these institutions and issue licenses is vested in the Ministry of Justice, marking a significant step towards formalizing and regulating arbitration in Ethiopia.[173]

[170] Ethiopian Mediation and Arbitration website https://emacethipia.org/ accessed on march 24
[171] Proclamation No 550/2007: Ethiopia Commodity Exchange Authority Proclamation (Federal Negarit Gazeta, 2007).
[172] Fekadu Petros,(n.3)
[173] Proclamation No 1237/2021 (n15), Art 18.

3.3.4. Recent Legal Reforms on Arbitration

Since 2018, Ethiopia has undergone significant legal reforms, particularly in the realm of Alternative Dispute Resolution (ADR) mechanisms.[174] These reforms commonly referred to as the "reform package," have been focused on enhancing the private sector's role in the economy and modernizing the country's legal system. One of the most important legislative developments in this regard is Proclamation No. 1237/2021, which introduced the Arbitration and Conciliation Working Procedure Proclamation. This law emphasizes the establishment of private dispute settlement mechanisms and aims to complement the constitutional right to justice, particularly in the resolution of investment and commercial disputes.[175]

The preamble of Proclamation No. 1237/2021 underscores the importance of arbitration and conciliation as efficient methods of dispute resolution, particularly due to their ability to reduce transaction costs, maintain confidentiality, and enable the participation of experts in complex commercial disputes. The law further simplifies arbitration procedures, offering flexibility to contracting parties and promoting the use of arbitration as a preferred method for dispute settlement in commercial transactions.[176]

The first major modification introduced by this proclamation is found in Article 3, which extends the jurisdiction of arbitral tribunals to cover both domestic and international arbitration. This expansion is significant as it harmonizes Ethiopia's arbitration framework with international standards, making it more attractive to foreign investors and international businesses.[177]

The second modification concerns the scope of arbitrable disputes. Article 7 of the proclamation lists several areas of disputes that are non-arbitrable, providing clarity on what matters can and cannot be resolved through arbitration. This is particularly important for ensuring that arbitration is used appropriately, avoiding issues that may be contrary to public

[174] Dagnachew and Mahlet Law Firm Arbitration and Settlement of Dispute of Marriage (March 24 ,2024) www.dmethiolawyers.com/ accessed on march 24
[175] Proclamation No 1237/2021 (n 15) the Preamble
[176] Ibid
[177] Proclamation No 1237/2021 (n 15), Art 3

policy or involve matters that are traditionally reserved for the courts. [178]Article 6 introduces a key change to arbitration agreements, allowing parties to determine the governing law for their arbitration proceedings. This provision gives greater autonomy to the parties, enabling them to select a legal framework that best suits their contractual relationship, provided it does not violate any mandatory provisions of Ethiopian arbitration law. This flexibility is a vital component for modern arbitration systems, aligning Ethiopia's framework with international best practices.[179]

Another crucial development under Proclamation No. 1237/2021 is the recognition of private and government owned arbitration centers. For the first time, the law formally acknowledges and regulates the establishment of both public and private arbitration institutions, ensuring they meet specified standards. This change is a response to the increasing demand for institutional arbitration in Ethiopia and is aimed at ensuring greater professionalism and consistency in the arbitration process.[180] A further key change in the legal framework is the introduction of a right to appeal arbitral awards. Under the proclamation, unless parties agree otherwise, they can apply the Cassation Bench of the Federal Supreme Court where there is a fundamental or basic error of law. This provision adds layer of legal protection, ensuring that arbitral decisions are subject to review in cases where legal errors have occurred, but it also ensures that arbitration awards remain final and binding in the majority of cases.[181]

Additionally the new proclamation also includes several additional procedural rules that were previously absent from Ethiopian arbitration law. These include detailed provisions on the request for arbitration, the manner of delivering notices, and the conduct of arbitration proceedings.[182] By incorporating these specific rules, the law brings Ethiopian arbitration in line with international standards, making the process more predictable and transparent for both domestic and international parties.[183]

One of the most significant innovations in the proclamation is the inclusion of confidentiality

[178] Ibid, Art 7
[179] Ibid, Art 6
[180] Ibid, Art 18
[181] Ibid, Art 22
[182] Ibid, Art 25
[183] Ermias Ayalew Chernet, Mintewab Afework Abebe and Redeat Stihanos Teka Aman Assefa & Associates "Guide to arbitration places (G AP) DELOS dispute resolution(12 July 2021) GAP 2nd ed. © Delos Dispute Resolution 2021

clauses. Maintaining confidentiality is crucial in arbitration, especially in commercial disputes where sensitive business information is often involved. The proclamation ensures that all parties are bound to keep arbitration proceedings confidential, thereby preserving the privacy of the dispute resolution process.[184]

3.4. LEGAL FRAMEWORK GOVERNING COMMERCIAL ARBITRATION IN ETHIOPIA

According to Mr. Nigussie Tezazu, Director General of the Civil Justice Administration Proclamation No. 1237/2021 is introduced to modernize Ethiopia's outdated arbitration laws and align them with international standards.[185] The old framework, mainly found in the Civil Code of 1960 and the Civil Procedure Code of 1965, could not handle modern commercial disputes. With Ethiopia's economy growing and cross-border transactions increasing, the laws had to be updated to meet current commercial needs.[186] The expert emphasized that this law was designed to incorporate key UNCITRAL model law principles, such as separability, kompetenz-kompetenz, and impartiality.[187]These principles were missing in the old laws, which failed to address the complexities of modern arbitration. He noted that foreign investors demand a reliable arbitration system before investing in any country.[188] The old system in Ethiopia discouraged many investors, particularly due to weak recognition of foreign arbitral awards.[189] By ratifying the New York Convention in 2021 and introducing this Proclamation, Ethiopia aimed to attract more foreign investment by providing a dependable dispute resolution process.[190]

The expert added that this Proclamation was part of broader legal reforms aimed at promoting private dispute resolution mechanisms, especially arbitration, as part of Ethiopia's commitment to fostering foreign direct investment. For instance, Investment Proclamation No. 1180/2020 guarantees investors the right to refer disputes to international arbitration,

[184] Proclamation No 1237/2021,(n 15) Art 30
[185] Mr Nigussie Tezazu (Director General of civil justice Administration Deputy director General of Minister of justices) interviewed by Mekit Zeleke Addis Ababa 17 April 2024
[186] Ibid
[187] Ibid
[188] Ibid
[189] Ibid
[190] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

signaling Ethiopia's strong commitment to arbitration as part of its foreign investment framework.[191]

The new law also aimed to reduce judicial interference. Under the old system, Ethiopian courts could easily overturn arbitral awards based on vague grounds like "fundamental error of law." This weakened arbitration's effectiveness as a final dispute resolution method. The Proclamation now restricts court involvement to clearly defined cases, ensuring that arbitration awards are more likely to be binding and final.[192]Another key objective was to encourage institutional arbitration. Previously, most arbitration was ad-hoc which lacks structured institutions.

The expert also discussed several major changes introduced by the Proclamation, which separate it from the old laws. The first is the scope of application, as Mr. Nigussie explains the Proclamation clearly distinguishes between domestic and international arbitration, something the Civil Code failed to do. This clarity, combined with Ethiopia's recognition of the New York Convention, ensures that international arbitration awards are recognized and enforced. It also exclude s certain types of disputes, like criminal and family law cases, from arbitration. This prevents confusion over what arbitral matters.[193] The second major change is judicial intervention under the old law; courts had too much power to overturn arbitral awards, particularly the Cassation Bench. The new Proclamation limits court intervention to cases involving due process violations or public policy concerns, ensuring arbitral awards are final and binding.[194] The expert explains that third crucial development under Proclamation No. 1237/2021 is the recognition of private and government owned arbitration centers. For the first time, the law formally acknowledges and regulates the establishment of arbitration institutions, both public and private, ensuring they meet specified standards. This change is a response to the increasing demand for institutional arbitration in Ethiopia and is aimed at ensuring greater professionalism and consistency in the arbitration process. [195]The fourth major change is the recognition and enforcement of foreign arbitral awards the in which Civil

[191] Interview with Nigussie Tezazu, (n185)
[192] Ibid
[193] Ibid
[194] Ibid
[195] Ibid

Code did not enforce foreign arbitral awards effectively. Now, under the New York Convention, the Proclamation requires courts to recognize and enforce foreign awards, making Ethiopia more attractive for international arbitration.

Also, alignment with international standards can be considered a major change. As Mr. Nigussie explains the old Civil Code did not follow international arbitration standards, which hurt Ethiopia's competitiveness. The new Proclamation adopts UNCITRAL model law principles and international best practices, aligning Ethiopia with global arbitration norms and making it a stronger regional arbitration hub.[196]

The last but not the list major change several additional procedural rules that were previously absent from Ethiopian arbitration law. These include detailed provisions on the request for arbitration, the manner of delivering notices, and the conduct of arbitration proceedings. By incorporating these specific rules, the law brings Ethiopian arbitration in line with international standards, making the process more predictable and transparent for both domestic and international parties. One of the most significant innovations in the proclamation is the inclusion of confidentiality clauses. Maintaining confidentiality is crucial in arbitration, especially in commercial disputes where sensitive business information is often involved. The proclamation ensures that all parties are bound to keep arbitration proceedings confidential, thereby preserving the privacy of the dispute resolution process

[196] Ibid

CHAPTER FOUR

LEGAL AND PRACTICAL CHALLENGES OF COMMERCIAL ARBITRATION IN ETHIOPIA: INSIGHTS FROM ADDIS ABABA

INTRODUCTION

This chapter employs qualitative data analysis to evaluate the legal framework governing private commercial dispute settlement, with a focus on arbitration practices in Ethiopia. By integrating interviews with legal professionals and practitioners from arbitration institutions in Addis Ababa, this chapter will explore how recent legal reforms, particularly Proclamation No. 1237/2021, having impact the functioning of arbitration centers and the resolution of commercial disputes. Additionally, this chapter delves into the practical and legal challenges encountered by these institutions, offering a thematic exploration based on the data collected.

4.2 THE IMPACT OF RECENT LEGAL REFORM ON ARBITRATION INSTITUTIONS IN ADDIS ABABA

Proclamation No. 1237/2021 represents a crucial legal reform in Ethiopia, significantly modernizing the arbitration landscape, particularly in Addis Ababa, the center of commercial and legal activity. This law introduces a structured approach that brings into line Ethiopian arbitration practices more closely with international standards, in case clear guidelines that help establish reliability and trust in arbitration as an effective means of dispute resolution. Earlier, arbitration in Ethiopia operated on an ad-hoc basis, meaning that the process was largely informal and improvised, with parties often negotiating each procedural detail. This lack of structure could result in disorganization, delays, and unpredictable results. However, Proclamation No. 1237/2021 has changed arbitration into a more ordered and reliable system, offering businesses both domestic and international a clearer, standardized process to resolve disputes outside of court.[197]

The Proclamation's impact also ranges to institutional arbitration centers, encouraging their establishment with licensing requirements, regulatory oversight, and consistent monitoring to ensure transparency and accountability. These developments promise to enhance confidence

[197] Ibid

among users of arbitration services by promoting professional and standardized practices. Notably, this reform has also facilitated the entry of foreign arbitrators into the Ethiopian arbitration sphere, thus expanding the talent pool and supporting the attachment of expertise for international cases. This openness to foreign arbitrators improves Ethiopia's attractiveness as an arbitration-friendly place for global trade and investment disputes, reflecting a commitment to the independence of the parties involved in arbitration, particularly in selecting arbitrators who bring specialized experience in cross-border issues.

In addition, the Proclamation has affected an increase in specialized training programs for arbitrators, ensuring that local practitioners develop the skills and knowledge needed to meet both domestic and international standards. As a result, institutions like the Addis Ababa Chamber of Commerce and other training providers are now offering certification programs and workshops for arbitrators, aimed at fostering professional excellence and ethical practices in arbitration.[198]These training advantages support a refined judicial approach that respects the independence of arbitration while supporting efficient court proceedings related to arbitration matters. The Ethiopian judiciary, under the new framework, is also more attuned to support arbitration by minimizing unnecessary interference, ensuring that court involvement is limited to essential oversight. This balance between independence and judicial support contributes to a reliable arbitration. An efficient arbitration environment that benefits all parties and reinforces Ethiopia's growing reputation as a fair and capable forum for resolving commercial disputes**.**

4.3. LEGAL AND PRACTICAL CHALLENGES OF ARBITRATION INSTITUTIONS IN ADDIS ABABA

Despite the fact Proclamation No. 1237/2021 aimed to strengthen arbitration practices in Ethiopia, particularly in Addis Ababa, numerous legal and practical challenges continue that significantly impact the functionality and accessibility of arbitration institutions. These obstacles not only compromise the effectiveness of arbitration as a viable alternative dispute

[198] Ms.Mistir Mohammed a legal expert in Addis Ababa chamber of commerce, arbitration matter interviewed by Mekit Zeleke Addis Ababa 17 April 2024

resolution method but may also discourage both domestic and international parties from engaging fully in arbitration proceedings.

4.2.1 Legal Challenges

This study identifies regulatory ambiguities surrounding the licensing and oversight of arbitration centers as a primary legal challenge under Proclamation No. 1237/2021. Specifically, Article 18 gives authority to the Federal Ministry of Justice to supervise and issue licenses for arbitration institutions. However, as Mr. Nigussie Tezazu, Director General of the Civil Justice Administration, point out, the article's broad language fails to provide detailed regulatory guidelines essential for the effective establishment and operation of these centers.[199] Such guidance is critical to the development trust in arbitration as a practical mechanism for commercial dispute resolution, yet the current framework lacks the necessary regulatory clarity.

The lack of specific rules in irregularities how various centers to operate, ultimately undermining users' confidence in arbitration as a reliable dispute resolution option. According to Mr. Samuel Alemayehu, a legal expert at the Ethiopian Mediation and Arbitration Center, some of the core issues in commercial arbitration in Addis Ababa stem from the legislative gaps within Article 18.[200] Even if the article allows for both public and private establishment of arbitration institutions, it lacks standardized procedures, regulatory laws, and oversight mechanisms, posing significant legal and practical challenges in Addis Ababa's arbitration landscape.[201]The absence of regulatory oversight allows unregistered individuals to form ad hoc arbitration centers, leading to inconsistencies in practice consequently; this regulatory void has led to procedural missteps by arbitrators, often resulting in continued and costly disputes rather than efficient resolution.[202]

[199] Ibid
[200] Mr,Samuel Alemayehu, lawyer and a legal expert in Ethiopian Mediation and Arbitration center interviewed by Mekit Zeleke Addis Ababa 22 April 2024
[201] Ibid
[202] Ibid

International experiences show that well-established arbitration jurisdictions often provide clear regulatory guidelines for the accreditation, operation, and monitoring of arbitration centers to ensure transparency, accountability, and efficiency in dispute resolution. In contrast, the Ethiopian framework under Article 18 lacks these specifics, leading to inconsistent practices among different arbitration centers.[203]

Therefore introduction of clearer licensing and regulatory frameworks could foster the consistency needed to boost the credibility of arbitration in Ethiopia, making it more appealing to businesses, particularly international investors**.**

Another significant challenge in Ethiopia's commercial dispute resolution landscape, particularly in the context of arbitration in Addis Ababa, is the absence of detailed standardized procedures and ethical codes of conduct. As stated by Ms. Mistir Mohammed, the current legal framework established by the Proclamation allows for the creation of both public and private arbitration centers. However, it particularly lacks the provision of clear ethical guidelines or conduct standards.[204] This oversight results in a scenario where individual arbitration centers exercise extreme discretion over their procedures, leading to inconsistencies in the appointment of arbitrators and the management of cases. While the Proclamation facilitates the establishment of diverse arbitration centers, it fails to clarify whether these entities must not adhere to specific ethical standards or codes of conduct, nor does it outline mechanisms for enforcing such standards. Moreover, it does not prescribe a uniform institutional framework for their operation, even if permitting considerable autonomy to individual centers in formulating their procedures and rules is good, but this flexibility can indeed subdivision innovation within arbitration practices; concurrently raises concerns regarding fragmentation and inconsistency in arbitration outcomes.[205]

In light of these ambiguities and the challenges faced by the current legal framework under Article 18, there is a convincing need for regulatory reforms aimed at enhancing the oversight and governance of arbitration centers in Ethiopia. To facilitate the effective

[203] Interview with Mistir Mohammed (n 198)
[204] Ibid
[205] Ibid

implementation of the new law, it is crucial to introduce inclusive clear regulatory guidelines concerning the establishment, registration, and operation of arbitration centers. These reforms should mandate the adoption of specific codes of conduct, the faithfulness to minimum operational standards, and the implementation of periodic audits to ensure compliance with established legal and ethical norms. By addressing these issues, the regulatory framework can adopt a more consistent and reliable arbitration environment, ultimately promoting greater confidence in the dispute resolution process.

Judicial interference also poses a significant barrier to the autonomy of arbitration. Although Proclamation No. 1237/2021 aims to minimize court involvement, judicial interference persists in key procedural matters, such as the appointment of arbitrators and the enforcement of awards. Mr. Samuel Alemayehu, a legal expert at the Ethiopian Mediation and Arbitration Center, referred to the case of "National Cement Share Company v. Danni & Associates," where a court annulled an arbitral award due to procedural discrepancies.[206] Such interventions compromise the independence of arbitration, which is designed to provide a definitive and private alternative to traditional litigation. Restricting judicial involvement to cases of severe procedural errors or breaches of public policy could help preserve the integrity of arbitration and align Ethiopian practices with international standards, thereby enhancing trust in arbitration as a dependable dispute resolution mechanism contrary to this the court in Patrice intervene. .

The legal challenge identified in this study is conflicting regulatory ambiguities, particularly within the framework of Investment Regulation No. 474/2020, Article 4(31), and Proclamation No. 1237/2021. These two legislative instruments significantly overlap in their approaches to arbitration, especially regarding foreign investment and the regulation of arbitration practices in Ethiopia.

Investment Regulation No. 474/2020, specifically Article 4(31), limits certain professional activities, including those of lawyers and consultants, to domestic investors only.[207] This

[206] National Cement Share Company v Danni & Associates(2019), Federal Supreme Court Caseation division , case No 2386/19
[207] Regulation No 474/2020 (n 29) Art 4(31)

provision has profound implications for the appointment of foreign arbitrators in international disputes, effectively limiting their participation in arbitration proceedings conducted within the country. The regulation stands for a protective position aimed at shielding domestic professionals from foreign competition in the legal and consultancy sectors, including arbitration services.

In contrast, Proclamation No. 1237/2021 seeks to modernize Ethiopia's arbitration framework. While the proclamation primarily focuses on procedural aspects and the establishment of arbitration institutions, it also recognizes the importance of foreign arbitrators in international arbitration cases. This represents a significant departure from the restrictive nature of Article 4(31) of the Investment Regulation, creating tension between the two legal frameworks governing foreign investment and arbitration practices.

On the one hand, Investment Regulation No. 474/2020 seeks to limit foreign participation in the legal profession, thus limiting the appointment of foreign arbitrators. This restriction undermines the principle of party autonomy, which allows parties to select arbitrators based on their expertise, regardless of nationality. On the other hand, Proclamation No. 1237/2021 promotes inclusivity by permitting the involvement of foreign arbitrators in international disputes, thereby recognizing the need for specialized knowledge in directing complex cross-border commercial matters.

This conflicting regulatory landscape presents practical challenges for arbitration institutions and parties engaged in international disputes.[208] While Proclamation No. 1237/2021 lays a legal foundation for the inclusion of foreign arbitrators, the limitations imposed by Investment Regulation No. 474/2020 could delay their appointment. Consequently, this creates legal ambiguities and potential disputes regarding the interpretation and application of these laws.

As Mr. Samuel noted, this legal ambiguity poses significant challenges for arbitration institutions in Ethiopia, particularly in Addis Ababa. Institutions may come across difficulties

[208] Interview with Samuel Alemayehu (n 200)

when attempting to appoint foreign arbitrators for international disputes. Mr. Samuel further emphasized that strict enforcement of the Investment Regulation could reduce the effectiveness of the arbitration process, especially in cases involving foreign parties who may prefer or necessitate arbitrators with international expertise. [209]

Moreover, these regulatory ambiguities could lead to disputes regarding the validity of arbitration awards, particularly if a party challenges the appointment of a foreign arbitrator based on the restrictions of the Investment Regulation. The absence of clear guidance on reconciling these two legal frameworks aggravates the complexity, potentially deterring foreign investors from selecting Ethiopia as a place for international arbitration.

For cross-border disputes, particularly those involving international commerce, the expertise and neutrality of arbitrators are critical. Parties often require arbitrators with a deep understanding of international law, foreign legal systems, or commercial practices that may not be adequately addressed by domestic arbitrators in Ethiopia. The restrictions imposed by Article 4(31) can create challenges in ensuring that arbitrators possess the necessary qualifications and experience to adjudicate international disputes effectively.

Furthermore, the absence of foreign arbitrators may raise concerns regarding the enforceability of arbitral awards in other jurisdictions. International parties may question whether an award rendered by domestic arbitrators in Addis Ababa can be enforced abroad.

As Ms. Mistir Mohammed pointed out, this regulatory conflict could deter the appointment of qualified foreign arbitrators, which is essential for addressing complex cases. The ambiguity surrounding the interaction of these laws might further discourage foreign investors from considering Ethiopia as a viable location for arbitration.[210]

In conclusion, the regulatory ambiguities between Investment Regulation No. 474/2020 and Proclamation No. 1237/2021 create a challenging environment for arbitration practices in Ethiopia. The tension between limiting foreign participation and recognizing the need for

[209] Ibid
[210] Interview with Mistir Mohammed (n 198)

expertise highlights the necessity for a stronger, more solid legal framework that reviews or amends the investment regulation to allow the work of arbitration only for domestic and foreign to facilitate effective arbitration, thereby enhancing Ethiopia's attractiveness as a destination for international dispute resolution. Complementing these legal frameworks to allow for greater flexibility in arbitrator selection would position Ethiopia as a more modest place for international disputes, thereby fostering foreign investment and driving economic growth.

This study discloses that enforcement of foreign arbitral awards in Ethiopia is distressed with significant challenges. Despite Ethiopia's ratification of the New York Convention, which gestures a commitment to recognizing international awards, domestic legal inconsistencies and differences in judicial practices continue to impede reliable enforcement.[211] This contradiction undermines Ethiopia's appeal as a reliable arbitration site, as international businesses often require assurance on their awards will be upheld without legal obstacles.

Ms. Mistir Mohammed from the Addis Ababa Chamber of Commerce underscored that establishing dependable enforcement standards is essential for international businesses considering arbitration in Ethiopia. The lack of clarity in enforcement practices risks deterring potential foreign investors, as it introduces uncertainty in the dispute resolution process. Consequently, to expand Ethiopia's attractiveness as a reliable arbitration center, the development of clear and consistent enforcement guidelines is grave. This step would not only encourage Ethiopia's reputation as a favorable destination for international arbitration but would also enhance confidence in its legal framework, encouraging greater foreign investment and strengthening its role in global dispute resolution.

4.3.2 Practical Challenges

In addition to legal difficulties, the findings of this study spot several structural practical challenges that hinder the development of Ethiopia's arbitration framework. Addressing these issues is essential to positioning Ethiopia as a credible option for both local and international dispute resolution.

[211] Ibid

According to Mr. Nigussie Tezazu, he noted that the lack of formal, resource equipped facilities for arbitration proceedings reduces the professional environment expected in legal environments. Many arbitration centers, particularly in Addis Ababa, are delayed by infrastructural lacks, such as outdated facilities, insufficient technological resources and also human resources, which diminish their ability to manage complex cases effectively, particularly in international disputes.[212]

In general Investment in, purpose-built facilities and modern technology would significantly enhance Ethiopia's arbitration services, advancing the credibility to its arbitration sector. Such improvements could elevate Ethiopia's status as a viable location for arbitration, comparable to established international centers.

The findings of this study reveal that the high costs associated with arbitration in Ethiopia present a significant barrier to accessibility, especially for smaller businesses. As Ms.Mister Mohammed, noted that these expenses, including administrative fees and related costs can make arbitration prohibitively expensive.[213] Mr. Samuel Alemayehu also emphasized that many smaller businesses struggle to afford arbitration domestically and often opportunities to foreign jurisdictions, which experience even higher costs and limit access for those without substantial resources.[214] This trend is exacerbated by the limited number of well-established arbitration institutions in Ethiopia, as noted by both Mr. Samuel and Ms. Mistir Mohammed, who underscored that the shortage of experienced arbitrators further drives parties to foreign arbitration centers, adding financial strain and reducing the appeal of local arbitration options.

This financial barrier ultimately weakens one of arbitration's primary goals providing an efficient, accessible alternative to litigation. For many parties, particularly domestic businesses with limited budgets, the perceived affordability of traditional litigation may balance the possible benefits of arbitration. The high cost of arbitration thus discourages its

[212] Interview with Nigussie Tezazu (n 185)
[213] Interview with Mistir Mohammed (n 198)
[214] Interview with Samuel Alemayehu (n 200)

use, stalling Ethiopia's efforts to promote arbitration as a practical and widely accessible dispute resolution mechanism.

To enhance the accessibility of arbitration, it would be beneficial for the government to consider implementing financial assistance measures, such as subsidies for smaller businesses. By improving the financial burden, these initiatives would encourage broader participation in arbitration, promoting it as an equitable option for dispute resolution across all sectors.

Further challenges include limited familiarity with arbitration procedures among legal professionals. This gap is especially obvious outside major centers, where many lawyers and judges remain unfamiliar with the requirements of the current Proclamation. Consequently, errors in drafting arbitration agreements and procedural delays are common, as Ms. Meseret Mohammed pointed out; with some judges still depending on outdated standards in reviewing arbitral awards.[215]

Establishing specialized training programs for judges and legal professionals would foster procedural consistency and promote a supportive environment for arbitration.

This study reveals that procedural ambiguities in the application of interim measures pose a significant challenge to the effectiveness of arbitration in Addis Ababa. Article 20 of the Proclamation allows arbitral tribunals the authority to issue interim measures, yet it lacks explicit criteria for when and under what conditions these measures should be applied.[216] Ms. Mistir Mohammed pointed out that, without clear guidelines, arbitration centers often help to unnecessary court intervention, detracting from the independence and efficiency of the arbitration process.

In comparison to arbitration, traditional litigation typically provides clear legal standards for interim measures, based on principles such as the necessity to prevent irreversible harm or to preserve rights. The absence of similar standards in arbitration creates uncertainty, leading to

[215] Interview with Mistir Mohammed (n 198)
[216] Ibid

inconsistent practices among arbitral tribunals and potentially undermining the enforceability of interim orders. Arbitrators may struggle to assess the validity of interim measures without a guiding framework, which could result in disputes over both their issuance and their subsequent enforcement.

Moreover, the lack of clarity regarding the enforcement of interim measures issued by arbitral tribunals adds another level of complexity to arbitration proceedings. Parties may encounter difficulties in securing compliance with these orders, particularly when the Ethiopian legal system does not offer a well-defined process for their enforcement. This gap not only creates challenges in ensuring adherence to interim measures but also risks shrinking the reliability of arbitration as a dependable method for dispute resolution, especially in cases requiring urgent protective action. Therefore this challenge needs clear guidance for enforcement of interim measures when, and how the arbitral tribunal to issue interim measure.

The study finds that limited public awareness significantly delays the adoption of arbitration in Addis Ababa, as many businesses remain unfamiliar with its key benefits, including efficiency, confidentiality, and cost-effectiveness. Despite these advantages, traditional litigation remains the default choice for many, primarily due to a lack of understanding of arbitration's value as an alternative dispute resolution method.[217]

All legal experts who were interviewed stressed the need for directed awareness campaigns to inform businesses about the practical benefits of arbitration. Public education initiatives could play a crucial role in promoting arbitration and, development of a culture that recognizes it as a viable and often superior approach to resolving disputes. By way of raising awareness, such initiatives would support broader adoption, reducing reliance on the court system and reinforcing arbitration's position as a credible and effective mechanism for commercial dispute resolution in Ethiopia.

[217] Interview with Nigussie Tezazu (n 185)

At the end, increasing public awareness emerges as a dire step in advancing Ethiopia's arbitration framework. Establishing educational campaigns and outreach programs would help cultivate an environment where businesses view arbitration as not just an alternative, but a preferred approach to dispute resolution, thereby enhancing its use and integration within the legal landscape.

In conclusion, this study finds that although Proclamation No. 1237/2021 marks important progress in advancing Ethiopia's arbitration framework. The key challenges remain that require targeted reforms and committed investment. Addressing these challenges from regulatory ambiguities and inconsistent judicial practices to infrastructural deficiencies and prohibitive costs is essential to strengthening the effectiveness of arbitration in Ethiopia. Deciding these issues would not only strengthen the legal framework but also enhance Ethiopia's capacity to serve as a credible and competitive site for both domestic and international dispute resoluteion. Through creating a consistent regulatory environment, improving accessibility, and investing in arbitration resources, Ethiopia can position herself as a respected arbitration hub, thereby fostering greater confidence among foreign investors and domestic parties.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. CONCLUSION

This thesis was to emphasize private commercial dispute settlement in Ethiopia especially focused on arbitration in Addis Ababa. Its findings exhibit an efficient commercial arbitration legal system integrates international standards and principles in its laws. Internationally, there are many model laws that integrate the required principles and standards. Coming to our country Ethiopia, for many years it has been suffering by lacking a compressive legal framework that embraces and integrates international standards and principles efficiently

The post-2018 Ethiopian government introduced a legal reform, including the introduction of Proclamation No. 1237/2021. This step marks dynamic development in the legal landscape of arbitration in Ethiopia, particularly in Addis Ababa. The reform has transitioned arbitration from a largely informal and ad-hoc practice to a more structured and regulated process that aligns with international standards. This Proclamation aims to improve the reliability and attractiveness of arbitration for both local and foreign businesses. This regulatory framework is important for building trust among interested party parties and also this Proclamation's stress on institutional regulation and misunderstanding is a significant step in that direction. The implications of these developments could lead to increased foreign investment.

Regardless of the positive steps made through Proclamation No. 1237/2021, significant legal challenges remain that could undermine the effectiveness and reliability of arbitration in Ethiopia predominantly in Addis Ababa. The existing ambiguities in the regulatory framework create inconsistencies in the establishment and operation of arbitration institutions, which may lead to unpredictable outcomes for both domestic and international parties. This study highlights the importance of clear secondary legal standards in enhancing arbitration's credibility and the lack of uniform guidelines threatens to wear down investor confidence. The finding as the legal challenge is separate from conflicting regulations

between investment regulation and this new proclamation concerning foreign arbitrators, through the study this conflict poses serious risks to the autonomy and finality of arbitral awards. Also, this proclamation faces the legal challenges of court intervention, lack of standard code of conduct and problem of awarded enforcement. Addressing these legal challenges is imperative for Ethiopia to establish a robust arbitration framework that is perceived as fair and effective by all stakeholders, thereby fostering a more favorable environment for dispute resolution. There are also practical challenges faced after the compressive legal framework

Practical challenges within Ethiopia's arbitration institutions further confuse the implementation of effective dispute resolution. Key issues, such as inadequate infrastructure and a shortage of qualified personnel, delay the ability of these institutions to manage complex and international cases efficiently. The finding emphasizes that without sufficient resources, arbitration may struggle to compete with traditional litigation as a viable alternative for businesses. Additionally, the high costs associated with arbitration can deter small and medium enterprises from pursuing this option, thereby limiting its accessibility. Moreover, the lack of awareness and understanding of the new legal framework among practitioners and the business community contributes to inconsistent applications of the law.

By doing so, Ethiopia can enhance its arbitration institutions' capacity to meet both domestic and international demands, ultimately promoting a culture of efficient and effective dispute resolution.

5.2. RECOMMENDATION

The outcomes of this study highlight several critical areas for reform to improve Ethiopia's arbitration framework. The following are the key recommendations to shape these legal and practical challenges.

The researcher of this study suggested that to curb the legal challenge the law makers are advised to enact details and clear secondary regulations to guide the problem of establishment, operation and monitoring mechanisms. This regulation also needs to address an ethical code of conduct along with detailed guidelines how arbitral awards are enforced. To correct the conflicting ambiguity of investment regulation and the new proclamation, this thesis recommends reviewing or amending conflicting provisions of investment regulation which restricts appointing foreign arbitrators, based on the principle of parity autonomy.

Additionally to fix the practical challenge this thesis of the study advised recommends investing in the training and professional development of legal experts and arbitrators, and also capacity building of domestic arbitrators in addition creating public awareness campaigns and legal education initiatives to encourage arbitration businesses and private dispute settlement mechanisms.

Addressing these areas will put Ethiopia in a better position to meet international standards in arbitration and foster a robust environment for commercial dispute resolution thereby enabling local businesses and FDI.

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Interview

- ✓ Mr. Nigseesi Tezazu Director General of civil justice Administration Deputy Director General of Minister of justices 17,04,2024 minister justice head office Equatorial Guinea st Addis Ababa. 17,04,2024.
- ✓ Ms.Mistir Mohammed a legal expert in Addis Ababa chamber of commerce, arbitration matter Addis Ababa chamber of commerce head office Mexico street Addis Ababa. 17,04,2024
- ✓ Mr,Samuel Alemayehu, lawyer and a legal expert in Ethiopian Mediation and Arbitration center Ethiopian Mediation and Arbitration center head office Bola Addis Ababa. 22,04,2024

APPENDIXES

ANNEX 1: INTERVIEW GUIDE QUESTIONS

Semi structured interview:

For title of Private Commercial Dispute Settlement in Ethiopia: legal frameworks and institutional practices of arbitration in Addis Ababa

For selected arbitration centers

1- What is your name? And your status?

2- What is private commercial dispute statement? Arbitration?

3- What are the key legal provisions and principles used for governing private commercial dispute resolution in Ethiopia; with a specific focus on arbitration can you tell us?

4- How does the legal framework governing arbitration in Ethiopia evolved over time, and what are the significant changes brought by recent legal reforms (new arbitration proclamation) for your center practicing commercial arbitration?

5- Currently how your arbitration institutions handle disputes? And what are the procedural rules and guidelines the center follow in conducting commercial arbitrations?

6- How can recent legal reforms in Ethiopia address the challenges faced by arbitration centers and promote the growth of arbitration as a preferred method of dispute resolution compare to the old civil and civil procedures codes?

7- What are the practical and legal challenges faced by your institutions after enactment of new Arbitration law, and how do they impact the effectiveness of private commercial dispute resolution through arbitration?

8- Are there any specific legal challenges or ambiguities within the legal framework that affect arbitration practices currently?

9- How does your arbitration center ensure transparency, impartiality, and efficiency in resolving commercial disputes, and what measures are in place to enhance the credibility of arbitration as a reliable dispute resolution mechanism?

For minister of justice

1. What is your name? And your status?

2. What is private commercial dispute statement? Arbitration?

3. How can the key arbitration institutions operating in Ethiopia, and how they are contributed for the development of arbitration practices in the country?

4. How this minister of justice plays his role given by proclamation NO 1237/2021 article 18 the power of supervises and licenses arbitration centers and what are the legal requirement for to be registered as arbitration center privately or government owned for domestic or international arbitration centers?

5. What are the legal and practical challenges faced by the minister of justice on regulating this arbitration centers?

6. What is the step taken by the minister of justice to correct the error or conflict between proclamation No 1237/2021 and other proclamation for example investment regulation?