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The Role of Courts in Arbitration in Ethiopia under Proclamation No. 1237/2021

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Abstract: Arbitration is an alternative dispute resolution mechanism that produces a binding decision on the parties, unlike other ADR mechanisms. Though it is an entirely private process, the involvements of national courts are essential and inevitable in different stages of commercial arbitration processes. Ethiopian courts assume a broader role in arbitration processes before the coming into force of arbitration and Conciliation, working Procedure Proclamation No.1237 /2021. Such broader functions of courts emanate from the former legal regime governing arbitration in Ethiopia. This article evaluates and describes the role of Ethiopian courts in arbitration processes that are conferred by Arbitration and Conciliation, working Procedure Proclamation No.1237 /2021. The study used a doctrinal legal research method. Analysis of the proclamation and other relevant international instruments indicates that the role of Ethiopian courts in Commercial arbitration is minimal.

Keywords: The Role of courts, Arbitration, Minimal intervention of courts.

Research Paper

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1 INTRODUCTION

There are different methods of resolving disputes in the world.[1] Other than Court litigation, all other mechanisms are generally categorized under an umbrella term called "Alternative Dispute Resolution" or "ADR."[2] Alternative Dispute Resolution ("ADR") refers to settling disputes outside the courtroom.[3] Compared to litigation in courts, arbitration is generally considered a quick, flexible, and confidential form of dispute resolution.[4] Although arbitration is decisional as opposed to other ADR mechanisms, like other ADR mechanisms, however, arbitration is a private dispute resolution process.[5] As opposed to state-appointed judges, arbitrators are chosen and paid by the parties themselves.[6] Arbitration is more formal and resembles a simplified version of a trial involving limited discovery and simplified rules of evidence.[7] It is widely submitted that arbitration, compared with litigation, provides a more expeditious, flexible, and cost-effective dispute resolution mechanism through competent individuals selected for their specialized knowledge with the power to give a final and binding award with no or limited recourse to ordinary courts.[8] Arbitration was

[1]Program on negotiation, Harvard School of Law, 'What Are the three types of dispute resolution'. <https://www.pon.harvard.edu> last visited on 15 February 2022.
[2]Mohammed Nure, The Prospect of Commercial Arbitration in Ethiopia: A Practice Oriented Study, (2008, Unpublished, AAU Law Library) p. 1.
[3]CornelLawSchool,ADR<https://www.law.cornell.edu/wex/alternative_dispute_resolution> last visited on 13 January 2022.
[4]Mohamed Nure, cited above at note 2, p.1
[5]ibid
[6]ibid
[7]ADR, cited above at note 3
[8]Solomon Emiru, Comparative Analysis of Scope of Jurisdiction of Arbitrators under the Ethiopian Civil

incorporated under Ethiopian law with the adoption of the Civil Code and the Civil Procedure Codes of Ethiopia in the early 1960s.[9] Until recently, Ethiopia did not have separate piece of legislation that regulated how alternative means of settling disputes operate. Only Articles 315 to 319 and Articles 350, 352, 355-357 and 461 he Ethiopian Civil Procedure Code (CPC), Articles 3318-3324 and 3325 to 3346 of the Ethiopian Civil Code (CC) and other scattered provisions were used to regulate arbitration and conciliation for over half a century.[10] These laws were criticized for failing to sufficiently address and providing a limitation on the role of courts during the arbitration proceeding, the finality of arbitration awards, and the arbitration tribunal's competency to decide on its jurisdiction.[11] As part of the recent legislative reform, the Ethiopian House of People's Representatives recently ratified the new Arbitration and Conciliation, Working Procedure Proclamation No.1237/2021. The Proclamation entered into force on 02 April 2021. It repealed and replaced, Provisions governing conciliation and arbitration.

As arbitration involves dispute settlement by private judges lacking public authority, the involvement of national courts is crucial to the overall efficacy of the process.[12] It is essential to the overall effectiveness of arbitration, both domestic and international. Instances calling for court intervention may appear at all arbitral proceedings stages. [13] Regarding the role of the Courts in Arbitration is, or should be, distinct from their day to day regular role while they entertain cases other than disputes that arises from arbitration.[14] The role of courts in arbitration and arbitral processes in the former legal regime governing Arbitration in Ethiopia was seen as broad and highly criticized for being wide. Although they play a positive role in, courts generally assumed extended roles concerning commercial arbitration, which is supposed to function with minimal.[15] Arbitration, on the other hand, is a consensual dispute resolution process. And because it is consensual, parties to an agreement to resolve disputes by arbitration may need to resort to the courts to enforce incidents of their agreement. [16] The role of courts in Ethiopia appears to be more than modest.[17] The new Arbitration Conciliation, Working Procedure Proclamation No.1237/2021 has some improvements and modernized the existing arbitration law in Ethiopia. The Proclamation is partly based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law and contains many provisions embracing international Arbitration best practices.[18] With particular emphasis on the role of courts, the Proclamation has addressed the role of regular courts in line with these best practices. In article, the author addresses the role of courts in Arbitration in Ethiopia under Proclamation No.1237/2021. The study's main objective is to critically examine the role of regular courts in arbitration under the new Arbitration and conciliation working procedure Proclamation No.1237/2021. As the study is conducted by critically analyzing Arbitration and Conciliation, working Procedure Proclamation No.1237/2021, the research design and methodology that is employed in this study is that of doctrinal or pure legal research type that is mainly based on qualitative analysis of conceptual underpinnings and descriptive method of elaborating the nature of the legal regime governing arbitration. To fully attain the study's objective, legal provisions of the Proclamation and other relevant international and national documents and legal provisions are consulted and analyzed.

2 THE ROLE OF COURTS IN ARBITRATION IN ETHIOPIA

This chapter examines and explores the role of Ethiopian courts in Arbitration processes under Arbitration and Conciliation, working Procedure Proclamation No.1237/2021 (Hereinafter used as Proclamation). Though the courts' role in supervising arbitration has been severely limited, they still have an essential part.[19] Arbitration depends on the courts' underlying support, which alone has the power to rescue the system when one party seeks to sabotage it.[20] To the extent that the relationship between national courts and arbitral tribunals is said to be one of 'partnership,' it is not a partnership of equals. [21]The arbitration may depend upon the parties' agreement, but it is also a system built on law, which relies on that law to make it effective nationally and internationally.[22] National courts could

Code of 1960, (2009, Unpublished short LL.M Thesis, CEU) p. 2.

[9]Mohamed Nure, cited above at note 2, p.3.

[10]MLA, 'Highlights of Key Changes and Introductions Made by the New Arbitration and Conciliation Proclamation' <https://www.mehrteableul.com> last visited on 28 January 2022.

[11]Ibid

[12]Hailegabriel Feyissa, 'The Role of Ethiopian Courts in Commercial Arbitration ', Mizan Law Review, Vol. 4(2010), p.297.

[13]Id, p.298

[14]Rares, Justice Steven, the Role of Courts in Arbitration, (http://www.austlii.edu.au/au/jpurnals/FedJSchol/2012/12.html) last visited on 2 February 2022.

[15]Hailegabriel Feyissa, Cited above at note 12, p. 333.

[16]Rares, Cited above at note 14.

[17]Hailegabriel Feyissa, Cited above at note 12, p. 333.

[18]White& Case LLP, Elizabeth Oger-Gross and Tolu Obamuroh, Ethiopia Modernizes Arbitration Framework, (https://www.lexology.com) last visited on 4 February 2022.

[19]George A. Bermann, "The Role of National Courts at the Threshold of Arbitration". The American Review of International Arbitration, vol. 28 (2017), p.291.

[20]Nigel Blackaby et al, *Redfern and Hunter on International Arbitration* (6th ed 2015), p.415.

[21]Id, p.416

[22]ibid

exist without arbitration, but arbitration could not exist without the courts. The real issue is to define the point at which this reliance of arbitration on the national courts begins and that at which it ends.[23] Under Proclamation No. 1237/21, courts shall not intervene in arbitrable matters except where it is expressly provided for in the Proclamation.[24] However, the assistance and intervention of courts are required and necessary at different stages of arbitrations. The courts' role starts before the commencement of the arbitration proceeding and goes up to the time of execution of the Arbitral Award and related issues. Under the Proclamation, the roles courts play during different stages of arbitral proceedings are recognized. The courts have a role to play before the constitution of the arbitral tribunal, at the beginning of the arbitration proceedings, during the arbitration proceedings, and after rendering arbitral awards. Factors and causes that attract courts' intervention in the stages mentioned above are different.

2.1 Before the constitution of the arbitral tribunal

Under the Proclamation, Courts are allowed to take interim measures upon the request of the contracting parties before arbitration proceedings are initiated.[25] Such types of intervention of courts are not considered a violation of the principles laid by the Proclamation and cannot be considered a negative intervention by courts against the principle of party autonomy and non-intervention.[26]Ethiopian courts are entitled to provide interim measures stated under Article 5 of the Proclamation when they believe it necessary. Such role of the Court is also recognized under the Model law. The interim measures sought at this stage are believed to have an emergency, which cannot await a proceeding, before the arbitrator or arbitral tribunal.

2.2 At the beginning of the arbitration

It is possible to identify at least three situations in which the intervention of the Court may be necessary at the beginning of the arbitral process. These situations are enforcing the arbitration agreement, the establishment of the tribunal, and challenges to the jurisdiction of an arbitrator or tribunal of arbitrators.[27]

2.2.1 Enforcing the arbitration agreement

Parties do not always respect their arbitration agreements.[28] Sometimes they commence litigation even though they agree to resolve their disputes through arbitration. And often, the only the reliable way to deal with a party that sidesteps its obligation to arbitrate is to seek the assistance of the courts.[29] Judicial intervention at this stage can be triggered either by a suit to enforce the arbitration agreement or, more commonly, when the party does not wish to arbitrate and files suit in Court in contravention of the arbitration agreement.[30] A party to an arbitration agreement might decide to start proceedings in a court of law rather than take the dispute to arbitration.[31] In the unlikely situation of the respondent's acquiescence without reservation, the arbitration agreement will be deemed waived, and court action will proceed. Unless courts are willing to enforce arbitration agreements, there may be no arbitral proceedings to which national courts may lend assistance and no arbitral awards to be annulled or granted recognition or enforcement.[32] The Proclamation adopted and followed the model law in this regard.[33] Based on the Proclamation, there are two grounds in which one of the parties may raise such an issue in front of a court by way of preliminary objection to the suit brought before the Court. One of the grounds for objection has a substantive nature. This requires that the suit brought before the Court falls under the subject matter of arbitral agreement of the parties. The second nature is procedural. In this case, the defendant has to raise it as a preliminary objection on the ground that the matter of the case is covered by the arbitration agreement, and it has to be to be resolved according to the arbitration agreement. The role of the Court in this instance is that it must dismiss the suit before it and refer parties to resolve their dispute per their arbitration agreement. The word "shall" indicates the mandatory nature of the provision, and the Court is obliged to refer the parties to solve their dispute by arbitration. Where the conditions set out therein are met, courts have no other option than to refer the case to arbitration. Nevertheless, where the arbitration agreement initially raised as a preliminary objection by the defendant has been rendered void and ineffective, the Court is obliged to continue hearing the case brought before it.[34] The Proclamation only used the terms "void and ineffective," unlike the Model Law, which instead used "null, void, inoperative and incapable."[35] It is essential to have a clear concept of "void contracts or agreements." A void contract is an act that the law holds to be no contract at all, a nullity from the very beginning; the conclusion of a void contract does not change the position of "contractants. [36] They can assume as if the

[23]ibid
[24]Arbitration and Conciliation, Working Procedure Proclamation, 2020, Art.5, Proc. No1237, Neg. Gaz. Year 27. no.21
[25]Id, Art.9.
[26]Id, Art.5.
[27]Nigel Blackaby et al, cited above at note 20, p.419.
[28]John Fellas, 'Enforcing Arbitration Agreements: Two Lessons from Recent Cases', New York Journal of Law, Vol. 2 (2015), p.254.
[29]ibid
[30]John T McDermott, 'Arbitration and the Courts', The Justice System Journal, Vol.11 (1986), p.248.
[31]Nigel Blackaby et al, cited above at note 20, p.419.
[32]George A. Berman, Cited above at note 19, p.291.
[33]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art 8 (1) & (2).
[34]ibid
[35]Id, Art. 8.
[36]Nadew Lantera, "Void Agreements and Voidable Contracts: The Need to Elucidate Ambiguities of Their Effects", Mizan Law Review, Vol.2 (2008), p.92.

contract was never formed.[37] A "voidable" contract, on the other hand, is binding until it is avoided (invalidated) by the option of the party whom the law protects.[38] It is a contract where one of the parties has power by manifestation of election to avoid the legal relations created by the contract.[39]

Generally, arbitration agreements are deemed void and ineffective for different reasons. From the contractual nature of arbitration agreements, the absence of consent or the absence of valid consent can be raised as one point. The agreement must have originated from the parties' free will. [40] Therefore, if one of them has acted induced by error or due to fraud, coercion, or undue influence, there has been no actual consent, and the agreement to arbitrate is not valid.[41] Capacity is one of the general requirements for entering into any agreement. The parties' lack of capacity to submit to arbitration entails the invalidity of the arbitration agreement. The arbitration agreement is subjected to the same rules that apply to the validity of contracts, which means that the lack of capacity usually makes the whole act void.[42] Formal requirements not met. When a given agreement is not made with the form required by the law governing arbitration, it may lead to invalidation. Accordingly, the writing requirements for the traditional paper-based agreement and accessibility requirements for electronic agreements laid by the Proclamation must be met.[43] The enforceable arbitration agreement must be valid and must meet the requirements for valid contracts under the contract law of Ethiopia or the law chosen by the contracting parties. Previously, the former law governing Arbitration in Ethiopia relating to arbitrability was unclear and continued to be a point of difference for judges in courts and other scholars. [44]However, the Proclamation enumerated non-arbitrable issues.[45] According to mandatory, public policy-based rules which prohibit enforcement of arbitration agreements, agreements relating to these non-arbitrable issues lead to the invalidation of such contracts.[46] Arbitration agreements in these non-arbitrable issues are void from the beginning. Failure to commence arbitration within the deadline provided for in the arbitration agreement is another ground. [47] Agreements sometimes provide that arbitration must be commenced within a given period following certain predetermined occurrences. The question then is whether, after a deadline expires, a party that commences an action in Court may resist a referral application because the arbitration agreement has become inoperative.[48] The applicable standard of review by a court, whether a full review or prima facie? Whether courts seized referral applications should fully review the validity, operativeness, Performability, and applicability of the arbitration agreement or merely on a *prima facie* standard is a question that has not been answered consistently.[49]

2.2.2Establishing the arbitral tribunal

2.2.2.1 Appointment of arbitrators

Courts called upon to enforce arbitration agreements may appoint arbitrators on behalf of the defaulting party.[50] If the parties have failed to make adequate provisions for the constitution of an arbitral tribunal and if there are no applicable institutional or other rules (such as the UNCITRAL Rules), the intervention of a national court may be required to appoint the chairperson or the respondent's arbitrator.[51] In the absence of such rules, the national Court must also intervene to decide any challenge to the independence or impartiality of an arbitrator.[52] The governing principle in establishing an arbitral tribunal is party autonomy, and the Proclamation adopts it. [53]The parties may choose the arbitrators directly before or after the dispute. They are also free to agree on the Procedure of appointment of arbitrators either by the arbitration center or by other third parties.[54] However, the principle of party autonomy is not without limit. Parties could not exclude the assistance of courts or appointing authority in overcoming deadlocks in the appointment process, and Court intervention can first occur under the default appointment procedure. Under the Proclamation, when a party defaults to appointment, the first instance court appoints an arbitrator upon the party's request seeking the commencement of the arbitration.[55] The intervention of the first instance court starts upon request, where one or two of the contracting parties fail to appoint the co-arbitrator or fail to agree within the default time specified by the law, which is 30 days from the date of receiving notice by the other party, where the two arbitrators fail to agree on the appointment of the chair arbitrator within

[37]ibid
[38]ibid
[39]ibid
[40]R. Caivano, "Dispute Settlement, *International commercial arbitration* ", (www.unctad.org), last visited on 9 May 2022
[41]ibid
[42]ibid
[43]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art. 6.
[44]Hailegabriel Feyissa, Cited above at note 12, p. 314-315.
[45]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art. 7.
[46]Uncitral Secretariat, "Digest of Case Law on the Model Law on International Commercial Arbitration", (12th edn, 2012) vol. 9, p.41.
[47]Id, p.42
[48]ibid
[49]Id, p.44.
[50]Hailegabriel Feyissa, Cited above at note 12, p. 317.
[51]Nigel Blackaby et al, cited above at note 20, p .420.
[52]ibid
[53]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art.11.
[54]Id, Art.12 (2).
[55]Id, Art .12(3.b).

30 days from the date of their appointment, where contracting parties fail to agree in case of a sole arbitrator, the first instance court is duty-bound to appoint such arbitrator upon the request of one of the parties. The existence of deadlock or default appointment and justification for this incident are necessary preconditions for regular courts' intervention in such a matter.

When appointing an arbitrator, the Court must consider the criteria stated in the arbitration agreement (must abide by the parties' agreement), check the impartiality and independence of the arbitrator, and their professional competence concerning the dispute. Where it is an international arbitration to be conducted by a sole arbitrator, the citizenship of the arbitrator must be different from either of the parties and must also be considered by the Court. Such a decision of the first instance court is final.[56]

2.2.3Challenging Arbitrators and the consequences

2.2.3.1 Grounds of challenge

The grounds for challenging an arbitrator have various sources.[57] Arbitration being contractual, one looks first to the parties' agreement for any specific provision and then to the arbitration rules.[58] If both are silent, one might then look to the governing law.[59] According to Article 14(1) of the Proclamation, a Challenge against an appointment of an arbitrator may be made if there are circumstances or grounds of challenge which create justifiable doubts as to his/her impartiality and independence or fulfillment of the criteria stated in the arbitration agreement. The "justifiable doubts as to his impartiality or independence" test generally corresponds to the test applicable to the disqualification of judges under local law.[60] In principle, a party may not challenge the arbitrator appointed by him or whose appointment he has participated unless for reasons known to him after the arbitrator's appointment.[61] The approach followed by the Proclamation in these instances is the same as the Model law.[62]

2.2.3.2 Procedure of challenge

In principle, the Procedure for challenging an arbitrator has to be according to the Procedure agreed upon by the parties. In the absence of such Procedure, the default procedure set under the Proclamation follows, and an objecting party shall submit the reason of objection in writing to the arbitral tribunal within 15 days of the designation of the arbitrator or the date he becomes aware of the causes of objection.[63] Unless the objected arbitrator agrees or willingly resigns, the tribunal shall render a decision on the objection.[64] The Civil Code rule entitles parties to challenge arbitrators is broader and contains more grounds than the Proclamation, which used only two. Article 3340 of the civil code reads as "*An arbitrator may be disqualified where he is not of age or where a court has convicted him, is of unsound mind, ill or absent or is for any other reason unable to discharge his functions properly or within or within a reasonable time."* The grounds for disqualification of an arbitrator are under the above Civil code Article: age, criminal conviction, unsound mind, or any other reason that bars him from discharging his or her duty within a reasonable time.[65] The unsuccessful party whose objection is rejected by the tribunal may submit his grievance to the first instance court within 30 days after such a decision. The decision of the Court is final, and no appeal shall lie there. The competent Court may order the suspension of the arbitration proceeding until it renders its decision on the objection of the aggrieved party. The Court shall render a decision within 60 consecutive days from the date of suspension of the proceedings. Such intervention of courts and the order of suspension given by them are necessary to avoid unnecessary waste of time or delays.[66] The Procedure of challenge adopted by the Civil Code does not specify the exact time limit for submitting abjection to the tribunal.[67] Instead, it allows the party to submit its challenge before giving the award and as soon as the party knows the grounds of disqualification. The Proclamation, however, limited a 15 days period for the same occurrence.

Additionally, the Civil Code embraced the role of the Court in the same instance, but then given the party who is aggrieved by the decision of the tribunal must appeal within ten days of such decision.[68] The Proclamation follows the Model law approach on such

[56]Id, Art .12(5) cum Art.12 (6) & (7).
[57]W Michael Tupman, "Challenge and Disqualification of Arbitrators in International Commercial Arbitration", The International and Comparative Law Quarterly, vol.38(1989), p.26
[58]ibid
[59]ibid
[60]Uncitral Secretariat cited above at note 46, p. 66.
[61]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art.14 (2).
[62]UNCITRAL Model Law on International Commercial Arbitration, 1985, as amended, 2006, Art .13(3).
[63]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art. 15(1) & (2).
[64]Id, Art .15(3).
[65]Michael Teshome, 'How to Disqualify and/or Remove Arbitrators Under Ethiopian Arbitration Law: Is Ethiopian Law on the Right Track?, (http://arbitrationblog.kluwerarbitration.com),last visited on7 May 2022.
[66]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art. 15(4) cum Art.15 (5).
[67]Civil Code of the Empire of Ethiopia, 1960, Art 3342(1). Neg. Gaz, Extra ordinary issue, year 19, No.165.
[68]Id, Art .3342(2).

issues, and the time limit is 30 days. [69] It is not clear whether such a grievance would be a ground for an appeal or not. At least in this instance, the Civil Code is clear that it uses the word "appeal" instead of "grievance" used by the Proclamation. The question that must be raised here is what is the purpose of the Court receiving such a grievance? Digest on the Model law suggested that a court intervening does not merely review the previous decision of the arbitral tribunal, but it also reviews the challenge fully and makes an independent decision as to whether it should be allowed. [70]It is therefore irrelevant to the Court that the challenge may have been initially decided without the participation of the impugned arbitrator.[71] The Model Law art 13(3) differs from the Proclamation in that while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and render an award.

2.2.4 Challenges to Jurisdiction

The parties give a private tribunal the authority to decide disputes between them, and the arbitral tribunal must take care to stay within the terms of its mandate. An arbitral tribunal may validly resolve only those disputes that the parties have agreed that it should resolve. This rule is an inevitable and a proper consequence of the voluntary nature of arbitration.[72] Unlike judges, arbitrators do not get their jurisdiction from the law enacted by the legislator. [73] Instead, this authority derives from the arbitration agreement concluded by the parties according to the law.[74] Often, the jurisdiction of arbitrators is defined in the arbitration agreement.[75] Apart from the arbitration agreement, mandatory statutory provisions set limits on the competence of arbitrators. The doctrines of separability and competence-competence are related but distinct.[76] The concept of separability means that the arbitration clause's validity does not depend on the validity of the remaining parts of the contract in which it is contained. [77]As long as the arbitration clause itself is validly entered into by the parties and worded sufficiently broadly to cover non-contractual disputes, an arbitrator may declare a contract invalid but still retain jurisdiction to decide a dispute as to the consequences of the invalidity.[78] By treating arbitration agreements as distinct from the main contract, separability rescues many arbitration agreements from failing simply because they are contained in contracts, the validity of which is questioned.[79] Competence-competence picks up where separability ends.[80] Competence-competence is best seen as a rule of convenience designed to reduce unmeritorious challenges to an arbitrator's jurisdiction.[81] Separability and competence-competence are connected. It has been said that the competence-competence rule is a corollary of the separability doctrine since separability creates a need for the arbitrator to have jurisdiction to rule not only on the main contract's validity but also on the Validity of the arbitration agreement.[82] The Proclamation also embraces the two primary principles widely used under major international Commercial arbitration instruments.[83] It is common to see that the jurisdiction of arbitrators is defined in the arbitration agreement; plus, mandatory statutory provisions set limits on the competence of arbitrators.[84] A challenge to the jurisdiction of an arbitral tribunal may be partial or total.[85]

A *partial* challenge rises whether certain of the claims or counterclaims that have been submitted to an arbitral tribunal are within its jurisdiction. A challenge of this kind does not amount to a fundamental attack on the arbitral tribunal's jurisdiction.[86] A *real* challenge, by contrast, questions the whole basis upon which the arbitral tribunal is acting or purporting to act.[87] A partial challenge is usually dependent on whether the particular matters referred to in Arbitration fall within the scope of the arbitration agreement. A total challenge usually questions whether there is a valid arbitration agreement.[88] The Proclamation recognizes two types of challenges (objection) to the jurisdiction of an arbitral tribunal.[89] These are a challenge against the material jurisdiction of a tribunal and that the case is beyond the jurisdiction of the arbitral tribunal (partial challenge). [90] The challenge's timing depends on the type of objection/challenge/ to be raised.[91] A challenge raised against the material jurisdiction must be submitted

[69]UNCITRAL Model Law on International Commercial Arbitration, cited above at note 62, Art .13(3).
[70]Uncitral Secretariat, cited above at note 46, 69.
[71]ibid
[72]ibid
[73]Solomon Emiru, cited above at note 8, p.6.
[74]ibid
[75]Hailegabriel Feyissa, cited above at note 12, p.309.
[76]Jack Tsen-Ta LEE, 'Separability, Competence-Competence and the Arbitrator's Jurisdiction in Singapore' Singapore Academy of Law Journal, vol.7 (1995), p.421.
[77]ibid
[78]ibid
[79]ibid
[80]ibid
[81]ibid
[82]Hailegabriel Feyissa, cited above at note 12, p.309.
[83]UNCITRAL Model Law on International Commercial Arbitration, cited above at note 62, Art.16 (1).
[84]Alemnew Gebeyew Dessie, 'The Extent of Court Intervention in Arbitration Proceedings: Ethiopian Arbitration Law in Focus', Sch Int J Law Crime Justice, Vol.2 (2019), p.54.
[85]Nigel Blackaby et al, cited above at note 20, p.335.
[86]ibid
[87]ibid
[88]ibid
[89]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art .19(2) & (3).
[90]ibid
[91]Uncitral Secretariat cited above at note 46, P. 78.

before the hearing starts by the tribunal on the point of substance, and procedurally it has to be raised as a preliminary objection.[92] Whereas if the objection is related to issues beyond the material jurisdiction of a tribunal, must be submitted as soon as such condition is discovered.[93] Exceptionally and at the tribunal's discretion, late Submission is possible for challenges related to material jurisdiction or the scope of its jurisdiction if it believes that delay is caused by sufficient justification.[94] A decision given by an arbitral tribunal as to its jurisdiction is subject to control by the courts of law, which in this respect have the final say. The relevant Procedure, degree of deference, and burden of proof vary from country to country and sometimes even within countries.[95] The system under which a national court may review the issue of jurisdiction before an arbitral tribunal has issued a final award on the merits of the case is known as 'concurrent control.' The advantage of this system is that it will save the cost and time of preparing a case on the merits if the Court denies arbitral jurisdiction. [96] There are broadly two arguments against concurrent control. First, it is argued that recourse to the courts during arbitral proceedings should not be encouraged since arbitral proceedings should, as far as possible, be conducted without outside 'interference.' Secondly, and more pragmatically, it is argued that to allow recourse to the courts during arbitration is likely to encourage delaying tactics on the part of a reluctant respondent. This question was much debated during the preparation of the Model Law. However, the solution of concurrent control was adopted. [97]

The Proclamation also adopted concurrent control. Challenge against the decision of the tribunal given on its jurisdiction shall be submitted to the Court within one month starting from the date of rendering the tribunal's decision. [98]However, such Submission to courts cannot prohibit the tribunal from continuing to hear the case and rendering an award.[99] If any issue is raised as to the jurisdiction of an arbitral tribunal, it will generally (although not always) be made at the beginning of the arbitration process. If the objection is successful, the proceeding will be terminated. The only point that should be made here, in the context of the relationship between national courts and arbitral tribunals, is that it is recognized in the Model Law that while any challenge to the jurisdiction of an arbitral tribunal may be dealt with *initially* by the tribunal itself, the final decision on jurisdiction rests with the relevant national Court.[100] This is either the Court at the seat of the Arbitration or the Court of the State (s) in which recognition and enforcement of the arbitral award is sought according to the Model Law. [101] Although a national court's role in reviewing a tribunal's award on jurisdiction is well established, the type of intervention that the Court is meant to undertake is unclear.[102] Is the Court to have a *de novo* hearing, considering the jurisdictional question afresh, or is it merely to review the tribunal's decision, assuming that this decision is correct? In other words, what degree of deference should it show to the original decision?[103]

2.3 The role of Court during the arbitral proceedings

Once an arbitral tribunal has been constituted, most arbitration is conducted without referring to a national court, even if one of the parties fails or refuses to take part in the proceedings.[104] However, there may be times at which the involvement of a national court is necessary to ensure the proper conduct of an arbitration.[105] It may become necessary, for instance, to ask the competent Court to assist in taking evidence, to make an order for the preservation of property that is the subject matter of the dispute or to take some other interim measure of protection. [106]The question then arises whether a national court may (or indeed should) become involved in a dispute being arbitrated, and if so, how far this involvement should extend.[107]

2.3.1Interim Measures

During arbitration, it may be necessary for an arbitral tribunal or a national court to issue orders intended to preserve evidence, protect assets, or in some other way maintain the status quo pending the outcome of the arbitration. Such orders take different forms and go under different names. In many cases in which interim measures of protection are required, the arbitral tribunal itself has the power to issue them. The Proclamation calls it "interim measures."[108] Provisional measures (also referred to as conservatory, protective, or interim relief) involve orders issued to protect a party from damage during the arbitral process.[109] Often, provisional measures are "intended to preserve a factual or legal situation to safeguard rights the recognition of which is sought from the [tribunal] having jurisdiction as to the

[92]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art.19 (2).
[93]Id, Art .19(3).
[94]Id, Art .19(4).
[95]Nigel Blackaby et al, cited above at note 20, p.342.
[96]Id, p.320.
[97]ibid
[98]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art.19 (5).
[99]Id, Art.19 (6).
[100]Nigel Blackaby et al, cited above at note 20, p.420.
[101]Id, p.420.
[102]ibid
[103]ibid
[104]Id, p.420.
[105]ibid
[106]ibid
[107]ibid
[108]ibid
[109]Gary B. Born, *International Arbitration: Law and Practice* (2012), p. 261.

substance of the case. Provisional measures are available from either an arbitral tribunal or a national court.[110]

2.3.1.1 Interim measure: the power of the arbitral tribunal

The Proclamation expressly permits arbitration tribunals to take an interim measure on their jurisdiction and provides the conditions for issuing the measures. [111] Any interim measure taken by arbitrators is binding in Ethiopia regardless of where the order was issued. The parties are also free to require the Court to issue interim order.[112] Under the Proclamation, there are three instances and sources for ensuring an arbitral tribunal's order of interim measures. These instances are the agreement of the contracting parties, the request of one of the parties, and the initiative of the arbitral tribunal.[113] Upon the request of one of the parties, the tribunal can issue six categories of interim orders.[114] The arbitral tribunal can also issue an order of injunction on its initiative to stop anything that may create an obstacle to the arbitration proceeding or bring about imminent damage.[115]

2.3.1.1.1 Interim measures: the power of the competent Court

The competent Court must have the power to issue interim measures supporting the arbitral process. [116]The measures requested may include granting injunctions to preserve the status quo or prevent the disappearance of assets, the taking of evidence from witnesses, or the preservation of property or evidence. In situations of extreme urgency, in which third parties need to be involved, or there is a strong possibility that a party will not voluntarily execute the tribunal's order, there may be little option but to identify the appropriate state court and submit an application to it. [117] There are different roles of courts concerning ordering interim measures that are discussed separately in this section. These are the role of courts relating to the enforcement of interim measures ordered by a tribunal, and this can be recognized as enforcing mechanism. Also, a discussion is made on Court-ordered interim measures.

2.3.1.1.2 Judicial enforcement of interim measures ordered by arbitral tribunals and the status of interim measures as "final "Awards.

There is a better view that states that provisional measures (interim measures) should be enforceable as arbitral awards under generally-applicable provisions for the enforcement of awards. Provisional measures are "final" in that they dispose of a request for relief pending the conclusion of the arbitration. [118] It is also essential for the efficacy of the arbitral process for national courts to be able to enforce provisional measures. [119] Given the uncertainty concerning the enforceability of provisional measures, some states have adopted legislation that authorizes judicial enforcement of tribunal-ordered provisional measures outside final awards.[120] The Model Law was revised in 2006 along similar lines (Article17) to permit specialized enforcement of "orders" of provisional relief. The Proclamation also recognizes the same principle.[121] According to the Proclamation, the status of interim measures given by the arbitral tribunal as a "final and enforceable" shared the same concept with the Model Law.[122] The assistance of a court to enforce such measures can be requested by the party unable to enforce them by him/ herself.[123] Two competent courts enforce the enforcement request. If the request comes from domestic Arbitration, the Court, which would have had jurisdiction had it not been submitted to an arbitral tribunal, is competent to enforce the orders. [124] If a foreign arbitral tribunal issues the order, the competent Court is the Federal High Court.[125] The Court to whom a request has been made shall order the contracting party to provide security where no decision has been given concerning security and where it finds it necessary to protect the interest of the party who has requested for the enforcement of interim order or third parties.[126] The party requesting the enforcement of interim measures is duty-bound to inform the Court promptly for any modification, temporary suspension, or reversal of the interim measure.[127]

2.3.1.1.3 Court-ordered interim measures

An arbitral tribunal is not the only source of provisional relief in connection with an International Arbitration: National courts also possess the concurrent authority to grant provisional measures to such arbitral proceedings. [128] In some instances, national courts are the only real source of provisional measures. As noted above, until the tribunal is in place, there is no prospect of obtaining provisional relief from it. [129] In addition, where attachments and other provisional measures

[110]ibid
[111]MLA, cited above at note 10.
[112]ibid
[113]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art. 20(1-3).
[114]Id, Art.20 (2).
[115]Id, Art.20 (3).
[116]Nigel Blackaby et al, cited above at note 20, p. 424.
[117]ibid
[118]Gary B. Born, Cited above at note 106, p.270.
[119]ibid
[120]ibid
[121]ibid
[122]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art .25.
[123]Id, Art.25 (2).
[124]Id, Art.25 (3).
[125]ibid
[126]Id, Art 25(4).
[127]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24 ,Art. 25(5).
[128]Gary B. Born, cited above at note 106, p. 271.
[129]ibid

binding third parties are concerned, arbitrators can virtually never provide effective relief. Consequently, parties who require urgent provisional relief at the outset of a dispute must often seek the assistance of national courts. [130] The existence of concurrent jurisdiction, shared by arbitral tribunals and national courts, is the exception to the general principles of arbitral exclusivity and judicial non-interference in Arbitral process. [131] Concurrent jurisdiction in this field is nonetheless well-recognized and is Essential for the efficacy of the arbitral process.[132] Parties to arbitration agreements need to understand to what extent they might be able to obtain effective interim relief from the courts. [133]While parties may provide in their arbitration agreement, whether through express drafting or (more often) by incorporation of institutional rules, that the parties shall be permitted to seek interim relief from any competent court, it will not necessarily be clear to the parties at the outset what steps this will entitle them to take in the courts without breaching their arbitration agreement.[134] The measures available from national courts will, of course, depend on the local legislative framework in question. [135]While parties may want to apply to the courts of the seat of the arbitration or the courts in another appropriate jurisdiction for legitimate interim relief, those proceedings must not stray into a determination of the merits.[136] There are already potential tensions between the provisions which squarely prohibit court interference in matters that shall be decided by an arbitral tribunal and the granting of court-ordered interim measures where a tribunal, once constituted, would enjoy the exact scope of authority. [137]

Some national laws dealing with the ability of the Court to grant interim measures are general and arguably broad enough to encompass court-ordered declaratory relief.[138] The Proclamation recognized Court-ordered interim measures.[139] Contracting parties can request a regular court for an order of interim order of measures irrespective of the place of arbitration of the tribunal.[140] The Court shall exercise such power by its procedures considering the specific features of international arbitration.[141] According to article 9 of the Proclamation and the Model Law, such requests for interim measures submitted to regular courts may not be considered a violation of arbitration agreement by contracting parties and as intervention by courts. [142] This application for court assistance during the arbitration process may not be considered an infringement of the agreement and waiver of the right to arbitrate. Parties are free to follow their Procedure as long as they comply with the procedural fairness.[143]

2.4 Intervention after the Rendering of Arbitral Awards

The arbitration process will come to an end due to various reasons. For a normal circumstance and arbitration that passes through complete proceedings, the end of the process is the rendering of an arbitral decision.[144] After the award is rendered by an arbitral tribunal, involvement of courts comes in the different forms and for different reasons. In this sub-section homologation, different types of objections, recognitions, and enforcement of foreign arbitral awards are discussed.

2.4.1 Homologation and Execution of Domestic Awards

After a final award is rendered, it would be binding and enforceable on the parties in the agreement.[145] Homologation of awards should be understood to mean confirmation by courts of the validity and thus enforceability of awards.[146] Black's Law Dictionary defines it as (1) "confirmation of, esp. of a court granting its approval to some action." (2) "A judge's approval of certain acts and agreements to render them more readily enforceable." Under the Civil Procedure and Civil Code regime governing arbitration, the governing provision that deals with the homologation of an award is Article 319(2) of the Civil Procedure Code. According to Article 78(2) of the Proclamation, it is now repealed and is rendered inapplicable.Coming to

[130]ibid
[131]ibid
[132]ibid
[133]Naomi Lisney, 'The Limits of Court-Ordered Interim Relief in Support of Arbitration?', (http://arbitrationblog.kluwerarbitration.comaccessed), Last visited on 15 April 2022.
[134]ibid
[135]ibid
[136]ibid
[137]Hamish Lal, ania Iakovenko-Grässer, and Brendan Casey, 'The Use of Interim Declarations in International Commercial Arbitration: An Excellent Remedy', Indian journal of Arbitration vol.10 (2021), p.34.
[138]ibid
[139]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art.27.
[140]ibid
[141]Uncitral Secretariat, cited above at note 46, p. 99.
[142]UNCITRAL Model Law on International Commercial Arbitration, cited above at note 62; Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Arts.9.
[143]Yared Tilahun, Analysis of the Existing Ethiopian Arbitration Law in Light with the Uncitral Model Law on Arbitration, (2018, Unpublished AAU Law Library), p.54.
[144]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art .45(2.d).
[145]Yared Tilahun, Cited above at note 143, p. 55.
[146]Birhanu Beyene Birhanu, The Homologation of Domestic Arbitral Awards in Ethiopia, (https://ssrn.com/abstract=2191500), last Visited on 16 April 2022.

the Proclamation, the word "homologation" is not found and is also not necessary to give effect to an award given by an arbitral tribunal. The law provides that, Domestic arbitral awards shall be deemed binding and executed in Ethiopia per the Civil Procedure Code by applying to the Court that has jurisdiction to execute the award had the case been heard by a regular Court.[147] When applying for enforcement, the award creditor must bring the arbitration agreement of the parties, original or authenticated copy of the Arbitral award, along with translation to the working language of the Court if it is rendered in another language.[148]

2.4.2 Objections against the decision of arbitral awards

The Proclamation recognizes different types of objections that can be raised against the decision of arbitral awards. Section seven of the Proclamation deals with objections against the decision of arbitral awards. Additionally, it provides the Procedure of objection and who is entitled to raise such objections. Either of the contracting parties or third party who should have been a party to the arbitration proceeding and whose rights have been affected by the arbitral award may object to Submission of such award or execution of the same as soon as he knew of such an award within the time prescribed by the law, for 60 days.[149] These objections (objections against the award or execution) are lodged to the Court having jurisdiction over this objections is the Court has jurisdiction over the case had it not been submitted to arbitration.[150] The Power of the Court that has received the objections depends on the type of the person submitting the objection. If the objection is raised by one of the contracting parties, the Court then remands the award to the arbitral tribunal. On the other hand, where a third party objects, the Court may reverse or modify partially or the total award given by the arbitral tribunal.

The Proclamation references the relevant provisions of the Civil Procedure code so long as they do not contradict the Proclamation Since section Seven of the Proclamation included appeal, resort to Cassation, and setting aside of arbitral awards as other types of objections against an arbitral award, each of the three objections is discussed under the following sub-sections.

2.4.2.1 Appeal against an arbitral award

In principle, appeal from arbitral awards is prohibited under the Proclamation. [151] Under the former legal regime governing Arbitration, Article 350 of the Civil Procedure Code, an arbitration award is not final or appealable unless parties agree to waive it. [152] Absence of an agreement, with full knowledge, a party aggrieved by the arbitration tribunal's decision is entitled to appeal to the relevant Court. The Federal Supreme Court Cassation Bench (the Cassation Bench) has decided many cases. [153]However, Under the Proclamation, unlike under the Civil Procedure Code, arbitral awards are final without expressly agreeing that it is final.[154] The limitation of judicial intervention is generally accepted in arbitral practice worldwide. Under the principle of Party autonomy, parties can decide whether appeal to Court is possible or not in their contract. An appeal is prohibited, but parties can also agree and include a clause that dictates whether an appeal is possible. Parties that seek finality and enforceability upon rendition of an award can enter into an exclusion agreement. [155]Such an agreement minimizes the bases for judicial review and avoids an appellate process's inevitable impact on enforcement. [156] Otherwise, the principle adopted by the Proclamation is "no appeal shall lie to the court from arbitral award."[157] However, the Proclamation prohibits the right of appeal in certain circumstances even if parties have a valid agreement that allows them to appeal against an award to regular courts.[158] The first instance is that no appeal shall lie from the award given by the tribunal based on equity or known commercial practices where such power was expressly given to the arbitral tribunal by the parties to the tribunal or the applicable law.[159]

The second is that appeal is prohibited from an arbitral award rendered based on an agreement of the contracting parties based on Article 43 of the Proclamation. [160] Such instances occur When Parties resolve their dispute by their agreement before an arbitral award is rendered by the tribunal on the arbitration's subject matter, which causes the termination of the arbitral proceeding. Lastly, an appeal is prohibited from the content award.[161]In this regard, the content of an arbitral award is to mean the written grounds of the given award. So, either of the parties cannot appeal from the record of such grounds of an award. The competent Court to hear an appeal from an award is the Court that

[147]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art.51 (1).
[148]Id, Art .51 (2) & (4).
[149]Id, Art .48(1).
[150]ibid
[151]Id, Art .49(1).
[152]Gidey Belay Assefa, Ethiopia Has Enacted Its First Arbitration and Conciliation Proclamation, (https://www.afronomicslaw.org), last visited on 4 May 2022.
[153]ibid
[154]ibid
[155]Daniel M Kolkey, 'Attacking Arbitral Awards: Rights of Appeal and Review in International Arbitrations', The International Lawyer, vol.22 (1988), p.693.
[156]ibid
[157]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art .49(1).
[158]Id, Art .49(3).
[159]Id, Art .41(5) cum Art.49 (3).
[160]Id, Art .43 cum Art .49(3).
[161]Id, Art.44 (2) cum Art 49(3).

has an appellate jurisdiction had the appealed case heard by a regular court that has first instance jurisdiction over the case. [162] The Court that received the appeal has the power to suspend the arbitral award for a maximum period of 60 days. It also has the power to render decisions it deems appropriate under the Civil Procedure Code.[163] During the appeal process from an arbitral award, relevant provisions of the Civil Procedure Code concerning appeal from the judgment (General provisions that start from articles 320 -331 of the Civil Procedure Code) are applicable.[164] Appeal from the arbitral tribunal's decision regarding the costs of arbitration is also allowed to be lodged to the Court of the first instance by the aggrieved party.[165] The legislators' position in this regard is clear and upholds the best practices in the world.

2.4.2.2 Setting aside of an Award

After an award is made, it may be "annulled" (alternatively termed "set aside" or "vacated"), virtually always only by a court at the seat of the arbitration. [166]The annulment or setting aside of an award can render the award null and void or non-existent, at least under local law in the place of annulment.[167] Application for setting aside an arbitral award given by a tribunal and the grounds to do so is recognized under article 34 of the Model Law. Courts in numerous jurisdictions have made clear that setting aside proceedings are not appeal proceedings in which evidence is re-evaluated, and the correctness of the arbitral tribunal's decision on the merits is examined.[168] Challenging or objecting to arbitral award through setting aside is found in the Proclamation under article 50 of the Proclamation. The application to set aside an award can be submitted to the Court having jurisdiction had the case not been submitted to an arbitral tribunal. A contrary agreement by the contracting parties does not prohibit the other party from requesting the same before a court.[169] Six grounds are the basis for raising possible applications to set-aside arbitral an arbitral award before a regular court by a party. [170] Compared to the Civil Procedure code, which has three grounds only, the Proclamation contains more additional grounds for setting aside. The burden of proof for the alleged grounds' existence rests with the applying party.[171] An application must be submitted within 30 days, after receiving an award by the applicant and before the enforcement of the award by the Ethiopian Court.[172] After receiving an application, the Court can set aside the arbitral award automatically on the following conditions. [173] The first one is if the award is based on a non-arbitrable matter under Ethiopian law. Consequently, if an award is given based on one of the non-arbitrable cases/matters / under article 7 of the Proclamation, the Court can then set aside the award given to the tribunal. The second condition is that the recognition and enforcement of arbitral awards create a public morality, policy, or national security problem.[174] Countries have adopted and developed their formulations of public policy exceptions in legislation or jurisprudence.[175] Each State's fundamental economic, religious, social, and political standards that define its legal system inform its definition of public policy. [176]In exercising their control over the post-award process, therefore, courts attempt to strike a balance between the parties 'right to autonomy [and] the State's interest in preserving and safeguarding those fundamental values that fall under the scope of public policy.[177] Therefore, the award passed by the arbitral tribunals, which are contrary to or opposed to the public morality, public policy, or national security, can be challenged before the judicial Courts and thereby set aside. In arbitration, the parties' autonomy is kept at the highest pedestal. [178] Therefore, any Court adjudicating the validity of an arbitral award is not to function as an appellate Court but merely to decide upon the legality or the validity of the arbitral award.[179] When the Court receives an application to set aside an award other than the aforementioned conditions, the process is different and governed in the following way. When first receiving the application, the Court may order the suspension of the award for not less than 60 days until it decides on the matter. [180]After considering the reasons for applying, the Court may refer back or remand the case to the tribunal that heard and decided on it by suspending the given award wholly or partially. [181]If the application is accepted and set aside, the award will become null and void.[182] Setting aside the award in partial makes the remaining partial part of the award valid. The decision of the Court on the application

[162]Id, Art.49 (4).
[163]Id, Art.49 (6).
[164]Id, Art .49(5).
[165]Id, Art. 46(2)
[166]Gary B. Born, cited above at note 106, p. 358.
[167]ibid
[168]Uncitral Secretariat, cited above at note 46, p. 134.
[169]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art .50(1).
[170]Id, Art .50(2(a-f)).
[171]Id, Art 50(2).
[172]Id, Art .50 (3).
[173]Id, Art.50 (4 (a-b)).
[174]ibid
[175]Penny Madden Qc et al., Arbitrability and Public Policy Challenges, (https://globalarbitrationreview.com),last visited on 9 May 2022.
[176]ibid
[177]ibid
[178]Chambers and Partners ,Realm of public policy and enforcement of domestic arbitral award, (https://chambers.com), last visited on 22 April 2022.
[179]ibid
[180]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art 50(5).
[181]Id, Art .50(6).
[182]Id, Art .50(7).

for a set-aside of an Arbitral award is final, and no appeal shall lie from such decision.[183]

2.4.2.3 Intervention by the Federal Supreme Court Cassation Bench

The constitution empowers the Federal Supreme Court Cassation bench to have a power Of Cassation over any final court decision containing a fundamental error of law.[184] The Proclamation recognized recourse to the Court of Cassation as another form of objecting to the arbitral award; unless the parties have an otherwise agreement that excludes recourse to the Court of Cassation. [185] The ground of objection and resort to such a mechanism is based on "Fundamental or basic error of law." [186] The Federal Court establishment of Proclamation No. 1234/2021 empowers and recognizes the Federal Supreme Court cassation division to have the power of Cassation over the final decisions rendered by an alternative dispute resolution mechanism (that includes arbitration) regarding cases that may be filed in federal Court when such final decisions contain a basic error of law.[187] Unlike the former legal regime governing arbitration, an Express agreement to waive their right may preclude the Cassation Bench from having jurisdiction over the case.[188] Therefore, a 'real finality' can only be obtained if the parties agree not to submit their grievance for Cassation.[189] The major paradigm shift taken by the Proclamation is that it recognizes party autonomy to decide to waive their right to cassation review of an arbitral award. Recognition of this right gives life to the private nature of arbitration and upholds the principle of party autonomy and the finality of the award, even if it has a fundamental error of law. This position of the legislature solves the critiques that have been raised towards the cassation bench's decision which disregards the contracting parties' agreement to exclude the review arbitral awards. Previously, the Cassation bench has broadened the judicial review power of courts and severely limited parties" autonomy. [190] It also answers the critiques raised on the legality of such a review of arbitral awards through Cassation.[191]

2.4.3Recognition and Enforcement of Foreign Arbitral Awards

The successful party in international arbitration expects the award to be performed without delay.[192] Once this decision has been rendered as an award, it is an intrinsic element of every arbitration agreement that the parties will carry out.[193] The winning party needs to take steps to enforce its performance of it. [194] Recognition is an undertaking by a state to respect the bindingness of foreign awards. [195] In contrast, enforcement is an undertaking by a state to enforce foreign arbitral awards per its local procedural rules.[196] Enforcement of foreign arbitral awards involves the crucial preliminary decision of whether an arbitral award should be qualified as foreign or as domestic.[197] If it qualifies to be a foreign award, its recognition and enforcement are subject in various states to various conditions.[198] The definition given to a foreign arbitral award under the Proclamation is "an arbitral award which is deemed to have been rendered in a foreign country in accordance with international treaties acceded and ratified by Ethiopia or a decision in which the seat of arbitration is mentioned to be outside of the Ethiopian territory."[199] Under the Proclamation, recognition of the foreign arbitral award is recognized and enforced if it falls under one of the international treaties that Ethiopia ratifies.[200] This is the general principle taken by the legislature regarding such awards. However, under a few grounds mentioned by the Proclamation, foreign arbitral awards shall not be recognized and enforced in Ethiopia. [201] These grounds are[202] (a) where the award is not based on reciprocity,(b) where the award is based on an invalid arbitration agreement or rendered by a tribunal that is not established in accordance with the law of the country in which such award is rendered, (c) If the award cannot be enforced in accordance with Ethiopian law, (d) where the parties have not had equal rights in appointing the arbitrators or in presenting their evidence and getting heard in the course of the proceedings,(e) where the matter on which the award is rendered is not arbitrable under Ethiopian law, (f) where the arbitral award

[183]Id, Art.50 (8).
[184]Federal Courts Establishment Proclamation, 2021, Art.10 (1(h)), Proc.No.1234, Neg.Gaz.Year 27th.No.26.
[185]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art.49 (2).
[186]ibid
[187]Federal Courts Proclamation, Cited above at note 184, Art .10(1(h)).
[188]Gidey Belay Assefa, Cited above at note 152.
[189]ibid
[190]Gelila Haile Duguma, Judicial Review of Arbitral Awards by Courts as a Means of Remedy: A Comparative Analysis of the Laws of Ethiopia, the United Kingdom, and the United States, (2018, LL.M short Thesis, Central European University), p.56.
[191]Birhanu Beyene Birhanu, 'Cassation Review of Arbitral Awards: Does the Law Authorize It?', Oromia Law Journal, Vol.2 (2013), p.16.
[192]Nigel Blackaby et al, cited above at note 20, p. 605.
[193]ibid
[194]ibid
[195]Tecle Hagos Bahta, 'Recognition and Enforcement of Foreign Arbitral Awards in Civil and Commercial Matters in Ethiopia', Mizan law review, vol.5 (2011), p.106.
[196]ibid
[197]István Szászy, Recognition and Enforcement of Foreign Arbitral Awards, The American Journal of Comparative Law, vol. 14 (1965), p.658.
[198]ibid
[199]Arbitration and Conciliation, Working Procedure Proclamation, cited above at note 24, Art. 2(8).
[200]Id, Art .53(1).
[201]Id, Art .53(2).
[202]Id, Art .53(2) ((a-f)).

contravenes public policy, morality and national security. An application to enforce a foreign arbitral award that qualifies the requirement of Article 53(1) and that satisfies the six grounds listed under Article 53(2) a-f) is made to the Federal High court. Additionally, a requirement to submit the arbitration agreement, the original award, or authenticated copy of the award to the Court is a precondition to enquire for enforcement. [203]Authentication and translation of foreign arbitral awards into the language of the Court are set as mandatory requirements.[204]

3 CONCLUSION AND RECOMMENDATIONS

3.1 Conclusion

Arbitration is a consensual and private dispute resolution mechanism. It has some common features with other alternative dispute resolution mechanisms such as mediation, negotiation, and conciliation, among others, its attribute of being confidential being one. However, arbitration is different from other ADR mechanisms due to its adversarial nature and the fact that it produces a binding decision. Commercial Arbitration is suitable for resolving disputes among businesses for which business secrecy and fast dispute resolution are required. As a private process, it is, in some respects, different from litigation in the production of evidence, speed, and cost. However, both litigation and arbitration processes would have binding decisions as their outcomes. Arbitration is classified as domestic and international. It may also be classified as ad hoc and institutional. Though arbitration processes are primarily private, and the disputes are decided by the arbitrators chosen by the contracting parties, it is almost impossible not to have the involvement of courts. National Courts have different roles at the different stages of arbitration processes. The role of Courts may start before the constitution of arbitral tribunals and goes further to the end of arbitral processes. The role of Courts is equally crucial for the enforcement of arbitration agreements and during the arbitral proceedings. The involvement of courts also goes to the stage of the enforcement of arbitral awards. The governing principles on the role of courts in commercial arbitrations are laid by national laws& International instruments. Internationally, the UNCITRAL Model Law on international commercial arbitration and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards are Mentionable instruments. This article has discussed the roles conferred upon Ethiopian courts by the Arbitration and Conciliation, Working Procedure Proclamation No. 1237/2021. Courts cannot intervene in arbitrations in other circumstances other than those explicitly given to them by the Proclamation. Accordingly, before the constitution of an arbitral tribunal, they may play the role of ordering interim measures, which have an emergency nature and cannot wait until the formation of a tribunal.

At the beginning of arbitral processes, courts assume the roles of enforcing arbitration agreements, assisting in forming arbitral tribunals, and ruling on challenges to the jurisdiction of an arbitrator or a tribunal of arbitrators. Concerning arbitration agreements, Courts rule on whether to proceed with the suit on the nullity of the agreements or refer them back to the tribunal. Regarding the formation of arbitral tribunals, Courts help resolve deadlocks by appointing an arbitrator. Courts also rule on challenges to an arbitrator and the jurisdiction of an arbitral tribunal. During the arbitration process, courts assume a role in enforcing interim measures ordered by arbitral tribunals and granting interim measures on their own upon the request of a contracting party. Ethiopian courts also assume different roles after the rendition of an arbitral award. They have the power to execute domestic awards upon checking the fulfillment of the criteria provided by the Proclamation. They also assume the power to rule on objections by non-contracting third parties either on an award or its execution. Ruling on setting aside an arbitral award is also their prerogative. Deciding on an appeal against awards, if parties had agreed in this Regard, is another role to play by courts. In principle, the Federal Supreme Court Cassation Bench has the power of Cassation over every arbitral award unless parties to an arbitration agreement have agreed to exclude it. As a finding of this study, it is possible to say that the roles conferred upon Ethiopian courts by Arbitration and conciliation, working Procedure Proclamation No.1237/2021 are minimal and assistive or supportive to the arbitration processes. The minimalist approach is the most desired approach regarding the intervention of Courts in arbitral processes. Consequently, this study showed that Arbitration and conciliation, working Procedure Proclamation No.1237/2021 mainly followed the UNCITRAL Model Law approach in this Regard, and the legislation answered questions raised in this regard before the promulgation of the Proclamation.

3.2 Recommendations

Although, this study has reached on its finding that the minimalist approach is adopted by Arbitration and Conciliation, working Procedure Proclamation No. 1237/2021, the following points are sought as a recommendation.

On the basis of the finding of the study, the writer would like to make the following recommendations:

1) Concerning arbitration agreements and suits brought before Court**s despite the agreements,** the Proclamation under Article 8(2) used the term" ***void and ineffective.***" In contrast**,** the Model Law used the term ***"Null and Void, inoperative or incapable of being performed***." Such terminological differences seem insignificant. However, they will create a considerable difference when courts would be

[203]Id, Art .51(2).

[204]Id, Art. 51. (3) & (4).

interpreting the provision which may lead to a broader intervention in this Regard. The writer recommends that Article 8(2) of the Proclamation be amended by adopting technical terms used in article 8(1) of the UNCITRAL Model Law.

2) Regarding the Procedure of challenging an arbitrator**,** the provisions of Article 13(3) of the Model Law differs from the provisions of Article 15(5) of the Proclamation. According to the above-mentioned Model Law provision, whilst the request before is pending, an arbitral tribunal may continue the arbitral proceeding. Ethiopian courts, upon receiving a request to decide on a challenge to an arbitrator, are given the discretion to stay the proceeding before an arbitral tribunal. It is feared that this instance will open room for more intervention by courts. The circumstance will also be used as a delaying tactic by the requesting party. So, the writer would like to recommend that the provisions of Article 15(5) of the Proclamation be replaced by the provisions of Article 13(3) of the Model Law.