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SCHOOL OF LAW

**PROTECTION OF THIRD PARTIES RIGHT UNDER THE ETHIOIPAN
ARBTRATION LAW**

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**PROTECTION OF THIRD PARTIES RIGHT UNDER ETHIOIPAN
ARBITRATION LAW**

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Declaration

I, the undersigned, declare that the thesis is my original work and has not been submitted in any other University. I also declare that all materials used in this thesis have been duly acknowledged.

Acknowledgment

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List of Acronyms

AAA	American Arbitration Association
AACCSA-AI	Addis Ababa Chamber of Commerce Sectorial Association Arbitration Institute
AAU.....	Addis Ababa University
ADR	Alternative Dispute Resolution
Art.....	Article
Civ. C	Civil Code
Civ. Pro. C	Civil Procedure Code
EACC	Ethiopian Arbitration and Conciliation Center
ECCSA	Ethiopian Chamber of Commerce and Sectorial Associations
FAA	Federal Arbitration Act
FDRE	Federal Democratic Republic of Ethiopia
FFIC.....	Federal First Instance Court
FHC.....	Federal High Court
FSC.....	Federal Supreme Court
ICC	International Chamber of Commerce
LCIA.....	London Court of International Arbitration
NAI	Netherlands Arbitration Institution
UNCITRAL.....	United Nations Convention on International Trade Law
USA	United States of America

Abstract

The traditional attitude ascribing the task of dispute resolution to ordinary courts of law is greatly challenged in modern society. It has now become part of the public policy of many states provide the means of settling disputes by alternative dispute resolution mechanisms (hereinafter referred to as ADR), both in court and outside of the courts. Among ADR mechanism, arbitration is one mechanism in which the parties can solve their disputes out of the court room. Currently, as commercial transactions become more complex worldwide, certain procedural problems in arbitration are becoming more common. One of the most troubling issues in this area of law concerns participation of third parties (through joinder, intervention or opposition to setting aside of arbitral awards) into arbitration proceedings. In fact, if all parties agreed, the problem will be somehow resolved. Otherwise, when parties disagree and third parties object participation, the issue will be difficult. The new Ethiopian arbitration rules (Proclamation number 1237/2021) tried to cover the right of third parties but it is not fully covered. Regarding the practice, the courts and arbitration tribunals are found to be different in interpretation of the new proclamation. Sometimes, they extend arbitration to third parties through litigation provisions, sometimes they become hesitant. The understandings of Practitioners and academicians who have exposure in arbitration are also divergent on the interpretation of Article 40 of Proclamation number 1237/2021. Some are proponents, some are opponents and some are in the middle way in relation to participation of third parties in arbitrations.

So, the problem is obvious. But, transactions comprise multiparty and multi contracts in which all parties will not be signatory of the same arbitration agreement are going in numbers. Generally, in Ethiopia, since multiparty arbitration proceedings would enhance the scope, efficiency, certainty and effectiveness of arbitration system, rules and procedures that allow the intervention and joinder of indispensable third parties in bilateral arbitration arrangement, as well as mechanism of challenging the award by interested third parties need to be regulated expressly and effectively. The practices also need to be developed.

Key Words: Arbitration, flexibility, binding, third party, arbitral award, protection and Ethiopia

Table of contents	page
Chapter one; proposal of the study.....	1
1. Introduction.....	1
2. Research problem.....	4
3. Research Questions.....	4
4. Objective of the study.....	4
4.1. General Objective.....	4
4.2. Specific Objective.....	5
5. Literature Review.....	5
6. Research Design.....	5
6.1. Methodology.....	5
6.2. Method of Research.....	5
7. Limitation of the study.....	6
8. Scope of Study.....	6
9. Organization of the study.....	6
Chapter Two: Over view of arbitration and third parties right.....	8
2.1. Introduction.....	8
2.2. Definition of Arbitration.....	8
2.3. Arbitration agreement.....	10
2.3.1. Major requirement of arbitration agreement.....	11
2.4. Arbitration and other ADR mechanism.....	12

2.4.1. Negotiation.....	13
2.4.2. Mediation/Conciliation.....	13
2.5. Arbitration and Litigation.....	14
2.6. Type of Arbitration.....	15
2.6.1. Domestic Arbitration.....	15
2.6.2. International Arbitration.....	15
2.6.3. Public International Arbitration.....	16
2.6.4. Compulsory Arbitration.....	16
2.6.5. Court Annexed Arbitration.....	16
2.6.6. Court-Ordered arbitration.....	16
2.6.7. Ad Hoc Arbitration.....	16
2.6.8. Statutory arbitration.....	17
2.6.9. Institutional Arbitration.....	17
2.7. Right of third parties in arbitration proceeding.....	17
2.7.1. Third parties right in commercial arbitration.....	17
2.7.2. Advantage of recognition of third parties in arbitration.....	19
2.8. Manner of recognition /accommodation of third parties in arbitration.....	20
2.9. International Convection's on third parties right in arbitration.....	20
2.9.1. UNCITRAL Arbitration rules.....	21
2.9.2. London Court of International Arbitration.....	22
2.9.3. Arbitration rules of the Netherlands 2015.....	23

2.9.4. The new 2017 ICC’S Arbitration rules.....	23
2.9.5. The rules of arbitration of Finland.....	24
2.10. National law experience on third parties right in arbitration.....	24
2.10.1. Netherland Code of Civil Procedure	24
2.10.2. Switzerland’s rules of International arbitration.....	25
2.10.3. USA’s experience.....	26
2.10.4. Belgium Law Experience.....	26
Chapter Three: Protection of third parties right under New Arbitration law of Ethiopia	28
3.1. Introduction.....	28
3.2. Arbitration Regime of Ethiopia: Historical Overview.....	28
3.2.1. The old legal frame work.....	29
3.2.2. The new legal Frame work.....	29
3.3. Manner of Third parties involvement/participation in the Ethiopian commercial Arbitration and conciliation.....	32
3.4. Gap in procedural and substantive laws.....	34
3.4.1. Before the arbitral awards.....	34
3.4.2. After the arbitral awards.....	41
3.5. Gapof Arbitral Institution.....	44
3.5.1. Weak institutional coordination.....	45
3.5.2. Non-compliance with Arbitration law.....	45
3.5.3. Accountability.....	45
3.5.4. Gaps in capacity, working standards and linkages.....	45

3.6. Problem of parties to Arbitration proceeding.....	46
3.7. Impacts of non-protection of third parties rights in the Arbitration law.....	47
Chapter Four: Conclusion and Recommendation.....	49
4.1. Conclusion.....	49
4.2. Recommendation.....	51
Bibliography.....	55

CHAPTER ONE: PROPOSAL OF THE RESEARCH

1. INTRODUCTION

Arbitration is a contract-based form of binding dispute resolution. In other words, parties' right to refer dispute to arbitration depends on the existence of an agreement.¹

In arbitration agreement, the parties agree to refer their dispute to a neutral tribunal to decide their rights and obligations. Although sometimes described as a form of alternative dispute resolution, arbitration is not the same as mediation or conciliation. A mediator or conciliator can only recommend outcomes and the parties can choose whether or not to accept those recommendations. By contrast, an arbitration tribunal has the power to make decisions that bind the parties².

Ethiopia did not have an independent piece of legislation that regulated the manner in which alternative means of settling disputes operate. It was only the Ethiopian Civil Procedure Code³ and the Ethiopian Civil Code⁴, together with other scattered provisions in various laws, which used to regulate arbitration and conciliation for over half a century. These laws provided for basic frameworks of conducting arbitration and conciliation such as governing the arbitration agreement, manner of constitute of tribunals, and the arbitration award. However, these laws were criticized for failing to sufficiently address, among other things, the manner of establishment and operation of arbitration centers, identifying arbitrable and non-arbitrable matters, protection of third parties, providing a limitation on the role of courts during the arbitration proceeding, the appeal ability of arbitration awards and the competency of an arbitration tribunal to decide on its own jurisdiction⁵. The provisions of the previous laws are also highly incompatible with the internationally recognized principles of commercial arbitration⁶.

¹Shipi M. Gowok, Alternative Dispute Resolution in Ethiopia - A Legal Framework, AFRR, Volume 2 No.2 (2008)

² Ibid

³ See Civil Procedure Code of Ethiopia Federal NegaritGazeta Extraordinary Issue Decree1960-05-05, Year 19 No.2 583p

⁴ See Civil Code of Ethiopia, Federal NegaritGazetta Extraordinary Issue Decree 52/1965 Year 25, No.3

⁵<https://mehrteableul.com/index.php/insights/news-and-updates/item/37-legal-update-highlights-of-key-changes-and-introductions-made-by-the-new-arbitration-and-conciliation-proclamation> accessed on 16 February 2022

⁶TeceleHagos , Ratification of the New York Convention in Ethiopia :towards efficacy and avoidance of divergent path; 15 (Mizan Law Review: 493-522)

The known formal dispute settlement mechanism prevailing in the country is litigation. Litigation being the main dispute settlement system is characterized by protracted lawsuits that take years to resolve a matter⁷. This has inevitably resulted in a congested court environment. Litigation alone does not go along with the very nature of commerce/business environment for which time, predictability and confidentiality are of the essence; features which are not exhibited in the Ethiopian litigation system⁸.

As part of the recent legislative reform the country is undertaking, the Ethiopian House of Peoples Representatives recently ratified the new Arbitration and Conciliation Working Procedure Proclamation, Proclamation No.1237/2021⁹ (the “Proclamation”). The Proclamation entered in to force on 02 April 2021. It basically repealed and replaced Articles 3318-3324 of the Civil Code, which governed conciliation, and Articles 3325 to 3346 of the Civil Code, which governed arbitration. The provisions of the Civil Procedure Code from Articles 315 to 319 and Articles 350, 352, 355-357 and 461, which deal with arbitration, have also been repealed by the Proclamation.

With the aim of complementing the right to justice and to contribute to the resolution of investment and commercial disputes and to the development of the sector, the Proclamation recognized the fact that arbitration and conciliation help in rendering efficient decisions by reducing the cost of the contracting parties, protecting confidentiality, allowing the participation of experts and the use of simple procedure which provides freedom to contracting parties. The Proclamation aims to provide for a general framework for the identification of arbitrable cases, management of arbitration proceedings and execution of decisions¹⁰. By amending the existing laws, the Proclamation aims to be in line with the international principles and practice and support the implementation of international treaties.

⁷MesfinBeyene (2019) Towards a Better Commercial Arbitration :Should Ethiopia Ratify the New York Convention ; Mizan Law Reviwe, Volume 13 No.1 ,123 – 152

⁸ Ibid

⁹Arbitration and Conciliation Working Procedure Proclamation, Proclamation No.1237/2021 Fed, Neg, Gaz, Year 27, No 21 2 April 2021 (hereinafter Arbitration and Reconciliation Proclamation)

¹⁰ Supra note 7

Unlike the Previous Laws, the Proclamation provides a clear and exhaustive definition of what constitute international arbitration¹¹.

As another basic departure from previous laws, the Proclamation contains an illustrative list of matters which are not subject to arbitration¹². Previously, it was not clear which matters are arbitrable and which are not. Matters relating to family such as divorce, adoption, guardianship, tutorship and succession cases, criminal matters, tax matters, judgment on bankruptcy and dissolution of business organizations, land matters, administrative contracts unless permitted by law, trade competition and consumer protection related matters, administrative disputes and other matters made non- arbitrable by other laws are not arbitrable matters under the Proclamation and the parties cannot agree to settle those disputes by way of arbitration. In fact, the Civil Procedure Code used to take administrative contracts out of arbitration agreement and this is maintained under the Proclamation.

The Proclamation also regulates matters relating with conciliation. It defines conciliation as a process of dispute settlement that is facilitated by a third party designated by contracting parties in order to resolve existing or future disputes¹³.

The proclamation, as much as it tried to introduce a number of developments as compared to the repealed provisions, has also tried to protect third parties interest in the course of arbitration. But the Proclamation falls short of adequately protecting third parties interests in pre, during and post arbitration proceedings. This paper is an attempt to examine protection if any, of third parties in the Ethiopian legal regime of arbitration.

2. Research Problem

Article 37 of the FDRE Constitution¹⁴ guarantees everyone's' right to access justice. As of this provision everyone has the right to bring a justiciable matter to, and to obtain a decision or

¹¹ Article 4 Arbitration and Conciliation Working Procedure Proclamation, Proclamation No.1237/2021 Fed, Neg, Gaz, Year 27, April 2021 (hereinafter Arbitration and Reconciliation Proclamation)

¹² Supra note 7

¹³ Article 2 (9) Proclamation No.1237/2021 define conciliation is a process of dispute settlement that is facilitated by a third party designated by contracting parties in order to resolve existing or future disputes that may arise from contractual or non-contractual legal relationship

¹⁴ Article 37(1) of Constitution of the Federal Democratic Republic of Ethiopia, Federal NegaritGazetta, Year 1, No.1, 21st August 1995 Article 37

judgment by, a court of law or any other competent body with judicial power. Here other competent body with judicial power can include those that have quasi-judicial power and arbitral institution that formed by the Government or by Private persons. Enjoyment of justice through arbitration should not violate or compromise rights of third parties that are not party to such proceeding. While the new proclamation number 1237/2021 be enacted one of the expected reason is that, it avoid the pre-existence problem of third party rights. But there is a problem relating to the protection rights of third party, thus, this research paper aims at examining the protection, if any, of third party under the Ethiopian legal regime of governing arbitration law (proclamation number 1237/2021).

3. Research Questions

The main purpose of this study is to provide thorough theoretical and practical analysis of concept of arbitration law in Ethiopia, and the protection, if any, and/or level of protection of third parties rights. The research will try to highlight the significance of upholding third party rights in pre, during and post arbitration proceeding stages.

Accordingly the research questions of this study are:-

1. What is put in place to protect third party rights under Ethiopian Arbitration law?
2. Are the national legislations of Ethiopian arbitration law in compliance with international standards on protection of third parties rights?
3. Are there institutional or legal arrangements put in place to address the violation of third parties rights in arbitration proceedings?

4. Objectives of the study

4.1 General objective

The general objective of this paper is examining the Ethiopian arbitration laws both the substantive and procedural rules weather they have detailed rules and procedures relating to third parties in commercial arbitration.

4.2 Specific objectives

1. To put forward (accommodates) to the gap relating to rights of third party in the current arbitration law of Ethiopia.
2. Examining whether third parties are taking part or represented in Ethiopian arbitrations law in pre, during and after arbitral awards.

3. To assess level of protection and implementation of third party rights under Ethiopian Arbitration law in light of international conventions and others jurisdictions. .
4. It also purports to assess institutional arrangements put in place to address violation of third parties rights in arbitration proceedings

5. Literature Review

The literature review included books, journal articles, book chapters, research reports and other publications.

6. Research Design

6.1) Methodology

The methodology that has been used in this work is conceptual and legal analyses and interpretation in a comparative manner. So, depending on the cases, it employs doctrinal and qualitative legal research methods.

6.2) Method of Research

To answer my research question I used both primary and secondary source. The study uses primary sources of data through interviews. Interviews were conducted with thirteen (**13**) key informants who have rich knowledge and experience in relation to arbitration and third party protection. Attempt was made to solicit information about legal, institutional and practical factors affecting right of third party during the proceedings of arbitration and after decision. I interviewed With Federal court judges (two from FSC, two from FHC and two from FFIC), three attorneys that commonly work on arbitration and three arbitrators that also work in the limited national arbitration centers and who also work in international arbitration centers and one private party of arbitration proceeding .The interview questions will be open ended. The task of conducting interview was stopped based on saturation principle, which refers to a situation where a researcher starts hearing repetitive information and new information is no more obtained.

On the other hand my Secondary data focus on exploration of applicable laws and collected from legislature, books, journal articles, report, literature reviews and research from arbitration centers, law offices if any.

7. Limitations of the study

I counter the following limitations. The first limitation is that there are no detailed books and literatures on the issue and even those limited sources at international level dealing with this topic are e-books which are difficult to access them easily. In Ethiopia too, since the area is new, it is very hard to get detailed materials written on the arbitration system of Ethiopia (particularly, in relation to protection of third party rights). Plus, Cases and judicial opinions play an appreciable role in legal research. But, I couldn't get even one case on third parties right after the enactment of new proclamation. However, maximum efforts have been made to address the issues.

8. Scope of the Study

The research will highlight the level of protection of rights third parties under Ethiopian arbitration law. It also tries to shed light on violations of rights to which third party are subjected to from legal point of view.

The research will cover different actors and institutions such as judges, arbitrators, attorneys, lawyers, law professor, Judicial and legal research institute etc. to get the fuller picture of the subject.

9. Organization of the Study

This study will be organized in to four chapters as follow:

The first chapter will provide introductory concepts, statement of the problem, methodology and scope of the study.

The second chapter will explore the very notion of arbitration to enable readers grasp the basic concept of arbitration. And again Arbitration and third parties right in general which deals with some international standards and other country experience on arbitration regarding to third parties right protection which used as bench mark for the research.

The third chapter will try to briefly narrate violation of rights of third parties under Ethiopian arbitration law. Again it deals with the analysis drawn from the data found from interview, questionnaire and written documents, particularly from the facts mentioned in the third chapter. It tries to uncover the level of protection and/or of violation of rights of third parties.

Finally, a conclusion and recommendations will follow to draw some conclusions addressed to the law makers, all concerned which are necessary and relevant to the problem and questions stated in this research.

CHAPTER TWO: GENERAL OVER VIEW OF ARBITRATION AND THIRD PARTIES RIGHT

2.1. Introduction

Arbitration is seen here as a non-judicial dispute settlement mechanism whereby parties to a dispute resort to a third party (or parties) whose determination over the dispute is as binding as comparable court decisions.¹⁵ Depending on various factors, one may identify different types of arbitration. Within the domain of international arbitration, one may further distinguish between investment arbitration, commercial arbitration and arbitration between states.¹⁶

2.2. Definition of arbitration

There are different mechanisms used in resolving disputes based on custom, tradition and laws. Some consider arbitration as one kind of Alternative Dispute Resolving mechanism even though it shares some common character with court litigation. Further they consider that arbitration can be called as the extreme kind of ADR mechanism since it has some adjudicative character similar to that of court litigation.¹⁷ Arbitration plays a prominent role in settling disputes which involve both national and international commercial transactions which are growing this era of globalization. International and national rules which govern various aspects of commercial arbitration have contributed to the effectiveness of arbitration as an alternative to court litigation.¹⁸ There is a dominant view that arbitration is one kind of ADR mechanisms even though it shares some common character with court litigation.

Different scholars give almost similar meaning while defining arbitration. The Black's Law dictionary defines arbitration as "*a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.*"¹⁹ It is also defined as a voluntary and consensual process based on private procedure,

¹⁵Hailegabriel G. Feyissa, 'The Role of Ethiopian Courts in Commercial Arbitration', (2010), Vol. 4, Mizan LR, 298

¹⁶ Ibid

¹⁷Tefera Eshetu & Mulugeta Getu; Alternative Dispute Resolution teaching material, by justice and legal research institute, [unpublished], 2009, p 1

¹⁸Hailegabriel Gaddissa Feyssa, et al, 'The role of Ethiopian courts in commercial arbitration' Mizan Law Review, Autumn 2010, vol. 4, No. 2, 297-333, p 306

¹⁹WEST GROUP, ST. POUL, MINN, 1999, Black's Law Dictionary 7th Edition, Bryan A. Garner (Editor)

which, inter alia, aims at avoiding problems litigations face in relation to disputes of complex nature in industrial society.²⁰ Arbitration is a process founded upon the agreement of parties.²¹

From the various definitions of arbitration one can conclude that the following are issues which have to be considered in arbitration in order to further understand the applicability of the system. Those are:

- ❖ **Arbitrability:** this means first we have to know issues which are arbitrable and which are not. To state otherwise, some disputes are not subject to arbitration due to different reasons, for instance, public policy might be one reason to exclude an issue from arbitrability.²² In light of this the new Proclamation of Ethiopian Arbitration law (proclamation no.1237/20121) provides for the scope of application of the Arbitration regime. Therefore the issue of arbitrability, concerns whether a particular dispute is properly the subject of arbitration.
- ❖ **Arbitration agreement:** as defined in Indian arbitration and conciliation Act of 1996, specifically in section 7 thereof it is stated as follows.

1. In this part arbitration agreement ‘means an agreement by the parties to submit to arbitration, all or certain dispute which have arisen or which may arise b/n them in respect of a defined legal relationship , whether contractual or not

2. An arbitration agreement may be in the form of arbitration clause in a contract or in the form of a separate agreement.

Bergsten (2005) in his book described the principal elements of arbitration in the module he prepared at the request of United Nations. These are:

1. Arbitration is a mechanism for the settlement of disputes, which is to mean that if there is no dispute, there can be no arbitration.

²⁰ Kenneth S. Carlson, ‘Theory of the Arbitration Process’, (1952), Vol. 17(4), LAW AND CONTEMPORARY PROBLEMS, 631, and see also United Nations Conference On Trade and Development, ‘Dispute Settlement, International Commercial Arbitration, United Nations, 2005, available at www.unctad.com, accessed on January 6/2022

²¹Noussia K, Reinsurance arbitrations, Springer Science & Business Media, Berlin, 2014, 195.

²² Alternative dispute teaching material for under graduate of LLB program prepared by TeferaEshetu and MulugetaGetu ,2009

2. Arbitration is consensual, which is to mean that it must be founded on the agreement of the parties unless the cases are made compulsory to be arbitrated by law of a country.

3. Arbitration is a private procedure, which is to mean that it is confidential. It will not be permitted to reveal anything about the arbitration including its existence unless otherwise one of the parties had to invoke the aid of a court in regard to the arbitration or to set aside or enforce an arbitral award.

4. And lastly Arbitration leads to a final and binding determination of the rights and obligations of the parties, which is to mean that a procedure that does not lead to a final and binding determination of the rights and obligations of the parties is not arbitration. However, the fourth principal element of arbitration from the above definition is not true in Ethiopia.

Under Ethiopian law although the Civil Code didn't specifically define the term arbitration Article 3325 give meaning to arbitral submission as; "[t]he arbitral submission is a contract whereby the parties to a dispute entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principles of law. "The new Arbitration and Conciliation Working Procedure Proclamation No. 1237 /2021"of Ethiopia also did no define or give specific meaning to arbitration, rather defined arbitration agreement under Article 2(1). It basically repealed and replaced Articles 3318-3324 of the Civil Code, which governed conciliation, and Articles 3325 to 3346 of the Civil Code, which governed arbitration. The provisions of the Civil Procedure Code from Articles 315 to 319 and Articles 350, 352, 355-357 and 461, which deal with arbitration, have also been repealed by the Proclamation.

2.3. Arbitration agreement

Different legal documents use arbitration agreements, arbitral submission and arbitration clause interchangeably. An arbitration clause is used to explain the dispute which arises in the future in performing a contractual relationship.²³ Arbitration submission however is used in relation to the existing dispute that has arisen between the parties in an arbitration agreement.²⁴ An arbitral submission though contract, is, however, peculiar in many respects. One of its peculiarities has been put succinctly by Lord Macmillan;

²³HailegabrielGaddissaFeyssa, supra note 18

²⁴ ibid

*“The other clause sets out the obligation which the parties undertake toward each other, but the arbitration clause does not impose on the parties an obligation in favor of the other. It embodies the agreement of both parties that if any dispute arises with regard to the obligation which one party has undertaken to the other, such dispute shall be settled by tribunal of their constitution”*²⁵

When we see the new Arbitration and Conciliation Working Procedure Proclamation No. 1237 /2021” of Ethiopia it article 2(1) defines arbitration agreement as

“Arbitration Agreement” is an agreement to be implemented in order to partly or wholly settle future or existing dispute that may arise from contractual or non- contractual legal relationship”

In light of this the UNCITRAL Model Law define, arbitration agreement as

*“Arbitration agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.”*²⁶

2.3.1. Major Requirements for Arbitration Agreement

The UNCITRAL Model law also specifies thoroughly the requirements for an arbitration agreement. According to the UNCITRAL Model Law, an arbitration agreement may be made in the form of an arbitration clause within a contract or in the form of a separate agreement. The UNCITRAL Model Law requires the arbitration agreement to be made in writing.²⁷ An arbitration agreement in the UNCITRAL Model Law is supposed to be made in writing, where its content is made in a way to hold records in any form whether or not the arbitration agreement or the contract has been made orally (recorded agreements) or by any other means. Thus, according to the Model Law, any other form of recording the contract or an arbitration agreement satisfies the form of an arbitration agreement.

The New York Convention also specifies requirements for arbitration agreement. it is required that the agreement should be in writing (Article II(1)), The all or any existing or future

²⁵Heyman and another V.DarwinLtd.From Eric Lee ,Encyclopedia of arbitration Law ,Lloyd of London Press 1984,sec.3.1.3

²⁶Heyman and another V.DarwinLtd.From Eric Lee ,Encyclopedia of arbitration Law ,Lloyd of London Press 1984,sec.3.1.3

²⁷United Nations 1994, UNCITRAL Model Law on International Commercial Arbitration, art,7(2)

differences requirement is also included (Article II(1)), There must be a defined legal relationship (contractual or not) requirement (Article II(1)), The arbitrability requirement (Article II(1)), The legal capacity requirement (Article V(1)(a)), The validity under the law of the arbitration agreement requirement (Article V(1)(a)) and also enforcement of arbitration agreements (Article II(3)) are included.

Such requirements are also included under the new Arbitration and Conciliation Working Procedure Proclamation No. 1237 /2021”of Ethiopia Article 6 specifies forms of arbitration agreement. The form requirement for general contract recognizes oral contracts to be acceptable where offer and acceptance is complied with as expressed under Article 1681 of the Civil Code. But it is not specifically included in the Arbitration and Conciliation Working Procedure Proclamation No. 1237 /2021.

2.4. Arbitration and other ADR mechanisms

ADR mechanisms can be categorized in to three categories based on the procedures to be followed in each dispute resolution mechanisms. The categories of ADR procedures are agreement (negotiation, mediation, facilitation and mini-trials are all procedures of agreement.), decision and advice.²⁸Compering to negotiation, conciliation and mediation arbitration pursues strict procedural rules through which a final binding decision is given out. ²⁹Understandably, the nature of arbitration stands far from mediation and conciliation. First and foremost it aims to lead to enforceable and binding award if necessary through execution against the assets of the losing party.³⁰

According to Yered Tilahun’s thesis Arbitration has adjudicatory function, evidence gathering, and absence of ordinary session and lack of win-win paradigm in relation to which the interference of regular court is quite inevitable. By contrast, conciliation and mediation do not intend to render binding decisions. Yet, this doesn’t mean that a compromise doesn’t give rise to legal obligation. The following are the type of ADR in general terms: those are:

²⁸TeferaEshetu&MulugetaGetu; Alternative Dispute Resolution teaching material, by justice and legal research institute, [unpublished], 2009, page50-51

²⁹YaredTilahun, “Analysis of the Existing Ethiopian Arbitration Law in Light with the UNICTRAL Model Law on Arbitration’, (LLM Thesis, University of Addis Ababa 2018).

³⁰ an Paulson et al The Fresh field Guide to arbitration and ADR clause in International contracts,2nd edition; Hague, The Netherland; Kluwer Law International,1999,p,7

2.4.1. Negotiation

This is a non-binding procedure involving direct interaction of the disputing parties where in a party approaches the other with the offer of a negotiated settlement based on an objective assessment of each other's position.³¹ In negotiation the parties are free to opt out of it, but the essence of Alternative Dispute Resolution is to ensure that parties resolve their disputes without recourse to violence.³² One special attribute of negotiation as a method of resolving difference is flexibility, both with regard to the manner in which the parties proceed and with respect to the ultimate accommodation reached.³³

2.4.2. Mediation /Conciliation

Mediation is one of the most important whereby the mediator [a neutral and impartial third party] makes the dialogue between disputants easy in a structured multistage process in order to help parties to reach a decisive and mutually satisfactory agreement in their interest.³⁴

Mediation is also defined as a process, in which professionals facilitate assistance to disputing parties, through which they will reach at a solution.³⁵

The significant features of mediation is that the whole process is controlled by parties themselves, which means the disputing parties without any other third party involvement choose mediation process, control the process and select such terms of the resolution.³⁶ Mediation has its own characteristics that distinguish it from other ADR mechanisms. Among the distinguishing factors: It is a voluntary process which means parties choose and enter into mediation, if they want to resolve their dispute and depart or withdraw from the process, without any condition; it is also a confidential and private.³⁷

³¹supra note29

³²Shipi M. Gowok, Alternative Dispute Resolution in Ethiopia - A Legal Framework, AFRR, Volume 2 No.2 (2008)

³³ ibid

³⁴ Arbitration, Mediation and Conciliation: differences and similarities,
<http://www.mediate.com/articles/sgubinia2.cfm>. Accessed on April 20, 2022

³⁵sahilamariamWadajo LLM thesis on the title of FACTORS DETERMINING THE CHOICE BETWEEN PUBLIC AND PRIVATE ADJUDICATION IN ETHIOPIA: FOCUSING ON COMMERCIAL DISPUTES(unpublished 2018,AAU)

³⁶ What are the characteristics of mediation? /Essential Mediation,
<http://www.essentialmediation.co.uk/what-is-mediation/what-are-the-characteristics-of-amediation/>. Accessed on April 20, 2022.

³⁷ ibid

2.5. Arbitration Vs. court litigation

When we see the two there is some common element they share and distinction that they exhibit. The most known common element that they share is that decision that is given in both mechanisms binding on the parties and both follow the same procedure even though there is some flexibility in arbitration. On the other hand when we compare both ordinary courts' litigation provides more expeditious, flexible and cost effective dispute resolution mechanism as it is performed through competent individuals/ arbitrators who may be selected for their specialized knowledge and who are conferred with the power to give a final and binding award without or with a limited recourse to the regular courts.³⁸ Addition to this since court judges are elected by sovereign there is no chance given to the parties to select the judge whereas arbitrators are selected by the parties. Also there is high degree of confidentiality in arbitration compared to court litigation and the proceeding of arbitration is neutral.³⁹

According to Yered Tilahun LLM thesis arbitration is characterized by privacy. In regular courts litigation, the proceeding is held in public which sometimes embarrasses the parties' and affects their privacy.⁴⁰ Whereas, in arbitration, the process is conducted privately that promises to protect the privacy of the parties.

During the process of arbitration parties may exchange sensitive information like customer list, sales data etc. which may be very important between the parties and may cause irreversible damage if it is disclosed to third parties.⁴¹

From the above explanation we can conclude that arbitration resembles litigation for the following factors:

Adversarial processes parties bring contending positions and try to convince decision maker to rule in their favor. Rule of natural justice apply (i.e. notice, fairness, impartiality) to both.

³⁸ Solomon Emiru, Comparative Analysis of scope of jurisdiction of Arbitrators under the Ethiopian Civil Code of 1960, Central European University, March 30, 2009,(unpublished on file with the author) , p 2 [here in after referred as Solomon Emiru]

³⁹kyrakiNossia confidentiality in international arbitration (2010)

⁴⁰ ibid

⁴¹ ibid

Decision is made according to the law (unless parties agreed to use) in both process. Obligations of disclosure to opposite party (although may be streamlined and focused) apply in both.

Principle of res judicata and issue estoppel apply to both arbitration and litigation. Appeal is possible unless expressly excluded and Arbitration awards, like court judgments, are enforceable at law⁴².

On the other side arbitration is different from litigation on the point of hearing and other procedures are flexible and informal in arbitration where as it is strict in litigation. Inan Arbitration stare decisis does not apply but in litigation it apply depend up on the system of the country follow. Arbitration Process cannot be initiated without the consent of all parties either by way of arbitration agreement but in litigation there is no need of the other parties consent.

2.6. Type/form of Arbitration

There is different type of Arbitration existed in different jurisdiction. Some of them are

2.6.1. Domestic Arbitration

Domestic arbitration is an arbitration that does not have the characteristics of an international one. It is usually between private individuals of the same state though this doesn't mean that whenever a foreign element is involved, arbitration becomes international. Domestic arbitration may also be referred to as national arbitration.⁴³

2.6.2. International Arbitration

As opposed to a domestic one, an international arbitration is the one that transcends national or state boundaries. Arbitration becomes international, among other, because of the nature of the dispute, the nationality of the parties, or of one of them, or some other factor/s that pushes it outside the jurisdiction of a state. When arbitration is international, it is believed that the involvement of national courts would be restricted and minimal.⁴⁴

2.6.3. Public International Arbitration

⁴²TeferaEshetu&MulugetaGetu; Alternative Dispute Resolution teaching material, by justice and legal research institute, [unpublished], 2009, page54-56

⁴³ZekariasKeneaa, 'Formation of Arbitral Tribunals and Disqualification and Removal of Arbitrators under Ethiopian Law', (2007), Vol. 21, J Ethiopian L, 138.

⁴⁴ ibid

This is different from commercial arbitration. A non-commercial international arbitration may be a public international arbitration. The most example one is border dispute.⁴⁵

2.6.4. Compulsory Arbitration

This is imposed by the law and the disputing parties have no other choice but to go to arbitration even if they wish to have their dispute resolved via other means including litigation. Compulsory arbitration is mandatory and the parties may not oust arbitral adjudication by their agreements.

2.6.5. Court-Annexed Arbitration

Arbitration may be court-annexed and as one aspect of case flow management; a case that may have been brought to a court could be seen and resolved by a court-annexed arbitration.

2.6.6. Court –Ordered Arbitration

A court may sometimes order arbitration when it convinced that it may be the best mechanism to resolve the dispute. In such case the arbitration may be referred to as a “court-ordered arbitration”

2.6.7. Ad Hoc Arbitration

Ad-hoc arbitration is form of arbitration where the procedure of arbitration, most of the time, set by the disputing parties themselves. Parties in a dispute need not stick on the institutional procedure⁴⁶. The national law of the place of arbitration avoids any problem arise of ad-hoc arbitration. An ad hoc arbitration is an arbitration not conducted in accordance with the rules of any arbitral institution. An ad hoc arbitration is conducted pursuant to the rules agreed upon and formulated for the purposes of conducting that particular arbitration. Sometimes international organizations like the UNCITRAL may prepare and make available model rules for ad hoc arbitrations.⁴⁷

2.6.8. Statutory arbitration

⁴⁵ ibid

⁴⁶ ibid

⁴⁷ Supra note43

Statutory arbitration is an imposition by law which governs the parties in dispute. Parties should submit the case to specified person or institutions for arbitration to resolve their case irrespective of their consent.

2.6.9. Institutional Arbitration

According to Red fern and Hunter, “Institutional arbitration is one that is administered by one of the many specialist arbitral institutions under its own rules of arbitration. In institutional arbitration parties ‘dispute is arbitrated according to pre- established rules of the institution, which most of the times known to disputing parties.⁴⁸ The Arbitrators mostly, are among named specialists. “In Ethiopia today we have the Addis Ababa Chamber Commerce and Sectorial Associations Arbitration Institute (AACCSA AI) as an autonomous organ but part of the AACCSA, as the only legally authorized and mandated commercial disputes settlement body in Ethiopia.

2.7. Right of third parties in arbitration proceeding

2.7.1.Third Parties right in commercial arbitrations

Because of the principle of privity of contract, arbitration is mainly considered as consensual and binding up on the parties, the bases of arbitration and an arbitration tribunal is mainly the arbitration agreement or submission and party autonomy. Since arbitration is like litigation there are situation when third parties ‘interest will come to picture in arbitration proceeding , both in civil (non-business) and commercial (trade and investment) relations or transactions.

Regarding the term "third parties" different materials define it in different ways depending up on the status of the third parties. From different materials third party referred to a person who never consented to an arbitration agreement concluded between two or more parties (existing contracting parties). In fact, the term "non-signatory party" is also often used interchangeably with the term third party. But, as will be shown in subsequent paragraphs, a non-signatory party should be distinguished from a third party, as, strictly speaking, the former is a person that has consented (or named) to an arbitration agreement and thus is bound by it, notwithstanding the

⁴⁸ ibid

fact that the person failed to sign it, whereas, third party is used to refer to someone who is not even a named party in agreement.⁴⁹

We can also say that "third party" also refers to not consented and non-signatories of the arbitration agreement or submission, but those who have direct or indirect interests or connections on the subject matter and need participation in ongoing arbitration (in relation to commercial related arbitrations). For example, there are a lot of circumstances when third parties right are violated both in the case of bilateral and multilateral arbitration processes. Those third parties are guarantors, creditors, third party beneficiaries, assignees, successors, in agency relations the principals or agents, in construction contracts sub-contractors or workers, in group of companies' cases parent/holding/ or subsidiary (affiliated) companies or share or stake holders, , insurance companies in insurance cases, in property cases joint owners and the like indispensable third parties. Particularly in the international context, have become extremely complicated, requiring the participation of several parties for the delivery of largescale projects.⁵⁰ Construction project may involve the employer and the main contractor but also an engineer or an architect, several subcontractors, suppliers, and financier's service. Similarly, the complicated structure of many multinational groups of companies requires several affiliates or subsidiary companies, shareholders, directors or stakeholders of the same group to become actively involved in the execution of a contract concluded by only one company of the group.⁵¹

In recent time as a result of development of the construction industry in different ways there are needs of third parties intervention ⁵²vertical construction contracts (i.e., owner-contractor-third party subcontractor); horizontal construction contracts (i.e., contractorengineer-third party architect); indemnification contracts (i.e., injured party-liable party-third party indemnificatory); reinsurance contracts (i.e., injured party-insurer-third party reinsurer); intellectual property contracts (i.e., patent holder-manufacturer- third party distributor); copyright distribution contracts (i.e., copyright holder-distributor in country A-third party exclusive distributor in

⁴⁹Brekoulakis Stavros, The Relevance of the Interests of Third Parties in Arbitration: Taking a Closer Look at the Elephant in the Room, 2009, penn state Law Review, vol.113:4, p.1166, available at; www.pennstatelawreview.org. [last accessed at May 25/2018],[Here in after; Brekoulakis(2009)]

⁵⁰Brekoulakis(2009),Supra not, 28, p.1167

⁵¹Passy Max D., The shortcoming of arbitration in the modern world: the third parties limitation,2016,global politics review, vol.2,no.2,p.78,available at, <http://globalpoleticisreview.com>, (last accessed at May 25/2018)[here in after; passy Max D. (2016)]

⁵² d.p.1168

country B which has experienced parallel imports from country A); employment contracts (i.e., employee-employer-third party subcontractor); securities contracts (i.e., seller-buyer-third party financier); franchise contracts (i.e., franchise owner-franchise holder in country A-third party franchise holder in country B); and tort cases referred to arbitration by consent or contract (i.e., injured party-product distributor-third party manufacturer).⁵³

2.7.2. Advantage of recognition of third parties right in arbitration

With the existing complex multi-party business relations the recognition or accommodation of related third parties in arbitration to be logical and has been obtained acceptance for various reason. Different literature and scholar which is supported by studies show that the following are some of the advantage of recognition of third parties right in arbitration at all stages. Some of those are:

- ❖ It will increase the efficiency of arbitration by preventing overlapping proceedings and expanding the material scope of arbitration. This means it reduces the risk of conflicting determinations from fragmented proceedings and would expand arbitration's domain.
- ❖ It is also advantageous to the parties themselves because of the reason that it protects their right in different angles.
- ❖ It regulates overlapping and duplication of Proceedings and irreconcilable awards; because, multiparty of arbitration proceedings will prevent the commencement of several fragmented bilateral proceedings with overlapping subject matters.
- ❖ Arbitration has the same purpose as litigation: to effectively resolve a specific dispute. Consequently, this functional equilibrium between substance and procedure in principle should also apply to arbitration.⁵⁴
- ❖ It also recognizes and promotes equity and due process consideration. The reason is that if the third parties participate in the arbitration proceeding the constitutional right of due process of the third parties is recognized and finally equity be served.
- ❖ It will also protect the non-signatories and minimize unnecessary oppositions.
- ❖ It can also increase its scope of enforcement because, if third parties affected and if parties are not treated equally, this may be a ground not to give recognition and

⁵³GirmechewNuguse on the title of commercial arbitration and accommodation of third parties in Ethiopia., (LLM Thesis, University of Addis Ababa 2018).

⁵⁴ ibid

enforcement of the arbitral award (New York convention) especially at international level.⁵⁵

2.8. Manner of recognitions/accommodation of third parties in arbitration

Girmachew Nigussie in his paper (LLM thesis Commercial Arbitration and Accommodation of Third Parties in Ethiopia unpublished ,2018 AAU) stated that participation of third party in an arbitration proceeding is a complex procedure requiring different considerations and depending on many factors that must be selected by the parties during the drafting of the arbitration agreement, including: selection of the arbitration institution, defining governing law of the arbitration agreement and the relevant contract, as well as the law of dispute resolution of the future arbitration. In spite of the issues ‘complexity, in some known arbitration institutions as well as some national jurisdictions, third party’s participation in arbitration proceeding is becoming accepted and there is no strict ban on third party participation in the arbitration proceeding.⁵⁶

2.9. International Convection’ on third parties right in arbitration

Different literature show that some non- governmental organizations have contributed to the growing number of proposed arbitral procedures (like UNCITRAL).from jurisdiction to jurisdiction different scholar literature show that the solutions adopted in different states and arbitration rules of institutions regarding third parties are different.

To review every provision of every arbitral body's procedural rules would exceed the scope of this thesis. This section will highlight only the relevant rules of some of the more important or innovative states and institutions regarding third parties right. Plus, the discussion’ focus will be on those provisions that provide an explicit or implicit basis for granting intervention, joinder and opposition in an existing arbitration. In addition, it will concentrate primarily on setting forth the rules of the arbitration institutions as they currently exist.⁵⁷

⁵⁵ international arbitrations raise issues not only of domestic public policy, but international public policy as well and many states and arbitral institutions will limit arbitral procedures or awards that contravene public policy and often will overturn or refuse to enforce such awards. Plus, if arbitration affects due process principles (equality of the parties and the opportunity for each party to fully present its case) it may be ground not to recognize and enforce it and these may be occurred during denial of participation of relevant third parties

⁵⁶ Super note⁵³

⁵⁷ ibid

2.9.1. UNCITRAL Arbitration rules

The 2010 UNCITRAL Arbitration Rules (as revised in 2013, and with new article 1, paragraph 4, as adopted in 2013) with in limited circumstances expressly permits joinder of third parties; thus, in Article 17(5) it provides that:

“The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration”.

From article 17(5) of the 2013 UNCITRAL Arbitration Rules one can conclude that the joinder of a third party in an arbitration, as well as the manner of such joinder, shall be decided by the arbitral tribunal upon the request of a party or a third party after hearing all parties and the third party to be joined as well as after considering all relevant circumstances that assures such joinder would not result in prejudice to any of the parties.⁵⁸ Regarding the third parties it seems silent but, by the same logic, if intervention by third parties is requested, it seems to be entertained by the tribunal in similar manner with joinder.

Again article 17(1) of the 2013 UNCITRAL arbitration rule imposed the duty on the arbitral tribunal to treat the parties and third parties equally at all stage of the proceedings each party is given a reasonable opportunity of presenting its case.⁵⁹

There are two opposite arguments whether or not 2013 UNCITRAL arbitration rule recognizes the third parties right in arbitration proceeding at all stages. For those proponents of accommodation of third parties in arbitration by combining article 17(1) and 26 of the rule, they argue that even if UNCITRAL model rules are limited to all parties agreement and lacks adequate and detailed provisions on the participation and protection of third parties (through joinder and intervention), since it provides wider discretion for the tribunal to conduct the

⁵⁸ Article 17(5) of 2013 UNCITRAL Arbitration rules

⁵⁹ The 2010 UNCITRAL Arbitration Rules (as revised in 2013, and with new article 1, paragraph 4, as adopted in 2013), Art.17(1), available at, <http://www.uncitral.org> (last accessed may 19/2018) [here in after; UNCITRAL Arbitration rule,2013]

arbitration in such manner as it considers appropriate, as long as, the parties are treated with equality and at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case, it conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute, by invoking grounds of interim relief (provisional measures) arbitral tribunals can allow joinder or intervention.⁶⁰

Coming to those who argue that it is not allowed ,their point of argument is depend up on UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006 which is especially designed for commercial arbitrations, it is silent as to participation of third parties in arbitration.

2.9.2. London Court of International Arbitration

With regard to third parties right in arbitration proceeding, the LCIA Arbitration rule under Art.22 (1) (viii)) provides;

“The Arbitral Tribunal shall have the power, upon the application of any party but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to costs and otherwise) may decide to allow one or more third persons to be joined in the arbitration as a party provided any such third person and the applicant party have consented to such joinder in writing following the Commencement Date”⁷²(emphasized)

From this article one can understand that the LCIA expressly permits application by a party to the arbitration on joinder of third parties even over the objection of existing parties to the arbitration and LCIA requires only the consent of the applicant and the third party, but not the consent of the other party. This shows that like the litigation process which recognize due process to both parties the arbitration process also respect this right to the third parties which are non-parties under the LCIA.

In addition, under the LICA Arbitration rules regarding consolidation of arbitral proceeding.

The Arbitral Tribunal has the power, upon the application of any party but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to

⁶⁰ Super note⁵³

costs and otherwise) to decide with the approval of the LCIA Court, the consolidation of the arbitration with one or more other arbitrations into a single arbitration subject to the LCIA Rules where all the parties to the arbitrations to be consolidated so agree in writing.⁶¹

2.9.3. Arbitration Rules of the Netherlands 2015

Like the LCIA Arbitration rules, the 2015 Rule of the Netherlands Arbitration also recognize the right of third parties under article 37 (Joinder and intervention) provided /stipulated the condition how and in what manner the third parties participated in arbitration proceedings.it provides that the arbitral tribunal shall not allow the impleader if the arbitral tribunal finds it implausible, in advance, that the third person will be required to bear the adverse consequences of a possible award against the interested party or is of the opinion that impleader proceedings are likely to cause unreasonable or unnecessary delay of the proceedings.⁶²

2.9.4.The new 2017 ICC’s Arbitration Rules

Like the above two arbitration Rules, the new 2017 ICC Arbitration Rules (from article 7 - 10 dedicates) provisions to complex multi-party and multi contract arbitrations.⁶³If we see Article 7 of the ICC Rules provides for the a mechanism for enabling a third party, who is not yet a party of the arbitration proceedings to join the arbitration by submitting request for Joinder to the Secretariat. The manner of proceeding provided under article 6(3)–6(7) and 9 of the rule.

Regarding consolidation of Arbitrations the ICC Rules gives power to Courts to order consolidation of two or more arbitrations pending under the Rules into a single arbitration, at the request of a party and when the parties have agreed to the consolidation.⁶⁴

2.9.5. The Rules of Arbitration of Finland

According to Girmachew Nigussie (LLM thesis on Commercial Arbitration and Accommodation of Third parties in Ethiopian unpublished,2018 AAU),the Finnish Arbitration rule regulates, expressly, conditions for joinder of additional parties to arbitration and has also expressly

⁶¹Girmachew Nigussie (LLM thesis Commercial Arbitration and Accommodation of Third Parties in Ethiopia unpublished ,2018 AAU)

⁶² ibid

⁶³ ICC arbitration rules,2017, pp.Art.7-10; (i.e. Article 7 Joinder of Additional Parties; Article 8 Claims between Multiple Parties; Article 9 Multiple Contracts; Article 10 Consolidation of Arbitrations).available at,

<http://iccwbo.org/publication/arbitration-rules-and-mediation-rules/>](last accessed May 5/2018) [here in after;ICC
⁶⁴ Id.,Art.10

recognized multi party and multi contract arbitration proceedings.⁶⁵ When we see article 10 of Finnish, Arbitration rule, the conditions in relation to joinder and intervention of additional parties are expressly provided .According to this article, where a party to a pending arbitration under the Rules (the applicant) wishes to join an additional party to the arbitration, it shall submit its request for arbitration against the additional party (the Request for Joinder) to the Institute.

Again if the additional party wishes to submit a Request for Joinder, it shall do so within a time limit to be set by the Institute and then if allowed, the additional party may make claims against any other party like new arbitration.⁶⁶

To conclude, the Finnish legal system regarding to third parties right in arbitration proceeding the Finland chamber of commerce arbitration rule, through joinder, intervention and consolidation, third parties may be parties with in arbitration and it has also expressed provisions in relation to (payment of fee and appointment, and other relevant procedures) multi parties and contracts arbitrations.

2.10. National Laws experiences on third parties right in Arbitration

2.10.1. Netherlands Code of Civil procedure

From European countries,Netherlands is among the few states to address third parties' participation in arbitration. In Netherlands there is no independent proclamation that deals of arbitration. Rather it is addressed in the Netherlands Code of Civil procedure. When we see article 1045 of the Netherlands Code of Civil Procedure Codes at the written request of a third party who has an interest in the outcome of the arbitral proceedings, the arbitral tribunal may permit such party to join the proceedings, or to intervene therein and the arbitral tribunal shall send without delay a copy of the request to the parties. Not only this even if a party who claims to be indemnified by a third party serves a notice of joinder on such party a copy of the notice shall be sent without delay to the arbitral tribunal and the other party.⁶⁷ But in the case of claim of indemnity by the joinder or intervention it is permitted by the arbitral tribunal, having heard the

⁶⁵ Girmachew Nigussie (LLM thesis Commercial Arbitration and Accommodation of Third Parties in Ethiopia (unpublished, 2018 AAU),

⁶⁶ Finland Arbitration Institute Arbitration rule, Art 10, Available at, <https://arbitration/rules/arbitration-rules/> (last accessed May 5/2018)

⁶⁷ *ibid*

parties, if and only if the third party accedes by agreement in writing between him and the parties to the arbitration agreement.

One golden rule of the Netherland Arbitration Law regarding to third parties which is model one for other states is consolidation of arbitrations. This means if two (or more) arbitrations are taking place in The Netherlands and are somehow "connected," then they may be consolidated by request of one of the parties (unless the parties agree otherwise), even over the objection of other parties.⁶⁸

2.10.2. Switzerland's Rules of International Arbitration

Like the Netherland law of civil procedure, Switzerland also recognizes third parties participation in arbitration. When we see o Article 4(2) of the Swiss Arbitration Rules it reads:

“Where a third party requests to participate in arbitral proceedings already pending under these Rules or where a party to arbitral proceedings under these Rules intends to cause a third party to participate in the arbitration, the arbitral tribunal shall decide on such request, after consulting with all parties, taking into account all circumstances it deems relevant and applicable.”

According to this article unlike the other institutional rules which give priority right to the parties to give their consent, under the Swiss Rules there is no requirement of consent of parties at the time of joinder or intervention. Rather the discretionary power is given to the tribunal to allow a third party to intervene in a pending arbitral proceeding.

2.10.3. USA's Experience

Like the Ethiopian arbitration law, in the United States, international arbitration is addressed at the federal level through the Federal Arbitration Act (FAA). Various states have also passed their own international arbitration Rules, which apply to the extent that they do not conflict with the FAA.⁶⁹ Regarding the issue of intervention and joinder The FAA is silent. But, the revised uniform arbitration act under section 10 allows the court to order consolidation of separate

⁶⁸ See Article 1046 of Netherland civil procedure code

⁶⁹ *ibid*

proceedings based on different agreements, between the parties to arbitration agreement or one of them with third party.⁷⁰

When we see the whole U.S. law on arbitrations it seems to be standing in favor of consolidation, rather than clearly recognizing third parties right, where common issues of law and fact exist and, for the most part, this policy has been based on efficiency, economy, expedience, and equity.⁷¹ But through interpretation, courts address intervention and joinder as of right, at least in the context of domestic arbitration and usually they use the standard as it is in civil litigation.⁷²

At state level in USA, unlike the Federal Government, two jurisdictions named South Carolina and Utah have passed legislation which is some extent good in providing for joinder of necessary third parties to arbitration. If we see the South Carolina uniform arbitration act (Sections 15-48-60),⁷³ allows participation of third parties in arbitration proceedings when their right is to be affected.

2.10.4. Belgium Law Experience

Like other jurisdictions, the national laws of Belgium also provide for joinder and intervention mechanisms. If we see Article 1709 of the Belgian Judicial Code any interested third party may request from an Arbitral Tribunal an ex-parte intervention in the proceedings and a party may also call upon a third party to intervene in the proceedings. But there are some conditions that must be fulfilled to allow it. The admissibility of such interventions requires an arbitration agreement between the third party and the parties involved in the arbitration.⁷⁴ And that agreement is subject, moreover, to the unanimous consent of the Arbitral Tribunal.⁷⁵

Therefore according to the Belgium Law in order to allow third parties into arbitration proceedings it requires agreement of the all parties and unanimous consent of the arbitral Tribunal which is opposite to the Swizz Rule. But if the parties do not agree the arbitral tribunal

⁷⁰ USA, Revised uniform arbitration act, 2000, section 10 ,available at, www.uniformlaws.org (last accessed May 12/2018)

⁷¹ Strong, S.I, supra note.,6,p.959

⁷² Girmachew Nigussie (LLM thesis Commercial Arbitration and Accommodation of Third Parties in Ethiopia un published ,2018 AAU)

⁷³ South Carolina code, title 15 chapter 48 uniform arbitration act, available at, <http://www.lawserver.com/law/state/south-carolina> (last accessed April 23/2018)

⁷⁴ see article 1709 of Belgian Judicial Code

⁷⁵ *ibid*

has the discretion to order any interim or conservatory measures it deems necessary in which it may allow to interview third parties or to reject their applications⁷⁶

CHAPTER THREE: PROTECTION OF THIRD PARTIES RIGHTS UNDER THE NEW ARBTRATION LAW OF ETHIOPIA

⁷⁶ See article 1691 of Belgium Judicial Code

3.1. Introduction

This chapter analyzes primary data collected from key informant interviewees and participants as well as case analysis regarding the protection of third parties right under Ethiopian Arbitration Law (Proclamation no.1237/2021) if any. The data is categorized into the following themes: gaps in procedural and substantive laws, weaknesses in application of the laws by arbitrators and courts, problems of private parties and impact of prohibiting third party participation in arbitration proceedings.

3.2. Arbitration Regime of Ethiopia: Historical Overview

Dispute settlement modalities, other than court litigation, were known before the era of the codification of the Civil and Civil procedure Code⁷⁷. The Ethiopian legal framework for modern arbitration was laid down by the codifications of the 1960s. Before that, arbitration was only known within the context of traditional dispute resolution processes.⁷⁸ Before the codification there were different traditional dispute settlement devices which could be approximated to what is now known as arbitration.⁷⁹ Customary dispute resolution based on customary laws is the most prevalent practice in Ethiopia.⁸⁰ These customary laws, rules, methods, and procedures which are largely unwritten are the ‘organic and living law’ of the indigenous business community of Ethiopia.⁸¹ *Shimigilina, GiligIyezemedDagninet ,Irq and Gada* are the known ones in different areas of Ethiopia which served as Arbitration.

The modern concept of commercial arbitration had, however, been alien to Ethiopia until at least mid-20th century, when Ethiopia developed most of its current codes on private law. Some provisions on arbitration were included in the 1960 Civil Code and the 1965 Civil Procedure Code (CPC).⁸²

⁷⁷ Supra note¹

⁷⁸ Hailegabriel G. Feyissa, 'The Role of Ethiopian Courts in Commercial Arbitration', (2010), Vol. 4, Mizan LR, 298

⁷⁹ Tilahun Teshome (2007), "The Legal Regime Governing Arbitration in Ethiopia."

Ethiopian Bar Review, 1(2), pp. 117-118 [hereinafter Tilahun]; Brietzke, P. (1974)

⁸⁰ Alemayehu Yismaw (n 6) 40.

⁸¹ Ibid

⁸² Supra note⁷⁷

The enactment of the Civil Code and the Civil Procedure Code of Ethiopia had significant impact in the introduction and development of modern arbitration.⁸³ The Civil Code governs the substantive aspect whereas the Civil Procedure Code governs the procedural aspect.⁸⁴

3.2.1. The old legal frame work

Arbitration and conciliation were governed by the Civil Code and the Civil Procedure Code. In addition to the above mentioned two Codes there were scattered legal provisions governing conciliation and arbitration of specific disputes. For instance, Regulation No.121/1993 regarding transfer of technology provides for both conciliation and arbitration of disputes arising from a technology agreement. Again under proclamation number 147/1998 which is repealed at this time also dictates dispute settlement of disputes between cooperative societies or within a single Society by conciliation.⁸⁵

Regarding the centers, they were established under different circumstances and laws. If we see AACCSA it is established by a General Notice number 90/97. In the same way, other Regional Chambers of Commerce and Sectorial Associations were established by Proclamation number 341/2003.

If we see the provisions of CPC and Civil Code on arbitration they do not address the question of appointment of arbitrators, grounds for disqualification of arbitrators, replacement of arbitrators and so on. Again the old law were not flexible enough to accommodate new challenges such as remote proceeding or virtual hearing and other factors that hinder the development of arbitration and conciliation as dispute settlement mechanisms in Ethiopia.

3.2.2. The new legal Frame work

For more than six decades, Ethiopia regulated arbitration and conciliation by the provisions of the Civil Code and Civil Procedure Code of Ethiopia and other scattered laws. But currently, Ethiopia has adopted a comprehensive Arbitration and Conciliation Working Procedure law

⁸³ Michealteshome, law and practice of commercial arbitration in Ethiopia.

⁸⁴ Article 3325-3346 govern on the over all of proceeding of arbitration; appointment, removal, disqualification of arbitrators, nature of arbitrators clause. On the other hand Article 350-357 of civil procedure code laydown principle of appeal, setting aside an award .it is useful to see article 315 to 319 of the civil procedure code also apply to arbitration..

⁸⁵ <http://iccwbo.org/publication/arbitration-rules-and-mediation-rules/acceted> may,2022

under Proclamation No 1237/2021(hereafter the Proclamation) effective from its date of publication in the Federal Negarit Gazette, on 2nd of April 2021.The new law is part of the larger efforts in the country to modernize its laws and position of Ethiopia as business-friendly, thereby attracting more foreign investment. Ethiopia is the second most populous country in Africa, with a population of over 112 million, and the fastest-growing economy in the region according to the World Bank.⁸⁶

This Proclamation repealed the arbitration and conciliation provisions of the Civil Code and Civil Procedure Code.⁸⁷ Prior to the enactment of the new law, under the previous legal framework for arbitration in Ethiopia, there was a limitation on the scope of the competence-competence doctrine, which allows arbitrators to rule on their own jurisdiction. While the Civil Code allows arbitrators to rule on their jurisdiction, Article 3330(3) of the Civil Code barred arbitrators from deciding the validity of an arbitral submission (arbitration agreement).Art.3330(3) provided as follows: *The arbitrator may in no case be required to decide whether the arbitral submission is or is not valid.*⁸⁸ Thus, before the issuance of the Proclamation, challenges to the validity of arbitration agreements were decided by the courts. The Proclamation has addressed the issue by providing that arbitral tribunals "have the power to determine the existence or non-existence of a valid arbitration agreement between the contracting parties including as to whether it has jurisdiction to hear the case or not."⁸⁹

The Proclamation applies to commercial related national arbitration, international arbitration whose seat is in Ethiopia and national conciliation proceedings. However, divorce, adoption, guardianship, tutorship, succession, criminal cases, tax cases, judgment on bankruptcy, decision on dissolution of business organizations, all land cases including lease, administrative contracts, trade competition and consumer protection, administrative disputes falling under the powers

⁸⁶ <https://www.orlbank.org/en/country/ethiopia/overview>.

⁸⁷ *ibid*

⁸⁸ The 1960 Civil Code of Ethiopia, Article 3325(1) defines an arbitral submission as a "contract whereby the parties to a dispute entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principles of law."

⁸⁹ The Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, Article 19.

given to relevant administrative organs by law shall not be submitted to arbitration.⁹⁰ It composed both substantive and procedure of Arbitration.

Under the previous laws, recognition and enforcement was governed primarily by the 1965 Civil Procedure Code, but there were questions regarding the finality of arbitral awards in Ethiopia, resulting from the application and interpretation of Article 350(2) of the Civil Procedure Code, which presumes a right of appeal from any arbitral award unless parties agree to waive the right of appeal "with full knowledge of the circumstances".⁹¹ The problem was highlighted in the recent case between the Federal Democratic Republic of Ethiopia and the Republic of Djibouti (represented by Chemin de Fer Djibouto-Ethiopien) and Consta JV,⁹² where the Federal Supreme Court Cassation Bench relied on its precedent in the case of National Mineral Corporation v. Dani Drilling⁹³ to hold, in essence, that the waiver provision of Article 350 does not preclude the Bench from reviewing arbitral awards for fundamental errors of Ethiopian law.

Unlike the Civil Procedure Code, the Proclamation adopts a presumption that arbitral awards are final and not appealable unless the parties agree otherwise in their arbitration agreement.⁹⁴ Nonetheless, Article 49(2) of the Proclamation allows parties to apply for cassation "where there is a fundamental or basic error of law", but parties may waive the right of appeal. Thus, unless the parties are able to agree to waive judicial review for errors of law, the potential for second-guessing final arbitral awards still exists through the appeal process. This is separate from the setting-aside provision of Article 50, which mirrors the UNCITRAL Model Law's

⁹⁰ Article 3 and 7 of Proclamation No 1237/2021 (hereafter the Proclamation) effective from publication in the Federal Negarit Gazette, done on 2nd of April 2021.

⁹¹ The 1965 Civil Procedure Code of Ethiopia, Article 350(2): "The parties may waive their right of appeal but any such waiver shall be of no effect unless made with full knowledge of the circumstances."

⁹² Consta Joint Venture v. Chemin de Fer Djibouto-Ethiopien, Federal Supreme Court Cassation Bench, File number 128086, year 2018. The case resulted from award issued by the Permanent Court Arbitration in case No. 2013-32 (Consta JV v. Chemin de Fer Djibouto-Ethiopien). The arbitration was governed by Ethiopian law while the arbitration proceeding was conducted under the Procedural Rules on Conciliation and Arbitration of Contracts Financed by the European Development Fund ("EDF Rules"). See, <https://www.iarbafrica.com/en/news-list/17-news/660-the-ethiopian-supreme-court-annuls-a-%E2%82%AC-20-million-euro-international-arbitral-award-in-favor-of-an-italian-contractor-under-the-european-development-fund-rules-edf>.

⁹³ National Mineral Corporation Plc. v. Dani Drilling Plc., Federal Supreme Court Cassation Bench, File Number 42239, year 2010.

⁹⁴ The Arbitration and Conciliation Working Procedure Proclamation Number 1237/2021, Article 49 (1).

grounds for setting aside arbitral awards and thus requires that judicial review of arbitral awards⁹⁵ be limited to narrow and well-defined situations.⁹⁶

Regarding Arbitration centers prior to the issuance of the Proclamation, the existing arbitration centers such as the Addis Ababa Chamber of Commerce and Sectorial Association, Ethiopian Arbitration and Conciliation Center, and Ethiopian Mediation and Arbitration Center were established by various laws as non-profit institutions.⁹⁷ Unlike the old regime, the Proclamation allows private organizations to establish arbitration centers.⁹⁸

The Proclamation is partly based on the UNCITRAL Model Law and contains many provisions embracing international arbitration best practices. It also contains some interesting provisions relating to the finality of awards, non-arbitrability, res judicata, confidentiality, and the establishment and regulation of arbitral institutions. Nonetheless, a few potential challenges remain. From among those challenges protection of third parties is one of the problems that is not properly addressed under the new Proclamation.

Therefore I will try to grasp what is embodied in Proclamation number 1237/2021 regarding the substantive and procedure of arbitration in relation to third parties rights at pre, during proceeding and after awards. I will also analyze the data that I gathered through interviews and from the case decided regarding third parties in arbitration proceedings that come across if any.

3.3. Manner of Third parties involvement/participation in the Ethiopian commercial Arbitration and conciliation

Because of the principle of privity of contract, arbitration is mainly considered as consensual and binding up on the parties and not binding on third parties. But even though arbitration agreements whether bilateral or multilateral are binding on the parties only as result of privity of contract, there are many instances in which third parties interest will come into picture. Dispute

⁹⁵United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006, Article 34.

⁹⁶Ortolani, Article 34: Application for Setting Aside as Exclusive Recourse against Arbitral Award, in UNCITRAL Model Law on International Commercial Arbitration: a Commentary, eds. I. Bantekas, et al., 2020, 859.

⁹⁷ See, the General Notice No. 90/1947; Chambers of Commerce and Sectorial Associations Establishment Proclamation No. 341/2003; Civil Code and Legal Notice No. 321/1966; and Civil Societies Organizations Proclamation No. 1113/2019.

⁹⁸ Article 18(1) of Proclamation No 1237/2021 (hereafter the Proclamation) effective from publication in the Federal Negarit Gazette, done on 2nd of April 2021.

settlement should not violate or compromise rights of third parties that are not parties to arbitration agreements.

There are different scenarios at which third parties would require to participate in. We may put the scenarios into the following three categories in which third parties arbitration participation would arise in arbitration. These are:

1. At the time of intervention the following two scenarios will arise.

- First, when third parties request to take part in the proceeding and the parties agree. In this case since all parties are considered as agreed, and since it will be considered as the submission is amended, it will be easy to decide and proceed and in this case there is no complexity of proceeding since the two parties in arbitration agree on third parties intervention.⁹⁹
- Second, when third party request to take part in the proceeding and one (some) or all of the parties in the arbitration agreement objected; these problems give rise to two opposite arguments: The discussion for this is provided under section 3.3.

2. During joinder the cases will arise in three scenarios;

- First, when one/some or all of the parties request the joinder of third parties. Here, if all the parties and the third parties themselves consented, this will be easy to decide since the arbitration agreement will be considered as amended accordingly.
- Second, when some of the parties requested joinder and some of them objected, this will be a problem even if the third parties requested to be joined consented.
- Third, when one or some of the parties request joinder of third parties in the proceeding and some or one of the parties and the third parties themselves objected, this will be difficult.¹⁰⁰

3. During opposition two scenarios will arise;

- First, if third parties oppose the award and the parties object to the jurisdiction of the tribunal, this need solution.

⁹⁹Girmachew Nigussie (LLM thesis Commercial Arbitration and Accommodation of Third Parties in Ethiopia unpublished, 2018 AAU)

¹⁰⁰ ibid

- Second, if third parties oppose the award and all the parties consented to be adjudicated by the tribunal, this will not be problem as the tribunal obtained consent.¹⁰¹

Because of the growing of multilateral parties and contracts, multilateral corporations, transnational and affiliated companies, networked and connected related transactions the above scenarios are common and become to be increasing that is existed in the arbitration proceeding under the Ethiopian Arbitration legal system.

3.4. Gap in procedural and substantive laws

3.4.1. Before the arbitral awards

My informants hold divided views on the question of whether there are gaps in the Protection of third Parties Rights under the Ethiopian Arbitration Law before arbitral awards are rendered (Proclamation number 1237/2021)?

From my informants some (Reta Tolosa, Rebuma Tefera and Gizaw G/Mikeal)¹⁰² argue that Proclamation number 1237/2021 has no gap in this regard; it is a clear and complete law; it has not been criticized so far by researchers comparing it with the CPC and Civil Code which had lots of problems regarding protection of third parties rights . They said that the problem is not in the law; it is in the enforcement of it. An informant in support of this position stated "*we have never seen the Protection of third parties rights under the Ethiopian Arbitration Law being attacked under the new Proclamation*".¹⁰³ The above mentioned informants, said that one of the rationale for the enactment of the new Proclamation number 1237/2021 is to close the gap that existed in the CPC and Civil Code regarding third parties right in Arbitration proceeding. They said that the new Proclamation (Proclamation number 1237/2021) is enacted based on the UNCITRAL Model Law and contains many provisions embracing international arbitration best practices, and one of them recognizes third party rights that is not party to arbitration agreements. The provisions are detail; they are written in a civilized manner.¹⁰⁴

¹⁰¹ ibid

¹⁰² Interview with Reta Tolosa. LLB, Judge of FSC of Ethiopia, July, 10, 2022. With Rebuma Tefera. LLB, MA, Judge of FHC of Ethiopia July, 10, 2022. With Gizewu G/Mikeal, Judge of FFIC. July, 08, 2022

¹⁰³ ibid

¹⁰⁴ ibid

To the above mentioned interviewers like the regular civil litigation proceedings rules relating to protection of third parties, the Civil Procedure Code ; from Article 35- 43, including provides which third parties interest, as well as, parties interest on third parties will be accommodated in regular civil proceeding; through mandatory¹⁰⁵ and optional joinders¹⁰⁶, intervention mechanisms¹⁰⁷, public prosecutor intervention¹⁰⁸, interpleader, relatively, they said that from pre-trial stage up to the execution of decision, third parties interest are somehow protected, parties interest over third parties somehow also can be protected, the new proclamation (proclamation number 1237/2021) of Ethiopian Arbitration law Clearly protect the third parties right before Arbitral awards without any reservation.

My interviewees said that, like Article 41 of the CPC which recognizes rights of third parties in the Court litigation before Court decision, it is clearly recognized by the proclamation number 1237/2021 under Article 40(1) while the Arbitration is in proceeding which is stated as: *Any third party whose interest could be affected by the arbitral award may intervene in the arbitral proceedings before the arbitral award is rendered upon submission of their application to the tribunal,*

My informants, in support of this position, said that before arbitral award is rendered relating protection of third parties (through joinder and intervention) neither substantive nor procedural part of arbitration rules of Ethiopia expressly stipulate mechanisms under the Civil Code and Civil Procedure Code compared to the new proclamation.¹⁰⁹ But under Article 40(1) of Proclamation number 1237/2021 it is clearly protected. Even they said that the elements of Article 41 of CPC to be intervening in the court litigation are more complex than the intervention in the arbitration proceeding. Their argument is that under Article 41 of the CPC for a third party to intervene in a court suit between other parties three elements must be fulfilled. These are:

- ❖ The person that wants to intervene in other parties' litigation must have ground that justifies such person in intervention.

¹⁰⁵ Article 40 of Ethiopian CPC

¹⁰⁶ Article 39 of CPC

¹⁰⁷ Article 41 of CPC

¹⁰⁸ Article 42 of CPC

¹⁰⁹ Supra note 101

- ❖ The person requiring intervention must show that if he could not intervene his right will be affected and does not have other means to respect his right that is violated as result of other parties' court litigation. This means where the intervener seeks independent relief on his own claim and when he is not interested in the subject matter of the suit between the original plaintiff and the defendant, he is not entitled to intervene under Art 41 of the civil procedure Code of Ethiopia.¹¹⁰ One test that has been proposed to determine whether intervention is proper is either the intervener will gain or lose by the direct legal operation of the judgment to be rendered in the suit between the other parties.¹¹¹

Compared to Article 41 of the CPC, they said, Art. 40(1) of Proclamation No.1237/2021 more protects the rights of third parties without any additional requirements. To them Art.41 of CPC is more stringent than Art. 40(1) of Proclamation number 1237/2021.

Again they strengthen their argument by saying that Article 37 of the FDRE Constitution guaranteed everyone's' right to have access to justice. Any party, apart from formal judicial procedure can enjoy his right to justice through extra-judicial means such as Arbitration and Conciliation. Since the right to have access to justice is a constitutional right, no one should deny the constitutional right of third parties intervention in arbitration proceeding. Proponents also argue and justify that since awards are equal to courts decrees and judgments, both parties and third parties interest will be affected, unless third parties are allowed to participate. Plus, to save time and cost; to decrease duplication of proceedings and then possibilities of irreconcilable awards being rendered, to minimize late oppositions to set aside the award, the law should be construed in favor of accommodation of third parties in arbitration even over parties' disagreement and objection. Therefore it must be allowed for third parties without any reservation.

Again for my informants in support of this position I asked them if Article 40(1) of proclamation number 1237/2021 protected right of third parties to intervene in the arbitration proceeding needs the consent of the parties in arbitration proceeding? Can the provision of Art.40 (1) be effected without Article 40(3)? If not in which circumstance Article 40(3) of Proclamation number 1237/2021 is applicable? In other words if one/more/all of the existing parties objected or if the third party that is requested to join failed to give consent, how would

¹¹⁰ See Article 41 of the CPC

¹¹¹ *ibid*

Arbitration tribunals proceed with arbitration? Can it render compulsory joining and intervention, while its jurisdiction is as discussed above limited, how it can do so? Can third party be ordered to join without his consent in the tribunal that instituted up on/by other parties 'agreement?

For this question my informants in support of the above-stated position, said that Art. 40(3) of the Proclamation do not apply to those third parties that are parties to the Arbitration proceeding by their own initiation as of Article 40(1) of the proclamation. They said that Art. 40(3) of the Proclamation does apply only to those parties to the proceeding as result of Article 40(2) not to those third parties as result of sub (1) of Article 40. In other words they said that Article 40(3) applies to those third parties to be a party of an arbitration proceeding by the request of the parties to proceeding.¹¹² Again, they said, that sub three is related to Joinder of third party like Art. 43 of the CPC. Thus, they strengthened their argument that according to these provisions, where a defendant claims to be entitled to contribution or indemnity from any person even a party to the arbitration proceeding, defendants can request joinder of third parties or even other concerned party to the proceeding. Here, the provisions relating to third party defendant provide an effective device that all claims arising from the same basic transaction can be determined in a single proceeding. In such case, they said that under the CPC a third party becomes a Party only by the request of the defendant no need of the plaintiff and the third parties consents but under the new Arbitration Proclamation to be a party of arbitration proceeding by request of one party of proceeding it need the unanimous agreement of all parties which is different from Article 43 of the CPC.¹¹³

Again, I asked them to what extent would the ordinary litigation provisions of the Civil Procedure Code relating to joinder of third parties before a Court of law be applied to Arbitration proceeding under the new Arbitration and conciliation proclamation number 1237/2013?

According to the Civil Procedure Code of Ethiopia, litigation proceedings are based on the existence of vested interest of the claimant over the subject matter of the suit.¹¹⁴ Under our Civil Procedure Code in addition to the two parties there are occasions where proceedings may be

¹¹²Supra note 101

¹¹³The cumulative reading of Article 40(2) and sub (3) of Proclamation number 1237/20121 arbitration and conciliation of Ethiopian Arbitration law.

¹¹⁴ See Article 33(2) of CPC.

multiparty being created. From Article 35-43 of the CPC it is provided as to how and in what way multiple parties become parties to litigation proceeding by having different status.¹¹⁵ Article 35 of CPC stipulate joinder of plaintiffs whereas Article 36 of CPC provides for joinder of defendants. Article 37-40 of the CPC also provides different mechanism in which multiple parties may exist in single court litigation. In light of this does the new Arbitration and Conciliation Proclamation allow such multiple parties or not was my question to my informant?

In response to this question almost all of my informants said that unlike the CPC, under the new Proclamation, before arbitral awards rendered, there is no clear provision that allows the joinder of third parties that have the status of plaintiff or defendants as well as those listed under Art. 39 or 40 of the CPC. They said that the new Proclamation failed to address expressly joinder or intervention of indispensable third party in ongoing arbitral proceeding emanating from a bilateral arbitration arrangement. Because, to them, as per of Art 40 (1) it address only the right of the third party who is neutral from both parties proceeding but challenges the arbitration proceeding before arbitral awards rendered by his own initiation for his own benefit ¹¹⁶

On the other hand, one of my informants Ato Rebuma Tefera FHC judge argued in different way by saying that unlike third parties intervention which is allowed under Article 40(1) of the Proclamation and existence of multiple parties in a single litigation there is no instance in which joinder of third parties as plaintiff, defendant or indispensable parties would exist in case of arbitration proceedings. ¹¹⁷ To him the joinder of plaintiff or joinder of defendant presupposes the consent and some elements that are listed under Article 35 and 36 of CPC for joinder of plaintiffs or joinder of defendants respectively. So since arbitration proceeding is the result of arbitration agreement there is no circumstance in which the joinder of multiple parties needed in arbitration proceedings unlike the Court litigation from Art. 35-40 of the CPC.

Regarding oppositions; In fact most of my informants support the protection in strict and exceptional circumstances but they argued that the Ethiopian arbitration law, like the previous laws (CPC and CC), doesn't expressly allow or regulate third parties participation in arbitration proceeding before arbitral awards are rendered in a clear manner, therefore, it is difficult to say

¹¹⁵ See from Article 35-43 of the Ethiopian CPC

¹¹⁶ Supra note 101

¹¹⁷ Interview with Judge Rebuma Tefera judge of FHC on July 10, 2022 at FHC

the new arbitration law solves the problem of third parties right that was a major problem under the CPC and which was open for different interpretations.¹¹⁸

Their argument is based on the cumulative reading of Article 40(1) and (3) of Proclamation number 1237/2021. They said, that by reading of Article 40(1) of the proclamation it seems that the Proclamation protects the rights of third parties to intervene at any time before arbitral awards are rendered without any other requirements than applying sub one itself. However, sub (1) does not apply solely; rather it does apply in cumulative with the reading of sub-Art. (3). To them sub-Art. 3 is not only the consequence of sub-Art.2, rather it is the consequence of both sub 1 and sub 2. They invoke the Amharic version of sub(3) which clearly stipulate for third parties to intervene in arbitration proceeding it needs the unanimous consent of both parties and the third parties themselves. To them, even though the English version of sub-Art. 3 of Article 40 is not clear, the Amharic version clearly shows that it applies to both sub-Art. 1 and 2. The Amharic version of sub-Art. 3 of Article 40 provides በዚህ አንቀጽ መሠረት ሦስተኛው ገጥሞች ወደ ሂደቱ መቀላቀል የሚችሉት ሦስተኛው ገጥሞች ጩምር ተዋዋይ ወገኖች ምረቃ ደኝታ ቸው ንሲ ገልጹ ገብቻ ነው በማለት ደንግጓል።¹¹⁹

My informants strengthened their argument on sub-Art.3 of Art.40 of the proclamation by saying that in order to allow third party intervention as in Article 40(1) of the Proclamation, three elements must be fulfilled; these are: the consent of third parties that want to intervene, the unanimous consent of plaintiff and defendant is needed. To them this is mandatory provision because it said በዚህ አንቀጽ መሠረት which is translated to English **under/in accordance with this Article**. This shows sub-Art.3 does apply to both sub-Art.1 and 2. Again they said that even though the English version of Article 40(3) is not clear whether it only applies to sub-Art. 2 or for both sub-Art. 1 and 2 of article 40 of the Proclamation, they said that the Amharic version is clear and does not need further interpretation. And if sub-Art. 3 applies only to sub 2 it wouldn't have provided በዚህ አንቀጽ መሠረት, rather it has to said በንዑስ አንቀጽ ሁለት መሰረት. The law makers deliberators' said በዚህ አንቀጽ መሠረት to show that sub-Art.3 apply to both of sub article

¹¹⁸Interviews with Dr Tokuma Daba, attorney at law and has exposure of arbitration, July 25,2022; Ato Meseret Abbaye, Attorney and has Arbitration Exposure, July 15,2022; Ato Sultan Aba Tamam Judge of FSC of Ethiopia, July 15/2022. With Ato Solomon Imiru, LLB, LLM AAU lecturer, Attorney, And Have arbitration Exposure, July 07,2022. With Ato Tesfaye Degefa, LLB, LLM, Attorney, Former Oromia Supreme court Judge currently he is Attorney and Have arbitration Exposure; July 07,2022.

¹¹⁹ ibid

one and two. They said that the Amharic version prevails over the English one because when the Amharic and English Version of the same proclamation contradict each other the Amharic version prevails over English version.¹²⁰

Again, they said that in addition to this article there are a lot of provisions that give priority right to parties to arbitration agreements by excluding third parties that become parties to the arbitration proceeding in line with Article 40(1 and 3). They, for instance mentioned, Art.14, 15, 16, 20¹²¹ and following as giving a priority right to the contracting parties. If third party become parties to proceeding according to Article 40 of the Proclamation and not satisfied with the arbitral tribunal and believe that the arbitral tribunal is against, to the contracting parties third party do not have right of Objection to Arbitrators unlike the contracting parties. The objection right is clearly given only to the contracting parties by excluding third parties that become parties in accordance with article 40(1).¹²²

The opponent concludes that in line with this Article intervention of third parties before the rendition of arbitral awards is practical impossible. Their arguments are since interventions of third parties are not in favor of one party rather it is against them, the parties do not give their consents. Therefore, they strengthen their argument by saying that the new Ethiopian arbitration and conciliation Proclamation, does not clearly protect right of third parties without any other requirements before arbitral award rendered. And it is also difficult to apply strict provisions by analogy; rather it needs express allowance without any reservation. Because, when parties also agree otherwise of joinder and intervention, compelling them to accept intervention or joinder may be in conflict with the substantive rule of the civil code and substantive nature of arbitration as well as arbitration agreement. Therefore, they conclude that the new proclamation does not protect the right of third parties without reservation rather it protects on the free will of the two parties to arbitration agreements.

Other informant of minor namely, Filipos Aynalem and Yohannes W/ Gebreal argue in the middle way.¹²³ They said that in principle Arbitration is based on agreement but depending on

¹²⁰ See Article 2(4) of proclamation number 3/1995.

¹²¹ See Art.14,15, 16, 19 and 20 of proclamation number 1237/2021 of Arbitration and conciliations of Ethiopia.

¹²² *ibid*

¹²³ Interview with Filipos Aynalem, LLB, LLM, former federal high court judge, instructor, arbitrator, attorney and member of Ethiopian lawyers association on July 09, 2022. With Yohannes W/ Gebreal, LLB, LLM, director arbitration institute at Addis Ababa chamber of commerce and sectorial associations on July,09,2022.

different circumstances it can accommodate third parties. They argue that within a bilateral arbitration arrangement if third parties request to intervene in arbitration this submission can be considered as the third party gives consent and in this case the tribunal can allow the intervention even over the objection of parties. Because, parties once has already given their consent and submit their case to the tribunal so it should not be allowed for them to object third parties as far as they have interest in the case. On the other hand, they argue that if the third parties object to be joined it is difficult to compel them, because, he did not give their consent and this will affect their right to bring cases in regular courts. Therefore article 40(1) must be interpreted in line with this.¹²⁴

3.4.2. After the rendition of arbitral awards

Under our CPC, opposition by third parties after decision is possible in accordance with article 358 if the elements listed are fulfilled. In light of this provision, I asked my informants does the new arbitration and conciliations number 1237/2021 allow opposition of third parties after Arbitral Awards have been conducted in the same spirit as article 358 of the CPC which allows opposition of Court decisions?

Regarding this question when we see Article 48(1, 2 and 5) of Proclamation No.1237/2021 it recognizes objections raised against arbitral awards in situation stated below:

***Sub art.1.** A contracting party or a third party who should have been party to the arbitration proceeding and whose right has been affected by the arbitral award may, within 60 days from the date he became aware of such award, submit his objection against the arbitral award or the execution of the same to the court which has jurisdiction over the case had it not been submitted to arbitration.*

***Sub art.2.** Where the third party who submits his objection had previously submitted the same to the tribunal that heard the case and had intervened in the arbitration proceedings; he may not submit his objection in accordance with Sub-Article (1) of this Article.*

***Sub art.5.** The provisions of the Civil Procedure Code regarding objection to judgment and execution of order shall be applicable in so far as they are consistent with this Proclamation.*

¹²⁴ *ibid*

From this Article one can understand that third parties that may oppose arbitral award are non-contracting parties or third parties whose right would be affected by rendition of arbitral awards. Such third parties must apply within 60 days from the date he became aware of such award, not previously intervene before arbitral awards and apply to the court which has jurisdiction over the case had it not been submitted to arbitration not to the Arbitral Tribunal. If one of the above element is not fulfilled opposition is not allowed as of this article.

Depending on this, my informants, again held divided views on the question of whether Arbitration and Conciliations Proclamation number 1237/2021 allowed opposition of third party that come after Arbitral Awards in the same way as opposition of court decision under Article 358 of CPC?

Those of my informant that support protection of third parties fully recognized before arbitral awards in the above way said that the new Arbitration and Conciliation Proclamation No. 1237/2021 under Article 48 also fully recognized in the same ways Article 358 of CPC for those oppositions that come after arbitral award rendered. Among my informants, Judge Rebuma Tefera, and Niway Negeso (both of them Judge of FHC) ¹²⁵ argued that even though the Arbitration law gives power to the court which has jurisdiction over the case had it not been submitted to arbitration, not to the arbitral tribunal, it recognize right of third parties that come after arbitral awards. Again they said that other than putting time limitation to submit their application within sixty days from date of being aware of the awards, Article 48 of the Proclamation equally recognized right of third parties that come after arbitral awards in the same way to those third parties that come after court decision in accordance with Article 358 of CPC. ¹²⁶ They concluded comparing the previous law (CPC and Civil Code of Ethiopia) which is repealed by the new Arbitration and Conciliation Proclamation number 1237/2021 and said that the latter one fully recognized right of third parties that comes after the rendition of arbitral awards.

On the other hand, some of my informants, those that argue intervention of third parties before the rendition of arbitral awards need the unanimous agreement of both parties and the third party in line with article 40(1 and sub 3), argued that Article 48(1) of Proclamation number 1237/2021

¹²⁵ Interview with Rebuma Tefera and Niway Negeso, on July, 10 of 2022 at FHC

¹²⁶ See Article 48(1) of proclamation number 1237/2021 with Article 358 of CPC.

does not fully recognize rights of third parties that come after the rendition of arbitral awards being the same to Article 358 of CPC. Their arguments are dependent up on the cumulative reading of Article 40(1 and 3) with Article 48 (1, 2 and 5) of Proclamation number 1237/2021.¹²⁷

They said that in accordance with sub Article 1 and 3 of Article 40 of Proclamation number 1237/2021 third parties can intervene before the rendition of arbitral awards if and only if the two parties of the arbitral agreement and the third parties have fully consented. Majority consent is not accepted rather it needs the unanimous consent of all. On the other hand, pursuant to article 48(1) in order to oppose arbitral awards he/she must be the one that not be intervene previously like in Article 40 of the Proclamation. Being dependent on this they argued that Article 48 of the Proclamation does not fully protect the rights of third parties that come after the rendition of arbitral awards similar to the provision of Article 358 of CPC. Their justifications are the following:

- 1) First, they said that the application of Article 48 of the proclamation is very narrow compared to Article 358 of CPC. They strengthened this justification by saying that Article 40(1 and 3) of the Proclamation allows to intervene before arbitral awards, upon the consent of all parties but this is practically impossible. On the other hand, under article 48 to object arbitral award a third party must not have intervened previously as of Article 40 of the proclamation. Therefore Article 48 does not protect rights of those third parties that apply to intervene similar to Art.40 but their application may be rejected because of inexistence of the consent of parties. This is it clearly prohibited under Art.48 (2).¹²⁸
- 2) The second, justification that they forwarded relates to time limitation. They said that in line with Art.48 (1) of the Proclamation objection must be submitted within 60 days from the date the opposer became aware of such award. To them this is discrimination in comparison to Art.358 of CPC which does not put time limitation. As per of Art.358 of CPC, the only requirement is objection before execution of court decision. This shows that those third parties, whose application is rejected under Art.40 of the Proclamation because of the unwillingness of the parties, cannot have their rights after arbitral awards have been rendered because of their awareness of the proceeding

¹²⁷ Supra note 117

¹²⁸ *ibid*

and awards before Arbitral awards but not intervene because of unwillingness of the parties. Therefore putting time limitation is discrimination of third parties that come after the arbitral awards have been rendered.¹²⁹

- 3) Their third, justification dwells upon unclarity of Article 48(1) of the Proclamation itself. They said Article 48(1) of the proclamation does not make it clear whether objection is before execution of an arbitral award or at any time. Again, the way of /form of application is not clear. Such unclarity gives a large discretion to the court to interpret the provision in different ways and may result in bias the right of third parties that comes after the Arbitral Awards.
- 4) Fourth, justification that they forwarded relates to unclarity of the power given to the court. Points of their argument are based upon Article 358 of CPC. According to Article 358 opposition is to the court that previously gave decision. To them, the opposition must be submitted to the arbitrators that gave the decision. Giving the power to the court is not correct.

On this, I asked them what is the problem of giving the power to the court?

They said that the form of application to oppose is unclear. It is not provided how and in what manner the application is to be submitted. But if the power is given to the arbitrators' the manner of preparing oppositions would be the same as the provision of Article 358 and 359 of the CPC.¹³⁰

3.5. Gap on Arbitral Institutions

Regarding the arbitral Institutions most of my informants revealed said that the following are some of the problems of arbitral Institutions as a result of which the rights of third parties that want to intervene in the arbitration proceeding are affected. The problem they forwarded may be summarized in the following manner:¹³¹

3.5.1. Weak institutional coordination: There is weak vertical and horizontal coordination among the various Centers of the Arbitration because of the way of their establishment such as government Arbitration center and private Arbitration center.

¹²⁹ *ibid*

¹³⁰ See Article 358 and 359 of the CPC of Ethiopia.

¹³¹ *Supra* note 117

The absence of well coordination among various institutions of arbitration center affects the right of third parties that wanted to intervene in arbitration proceedings.

I raised to them the question what are the manifestations of this poor coordination?

They said that unlike regular court there is no check and balance among them and as a result the decisions they give are at times inconsistent with each other regarding third parties. Again they said that the place where arbitrators undertake their proceedings of arbitration is secret and it is only the parties and their lawyers that know the place of proceeding. As result, if third parties wanted to intervene in the proceedings it would be difficult for them to get the place of proceedings.¹³²

3.5.2. Non-compliance with Arbitration law: The prevailing trend is towards respecting and complying with the interest of the two parties in arbitration agreements than third parties. But there are also instances where the arbitral tribunal refuses to adhere to third parties question than the two parties by saying that they get judicial power only by the consent of the two parties not by third parties.

3.5.3. Accountability: here is lack of legal accountability in relation to officials or experts of the arbitrators who are involved in taking actions against third parties without complying with legal rules and procedures. On this they said that neither the new proclamation nor the previous law provided the accountability. They said that regarding the regular court there is clear accountability that is provided in the law when they violate the law but in respect to the arbitrators there are no laws that make accountable the institution if they clearly violate Arbitration proceedings in respect of third parties.

3.5.4. Gaps in capacity, working standards and linkages: There are skill gaps and lack of commitment on the part of the professional of Arbitrator that is designated by contracting parties. possibility of Arbitrator appointed by the parties .while they are appointed there is no standard that the parties follow, rather the parties appoint the person they wanted without any other requirement. in such case the appointed Arbitrator acts himself as he/she is only the judge of the two parties and ignoring to treat the third parties that want to intervene in the Arbitration proceeding before arbitral awards. Again they said that The Government Arbitration

¹³² ibid

center does not have its own justice sector professionals ‘training center for Arbitrators that is appointed by the two. There are no established protocols in the appointment of Arbitrators by the parties to arbitration.

There are no comprehensive predetermined working standards for the Arbitrators which guide officials and experts therein to decide on the issue of third parties interest rather their primary focus is only on the case of parties to arbitration agreements.¹³³

3.6. Problem of parties to Arbitration agreement proceeding

Arguments raised by parties to Arbitration agreement proceeding are from the nature of the arbitration agreements itself. Because of the principle of privity of contract, this is mainly considered as consensual and binding on the parties, the base of arbitration and the arbitration tribunal is mainly the arbitration agreement or submission and party autonomy. My informant of parties to arbitration agreement proceeding justification summarized in the following ways:

- ❖ First, from the nature of contract. They said that according to Article 1731(1) of the Civil Code which reads "*the provision of contract lawfully formed shall be binding on the parties as though they were law.*" Arbitration arises from an arbitration agreement and since arbitration agreement is one of the lawful agreements that bind and apply on the parties to the agreements. Therefore they said that the parties raise the arguments without our consent why we allow third parties to arbitration proceedings. Allowing third parties to the proceeding without consent of the parties violates the nature of arbitration agreements.¹³⁴
- ❖ Second, justification is almost similar to the first. Their argument is based upon Articles 2(1), 2(3) and 2(6) of Proclamation number 1237/2021. They raise the reason that since arbitration is the result of two parties’ agreement and the arbitrator is designated by contracting parties, allowing intervention of third parties to arbitration proceeding without the unanimous consent of parties affects the main objective and goal of arbitration.
- ❖ Third, reason they raise is from the nature of human being. They said human beings are selfish in nature. Everyone wants to get an advantage at all times by adversely affecting others. Therefore, in practice no one would willfully allow others to affect his/her right

¹³³ Supra note 101

¹³⁴ Interview with Ato Girma Chali, party of arbitration agreement, on July, 11, 2022

.Therefore, since allowing other third parties to the arbitration proceeding will directly or indirectly affect the right of parties to arbitration they arise different reason to avoid the intervention of third parties to arbitration proceedings.¹³⁵

3.7. Impacts of non-protection of third parties rights in Arbitration law of Ethiopia

Almost all of my informants said that non protection of third parties rights in arbitration law can create the following consequences. Those are:

- ❖ It will decrease the efficiency of arbitration by creating new door for overlapping proceedings and narrowing the material scope of arbitration. This means it would increase the risk of conflicting determinations in fragmented proceedings and would narrow arbitration's domain.
- ❖ It would also be disadvantageous to the parties themselves because of the reason that it does not protect their right from different angles.
- ❖ It will create overlapping's and duplication of Proceedings and irreconcilable awards; because, multiparty arbitration proceedings will prevent the commencement of several fragmented bilateral proceedings with overlapping subject matters.
- ❖ Arbitration has the same purpose as litigation: to effectively resolve a specific dispute. Consequently, this functional equilibrium between substance and procedure in principle should also apply to arbitration. But if the rights of third parties are not respected it would violate this principle.
- ❖ It also does not recognize and promotes equity and due process consideration. The result is that if third parties are allowed to participate in the arbitration proceeding the constitutional right of due process of the third parties would be recognized and finally equity will be prevailing.
- ❖ If the right of non-signatories is not protected it would maximize unnecessary oppositions. And
- ❖ It can also decrease the probability of enforcement because, if third parties remain adversely affected and if parties are not treated equally, this may be a ground not to give recognition and enforcement of the arbitral award (New York convention) especially in international arbitrators.

¹³⁵ *ibid*

CHAPTER FOUR: CONCLUSION AND RECOMMENDATION

4.1. Conclusion

The core issue addressed in this paper is the protection of third party in the arbitration system of Ethiopia (Proclamation number 1237/2021). The paper discussed the issue in four chapters.

The first chapter provides the proposal. In chapter two, arbitration in general has been discussed. Specifically, this chapter has dealt with the notion of arbitration and its definition in general; plus, it also analyzed arbitration and third parties rights in general. This chapter deals with third parties in commercial arbitration, advantage of recognition of third parties in arbitration as well

as experience of international convention and other jurisdiction regarding the protection of third parties

Chapter three is the core point of this paper. It deals with protection of third parties under the new Ethiopian Arbitration law. Specifically, this chapter analyzed: the issue of third parties protection under the new Ethiopian arbitration; whether the accommodation of third parties is possible in the Ethiopian arbitration system (proclamation number 1237/2021) before arbitral award and after arbitral awards are rendered. Again it deals with whether and to what extent the ordinary litigation provisions of the Civil Procedure Code relating to third parties will be applicable to arbitration in case of third parties intervention both before and after the renditions of arbitral awards. This chapter has also tried to see and analyze problems relating to arbitration institution and the parties to arbitration agreements in relation to protection of third parties in Arbitration proceedings.

Generally, from this paper, it can be concluded that, , in principle, even if arbitration is binding to signatories of arbitration agreement (parties), sometimes it may directly or indirectly affect the interest of third party in different perspective at different stages. Moreover, for effectiveness and efficiency purpose, the participation of third party in arbitration proceedings is becoming necessary or relevant and inevitable. Third parties may also be in need of protection from arbitral awards in which they didn't participate.

Currently, as commercial transactions become more and more complex, certain procedural problems are becoming more common including the right of third parties.

Regarding to what extent arbitration proceedings can protect third parties rights, the thesis tried to show the standard of different international conventions and that of other jurisdiction .The experience of different jurisdiction tell that participation of third parties in arbitration should not be always possible. Rather, it should be justifiable and for effectiveness and efficiency purpose there should be good grounds or conditions (connecting factors) that need to be fulfilled.

Coming to Ethiopia, currently settling commercial or business related disputes through arbitration is becoming common like the rest of the world. In arbitration institutions established to resolve commercial disputes. Many cases are also settled through arbitration institution and ad-hock tribunals are becoming common. Especially, commercial arbitration is becoming common

at national and intentional level with multiparty contracts (complex) transactions and this is also true in Ethiopia.

Coming to the issues of third parties: in Ethiopia, mostly arbitration is assumed as it is based on party autonomy principle, which is consensual; it is also considered as contract that is based on agreement of the parties only and under the previous law of CPC and CC, there is no clear provision that provided for the protection of third parties. As result, different interpretations have been given by different scholars. Some argued that since arbitration proceeding are the results of arbitration agreements and there is no law that allowed the intervention of third party,so we cannot allowed third parties for which the law does not allow that. On the other hand, some argued that Art 317(1) can be invoked and said that why not the normal civil procedure provisions relating to joinder, intervention and opposition of third parties are applied in arbitration proceeding.

To avoid this unclarity and other problem of arbitration that existed under the two previous laws, the new Proclamation number 1237/2021 was enacted. The Proclamation is partly based on the UNCITRAL Model Law and contains many provisions embracing international arbitration best practices. It also contains some interesting provisions relating to the finality of awards, non-arbitrability, res judicata, confidentiality, and the establishment and regulation of arbitral institutions. Nonetheless, a few potential challenges remain. From those challenges protection of third party is one of the problems that are not properly answered under the new Proclamation though it is expected to be clearly answered.

Based on the above conclusions the paper recommends the following measures to be taken by law makers, arbitral institutions and concerned organs as well as contracting parties.

4.2.Recommendations

What was expected from the enactment of the new Proclamation No.1237/2021 of Arbitration and Conciliation working procedure of Ethiopia was to avoid the pre-existing problem of Arbitration rule that existed in the Civil Code and CPC of Ethiopia regarding the right of third party, but the new Proclamation was enacted without clearly solving the problem that existed.

Therefore, the writer recommends the following;

1. The whole rules and procedures relating to arbitration that were noted as shortfalls under the previous laws are not fully addressed under the new Proclamation number 1237/2021 in respect to third parties right in arbitration proceedings: So, the law needs amendment, and the rules and procedures concerning third parties, multiparty and multi contractual based arbitrations need to be expressly stipulated. Therefore, the law maker should enact express and detailed rules and procedures in relation to third parties participation in commercial arbitration to make compatible with the international instruments that talk about of arbitration from all angles having equal status with the parties to arbitration agreements.

2. Arbitration rules of the new Proclamation deals with third party rights are creating ambiguity, and not clear and expressed, they should be amended and so that express rules and procedures that can accommodate third parties in commercial arbitration by avoiding the ambiguity that exists in Article 40(3) of Arbitration and Conciliation Proclamation of Ethiopia. Here, the law has to provide expressly articulated conditions and circumstances to allow joinder and intervention of third parties in arbitration as well as mechanism of challenging the award by interested third parties by avoiding the consent of the two parties, serving the nature and purposes of arbitration.

3. The Ethiopian law of arbitration, Proclamation number 1237/2021 also need to be amended so that it has rules that promote multiparty and multi contracts based arbitration arrangement to achieve the goals, purpose and objectives of modern arbitration law, .

4. Arbitration Institutions need to have effective and efficient rules, procedures and practices in relation to accommodation of third parties. So, they need to enact or amend their arbitration rules and procedures. Practices also have to be developed in relation to accommodation of third parties in commercial arbitrations.

5) In Proclamation No.1237/2021, unless the contracting parties agree otherwise, the tribunal may issue an order of interim measure upon the request made by one of the contracting parties. Also where an order for interim measure cannot be enforced, one of the contracting parties may apply to a court for the enforcement of such order. But such right is not given to third parties that intervene in arbitral proceeding. Therefore it must be amended and enacted in a way that accommodates third parties to have such rights.

6) Unlike Regular courts, arbitral tribunal couldn't have effective and efficient rules and procedures that make them accountable when they violate the clear arbitration proceeding. Therefore the government must enact law that make the arbitral tribunal make accountable to the Court when they clearly violate the law.

7) Regarding ad hoc Arbitrators who are appointed by the parties to arbitration agreements, there must be law that make them liable and accountable to the Arbitration institution that established by the government and way of their appointments. The purpose is the place where and at what time they see the parties' arbitration proceeding is not known to the third party other than the two parties. Therefore if there is a law that makes the Ad hoc liable to the Arbitration Institution that is established by the government, the Arbitration institution of government can supervise and follow the day to day activity of ad hoc Arbitrators.

8) The Federal Supreme Court cassation bench whose decision has binding effect shall come up with clear decisions that does not have reservation and have equal status as the provision of Article 41 and 358 of CPC in relation to participation of third parties in arbitration by avoiding the unclarity of article 40 of the arbitration law. Other courts and Arbitration tribunals should promote accommodation of third parties and interpret the laws in favor of accommodation of third parties in commercial arbitration.

9) The Proclamation states that Arbitration Centers may be established by the government or private persons and the details shall be determined by Regulation. But till now the regulation has not been enacted by Ministry of Justice. Therefore the writer recommends that Ministry of Justice must enact the regulation to follow the day to day activities of Arbitration centers.

10) There must be given continuous training to ad hoc arbitrators and those whose names appear in the roster of arbitral institutions.

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7. With Misganu Muleta. LLB.LLM, Former Oromia Supreme court Judge currently he is Attorney. July,15,2022
8. With Meseret Abbaye. LLB.LLM, Former Oromia Supreme court Judge currently he is Attorney, July,15,2022.
9. With Filipos Aynalem, LLB, LLM, former federal high court judge, instructor, arbitrator, attorney and president of Ethiopian lawyers association. July, 09, 2022.
10. With Yohannes W/ Gebreal, LLB, LLM, director arbitration institute at Addis Ababa chamber of commerce and sectorial associations. July, 09, 2022.

11. With Ato Solomon Imiru, LLB, LLM AAU lecturer, Attorney, And Have arbitration Exposure, July, 07, 2022.
12. With Ato Tesfaye Degefa, LLB, LLM, Attorney, Former Oromia Supreme court Judge currently he is Attorney and Have arbitration Exposure, July, 07, 2022.
13. With Girma Chali, private party of arbitration proceeding that I get him at Arbitral Tribunal Judge of FHC of Ethiopia. July, 15, 2022.

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