“Interim measures in arbitration proceedings under Ethiopian law: the law and practice”

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“Interim measures in arbitration proceedings under Ethiopian law: the law and practice”

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Declaration

I hereby certify that the thesis titled "Interim measures in arbitration proceedings under Ethiopian law: the law and practice," prepared by Betelhem Tolossa Abdi, for the degree of Master of Law (LL.M. in Business Law), is my original work. I confirm that this thesis has not been submitted for a degree at any other university, and I have duly acknowledged all materials used.

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This Thesis has submitted for examination with my approval as supervisor.

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Acronyms

- ADR …………………………….Alternative Dispute Resolution
- CC ……………………………... The 1965 Civil Code of Ethiopia.
- CPC……………………………...The Civil Procedure Code of Ethiopia
- UNCITRAL……………………United Nations Commission On International Trade Law
- FDI………………………………..Foreign Direct Investment
- IP………………………………….. Intellectual Property
- FFIC………………………………… Federal First Instance Court
- FHC………………………………… Federal High Court
- WIPO………………………………… World Intellectual Property Organization
- ICC…………………………………… International Court of arbitration
- ICDR…………………………………. International Center for Dispute Resolution
- LCIA…………………………………... London Court of International Arbitration
- SCC……………………………………. The Stockholm Chamber of Commerce
- HKIAC…………………………………. Hong Kong International Arbitration Center
- FAA…………………………………….. Federal Arbitration Act
- UK………………………………………. United Kingdom
- USA……………………………………… United States of America
- FDI………………………………………. Foreign Direct Investment
- IP…………………………………………..Intellectual Property

Abstract

The existing arbitration law in our country has long lacked comprehensive coverage of interim measures, but the introduction of the new Conciliation and Arbitration Proclamation has improved the legal framework in this regard. However, there are still debatable issues and different interpretations of the law, limiting parties' options for seeking interim relief and urgent relief before the establishment of an arbitral tribunal. The proclamation grants both the court and the tribunal the power to issue interim measures, but the conditions for the court's intervention and the jurisdiction of the court are not clearly defined. The proclamation also imposes two cumulative conditions for granting an order of interim measure, potentially limiting the issuing authority's discretion. The requirement of security for the requesting party is determined solely at the discretion of the issuing authority, potentially causing financial burdens. The appeal process and execution of tribunal-issued orders also lack clarity. This research suggests the need for further refinement and clarification to ensure the effectiveness and consistency of interim measures in arbitration proceedings.

Key Words, **Interim measure, Standards, Security, Jurisdiction of courts**

CHAPTER ONE

1.1. Background

The different techniques used to solve a given dispute could vary in terms of the level of formality and the authority to make the decision actually generated. A dispute resolution mechanism through a regular court is characterized by highly formal procedures. The authority to make decisions in a regular court emanates from the law of a given country. Whereas those dispute resolutions, commonly known as alternative dispute resolution (ADR), are characterized by a more informal procedure with authority for making decisions emanating from the contracting party.

ADR is one of the dispute resolution methods that assists the resolution of conflicts without resorting to a court trial, with the assistance of an unbiased third party.[1] ADR comprehends a variety of alternative methods to resolve conflicts or disputes, serving as alternatives to the traditional approaches. The most commonly recognized and commonly used ADR methods include mediation, arbitration, conciliation and negotiation.

Arbitration is one of ADR mechanisms in which, parties present their claims before a neutral third party known as an Arbitrator for obligatory decision also known as an "award".[2] The process is less formal than a trial but more structured than other ADR mechanisms. The Arbitrator acts like a Judge, rendering a decision that becomes an Arbitrator's Award, often enforced by the Court. The award can be detailed or concise, determining the prevailing party's entitlement to a monetary award.[3] Generally, Arbitration is a legally binding process.Those internationally accepted laws and rules of an arbitral institution, together with the laws of each country, govern arbitration proceedings.

[1]Liberto, Daniel. "Alternative Dispute Resolution (ADR): Definition and Meaning."Investopedia, (2023). available at https://www.investopedia.com/terms/a/alternative-dispute-resolution.asp, last visitedJan. 13/2024.

[2] Martin Domke, "Arbitration | Advantages, Process & Types", Britannica,(2023), available at https://www.britannica.com/topic/arbitration, last visitedJan 13/2024.

[3]DENNING, M. J. "What are the Most Common Types of Alternative Dispute Resolution (ADR)?" Smith Debnam, (2023), available at https://www.smithdebnamlaw.com/article/what-are-the-most-common-types-of-alternative-dispute-resolution-adr/, last visitedJan. 13/2024.

The enactment of the 1960[4] civil code (CC) and the 1965[5]civil procedure code (CPC) of Ethiopia could mark the beginning of the introduction of arbitration law in the country. In Ethiopia, the substantive aspects of arbitration used to be governed by provisions of the CC from Articles 3325–3346, while the procedural aspects are governed by Articles 315–319, 350–357, and Art. 461 of the CPC.

A proclamation which encompasses great improvements on the previous laws of arbitration in Ethiopia, was enacted in 2021,[6] further contributing to the development and regulation of arbitration in the country. On the other hand, the enactment of the new arbitration and conciliation working procedure proclamation (hereinafter the proclamation) has rendered the two laws on arbitration, as mentioned earlier, ineffective in most aspects. [7] However, the proclamation allowed the applicability of certain provisions of the civil procedure code that are compatible with the proclamation and support the implementation of conciliation or arbitration proceedings.[8] It is important to ensure that any provisions utilized from the civil procedure code align with the requirements of the new proclamation and do not contradict with it in order to apply for arbitration mater. [9]

Ethiopia has demonstrated its commitment to international arbitration by ratifying the 1958 convention on the recognition and enforcement of foreign arbitral awards, also known as the New York Convention, through ratification number 1184/2020.[10] This means that the New York Convention has also become part of the law of the country.[11] Even with the prevalence of these laws on arbitration in Ethiopia, there are still unsolved issues with regard to arbitration. One of such issue is that of provisional interim measures under arbitral proceedings.

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[4] Civil code of the Empire of Ethiopia, 1960, Fed. Neg. Gaz., Extra ordinary issue, No. 19th year No. 2.

[5] Civil procedure code of the Empire of Ethiopia, 1965, Fed. Neg.Gaz., Extra Ordinary Issue, No.3.

[6] Arbitration and conciliation working procedure proclamation, 2021, Pro. No. 1237, Fed. Neg. Gaz., year 27, no.21.

[7]Id. Article 78(1) and (2)

[8]Id. Article 79.

[9] Ibid.

[10] The convention on the recognition and enforcement of foreign arbitral awards ratification proclamation, 2021, pro. No. 1184, Fed. Neg. Gaz., year 27, no. 25.

[11] Constitution of the Federal Democratic Republic of Ethiopia Proclamation, 1995. pro. No.1, Fed. Neg. Gaz., year 1st, no. 1, Article 9(4), states that "international agreements ratified by Ethiopia are an integral part of the law of the land.

An interim measure, as defined by United Nations Commission On International Trade Law (UNCITRAL), is a temporary measure that can be takenin the form of an award or any other form, allowing an arbitral tribunal to order a party to maintain the status quo, prevent harmful actions, preserve assets for potential awards, or preserve relevant evidence before the final resolution of the dispute.[12]

The courts were the ones who used to issue interim measures for arbitral proceedings. It was argued that seeking relief from a court may contradict the parties' intention to resolve disputes confidentially before a neutral tribunal with specialized expertise, which is the very purpose of opting for arbitration.[13] To address these issues, many countries, including ours, have expanded the authority of arbitral tribunals to grant interim measures of protection. By granting such power to arbitrators, jurisdictions aim to ensure that parties can obtain the necessary protection during the arbitration process without resorting to traditional court proceedings. [14]

In certain situations, there may be a pressing need for interim relief before the formation of an Arbitral Tribunal, ensuring that the fundamental purpose of choosing arbitration is not undermined. This is where emergency arbitration plays a crucial role. Emergency arbitration allows parties to seek urgent interim relief even before the tribunal is constituted. [15] It enables parties to obtain timely measures or protective relief to address pressing issues or preserve their rights until the formal arbitration process can commence. [16] By incorporating emergency arbitration provisions, parties can effectively address urgent matters and ensure that the purpose of choosing arbitration is upheld. Unfortunately, the concept of emergency arbitrator didn't incorporate in the proclamation.

The proclamation provides a general framework for identifying arbitral cases, managing arbitration proceedings, and executing decisions. The proclamation aligns with international

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[12] UNCITRAL Model Law on International Commercial Arbitration. (2006). With amendments as adopted in 2006. In UNCITRAL Model Law on International Commercial Arbitration (pp. 9–10). Oxford: Oxford University Press.

[13] Mika SAVOLA, "Interim Measures and Emergency Arbitrator Proceedings", Croat. Arbit. Yearb. Vol. 23 (2016), pp. 73-97. p. 73-74.

[14] Ibid.

[15] Shivam Kuma, "Emergency Arbitration — Its Advantages, Challenges and Legal Status in India", March 26, 2022., SCC online, available at: https://www.scconline.com/blog/post/2022/03/26/emergency-arbitration/, last visitedMar. 20/2024.

[16] Ibid.

practices and principles related to arbitration and conciliation. While the proclamation does not specify detailed standards, it generally follows established principles as a standard necessary to be fulfilled so as to grant an interim measure. This paper basically tries to figure out the legal and practical challenges raised with regard to the issuance and enforcement of interim measures in Ethiopian arbitration law, with particular emphasis on the new conciliation and arbitration proclamation.

1.2. Statement of the problem

The employment of interim measures during litigation proceedings plays a decisive role in protecting the rights of the involved parties and improving the efficiency of the legal process. This is due to the fact that, in the absence of effective implementation of court decisions, the decision itself doesn't result in the desired relief. Thus, interim measures guarantee the implementation of the court's decision if it favors the plaintiff. This principle holds true not only for court litigation but also for arbitration proceedings. Traditionally, regular courts are the ones who issue interim measures in an arbitral proceeding.

A short time ago, there was a shift in who had the power to issue an order of interim measure in arbitration proceedings. The new trend in relation to the authority to issue interim measures has been promoted by international institutions like UNCITRAL. Thus, in today's arbitration law regime, arbitral institutions are conferred with the power of issuing interim measures baked into legal frameworks and practices.

The new law introduced interim measures as a measure, aiming to provide parties with temporary relief during the arbitration process. The area of interim measure as incorporated in the new proclamation is one of the outcomes of the Proclamation claimed to solve the preexisting problems of our arbitration law. However, despite this wanted addition, the law still presents certain gaps that create inconvenience and ambiguity.

One of the gaps that exist in the new Proclamation pertains to the jurisdiction of courts to grant interim measures in arbitral proceedings. Unfortunately, Articles 9 and 27 of the proclamation do not provide clear guidance as to which level of court has the authority to issue such orders. As a result, two different views have emerged regarding the power of courts to issue interim measures. Depending on the specific trial of the case, the request for an order of interim measure in FFIC may be rejected due to a lack of material jurisdiction or granted based on the request without even considering the material jurisdiction issue. The same issue exists in the FHC, with two opposite positions on cases having similar facts.

Legal scholars have also voiced their opinions on these conflicting positions. It is essential to highlight that interim measures are designed to provide prompt relief to parties involved in arbitration, allowing for the effective protection of their rights. The lack of clarity regarding the material jurisdiction of courts in granting interim measures has created uncertainty and challenges the goal of achieving a quick response to address the parties' needs effectively.

The way the Proclamation lists down types of interim measures in an exhaustive way raises a question as to the fate of other possible types of interim measures that could be requested by one of the parties. The Proclamation includes a list of interim measures, with one of them being the preservation of relevant evidence. However, the term "relevant" used in this context is subjective and lacks clear guidance on how to determine the relevance of the evidence.

The proclamation provides two cumulative conditions of probability of irreparable damages if the order is not issued on the party with the request and ensuring the proportionality of the order against whom the order is sought. The law expects arbitrators and judges to strike a balance between two opposing interests. Thus, there is a probability that the balance will become difficult, in which case the law has no answer.

The Proclamation does not address the criteria used to evaluate the security needs that may be requested from the party seeking an interim measure. It does not specify the consideration of prior security measures in relation to the purpose of the interim measure or the financial status of the requesting party.

The proclamation clearly provides the role of courts in enforcing the order given by an arbitrator. However, the manner of execution and recognition of an order of interim measure rendered by an arbitral tribunal particularly adhockery institutions, don’t have a detailed rule. Thus. the manner of recognition of the order issued by an adhockery institutions is unsolved issue. The proclamation is silence on the appeal ability of the decision of arbitrators in relation to interim measure and the security there of. Since the two issues has a very detrimental effect the way it remains un touched by the proclamation crates a mess.

1.3. **Research objectives**

1.3.1 General objective

The general objective of the study is to analyze and evaluate the role, effectiveness, gaps and challenges associated with interim measures in the context of Ethiopian arbitration law.

1.3.2 Specific objectives of the research

1. Examine the legal framework and relevant provisions governing interim measures in arbitration,

2. Explore the types of interim measures commonly sought in arbitration,

3. Analyze the criteria and requirements for obtaining interim measures in arbitration, including the threshold for granting such measures and the standard of proof,

4. Evaluate the effectiveness of interim measures in practice,

5. Identify challenges and issues related to interim measures in arbitration, such as potential conflicts with the jurisdiction of national courts, the availability of remedies, and the potential for abuse.

1.4. **Research questions**

The research focus on the following specific questions: -

1. How do the various types of interim measures under Ethiopian arbitration law align with the standards and conditions for granting or denying requests for such measures?
2. What are the practical encounters faced by arbitrators when ordering interim measures in Ethiopia?
3. What are the challenges and prospects associated with enforcing interim measures in Ethiopia, and how can parties navigate the possibleimpediments to ensure the effectiveness of such measures?
4. How do regular courts cooperate with arbitral tribunals in relation to an order of interim measures, and what are the key principles and practices governing the interface between these two dispute resolution mechanisms?Which court has the material jurisdiction to grant interim measures?

1.5. Significance of the study

This research is significant in the field of arbitration, specifically in the context of interim measures. One of the major contributions of this thesis is its ability to fill a crucial knowledge gap. Currently, there is a lack of comprehensive research available on the specific topic of interim measures in arbitration under Ethiopian law. By addressing this gap, this research aims to provide a detailed understanding of the subject matter. Furthermore, this thesis plays a vital role in creating a comprehensive understanding of the legal framework governing interim measures in arbitration in Ethiopia. Through an in-depth analysis of the relevant laws, this research sheds light on the principles and procedures that govern the granting and enforcement of interim measures.

Importantly, this research extends beyond theoretical analysis and delves into the practical implementation of interim measures in Ethiopia. It explores how the existing legal framework is put into practice, including the attitudes of Ethiopian courts towards granting interim measures and the challenges encountered in their enforcement. Moreover, this research offers valuable insights for policymakers and practitioners in the field of arbitration. By identifying gaps in the legal framework, highlighting areas for improvement, and proposing recommendations, this research can guide the development of more robust and effective mechanisms for interim measures in arbitration under Ethiopian law.

1.6. Research Methodology

The thesis follows a doctrinal and non-doctrinal legal research methodology. The doctrinal legal research part focused on a literature review and legal analysis. The review part involves conducting a comprehensive literature review to establish a foundation of existing knowledge and understanding of the topic. While the legal analysis involves analyzing the legal framework governing interim measures in arbitration under Ethiopian law. It also includes comparing Ethiopian law with international best practices and standards. The empirical research aspect of the thesis involves conducting interviews or surveys with stakeholders involved in arbitration in Ethiopia.

Thus, regarding the source of data the study includes: -

- Primary data: which involves examining relevant legislation and provisions of the relevant law,
- Secondary data: This includes reviewing academic articles, books, legal texts, case law, and relevant international treaties and conventions related to interim measures in international and Ethiopian law. For the Empirical research the necessary interview with selected arbitrators, lawyers, judges, academics, and representatives from arbitral institutions will undertake. The purpose of this research is to gather insights into the practical implementation and challenges faced regarding interim measures in arbitration under Ethiopian arbitration laws.

1.7. Scope of the research

The focus of this study is restricted to examining the significant legal and practical challenges related to the application of interim measures in the arbitration and conciliation working procedure proclamation no. 1237/2021.

1.8. Limitation of the study

The main challenge is the lack of comprehensive literature on the subject, particularly in the form of books and works of literature. The available sources at the international level are mostly in the form of e-books, which can be difficult to access freely. Additionally, in Ethiopia, where the topic is relatively new, it is challenging to find detailed materials specifically addressing the interim measures taken by courts and arbitration tribunals.

1.9. Structure of the study

This study is structured into four chapters. Chapter one presents the research proposal, which includes the background of the study, statement of the problem, research questions, and methodology. Chapter two is dedicated to the literature review, where various books, journals, and research conducted in the field are discussed to provide a comprehensive understanding of the study. Chapter three entertained the main issue of the title of the thesis. Under this chapter, both the practical and theoretical aspects of interim measures in arbitral proceedings will be discussed. Finally, chapter four concludes the study and provides recommendations. A list of references is included at the end of the research.

CHAPTER TWO

2. Literature Review

2.1. Alternative dispute resolution (ADR) in general

Alternative dispute resolution (ADR) is a method utilized to resolve disputes without litigation, involving the intervention of an unprejudiced third party.[17] ADR encompasses a range of approaches for resolving conflicts, both within social and institutional settings. These methods provide individuals and groups involved in disputes with various options for seeking resolution, each taking place within distinct cultural contexts that are either natural, inherited, or created. Arbitration and mediation are examples of ADR methods and serve as prominent mechanisms employed worldwide to address international and interstate disputes involving economic, commercial, and industrial matters.[18]

Resolving a dispute through ADR instead of going to trial offers both parties a higher level of control over the outcome of the dispute.[19] It enables them to determine the terms of resolution instead of relying on an uncertain decision imposed by a Judge or Jury.[20] The primary objective of reaching a settlement is to avoid the expenses and stress associated with a trial while ensuring that the matter is fully and effectively resolved, enabling the parties to move forward.[21]

Emotions often play a significant role in the litigation process, regardless of the source or nature of the dispute. These emotions can lead to irrational perceptions and positions. The goal of ADR is to bridge the gap between the emotional value that the parties ascribe to their case and the

[17] Daniel Liberto,cited above at 1.

[18] Nasrallah, Faris Elias. "Alternative Dispute Resolution." In *The Oxford Handbook of Law and Anthropology*, edited by James D. Wright and Monica L. Miller, 493–514.

[19] DENNING M. J,cited above at 5.

[20] Ibid.

[21] Ibid.

practical value it holds.[22] By doing so, ADR helps prevent unforeseen and detrimental consequences that could have been avoided if the case were to proceed to trial.

2.2 Arbitration in general

Arbitration is a widely used method of resolving disputes which involves the parties agreeing to present their case to one or more impartial individuals, known as arbitrators, who will make a final decision. This alternative to litigation includes a structured hearing, similar to a trial, where each party is represented by their own legal counsel and presents evidence and testimony. In arbitration, the parties typically have the opportunity to select the arbitrators who will ultimately decide the outcome of the dispute.

Similar to litigation, the arbitrator will issue a decision after each side presents their case. The arbitration process is binding, meaning that the parties are legally obligated to comply with the arbitral award, and limited grounds are available for judicial review, such as incapacity of a party, invalidity of the arbitration agreement, or if the award violates the law or public policy.[23] Arbitration proceedings are typically conducted in private, offering confidentiality to the parties if they choose.

Using arbitration to solve disputes is preferred over other dispute resolution mechanisms driven by various motives. In the first place, the parties have flexibility in selecting an arbitrator and can determine the procedure to be followed in resolving their dispute.[24] They have control over key aspects such as choosing a neutral arbitrator, deciding the timing and location of the hearing, and determining who else, besides the parties themselves, may be present during the arbitration. The process allows for informal proceedings,[25] as there are no prescribed procedural or evidentiary rules, and the rules of procedure can be established through existing rules, a negotiated arbitration agreement, or an agreement between the parties and the arbitrator.

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[22] DENNING M. J,cited above at 3.

[23] "Arbitration, Dispute Resolution Reference Guide Practice Module 4", Dispute Prevention and Resolution Services Department of Justice, Canada, Justice gc.ca, available at https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/06.html, last visitedJan 13/2024.

[24] Ibid.

[25] Ibid.

2.3. The concept of interim measure

Provisional and protective measures play a crucial role in the field of civil justice. Provisional and protective measures have become increasingly vital in modern civil justice systems due to the need for timely resolution of disputes and the growing caseload.[26]They are essential for ensuring the enforcement of court decisions and addressing urgent situations. In many countries, the duration of regular legal proceedings is often quite lengthy, leading to an increasing demand for provisional measures.[27] These measures are sometimes initiated either concurrently with or prior to the main proceedings. In some cases, they may even replace the main proceedings entirely, aiming to save significant time and costs.

One significant aspect of the regulations governing provisional and protective measures is the inclusion of discretionary powers.[28] It is crucial for a judge to have the authority to make decisions based on the level of urgency and other specific circumstances of each case. This flexibility allows the judge to determine whether to grant a measure or not, as well as the specific details and scope of the measure. By granting this discretion, the rules enable judges to tailor the measures according to the unique requirements of each situation.[29]

2. 3.1. The meaning and nature of interim measure in arbitral proceedings

The terms "interim," "pre-award," "conservatory," and "protective" measures are often used interchangeably and without precise distinction in the context of provisional measures in international arbitration.[30] These terms refer to two related concepts:[31]

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[26]Kramer, Xandra E. "Harmonization of Protective and Provisional Measures in Europe." In *Procedural Laws in Europe: Towards Harmonization*, edited by Marcel Storm, 305–319. Maklu Publishers, 2003, p. 306.
[27] Ibid.
[28] Ibid.
[29] Ibid.
[30] UNCITRAL Model 2006, Art. 9 ("interim measures" and "interim measure of protection"); International Court of arbitration (ICC) Arbitration Rules 2017, Art 28(2) ("interim or conservatory measures"); International Center for Dispute Resolution (ICDR) Arbitration Rules 2014, Art. 24 ("interim measures"); London Court of International Arbitration (LCIA) Arbitration Rules 2020, Art. 25 ("interim and conservatory measures"); The Stockholm Chamber of Commerce (SCC) arbitration rules 2023, Art.37 ("interim measures"); Hong Kong International Arbitration Center (HKIAC) Arbitration Rules 2018, Art. 23 ("interim measures of protection and emergency relief"); Singapore International Arbitration Center (SIAC) Arbitration Rules 2016, Art. 30 ("Interim and Emergency Interim Relief").
[31] Born, G. 'Provisional Relief in International Arbitration' in International Commercial Arbitration Kluwer Law International, (2020) p. 3884.

1. Interim and Provisional Decisions: These are decisions made before a final award, where the relief granted is typically aimed at protecting a party during the ongoing arbitration proceedings. These measures may be subject to alteration or elimination in the final award.

2. Protective or Conservatory Measures: These measures are designed to protect or preserve specific rights, irrespective of whether they are granted in an interim or final award. These measures are typically aimed at conserving the status quo or preventing irreparable harm.

In practice, interim relief usually involves conservatory and/or protective measures, and these measures are typically granted at an interim stage of the proceedings, which is before a final award is rendered.[32]Overall, the terms used to describe provisional measures can be used interchangeably, and their precise meaning may vary depending on the context. The main aim of these measures is to provide temporary relief and protection to parties during the arbitration proceedings, with the potential for modification or elimination in the final award.

An interim measure is a concept that encapsulates the notion of utilizing a temporary solution or strategy until a more permanent and lasting solution can be implemented or established.[33] Interim measures serve as a bridge or stopgap, providing temporary relief, support, or provisions until the circumstances allow for the implementation of a permanent resolution.[34] Interim measures refer to actions or measures that are implemented temporarily while an investigation or hearing is being conducted.[35]On the other hand, an interim measure has also defined in Oxford Learner's Dictionaries as a temporary solution or action that is put in place until a more permanent alternative or solution is identified or established.[36]

The above dictionary meaning of the word interim measure seems similar in its approach, which is commonly employed in situations where immediate action is necessary to address a pressing issue or problem while time, resources, or deliberation are required to develop a comprehensive and enduring solution. From these definitions, we can understand that interim measures are

[32] Ibid.

[33] Interim measure, (n.d.) Collins English Dictionary. available at https://www.collinsdictionary.com?dictionary/english/interim-measure, last visitedMarch 11, 2024.

[34] Ibid.

[35] 'Interim Measure' (Law Insider, no date) available at: https://www.lawinsider.com/dictionary/interim-measure, last visited7 March 2024.

[36]'Interim' (Oxford Learner's Dictionaries, no date), available at: https://www.oxfordlearnersdictionaries.com/definition/english/interim_1, last visited11 March 2024.

designed to be transitional in nature, actively acknowledging that they are not intended as long-term solutions but rather as a means to manage the situation until a more sustainable approach can be identified, developed, and put into effect. Thus, the effect of interim measures is that, once the permanent solution is ready, the interim measures are typically phased out or replaced, as they have fulfilled their purpose of providing an interim fix until the desired permanent outcome could be realized.

In arbitration proceedings, parties have the option to seek provisional or interim remedies to safeguard their patents by establishing temporary rights while awaiting the final decision.[37] These interim remedies offer a notable advantage over litigation as they enable a party to protect its rights, especially those related to time-sensitive matters, soon after initiating a claim.[38] By availing these measures, parties can ensure the preservation of their patent rights during the arbitration process, providing them with a sense of security and immediate relief while awaiting the ultimate resolution of the dispute. Interim measures play a crucial role in the realm of human rights. Their significance lies in their ability to put an end to abuses rather than simply compensating the victims. The issuance of interim measures is as vital as safeguarding the lives of those who speak out against injustice.[39]

Critics argue that arbitration lacks the ability to grant interim measures until an arbitrator has been appointed. Since the appointment of an arbitrator typically requires the consent of both parties after a dispute has arisen, the party against whom interim relief is sought can intentionally delay the appointment process. Consequently, parties may hesitate to include arbitration clauses in their contracts when they anticipate the need for urgent relief in case of a dispute. [40]However, some arbitral rules now include emergency provisions to allow for urgent interim relief before the tribunal is in place. These provisions involve the appointment of an emergency arbitrator.

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[37]World Intellectual Property Organization (WIPO) Arbitration Rules 2002, Art.46

[38]*Metcal, Craig. "Resolution of Patent and Technology Disputes by Arbitration and Mediation: A View from the United States,"* The International Journal of Arbitration, Mediation, and Dispute Management*, Vol. 74, No. 4 (2008)*, p.393.

[39] Jo M. Pasqualucci, "Interim Measures in International Human Rights: Evolution and Harmonization", VANDERBIL TJOURNAL OF TRANSNA TIONAL LAW, Volume 38 , (2005). p.4.

[40] Ibid.

2.3.2. Emergency Arbitrator

Emergency arbitration is a specific process where an arbitrator is selected to handle urgent requests for temporary relief before the formal arbitration proceedings begin.[41] It allows parties involved in an arbitration to seek immediate but temporary measures of protection before the full arbitration panel is constituted.

There is an emerging agreement among experts and those in the field that emergency arbitration is increasingly becoming a fundamental component of international arbitration.[42] This trend is driven by the escalating demand for prompt provisional measures from parties involved in international disputes. Resorting to state courts for such measures could potentially compromise key aspects of arbitration, notably its confidentiality.[43] Currently, all major arbitral institutions have emergency arbitrator provisions.[44]

In the context of Emergency Arbitration, most international arbitration rules follow an "opt-out" policy.[45] This means that unless the parties explicitly exclude the "Emergency Arbitrator Provisions", these provisions apply in full. An Emergency Arbitrator is appointed specifically for urgent situations. After issuing an Interim Order,[46] the Emergency Arbitrator's role is complete.

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[41] K Muigua, 'Definition and Regulation of Emergency Arbitration' (The Lawyer Africa, 9 January 2024) https://thelawyer.africa/2024/01/09/definition-and-regulation-of-emergency-arbitration/ accessed 21 March 2024.

[42] O Umeh, The Emergence of Emergency Arbitration in International Arbitration(2023) SSRN https://ssrn.com/abstract=4512857 last visited 18 March 2024.

[43] Ibid.

[44] you can see, the International Court of arbitration (ICC) rules Art. 29, the International Center for Dispute Resolution (ICDR) arbitration rules, Art. 7 (1), London Court of International Arbitration (LCIA) rules of 2020, Art. 9B (9.4.), The Stockholm Chamber of Commerce (SCC) arbitration rules, APPENDIX II – from art.1-10, Hong Kong International Arbitration Center (HKIAC) arbitration rules. Art. 23.1 and Singapore International Arbitration Center (SIAC) Art. 30.2.

[45] "Emergency Arbitration In India: Concept And Beginning", Singhania and Partners LLP (Mondaq, https://www.mondaq.com/advicecentre/content/3958/Emergency-Arbitration-In-India-Concept-And-Beginning last visited 18 March 2024.

[46] Ibid. The key functions of an emergency arbitrator are: Scheduling: The emergency arbitrator promptly establishes a schedule for considering the emergency relief application; Limited Interaction: Due to tight timelines, the emergency arbitrator may not directly engage with the parties beyond essential clarifications. The decision is primarily based on the submitted documents. Timelines: Emergency arbitrations typically conclude within eight to ten days from the application date to the award date; Powers: The emergency arbitrator has authority similar to that of the full arbitral tribunal. This includes a ruling on jurisdiction and ordering interim protective measures

2.3.3. Types of interim measures in arbitration

In the scientific literature, the classification of interim measures in arbitration is often based on their specific purpose. This means that the name assigned to a particular type of interim measure is derived from the purpose it aims to fulfill. In other words, the definition of an interim measure is closely tied to the objective it seeks to achieve. This classification approach allows for a comprehensive understanding of the different types of interim measures and their intended purposes within the context of international arbitration. The specific types of interim measures available may also vary based on the applicable law and the rules of the arbitration institution handling the case.

Interim measures in arbitration can serve various purposes. Here are the different types explained concisely:[47]

1. Injunctions: injunctions are court orders that can prevent certain actions, such as publishing defamatory content or disposing of assets, to safeguard the final arbitration award's payment.

2. Security for costs: Requested by the claimant when there is concern about the respondent's ability to pay arbitration fees if they lose. It involves providing financial security for potential costs.

3. Preservation or detention of property: Less common but significant measures that require careful consideration. They involve actions like inspecting or preserving property, which can have consequential effects and must be evaluated thoroughly.

4. Active interim measures: Also known as "preserving the status quo," these measures require parties to perform or refrain from specific actions, such as continuing contractual obligations or providing intellectual property.

5. Passive interim measures: These measures establish formal guidelines for conducting the arbitration, helping both parties align their understanding and expectations.

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based on the dispute's subject matter; Interim Orders: These may include asset freezing, injunctions (both prohibitive and mandatory), evidence preservation, and preventive measures to prevent misuse of intellectual property or confidential information.

[47] "Kinds of Interim Measures in Arbitration", expert-evidence.com, Mar.15/2016, available at: https://expert-evidence.com/kinds-of-interim-measures-in-arbitration/, last visitedMar. 20/2024.

Interim measures can also be classified based on the authority that grants them. One type of interim measure is provided by an emergency arbitrator, who responds promptly to requests for interim relief before the establishment of the arbitral tribunal. The other type of interim measure is granted by the ordinary arbitral tribunal after its formation. The above listed different types of interim measure are also available in international arbitration rules.

2.3.4. The power of arbitral tribunals to grant interim measures

The authority of the arbitral tribunal to order interim measures can be derived from the agreement of the parties or from international conventions and domestic laws. Their might be a possibility that, the arbitration clause in a commercial agreement does not explicitly give arbitrators specific powers regarding interim measures. However, the clause may make reference to a specific set of rules that often contain provisions on such measures.[48]Thus, we can see that power of arbitral tribunal to grant interim measures could be express or implied.[49]In recent times, even though, the scope varies fromone to another, major institutional rules have increasingly been granting arbitrators explicit powers to order a wide range of interim measures. [50]

The recommended approach for an effective and efficient arbitration clause, as outlined in the Debevoise International Arbitration Clause Handbook, is to grant the arbitration tribunal the authority to issue orders for interim relief, safeguarding the parties' rights.[51] This may involve

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[48]*Grégoire Marchac, "INTERIM MEASURES IN INTERNATIONAL COMMERCIAL ARBITRATION UNDER THE ICC, AAA, LCIA AND UNCITRAL RULES", American Review of International Arbitration 1999 Note & Comment, (2010) p.2. available at,https://mitchellhamline.edu/wp-content/uploads/sites/18/2016/05/DOC-35-Marchac_10_AMRIARB_123_4-5-10_0551.pdf last visited Mar. 15/2024.*

[49]*"INTERNATIONAL ARBITRATION PRACTICE GUIDELINE: Applications for Interim Measures, Chartered Institute of Arbitrators", available at: guideline-4-applications-for-interim-measures-2015.pdf (ciarb.org), last visited Mar. 28/2024*. Commentary on Article 1, Paragraph two (a) and (b) provides that, in order to grant interim measures in arbitration, it is important for the arbitrators to have the power to do so. While the arbitration agreement itself may not specifically mention the power to grant interim measures, it is common for national laws and arbitration rules to provide general powers to grant such measures. If there are no express provisions allowing the arbitrators to grant interim measures, and as long as the arbitration agreement and applicable rules do not prohibit it, arbitrators may believe that they have an implied power to do so.

[50] See UNCETRAL art. 26, ICC art. 28(1), LCIA art. 25.1, SCC art. 37(1), HKIAC art. 23.2.

[51]"Debevoise International Arbitration Clause Handbook", Debevoise& Plimpton LLP,(2022) p.48 available at, https://www.debevoise.com/-/media/files/insights/publications/2023/02/international-arbitration-clause-handbook.pdf?rev=bd8badd3eeb542c4a4e7c181f0b7d972&hash=EECF13172707AD99DC58B3B094E4750B, last visitedMar. 13/ 2024.

actions like pre-arbitration attachments or injunctions.[52] Furthermore, it is also recommended for the parties to agree on any decision made by the arbitration tribunal regarding interim measures to be considered as a final award on the matter at hand and can be fully enforced as such.[53]

The authority of arbitrators is derived from the arbitration agreement and is limited to the parties involved in the arbitration.[54] This means that arbitrators cannot impose binding interim measures on third parties. However, arbitrators can direct a party to the arbitration to take certain actions in relation to a third party, such as instructing a parent company to direct its subsidiary.[55] Nevertheless, arbitrators do not have the power to order the seizure of assets belonging to or under the control of a third party.[56]

While international arbitral tribunals generally have the authority to issue provisional measures, there are notable constraints on this power. These constraints stem from the fundamental nature of the arbitral process, which is based on contractual agreements between specific parties and necessitates the establishment of a tribunal for each individual dispute.[57] Additionally, certain limitations are imposed by national arbitration statutes.[58]

The limitations on the arbitral tribunal to order an interim measures includes:-[59]

1. Arbitral tribunal lacks power to order provisional relief against third parties: The arbitral tribunal does not have the authority to issue temporary measures or actions against individuals or entities that are not directly party to the arbitration proceedings.

2. Arbitral tribunal lacks power to directly enforce provisional relief in the absence of consent from the side of the contracting parties: The arbitral tribunal cannot enforce or implement provisional relief measures on its own, when there is unwillingness to perform from the side of

[52] Ibid.
[53] Ibid.
[54] INTERNATIONAL ARBITRATION PRACTICE GUIDELINE: Applications for Interim Measures,cited above at 49, Commentary on Article 3 Paragraph 1.
[55] Ibid.
[56] Ibid.
[57] Gary B. Born,cited above at 31, p.3902.
[58] Ibid.
[59]Id. p.3902-3907.

the parties in the arbitration process. It does not possess the means to directly ensure compliance with the temporary actions it orders.

3. Limitation of provisional relief to subject matter of dispute: Any provisional relief ordered by the arbitral tribunal is restricted to the specific issues or matters being disputed in the arbitration. It cannot extend its temporary measures beyond the scope of the ongoing arbitration proceedings.

4. Arbitral tribunal lacks power to order provisional relief until it is constituted: The arbitral tribunal does not have the authority to order provisional relief measures until it has been properly constituted or established. It requires the formal establishment of the tribunal before it can issue any temporary actions.

2.3.5. Conditions or/and standards to grant interim measure under arbitral proceedings

On the international arbitration guideline, which sets out the current best practice in international commercial arbitration in relation to the arbitrators' power to grant interim measures, four standards must be fulfilled in order the arbitral tribunal to grant interim measure is delivered. This are:

i) Prima facie establishment of jurisdiction provided that: Before granting an interim measure, arbitrators must establish prima facie jurisdiction over the dispute by examining the evidence of a valid arbitration agreement.[60] Even if there is a pending jurisdictional challenge, arbitrators can still consider and issue interim measures as long as there is a prima facie basis for asserting jurisdiction. [61] However, if arbitrators believe there is little or no chance of having jurisdiction, they should address the jurisdictional challenge before dealing with the application for interim measures.[62]

ii) prima facie establishment of case on the merits provided that: When considering an application for interim measures, arbitrators must be convinced, based on the information available, that the applicant has a reasonably arguable case. [63]

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[60] INTERNATIONAL ARBITRATION PRACTICE GUIDELINE: Applications for Interim Measures, cited above at 49, Commentary on Article 2 Paragraph 1, i.

[61] ibid.

[62] ibid.

[63] Id. Commentary on Article 2 Paragraph 1, ii.

iii) a risk of harm which is not adequately reparable by an award of damages if the measure is denied: Arbitrators must be satisfied that the party seeking an interim measure is likely to suffer harm if the measure is not granted. [64]

iv) proportionality: Arbitrators must also take into account any harm that may be caused to the opposing party if they grant the interim measure. [65]

The discretion granted to the arbitral tribunal allows for a flexible approach, taking into account the unique characteristics of each dispute. This empowers the tribunal to consider various factors and weigh them accordingly when deciding on the granting of interim measures. The tribunal may consider aspects listed on other arbitration rules such as, the urgency of the situation, the potential harm that may be suffered, the likelihood of success on the merits of the claim, and any other relevant factors that can influence the appropriateness of the relief sought.

2.3.6. Enforcement of Interim Measures Ordered by Arbitrators

In arbitral proceedings there are times when the conduct of the other party causes the outcome of the proceedings to be largely ineffective, such as when the uncooperative party disposes of its assets or places them in a court where enforcement is difficult or otherwise impossible, a final award may be of little value to the successful party. The precautionary claimant may request interim relief to avoid this type of harm. The timely implementation and enforcement of interim measures in arbitral proceedings in general and international arbitration in particular, can significantly impact the eventual enforcement of the final arbitration award, particularly when issues related to asset or evidence protection arise before or during the arbitration process.[66]Thus, enforcement of interim measure is the one that give life for the granted interim measure.

Arbitrators do not have the power to enforce their decisions on interim measures.[67] In most cases, enforcement of interim measures must be carried out through national courts. There is no

[64] Id. Commentary on Article 2 Paragraph 1, iii.

[65] Id.. Commentary on Article 2 Paragraph 1, iv.

[66]NatalijaKaminskienė, "APPLICATION of Interim Measures in International Arbitration: The Lithuanian Approach", MykolasRomeris University, Faculty of Law, Department of Civil Procedure, (2010), p. 243–260, p. 244.

[67] INTERNATIONAL ARBITRATION PRACTICE GUIDELINE: Applications for Interim Measures,cited above at 49, Paragraph 2 Interim measures and national courts

consensus on whether arbitrators' decisions on interim measures should be issued as procedural orders or awards that can be enforced under the New York Convention.[68] Some national courts view interim measures as temporary but final for enforcement purposes. It is important for arbitrators to be aware that states that have adopted Articles 17H and 17I of the UNCITRAL Model Law on International Commercial Arbitration have a specific regime for recognizing and enforcing interim measures issued in the form of an interim award.[69]

2.4. **The interface between regular courts and arbitral tribunals in relation to granting interim measures**

In the past, an interim measure taken before the final arbitration award is was as a whole is possible through the courts. However, the prevailing view now acknowledges that parties can seek court-ordered interim relief without forfeiting their right to arbitrate. Additionally, the arbitral tribunal itself may apply interim measures, or parties can mutually agree to grant such powers to the tribunal.

In the legal literature, there are two main models regarding the relationship between courts and arbitral tribunals when it comes to applying interim measures in international arbitration. These models are commonly referred to as the court-subsidiarity model and the free-choice model.[70]

Under the court-subsidiarity model, interim measures should primarily be sought from the arbitrator before resorting to court intervention.[71] The court's jurisdiction is limited and subsidiary to the arbitrator's authority. The aim is to keep interim measures within the realm of arbitration as much as possible.

On the other hand, the free-choice model allows parties to seek interim measures from either the arbitral tribunal or the court at any stage of the proceedings, unless the parties have agreed otherwise.[72] Legislation ensures that relief granted by the arbitrator is as effective as court-ordered relief, providing a viable alternative for the parties. There are no restrictions on

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[68] Ibid.
[69] Ibid.
[70] Id. p. 250-251.
[71] Ibid.
[72] Ibid.

accessing the court, and parties do not need permission from the arbitral tribunal to apply for interim measures.

In some jurisdictions, there is a third model, known as the judicial model, where arbitrators do not have the power to issue interim measures at all. In this model, parties rely solely on the court for obtaining interim relief.[73]

The tribunal's ability to provide interim relief may be restricted due to practical factors, such as the time required to establish an arbitral tribunal and the tribunal's lack of authority to enforce injunctive relief independently. Therefore, to address this limitation, the rules of many arbitration institutions explicitly permit parties to seek interim relief from national courts without forfeiting their right to arbitrate under the agreement.[74] It should be noted that once the arbitral tribunal has been established, there are certain rules that impose restrictions on the parties' ability to seek interim relief from national courts.[75] In such cases, seeking interim relief from national courts is only permitted under limited circumstances. Therefore, while the option to seek interim relief from national courts may still exist, it is subject to specific conditions and limitations once the arbitral tribunal has been constituted.

According to the "Debevoise International Arbitration Clause Handbook," they recommend including an arbitration clause that addresses the intervention of courts for granting interim measures in two ways: first by inviting the intervention of courts to grant interim measures by allowing parties to seek interim relief from regular courts even after the establishment of an arbitral tribunal[76] or limiting the intervention of regular courts before the establishment of the arbitral tribunal.[77] This means that once the arbitral tribunal has been constituted, the parties are expected to seek interim measures exclusively from the tribunal.

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[73] Ibid.

[74] TheUNCITRAL RulesArt. 26 (9); ICC rules of arbitration, Art. 28(2); LCIA rules of arbitration, Art. 25.3,

[75]International Chamber of Commerce (ICC) Arbitration Rules, Article 28(2).

[76]Debevoise International Arbitration Clause Handbook,cited above 51, p. 49, suggest an arbitral clause as, "A request by a party to a court of competent jurisdiction for interim measures necessary to preserve the parties' rights, including pre-arbitration attachments or injunctions, shall not be deemed incompatible with, or a waiver of, this agreement to arbitrate."

[77]Debevoise International Arbitration Clause Handbook,cited above 51, p.50, suggest an arbitral clause could include "Either party has the right to apply to any court of competent jurisdiction for interim relief necessary to preserve the parties' rights, including pre-arbitration attachments or injunctions, until the arbitrators are

2.5. Interim measures in arbitral proceedings in some countries

Arbitration in the United States of America (USA) is regulated by federal and state laws, with the Federal Arbitration Act (FAA) being the primary law. In the USA, interim, provisional, and conservatory relief can be granted by three entities: the arbitral tribunal, an emergency arbitrator appointed by an administering body, and a federal or state court,[78] even though the FAA does not specifically mention interim measures. The extent of their authority depends on several factors, including the terms of the arbitration agreement, the relevant arbitration rules, and the applicable federal and state laws. In the United States, courts typically enforce interim measures that are ordered by arbitral tribunals.[79]

The 1996 United Kingdom (UK), Arbitration Act is widely regarded as an exceptional and comprehensive legislative framework for arbitration, offering clear and consistent guidelines.[80] It effectively combines both legislative and institutional regulations, placing significant emphasis on the practical operation of the arbitration process. Section 44 of the UK's Arbitration Act grants the court powers to support arbitral proceedings, outlines the specific circumstances in which courts can exercise their powers.[81]

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appointed. After appointment of the arbitrators, the arbitrators shall have exclusive jurisdiction to consider applications for interim relief." This means that once the arbitral tribunal has been constituted, the parties are expected to seek interim measures exclusively from the tribunal.

[78] "Interim, Provisional and Conservatory Measures in US Arbitration", New York State Bar Association, 2017 Thomson Reuter, p. 2. available at: https://nysba.org/Sections/Commercial_Federal_Litigation/Materials/DRS_FED_Joint/Practical_Law_Report_re_Interim,_Provisional_and_Conservatory_Measures_in_US_Arbitration.html, last visitedApril 1, 2024.

[79] Mark W. Friedman and LavaudFloriane, "Arbitration Guide IBA Arbitration Committee on UNITED STATES", International Bar Association, (2018), available at: https://www.ibanet.org/MediaHandler?id=939CE0D4-8D8A-4350-81D7-B7FEFE923C11, last visitedApril 1, 2024.

[80] Thomas E. Carbonneau, "A Comment on the 1996 United Kingdom Arbitration Act", TULANE MARITIME LA W JOURNAL , vol. 22, (1998). from p. 131-154, p. 154.

[81] United Kingdom's Arbitration Act of 1996 in general provides, the court has the same authority as in legal proceedings to make orders related to specific matters in arbitration. These matters include taking witness evidence, preserving evidence, handling property involved in the proceedings, selling goods subject to the case, granting interim injunctions, and appointing receivers. Urgent cases allow the court to preserve evidence or assets. Non-urgent cases require permission from the arbitral tribunal or written agreement from other parties. The court intervenes when the arbitral tribunal or another institution lacks effective power. Orders made by the court under this section may cease to have effect based on the tribunal's or institution's order.

In France, the New Code of Civil Procedure does not specifically address the availability of provisional measures from the courts. However, Article 809 of the New Civil Procedure Code does cover protective measures that can be sought from the courts in regular situations.[82] Article 1468 of the French Code of Civil Procedure (CCP) encompasses all types of interim and conservatory measures, illustrating the broad approach taken by French law in recognizing the jurisdiction of arbitral tribunals.

South Africa's Arbitration Act 42 of 1965 (1965 Act) aims to resolve domestic disputes through arbitration and ensure the enforcement of arbitration awards. The International Arbitration Act of 2017 (2017 Act) incorporates the UNCITRAL Model Law on International Commercial Arbitration from 1985 into South African legislation. Article 26 of the 1965 South African arbitration act states that an arbitration tribunal has the authority to issue an interim award within the designated time frame for issuing a final award.

The Arbitration Act of Kenya, established in 1968, replaced the previous legislation in 1995. It consists of 42 sections divided into 8 parts and is influenced by the Model Arbitration Act of the United Nations Commission on Trade Law.[83] The Act introduces provisions for ordering interim measures and applies to both domestic and international arbitration. The High Court of Kenya has extensive authority to issue interim orders, but discourages simultaneous applications. The law treats any rulings by the arbitral tribunal as conclusive.

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[82] New Code of Civil Procedure of France (CCP), Art. 809 provided that the president of the high court possesses the authority to issue immediate and expedited protective measures or measures aimed at restoring the parties to their former state, even in situations where a significant challenge is presented.

[83] Kariuki Muigua, THE ARBITRATION ACTS: A REVIEW OF ARBITRATION ACT, 1995 OF KENYA VISA-VIZ ARBITRATION ACT 1996 OF UNITED KINGDOM*, KairiukMuinua and Company Advocates, P.2. available at, http://kmco.co.ke/wp-content/uploads/2018/08/075_ARBITRATION_ACT_REVIEW.pdf, last visitedApril 6, 2024.

CHAPTER THREE

3. Interim measures under the Ethiopian arbitration law: the law and practice

3.1. Laws governing arbitration in Ethiopia

In Ethiopia, arbitration and conciliation were governed by the Ethiopian Civil Procedure Code (CPC)[84] and the Ethiopian Civil Code (CC).[85]These laws provided some guidelines for conducting arbitration and conciliation, including how an arbitral agreement may be formed, the composition of tribunals, and the process for issuing arbitration awards. The Civil Code dealt with the substantive aspects as the basic aim of the code itself, while the Civil Procedure Code focused on the procedural aspects of the process. Following these two basic laws, there are also other dispersed provisions in various laws.[86]

The other law that the country uses for arbitration purposes is the New York Convention,[87]which becamethe law of the country after its ratification.[88]The application of the ratification

[84] Civil code of the Empire of Ethiopia,cited above at 4, 3325-3346 of the civil code deals with the substantive aspects of arbitration.

[85] Civil procedure code of the Empire of Ethiopia,cited above at 5, Articles 315-319, 350-357 and art. 461 of the civil procedure code deals with the procedural aspects of arbitration.

[86] See Petroleum Operations Proclamation, 1986, NegaritGazeta, no. 295, Art. 25 (1) (2), which provides the ADR mechanisms to solve disputes; Transfer of technology council of minister's regulation, 1993, NegaritGazeta, No. 121, 52nd year, No. 53, Art. 5; Ethiopian Water Resources' Management Proclamation, 2000, NegaritGazeta, No. 197, 6th year, N0.25, Art. 9 (4) provided arbitration as a dispute mechanism for those disputes not resolved through negotiation; Chambers of Commerce and Sectorial Association Establishment Proclamation, 2003, NegaritGazeta, No. 341, 9th year, No.61, Art. 15 (3) has also provided arbitration as an alternative dispute settlement mechanism up on the request of the parties; Ethiopian Commodity Exchange Proclamation, 2007, NegaritGazeta, No. 550, 13th year, No. 61, Art. 6(7) states that providing mechanisms for dispute resolution through arbitration is one of the purposes of the establishment of an exchange; Mining Operations Proclamation, 2010, NegaritGazeta, No. 678, Art. 76 (2) refers to arbitration for a case not able to be solved by negotiation; Cooperative Societies Proclamation, 2016, NegaritGazeta, No. 985, 23rd year, No. 7; Art. 62 (1) (2) provided arbitration as an alternative to a dispute not settled by conciliation; The Labour Proclamation, 2019, NegaritGazeta, No. 1156, 25th year, No. 89, chapter three of the proclamation, especially Art. 144, provided the way the ADR mechanism could apply to the labor disputes. Public-Private Partnership Proclamation, 2018, NegaritGazeta, No. 1076, 24th year, No. 28, Art. 61 (2), has provided ADR mechanisms, including arbitration, as a way to settle disputes; Investment Proclamation, 2020, NegaritGazeta, No. 1180, 26th year, No. 28, Art. 28 (1).

[87] The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

[88] The New York Convention Ratification Proclamation No. 1184/2020,cited above at 15.

proclamation is supported by its three main advantages.[89]First, it becomes a solution for the pre-existing ‘pro-enforcement biases. Second, as stated in the preamble of the ratification proclamation itself, to promote our country’s obligingness. And at last, the ratification of the New York Convention is said to have benefited the parties to have the opportunity to use the best rule.

Earlier, the CC and the CPC were subject to criticisms for not adequately addressing several concerns.[90] Some of these include lack of clear guidelines for the formation and functioning of arbitration centers, no clear stipulation of which matters are arbitrable and which onesare not, the potential for appeals against arbitration awards, and the authority of arbitration tribunals to decide on their own jurisdiction.

The presence of longstanding issues with our country's arbitration law, among other factors, has been cited as a significant detriment to resolving Copyright and Trademark disputes and inhibiting the promotion of Foreign Direct Investment (FDI).[91]This lack of a well-organized arbitration law in our country also manifests in other civil litigation matters. Consequently, there have been calls for updating the outdated arbitration law to better protect Intellectual Property (IP) rights. In general, the previous arbitration laws have faced criticism for not adhering to internationally recognized principles of commercial arbitration.[92]

Ethiopia enactedthe new Arbitration and Conciliation Working ProcedureProclamation No.1237/2021. This proclamation, which came into effect on April 2, 2021,provided that provisions of the civil code from Art. 3318-3324, which talk about conciliation, and those

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[89]Tecle Hagos Bahta, “The Ratification of the New York Convention in Ethiopia: Towards Efficacy and Avoidance of Divergent Paths”, Mizan Law Review, vol. 15(2) (2021), 493-522. P.511

[90] Id. P. 521.

[91]Roza Siyum Getachew, “ ARBITRATION OF INTELLECTUAL PROPERTY DISPUTES IN ETHIOPIA: EXPLORING THE LEGAL AND INSTITUTIONAL GAPS”, WIPO-WTO Colloquium Papers, World Trade Organization, (2019) p.66, available at https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2019/chapter_5_2019_e.pdf, last visited April 12, 2024.

[92] Ibid.

provisions of the same code talk about arbitration as stipulated from Art. 3318-3324, as well as Articles 315-319, 350, 352, 355-357, and 461 of the civil procedure code, have been repealed.[93]

The new Proclamation applies to both domestic and international arbitration cases conducted within Ethiopia.[94]Arbitration agreements made prior to the new Proclamation will continue to be governed by the previous legal framework, so long as the parties didn't agree to be governed by the new Proclamation.[95] By the same token, continuing arbitration proceedings and correlated court cases that were begun prior to the enactment of the new proclamation will continue to be overseen by the laws in place before the new law was adopted.[96]

The introduction of the new arbitration Proclamation has brought about a number of changes appreciated by different professionals in the area. We can say that the new Proclamation goes strides to fill the gaps in theprevious arbitration laws of the country. Among the prominent changes introduced by the new Proclamation, the following can be mentioned.

It introduced the power of an arbitral tribunal to determine the question as to the validity of an arbitral submission.[97]Enablingan arbitral tribunal to determine its own jurisdiction is a shift from the previous law that restricted arbitral tribunals from deciding on the issue of contestation in their jurisdiction.[98] It has also given an arbitral tribunal the power to issue an order of interim measure,[99]which improves the legal framework of Ethiopian arbitration law. It also prohibited unlimited court intervention that was characteristic of the earlier laws.[100] This in turn increases the institutional freedoms of arbitral institutions as well as an ad hock arbitrators in a way that encourages them to work in a diligent manner.

[93] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 78 (1) (2). As per the third sub article of the same provision, even other laws or customary practices, inconsistence with the new proclamation, restricted their implementation on matters covered by the proclamation.

[94] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 3(1).

[95] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 77(1) and (3).

[96] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 77(2).

[97] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 19 (1)

[98] The 1960 civil code of Ethiopia,cited above at 4, Art. 3330(3), clearly stipulates that an arbitral tribunal is forbidden from entertaining disputes over its jurisdiction.

[99] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 20 (1).

[100] The Arbitration and Conciliation Working Procedure Proclamation cited above at 621, Article 5. This article tells us that, as a matter of principle courts are not allowed to intervene in an arbitral proceeding.

The way the new proclamation comes up with an expressed list of matters excluded from the ambit of arbitration is the other change introduced.[101]The previous laws don't list out what subject matter can't be entertained by an arbitration. The previous law didn't promote the establishment of private arbitral institutions, as opposed to the new proclamation establishing the legal framework for the establishment of privatearbitral institutions.[102]The availability of making arbitration contracts through electronic means, the brief meaning of international arbitration, the brief provisions regulating the number, appointment, right, and obligations of arbitrators, the freedom of parties in selecting the applicable substantive laws, and the right of the parties to remove an arbitrator at the time of default to conduct the arbitration could also be mentioned as areas of improvement by the new proclamation.

3.2 Interim measures under the Ethiopian Civil Code (CC) and Civil Procedure Code (CPC)

Title XX of the Ethiopian Civil Code is dedicated to compromise and arbitral submission. Chapter two of the same title particularly focuses on arbitral submission. This chapter has been used to govern the substantive aspects of arbitration in Ethiopia for the past 60 more and above. Art. 3325-3346 of the Civil Code, which provides a rule governing arbitration, basically stipulates, among other things, what constitutes an arbitral submission,[103]capacity, form, and object of the contract of the arbitral submission;[104]the interpretation of the provisions of the arbitral submission; [105]the appointment of an arbitrator;[106]and reference to the CPC for the procedural aspects of the arbitration process. [107]However, the CC provisions, which deal with arbitration, have failed to deal with the issue of interim measures. Thus, there isn't a single provision to govern interim measures in an arbitral proceeding under the CC.

When we resort to the Ethiopian CPC, Book IV. of the code, which deals with special procedures, encompasses a few provisions intended to govern arbitration under Chapter 4 of the

[101]The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 7.

[102] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 2 (3) and 18 (1).

[103] The 1960 civil code of Ethiopiacited above at 4, see Art. 3325 (1) (2).

[104] The 1960 civil code of Ethiopiacited above at 4, Art. 3326, Art, 3327, Art. 3327 and Art. 3328.

[105] The 1960 civil code of Ethiopiacited above at 4, Art. 3329.

[106] The 1960 civil code of Ethiopiacited above at 4, see from Art. 3331 - Art.3343, generally focused on the issue related to the appointment of an arbitrator to the removal thereof.

[107] The 1960 civil code of Ethiopiacited above at 4, Art. 3346.

code.[108]The CPC starts to entertain the case of arbitration by stipulating the basic principles of arbitration and by strengthening the provisions of the CC, which compact with arbitration. [109]Other issues of an appointment of an arbitrator by the court,[110] procedure before the arbitration tribunal,[111] making of award[112] and execution of an award have also been discussed under this section.[113] The issue of appeal and setting aside of arbitral award covered by chapter two of Book V. that talks aboutappeal, opposition and revision.[114] Art. 461, which is raised as one legal provision governing arbitration, is basically concerned with the enforcement of foreign awards.

The Ethiopian CPC does not include provisions regarding interim measures in arbitration proceedings. The only occurrence where court interference in arbitration proceedings is mentioned is when an arbitral tribunal fails to ensure the appearance of a witness summoned by them.[115]According to the first sub-article of the same article, the procedure before an arbitration tribunal, including family arbitrators, should be similar to that of a civil court. This indicates that the provisions of the CPC will be applicable to the arbitration process, as the civil codes primarily govern their substantive laws.[116]

The Civil Procedure Code (CPC) addresses the matter of interim measures, such as attachment before judgment[117] temporary injunctions, [118] and interlocutory orders. [119]These provisions govern situations where a court grants interim measures to prevent imminent danger and ensure the safety of civil litigation. It is worth noting that these measures can also be applied in arbitral proceedings, with courts using the provisions of the CPC by analogy. However, there used to be a requirement for the establishment of an arbitral tribunal and the initiation of the litigation

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[108] Civil procedure code of the Empire of Ethiopia,cited above at 5, Ar. 315-319, Art. 350-357 and Art. 461 deals with arbitration.

[109] Civil procedure code of the Empire of Ethiopia,cited above at 10, Art. 315.

[110] Civil procedure code of the Empire of Ethiopia,cited above at 10, Art. 316.

[111] Civil procedure code of the Empire of Ethiopia,cited above at 10, Art.317.

[112] Civil procedure code of the Empire of Ethiopia,cited above at 10, Art. 318.

[113] Civil procedure code of the Empire of Ethiopia,cited above at 10, Art. 319(2).

[114] Civil procedure code of the Empire of Ethiopia,cited above at 5, see from Art.350-357.

[115] Civil procedure code of the Empire of Ethiopia,cited above at 5, Art. 317 (3).

[116] Civil procedure code of the Empire of Ethiopia,cited above at 5, Art. 317 (1.

[117] Civil procedure code of the Empire of Ethiopia,cited above at 5, Art. 151 (1) (a & b).

[118] Civil procedure code of the Empire of Ethiopia,cited above at 5, Art. 154 (a & b).

[119] Civil procedure code of the Empire of Ethiopia,cited above at 5, Art. 160 and the following.

process in order for a court to issue an interim measure. Thankfully, this requirement was eliminated by a decision from the Cassation Division of the Federal Supreme Court.[120]

3.3. Interim measures under the Arbitration and Conciliation Working Procedure Proclamation: the law and practice

As said before, one of the changes that the new proclamation has brought is the issue of interim measures. There are some important provisions governing the issue of interim measures that contribute to the improvement of the legal framework for interim measures in an arbitral proceeding. When we talk about interim measures, the major change the new proclamation came up with is enabling interim measures to be requested independent from the main arbitral litigation. As mentioned earlier, Article 154 of the Civil Procedure Code (CPC) requires the existence of a legal proceeding in order to seek a temporary injunction. This requirement poses a challenge when it comes to requesting an injunction prior to the decision of the Cassation Bench and especially before the enactment of the new proclamation.

3.3.1 The power of courts to issue an order of interim measure

The new proclamation starts to entertain the issue of interim measures by giving the parties the right to ask for interim measures from the regular court before or during the arbitration proceeding.[121] This action doesn't amount to intervention on the arbitral proceedings , and again, the party asking for the order is not considered to have violatedthe arbitration agreement.[122] The request for an interim measure can be brought regardless of where the arbitration is taking place.[123]

Art. 9 of the proclamation, which gives the power of the court to issue interim measures before or during an arbitral proceeding, raises a question as to the rationale of the court to issue interim

[120]Yemane Girmay General Contractor Pvt. Ltd V. Chania C E M C Engineering Company Limited, (Federal Supreme Court Cassation Bench Decision), Fil. No. 191402, Vol. 25. In this decision the cessation bench provides an explanation for Article 154(1) of the CPC. According to this interpretation, the court should grant an injunction if the parties can justify the need for additional time and demonstrate the consequences of not issuing the restraining order until the case is filed. However, it is important to note that only a temporary restraining order can be issued.

[121] The Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, Article 9.

[122] Ibid.

[123] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 27.

measures after the constitution of the arbitral tribunals. The involvement of courts in issuing interim measures before the arbitral tribunal is constituted is logical, since an arbitral tribunal that isn't established by the agreement of the parties can't issue an order. Conversely, the involvement of courts in issuing interim measures after the establishment of arbitral tribunals seems unsound. Because arbitral tribunals, as will be discussed in the following sections, have the right to issue interim measures, there is no reason why a court can enter into such an order after that.

In spite of this, courts have been observed to exercise their authority to grant interim measures even after the establishment of an arbitral tribunal. There have been instances where the court, after deciding that an arbitral tribunal should be established, entertained a request of an order of interim measure from the plaintiff that was made a month after the court's decision. The court proceeded to issue an order of interim measure, justifying its action by citing provisions in the proclamation that allow for the issuance of such measures even after the establishment of an arbitral tribunal. [124]The courts' issuance of interim measures, which support the arbitral process, is viewed positively by some arbitrators.[125]

The writer's view is that the new proclamation has given the arbitral tribunal the power to issue interim measures.[126]Given the overwhelming caseload of courts in our country, requesting interim measures adds to their burden, will contrary to the purpose of reducing court cases through arbitration. The issuance of interim measures is part of the arbitration process, with the proclamation explicitly prohibiting court interference in arbitral proceedings.[127]In the absence of failure to issue interim measures from the side of the tribunal, giving parallel power to the courts with an arbitral tribunal seems contradictory and might be against the interests of the other party in which the order is being asked. Thus, the only way for courts to be involved in the issuance of such an order is in cases where the order of the tribunal isn't enforced by following the court-subsidiary model.

[124]Abdusemed Ibrahim Gato V. Ahmed Ali Oumeredin, (civil file No. 00548, Federal First Instance Court Commercial and Investment Division Court), Unpublished.

[125]Interview with Ass. Prof. Zekarias Kenea, Addis Ababa University Ass. Pro. and an arbitrator, on 29 April 2024 in law school office.

[126]The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 9.

[127]The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 5.

3.3.2. Interim measure and jurisdiction of courts

When we talk about the way the new proclamation treats the issue of interim measures and the practice on the ground, the majority of problems are raised with regard to the issue of the jurisdiction of regular courts in issuing interim measures. The problem with regard to jurisdiction of courts in issuing interim measures basically arises as a result of the lack of clarity in Art. 9 and Art. 27 of the new proclamation that governs the court's power to issue interim measures before or after the constitution of an arbitral tribunal, but say nothing about which tier of courts has the jurisdiction to issue the order. These two provisions are silent on the jurisdiction issue. However, Art. 27 partially entertained the issue of jurisdiction by eliminating the restriction put on judicial jurisdiction. On the other hand, the practice shows the issue that arises from the arbitral tribunals originally brought to the Federal First Instance Court (FFIC) commercial and investment division. The same is true with the Federal High Court(FHC) structure. Therefore, it is evident that the legal and practical aspects have addressed the issue of judicial and local jurisdiction. However, the unresolved question pertains to whether applications for interim measures should adhere to the material jurisdiction of courts or if they must always be submitted to the FFIC.

This resulted in the application of the legal provisions of the new proclamation, which talk about the power of courts to issue interim measures in two ways. What makes things worse is that these two ways of interpreting the proclamation exist in both the FFIC and the FHC. That is, in the FFIC, there are two contradictory positions with regard to the material jurisdiction of courts. The same is true with the FHC. The same request for an interim measure by a party in an arbitral proceeding could gain the order irrespective of the monetary value the request contained, or it could have a chance of rejection in case the monetary value becomes beyond the material jurisdiction of the FFIC. The problem does not end there; rather, if the party whose claim was rejected decides to bring the case to the FHC in its original jurisdiction, there is a probability that his or her claim will get a positive answer, or it could be rejected for lack of jurisdiction.[128]

The first line of argument emphasizes the strict observance of the material jurisdiction of courts to issue an order of interim measure for cases that arise under an arbitral tribunal. Proponents of these views argue that the new arbitration and conciliation proclamation is structured in a way

[128]Interview with Judge Seble Kinfe, Federal High Court Lideta Construction Bench Judge and coordinating judge, on 29 April 2024 in her office.

that prioritizes material jurisdiction.[129] This can be seen by examining the provisions of the new proclamation.

There have been practical cases in the FFIC that demonstrate this line of reasoning and involve the rejection of parties' petitions for an order of interim measure. In one such case, the petitioner sought to have injunctions placed on the payments of two rounds of Advance Payment, which amounted to $12,910,629.76 and $6,453,810.44, as well as the guarantee bonds provided by Dashen Bank S.C. The court denied the petition, stating that it should have been submitted to the Federal High Court.[130]

Similarly, in another case, the FFIC declined to entertain the petition and grant the requested injunction order. The court argued that the case, as described by the petitioner, involved an amount ofBirr 1,000,000,000, which exceeded the jurisdictional threshold of Birr 10,000,000 for the FFIC. Therefore, the court, by a majority decision, denied the petition and ruled that the case should have been presented to the High Court instead.[131]

The proponents of this argument point out that the new proclamation's section on conciliation permits parties to request interim measures from a court with jurisdiction over the case, even without a written conciliation agreement. [132] The new proclamation explicitly states that material jurisdiction is required to request an interim measure for a case being handled through conciliation.[133]Therefore, proponents argue that it is reasonable to interpret the provision requiring material jurisdiction for issuing interim measures in conciliation cases to also apply to arbitration cases.

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[129]FikaduAndargeMekonen, ጊዜያዊየመጠባበቂያእርምጃ (Provisional Interim measure) እናየፍርድቤትሥልጣን, (2023), available at: https://www.abyssinialaw.com/blog/provisional-interim-measure, last visited26/04/2024; Interview with Judge Fikadu Andarge, Federal First Instance Court Commercial and Investment Division Judge, interviewed on 26 April 2024; Interview with Mrs. Mister Mohamed, of the Addis Ababa Chamber of Commerce. on 29 April, 2024, in her office; Interview with Mr. Awgichew Kibret, Lawyer and general manager of AMAS advocate LLP, on 2 May 2024, through phone; Interview with Mr. Kalayu Ayalew, Lawyer, though filling of questioner via email, send on April 30/ 2024.

[130]China Railway 14 Bureau Group Co. Ltd Ethiopia Branch V. Ethiopian Roads Authority Administration, (civil file No. 01999, Federal First Instance Court Commercial and Investment Division Court).

[131]Ethiopian Roads Administration V. China National Chemical Communication Group (Ltd.), (civil file No. 302195 Federal First Instance Court Commercial and Investment Division Court).

[132]The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 55 (3).

[133] The Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, Article 70 (2).

The other reason mentioned is in relation to the provisions of the new proclamation that govern the recognition and enforcement of an interim order. As per Art. 25(3) of the proclamation, it is the jurisdiction of the FHC to execute an order issued by foreign tribunals, and for cases entertained in the country, it is the jurisdiction of the court, which would have had jurisdiction had the case not been submitted to the tribunal. Judge Fikadu Andarge strongly argues, even though this provision is meant to govern the execution of an order of interim measure, is so by analogy possible to conclude that the same should apply for interim measures granted by courts. [134] This is because the reason behind limiting the material jurisdiction of courts is based on the competency of courts to entertain a given case. Executing an order that has already been issued is much less than issuing a new order, which requires further investigation. [135] Thus, the proponents of this view say that so long as the legislator believes in the necessity of keeping material jurisdiction of courts to execute an order of interim measure issued by an arbitral tribunal, for stronger reasons we should also follow material jurisdiction of courts to issue an order of interim measure.

The other part of the new proclamation with the provision focusing on material jurisdiction is provided in the section that talks about the support of the court in receiving evidence. Art. 37(1) of the proclamation states the arbitral tribunal can ask for help from the court with material jurisdiction over the case to gather evidence and enforce its orders if it lacks the authority or capability to do so on its own. An order of interim measure issued by a court could count as one form of support for the arbitration proceedings, which would suggest that the request for such an order should be taken to the court with material jurisdiction.

The second line of argument runs on the idea that the order of interim measures shouldn’t follow the material jurisdiction of courts, it is rather always present to the FFIC, no matter the monetary

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[134] FikaduAndargeMekonen, ጊዜያዊየመጠባበቂያእርምጃ (Provisional Interim measure) እናየፍርድቤትሥልጣን,cited above 129. p. 2.

[135] ibid. The writer mentioned Art. 372 (1) and 374 (1) of the CPC, which talk about the possibility of sending the decision the court made for execution to the lawyer's court, which doesn’t have the material jurisdiction to entertain the case, and this amounts to the execution court having equal status with the one who decides the case. The fact that the upper court can’t send a case to be entertained by the lower court without the material jurisdiction but can send an execution of a decision to the lawyer court with no material jurisdiction clearly shows execution of a decision that has already been rendered is much easier than rendering a new decision or order.

value it involves.[136]The first thing raised by the proponents of this view is that, to begin with, interim measures are orders given for temporary purposes. They don't create permanent rights and obligations. So there isn't a reason to consider the material jurisdiction to give the interim measure.

On the other hand, it is one of the responsibilities of the FFIC to give an injunction order on civil suits like the marital litigation, the liquidation of property of succession, and the like without considering the material jurisdiction of courts. The request for an injunction used to be entertained in the same manner as a civil suit without having monetary value. They argued the same should apply to courts in granting interim measures that arise from arbitration.Art. 12(3)(b) and Art. 15(4) of the proclamation, which talk about the FFIC jurisdiction in entertaining requests for the appointment of arbitrators at times when parties couldn't reach an agreement, and grievances on the decision of the arbitral tribunal on the objection against an arbitrator are also raised as reasons for their argument. They claimed that since the FFIC has original jurisdiction to entertain the two issues, why should we forbid the issue of an order of interim measure irrespective of the material jurisdiction?

Certain decisions made by the FFIC and the FHC provide evidence of these positions and the arguments presented. In a case before the Federal High Court (FHC), the request for an interim measure was rejected by the FFIC on grounds of lacking material jurisdiction. The FHC, however, remanded the case back to the FFIC, asserting that it is within the jurisdiction of the FFIC, not the FHC, to entertain such matters. [137] On the other hand, in another scenario, the FFIC issued an order of interim measure without raising any concerns about its jurisdiction, despite the petitioners noting that the damages they suffered far exceeded the material jurisdiction of the FFIC. [138]

[136] Judge SebleKinfe,cited above 128, Interview with Judge Ashenafi Lemecha, Federal First Instance Court Commercial and Investment Division judge, on 24 Aril 2024 in his office, Ass. ProffesorZekariasKenea,cited above 125,Interview with, Mrs. Eskedar Wedajo, contract and claims group leader at Ethiopian Road Administrative (ERA), interview on 25 April 2024 in her office.

[137]Ethiopian Road Authority V. Akir Construction (Civil Case No. 293123 Federal High Court of Ethiopia,), (unpublished) and Ethiopia Road Administration V. China National Communication Construction Group (Ltd.) (Civil Case No. 293311 Federal High Court of Ethiopia), 2015. Unpublished.

[138]Ato Mohammed Ahmed Said, Ato Kedir Mussa Usman, Wajiz Engineering PLC V. Ato Salah Ahmed Abdurahman, (Civil Case No. 02880Federal First Instance Court Commercial and Investment Division Court), unpublished.

The first group criticized the second group's argument, stating that the argument raised about the authority of the FFIC to handle the appointment of arbitrators as an example of the authority of the FFIC to entertain the claim of issuance of interim measures is unrelated. The opponents of the second line of argument opposed this line of argument by saying that provisions of the new proclamation that grant original jurisdiction to the FFIC may indicate that the intention of the lawmaker was not to vest the FFIC with the power to issue interim measures.

On the other hand, the opponents have also criticized the second group in that the reason for the FFIC's jurisdiction over civil suits like marital litigation, liquidation of property of succession, and dissolution of companies is as a result of the special behavior of the suits. So long as the jurisdiction given for such suits is done by law, the temporary injunction given by the FFIC is as a result of the fact that the main suit has also been entertained by them, not because of such orders only being given by the FFIC. Thus, they didn't accept the argument raised, saying that since the temporary orders on matters of litigation conducted between spouses, dissolution of the company, and liquidation of succession property were given by FFIC without considering the material jurisdiction, the same should apply to the interim measure.

The second group basically criticizes the first group by saying that the analogical interpretation of the provision of the proclamation governing execution and enforcement of interim measures to the granting of interim measures isn't the right way of interpretation. They argued that it is illogical to try to forge a relationship between execution and the granting of interim measures.

The author of this thesis aligns with the proponents of the first argument line. Their stance resonates with the essence of the new proclamation and the legislative intent behind it. The proclamation is structured to take into account court jurisdiction, with a specific exclusion of judicial jurisdiction from the scope of interim measure requests in arbitration proceedings.[139]Additionally, certain cases are expressly designated for the FFIC.[140]The author argues that if the lawmaker had intended to grant exclusive authority to the FFIC to handle interim measure requests, they would have clearly stated so or omitted the requirement of court

[139]The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 27.

[140]The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 12 (3) (b) and Art. 15 (4)

material jurisdiction, allowing parties more flexibility. In the absence of these conditions, it is challenging to assert that only the FFIC holds the power to issue interim measure orders.

I concur with the points raised by the proponents of the first argument, particularly regarding the provisions of the proclamation governing conciliation and the enforcement of interim measures issued by an arbitral tribunal. These provisions strongly support the first argument. The new proclamation is designed to regulate both conciliation and arbitration processes. It explicitly states that interim measure requests for parties in conciliation proceedings should be made to a court with jurisdiction.[141]Therefore, it is reasonable to infer that the same principle should apply to interim measures requested in arbitration proceedings. Using consistent standards for interim measures in both conciliation and arbitration proceedings are more logical than applying different criteria. It is rational to extend the requirements specified for conciliation to also cover arbitration proceedings.

The provision on execution and enforcement of interim measure ordered by an arbitral tribunal has also a clear implication on making the request for enforcement of interim measure ordered by an arbitral tribunal based on the jurisdiction of courts, rather than give it to the FFIC. As said by the proponents of the first view, execution is easier than giving the first order. In addition to this, issuing an order of interim measure has also involved executing the same order. So if we aloud the FFIC to issue an order of interim measure of cases beyond their material jurisdiction, by default we are along the execution of the same order contrary to the law that prohibits such act.

In practice, arbitral tribunals have been issuing interim measures. To ensure the enforcement of these measures, a trend has emerged where an arbitral institution issuing the order and seeking the execution of the measure sends a copy of the proclamation that grants arbitral tribunals the power to issue such orders along with the interim measure itself.[142] This practice has proven effective in minimizing instances of non-execution of the interim measure, which is a less frequent occurrence after the issuance of the new proclamation.[143]

[141]The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 55 (3).
[142] Mrs. Misitir Mohammed, cited above. 129.
[143]ibid.

An interim measure requested and granted by courts and an arbitral tribunal in practice includes;[144]measures to keep the property that is the source of the dispute attached; measures to make performance and prepayment guarantees given by financial institutions remain unpaid; and measures used to make assets and money deposited in a bank to enforce the decision given by arbitration. Evenif there is no request for a new interim measure other than the one listed in the new proclamation, those concerned organs believe that an order of interim measure could be given to the party who requests the order so long as it satisfied the very purpose of granting an order of interim measure. [145] Art. 20(2) of the proclamations seems to exclude attachment before judgment, as stated under Art. 151 of the CPC. However, if we interpret Art. 20(2) of the proclamation in a way that can bring a result and in its fullest content, we can resort to interim measures, which can also include an order of attachment before judgment. [146]

In general, the arbitrator, Judges and legal practitioners who wereinterviewed for this research believe the list under Art. 20 (2) of the proclamation is an illustrative list. In practice both arbitral tribunals and courts issues an order of interim measure so long as the request is in line with the general purpose of interim measure. Some mentioned lack of knowledge from the side of the party could be reason for not asking those interim measures stipulated on the proclamation not alone requesting something not stipulated in the proclamation.[147]

3.3.3. Power of an arbitral tribunal to issue order of interim measures

Section four of the new proclamation as a whole is dedicated to interim measure. The proclamation, by keeping the possibility of a party's agreement to the contrary, confers on an arbitral tribunal the power to issue an interim measure in response to a request from one party. [148] The order is given when the tribunal believes in the necessity of the order to be

[144]Interview with, Mr. Selamsetegn Adera, From the Ethiopian Chamber of Commerce, questioner filed and send via email on Aril 26/2024, Judge FikaduAndargecited above at. 129, Mrs. Misitir Mohammed, Cited above. 129, Ass. Pro. ZekariyasKenea Cited above. 126, judge SebleKinfe, Cited above. 128, Judge AshenafiLemecha Cited above. 136, Mr.KalayuAyalew,cited above 129, Mrs. EskedarWedajo, cited above. 136, Mr.AwgichewKibret, cited above. 129.

[145] Ibid.

[146] Judge FikaduAndarge, Cited above. 129.

[147] Mr. AwgichewKibret, cited above. 129.

[148] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 20 (1).

given.[149] The proclamation goes further and gives the tribunal discretion to independently issue interim measures to prevent any action or circumstances that may hinder the arbitration process or cause immediate harm. [150]

In practice, arbitral tribunals often issue interim measures to ensure the effectiveness of the arbitration process. To prevent the non-enforcement of these interim measures by the party required to execute them, there is a growing trend to include a copy of the proclamation that grants the arbitral tribunal the power to issue such orders along with the interim measure itself.[151]This practice significantly reduces the likelihood of non-compliance with the interim measure. It should be noted that the non-execution of an interim measure is far less common than the issuance of a new proclamation.[152]

3.3.4. Types of interim measures

Art. 20(2) of the new proclamation stipulates the types of interim measures to be given by the arbitral tribunals. The classification is based on the function of the order of interim measures. The word "shall include" in Art. 20(2) impliesthe listing is exhaustive rather than illustrative. However, sub. Art. 3 of the same provision indicates the possibility of issuing an order to stop anything that may create an obstacle to the arbitration proceedings. Thus, we can say that the list

given by the proclamation is not the only possible type of interim measure but is provided as an example of what the possible interim measures look like. Accordingly, the types of interim measures, among others, include: One, those given for the preservation of evidence.[153] This includes taking measures to protect any evidence that is relevant to the dispute. The problem in practice faced here is the question of who decides the relevancy of the evidence. Sometimes it is raised, and it is controversial. [154]

Two,the other type of interim measure given is for the purpose of the proper maintenance and preservation of property. [155]This might include keeping goods involved in the dispute safe and

[149] Ibid.
[150] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 20 (3).
[151] Mrs. Misitir Mohammed, cited above. 129.
[152]Ibid.
[153] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 20 (2) a.
[154] Mr. KalayuAyalew, cited above. 129.
[155] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 20 (2) b.

secure, placing them under the custody of a third party, or selling perishable goods to prevent loss or damage. Preserving the assets and funds that may be subject to an arbitration decision is one of the other types.[156] At last, allowing continuation of existing conditions or resorting to the status quo provided isone type of interim measure, which could be granted by the arbitral tribunals.[157]

An interim measure requested and granted by courts and an arbitral tribunal in practice includes;[158]measures to keep the property that is the source of the dispute attached; measures to make performance and prepayment guarantees given by financial institutions remain unpaid; and measures used to make assets and money deposited in a bank to enforce the decision given by arbitration. Evenif there is no request for a new interim measure other than the one listed in the new proclamation, those concerned organs believe that an order of interim measure could be given to the party who requests the order so long as it satisfied the very purpose of granting an order of interim measure. [159] Art. 20(2) of the proclamations seem to exclude attachment before judgment, as stated under Art. 151 of the CPC. However, if we interpret Art. 20(2) of the proclamation in a way that can bring a result and in its fullest content, we can resort to interim measures, which can also include an order of attachment before judgment. [160]

In general, the arbitrator, Judges and legal practitioners who wereinterviewed for this research believe the list under Art. 20 (2) of the proclamation is an illustrative list. In practice both arbitral tribunals and courts issues an order of interim measure so long as the request is in line with the general purpose of interim measure. Some mentioned lack of knowledge from the side of the party could be reason for not asking those interim measures stipulated on the proclamation not alone requesting something not stipulated in the proclamation.[161]

3.3.5. Conditions for issuing an order of interim measures

[156] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 20 (2) c.

[157] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 20 (2) d.

[158] Mr. Selamsetegn Adera,cited above at 144, Judge FikaduAndargecited above at. 129, Mrs. Misitir Mohammed, Cited above. 129, Ass. Pro. ZekariyasKenea Cited above. 125, judge SebleKinfe, Cited above. 128, Judge AshenafiLemecha Cited above. 136, Mr.KalayuAyalew,cited above 129, Mrs. EskedarWedajo, cited above. 136, Mr.AwgichewKibret, cited above at . 129.

[159] Ibid.

[160] Judge FikaduAndarge, cited above at. 129.

[161] Mr. AwgichewKibret, cited above at . 129.

The practice of international arbitration shows, three prerequisites that appear to be widely acknowledged by legal scholars and arbitration professionals for the issuance of interim measures. These are:[162] (i) the existence of a case with reasonable merit; (ii) a potential for "irreparable" or significant harm that cannot be adequately compensated through monetary remedies if the measures are not promptly implemented; and (iii) the avoidance of any determination regarding the underlying merits of the dispute.

Art. 21 of the proclamation providethe conditions that must be fulfilled to require an interim measure. Sub Art. 1 of the same provision provides that the tribunal, in issuing an interim measure, should take into consideration the proportionality of the measure asked from the side of the person against whom the order is issued and/or the damage that would have arrived had the interim measure not been given, which can't be rectified. One thing we should take into consideration is that the Amharic version and the English version of this provision are different in their endowment of standards. The Amharic version puts the two standards by the conjugation "and," while the English version uses "or." In times of contradiction between the Amharic and English versions of legal acts in our country, the Amharic version prevails over the English.[163]The question raised is: should the two pre-conditions of irreparable damage and proportionality of the measure against the other party come together? Or is it enough to fulfill one of the conditions?

There is a slight difference in the positions of scholars. On one hand, some argue that the Amharic version seems to be acceptable from the point of view of the substance of the matter since the order of interim measures always follows the principle of proportionality. Thus, some argue the two conditions are enough but should be strictly followed.[164]Some others still agree with the cumulative requirement of the conditions, and at most, they should consider the two conditions to grant the order, even though it didn't appear until now that the irreparable damage requirement would become strong and couldn't meet the proportionality condition, issuing an

[162] Mika SAVOLA, cited above at , p.82.

[163]*Constitution of the Federal Democratic Republic of Ethiopia Proclamation, cited above at 11, Art. 106*

[164] Judge AshenafiLemecha,cited above 136.

order of interim measure at the expense of the party. [165]On the arbitral institution, still know there is no experience of party's dissatisfaction with the conditions of the interim measure.[166]

There is also an argument that the conditions stated in Art. 20(1) of the proclamation are cumulative, and other conditions need to be included, like the issue of public interest.[167] Ofcourse, in practice, public interest issues are also considered while issuing an order of interim measure.[168]Some also favor this view by arguing that the two conditions alone may be abused by the party who asks for the order, so other requirements, including the chance of winning the case, the urgency of the case, and other necessary conditions, should also be taken into consideration. [169]On the other hand, there is also an argument in favor of the condition provided in the proclamation being sufficient to determine an order. [170] If other conditions were considered in addition to the one provided by the law, it would hearten the party requiring the order. [171]

The author's stand is that the two pre-conditions should be treated separately. The first pre-condition of irreparable damage is more outweighed than the proportionality requirement. It is good if we keep these two conditions as close as possible. However, if the tribunal has sufficient belief that irreparable damage would be caused if an order is not issued, it is better to give the measure without taking into consideration the proportionality issue. Because that is how we can satisfy the very purpose of the interim measure. However, the opposite shouldn't apply since proportionality without an irreparable damage condition isn't a sufficient condition to give the order.

Certain advocates in the field of arbitration have asserted that there is a current shift towards a more business-centric approach in international arbitration. According to this perspective, the standard for granting interim measures is (or should be) less stringent than in previous times. [172]

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[165] Judge SebleKInfe,cited above at 128, Prof. ZekariyasKenea,cited above at 125, Mr. AwgichewKibret, cited above. 129.

[166] Mr. Selamsetegn Adera supra not 144, Mrs. Mistir Mohammedcited above 129.

[167] Judge FikaduAndarge,cited above 129.

[168]Judge FikaduAndarge,cited above 129, Judge SebleKInfe,cited above 128

[169]Mirs. EskedarWedajocited above 136

[170] Mr. Selamsetegn Aderacited above 144.

[171] Ibid.

[172] Mika SAVOLA, cited above at 13, p. 84.

Under this view, arbitrators have the authority to authorize interim relief even in situations where "irreparable" harm is not present. It would be sufficient for the applicant to demonstrate that without the requested measures, the potential losses may not be fully compensable through a later award of damages. [173]

The other condition stipulated by the proclamation is the right to be heard by the other party on the requested interim measure.[174]This is in order to evaluate the proportionality of the interim measure requested from the side of the other party. However, this right of the other party could restrain itself at times when a request for an order of precautionary measures is made. The proclamation provides a situation where the party requesting an interim measure can also ask for a precautionary measure to be taken in order to prevent the other party from obstructing the implementation of the requested interim measure.[175]

3.3.6. The right to ask an order of precautionary measure

The proclamation clearly indicates that an arbitral tribunal has the authority to issue the precautionary measure without notifying the other party if it has a strong reason to believe that notifying the other party would impede the implementation of the interim measure.[176]However, after the precautionary measure is given by the tribunal, the other party may have the opportunity to react to the subject matter.[177]After hearing the side of the party against whom the order of precautionary measure was issued, the tribunal may modify, confirm, or totally reverse the order, not exceeding thirteen consecutive days from the date of rendition ofsuch order.[178]

The proclamation imposed an obligation on the party who has requested a precautionary measure to inform the tribunal of any changes in the conditions that led to the issuance of the order or its extension.[179] The obligation is conditional on the other party's presentation of their defense during the tribunal proceeding. On the other hand, the tribunal has the power to require the parties in the arbitration to promptly inform them if any changes occur with regard to the

[173]Ibid.

[174] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 21 (2).

[175] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 22 (1).

[176] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 22 (2).

[177] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 22 (3).

[178] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 22 (4).

[179] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 21 (4) and 24 (2).

implementation of precautionary or interim measures. [180] Art. 23 of the proclamation stipulates that there is a possibility of modification, suspension, or reversal of the interim measure granted basically by the request of the parties but exceptionally by the initiation of the tribunal itself. The Amharic version seems very clear compared to the English version of this legal provision.

3.3.7. The security requirement under interim and precautionary measures

The other conditions provided in the proclamation to give an order of interim measure are the issue of prior security and the liability that comes after the order is given. Theproclamation provide**s** the possibility for the arbitral tribunal to ask for a security to cover the damage that may be caused by the order of an interim measure [181]or precautionary measure.[182]The pre-request for security for the purpose of interim measures and precautionary measures has a slight difference. In the case of the security for asking for an interim measure, what is assessed is“sufficient security to cover the damage that may be caused by the order". [183]Whereas, prior security for asking for precautionary measures is a “security for the damage that may be caused by such an order of interim measure."[184]

The issue that the proclamation didn’t cover with regard to prior security is: how do we measure the security needed to ask for interim measures and precautionary measures? What if it is subject to abuse, which enables parties to go for the request of the order as a result of a lack of capacity to come up with the needed security? On the other hand, there is also the personal liability of the party who requests the order of interim or precautionary measures as a result of damage caused by the order that proved to be inappropriate. [185]Thus, the prior request for security is questionable on the ground that if we make the party requesting an order of interim measure liable to any harm is sustained as a result of the order, why should we impose prior security?

In practice there are few cases of prior security imposed by an arbitral tribunal.[186]However, there is no opposition or other complicated issue raised with the imposition of prior security in arbitral

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[180] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 21 (4) and 24 (1).
[181] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 21 (3).
[182] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 22 (5).
[183]cited above at 57.
[184]cited above at 58.
[185] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Article 21 (4) and 22 (6).
[186] Mrs. Mistir Mohammed,cited above 129.

institution.[187]In courts however, the prior security issue is not yet entertained.[188]Some believe in the importance of prior security.[189] It is recommended that at least some standard should be set in order to assess the prior security amount.[190]There are also others who are in total opposition to the need for security.[191]This is basically due to lack of professionals in assessing the value of property or the possible damage that would besustained. In addition, a partyis unable to pay the security in denial of the request for an interim measure might leave that party with a decision that can't be executed.

In addition to the lack of standards in the proclamation, there are also some concerns raised in relation to security issues. The proclamation does notprovide the type of security—real security or personal security,that might be used for security purposes. There is a tendency to require real security because of its convenience. [192]Nonetheless, the party could still demand personal security. So, the law doesn't give an answer. The issue of prior security in its face value seems against the very purposes of the interim measure. On the other hand, it is also important in cases of wrongful claims. Thus, the discretion of arbitral tribunals to ask for prior security should apply in a very narrow way.

3.3.8. Recognition and enforcement of interim measure

Art. 25 of the proclamation talks about the recognition and enforcement of an order of interim measure. Sub. Art. 1 of this provision, by keeping the status of those provisions of the proclamation that talk about recognition and enforcement of foreign awards,[193] affirms the binding nature of an order of interim measure given by arbitral tribunals, including foreign arbitral tribunals in Ethiopia. The order being said to be binding means that it should be applied accordingly to give effect to the order. However, for various reasons, there might be a possibility of the order given by the arbitral tribunal constituted in our country or in foreign countries not

[187] Ibid.

[188] Judge AshenafiLemecha,cited above 136, Judge SebleKInfecited above At 128, Judge FikaduAndargecited above 129.

[189]Ass. Prof. ZekariasKenea,cited above 125, Judge AshenafiLemecha,cited above 136, Judge SebleKInfecited above 128, Judge FikaduAndargecited above 129, Mr. KalayuAyalew,cited above 129..

[190]Judge AshenafiLemecha,cited above 136.

[191]Mr.AwgichewKibretcited above 129.

[192]Prof. ZekariasKenea,cited above 125.

[193] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, section eight of the proclamation, from Art. 51- Art. 53 talks about recognition and execution of arbitral award.

executed. This is the place where the proclamation invites regular courts to give support to the tribunals by executing the enforcement of such orders.[194] Courts are involved in the execution of an order of interim measure rendered by the tribunals on the request of one of the parties to this effect.[195]The application made to the courts for the execution of an order of interim measure is made to the federal High Court for the order issued by a foreign tribunal and to the court with jurisdiction had the case been brought to the regular courts. [196]

In the literature, there are four possible approaches that national courts can take when enforcing an order of interim measure rendered by an arbitral tribunal.[197] The first approach is direct enforcement, where a national court simply executes the interim measure ordered by the arbitral tribunal without conducting a review of the case. The second approach is executory assistance, where national courts conduct a limited review of the interim measure ordered by the tribunal before enforcing it. The third approach is recasting tribunal orders, which involves transposing the tribunal's orders into the national legal system. The final approach allows national courts to unilaterally order an interim measure of their own. This approach grants the court the authority to independently assess the need for and appropriateness of an interim measure, separate from any interim measure issued by the arbitral tribunal.

When we come to our country, there is a practical gap on the part of the proclamation that talks about the enforcement and recognition of interim measure rendered by an arbitral tribunal. This basically results from lack of clear legal provisions about the manner of enforcement and recognition of interim measures ordered by an arbitral tribunal. Enforcement of interim measure ordered by an arbitral tribunal is carried outby openingfiles before the competent court and executed by the additional order of the court. On the other hand, recognition of interim orders by an arbitration tribunal takes effect upon payment of the required revenue fee on the revenue stamp. If the party who asks for the stamp service has already a file in the court for the appointment of an arbitrator, there is a practice to give the stamp service with that file.[198]Even

[194] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Art. 25 (2).
[195] Ibid.
[196] The Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, Art. 25 (4).
[197]Ronald Wong, INTERIM RELIEF IN AID OF INTERNATIONAL COMMERCIAL ARBITRATION, Singapore Academy of Law Journal, (2012) 24 SAcLJ, PP.499-532, p. 508-510.

[198] Judge FikaduAndargecited above 129.

there are also a time the registrars simply give the stamp service without presenting the issue to the judges.[199]The registrars bring the issue to the attention of the judges when the party requesting the stamp service has no previous file. There is also a position taken by the judges for therequest to be made under aseparate file, even if there is a previous file within the court.[200]

Art. 25 (4) gives the right to require prior security for courts with the request of enforcement of interim measures given by the tribunals at times when the tribunals fail to decide on the security.[201]However, the rationale given by that provision seems contradictory. It says the security required by the court is in order to protect the rights of the party who has requested the enforcement of the order and a third party. The party who has requested the enforcement of the order is the one who is actually in need of the issuance and enforcement of the order. Thus, there is no way that we can worry for the one who asks for the issuance of the order. As Art. 21 (3) and Art. 22 (5) clearly stipulate, it is the party who requires the interim or precautionary measure who has the obligation to provide the security decided by the tribunal. And, of course, this one is very logical. With regard to the interests of a third party, there is a legal procedure under which the party who is affected by the decision or order of a civil litigation could come and ask for a remedy. The ground on the basis of which the court, by its own initiative, determines whether the order will affect the interests of a third party or not seems illogical.

The proclamation has provided the duty of the party who requests an order of interim measures to inform the court about the changes, temporary suspensions, or reversals of the interim measures.[202]The question is: what if the party who requests for the order fails to inform them of the said modification to the order? The proclamation should incorporate the consequence thereof.

The proclamation delivered the grounds for refusal of the request for the recognition or enforcement of interim measures under Art. 26 (1) (a)-(d). Accordingly, court can refuse to recognize or enforce an order for interim measures based on the following grounds: if the award provisions that allow refusal of the order due to loss of contracting party's capacity, absence of a valid arbitration agreement, lack of arbitrable subject matter, lack of jurisdiction of the tribunal, or if the order is beyond the tribunal's scope; if the tribunal's decision regarding security has not

[199] Ibid.
[200] Ibid.
[201] The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Art. 21 (3).
[202]The Arbitration and Conciliation Working Procedure Proclamation cited above at 6, Art. 21 (5).

been complied with if the decision on the interim measure has been modified, temporarily suspended, or reversed; if the court lacks jurisdiction; if the recognition or enforcement of the interim measure conflicts with public morality or government policy.

3.3.9. Prior security and interim measures ordered by an arbitral tribunals and the right of parties to lodge an appeal before courts.

The proclamation, while stipulating different cases as appealable and non-appealable before courts, has left the issue of interim measures and the prior security requested there undetermined. Thus, there is no legal provision that allows an appeal on the order of interim measure issued by an arbitral tribunal or on security. Some believe an appeal on both the order and security should be available for the parties to the court with the appellate jurisdiction of the case.[203]The case brought before the FHC shows the opposite practice. In one case, the FHC decided it had no jurisdiction to revoke the interim order placed by the arbitral tribunal. [204]

The writer of this thesis suggests that the interim measure ordered by an arbitral tribunal and the security they decide to give the interim measure should be open for appeal before the appealable court to the court that would have entertained the case had it not been the arbitration. The party in the arbitration may be dissatisfied with the manner of evaluation and determination of irreparable damage to the party requesting the order, the proportionality of the measure to the party against whom the measure was asked, and the prior security imposed on the party requesting the order.

The justification for parties to have the right to appeal on an order of interim measure and prior security in an arbitral proceeding is based on the fact that there is no explicit prohibition of appeal for both. Therefore, considering Article 320 of the Civil Procedure Code (CPC), it can be argued that these decisions are appealable. This is further supported by the decision of the Federal Cassation Court regarding the appeal ability of temporary orders issued by courts in accordance with Article 151 and Article 154 of the CPC..[205]Thus, there should be an appeal right on the order of interim measure and on prior security imposed by an arbitral tribunal.

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[203]Ass. Prof. ZekariasKenea,cited above 125.

[204]China CMC Engineering Limited V. United construction PLC, (Civil Case No.288797, Federal High Court of Ethiopia), unpublished.

[205]Abyssinia Bank V. W/Ro Zeytu Kemal, Federal Supreme Court Cassation Bench, File No. 101632, Vo. 17.

3.3.10. Problems an arbitrator face with regard to an order of interim measure

Arbitral institutions have raised concerns about the non-enforceability of interim measures by the parties who are directed to carry out the orders, highlighting it as a significant issue. Legal practitioners and judges have also acknowledged the existence of this problem. This issue does not stem from legal gaps but rather from a disregard for the law granting arbitrators the authority to issue interim measure orders. As a solution, arbitral institutions often provide a copy of the proclamation demonstrating the arbitrator's power to issue such orders along with the interim measure directive. The last resort is to refer the parties to court for the enforcement of the order, a step that goes against the core purpose of arbitration proceedings.

CHAPTER FOUR

Conclusion and Recommendation

4.1 conclusion

Arbitration, one of the alternative dispute resolution mechanisms, has been lacking adequate specific legislation for many years. Unlike other ADR mechanisms, arbitration follows a more formal procedure that resembles court litigation. The previous laws governing arbitration, namely the Civil Code (CC) and the Civil Procedure Code (CPC), only included a few provisions to provide general guidelines. Consequently, many unresolved issues have been subject to extensive arguments and debates. To address this gap, a new proclamation was enacted in 2013 to govern conciliation and arbitration. This proclamation introduced detailed provisions aimed at filling the long-standing gaps in the legal frameswork. One of the new things introduced in the proclamation is the issue of interim measures. However, despite these efforts, there are still shortcomings in the new proclamation that have resulted in practical differences in its application. The part of the proclamation that governs the interim measure and its legal and practical gaps have been discussed in depth in this thesis.

The introduction of the new proclamation makes the request of interim measure to stand independent from the main arbitral litigation. The proclamation has conferred the arbitral tribunals and courts with a power to order an order of interim measure. Thus, interim measure request in the arbitral proceedings present before the arbitrators and to the courts as of right under the new proclamation. However, the right of party requesting interim measure before the constitution of an arbitral tribunal is only limited to the court. This is because of the proclamation lack to govern the possibility of issuing an order of interim measure by an arbitrator before the constitution of an arbitral tribunal. The proclamation doesn't incorporate the issue of Emergency arbitrator as recognized in a well-known arbitration rules and institution like the UNCETRAL, to allow parties to request interim measure before the arbitral tribunal constituted.

The proclamation equally recognizes the authority of courts and arbitral tribunals to issue interim measures alongside each other. Nevertheless, the power of arbitrators to grant interim measures prior to the formation of the arbitral tribunal is limited, as the law does not provide a mechanism for arbitrators to do so before the establishment of an arbitral institution. The involvement of courts in issuing interim measures when the arbitral tribunal has not been formed or when the tribunal's orders are not being executed is seen as justifiable. While arbitrators enjoy the ability to issue such orders, granting the power to issue interim measures to courts appears inconsistent with the proclamation and lacks a evenhanded justification.

The power of courts to issue interim measures has involved a very contentious question of which court actually has material jurisdiction to give the order. This silence in the proclamation to clearly demonstrate the material jurisdiction of courts to issue interim measures creates two extreme positions. On one side, some argue that the request for an interim measure should be provided to the court with material jurisdiction, and on the other side, some say the request should always be presented to the FFIC. These two positions exist in both the FFIC and the FHC and are also shown in practical cases, which actually create inconvenience for the parties and the unpredictability of court decisions.

The way the proclamation lists down the types of interim measures seems to be provided in an exhaustive listing. In practice, even though interim measures other than those provided under the law haven't been requested yet, there is a general agreement for the grant of interim measures, even outside the list on the proclamation, so long as they satisfy the purpose of granting interim measures. One of the types of interim measures as provided in the proclamation to require the protection of relevant evidence in the dispute lacks clarity as to who decided the relevancy of the evidence, whether the party or the court.

The proclamation mandates the fulfillment of two conditions in order to obtain an order of interim measures. These conditions include demonstrating the likelihood of irreparable damages if the order is not issued, as well as ensuring the proportionality of the order in relation to the person it is directed against. In practice, both an arbitral tribunal and courts try to consider the two conditions cumulatively as provided in the law. The problem is that there might be a time when these two conditions can't be satisfied all together. Legal experts hold differing views on this matter. Some argue that, irrespective of the circumstances, both conditions must be met in order to grant an interim measure. And some resemble the one who asked for the interim measure and favored irreparable harm over the proportionality issue. There is also an idea that the conditions are not enough and that public interest should also be considered. There are also those who strongly oppose the imposition of any additional conditions, as they believe it would unduly restrict parties' right to seek interim measures.

The issue of security is the other area we try to discuss. The proclamation provided the possibility for the arbitral tribunal to require prior security from the person who requested the measure. The proclamation, other than stipulating such scenario didn't include what the standard would be or the solution for the party with no economical position to provide the said security. The type of security isn't pointed out in the proclamation.

The proclamation provides a solution for an order of interim measure ordered by an arbitral tribunal that remains ineffective. Courts execute an order of interim measures by the arbitral tribunal by ordering the one who is supposed to execute, or they could also give a stamp service to give recognition for the order without any other additional order. There is a difference in the rendering of this stamp service by the FFIC. On one hand, there are times the stamp is simply put on the order, especially when there is a pre-existing file before the court, and there are also requests by the court to open the file, and the judge goes through the contents of the order and puts the stamp on it.

The proclamation has said anything with regard to the order of interim measures, and the decision to wards the security is appealable or not appealable. The court's position seen in practical cases reflects an absence of appeal towards such an order. From the point of view of the importance of the orders and their effect on the parties, denying the appeal right has a negative impact.

Generally, even though the new proclamation has come up with a number of improvements and governs new aspects not covered by the previous laws, it still remains an issue in need of further enhancements and legal coverage. One of such area in need of enhancements is the concern of interim measures. The gaps in the proclamation with regard to the interim measure resulted in different applications of the proclamation. This negatively affects the parties involved in the arbitration proceedings, including the arbitrators and the courts. It might even be a reason for the parties to resort to the regular courts rather than the ADR. Thus, it is unquestionable the importance of collecting the loopholes in the proclamation and hardly working to come up with a more modernized law with clear legal provisions that adequately govern arbitration in general and interim measures in particular.

4.2. Recommendations

From the findings of this thesis on the issue of interim measures as entertained in the new arbitration and conciliation proclamation no. 1237/2013, the following are recommended:

- ❖ The concept of emergency arbitrators should have been incorporated into the proclamation so as to give the parties a chance to totally deal with their case in the arbitration proceeding.
- ❖ The authority of courts and arbitral tribunals to issue interim measure orders should be clearly defined, specifying the circumstances under which court intervention is warranted. The proclamation should restrict the court's involvement in issuing interim measures in arbitral proceedings to instances where the arbitral tribunals fail to issue the order before their establishment or when the orders issued by the arbitrators are not in compliance.
- ❖ The proclamation should clearly provide which court has the material jurisdiction to issue an interim measure. An alternative approach to addressing the issue would be to convene a conference to discuss the matter with the judges' councils.
- ❖ The authority of courts and arbitral tribunals to issue interim measure orders should be clearly defined, specifying the circumstances under which court intervention is

warranted. The proclamation should restrict the court's involvement in issuing interim measures in arbitral proceedings to instances where the arbitral tribunals fail to issue the order before their establishment or when the orders issued by the arbitrators are not in compliance.

- The security that is left to the discretion of arbitrators or judges requires at least a standard to determine the needed security. There should also be an alternative for the party with a financial deficit to comply with the security. In addition to this, both real and personal security should be allowed by the proclamation in a clear manner.
- The interim measure orders issued by arbitrators and the security imported for that should be subject to appeal in the appropriate court that has jurisdiction for appeals.
- Generally, the proclamation should be accompanied by regulations so as to deal in detail with specific matters, and some particular body should be assigned to oversee the implementation of the proclamation and collect input for further amendments to the proclamation.

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D. Interviews

Interview with Prof. Zekarias Kenea, Addis Ababa University Ass. Pro. and an arbitrator, on 29 April2024 in law school office.

Interview with Judge Seble Kinfe, Federal High Court Lideta Construction Bench Judge and coordinating judge, on 29 April 2024 in her office.

Interview with Judge Fikadu Andarge, Federal First Instance Court Commercial and Investment Division Judge.

Interviewed on 26 April 2024; Interview with Mrs. Mister Mohamed, of the Addis Ababa Chamber of Commerce. on 29 April, 2024, in her office;

Interview with Mr. Awgichew Kibret, Lawyer and general manager of AMAS advocate LLP, on 2 May 2024, through phone;

Interview with Mr. Kalayu Ayalew, Lawyer, though filling of questioner via email, send on April 30/ 2024.

Interview with, Mrs. Eskedar Wedajo, contract and claims group leader at Ethiopian Road Administrative (ERA), interview on 25 April 2024 in her office.

Interview with Judge Ashenafi Lemecha, Federal First Instance Court Commercial and Investment Division judge, on 24 Aril 2024 in his office.

Interview with, Mr. Selamsetegn Adera, From the Ethiopian Chamber of Commerce, questioner filed and send via email on Aril 26/2024