Ethiopia Has Enacted Its First Arbitration And Conciliation Proclamation

By:

Gidey Belay Assefa

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Introduction

Until April 2, 2021, both arbitration and conciliation in Ethiopia were governed by the 1960 Civil Code, the Civil Procedure Code, and other scattered laws. These laws left many issues on arbitration and conciliation unaddressed. There were also variances concerning naming of the dispute settlement mechanisms and procedure.

Further, the Civil Code and a hodge-podge of laws established arbitration centers as non-profit organizations. The absence of modern arbitration and conciliation laws left Addis Ababa, the African political capital city, with no international arbitration and conciliation center.

Recently, Ethiopia ratified the New York Convention through ratification Proclamation Number 1184/2020. More importantly, on 2 April 2021, a new

Arbitration and Conciliation Working Procedure Proclamation Number 1237/2021 was enacted.

This article describes how arbitration and conciliation were treated in the old laws, and briefly outlines the new arbitration and conciliation proclamation by highlighting the unique provisions and in doing so contrasts and compares them to the old laws.

The Old Legal Framework

Arbitration and conciliation were governed mainly by the Civil Code and the Civil Procedure Code. In addition, as noted above there was a scattering of legal provisions governing conciliation and arbitration of specific disputes. For instance, the Labor Proclamation makes provisions regarding conciliation and arbitration of labor disputes. The Transfer of Technology Council of Ministers Regulations No.121/1993 provides for conciliation and arbitration of disputes arising from a transfer of technology agreement. The Federal Cooperative Societies Proclamation Number 147/1998 dictates settlement of disputes between cooperative societies or within a single society by conciliation.

Concerning finality of arbitral awards, Article 350 of the Civil Procedure Code provides that an arbitration award is not final or appealable unless parties agree to waive it. Absent an agreement, with full knowledge, a party aggrieved by the decision of the arbitration tribunal is entitled to appeal to the relevant court. The Federal Supreme Court Cassation Bench (the Cassation Bench) has decided many cases confirming this. In addition to appeals, the old law also allowed review by the Cassation Bench on the ground that there was a basic error of law. In addition, no agreement could waive parties' right to appear before the Cassation Bench.

Similar to the Civil Procedure Code, the Labor Proclamation allowed aggrieved parties arising from the decision of an arbitral tribunal, or the failure to reach a conciliation agreement, to take their case to a court.

Previously, centers were established under the auspices of different laws. Addis Ababa chamber of commerce and sectorial association (AACCSA) was established by the General Notice number 90/1947 as a non-profit organization. The AACCSA was redefined, and other regional chambers of commerce and

sectorial associations were established through the Chambers of Commerce and Sectorial Associations Establishment Proclamation Number 341/2003. The former Ethiopian Arbitration and Conciliation Center was also established as a non-profit organization by the Civil Code and legal notice number 321/1966. And recently, the Ethiopian Mediation and Arbitration Center is established as a non-profit by the Civil Societies Organizations Proclamation Number 1113/2019.

The arbitration provisions did not address questions of appointment of arbitrators, grounds for disqualifaction of arbitrators, replacement of arbitrators, and so on. In addition, the old laws were not flexible enough to accommodate new challenges such as remote proceedings or virtual hearing. These and other reasons hindered the development of arbitration and conciliation as a dispute settlement mechanisms in Ethiopia.

The New Legal Framework

The Arbitration Law The Arbitration and Conciliation Working Proclamation Number 1237/2021 (the Proclamation) is applicable to commerce-related domestic arbitrations, and international arbitrations whose seat is in Ethiopia. But, it also contains a few provisions that govern international arbitrations whose seat is outside Ethiopia.

In principle, only agreements made after the coming into force of this proclamation are within the scope of this proclamation. As envisaged in Article 77 of the Proclamation, arbitration agreements entered before the coming into force of this proclamation are to be governed by the law that had been in force before the coming into force of this Proclamation unless parties agree otherwise.

Under Article 7, the proclamation designates matters of; divorce, adoption, tutorship, guardianship, succession, criminal, tax, a decision on bankruptcy, a decision on dissolution of companies, lease, and other land issues, administrative contracts unless permitted by other laws, trade competition and consumer protection issues, administrative issues bestowed to administrative tribunals, and other issues prohibited by other laws as non-arbitrable.

Unlike under the Civil Procedure Code, arbitral awards are final without the need to specifically agree that it is final. In relation to the review of an award on

the basis of a basic error of law by the Cassation Bench, however, only an express agreement to waive their right may preclude the Cassation Bench from having jurisdiction over the case. Article 49 of the Proclamation provides that: “[u]nless there is [an] agreement to the contrary, an application for cassation can be submitted where there is a fundamental or basic error of law”. Therefore, a ‘real finality’ can only be obtained if the parties agree not to submit their grievance for cassation.

In relation to the establishment of arbitration centers, the Proclamation provides that the government or a private person may establish them. The mandate to issue and renew licenses, provide criteria for their establishment and supervise them is bestowed to the Federal Attorney General. The absence of experts in the area may be a challenge to establishing a competitive center in Africa.

Moreover, Article 18 of the Proclamation allows the previously established centers to continue to operate.

The Conciliation Law

The Proclamation also deals with another mechanism of dispute settlement called “conciliation”. Conciliation is defined as “a process facilitated by a third party designated by contracting parties in order to resolve existing or future dispute that may arise from a contractual or non-contractual legal relationship”. In this form of dispute settlement, the role of the third person (the conciliator) is facilitation. S/he does not have the kind of jurisdiction to determine disputes like an arbitrator in arbitration.

According to Articles 55 and 68 of the Proclamation, an agreement to settle disputes through conciliation may be presented as a preliminary objection, and settlement agreements are final, non-appealable, and enforceable. The court that has material jurisdiction located at the place where the settlement agreement as well as the jurisdiction to enforce the settlement agreement made by the parties.

Objection to execution of settlement agreements may only be made when; 1) the settlement agreement is null and void, (2) the settlement agreement lacks clarity, (3) the settlement agreement is contrary to good conduct or violates

public peace and policy, and (4) where contracting parties lack [the] capacity to conclude the agreement.

The settlement agreement may also be invalidated on the ground of fundamental error where the document obliging the parties is itself is null and void, and where the consent of the contracting parties or one of them is obtained by a document which is proved to be false unless the parties were aware, during the agreement, that the document would be void or false.

The conciliation law does not provide for a service fee for the conciliator and prohibits a conciliator from acting as an arbitrator or being a witness in future proceedings of the same case if parties fail to settle it through the assistance of the conciliator.

In general, the arbitration and conciliation proclamation working procedure proclamation number 1237/2021 is new by its nature. But, its success remains to be tested through practice.

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