

Assessment of Effectiveness of Arbitration and Developing Framework to Enhance Arbitration Practices in Road Construction Contracts



Girma Fekadu

A Thesis Submitted to the Department of Civil Engineering

School of Civil Engineering and Architecture

Presented in Partial Fulfillment of the Requirement for the Degree
of Master's in Construction Engineering and Management

Office of Graduate Studies
Adama Science and Technology University

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Adama, Ethiopia

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DECLARATION

I declare that this thesis entitled “Assessment of Effectiveness of Arbitration and Developing Framework to Enhance Arbitration Practices in the Road Construction Contracts” is my own work and has not been submitted to any university for similar purposes. The references used in this thesis are duly recognized by proper citations.

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October 28, 2024

Name of student

Signature

Date

RECOMMENDATION

I, the major advisor of this thesis, hereby certify that I have read the revised the revised version of this thesis entitled “Assessment of Effectiveness of Arbitration and Developing Framework to Enhance Arbitration Practices in Road Construction Contracts” prepared under my guidance by Girma Fekadu submitted in partial fulfillment of the requirement for the degree of Master’s of Science in Construction Engineering and Management. Therefore, I recommend the submission of the thesis to the department following the applicable procedures.

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APPROVAL

I, the major advisor of the thesis entitled “Assessment of Effectiveness of Arbitration and Developing Framework to Enhance Arbitration Practices in Road Construction Contracts” and developed by Girma Fekadu, hereby certify that the recommendation and suggestion made by the board of examiners are appropriately incorporated into the final version of the thesis.

Major Advisor

Signature

Date

We, the undersigned, members of the Board of Examiners of the thesis by Girma Fekadu have read and evaluated the thesis entitled “Assessment of Effectiveness of Arbitration and developing Framework to Enhance Arbitration Practices in Road Construction Contracts” and examined the candidate during open defense. This is, therefore, to certify that the thesis is accepted for partial fulfillment of the requirement of the degree of Master of Science in Construction Engineering and Management.

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Acronyms

AAA	American Arbitration Association
AACCSA	Addis Ababa Chamber of Commerce and Sectoral Association
AACCSA AI	Addis Ababa Chamber of Commerce and Sectoral Associations Arbitration Institute
CC	Civil Code of Ethiopia
CPC	Civil Procedure Code of Ethiopia
DRB	Dispute Review Board
EACC	Ethiopian Arbitration and Conciliation Center
ERA	Ethiopian Roads Administration
FIDIC	Federation International Des Ingenieurs Conseils
ICC	International Chamber of Commerce
IHA	Imperial Highways Administration
LCIA	London Court of International Arbitration
NYC	New York Convention
PPA	Public Procurement Agency
RoW	Right of Way
UNCITRAL	United Nations Commissions for International Trade Law

Abstract

Disputes in construction industry are frequent because of the uniqueness and complexity of construction projects. Arbitration is considered to be an effective final dispute resolution mechanism in solving construction disputes. This research aims to study effectiveness of arbitration in the road construction industry focusing on road construction contracts undertaken by the ERA. In doing so, the research studied arbitration effectiveness in terms of time efficiency, cost-effectiveness and quality of awards. To achieve the research objectives a comprehensive literature review was conducted on the current knowledge and practices of arbitration in the construction industry of Ethiopia and international level. In doing so, the researcher reviewed the new proclamation, titled the Arbitration and Conciliation Working Procedure Proclamation no. 1237/2021, which provides the legal framework, provisions related to arbitration in the conditions of FIDIC contracts and a score of articles and books related to arbitration of construction disputes in general and road construction disputes from the Ethiopian context. Then, interviews and case studies were conducted to collect data from various experienced professionals working in the road construction industry as Arbitrator, Claim/Contract Engineer, Lawyers employed in ERA, private construction companies and consulting firms. The data are organized, analyzed and interpreted to provide applicable and rational recommendation to enhance the arbitration practices in resolving construction disputes arising in the Ethiopian Road Administration projects. Accordingly, the study revealed that dispute potential in Ethiopia's road construction industry is high, primarily due to contract-related issues and project management problems. In regard to effectiveness of arbitration in resolving construction disputes in federal road contracts the research disclosed mixed results: while domestic arbitration is generally effective in terms of time and cost, international arbitration proves to be less efficient and far more expensive. Establishing a more robust domestic arbitration center, improving the only functioning AACCSA AI capacity and setting a vision and working towards making Addis Ababa as a seat for international arbitration are forwarded as recommendations.

Key words: Arbitration, ADR, Effectiveness of Arbitration, Road Construction Industry

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Acknowledging the crucial role of road transport in fostering social and economic development, the Federal Democratic Republic of Ethiopia's (FDRE) government has prioritized enhancing the quality, extent, and distribution of the country's road infrastructure. To address the deteriorated road conditions following an extended period of civil conflict, the government initiated the Road Sector Development Program (RSDP) in 1997. Subsequent iterations, from RSDP II to RSDP V, each spanned five years, with the exception of the three-year RSDP III. Currently, RSDP VI is being implemented, having commenced in 2022.

Road construction projects, similar to other construction endeavors, are distinct undertakings. They are executed within defined timeframes, utilizing various resources such as workforce, equipment, and finances, and involve numerous parties and stakeholders. The intricacy of these projects can be amplified by divergent viewpoints and interests among involved entities, as well as critical considerations of schedule, cost, and quality. Additionally, globalization has increasingly impacted the construction industry, with international partnerships becoming more prevalent. Given these circumstances, conflicts are unavoidable in construction projects. Dispute resolution demands time, resources, and effort from all contractual parties. Disagreements are expensive and can impede a project's successful completion. As a result, project managers must understand the underlying causes of construction disputes and develop tactics to address and prevent them. By comprehending the factors that contribute to disagreements, project leaders can formulate strategies to mitigate potential conflicts.

In recent years, the construction sector has seen a rise in disputes (Lee et al., 2021). Traditionally, when parties failed to resolve conflicts amicably, they would resort to legal action. However, court proceedings have proven to be costly and time-consuming for settling construction-related disputes. The losing party in a lawsuit may face financial sanctions that could potentially lead to insolvency. Moreover, it can harm the reputation and goodwill of

construction contractors, which they have invested considerable effort in building. The damage to a contractor's market standing can significantly impact their business due to diminished trust from prospective clients. Furthermore, the judicial system is overwhelmed, and cases often conclude with compromises that leave both parties dissatisfied. Additionally, judges typically lack specialized construction knowledge, necessitating expert testimony. Consequently, road construction disputes are increasingly being referred to arbitration. Thus, it is crucial to establish efficient, cost-effective, and impactful arbitration procedures for resolving road construction conflicts in Ethiopian road construction projects.

In Ethiopia, arbitration stands as a recognized formal alternative to traditional dispute resolution methods, with its awards carrying the same enforceability as court decisions. Its suitability for construction-related conflicts has contributed to its widespread acceptance internationally. The arbitration process ensures confidentiality for disputing parties and offers adaptability to meet the specific needs of each case. Moreover, it grants parties complete freedom in choosing an appropriate arbitrator. Globally, arbitration is widely regarded as one of the most efficient alternative dispute resolution techniques. Given these factors, this study aims to investigate and assess the "effectiveness of arbitration as a dispute resolution method in the road construction industry of Ethiopia."

1.2 Statement of the Problem

The prompt resolution and effective management of conflicts in construction projects are imperative to mitigate potential damage to inter-party relationships, which can adversely affect project timelines, expenditures, and overall quality. Conventional judicial proceedings are generally deemed inadequate for addressing construction-related disputes. This inadequacy stems from the fact that resolving such conflicts necessitates not only legal expertise but also technical proficiency, which many court judges lack. Furthermore, court proceedings frequently result in a series of costly appeals in higher courts, leading to protracted and financially burdensome processes. Consequently, alternative dispute resolution (ADR) methods have emerged as indispensable mechanisms for settling construction disputes outside the judicial system, offering a more efficient and specialized approach to conflict resolution in the construction industry.

Arbitration is one of the alternative dispute resolution techniques that has a binding effect in Ethiopia. The existence of a considerable number of arbitration institutions and various arbitration treaties worldwide indicates a preference for arbitration over court proceedings in resolving disputes arising from commercial matters, such as construction. Although most researches and the practice suggest that arbitration is more effective than litigation, however recent researches has shown reservation on the efficacy of the arbitration mechanism in the construction industry (Abwunza, 2020), where it is extensively applied. Therefore, researches should be conducted to investigate and evaluate the effectiveness of arbitration and to enhance its performance in resolving road construction work disputes from the Ethiopian road industry context.

1.3 Objectives of the Research

1.3.1 General Objective

The general objective of this thesis is to assess dispute causes and efficiency of arbitration practices and to develop a tailored arbitration framework for Ethiopian road construction contracts based on industry standards, local regulations, and international best practices.

1.3.2 Specific Objectives

1. To investigate the causes of disputes in the road construction industry
2. To Evaluate the efficacy of current arbitration practices in resolving disputes
3. To Develop local based arbitration framework for national and international road construction contracts for the Ethiopian Roads Administration

1.4 Research Questions

The following questions initiated the researcher to conduct this thesis.

1. What are the potential causes of disputes in the road construction industry and how disputes can be avoided or minimized in the road construction contracts?
2. What are the contract provisions and applicable laws/rules in the local and international arbitration practices and how is the current domestic arbitration law is aligned with the international arbitration laws and rules?

3. Are the current arbitration practices is really effective in resolving road construction (domestic and international contracts) disputes in terms of time efficiency, cost-effectiveness and quality of awards?

1.5 Significance and Application of the Research

In commercial agreements, particularly those involving construction projects, arbitration stands out as an efficient means of resolving disputes. It is commonly viewed as a preferable option to litigation for addressing conflicts. The implementation of arbitration in construction-related disagreements presents multiple advantages for the parties involved and plays a role in fostering foreign investment and development within the construction industry. This research aims to offer valuable insights to assist the road construction sector in handling conflicts during project execution. Furthermore, the study seeks to recommend enhancements to improve the efficacy of arbitration in Ethiopia's road construction industry, specifically addressing both domestic and international contracts. On a broader scale, this work aspires to complement existing literature by contributing to the progression of arbitration as a definitive alternative dispute resolution method within the country.

1.6 Limitation of the Research

As arbitration practices and procedures are mostly confidential, getting access to detail information of arbitration of construction disputes has been noted as a limitation in conducting this research.

1.7 Scope of the Research

This thesis is focused only on arbitration in the road construction contracts undertaken by Ethiopian Roads Administration. Its effectiveness in terms of time efficiency, cost-effectiveness and quality of awards are investigated in the context of the Ethiopian federal road construction contracts refereed to arbitration in the last five years. Detail literature review has been conducted with regard to the general commercial arbitration with focus on construction arbitration practices and effectiveness in the road construction industry.

1.8 Organization of the Study

The research work is organized into four chapters and the contents of which are briefly described as follows:

Chapter 1: it is an introductory part which offers background information, states the research problem, significance of the research, the objectives and limitations of the research.

Chapter 2: deals with a literature review of relevant published research papers, books, internet searches, publications, previous similar research works and study of arbitration award and contract documents. This chapter provides a conceptual framework for the study.

Chapter 3: discusses the research methodology followed in order to achieve the objectives of the study.

Chapter 4: describes the findings of the interview and case studies of projects selected for the research and discussions is made with appropriate reference from the literature review findings.

Chapter 5: concludes based on the findings of the case studies and forwards recommendations and further research area suggestions.

CHAPTER TWO

LITERATURE REVIEW

2.1 General Overview of Construction Disputes

Construction by its very nature is a complex undertaking involving numerous trades and disciplines all working under what is usually a “tight budget” and with time constraints for completion – all of which lead to the possibility of conflict and disputes arising as to time, quality, delay, and a myriad other complication (Cheren, 2020).

As a result, disputes are inevitable and frequently occur in road construction projects. Uncertainties in contract documents, inadequate communication, scope modifications, and other unforeseen events that may occur during the construction period are some of the common causes of these. Conflicts may cause a project to be completed later than expected, which could have a negative financial impact. These undercut project results and could have negative impact on the project's overall viability and economics. Consequently, it is essential that the disagreements be settled quickly and cordially, with outcomes that all parties involved can be satisfied with (Gamage, 2023). In the road construction sector, disputes have been called an epidemic because they frequently result in project failure, financial and time loss, and strained relationships between project participants. If disagreements are not settled quickly, they can worsen and require the involvement of dispute resolution procedures. These processes take a lot of time and money (Kumar Viswanathan et al., 2020).

Mismanaged and unresolved disagreements are the root cause of disputes. Because conflicts are inherently damaging, they should be avoided because they sabotage peace and promote a healthy coexistence. Resolution, containment, and prevention are all part of conflict management. In reality, dispute resolution is just one part of conflict management. When one partner in a partnership makes an assertion that the other party rejects and the former finds this rejection intolerable, there is said to be a disagreement (A. K. Sinha & Jha, 2020).

2.2 Causes of Disputes

One of the primary things preventing the road construction projects from being completed successfully is disputes. Therefore, in order to finish projects on schedule, within budget, and with the intended quality, it is critical to understand the reasons behind disagreements (Getahun, 2016). Conflicts are frequent in the construction sector. Disagreements between any of the contracting parties give rise to disputes. Construction projects suffer greatly from disputes since they can lead to overspending, delays, and decreased productivity. To finish a construction project on schedule and under budget, it is essential to comprehend the reasons behind disagreements (Sameh et al., 2020). Unforeseen physical or site conditions leading to variation, war and hostilities, strikes, rioting or disorder, natural disasters, and earthquakes are the main causes of disputes/claims; consequently, it is observed that the main stakeholders have raised the disputes/claims mostly from these causes (Id et al., 2018). The main reasons for claim and dispute in the Middle East are administrative (inadequate contract administration) and unprofessional management documents, undervaluation, ineptitude, and unequal bidding among contractors failing to issue interim judgments regarding time extensions and owner compensation), Contractual: By changing the typical terms of the agreement, the contractor assumes the majority of the risk Insufficient or lacking technical blueprints or specifications Inconsistent and erroneous data in the contract documents Owner disregards the terms of the contract Contractor unable to uphold his end of the bargain variations brought about by the owner/consultant (additive/deductive) and cultural (law and rules are constantly changing, which can result in unforeseen events and changes in material pricing) Local customs and social norms' influence on dispute resolution (Awwad et al., 2016).

2.3 Dispute Resolution Methods

Many methods of resolving commercial disputes have evolved over the centuries. The most familiar are listed below: (Buni, 2005)

- (a) negotiation;
- (b) mediation;
- (c) conciliation;

- (d) Dispute Boards, Dispute Review Boards or Experts, Claims Review Boards and Dispute Adjudication Boards or Experts;
- (e) adjudication;
- (f) arbitration; and
- (g) litigation.

The last two of the above methods lead to a solution that is imposed on the parties in dispute, through a court judgment or an arbitral award. The other methods are amicable and so the parties have a say in, and can control, the outcome of the dispute. They are more popularly known as ‘alternative dispute resolution’ or ‘amicable dispute resolution’ methods, and are usually referred to by the acronym ADR (Bunni, 2005).

It should be pointed out that the best time to decide on the mandatory use of an amicable method of dispute resolution and the rules to be used for such method, is at the time of writing the contract agreement. The reason is that once a dispute has arisen, any proposal by one party towards amicable settlement may be perceived as a sign of weakness by the other party or parties and may lead to the opposite result: entrenchment. A further advantage of using amicable settlement as a mandatory step before reference to arbitration is the avoidance of any possible blame being attached to the decision maker who proposes amicable settlement of a dispute instead of a more adversarial method. These two reasons were influential in the decision by FIDIC to make amicable dispute settlement an obligatory step to be taken prior to arbitration.

Amicable dispute resolution methods are successful when the parties believe that the disputes in question are difficult or challenging, and while good faith and trust still exist between them. On the other hand, these methods are generally less successful when emotions are running high and where the parties have no interest in a prompt settlement. In general, however, the ordinary person is not skilled in the art of negotiation and a third person is usually engaged to facilitate the dispute resolution process.

With the exception of negotiation, the above methods of dispute resolution differ from arbitration in that they involve a process whereby a third party is simply called upon to facilitate the process and to assist in reaching a settlement by issuing a non-binding evaluation

of the dispute and a recommendation of how it could be resolved, or in the case of a dispute adjudication method a decision that is temporarily binding until and unless it is revised in a subsequent forum.

It is also to be noted that in its current dispute resolution method ERA is practicing adjudication and arbitration as dispute resolution method (ERA Bidding Manual). As one of the objectives of this research was to study on arbitration effectiveness the following sections discussed history of arbitration development, arbitration conventions, rules and topics related to effectiveness of arbitration.

2.4 Brief History of Arbitration Development

Arbitration has been a long-standing alternative to traditional legal proceedings. During medieval times, it was the predominant form of dispute resolution. The first cross-border private judicial system emerged from the disciplinary committees of craftsmen (Institute of Arbitration 2020).

As business practices grew more intricate, relying solely on participants' goodwill became insufficient for enforcing arbitration decisions. A more robust framework was necessary. Redfern et al. (2022) noted that "the support of legal system within which the process of private dispute resolution operates" was essential. Consequently, it was anticipated that national governments would eventually intervene to regulate the increasingly significant commercial activities (Redfern et al., 2022).

The inaugural legislation addressing arbitration, known as the "Arbitration Act," was enacted in 1698. In France, a 1560 law mandated that merchants resolve disputes through arbitration, although this requirement was later disregarded and subsequently reinstated during the French Revolution (Redfern et al., 2022).

In addition to the development of legal frameworks for arbitration, several important arbitration institutions were established. Notable examples include the London Court of International Arbitration (LCIA) in 1892, the Court of Arbitration of the International Chamber of Commerce (ICC Court) in Paris in 1923, and the American Arbitration Association (AAA) in 1926 (Redfern et al., 2022). Manson (1983) summarizes the primary objectives of these

organizations as "to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, peace-maker instead of a stirrer-up of strife".

2.5 International Conventions and Rules on Arbitration

Because of globalization and the growing importance of international cooperation, commercial arbitration does not stay within the national boundaries, rather it crosses them. Therefore, again something more was needed and that is “an international treaty or conventions which would link together national laws and provide a uniform solution” (Redfern et al., 2022). In 1923, as a response to this problem, the Geneva Protocol came into being. Nowadays, there are several important International Conventions and Rules on arbitration. Some of these are briefly discussed below.

2.5.1 The Geneva protocol of 1923 and 1927

This protocol was the first international convention initiated by the ICC and carried out under the auspices of the League of Nations at Geneva on September 24, 1923. It had two objectives. The first is to make arbitration clauses enforceable internationally so that parties to any arbitration agreement would be obliged to resolve their disputes by arbitration, rather than through the courts. And the second is to ensure the arbitration awards made pursuant to such arbitration agreements to be enforced in the territory of the states in which they were made (Art 1 and 3 of Geneva protocol, 1923).

As per the report of the Secretary-General of the United Nations (1966), the Protocol has been ratified by fifty-three countries and all the involved parties agreed on the execution of the consensus made above.

Similarly, the 1927 Geneva convention has been adopted at Geneva on September 26, 1927 under the auspices of the League of Nations. The aim of this convention was to widen the Geneva protocol of 1923. It is to ensure the recognition and enforcement of protocol awards within the territory of contracting states rather than only within the territory of states in which the awards were made (Juris International, 2002). However, the parties seeking enforcement should prove that the conditions necessary (which are tiresome) for the enforcement are fulfilled.

The member states of the Geneva Convention were basically the same as of the Geneva Protocol, with notable omissions, such as Brazil and Norway (Redfern et al., 2022). It has been ratified by forty-four countries.

2.5.2 The New York Convention of 1958

This convention is also known as “The Convention on the Recognition and Enforcement of Foreign Arbitral Awards”. As per the report of the Secretary-General of the United Nations (1966), the major causes that initiate the international business community to consider Geneva Convention of 1927 arrangements as inadequate were the rapid growth of international trade and the associated need to develop facilities for arbitration. It was ICC who prepared the draft of this convention and later on the United Nations Economic and Social Council had taken up the proposal of ICC and resulted in the New York convention on June 10, 1958. The improvements done on the New York convention are the provision of a much more simple and effective method of obtaining recognition and enforcement of foreign arbitral awards than that of 1927 Geneva convention and the wider validity of arbitration agreements than that of 1923 Geneva protocol (Redfern and Hunter, 2012). It is now the most important international treaty relating to international commercial arbitration.

Nowadays 172 countries around the world signed the New York Convention (www.uncitral.un.org) Ethiopia also ratified the convention on February 13, 2020 and acceded to NYC on August 24, 2020 as 165th state from the world and 40th country from Africa. The endorsement became enforceable as of November 22, 2020.

2.5.3 The UNCITRAL Arbitration Rules

As per 39 Essex Street Chambers seminar report (2010) “an increasing need for a neutral set of arbitration rules suitable for use in ad hoc arbitrations” in early 1970s was one of the reasons which necessitated the adoption of the UNCIRAL arbitration rules. It was adopted by one of the supplementary bodies of General assembly of the United Nations called the United Nations Commission on International Trade Law (UNCITRAL) on December 15, 1976. That is why it is named UNICTRAL arbitration rules.

The UNCITRAL arbitration rules mainly developed for ad hoc arbitrations by providing model arbitration rules covering all aspects of arbitration process and setting out of the procedural rules. Nowadays it has widely used and achieved international recognition. In 2010 the working group of United Nations Commission on International Trade Law revised the 1976 arbitration rules for making it more suitable for its purpose.

2.5.4 The UNCITRAL Model Law on Arbitration

The UNCITRAL model law on arbitration was established in December 1985. The primary motivation behind this model law was the belief that "harmonization of the arbitration laws of the different countries of the world could be achieved more effectively by a model or uniform law" (Redfern et al., 2022), in addition to providing arbitration rules. It is considered the most effective model for illustrating the arbitral process in a clear and comprehensible manner, from its inception to its conclusion (Redfern et al.2004). Over 40 nations worldwide have adopted this model, either in its original form or with slight modifications, including Canada, Germany, and Australia (Christen et al., 2010). Additionally, the model underwent revision in 2006 to align with the rapidly evolving landscape of international arbitration (39 Essex Street Chambers report, 2010).

These days, UNCITRAL model law on arbitration is accepted to be one of the best legal norms in the world concerning international arbitration (Blanch et al., 2006).

2.6 National Arbitration Institutes and Rules

2.6.1 Addis Ababa Chamber of Commerce Arbitration Institution Rules

Addis Ababa Chamber of Commerce and Sectoral Associations (AACCSA), is established in 1947 and the major objective of AACCSA is to promote the establishment of conditions in which business in general and in Addis Ababa in particular can prosper. It was also legally mandated and authorized to carryout arbitration on business and industrial differences among the business community. Still the Chamber is offering dedicated arbitration and other alternative dispute resolution service to its members and the business community at large. With over 17,000 registered members, it is the largest and oldest chamber of commerce in Ethiopia and several cases were reportedly settled under its support. In January, 2002 in

response to the rising need for reliable, effective, fast and flexible commercial dispute resolution mechanisms, the Chamber established the Arbitration Institute, which is the first of its kind in Ethiopia aimed at providing the whole range of commercial arbitration services (<https://addischamber.com/arbitration/about-arbitration-institute/>).

Administering and facilitating the settlement of disputes in accurate accord with the Arbitration Rules of the AACCSA, ensuring the proper and effective application of the relevant AACCSA Rules, and promoting and disseminating the settlement of commercial disputes by Alternative Dispute Resolution (ADR) mechanisms are the main objectives of the institute (AACCSA rules, 2008).

2.7 Definitions and Importance of Arbitration

In his well-known book Buni (2005) defined arbitration as a process whereby parties in dispute agree to submit the matter in dispute to the decision of a person or persons in whom they have confidence and trust and undertake to abide by that decision.

A more comprehensive definition of arbitration also given by Redfern (2022). International arbitration (arbitration) is a legal process in which parties to a dispute agree to refer that dispute to a tribunal of one or more independent and impartial arbitrators chosen by or on behalf of the parties to the exclusion of the domestic courts. The task of that tribunal is to give equal consideration to the claims and defenses of the parties and to arrive at a decision on the dispute pursuant to the applicable legal framework. That decision is given in writing in the form of a binding award which the parties are obliged to perform without delay and which, in the absence of voluntary compliance, is underpinned by an international system of recognition and enforcement through local courts.

For a valid arbitration the following four core points must be in place (Buni, 2005).

(a) The existence of a dispute: A dispute must arise before the parties can enter into an arbitration. It is not, for example, an arbitration if two parties seek a decision in respect of a problem for which neither have an answer, as in the case of the evaluation of the cost of a certain item. If the cost of the item is not known a dispute has not yet arisen. A dispute will not arise until a decision is made by someone (for example, the engineer under the contract or

an expert appointed by one of the parties) as to the cost, and that decision is challenged by one or both of the parties.

There should be a dispute in existence between the parties before proceeding down the path to arbitration appears to be stating the obvious, but in fact the great number of litigation cases where the arbitrator's jurisdiction is challenged on this very point shows that it is not as straightforward as it would first appear (Buni, 2005).

(b) Agreement to refer the dispute to arbitration when the dispute arises: The parties in dispute must either agree or already have agreed to refer the dispute to a third-party individual or tribunal for determination. Such arbitration agreement typically incorporates by reference a set of procedural rules which the parties and the third-party individual/tribunal are required to follow in respect of their conduct during the arbitration and the manner by which the determination is reached.

(c) Agreement to be bound by the award: The parties in dispute must also agree to be bound by the award of the arbitrator who has been chosen or appointed.

(d) Initiation of the arbitration: A notice by one party to the other that he is commencing arbitration proceedings, and intends to refer the dispute that is in existence to an arbitrator, is required to be given to initiate the arbitration proceedings. In most, if not all jurisdictions, the date of such notice serves as the date of the commencement of arbitration. The date of commencement of arbitration is important from the point of view of the limitation period since the notice is equivalent to the issue of a writ. At the same time, or very shortly after serving this notice, very often the notifying party will propose an individual to act as arbitrator and so serves on the other party a notice to concur on the appointment of this individual as arbitrator (Buni, 2005).

2.8 Advantage and Disadvantage of Arbitration

2.8.1 Advantage of Arbitration

Arbitration offers numerous advantages when compared to court proceedings. The following section outlines the most frequently cited benefits of arbitration. However, it is important to note that many of these pros may only be applicable to disputes arising from construction contracts.

1. Freedom in Choice of Arbitrator

In contrast to court proceedings, arbitration allows parties the liberty to select a suitable individual to serve as an arbitrator. This provision grants party's complete autonomy in choosing an appropriate person for their cases. It is frequently asserted that an arbitrator selected partly due to their technical expertise can comprehend and interpret facts more efficiently and effectively compared to lay judges. Douglas (1993) supports this notion in his book, stating that "while it is recognized that technical expertise is available in court through the appointment of experts, there is a very real danger that a non-technical judge may be influenced more by the eloquence and powers of explanation and persuasion of the expert than by the technical merits of his evidence". Consequently, one of the advantages for parties in arbitration is the opportunity to select competent arbitrators who may possess expertise in the subject matter of the dispute.

2. Flexibility

The procedural aspects of arbitration are flexible and can be tailored to the requirements of a particular dispute. Arbitration concerning the quality of grain delivered in a sales contract does not necessitate the same procedures as arbitration regarding the construction of a factory. In arbitration, parties can mutually agree on the most appropriate manner to conduct the proceedings from initiation to conclusion (Redfern, 2022).

3. Cost

Arbitration can be more cost-effective than court proceedings. However, a deliberate effort is necessary to ensure its cost-effectiveness; otherwise, it may prove even more expensive than litigation. Nevertheless, since court proceedings are more likely to be followed by a series of costly appeals to superior courts, arbitration can be more economical if "parties act sensibly in choosing the form of the proceedings and of their representation" (Douglas, 1993).

4. Speed

A properly used arbitration resolves disputes in minimum delay of time as compared to court (Douglas, 1993). Most of the time court is eventful and take much more time to give its service.

5. Privacy

Privacy is one of the most important advantages of the arbitration as compared to court. Unlike the latter, in the former proceedings are not open to the press or to the public. Only those persons involved in the proceedings are permitted to attend. Also, individuals involved in the proceeding do not allowed to disclose the information about the proceeding without the consent of the parties. This will avoid the disclosure of commercially sensitive information and any undesirable publicity or loss of reputation (Redfern, 2022).

6. Finality of the award

Unlike the award given by the judges, the award rendered by the arbitrator in most jurisdictions is final and binding unless it can be shown that the arbitrator has made a mistake in law or has treated the proceedings unfairly.

7. No Obligation to be Represented

As Lachmann (2002) explains, in arbitration procedure parties are not forced to be represented by a lawyer, which is must in the case of court. This can somehow reduce the expenses of the parties. However, this advantage of arbitration does not hold true in Ethiopia since in Ethiopian courts parties are not forced to be represented by a lawyer.

2.8.2 Disadvantage of Arbitration

Even though the pros outweigh, there are some drawbacks of arbitration which are being raised nowadays. Next some of the critics of arbitration are discussed.

1. Cost

It is not true that arbitration is always a cheaper method of resolving disputes than court or any other ADR methods. Unlike the court administrative fees, the fees and expenses of the arbitrators which are to be paid by the parties may be substantial. In addition, other costs like administrative fees and expenses of an arbitral institution, hiring rooms for meetings, and hearings can raise the cost of arbitration. Therefore, unless a conscious effort is made, arbitration is unlikely to be cheaper than court proceedings (Redfern et al., 2022). But as mentioned above, even though it may not be cheaper than that of proceedings in

court, the award of the arbitrators is unlikely to be followed by a series of costly appeals to superior courts (Redfern et al., 2022).

2. Conflicting Awards

Because of the confidentiality of arbitration, different awards may be given for similar issues or facts. As Redfern et al. (2022) explains it “there is no rule in arbitration that an award on a particular issue, or a particular set of facts, is binding on arbitrators confronted with similar issues or similar facts”. That means in arbitration each award stands on its own. Therefore, it is possible that different awards are given for the same case.

3. Difficulty in Prediction

Once again, because of the confidentiality of arbitration, there is no available data of previous endings. Therefore, parties have less possibility of predicting how their dispute will end.

4. Incompetent Arbitrators

Occasionally, due to a lack of understanding of appointment criteria, individuals with insufficient qualifications are selected as arbitrators, either by appointing authorities or the involved parties (Douglas, 1993). To address this issue, many arbitration organizations now maintain rosters of qualified arbitrators from which parties can choose their representatives.

5. No Reconsideration

Even though the finality of arbitration awards can be seen as an advantage on one hand, sometimes parties may be obliged to accept unfair arbitral decisions that are not reviewable.

2.9 Process of Arbitration

The arbitration process can be divided into two types of arbitration proceedings. These are Ad hoc arbitration and institutional arbitration.

2.9.1 Ad hoc Arbitration

This is a kind of arbitration in which the procedure is usually set by the disputing parties themselves. Parties are free to work out and establish rules of procedure for themselves under ad hoc arbitration, as long as these rules treat the parties with equality and allow each party a reasonable opportunity to present its case (Redfern et al., 2022). Therefore, the major advantage of ad hoc arbitration is that, it may be shaped to meet the wishes of the parties and the facts of the particular dispute (Redfern et al, 2022). However, since drafting special rules for an ad hoc arbitration is a time-consuming process, most of the time rules of procedure which have been specially formulated for this purpose like UNCITRAL Rules are adopted.

The principal drawback of ad hoc arbitration as Redfern et al (2022) suggests that “it depends for its full effectiveness on cooperation between the parties and their lawyers, backed up by an adequate legal system in the place of arbitration.” Therefore in ad hoc arbitration it is easily possible for one party to delay arbitral proceedings by refusing to act actively.

2.9.2 Institutional Arbitration

This is the kind of arbitration administered under the rules of arbitral institutions. In institutional arbitration, the parties will incorporate into their arbitration agreement by reference the arbitration rules of an identified arbitration institution. The main advantage of institutional arbitration is that it is possible to arbitrate effectively even if at some point one party is found to be reluctant to go ahead with the arbitration proceedings since the institute provides a set of procedural rules for different cases (Weigand, 2002). Another important advantage of institutional arbitration is in most arbitral institutions’ arbitration is administered by a trained staff and also “the institution itself reviews the arbitral tribunal’s award in a draft form, before it is sent to the parties” (Redfern et al., 2022).

The drawback of institutional proceedings is that a fixed fee to be paid by the parties in advance for the fees and expenses of the institution and arbitral tribunal is substantial. Also, delay caused by the institution in order to follow their bureaucratic steps can be taken as a demerit (Redfern et al., 2022).

2.10 Legal Framework of Arbitration

Prior to April 2021, Ethiopia lacked dedicated arbitration legislation. The country's arbitration laws were dispersed throughout the Civil Code of 1960 and the Civil Procedure Code of 1965, both of which were decades old.

On the 2nd of April 2021, the new arbitration law was enacted as ‘Arbitration and Conciliation Working Procedure Proclamation’ Proclamation no. 1237/2021 (the Proclamation). This provided Ethiopia with its first standalone legislation with comprehensive governance of different aspects of dispute resolution through arbitration and conciliation.

The Proclamation is drafted to apply to commercial domestic arbitrations and international arbitrations, whose seat is in Ethiopia, as part of broader initiatives to update its legal framework and enhance its appeal to foreign investors. In addition, the Arbitration Law was introduced shortly after Ethiopia ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award (NYC) on February 13, 2020.

This move aimed to portray Ethiopia as a business-friendly nation, encouraging increased international investment. According to the World Bank, with about 126.5 million people (2023), Ethiopia is the second most populous nation in Africa after Nigeria, and one of the fastest-growing economies in the region, with an estimated 7.2% growth in FY2022/23 (<https://www.worldbank.org/en/country/ethiopia/overview>).

The Proclamation is largely based on the UNCITRAL Model Law and contains many provisions that embrace international arbitration best practices. It also contains some interesting provisions relating to the finality of awards, non-arbitrability, res judicata, confidentiality, and the establishment and regulation of arbitral institutions. Nonetheless, a few potential challenges remain.

As per Article 78 of the Proclamation, the provisions of Articles 3318 to 3324 of the Civil Code which deal about conciliation and the provisions Articles 3325 to 3346 of the Civil Code which deal about arbitration shall be repealed by this Proclamation. And, the provisions of the civil procedure code from Articles 315 to 319, 350, 352, 355-357 and 461 which deals about arbitration repealed by this Proclamation.

2.10.1 Overview of The New Arbitration and Conciliation Proclamation

Prior to the enactment of the new law, under the previous legal framework for arbitration in Ethiopia, there was a limitation on the scope of the competence-competence doctrine, which allows arbitrators to rule on their own jurisdiction. While the Civil Code allows arbitrators to rule on their jurisdiction, Article 3330(3) of the Civil Code barred arbitrators from deciding the validity of an arbitral submission (arbitration agreement). Thus, before the issuance of the Proclamation, challenges to the validity of arbitration agreements were decided by the courts. The Proclamation as per Article 19, has addressed the issue by providing that arbitral tribunals the power to determine the existence or non-existence of a valid arbitration agreement between the contracting parties including as to whether it has jurisdiction to hear the case or not.

Under the previous recognition and enforcement regime governed primarily by the 1960 Civil Code and the 1965 Civil Procedure Code, there were questions regarding the finality of arbitral awards in Ethiopia, resulting from the application and interpretation of Article 350(2) of the Civil Procedure Code, which presumes a right of appeal from any arbitral award unless parties agree to waive the right of appeal “with full knowledge of the circumstances”.

Unlike the Civil Procedure Code, the Proclamation adopts a presumption that arbitral awards are final and not appealable unless the parties agree otherwise in their arbitration agreement. Nonetheless, Article 49(2) of the Proclamation allows parties to apply for cassation "where there is a fundamental or basic error of law", but parties may waive the right of appeal. Thus, unless the parties are able to agree to waive judicial review for errors of law, the potential for second-guessing final arbitral awards still exists through the appeal process. This is separate from the set-aside provision of Article 50, which mirrors the UNCITRAL Model Law's grounds for setting aside arbitral awards and thus requires that judicial review of arbitral awards be limited to narrow and well-defined situations (Elizabeth Oger-Gross and Tolu Obamuroh, 2021)

The Proclamation also contains a list of matters that are not arbitrable under the law, similar to the laws of most arbitration-friendly jurisdictions. However, the law provides that "administrative contracts" – which are contracts concluded between administrative authorities and individuals or companies to carry out the activities of public services, such as public supply contracts and contracts of public services – are non-arbitrable.

The provision of the Proclamation on the non-arbitrability of administrative contracts mirrors the Civil Procedure Code, which provides that "no arbitration may take place in relation to administrative contracts as defined in Art. 3132 of the Civil Code or in any other case where it is prohibited by law." With this provision, invoking arbitration agreements against agencies of government under Ethiopian law may be challenging. However, Ethiopian courts, particularly the Federal Supreme Court, have generally been consistent in nonetheless enforcing arbitration agreements and awards resulting from administrative contracts (Elizabeth Oger-Gross and Tolu Obamuroh, 2021).

Prior to the issuance of the Proclamation, the existing arbitration centers – such as the Addis Ababa Chamber of Commerce and Sectorial Association, Ethiopian Arbitration and Conciliation Center, and Ethiopian Mediation and Arbitration Center – were established by various laws as non-profit institutions. Unlike under the old regime, the Proclamation (Article 18) allows private organizations to establish arbitration centers. The Attorney General of the Federation is empowered to issue and renew licenses, provide the criteria for establishing new arbitration centers, and supervise the operation of such centers. Given the significance of Ethiopia as the largest economy in East Africa, the fastest growing economy in Africa and the headquarters of the African Union, and the drive to make Addis Ababa the air transport hub of the region, it is expected that other independent international arbitration centers will emerge in the future (Elizabeth Oger-Gross and Tolu Obamuroh, 2021).

2.10.2 Arbitration Agreements Under Ethiopian Law

Redfern et al. (2022) states that the cornerstone of modern commercial arbitration is the mutual agreement between parties to resolve their disputes through arbitration. This implies that arbitration is only valid when a legitimate agreement to arbitrate exists between the involved parties. The arbitration agreement demonstrates the parties' willingness to address their conflicts through arbitration, and such agreements are recognized in both national laws and international treaties.

The Proclamation defines an Arbitrational Agreement as a contract to resolve current or future disputes, whether contractual or non-contractual, either partially or fully. As a contract, it must comply with both general contract provisions and specific arbitration-related requirements. The Proclamation also mandates certain formalities for arbitration agreements, including:

written documentation, signatures from all parties, and attestation by two witnesses. These requirements can be fulfilled electronically if the content is accessible and can be stored for future reference. Additionally, electronic signatures are acceptable for both the contracting parties and witnesses.

The Proclamation clearly acknowledges the concept of separability of arbitration agreements, treating them as distinct from the main contracts in which they are found. Article 19 of the Proclamation explicitly states that an arbitration agreement is independent of the primary agreement. Consequently, the invalidity of the main contract does not necessarily impact the arbitration agreement's validity. However, issues specific to the arbitration agreement itself may lead to its nullification.

2.10.3 Number and Designation of Arbitrators

Section three of the Proclamation deals with number and designation of arbitrators. Article 11 cum Article 19 states about no. arbitrators, appointment of arbitrators, rights and obligations of an arbitrators and etc. These articles are important in the formation of the arbitrators' tribunal and can be invoked in the cases when any arbitration proceedings face problems related to competency or impartiality of arbitrators.

2.10.4 Revised Arbitration Rules of AACCSA Arbitration Institute

The current arbitration Rules AACCSA AI has been put into force since November 25 of 2008 (AACCSA Arbitration rules, 2008). The AACCSA Arbitration rules, 2008 is a comprehensive set of arbitration rules that covers various aspects of arbitration proceedings in detail, including initiation, tribunal composition, procedures, awards, and costs

2.10.4.1 Initiation of Arbitration Proceedings

For parties seeking to resolve their disagreement through arbitration managed by the AACCSAAI, it is crucial to express this intention as explicitly as possible in their written arbitration agreement. To assist with this, the AACCSA AI offers a sample arbitration clause: “Any disputes, controversies or claim arising out of or relating to this contract, or the breach, termination or invalidity or any subsequent amendment of this contract thereof, shall be settled

by arbitration in accordance with the Arbitration rules of AACCSA Arbitration Institute as at present in force."

According to AACCSA regulations, arbitration agreements must be written, and parties are encouraged to specify an arbitrator appointing administration, the number of arbitrators, and the location and language of arbitration in their agreement (AACCSA arbitration rules, 2008). This recommendation aims to prevent delays and additional conflicts.

The arbitration process begins when the claimant submits an arbitration request to the institute. This request must meet all requirements outlined in the institute's rules, including contact details for both parties, a description of the dispute, and a copy of the arbitration agreement (AACCSA arbitration rules, 2008). It should also include all relevant supporting documents and the required advance payment. Once the AACCSA AI secretariat confirms that the claimant has fulfilled all formalities, it promptly sends the respondent a notice of arbitration, along with copies of the claimant's application, attachments, and other necessary documents. The AACCSA arbitration rules stipulate that the respondent must reply within 45 days of receiving the arbitration notice.

The commencement of arbitration proceedings is generally governed by articles 6, 7, and 8 of the institute's arbitration rules (AACCSA Arbitration Rules, 2008).

2.10.4.2 Composition of Arbitral Tribunal

Under the AACCSA Rules, parties have the freedom to determine the number of arbitrators. In the absence of an agreement, the arbitral tribunal will consist of three arbitrators, unless the institute decides on a sole arbitrator based on the case's complexity and other factors.

For three-arbitrator cases, each party selects one arbitrator, and these two appointees then choose the third arbitrator, who will serve as the tribunal's chairperson. If a party fails to nominate an arbitrator within 20 days of receiving a request, or if the appointed arbitrators don't select a chairperson within 20 days of their appointment, the Institute will make the nomination.

In cases requiring a sole arbitrator, parties must jointly nominate the arbitrator. If they fail to do so within 20 days of the respondent receiving the statement of claim, the Institute will make the nomination, unless the parties have agreed otherwise (Article 10 of AACCSA AI rules).

For disputes involving parties of different nationalities, the Institute may appoint a sole arbitrator or Arbitral Tribunal Chairman of a nationality distinct from the parties, unless they have agreed differently (Article 10 of AACCSA AI rules).

As stipulated in articles 12 and 13 of the AACCSA AI Rules, the Institute verifies the impartiality and independence of arbitrators. After nomination, arbitrators are contacted directly and asked to complete a standard form ensuring impartiality and independence. The Institute's Secretariat then provides this information to the parties in writing and establishes a deadline for their comments.

2.10.4.3 Challenge of Arbitrators

The AACCSA Rules provide flexibility for parties to determine the number of arbitrators. In the absence of an agreement, a three-member panel will be appointed, unless the institute determines that a single arbitrator is suitable based on the case's complexity and other factors.

For cases with three arbitrators, each party selects one, and these two appointees then choose the third, who serves as the tribunal chair. If a party fails to make a selection within 20 days of receiving a request, or if the appointed arbitrators don't select a chair within 20 days of their appointment, the Institute will step in to make the decision.

In situations requiring a sole arbitrator, parties must collaboratively choose one. If they fail to do so within 20 days of the respondent receiving the claim statement, the Institute will make the selection, unless the parties have previously agreed to a different arrangement (Article 10 of AACCSA AI rules).

For disputes involving parties from different nations, the Institute may appoint a sole arbitrator or Arbitral Tribunal Chairman with a nationality different from the parties, unless they have agreed otherwise.

As stipulated in articles 12 and 13 of the AACCSA AI Rules, the Institute verifies the impartiality and independence of arbitrators. Following nomination, arbitrators are directly contacted to complete a standard form ensuring their impartiality and independence. The Institute's Secretariat then provides this information to the parties in writing and establishes a deadline for their response (Article 12 and 13 of AACCSA AI rules).

2.10.4.4 Removal and Replacement of an Arbitrator

The institute's article 15 outlines the circumstances for replacing an arbitrator, which include death, accepted resignation, successful challenge, or unanimous request from all parties. The Institute reserves the right to remove arbitrators who fail to perform their duties in accordance with the Rules or within given time limits. Sub-article 4 specifies that if a party-nominated arbitrator dies, the nominating party must choose a replacement, while the Institute appoints a new arbitrator if their nominee passes away.

When an arbitrator steps down or is dismissed, the Institute is responsible for selecting a substitute. Moreover, the Institute may decide, after consulting both parties and the arbitrators, whether the remaining arbitrators should proceed with the case independently.

2.10.4.5 Arbitral Tribunal Proceedings

The AACCSA AI rules (Art 17) stipulate that the arbitral tribunal must ensure equal treatment of parties and provide them with ample opportunity to present their cases. In the event that neither party requests a hearing, the tribunal will determine whether to conduct hearings or base the proceedings on documentary evidence and other materials.

According to articles 19 and 20 of the institute's rules, the arbitral tribunal will decide the location and language of the proceedings, taking into account all relevant factors, unless the parties have previously agreed upon these aspects.

2.10.4.6 Award

The AACCSA Rules mandate that arbitral tribunals issue awards within six months of their formation, as stated in Article 24. However, the institute retains the authority to extend this period in exceptional circumstances.

For three-member tribunals, decisions are reached by majority vote. In cases where a majority cannot be achieved or when authorized, the presiding arbitrator may make decisions, subject to review by the tribunal. The rules specify that awards must be written and, unless pre-agreed otherwise, are considered final and binding on all parties (Article 26 of AACCSA AI rules). The tribunal is required to provide justification for the award, except when parties have mutually agreed to omit this requirement (Article 26.3 of AACCSA AI rules).

Either party has the right to request the tribunal to clarify the award or rectify any computational, clerical, typographical, or similar errors within 30 days of receiving it, provided they inform the other party (Article 30 of AACCSA rule). Moreover, within the same timeframe, either party can request the tribunal to render an additional award for claims presented during the proceedings but not addressed in the original award.

Under the AACCSA AI rules, the tribunal is authorized not only to issue a final award but also to conclude arbitral proceedings or record a settlement as an arbitral award on mutually agreed terms (Art 28 of AACCSA rules).

2.10.4.7 Costs of the Arbitration Proceeding

AACCSA arbitration proceedings involve various costs, including fees for arbitrators and experts, administrative expenses determined by the Institute, and reasonable legal and other costs incurred by parties (Art 33 of AACCSA AI rules). To initiate proceedings, the Claimant must submit a non-refundable registration fee of 500 ETB. The Institute will determine an advance on costs, likely covering arbitrators' fees, expenses, and administrative costs, which the claimant and respondent are expected to pay in equal parts (Art 35 of AACCSA AI rules). The Arbitral tribunal will specify the total arbitration costs and their distribution among the parties in the final award.

Arbitrator fees will be set by the Institute based on the scale provided in Annex 1 of AACCSA IA rules (located in the appendix). However, the Institute may adjust these fees above or below the standard amount in exceptional cases (Art 32.1 of AACCSA AI rules).

2.11 Dispute Settlement and Arbitration in the FIDIC Conditions of Contract

The primary contractual conditions currently employed for contract administration in the ERA road construction contracts are various versions of the FIDIC conditions of contract. PPA is utilized most extensively in public contracts of building construction projects. Therefore, a discussion is presented regarding the FIDIC conditions of contract, as the research focuses on the arbitration of road construction contracts undertaken by ERA (ERA Bidding Manual).

The dispute resolution process outlined in section 67.1 of the 1987 FIDIC contract conditions has been slightly modified by the World Bank and other Multilateral Development Banks

(MDBs). This updated version is now referred to as the MDB Harmonized Conditions of Contract for Construction March 2010. All infrastructure projects funded by these institutions are required to adhere to these contract conditions, which explicitly provide an arbitration option. The following section will briefly outline the steps for resolving disputes or claims under these MDB Harmonized Conditions of Contract.

1. If a contractor believes they have grounds for a claim, they must inform the Engineer within 28 days of becoming aware or reasonably should have become aware of the event. The contractor is then required to submit a detailed claim within 42 days of this awareness, unless they propose and the Engineer approves an alternative timeline.
2. The Engineer is expected to provide a response to the claim within 42 days of receipt, or within a different timeframe that they suggest and the contractor agrees to.
3. In the event that the Engineer fails to respond within the agreed-upon period, either party may present their case in writing to the Dispute Board. This board can consist of one or three members, as mutually agreed by the parties. Both the other party and the Engineer should receive copies of this submission. However, if no Dispute Board is in place, the dispute will be directly referred to arbitration, as per sub-clause 20.8.

The Dispute Board will render its decision within 84 days of receiving the case, or within an alternative timeframe proposed by the Board and accepted by both parties. If the DB fails to deliver its decision within this period, either party may, within 28 days of the DB's 84-day deadline expiration, notify the other party of its dissatisfaction and intent to initiate arbitration. Similarly, if a party is dissatisfied with the DB's decision, it may, within 28 days of receiving the decision, inform the other party of its dissatisfaction and intention to begin arbitration.

At this stage, the MDB Harmonized Conditions of Contract allow the parties an opportunity to resolve their dispute amicably before arbitration commences. However, if no agreement is reached, arbitration may start on or after the 56th day following the notification of dissatisfaction and intent to commence arbitration.

According to the MDB Harmonized Conditions of Contract, unless otherwise agreed, for contracts involving foreign contractors, international arbitration will take place in the city where the appointed arbitration institute's headquarters is located. The proceedings will follow either the arbitration rules of the chosen institution or the UNCITRAL arbitration rules. For contracts with domestic contractors, arbitration will be conducted in accordance with the laws of the Employer's country. The language used in the proceedings will be as specified in the contract data. The MDB Harmonized Conditions of Contract are widely utilized in developing countries.

2.12 Overview of the International Context of Arbitration Practice

Due to globalization, global business is flourishing from time to time and cross border trade and investment is increasing in a great leap, so, the need for effective and reliable mechanisms for management of commercial disputes as well as other general disputes involving parties from different jurisdictions has not only become desirable but also invaluable. This in turn has contributed to rapidly growing popularity of international commercial arbitration (ICA)

Being cognizant of the legal pitfalls, Ethiopia has recently overhauled its arbitration laws to become a hub of international commercial dispute resolution. Undeniably, adoption of an up-to-date and adequate legal framework is not a sufficient condition to make a country an arbitration-friendly seat. An independent, competent and efficient judiciary and arbitration lawyers, arbitration minded business community, accessible and secure seat of arbitration and ethical fortitudes, among other factors, are required to bring life to such decorated and ample law. As a result, any effort made to examine the arbitration friendliness of a nation should essentially explore all those determinant factors. Yet, having an adequate law is a necessary condition to be labeled and recognized as an arbitration-friendly seat.

The selection of the place for arbitration has an impact in many circumstances, such as on the parties' choice of law, procedural law, the pool of arbitrators, and enforceability of the award. Besides, the place of arbitration also affects the parties' costs – travel expenses for the parties and witnesses, as well as the arbitrators' fees. Increasing the attractiveness of a particular place of arbitration tends to increase the work of lawyers based there and at the same time would also increase revenues for the local hospitality industry, which will have a great contribution

for the overall economic growth of that country. The market of international arbitrations is not only interesting because of its economical weight, but also because of the prestige associated with hosting international arbitrations.

Historically, international arbitration has enjoyed a growing popularity with venues like London, Paris, Geneva and New York using institutions like the London Court of International Arbitration (LCIA), International Chamber of Commerce (ICC), and the American Arbitration Association's International Center for Dispute Resolution (AAA/ICDR).

But these days, with the emergence of regional economic hubs around the world, there has been a trend towards referring disputes to arbitral institutes closer to home. As a result, regional economic hubs cannot attain a respectable stature in the current business and investment circuit environment without an effective and trusted platform for dispute resolution including arbitration venues.

Despite the development of ICA throughout the world and the competition of different countries to give the service of arbitration and benefit from the output, Ethiopia does not have effective, commercial arbitration centers until now, which receives the proper attention in the international commerce and make it competent on the ongoing "battle". However, as the new arbitration law has the provision to establish private arbitration centers the business community and associations has to put efforts in establishing new competent arbitration institutes to realize becoming a regional arbitration hub. Compared to well performing African nations like south Africa which have at least 7 arbitration centers, Nigeria 6 arbitration centers, Egypt which have 5 arbitration centers and even Kenya which have 3 arbitration centers, a long way is ahead to compete with regional competitors let alone with international ones.

2.13 Dimensions of Arbitral Effectiveness

Dispute resolution methods' effectiveness encompasses multiple dimensions. This variable consists of various elements, including timeliness, expenses, relationship preservation, transparency and equity, adaptability, willingness to participate, innovative solutions, control over the process, privacy, expert decision-making, satisfactory results, and the conclusiveness and enforceability of the resolution (Cheung & Suen, 2002; Cheung et al., 2002; Gebken, 2006).

While speed and cost are separate components, the other factors relate to the level of satisfaction disputants have with the outcome. Research on the effectiveness of dispute resolution techniques reveals significant variations in how these components are perceived across different studies (Abwunza, 2020).

2.13.1 Cost-effectiveness

The determination of cost-effectiveness involves calculating the total direct transaction costs associated with resolving a dispute as a fraction of the claim value, counterclaim value, or award. In dispute resolution, the overall expense of reaching a settlement encompasses all costs incurred (Cheung & Suen, 2002). Cost-effectiveness is measured by the ratio of this expense to the award value. A greater disparity between the parties' proportions leads to feelings of unfairness and deprivation. Consequently, achieving equity in arbitration necessitates striking a proper balance between the ratio of costs incurred by the disputants and the outcomes obtained from the arbitral process.

Striking this balance requires arbitration participants to strive for efficiency in proceedings while adhering to due process. Users of arbitration services reasonably expect a swift, high-quality process at an affordable price (Rees, 2015). To enhance effectiveness, cost-effectiveness demands that participants conduct themselves in a manner that minimizes unnecessary expenses.

Arbitration expenses can be categorized into two types: explicit or tangible costs and implicit or intangible costs, with both categories potentially containing necessary and unnecessary elements. According to Gebken and Gibson (2006), tangible costs encompass the actual expenses incurred by parties. These include: (1) fees for the arbitration process, primarily based on the arbitrator's hourly rate; (2) administrative expenses related to the venue; (3) legal charges covering preparation, discovery, hearings, and award registration or annulment; and (4) expert fees for deposition, investigation, analysis, and preparation. The arbitrator's fees and administrative costs, which are shared expenses, increase with the panel size but decrease as more parties are involved. Expert fees can be shared or individually borne, depending on how the expert is appointed. Tangible costs vary between disputes and can be reduced through the participants' conduct during proceedings. Legal fees represent a substantial portion of direct transaction costs (Newmark, 2008). Research indicates that these legal fees may account for

up to 75 percent of arbitration transaction costs (Gebken, 2006; Mistelis, 2004) and as much as 82 percent in international and domestic arbitration in certain jurisdictions (International Chamber of Commerce Commission on Arbitration Task Force on Reducing Time and Costs in Arbitration Report, 2007). The high legal expenses may be attributed to the increasingly court-like nature of the arbitration process.

Resolving contractual disputes through arbitration also gives rise to hidden costs that are generally difficult to quantify. These costs include the effect of the dispute on the morale of project staff and their relatives, and lost company momentum (Gebken, 2006). Other relevant costs include contractors' reputation damage which affects their bidding competitiveness, owners' reputation damage which attracts premium rates from contractors, trust damage which results in higher supervision costs, expenditure spent on favorable measures taken to amicably resolve disputes, time loss of claim personnel, project delay which may result in loss of revenue and difficulty in executing judgments (Lu et al., 2015), delayed recovery of money thus affecting investment and/or increasing financial cost, strained business relationships that may affect other running and future projects, and the cost of emotional stress (Gebken, 2006; Lu et al., 2015). These unnecessary consequential costs carry an emotional component and hence have a significant bearing on the disputants' perception of the effectiveness of arbitration as a dispute resolution mechanism.

2.13.2 Time Efficiency

Disputes take time to resolve, with some disputes requiring more time than others. Dispute resolution time refers to the period taken to resolve the dispute, from the time of the request for appointment of the arbitrator to the time of settlement or final write of execution attaching assets, whichever comes first (Cheung & Suen, 2002). Such period includes time spent on document production, and time and effort involved in expert investigation and analysis (Wiesel, 2011). However, time efficiency refers to such dispute resolution time in relation to a referent standard, such as the time taken to arbitrate similar disputes, or the time taken to resolve similar disputes using other dispute resolution techniques. It has been recommended that arbitration should not take more than six months (Fortese & Hemmi, 2015; Risse, 2013; Rivkin & Rowe, 2015).

Time efficiency in arbitration depends on several factors. Cheung and Suen (2002) argued that the speed of resolving disputes depends on complexity, quantum, and number of disputants. Complexity is associated with the simplicity of the dispute. A complex dispute requires more time to resolve than a simple dispute. A simple dispute that takes as much time to resolve as a complex dispute is time inefficient. Quantum refers to the monetary size of the dispute. A large dispute may result from a series of issues that require time to scrutinize and resolve. It may also involve a few issues requiring time to interpret. The number of disputants refers to the parties in dispute. The higher the number of disputants, the longer it is likely to take to settle. Thus, achieving time efficiency requires participants to pay attention to the factors that are likely to impact on the resolution time.

2.13.3 Quality of the Award

Both time efficiency and cost-effectiveness are aspects of efficiency, but that is not what parties want most (Newmark, 2008). Parties are also keen on the quality of the award.

Economy and speed are factors of efficiency while the interpersonal climate addresses the extent to which the resolution process maintains relationships among the disputants. Outcome quality is concerned with the objective assessment of the award and may be evaluated in terms of disputants' satisfaction.

Several factors determine the quality of the award. Some of the main determinants include the validity of the award, its fairness, acceptability to the parties (ABA Section of Litigation Task Force on ADR Effectiveness, 2003) and the extent to which the award maintains business relationships (Cheung, 1999).

The quality of the award may also be determined by its perceived fairness. Award fairness, otherwise known as outcome fairness refers to disputants' response to their perceptions of the extent to which the award complies with rules or standards (Goldman & Cropanzano, 2015; Tyler, 2000). Disputants may choose the applicable rules, in default of which the governing law dictates what may constitute a fair outcome. However, standards may be either objective or normative. Objective standards may be determined by comparing an outcome to a referent standard established in concluded disputes having similar characteristics. Such standards thus compare the outcome of one dispute to another dispute within the same dispute resolution method. However, no two disputes display the same characteristics. The normative standard

compares a dispute resolution outcome to an outcome that parties could obtain from an alternative method. Unfortunately, disputants have no basis for establishing whether they could have obtained more under the alternative method (Tyler, 1989). Thus, the absence of well-established standards compromises the determination of the quality of dispute resolution mechanisms.

The finality of arbitral awards implies that disputants may voluntarily comply with the award even if they consider the award to be unfair. In this case, while the award remains unsatisfactory, accepting an award perceived to be unfair minimizes the time and cost of resolving the dispute. However, the outcome of a mediation process compares favorably with a consent award resulting from arbitration, both of which are mostly considered satisfactory even though they are a product of perceived coercion and pressure (Tyler, 1989). When disputants find such outcomes satisfactory, their commitment to comply with the outcome voluntarily enhances the effectiveness of the resolution techniques.

One or more disputants may also challenge or decline to comply with the award voluntarily if the disputant(s) perceive the award to be unfair. This challenge or refusal to comply voluntarily is an indicator of the extent to which disputants express their acceptability of the award and determines the effectiveness of arbitration (Torgbor, 2013). Thus, the three determinants of the quality of the award are related and influenced by disputants' satisfaction with the award. A satisfactory award means an award that is valid within the juridical context, is fair and acceptable to both parties. However, the tribunal must make the award within reasonable time and cost, thus the process of making the award matters as well.

The process of achieving the award includes the various procedures adopted during the arbitration. Studies have shown that disputants are not only concerned with the outcome of the dispute resolution process, their reaction to the outcomes also depends on the fairness of the process that led to that outcome (Colquitt, 2012; Lind & Tyler, 1988). Such fairness is one of the most significant predictors of the success rate of arbitral decisions (Patil et al., 2019). Generally, winners tend to be more satisfied with the outcome and the process than do losers, irrespective of the process and its outcome (Gross & Black, 2008). Unsuccessful disputants may also react positively by accepting and voluntarily complying with an unfavorable award

if they perceive the process to be fair. However, such losers are likely to exhibit a negative reaction to outcomes arising out of procedures they perceive to be unfair. Once they learn of their negative outcomes, they start evaluating the quality of the decision-making process and the fairness of the procedures that led to those outcomes (Aibinu et al., 2011). Thus, process techniques that are procedurally unfair cannot be considered as effective in achieving satisfactory outcomes, especially where outcomes are unfavorable (Harmon, 2003). Hence, disputants' perception of procedural fairness depends on outcome favorability, perceived outcome fairness and perceived quality of the decision-making process.

Disputants evaluate their relationships and their perception of dispute resolution methods on the basis of the outcomes they receive (Lind & Tyler, 1988) and on their perception of the fairness of the procedures used (Thibaut & Walker, 1975). Time- consuming and costly outcomes fracture such relationships. According to Thibaut and Walker (1975), "one of the major aims of the legal process is to resolve conflicts in such a way as to bind up the social fabric and encourage the continuation of productive exchange between individuals". Such continuation is enshrined in the way disputants sustain their relationships after the dispute is resolved. Indeed, a global survey conducted to elicit perceptions and experiences of corporations in enforcing awards and settling disputes established that corporations that opted to settle their disputes before the arbitral award was issued were mainly motivated by their desire to maintain business relationships, weak cases and the need to minimize cost and delay (Price Water house Coopers & Queen Mary, University of London, 2008). Therefore, disputants are more concerned about the extent to which the resolution of their dispute may sustain their relationships.

Another aspect of the quality of the award is the extent to which the award motivates disputants to recommend arbitration as a method of resolving future disputes. People make long-term judgments about groups based on the quality of outcomes they receive from the groups, across situations, relative to outcomes from alternative groups and the degree of resources invested in the group (Tyler & Blader, 2000). Thus, if arbitration can be taken as a group, then disputants are likely to recommend it as a method of resolving future disputes if they are satisfied with its awards, if they can trust the arbitrator and if such awards compare favorably with outcomes

likely to come from other dispute resolution mechanisms. The quality of such outcomes enhances commitment to arbitration as a dispute resolution method.

2.13.4 The Magic Triangle

In his doctoral dissertation, Abwunza (2020) described the interconnectedness of the three measures of arbitral effectiveness, which Risse (2013) termed the 'magic triangle'. As illustrated in Figure 2.2, altering any aspect of this triangle is likely to impact the others. Specifically, efforts to enhance efficiency in terms of time and cost may potentially compromise the quality of the arbitration award (Hinchey, 2012; Lind et al., 1990; Park, 2011). Risse (2013) argues that those engaging in arbitration should view both cost and time as crucial elements in achieving high-quality awards.

This perspective necessitates striking an appropriate balance among the three measures, allowing participants to streamline unnecessary processes to reduce time and expenses. This delicate equilibrium suggests that while a high-quality award can be obtained through standard, unmodified processes and procedures, it may come at significant time and financial costs to the parties involved. However, these three dimensions need not always be at odds with one another. Arbitration can still yield efficient and equitable outcomes (Bruner, 2011; Welser, 2014). Consequently, participants must carefully consider the impact of their procedural decisions on all three dimensions to achieve the most just outcome in the most efficient manner possible.

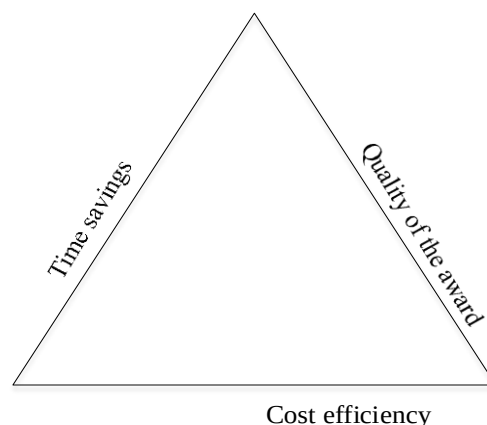


Figure 2.1: Measures of arbitral effectiveness

(Source: Modified from Risse (2013))

2.14 Summary of Literature Review

The historical development of arbitration dates back to the history of human society trades but the widespread shortcomings of court litigation necessitated the use of alternative dispute in general and arbitration in particular resolution in wider and formalized manner both in court and out of court. The advantages of arbitration, as compared to court litigation, are various, such as;

- ✓ reduction of cost and time during the process of dispute settlement;
- ✓ relatively satisfactory outcome among the conflicting parties after dispute settlement process;
- ✓ maintaining prior relationship between disputing parties at the end of dispute settlement; and
- ✓ Avoiding potential conflicts is one of the main factors for the inclusion or incorporation of arbitration in the local legal systems and in the international arena as well.

Though the merits of arbitration are many in numbers, it is not devoid of any demerits. Inequity of power between disputing parties during dispute resolving proceeding, lack of legal expertise of third party who involves himself to resolve dispute between parties, absence of precedent to base one's decision by the arbitrator and the problem related with the enforcement of judgment (compromise) are examples of drawbacks of arbitration methods.

Therefore, as per the literature review arbitration has its own shortcomings but compared to litigation, it is believed to be effective at least in terms of cost and time efficiency. This will be investigated in detail in this paper as it aims to find out the effectiveness of arbitration in the road construction disputes.

The dimensions of arbitral effectiveness in dispute resolution, focusing on three main components:

1. Cost-effectiveness:

- Determined by the ratio of total resolution costs to the award value

- Includes direct costs (arbitrator fees, administrative costs, legal fees, expert fees) and hidden costs (impact on morale, reputation damage, strained relationships)

2. Time efficiency:

- Measured from the request for arbitrator appointment to settlement or final execution
- Influenced by dispute complexity, quantum, and number of disputants
- Recommended resolution time is six months, though studies show arbitration often takes longer time.

3. Quality of the award:

- Determined by validity, fairness, acceptability, and ability to maintain business relationships
- Influenced by both outcome fairness and procedural fairness
- Disputants' satisfaction with the award is a key indicator of quality

The concept of the "magic triangle," which illustrates the interrelationship between cost, time, and quality in arbitration. Balancing these three dimensions is crucial for achieving effective arbitration outcomes.

2.15 Research Gap

Ample of researches and literatures can be found in regard to international commercial arbitration in Europe and America. The researchers are focused mainly on the legal issues, practices and improvements of international arbitration of developed countries. While coming to a national or even regional level a lot of researches needs to be done to enhance the extensive use and performance of the commercial or construction arbitration of the country. In this regard, few undeniable efforts were made by scholars and practitioners like Michael Teshome, Gidey Belay, Tecle Hagos, and etc. However, this thesis researcher observed a clear gap or lack of research conducted on Arbitration of Construction Disputes. Except one research thesis titled ‘Review of Arbitration Practice in the Ethiopian Construction Industry’ by Daniel Alemayehu, which is a comparative study of arbitration and litigation usage in resolution of disputes in the construction industry of Ethiopia. In this research, however, the researcher attempted to find out that even though arbitration is

generally accepted as effective over courts in resolution of construction disputes, however, recent researchers like done by Abwunza (2021) indicate that arbitration is becoming ineffective in resolving construction disputes in Kenya. As a part of filling the gap as there is no such study in Ethiopia, this researcher motivated to study the effectiveness of arbitration in the Ethiopian road construction industry to study the effectiveness of the arbitration practice especially after the promulgation of the new arbitration proclamation and ratification of the NYC by the Ethiopian government and thereby recommend measures to be taken to enhance the existing arbitration practices based on the research findings.

CHAPTER THREE

MATERIALS AND METHODS

Research Design is the path to find answers of research objectives. It is a practical step through which a researcher must pass in his/her research journey in order to find answers to his/her research questions.

3.1 Study Area

This research aims to investigate the practices of arbitration in resolving disputes of road construction projects administered by ERA, focusing on the efficacy of national and international arbitration cases. The study endeavors to examine the effectiveness of arbitration in terms of time efficiency, cost-effectiveness, and quality of awards.

The study area for this research is the Ethiopian Roads Administration organization, located in Addis Ababa City Administration and was established in 1951 with the primary objective of to manage road projects constructed throughout the country using government and financier budgets, as per the aforementioned regulation. Presently, the Ethiopian Roads Administration is overseeing the construction of approximately two hundred road construction projects (www.era.gov.et).

Since its inception, the Administration has undergone a series of structural changes, with the most recent modification occurring in October 2022 by proclamation No. 1263/2021. Currently, the organization is structured into five main departments, each led by a Deputy Director General who reports to the Director General. These departments are: Project Development, Construction Projects Management, Road Asset Management, Corporate Service, and Office of Director General. Each department comprises various directorates with specific responsibilities.

3.2 Research Methodology

Considering the research objectives, data type and similar previous researches, this research can be best studied through qualitative research methodology using case study and interview of professionals as appropriate research methods or instrument to conduct the research. The

philosophical foundation of choosing these methods is the fact that these methods enable researchers to collect diversified data so that they can have a better understanding about the topic under consideration (Creswell, 2018).

3.3 Research Methods

As pointed out above case study and interview will be used as research instrument to achieve the objectives of the study. The case study research method used secondary data whereas primary data shall be collected from interview of the professionals as detailed below.

In addition, extensive review of past research papers, publications, documents and other relevant materials have been reviewed.

3.3.1 Interview

Interviews were conducted with professionals particularly Arbitrators, Claim Engineers, Contract Engineers/Administrators and Lawyers employed in ERA, private consultant and construction firms that have ample experiences on the subject matter of the research. The method employed here is a thematic analysis method where the researcher attempted to identify the themes, which in this particular research is not difficult to identify as the interview questions based on the three specific objectives. For ease of analysis the results of the interview are presented in tabular form in chapter four.

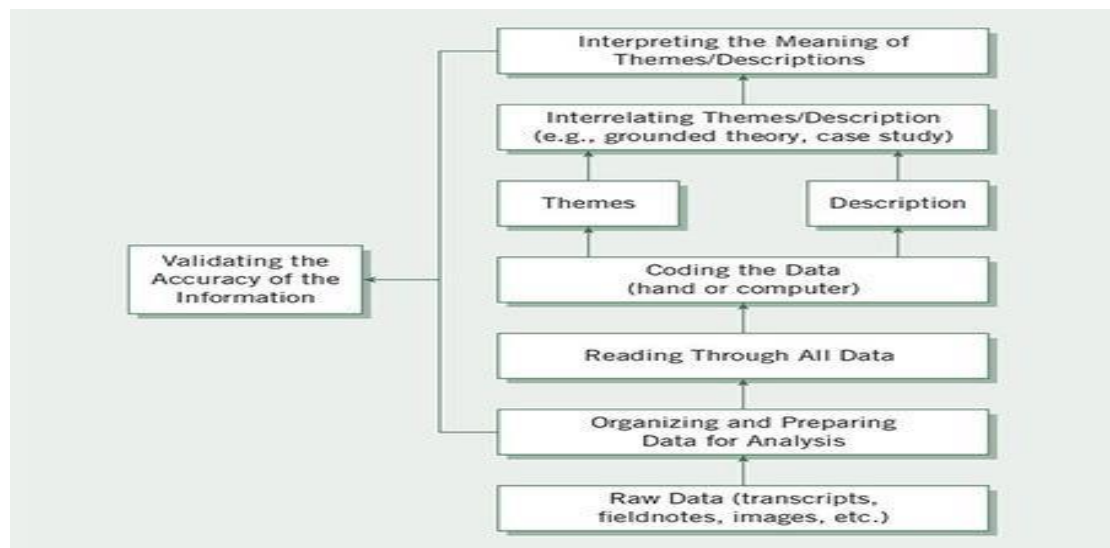


Figure 3.1 Data Analysis in Qualitative Research (Creswell, 2018)

3.3.2 Case study

To evaluate the efficacy of arbitration in resolving road construction disputes, one of the research methodologies employed is the case study approach. Case studies are typically conducted by selecting a limited number of cases that best exemplify the phenomenon under investigation (Creswell, 2018).

Cases are bounded by time and place (or setting), and researchers collect detailed information using a variety of data collection procedures over a sustained period of time (Yin, 2014) hence this research focused on arbitration cases that spanned within the last five years, due to the fact that most important development of arbitration in regard to legal framework and practices took place in the last five years. As stated in the literature review Ethiopia ratified the important document the accession to the NYC in February 2020 and more importantly enacted an arbitration law in August 2021 the ‘Arbitration and Conciliation Working Procedure Proclamation no. 1237/2021’.

3.4 Sample Size and Study Population

According to Yin (2018), studying small number of cases can offer no grounds for establishing reliability or generalizability and yet he also argues that ‘case study’, like experiment, does not represent a “sample”, in doing a case study the goal is to expand and generalize theories (analytical generalization) and not to enumerate frequencies (statistical generalization). To facilitate the generalization and ensure the quality of the research, however, it is necessary to select the appropriate number and type of cases. Again, Yin (2018) notes that while a larger case number may be needed for theoretical replication, when fit, even two cases may be enough for literal replication.

In line with this as this research focused on road construction disputes referred to arbitration and typically arbitration documents are confidential, getting access to such documents was one factor in determining the number of cases. However, understanding the intention (academic purpose) and helpfulness of the research the ERA legal department willingly availed the most known and relatively recent arbitration cases for the researcher.

During the last five years as per the data gathered from the ERA legal department 21 arbitration cases have been brought to both the domestic and international arbitration tribunal. From these the 10 cases are disputes with road contractors and 11 cases are with insurance companies. And, from the 10 arbitration cases with the road contractors two arbitration cases are ongoing and about two cases don't have complete information. Therefore, from the remaining eight arbitration cases ERA was willing to provide information for five cases. Thus, five arbitration cases were considered for the case study. Again, from these five cases, three arbitration cases are presided in Addis Ababa for the contracts are made with local contractors and the appointing authority stated in their contract was AACCSA-AI and the other two cases are international contracts and the appointing authority was ICC and hence presided in Paris in accordance to their arbitration contracts agreement.

Thus, for case study of this research, a total of five arbitration case are purposively selected, three from national and two from international contracts.

The target population for the interview study are professionals (Arbitrators, Claim Engineers, Contract Engineers/Administrators and Lawyers) employed in ERA, private consultant and construction firms who has exposure to arbitration.

According to the roster of arbitrators from AACCSA AI disclosed that there are about 10 registered construction dispute arbitrators and based on records of arbitration cases in the last five years in ERA there are about 10 cases, thus assuming one claim engineer from contractor side and one contract engineer from the employer, ERA side the number of claim engineers having arbitration exposure were about 11 engineers. Therefore, the population size for this study is totally 21 arbitrators and claim engineers. This researcher purposive sampled 16 professionals based on exposure and willingness to conduct the interview however, managed to conduct 14 interviews out of the 16-sample size. From these 14 interviewees six are most experienced arbitrators that have extensive experience in arbitration of road construction disputes and eight interviewees were claim engineer, contract engineer and team leader. Most of the arbitrators have experience of arbitration of at least in three road construction disputes conducted here in Addis Ababa and one arbitrator from Zambia, has international experience in at least six road construction disputes. Thus, overall, five cases and fourteen interviews were administered to investigate the research objectives in depth.

Purposive sampling involves the use of the researcher's knowledge of the population in terms of research goals. That is, elements are selected based on the researcher's judgment that they will provide access to the desired information. Purposive sampling also can be used to select participants based on their knowledge and experience on particular topic and even on willingness to be studied or interviewed (Dattalo, Determining Sample Size, 2008).

3.5 Validity and Reliability

When working with qualitative data, the concepts of trustworthiness, dependability, transferability, and credibility are main elements to be considered. According to MacMillan and Schumacher (2001), validity is the degree to which the interpretations and concepts have mutual meanings between the participants and the researcher. In order to ensure the validity of this research triangulation (literature review, interview and case study) was employed as it is one of the strategies for checking validity of qualitative research.

How do qualitative researchers checked to determine if their approaches are reliable (i.e., consistent or stable), Yin (2018) suggested that qualitative researchers need to document the procedures of the case studies and to document as many of the steps of the procedures as possible. He also recommended setting up a detailed case study protocol and database so that others can follow the procedures. Accordingly, the researcher prepared protocols as Creswell (2018) suggested for qualitative research design methods The interview and case study protocol and procedures employed during interview and case study that ensured the reliability of the research are attached as appendix. Furthermore, triangulating the findings of interview and case study were employed to verify validity and reliability of the research.

3.6 Ethical Considerations

In this research ethical issues were considered by different techniques first information was given to participants of the study about the aim of the study and participating in this study is only based on their willingness even after starting interview participant were told that it's their right to escape questions they don't want to answer or quit participation. Confidentiality has been assured by using generic names (like respondent no.) and coding the contractors name in the case study whenever necessary.

CHAPTER FOUR

RESULTS AND DISCUSSION

4.1 Results and Discussion of Interview

Interviews were conducted with professionals who had served as arbitrators, claim/contract engineers, and lawyers in various local and international construction disputes. Professionals with engineering and legal backgrounds were selected for the interviews. The respondents were chosen based on their qualifications and experience in arbitration, claim management, contract administration, or exposure to diverse construction arbitration cases. The researcher posits that the opinions derived from the experts' experiences are crucial for addressing the research objectives.

The interview questions were designed to address the research objectives. Semi-structured deductive questions were formulated for the interview. This approach was adopted to provide flexibility and latitude in probing the experts, thereby facilitating the capture of in-depth insights on the subject matter from the respondents. The interview questions are attached in the appendix of this research.

The results of the interviews are analyzed based on the responses of the professionals. In the first part of the analysis, the educational qualification and personal careers of the experts will be presented. In the second part, the interviewees' opinion about the general reasons for disputes in construction industry of Ethiopia will follow. In the third part, responses about effectiveness of arbitration by the respondents will be analyzed. Lastly the overall responses of the interviewees will be discussed.

4.1.1 Qualification of the Interviewee

The educational qualifications, years of experience and exposure on arbitration of road construction disputes of the respondents are indicated in Figure 4.1, Figure 4.2 and Figure 4.3 respectively.

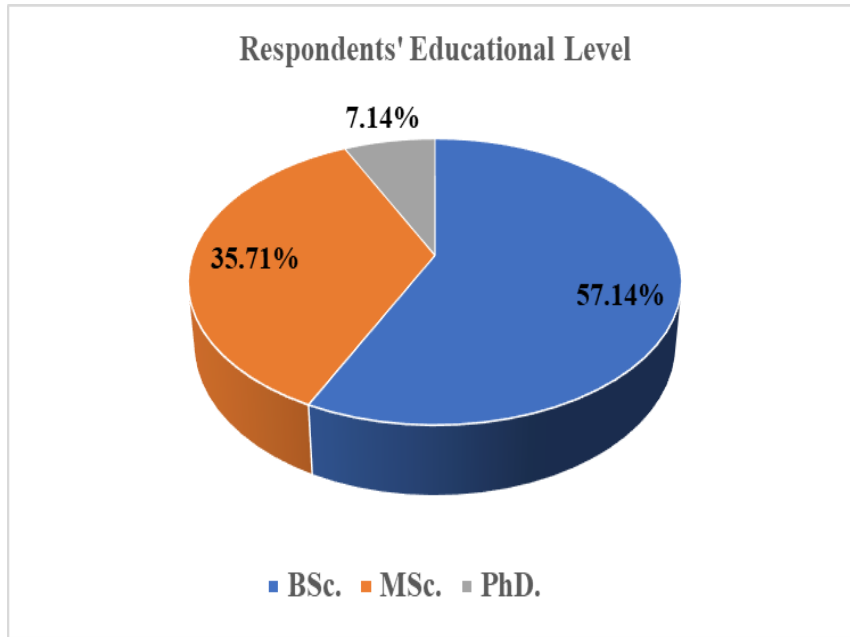


Figure 4.1 Educational level of Respondents

As shown in Figure 4.1 above, the majority of the respondents, i.e. 57.14 %, are Bachelor of Science Degree holders whereas 35.71% are Masters of Science holders and 7.14% has educational qualification of PhD.

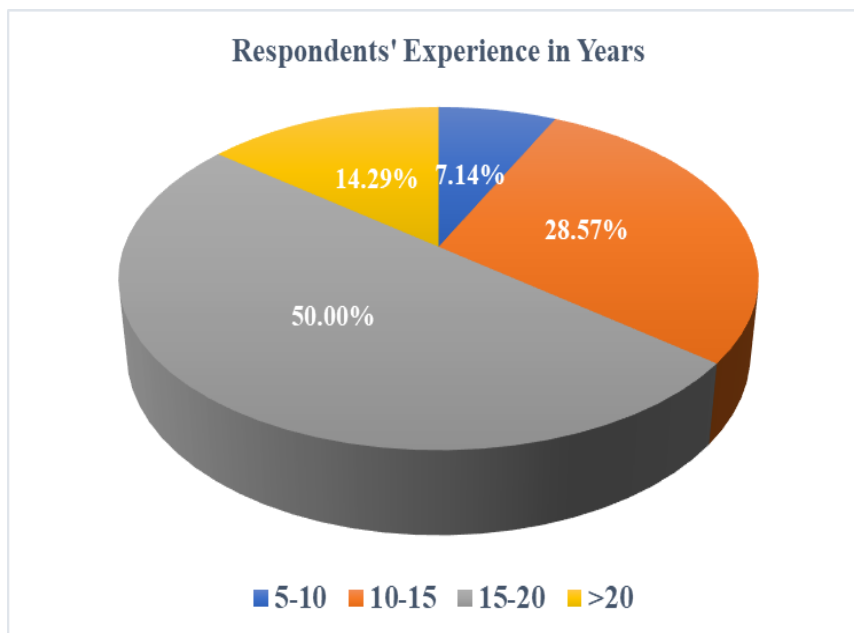


Figure 4.2 Experience of the Interviewee in Construction Works

As shown in Figure 4.2 above, the majority of the respondents, i.e. 92.86%, have more than 10 years of experience in the construction industry.

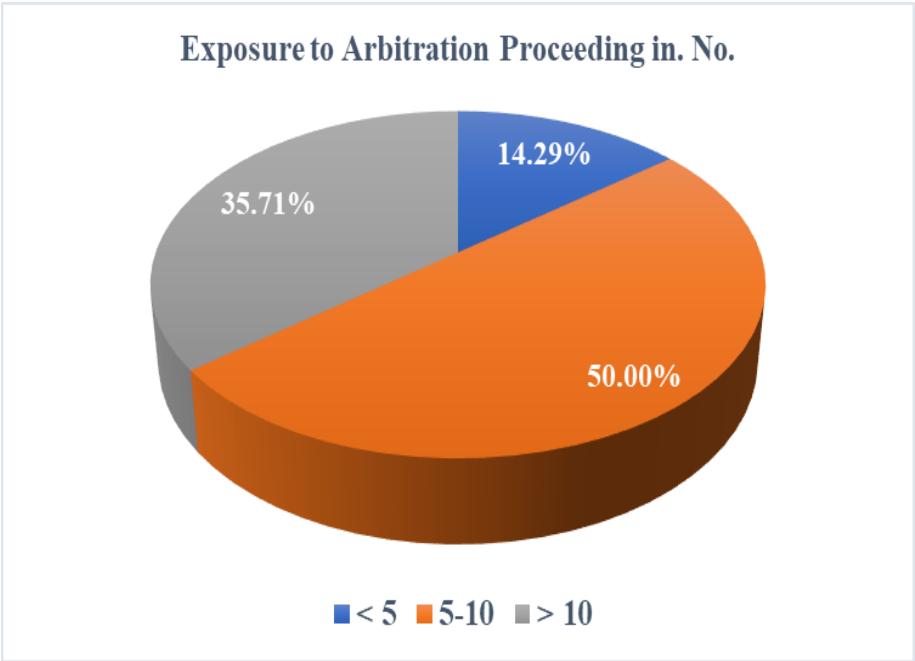


Figure 4.3 Exposure to Arbitration Proceedings

As shown in Figure 4.3 above, the majority of the respondents, i.e. 85.71%, have been involved in more than 5 road projects' arbitration.

4.1.2 Causes of Disputes

Respondents' opinion on interview question 1, which is about potential causes and factors of dispute are tabulated by summarizing the main themes from the interview. All the factors raised by the interviewees are exhaustively summarized and listed hereunder and the opinion of each interviewee on the factors is tabulated in the table below. Details of the transcribed response of the interviewees are attached in the appendix.

As per the interview factors or causes for disputes on the road construction contracts are summarized as listed below.

Factor 1: Poor contract administration during the execution of projects. Like Failure to settle claims timely, change of scope of work as a result of variation order, design change, local community demand, etc.

Factor 2: Poorly drafted (lack of consistency, clarity and completeness) contract document

Factor 3: Lack of proper understanding and interpretation of bid document and contract document

Factor 4: Incompetent contractor, lack of resources and good project management practices; like poor planning, communication with different stake holders and etc.

Factor 5: Delayed payment, and issues related to price escalation and adjustment

Factor 6: Attitude of Employer, Engineer and Contractor creates problems, disregarding the good faith spirit in contract.

Table 4.1 Potential Causes of Dispute as Identified by Respondents

Participants	Factor 1	Factor 2	Factor 3	Factor 4	Factor 5	Factor 6
Respondent 1	√	√	√	√	√	√
Respondent 2	√	√	√	√	√	
Respondent 3	√	√		√	√	
Respondent 4	√	√	√	√	√	
Respondent 5	√	√			√	
Respondent 6	√	√	√	√	√	
Respondent 7	√	√	√	√	√	
Respondent 8	√	√	√	√	√	√
Respondent 9	√	√			√	
Respondent 10	√	√		√	√	
Respondent 11	√	√	√	√	√	√
Respondent 12	√	√			√	
Respondent 13	√	√	√	√	√	
Respondent 14	√	√	√	√	√	√
Total	14	14	9	11	14	3

Source: Field survey data, 2024

As it can be seen in the table above all agreed on the three factors except factor no. 3,4 and 6. All the three factors listed above are the most common causes of dispute in road construction

projects in accordance to the response of the interviewee. Factor 3,4 and 6, stated as a potential cause for dispute by only some of the respondents.

4.1.3 Effectiveness of Arbitration with Respect to Time

Table 4.2 Time to Complete Domestic Arbitration

Participants	Expectation			Actual Experience			
	<1year	1-2 years	2- 3 years	<1year	1-2 years	2-3 years	> 3 years
Respondent 1	√			√			
Respondent 2		√			√		
Respondent 3	√			√			
Respondent 4	√				√		
Respondent 5	√					√	
Respondent 6		√			√		
Respondent 7	√			√			
Respondent 8	√			√			
Respondent 9		√			√		
Respondent 10	√			√			
Respondent 11		√				√	
Respondent 12	√			√			
Respondent 13	√			√			
Respondent 14	√			√	√		
Total Freq.	10	4		8	4	2	
Percentage	71.43	28.57	-	57.14	28.57	14.29	-

Source: Field survey data, 2024

About 71.43.71% of the respondents think that domestic arbitration should take about 1-2 years in the actual experience 66.67% of the participants all observed that domestic arbitration is taking 1-2 years. The result indicated that the actual experience is somewhat as expected with

few arbitrations cases delay. Thus, effectiveness of domestic arbitration with respect to time can be said relatively effective.

Table 4.3 Time to Complete International Arbitration

Participants	Expectation			Actual Experience			
	<1year	1-2 years	2- 3 years	<1year	2-3 years	3-4 years	> 4 years
Respondent 1		√				√	
Respondent 2		√				√	
Respondent 3		√				√	
Respondent 4		√			√		
Respondent 5		√			√		
Respondent 6		√				√	
Respondent 7		√				√	
Respondent 8		√				√	
Respondent 9			√			√	
Respondent 10			√				√
Respondent 11		√			√		
Respondent 12		√			√		
Respondent 13		√			√		
Respondent 14		√				√	
Total Freq.	-	12	2		5	8	1
Percentage	-	85.71	14.29	-	35.71	57.14	7.14

Source: Interview survey data, 2024

About 85.71% think that international arbitration should take about 1-2 years where as in actual experience 66.67% of the participants observed that international arbitration is taking more

than three years. There is an excessive delay in the case of international arbitration of dispute settlement as per the professional experience.

4.1.4 Effectiveness of Arbitration with Respect to Cost

The interview result regarding efficacy of arbitration with respect to cost for both domestic and international arbitration is depicted in Table 4.4 below.

Table 4.4 Response to Cost of Arbitration

Participants	Domestic Arbitration			International Arbitration		
	Fair(1-5)%	Expensive (5 -10)%	Very Expensive (> 10)%	Fair(1-5)%	Expensive (5 -10)%	Very Expensive (> 10)%
Respondent 1	√			√		
Respondent 2	√				√	
Respondent 3	√					√
Respondent 4		√				√
Respondent 5	√					√
Respondent 6	√					√
Respondent 7	√				√	
Respondent 8	√					√
Respondent 9		√				√
Respondent 10	√					√
Respondent 11	√					√
Respondent 12	√				√	
Respondent 13	√					√
Respondent 14	√					√
Total Freq.	12	2	-	1	3	10
Total (%)	85.71%	14.29%	0.00%	7.14%	21.43%	66.67%

Source: Interview survey data, 2024

Almost all interviewee, about 85.71% think domestic arbitration cost is fair and about 21.43% and 66.67% of the participants believed that international arbitration is expensive and very expensive respectively.

4.1.5 Effectiveness of Arbitration with Respect to Quality of Awards

Table 4.5 Responses to Quality of Awards

Participants	Maintaining Bussines R/S		Finality of Award	
	Affected	Not Affected	Accepted	Appealed
Respondent 1		√	√	
Respondent 2		√	√	
Respondent 3	√			√
Respondent 4	√			√
Respondent 5		√	√	
Respondent 6		√	√	
Respondent 7	√			√
Respondent 8		√	√	
Respondent 9	√		√	
Respondent 10	√			√
Respondent 11		√	√	
Respondent 12		√	√	
Respondent 13		√	√	
Respondent 14		√	√	
Total Freq.	5	9	10	4
Total (%)	35.71%	64.29%	71.43%	28.57%

Source: Interview survey data, 2024

As shown in Table 4.5, 64.29% and 71.43% of the participants think that the business relationship after arbitration is maintained and final respectively. Thus, quality of awards with respect to maintaining business relationship and finality of the award can be said acceptable.

4.1.6 Results of the Interview

The interview made with professionals revealed that the potentials for disputes in the road construction industry of Ethiopia are high. The major causes of dispute as per the respondents are related with contracts matters and project management issues. These are poor drafting of contract document which can be expressed in terms of lack of clarity, consistency and completeness, lack of understanding of construction contracts by the parties and lack of proper contract administration.

Non fulfillment of contractual obligations by the parties is also mentioned as a common cause for dispute in road construction industry of Ethiopia. These include failure to effect payment on time or denial of payment, poor performance by a contractor which usually results from careless selection of contractor during tender process.

Regarding the effectiveness of arbitration in terms of time efficiency, the majority of professionals have expressed their expectation that arbitration proceedings typically require about one year to conclude the proceeding. However, instances of some domestic and most of international arbitrations have been noted to extend beyond two years. As shown in the Table 4.5, 71.43% of respondents expect domestic arbitration to be completed in less than one year and about 28.57% think it is tolerable to extend up to a maximum of two years. And, as per the actual experience 57.14% of respondents observed that arbitration cases completed in less than one year and 28.57% of the respondents have experience of arbitration completed within 1 and 2 years and the rest 14.29% had experience that arbitration completed in more than 2 years.

Therefore, some inefficiencies are observed with regard to completion time of domestic arbitration and serious inefficiencies with respect to international arbitration, which should need to be addressed and resolved by all the concerned stake holders to improve the performance of the arbitration process with respect to efficient use of time. In doing so, it has to be noted that the duration of arbitration is contingent upon the experience, expertise, and

dedication of the arbitrators, the timely submission of arguments, documents, and evidence by the parties involved, and the presence or absence of hearings subsequent to submissions. Thus, focus should be given to factors affecting the arbitration proceedings time.

As to cost-effectiveness, the interview results clearly showed that domestic arbitration is cost-effective with regard to the services rendered whereas international arbitration is not cost-effective, rather very expensive as per the majority response of the interviewee. This is because almost exclusively international road contracts include a clause that the arbitration center for arbitration is the International Chamber of Commerce (ICC) in Paris. Such organizations charge many millions Euro/USD, because they are made purely for their business community. In addition, payments are made in Euro or USD, which is as a matter of fact, it is now one of the most scarce resources of the country. As Ethiopia has ratified the NYC convention so technically any international arbitration can be presided here in Addis Ababa unless and other wise to do so to the contrary. However, the country has only one active arbitration institute and the capacity and the number of arbitrators has to increased up to the standard of the international arbitration centers.

Quality of award as described in the literature review is not easy to measure as it constitutes so many elements and it is beyond the scope of this paper. However, the researcher tried to get perception of quality of awards with two important constructs: maintaining ongoing business relationships and finality of awards. Based on the interviewees response as shown in Table 4.8 64.29% and 71.43% of the participants think that the business relationship after arbitration is maintained and the award is final respectively and the result looks acceptable. But, the 37.41% respondents have experienced that business relationships are affected after the arbitration proceedings. The researcher believes such number cannot be ignored and improvements should be made in this aspect as one of the preferences of arbitration over court is the likely advantage the smooth business relationships.

The majority of respondents expressed a preference for institutional arbitration in Ethiopia's current construction industry. Factors influencing this choice included globalization, enhanced legal support and the provision of a structured and efficiently managed process. Most participants acknowledged that the existing local arbitration institute is performing well.

Nevertheless, they suggested that improvements are necessary to meet the standards of developed nations and even some African countries' arbitration institutions.

4.2 Results and Discussion of Case Studies

The data for the cases were collected from ERA Legal Department and Addis Ababa Chamber of Commerce and Sectoral Associations Arbitration Institute (AACCSA AI). In studying the cases the researcher tried to see the effectiveness of arbitration in dispute resolution of road construction projects in terms of time efficiency, cost effectiveness and quality of awards. Quality of awards can be expressed in terms of finality and enforceability of the award without further proceeding of the cases to court and maintaining smooth business relationship.

Case studies are usually conducted by selecting a few best fit cases for the phenomenon under study. They emphasize detailed contextual analysis of a limited number of events or conditions and their relationships (Solomon, 2015).

Cases are bounded by time and place (or setting), and researchers collect detailed information using a variety of data collection procedures over a sustained period of time (Yin, 2014) hence this research focused on arbitration cases that spanned within the last five years, due to the fact that most important development of arbitration in regard to legal framework and practices took place in the last five years. As stated in the literature review Ethiopia ratified the important document the accession to the NYC in February 2020 and more importantly enacted an arbitration law in August 2021 the 'Arbitration and Conciliation Working Procedure Proclamation no. 1237/2021'.

During the last five years as per the data gathered from the ERA legal department 21 arbitration cases have been brought to both the domestic and international arbitration tribunal. From these the 10 cases are disputes with road contractors and 11 cases are with insurance companies. And, from the 10 arbitration cases with the road contractors two arbitration cases are ongoing and about two cases don't have complete information. Therefore, from the remaining eight arbitration cases information can be accessed to five cases. Thus, five arbitration cases were considered for the case study. Again, from these five cases, three arbitration cases are presided in Addis Ababa for the contracts are made with local contractors and the appointing authority

stated in their contract was AACCSA-AI and the other two cases are international contracts and the appointing authority was ICC and hence presided in Paris in accordance to their arbitration contracts agreement.

Table 4.6 Contract Information for the Cases

Case No./ Name	Project name and Contract Type	Bid Type	Contract Type	Project Contact Time	Project Cost	Remark
Case 1: ERA (Claimant) and DC-1 Construction PLC. (Respondent)	Debark – Buhait Road Project;	NCB	DB	1095 calendar days	ETB 699,465,650 inclusive of 15% VAT	
Case 2: DC-2 Construction PLC. (Claimant) and ERA (Respondent)	Yalo – Nehile Road Project	NCB	DBB	Not disclosed	Not disclosed	
Case 3: ERA (Claimant) and DC-3 Construction PLC. (Respondent)	Sanja – Kiraker Road Construction Project	NCB	DBB	Not disclosed	Not disclosed	
Case 4: SEW Infrastructure limited (Claimant) and ERA (Respondent)	Hawassa – Chuko Road Project	ICB	DBB	1095 Cal. days or 36 months	ETB 958,985,720.28 (including 15% VAT)	
Case 5: The Arab Contractor (Claimant) and ERA (Respondent)	Ageremariam – Yabelo Road Project	ICB	DBB	1095 Cal. days or 36 months	ETB 740,685,321.21 (including 15% VAT)	

Source: Arbitration awards review data, 2024

Note: Due to confidentiality issues the Contractors in the above three cases named as DC-1, DC-2 and DC-3 to represent Domestic Contractor No., No.2 and No.3 respectively.

4.2.1 Brief Project Description and Case Summary

Case Study 1: Buhait – Debark Road Construction Project

The following brief description of the project and causes of termination was found from the arbitration award document of the project. The Claimant, Ethiopian Roads Authority and Respondent a domestic Contractor (DC-1) concluded a Contract agreement for the Design and construction Works of Debark – Buhait - Dilyibza, Lot 1, Debark - Buhait Road Project with a total project length of 65 km which is later reduced to 61.8 km on 29th March 2011.

The contract duration was 1095 calendar days with original contract completion date of the contract to be on July 4, 2011 which is revised to July 27th, 2017. The total contract price to execute, complete and remedy defects is ETB 699,465,650 inclusive of 15% VAT.

The contract was terminated by the Claimant on 11th of October 2019 as per Sub-Clause 15.2(a), (b) & (c) (II) of the General Conditions of the Contract as report in the award document.

The issues arising out of termination of the contract which includes unrecovered advance payment, over-paid amount, released retention sum, payment for material on site (unincorporated to the works), supervision service payment after contractual completion date, liquidated damage, plant and materials at site, and interest on claimed amount were disputed by the parties.

Clause 20.6 of the Appendix to Bid of the Contract Agreement stipulates for settlement of disputes through arbitration under the Rules of Arbitration of the Arbitration Institute of Addis Ababa Chamber of Commerce and Sectoral Associations (AACCSA-AI).

Accordingly, in the matters referred to it and considered and determined by it, the arbitral tribunal hereby declared the award as follows:

- a. The Respondent, a domestic contractor, shall pay unrecovered Advance Amount ETB 17,572,073.59 (Seventeen Million Five Hundred Seventy Two Thousand Seventy Three Birr and 59/100) to the Claimant Ethiopian Roads Authority.
- b. The Respondent, DC-1 Construction PLC, shall repay the overpaid amount ETB 20,068,260.87 (Twenty Million Sixty-Eight Thousand Two Hundred Sixty Birr and 87/100) to the Claimant Ethiopian Roads Authority.

- c. The Respondent, DC-1 Construction PLC to pay ETB 28,075,834.94 (Twenty-Eight Million Seventy-Five Thousand Eight Hundred Thirty-Four Thousand and 94/100) for unincorporated and missed materials to the Claimant Ethiopian Roads Authority.
- d. Respondent, DC-1 Construction PLC. to pay liquidated damage amounting Birr 17,934,431.45 (Seventy Million Nine Hundred Thirty-Four Thousand Four Hundred Thirty-One and 45/100) to the Claimant, Ethiopian Roads Authority for the delay between the relevant time for completion and date of termination.
- e. The Respondent shall pay legal rate of interest at 9% per annum from September 18, 2020 until actual payment of the total amount awarded by the Arbitral Tribunal in this Award.
- f. Taking into consideration the above decisions the Respondent, and taking the positive balance of Birr 15, 035, 106.33 due to the Respondent (IPC 54), the Contractor shall pay total amount of Birr 68,615,494.52 (Sixty-Eight Million Six Hundred Fifteen Thousand Four Hundred Ninety-Four and 52/100) to the Claimant, Ethiopian Roads Authority with legal rate of interest of 9% per annum accruing from September 18, 2020 until actual payment of the total amount awarded.
- g. The Claimant may responsibly use Respondent's resources for completion of the works and the saving from utilization of the resources shall be accounted as payable to Respondent by keeping proper daily records. At the end of the project the Claimant should return the machineries and equipment to the Respondent.
- h. The Arbitral Tribunal declares that the Respondent shall pay or reimburse the Claimant Birr 435,902.88 (Four Hundred Thirty-Five Thousand Nine Hundred Two and 88/100) arbitration cost which includes Arbitrator's fee, AACCSA-AI case administration fee and miscellaneous expenses.

Case Study 2: Yalo – Nehile Road Construction Project

The Claimant (Domestic Contractor) and Respondent (ERA) concluded contract agreement for construction works of Yalo - Nehile Road Project Lot.1 from Km 0+000 - km 45+000 on 23rd January 2013.

The issue of Unpaid certified payments certificates no. 56,57,58 and 59 amounting 23,117,115.99 (Twenty-Three Million one hundred seventeen thousand one hundred fifteen 99/100) was disputed by the party.

Article 24.4 of the condition of particular Application stipulate for settlement of dispute through arbitration under the rule Arbitration of the Arbitration institute of Addis Ababa Chamber of Commerce and sectorial Associations (AACCSA-AI).

The claimant submitted its statement of claim on September 01/01/2020 while the respondents submitted its statement of defense on February 06, 2020. The claimant has submitted its replay to the statement of defense on February 18, 2020. The award is declared on 10/09/2020.

Accordingly, in the matters referred to it and considered and determined by it, the arbitral tribunal hereby declared the award as follows:

The Respondent, Ethiopian Roads Authority, shall pay certified payment 56, 57, 58 and 59 amounting Birr 23,117,151.99 to the claimant.

The respondent to pay interest at 13.5% per annum starting 15 June, 2019. To the date of actual payment on the amount decided.

The arbitral Tribunal declares that the Respondent shall pay or reimburse the claimant 116,010.87 Birr cost which include Arbitrator's fee and AACCSA-AI case administration fee.

Case Study 3: Sanja – Keraker Road Construction Project

The Claimant, by the statement of claim dated 14 January 2015, Ethiopian Road Authority brought an action against DC-3 requesting an award of 517,713,171 (Five Hundred Seventeen Thirteen Thousand one hundred thirteen Birr) stating that the duration of the contract was 36 months but the Respondent failed to complete the project even after 51 months. The claimant argued that owing to excessive delay of the work and finally the respondent abandoning of the project site, the Claimant terminated the contract on the ground of fundamental breach of the contract.

On the basis of the above fact, the claimant contained that it has sustained the damage on the account of rendering the project which resulted from breach of the contract by the respondent so that the claimant seeks the following relief:

Birr 423,518,218.09 representing the extra cost claimant incurred on the account of terminating the contract before it duly performed. The claimant argue that another contractor engages to complete the remaining work against payment of birr 687,773,290.12 while the work was estimated for birr 264,249,091.44 that the difference between the two figures amounting to birr 423,518,218.09 is the damage sustained as the result of retendering and that is the claimant entitled to claim this Amount in Accordance with Article 3038 /2/ of the Ethiopian Civil Code.

Birr 54,696,493.78 for liquated damage for delay of works. The claimant argue that the respondent executed only 55.3% the work against 12.45% of the contract at the time of termination; this default of the respondent entitles the claimant the to ask for the payment of maximum of liquated damage stipulated under clause 47.1 of the GCC which is 10% of the contract price.

Birr 31,909,139.63 representing uncovered advance payments. The claimant claims the total amount of advance payment is made to the respondent according to Art.60 of GCC through interim payment certificate is Birr 84,524,447.98 that this amount of birr 52,615,308.35 was paid to the claimant by United Insurance share company the entity that issued an advance payment bond.

7,369,479.03 as an additional cost required to prolong consultancy service the claimant argue that the original price for consultancy service ETB 8,058,684.23 out of which ETB 6,442,638.26 that the reaming price for consultancy work was only ETB 1,616,045.97 the following rendering of the project works anew supervision agreement was signed for ETB 8.9985,525 this resulted an additional supervision cost of ETB 7,369,479.03.

The Respondent, by the statement of defense written on the 28th of March 2015, raised a preliminary objection by saying, the counter party is public enterprise operating under the auspices of the federal government and such an entity is precluded from summiting its dispute to arbitration as per art.315 of Ethiopian civil procedure code. The second of point is competency of this tribunal to hear and dispose of the case since the dispute ought to have brought Dispute review expert /DRE/first as per the contract under clause 6.7.1.

Accordingly, in the matters referred to it and considered and determined by it, the arbitral tribunal hereby declared the award as follows:

The respondent has to pay to the claimant a total amount ETB 428,704,069.79, along with the nine percent legal interest to be computed there to as of the date of submission of the request for arbitration which is 13 January 2015.

Case Study 4: Hawassa – Chuko Road Construction Project

A Contract Agreement entered into by Claimant and Respondent (ERA) on 30 November 2012 for the construction of a 66 kilometer road between Hawassa and Chuko, as part of the Mombasa - Nairobi - Addis Ababa Road Corridor Phase III Project (the Respondent, as the Employer engaged Claimant, as the Contractor, to complete the Road Project within a period of 36 months, i.e. effectively by 21 April 2016.

The Contract value was Ethiopian Birr (ETB) 958,985,720.28 (including 15% VAT), 65% of which was payable in U.S. Dollars (USD) and 35% in ETB, with the agreed exchange rate being ETB 17.5914: 1 USD as per the Contract.

The construction of the road project got fraught with various problems, one of which were significant delays in the progress of the works. After having issued an Employer's notice of intention to terminate on 20 May 2016, Respondent terminated the Contract effective on 20 June 2016, asserting that Claimant had committed fundamental breaches of the Contract. Claimant denied being responsible for the delays or having committed any breaches of contract. Thus, on 27 December 2016, Claimant submitted its claims to Respondent, and on 17 June 2017, it submitted its Dispute Referral to the SDBM in accordance with Sub-Clause 20.4 of the General Conditions of Contract. Respondent submitted its Response thereto on 1 September 2017.

On 4 October 2017, the SDBM issued its decision on Dispute Number 1 (the "SDBM Decision"). In relation to the 14 claims that SEW had submitted in the total amount of ETB 228,647,178.80 and USD 16,880,248.09, the SDBM accepted only two claims totaling ETB 2,018,809.80 and USD 149,189.50.60. Claimant issued a Notice of Dissatisfaction and intention to commence arbitration, which it started on **7 December 2017**, the Parties having failed to reach an amicable resolution of their dispute.

Accordingly, in the matters referred to it and considered and determined by it, the arbitral tribunal hereby declared the award as follows:

- a. Respondent is ordered to pay to Claimant the following sums: USD 1,160,990.85; plus ETB 12,384,608.43; plus compounded monthly interest as from 20 June 2016 until payment in full at the rate of the USD LIBOR plus 2%.
- b. Sum of USD 108,611.84, and at the rate of 8.5 % p.a. on the sum of ETB 1,589,499.55 (awarded as part of Claim No. 8),
- c. For the sums awarded for claims Nos. 7, 9 and 10, which represent the total of USD 1,052,379.01 and ETB 10,795,108.88.

Therefore, the Respondent is ordered to pay in total of USD 2,321,981.70 and ETB 24,769,216.86. Converting the ETB with the agreed exchange rate the total amount ordered to be paid by the respondent is about USD 3,730,011.58. The ratio of arbitration fee to the amount paid as reward is about 18.77%.

And the time taken to resolve the dispute from commencing the arbitration procedure until award is about 1324 cal. days which is over three years. The case has been also appealed to the Paris Court of Appeal on Jan. 9, 2024 but the court rejected the appeal and endorsed the award.

Case Study 5: Ageremariam – Yabelo Road Construction Project

The Claimant, Arab Contractor (AC) and Respondent, Ethiopian Roads Authority (ERA) agreed that the Claimant would carry out works of rehabilitation and widening to a long (94.5 km) stretch of road running north to south between Ageremariam and Yabelo in southern Ethiopia, forming part of the Mombasa-Nairobi-Addis Ababa Corridor – Phase II Project. The Project was to be funded jointly by the Government of Ethiopia and the African Development Bank (AfDB), with the ERA named as the contracting authority.

The Contract was the culmination of a formal bidding process that was commenced in May 2010 by the ERA inviting tenders for the Project, and in July 2010, AC submitted its bid for the works. By a Letter of Acceptance from the ERA dated 10th March 2011, the ERA informed AC that its Bid for the Project was accepted “subject to the Conditions of Contract, Specifications, Bid Submission Form, Bill of Quantities, Drawings, Addendum No 1 to the

Bidding Documents and this letter” for the sum of ETB 740,685,321.21 “including specified provisional sums, 10% contingency and 15% VAT.”

The amount payable to the Contractor under the Contract was expressed in Ethiopian Birr (ETB) in the sum of ETB 740,685,321.21, including specified provisional sums, a 10% contingency and any applicable VAT.

The Project represented (and as constructed counts as) an important commercial and traffic link on the main corridor between Addis Ababa, Nairobi and Mombasa.

The Contract is a typical re-measurement contract, i.e. whereby the Works would be measured (and valued) in accordance with the Specification.

The “Conditions of Contract is the well-known Conditions of Contract for Works of Civil Engineering Construction published by the Fédération Internationale des Ingénieurs-Conseils or FIDIC for short.

Clause 67.3 of this FIDIC provides the provision for arbitration as stated here under.

Any dispute in respect of which the Recommendation, if any, of the Board has not become final and binding shall be finally settled by arbitration under the UNCITRAL Arbitration Rules. The arbitral tribunal shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer and any Recommendation(s) of the Board related to the dispute.

Neither party shall be limited in the proceedings before such tribunal to the evidence or arguments put before the Board for the purpose of obtaining its Recommendation(s) pursuant to Sub-clause 67.1. No Recommendation shall disqualify any Board Member from being called as a witness and giving evidence before the arbitrator(s) on any matter whatever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of [ERA], the Engineer, [AC] and the Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.

The appointing authority shall be the Authority specified in the Appendix to Bid. The place of arbitration shall be agreed upon, in writing, between [ERA] and [AC], but failing agreement shall be fixed by the Appointing Authority, and the language of arbitration shall be English.

The main reasons for dispute were the claim presented by the claimant with regard to payments for additional works due to change on the design and extension of time and associated costs due to delay in removing RoW obstructions and delays due to riots and disorder caused by local people.

After due considerations of the documents presented and hearings, the majority of the Tribunal awards and declared the following sums payable by the Respondent to the Claimant as follows:

- Ethiopian Birr (ETB) 112,316,207.07 in respect of the Claimant's claims for damages and interest.
- United States Dollars (US\$) 280,966.40 in respect of the Claimant's claims for damages and interest.
- United States Dollars (US\$) 995,131 in respect of the Claimant's claim for costs
- British Pounds £372,504.76 in respect of the Claimant's claim for costs and for reimbursement of the Tribunal's fees and expenses, including interest on costs paid to the Tribunal and simple interest on the above amounts in the amount of 9% per annum from 1 December 2023 until payment.

Table 4.7 Time and Cost Related Information for Domestic Arbitration Cases

Case	Reasons for Dispute	Time taken to resolve the dispute from commencing the arbitration procedure until award	Amount in Dispute or Awarded	Arbitration Procedural Cost	Fairness and Finality of Award	Remark
Case 1: ERA (Claimant) and DC-1 Construction PLC. (Respondent)		Oct 16,2020 – July 02, 2021 = 259 Cal. days	ETB 68,615,494.52	ETB 435,908.28	Accepted	
Case 2: DC- 2 Construction PLC. (Claimant) and ERA (Respondent)		Jan. 01,2020 – Sept.10 ,2020 = 253 Cal. days	ETB 23,117,151.99	ETB 232,021.74	Accepted	
Case 3: ERA (Claimant) and DC-3 Construction PLC. (Respondent)	Excessive delay and	14 January 2015 – 23 October 2017 = 1012 Cal. days	ETB 428,704,069.79	ETB 868,513.17	Appealed	

Source: Arbitration Awards Document, 2024

Note: Due to confidentiality issues the Contractors in the above three cases named as DC-1, DC-2 and DC-3 to represent Domestic Contractor No., No.2 and No.3 respectively.

Table 4.8 Time and Cost Related Information for International Arbitration Cases

Case	Reasons for Dispute	Time taken to resolve the dispute from commencing the arbitration procedure until award	Amount in Dispute or Awarded	Arbitration Procedural Fee	Fairness and Finality of Award	Remark
Case 4: SEW Infrastructure limited (Claimant) and ERA (Respondent)	Claims related to 'unlawful' termination of the contract by the respondent for 'excessive delay' of the project works	Dec 11, 2017 – July 27, 2021, 1324 Days on Arbitration	USD 3,730,011.58	USD 700,000.00	Paris Court of Appeal on Jan. 9, 2024 Rejected the appeal and endorsed the award.	Maintaining business relationship is unlikely after the case further brought to the court.
Case 5: The Arab Contractor (Claimant) and ERA (Respondent)	Claims related to Construction	Aug 16, 2018 – Dec 1, 2023 = 1933 cal. days	USD 3,826,422.26	£ 614,145.99/ USD 775,730.69	Accepted	International Arbitration Presided in Paris

Source: Arbitration Awards Document, 2024

4.2.2 Effectiveness of Arbitration with Respect to Time

Effectiveness of arbitration with respect to time, recognized as the time from submission of notice of letter for arbitration up to award of arbitration for all cases is shown in Table 4.9.

Table 4.9 Arbitration Time taken for the Case Studies

Cases	Domestic Arbitration			International Arbitration		
	<1year	1-2 years	2- 3 years	1-2 years	2-3 years	> 3 years
Case 1	√					
Case 2	√					
Case 3			√			
Case 4						√
Case 5						√
Percentage	66.67%		33.33%			100%

Source: Arbitration Awards Document, 2024

As depicted in the table above 66.67% of the domestic cases were completed in less than one year whereas 100% of the international arbitration cases were completed beyond three years.

4.2.3 Effectiveness of Arbitration with Respect to Cost

Table 4.10 Arbitration Cost Comparison against Awarded Amount for Domestic Cases

Case	Award (Claimed) Amt. in ETB	Arbitration Fee and Admin Cost in ETB	Ratio of Arbitration Cost/ Award Amt in %
Case 1	68,615,494.52	435,908.28	0.64%
Case 2	23,117,151.99	232,021.74	1.00%
Case 3	428,704,069.79	868,513.17	0.20%

Source: Arbitration Awards Document, 2024

The results shown in Table 4.10 disclosed that domestic arbitration cost is within 1 % of the awarded amount.

Table 4.11 Arbitration Cost Comparison against Awarded Amount for International Cases

Case	Award (Claimed) Amt. in USD	Arbitration Fee and Admin Cost in USD	Ratio of Arbitration Cost/ Award Amt. in %
Case 4	3,730,011.58	700,000.00	18.77%
Case 5	3,826,422.26	775,730.69	20.27%

Source: Arbitration Awards Document, 2024

As shown in Table 4.11, the cost of arbitration in the case of international arbitration is in the range of 18 – 20% of the awarded amount.

4.2.4 Effectiveness of Arbitration with Respect to Quality of Awards

Table 4.12 Arbitration Quality of Awards for Domestic and International Cases Study

Cases	Award Finality		Business Relationship	Remark
	Final	Litigation		
Case 1	√		Ok	
Case 2	√		Ok	
Case 3		√	Affected	Appealed to cassation bench on the ground of basic error of law
Case 4		√	Affected	The Contractor appeal to Court of appeal in Paris
Case 5	√		Ok	

Source: Arbitration Awards Document, 2024

As detailed in Table 4.12 above one case from each of the domestic and international arbitration cases were appealed and hence the arbitration award was not final and this affected the business relationships of the parties.

4.2.5 Results of Case Study

The case study made on five cases reveals that the major causes for dispute as per the study are related with delay on progress of works and matters related to delay in removal of RoW obstructions. In addition, delay or denial in payment also seen as a source of dispute.

In the second part of the case study, the researcher attempted to study about the effectiveness of arbitration in terms of time efficiency, cost-effectiveness and quality of awards. Accordingly, the study on arbitration effectiveness in terms of efficiency of time disclosed that domestic arbitration is relatively effective whereas international arbitrations are not. As shown in the Table 4.12, 66.77% of the domestic cases are completed in less than one year, as stated in the literature review arbitration completed within one year is considered as optimum and the arbitration can be said effective in terms of the time it consumed. In the case of international arbitration, the study revealed that the international arbitration is ineffective in terms of time. The cases studied have delays for more than three years. The reason for this can be attributed that international arbitration tribunals, like ICC handle so many commercial cases from all over the world and detail procedures from reviewing documents, hearing and etc. demands a great deal of time.

Therefore, inefficiencies are observed particularly with regard to completion time of international arbitration which should need to be addressed and resolved by all the concerned stakeholders to improve the performance of the domestic arbitration center and establish more competent domestic arbitration center, so that the seat for international arbitration to be Addis Ababa. In this regard the legal framework has been overhauled and suited to conduct any international commercial arbitration.

Study of the cases with regard to cost-effectiveness, it is noted that domestic arbitration is cost-effective and whereas international arbitration is not cost-effective. As depicted in Table 4.13, the arbitration cost for domestic arbitration is about 1% of the arbitration award amount, whereas in the case of international arbitration it is in the order of 20% of the arbitration award amount. As the figure says, in simple words the domestic arbitration is fair whereas the international arbitration is very expensive.

The researcher tried to get perception of quality of awards with two important constructs: maintaining business relationships and finality of awards (please refer Table 4.15). Accordingly, 60.00% of the cases study revealed that the parties in dispute maintained their business relationship after arbitration and the award was final. But this implies that 40% failed to maintain the business relationships or the awards were not final and referred to court. Therefore, such significant number cannot be simply ignored and hence, improvements should be made in this aspect as one of the preferences of arbitration over court is getting the

advantage of having final award, avoiding courts and maintain smooth business relationships after arbitration proceedings.

4.3 Summary of Results

As per the findings of interview and case study key causes for dispute include unclear, inconsistent, or incomplete contract drafting, lack of understanding of construction contracts, and improper contract administration. Non-fulfillment of contractual obligations, such as delayed payments or poor contractor performance, is also a significant factor in disputes.

Concerning arbitration effectiveness in resolving disputes, the findings indicate it is time-efficient in the domestic arena, with most cases completed within a year. However, international arbitration, often involving institutions like the International Chamber of Commerce (ICC), is far less time-efficient, sometimes taking over three years.

Cost-wise, domestic arbitration is viewed as cost-effective, but international arbitration is extremely expensive due to high fees charged by foreign arbitration centers like the ICC and payments made in scarce foreign currencies.

The study indicates that arbitration can maintain business relationships and produce final awards, but there are concerns: 37% of respondents reported damaged business relationships post-arbitration, and 40% of cases studied did not achieve finality, with disputes returning to court.

Institutional arbitration within Ethiopia is favored, but further improvements are needed to raise standards to international levels.

4.4 Framework for Dispute Resolution in ERA

4.4.1 Brief Overview of ERA's Organizational Structure Development

ERA is a legally autonomous organization established on January 26, 1951. Ever since its establishment, the Administration has gone through a series of structural changes, one being in July 2011 by the Council of Ministers Regulation No. 247/2011.

To enhance capacity of construction contract administration, ERA was reorganized under seven Contract Administration Directorates. Five of these directorates are organized geographically as North, South, West, East and Central region contract administration directorates to take the

responsibility for administering construction & design contracts under their respective jurisdiction. The other two directorates were established to administer Design & Build contracts and Construction of expressways in the country.

In 2019, Contract Administration Directorates were restructured again in the spirit of moving from contracts administration to project management. Subsequently, the previous Design – Build directorate was dissolved and the Expressway Directorate was restructured to Expressway & Special Projects Management Directorate. After ERA’s Contract Administration Directorates were restructured to be Construction Project Management Directorates, the number of contract engineers, team leaders and directors has substantially increased and hence, the efficiency of contract administration has substantially improved.

However, ERA has noticed that this structure has mainly emphasized on the administration role of contracts rather than management of projects; and the projects are being interfaced with ERA structure through ERA counterpart project engineers-often not allowing proper representation of ERA as a client in the project management system and mechanisms. The project counterpart engineer’s residences in head office exacerbate the challenges-as it has deprived the projects the important contribution for the client’s stand and interest. Accordingly, this lacks the essence of facilitating the interaction of people to achieve the project’s ultimate goals within the specified constraints of scope, schedule, budget and quality.

To ease all these challenges, ERA has opened Project Management Offices in July 2022 which is fundamentally emphasized on transforming the archaic culture of project contract administration leadership to Project Management Leadership style which is believed to strongly empower ERA to manage its construction projects by its own method rather than merely surrogating the responsibility mainly to consultant engineers. This leadership style is supposed to bring ERA and all main stakeholders under a unified umbrella to mainly focus on project outcomes in a mutually inclusive way. Hence, the readjusted organizational structure is the one which strongly supports the realization of the newly crafted Construction Project Management leadership style. To facilitate the smooth implementation and close follow up of the projects, the organization has formed project management offices at national levels in different strategic places of the country.

4.4.2 Existing Framework of Arbitration of ERA Road Construction Contracts

As described in chapter two domestic arbitration are carried out at the AACCSA AI in Addis Ababa and international arbitration almost in exclusive manner at the ICC in Paris. Accordingly, the AACCSA AI rules for domestic arbitration are used for the proceeding of domestic disputes and ICC rules are applied for international disputes.

The most important aspects of AACCSA AI and the legal framework for arbitration (proclamation no. 2137/21) were discussed in chapter two, thus here ICC rules of arbitration briefly discussed.

Arbitration under the ICC Arbitration Rules is a formal procedure leading to a binding decision from a neutral arbitral tribunal, susceptible to enforcement pursuant to both domestic arbitration laws and international treaties such as the 1958 New York Convention. Arbitration rules defines a structured, institutional framework intended to ensure transparency, efficiency and fairness in the dispute resolution process while allowing parties to exercise their choice over many aspects of procedure. (<https://iccwbo.org/dispute-resolution/dispute-resolution-services/icc-international-court-of-arbitration/>).

The Arbitration Rules are those of 2012, as amended in 2017 and 2021. They are effective as of 1 January 2021. Some of the 2021 amendments reflect established practice of the Court while others aim at increasing the flexibility, efficiency and transparency of ICC Arbitrations.

Amendments with regard to complex arbitrations include Article 7(5) (providing for joinder of additional parties after the confirmation or appointment of any arbitrator) and Article 10(b) (allowing consolidation of cases involving different parties where the same arbitration agreements are relied upon).

The new Article 12(9) introduces an additional safeguard for parties' equality in the constitution of the arbitral tribunal. It provides that the Court may appoint each member of the arbitral tribunal where the method of constitution in the arbitration agreement may pose a risk to the validity of the award.

Independence and impartiality of arbitrators are further addressed with the inclusion of a provision empowering the arbitral tribunal to take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation (Article 17(2)), and the requirement of party disclosure of third-party funding arrangements (Article 11(7)). In addition,

Article 13(6), which applies to investment arbitrations based on a treaty, ensures complete neutrality of the arbitral tribunal by providing that no arbitrator shall have the same nationality of any party to the arbitration.

On the conduct of the proceedings, the 2021 amendments acknowledge the increased use of technology in arbitration, such as the transmission of the Request for Arbitration and Answer by electronic means of communication (Articles 4 and 5) and the possibility for the arbitral tribunal to decide that hearings can be held remotely after consulting the parties (Article 26(1)). Moreover, the Rules introduce a provision on additional awards (Article 36(3)), and, as a further step towards flexibility and efficiency of the proceedings, encourage parties to consider settlement of all or part of their dispute (Appendix IV(h)(i)).

The Rules also provide for increased transparency with regard to the composition and functioning of the Court (Appendices I and II) and the communication of reasons of Court decisions upon request of any party (Appendix II, Article 5).

The expedited procedure (Article 30 and Appendix VI), which is a streamlined procedure with a reduced scale of fees, has proved its efficiency since it was introduced in 2017. The Rules expand its scope of application to disputes with a value not exceeding US\$ 3 million for arbitration agreements concluded on or after 1 January 2021. The expedited procedure continues to be available on an opt-in basis for higher-value cases.

4.4.3 Arbitration Framework Developed for ERA Road Construction Contracts

Ethiopia's arbitration framework is on a path toward modernization and greater effectiveness. With the continued development of legal and institutional support, along with increased awareness and training, arbitration can play a crucial role in the country's dispute resolution landscape, fostering a more conducive environment for investment in infrastructure and commerce.

The primary legal framework is established by Proclamation No. 1237/2021, which governs arbitration practices in Ethiopia. This proclamation is intended to align with international standards (UNCITRAL model of law) promoting arbitration as a viable means of resolving disputes.

Ethiopia is also a signatory to various international conventions, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, facilitating the enforcement of international arbitration awards.

In regard to institutional framework the Addis Ababa Chamber of Commerce and Sectorial Association (AACCSA AI) the first of its kind in Ethiopia and currently the only one is actively providing the whole range of commercial arbitration services. As detailed in the literature review, the institution has its own arbitration rule enacted in 2008 and ERA has also included in its contract document as appointing authority for resolution of domestic disputes as per the AACCSAAI rules. On the other hand, ERA use the ICC rules of arbitration for disputes arise in its international contracts.

The specific arbitration framework developed for national and international road construction contracts for the Ethiopian Roads Administration includes key components as detailed here under to ensure fair and efficient dispute resolution processes.

1. Legal Framework

The new arbitration law was enacted as ‘Arbitration and Conciliation Working Procedure Proclamation’ Proclamation no. 1237/2021 (the Proclamation). This provided Ethiopia with its first standalone legislation with comprehensive governance of different aspects of dispute resolution through arbitration and conciliation.

The Proclamation is drafted to apply to commercial domestic arbitrations and international arbitrations, whose seat is in Ethiopia, as part of broader initiatives to update its legal framework and enhance its appeal to foreign investors. In addition, the Arbitration Law was introduced shortly after Ethiopia ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award (NYC) on February 13, 2020. This move aimed to portray Ethiopia as a business-friendly nation, encouraging increased international investment.

2. Arbitration Procedures

The arbitration procedures adopted for dispute resolution of ERA contracts should be established and designed to ensure a fair, efficient, and streamlined process for resolving

disputes. They should reflect best practices in international arbitration while being tailored to the local context. The Addis Ababa Chamber of Commerce and Sectoral Associations Arbitration Institute (AACCSAAI), which is refereed as appointing authority in ERA contracts, has established specific arbitration procedures to facilitate the resolution of disputes effectively for domestic and international arbitration.

According to Sub-Clause 67.3.1 of the Particular conditions of ERA's DBB contracts (modified FIDIC IV) any dispute in respect of which the recommendation, if any, of the DRE has not become final and binding shall be finally settled by arbitration in accordance with shall be finally settled under the Rules of conciliation and Arbitration of ICC rules for foreign contractors and AACCSA AI for domestic contractors. However, more or less the two rules have similar approaches so the framework development focus on the rules of AACCSAAI.

The arbitration process begins when the claimant submits an arbitration request to the institute. This request must meet all requirements outlined in the institute's rules, including contact details for both parties, a description of the dispute, and a copy of the arbitration agreement (AACCSA arbitration rules, 2008). It should also include all relevant supporting documents and the required advance payment. Once the AACCSA AI secretariat confirms that the claimant has fulfilled all formalities, it promptly sends the respondent a notice of arbitration, along with copies of the claimant's application, attachments, and other necessary documents. The AACCSA arbitration rules stipulate that the respondent must reply within 45 days of receiving the arbitration notice. However, this is reduced to 30 consecutive days in the Proclamation (Article31.2). The commencement of arbitration proceedings in accordance to AACCSAAI generally governed by articles 6, 7, and 8 of the institute's arbitration rules (AACCSA Arbitration Rules, 2008). `

Parties in dispute can mutually agree on an arbitrator or a panel of arbitrators. If they cannot agree, the Institute will appoint arbitrators from its list. Arbitrators are typically selected based on their expertise, neutrality, and experience in the relevant field. As stipulated in articles 12 and 13 of the AACCSA AI Rules, the Institute verifies the impartiality and independence of arbitrators. After nomination, arbitrators are contacted directly and asked

to complete a standard form ensuring impartiality and independence. The Institute's Secretariat then provides this information to the parties in writing and establishes a deadline for their comments.

A preliminary conference may be held to establish the procedural framework, timelines, and any preliminary issues. This meeting helps to set deadlines for submissions and hearings.

Both parties are required to submit written statements of their claims and defenses, along with any supporting documents. Evidence must be exchanged in a timely manner, allowing both sides to prepare their cases adequately. As part of evidence presentation hearings are conducted where both parties present their arguments, evidence, and witness testimonies. In doing so, the Institute may allow for flexibility in the hearing process, depending on the complexity of the case.

After the hearings, the arbitrators deliberate and come to a decision based on the presented evidence and arguments. An arbitration award is then issued, which is binding on both parties. The award typically includes the reasons for the decision.

Arbitration proceedings are generally confidential, protecting sensitive information from public disclosure. And, Awards issued by the ICC or AACCSAAI are generally recognized and enforceable under Ethiopian law and relevant international treaties.

3. Governing Laws and Jurisdiction

The Arbitration and Conciliation Working Procedure, Proclamation Number 1237/2021 is the governing law, which has the jurisdiction to apply on commercial domestic arbitrations and international arbitrations whose seat is in Ethiopia.

Determining the jurisdiction of an arbitral tribunal primarily basis on the arbitration agreement between the parties. This agreement should explicitly state the intention to resolve disputes through arbitration and define the scope of the disputes covered.

The Arbitration Proclamation has vested in the arbitral tribunal jurisdiction to decide on its own jurisdiction. Art. 19(1) states in relevant part "the tribunal shall have the power to determine the existence or non-existence of a valid arbitration agreement between the parties ... and whether it has jurisdiction to hear the case...." The tribunal has the power to

decide on the foundation, content, and extent of its own jurisdiction. This competence-competence principle in the Proclamation is aligned with the 2006 UNCITRAL Model Arbitration Law Art 16(1).

In connection to the seat of arbitration, Ethiopia has formally ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award (“NYC”) on February 13, 2020, foreign contractors are ideally no longer tasked with concerns of enforcement in Ethiopia of foreign arbitral awards. Unlike the old regime of laws the Proclamation has the provision for international arbitration in Ethiopia, thus having the legal framework and the NYC convention in place Addis Ababa can be a seat for international arbitration. However, factors like infrastructure, availability and competency of arbitrators should be improved and establishment of more competent arbitration centers should be encouraged.

4. Confidentiality and Transparency

Confidentiality in arbitration ensures that the proceedings, evidence, and outcomes remain private and are not disclosed to outside parties in order to protect sensitive business information and trade secrets, to encourage open and honest communication between parties and reduces the risk of reputational harm from public disputes.

Proclamation No. 1237/2021 establishes a strong framework for confidentiality of arbitration in Ethiopia, promoting a secure environment for dispute resolution while allowing for certain exceptions as necessary. This balance fosters trust among parties while ensuring that relevant stakeholders are not completely excluded from the process.

On the other hand, arbitration process also expected to be transparent. Transparency refers to the openness of the arbitration process with the aim of enhancing the legitimacy and credibility of the arbitration process. It also allows stakeholders to understand how disputes are resolved and ensures accountability. Arbitrators and parties often need to strike a balance between maintaining confidentiality and ensuring necessary transparency, particularly in sectors where public trust is crucial.

In arbitration, confidentiality protects the parties' interests and promotes candid dialogue, while transparency fosters trust and accountability in the process. The specific application of these principles can vary based on the arbitration agreement, the applicable laws, and the rules of the arbitration institution involved.

5. Costs and Fees

AACCSA arbitration proceedings involve various costs, including fees for arbitrators and experts, administrative expenses determined by the Institute, and reasonable legal and other costs incurred by parties (Art 33 of AACCSA AI rules). To initiate proceedings, the Claimant must submit a non-refundable registration fee of 500 ETB. The Institute will determine an advance on costs, likely covering arbitrators' fees, expenses, and administrative costs, which the claimant and respondent are expected to pay in equal parts. The Arbitral tribunal will specify the total arbitration costs and their distribution among the parties in the final award. Arbitrator fees will be set by the AACCSA IA based on the scale provided in the AACCSA IA rules.

6. Interim Measures and Awards

Proclamation No. 1237/2021 (Article 20) and AACCSA AI rules (Article 16) includes provisions for interim measures to protect parties' rights or assets during arbitration. Interim measures are generally temporary and may be subject to review by the tribunal. The tribunal can modify or terminate these measures based on changing circumstances.

Types of interim measures may include freezing orders on assets, preservation of evidence, to preserve assets and funds against which an arbitration decision may be given and any other measures deemed necessary to protect the rights of the parties.

The Proclamation (Article 25.4) provides for the possibility of seeking assistance from the courts to enforce interim measures. This can be particularly important in cases where a party may not comply with an order voluntarily.

In general, the provisions for interim measures under Proclamation No. 1237/2021 enable parties in arbitration to take proactive steps to protect their rights and assets, ensuring that the arbitration process is effective and equitable. These measures play a crucial role in

maintaining the integrity of the arbitration process and preventing potential harm during proceedings.

The AACCSA Rules mandate that arbitral tribunals issue awards within six months of their formation, as stated in Article 24. However, the institute retains the authority to extend this period in exceptional circumstances.

For three-member tribunals, decisions are reached by majority vote. In cases where a majority cannot be achieved or when authorized, the presiding arbitrator may make decisions, subject to review by the tribunal. The rules specify that awards must be written and, unless pre-agreed otherwise, are considered final and binding on all parties (Article 26 of AACCSA AI rules). The tribunal is required to provide justification for the award, except when parties have mutually agreed to omit this requirement.

Either party has the right to request the tribunal to clarify the award or rectify any computational, clerical, typographical, or similar errors within 30 days of receiving it, provided they inform the other party (Article 30 of AACCSA rule). Moreover, within the same timeframe, either party can request the tribunal to render an additional award for claims presented during the proceedings but not addressed in the original award.

Under the AACCSA AI rules, the tribunal is authorized not only to issue a final award but also to conclude arbitral proceedings or record a settlement as an arbitral award on mutually agreed terms (Art 28 of AACCSA rules).

Enforcement of awards has a lot to do with the New York Convention, which is now ratified by 172 countries to date. The most significant obligation the parties to the Convention assume is to recognize and enforce awards made in member countries. Arbitral awards made in Ethiopia can now be recognized and enforced in most jurisdictions. This has removed the biggest technical hurdle to the conduct of international arbitration in Ethiopia. It is now easier for Ethiopian parties to convince their foreign counterparts to agree to arbitration in Ethiopia.

Proclamation 1237/2021, Article 51 states that without prejudice to the provisions of Articles 50 or 52 of this Proclamation, an arbitral award rendered in Ethiopia or in a foreign country shall be deemed to be binding and shall be executed pursuant to Civil Procedure

Code by applying to a court that is empowered to execute the award had the case been heard by a court.

The court's review of an application for enforcement is generally limited. Courts do not re-examine the merits of the case but focus on whether the procedural and legal requirements for enforcement are met.

Thus, the enforcement of arbitral awards in Ethiopia is structured to promote the effectiveness of arbitration as a dispute resolution mechanism. The legal framework supports both domestic and international awards, providing a pathway for parties to seek recognition and enforcement while ensuring certain safeguards are in place.

7. Appeals and Challenge Procedures

According to Proclamation No. 1237/2021, Article 49 an appeal is not automatically available; it depends on the presence of an agreement. Article 49(1) states that unless the contracting parties agree otherwise in their arbitration agreement, no appeal shall lie to the court from an arbitral award. Nonetheless, Article 49(2) of the Proclamation allows parties to apply for cassation "where there is a fundamental or basic error of law", but parties may waive the right of appeal. Thus, unless the parties are able to agree to waive judicial review for errors of law, the potential for second-guessing final arbitral awards still exists through the appeal process.

If the parties agreed not to waive the right to appeal and if there is a fundamental error of law the procedure for appeal requires to file the appeal with the competent court as designated in the arbitration agreement or as per Ethiopian law. This could be the Federal First Instance Court or a regional court, depending on the context. The appeal should include the details of the arbitration (parties involved, arbitration agreement, etc.), specific grounds for the appeal and any supporting evidence or documentation. It is also required to serve a copy of the appeal to the other party involved in the arbitration. Then, the court may schedule a hearing to review the appeal. Both parties will typically have the opportunity to present their arguments. Finally, the court will render a decision on the appeal, which could affirm, modify, or overturn the arbitral award.

If unsatisfied with the court's decision, there may be an option for further appeal to a higher court, depending on the specific legal provisions applicable.

8. Compliance and Enforcement

The mechanisms for ensuring compliance with arbitral awards primarily involve the legal framework established by the Arbitration and Conciliation Proclamation No. 1237/2021.

Accordingly, it has the provision for the courts to provide assistance in enforcing awards, including issuing orders for compliance or even imposing penalties on non-compliant parties.

Enforcing an arbitral award in case of non-compliance involve requires to adhere to the procedures outlined hereunder:

- a. Obtain the Arbitral Award: Ensure you have the final and binding arbitral award, properly formatted and signed by the arbitrators.
- b. Review the Award: Confirm that the award is enforceable under Ethiopian law. It should not be subject to appeal or set aside, and it should comply with any necessary formalities.
- c. Filing for Enforcement:
 - Competent Court: File a petition for enforcement at the competent court, which is typically the Federal First Instance Court.
 - Documentation: Attach the following documents:
 - A copy of the arbitral award.
 - The arbitration agreement.
 - Any translations if the documents are not in the official language.
- d. Notice to the Other Party: Serve notice to the party against whom enforcement is sought, informing them of the application to enforce the arbitral award.
- e. Court Hearing: The court will schedule a hearing to review the enforcement application. Both parties can present their arguments.
- f. Court Decision: The court may grant enforcement if it finds that the award meets legal requirements. If the court denies enforcement, you may have the right to appeal the decision.
 - Execution of the Award: Once the court grants enforcement, you can proceed with execution. This may involve:

- Engaging enforcement officers to carry out the terms of the award.
- g. Applying for necessary measures, such as asset seizure or garnishment, if the award involves monetary payment. Further Legal Actions: If the other party still fails to comply, additional legal actions may be necessary, such as seeking contempt of court orders or further enforcement measures.

In summary, as pointed out in the results of the research that arbitration of international proceedings found to be not effective. Thus, a framework to developed has to take this finding into account in addition to the improvement of the key components listed above.

Besides having a good legal framework, the effectiveness of arbitration also relays on the process control of the arbitration procedures. Review of literatures (Abwunza, 2020) suggested a strategy for improving the effectiveness of arbitration should focus on the following five main factors. These factors are within control of the participants in the arbitral process.

1. To avoid exaggerating claims and counterclaims. Such exaggeration suggests existing loopholes in the existing contract provisions. Exaggeration essentially increases the time and cost of resolving the dispute as both the claimant and the respondent devote their resources towards assembling requisite evidence to build and support their respective cases. It also escalates the need for more process control that exaggerates expectations of receiving favorable awards.
2. Participants must also strive to comply with deadlines set by the tribunals. Compliance entails ensuring that the tribunals' deposits are promptly paid, required documents are promptly prepared and filed, and participants attend the proceedings on scheduled time. Such compliance minimizes unnecessary delays.
3. In addition, participants must avoid the tendency to willfully misstate facts. Such misstatement essentially escalates both the time and cost of arbitration as the other party endeavors to disprove the misstatement. Thus, avoiding misstatement enables participants to focus on the core issues in dispute. Participants must also avoid revisiting previous rulings made by the tribunals. Revisiting such rulings has the tendency to draw back the proceedings as

parties take time and incur costs in arguing their respective positions. Hence, avoiding prior rulings focuses the parties on the dispute.

4. Good documentation can help in focusing on the disputed issues. Additionally, avoiding unnecessary techniques really helps in enhancing effectiveness. For instance, once parties file witness statements and fact witnesses adopt their statements, it is unnecessary to take the witnesses through examination-in-chief. Participants may proceed directly to cross-examination to save time and cost.

5. As the parties' endeavor to avoid the above aspects of negative conduct, tribunals must make adequate use of its powers to ensure that the proceedings are not disrupted. In addition to taking a proactive approach in managing the case, tribunals should try to balance between concerns for time and cost and the need to be flexible enough to give each party a reasonable opportunity to present its case. In the end, tribunals must issue timely awards that are adequately supported by sufficient evidence to withstand possible court challenges. Thus, there is a need for tribunals to make good use of their functional skills. However, training institutions must place greater emphasis on developing such skills through their training and mentorship programs. These skills can only be effectively applied if the arbitrators appointed to resolve the various construction disputes are properly matched to the complexities of the cases they handle. Disputants and appointing institutions must carry out adequate due diligence before appointing or agreeing to the appointment of arbitrators. In the end, these arbitrators can capitalize on their understanding of the complexity of the dispute to guide disputants in presenting their evidence efficiently.

4.5.1 Importance of Framework Development

The development of a framework for arbitration in the Ethiopian road construction industry can have significant implications across various dimensions as outline below.

1. Enhanced Dispute Resolution

- a. Efficiency: A structured arbitration framework can lead to quicker resolution of disputes compared to traditional litigation, minimizing project delays.

- b. **Cost-Effectiveness:** Reduces legal costs associated with prolonged disputes, benefiting both contractors and clients.

2. Legal Certainty and Predictability

- a. **Clear Guidelines:** Establishing clear arbitration rules helps parties understand their rights and obligations, fostering a more predictable business environment.
- b. **Encouragement of Contracts:** Stakeholders may be more inclined to enter into contracts with clear arbitration clauses, knowing there's a reliable dispute resolution mechanism.

3. Attraction of Foreign Investment

- a. **Investor Confidence:** A robust arbitration framework signals a commitment to fair and effective dispute resolution, attracting foreign investors looking for stable environments.
- b. **International Standards:** Aligning local practices with international arbitration standards can enhance Ethiopia's appeal as a destination for global investment.

4. Capacity Building and Professional Development

- a. **Training Opportunities:** The establishment of an arbitration framework can lead to the development of training programs for legal professionals, arbitrators, and industry stakeholders.
- b. **Strengthening Institutions:** Building institutional capacity within Ethiopia's legal and construction sectors can improve overall service delivery and industry standards.

5. Reduction of Corruption and Bias

- a. **Transparent Processes:** An effective arbitration framework can reduce opportunities for corruption by providing a structured, transparent process for dispute resolution.
- b. **Neutrality:** Arbitration can offer a neutral ground for resolving disputes, mitigating biases that may exist in local courts.

6. Integration of Local Practices

- a. Cultural Relevance: Incorporating local customs and practices into the arbitration process ensures that the framework is culturally sensitive and widely accepted.
- b. Stakeholder Buy-In: Engaging local stakeholders in the development of the framework can enhance acceptance and effectiveness.

7. Promoting Compliance and Good Practices

- a. Encouraging Adherence: A clear arbitration process can encourage parties to adhere to their contractual obligations, knowing that breaches can be resolved through a defined mechanism.
- b. Improving Industry Standards: Promotes the adoption of best practices within the construction industry, leading to higher quality work and safer environments.

8. Policy Development and Reform

- a. Influencing Legislation: A well-defined arbitration framework can prompt further legal reforms that support the construction industry and improve overall governance.
- b. Industry Regulation: It can pave the way for better regulation of the construction sector, ensuring compliance with standards and enhancing accountability.
- c.

9. International Recognition

- a. Global Credibility: Establishing a robust arbitration system can position Ethiopia favorably in the international community, enhancing its credibility in cross-border projects.
- b. Facilitating Trade: It can promote international trade relationships by providing a trusted method for dispute resolution among international parties.

In summary, developing an arbitration framework for Ethiopia's road construction industry can lead to a more efficient, transparent, and attractive business environment, fostering growth and sustainable development in the sector.

CHAPTER FIVE

CONCUSION AND RECOMMENDATIONS

In this part of the research conclusion and recommendations will be presented based on the results of the interview and case studies as discussed in chapter four.

5.1 Conclusion

Based on the results of interview and case studies discussed in the previous chapter the following points can be drawn as conclusion.

Disputes in Ethiopia's road construction industry is high, primarily due to contract-related issues and project management problems. As per the research finding the major causes of disputes include but not limited to:

- ✓ Poor drafting of contract documents
- ✓ Lack of understanding of construction contracts
- ✓ Inadequate contract administration
- ✓ Non-fulfillment of contractual obligations
- ✓ Delayed or denied payments
- ✓ Poor contractor performance
- ✓ Delays in removal of Right of Way obstructions, and payment issues

In regard to arbitration effectiveness the findings have shown mixed results: while domestic arbitration is generally effective in terms of time and cost, international arbitration proves to be less efficient and far more expensive, largely due to international institutes like the ICC in Paris is handling international cases from all over the world as a result it is time taking and the arbitration and administrative fees are also expensive. Moreover, maintaining business relationships and ensuring the finality of awards after arbitration are areas in need of improvement, as a significant portion of arbitration cases still result in strained relationships or non-final awards. In summary, Domestic arbitration more time-efficient and cost-effective whereas international arbitrations are not time efficient and cost-effective, often very expensive. In regard to quality of awards majority of cases maintain business relationships and achieve

finality of awards however, a significant percentage (37-40%) experience negative impacts on business relationships or lack of award finality.

As discussed in the discussion part in the previous chapter the development of a framework for arbitration for the road construction industry includes key components to ensure fair and efficient dispute resolution processes. As conclusion the importance implications can be stated in the following features: dispute resolution efficiency, legal certainty, attracting investment, foster capacity building and influence broader policy development.

5.2 Recommendations

To address the issues, there is a need for the development of a more robust domestic arbitration centers, train and develop expertise among arbitrators, and refine the law and rules to enhance both the efficiency and effectiveness of arbitration in the construction industry. In summary,

- Establish more robust domestic arbitration centers
- Improve the only functioning AACCSA AI center capacity and competence
- Vision and work towards making Addis Ababa as a seat for international arbitration
- Enhance the quality of awards to better maintain business relationships and ensure finality.

5.3 Recommendation for Further Studies

In principle, administrative contracts are not arbitrable in Ethiopia. Article 7(7) of the Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021 states that an administrative contract is not arbitrable except where it is permitted by law. So, unless special laws permit for a certain administrative contract to be arbitrable, administrative contracts are not arbitrable. And, road construction contracts that ERA enters into with domestic or international contractors are basically administrative contracts. This poses a challenge and threat to fully exploit arbitration in construction contracts. Thus, I recommend the challenges and impacts of inarbitability of administrative contacts in the resolution of disputes of construction contracts through arbitration

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Appendix A: Semi-Structured Interview Questions

Dear Sir/Madam

At the outset, I would like to thank you for your invaluable time and willingness to conduct this interview. The aim of this interview is to gain insight for the research I am undertaking with a title of ‘**Effectives of Arbitration Particle in the Ethiopian Road Construction Industry**’ at the Adama Science and Technology University as a requirement of a partial fulfillment for Msc. in Construction Engineering and Management. I hereby would also like to assure you that the data will be used only for academic purposes and will remain confidential.

A, Introduction (Name and Experience)

1. Name (optional), educational background, previous and current position in your firm/company.
2. Please briefly describe your experience with dispute resolution and the arbitration of road construction contracts?

B. Disputes in General

1. What are the underlying factors contributing to disputes in Ethiopia's road construction industry or in ERA-administered road projects?
2. Which ADR methods you have experience other than arbitration and which method do you think the best dispute resolution method for the road construction industry in Ethiopia? Why?

C. Arbitration Practices and Procedures

1. Experience and Exposure on Arbitration Practices

- For how many disputes in road construction contracts you acted as an arbitrator/adjudicator or advisor on domestic and/or international arbitration cases so far?
- If you had the opportunity to participate on any international arbitration cases? Please briefly describe the similarities and differences with the domestic arbitration practices and procedure.

2. Effectiveness of Arbitration

- From your experiences, how long (in average) does it take to resolve a typical domestic and international road construction dispute through arbitration? How long do you think an efficient arbitration process should take in average?
- What range of proportion (arbitration cost/ amount in dispute) do you think fair or acceptable as cost of arbitration?
- Do you think the arbitration you have experience are effective in terms of time efficiency, cost-effectiveness, quality of awards (how satisfied the involved parties are with overall process and outcome of an arbitration and maintaining the business relationship). Please compare and contrast domestic and international arbitration cases.
- Which form of arbitration do you consider appropriate or recommend to the current condition of Road Construction Projects in Ethiopia (Ad-hoc or Institutional)?
- Given that Ethiopia ratified the NYC in 2020 and promulgation of the Arbitration and Conciliation law in 2021 and having an arbitration institute (AACCSA AI) serving the local commercial community since 2002,
 - Is Addis Ababa competent enough to be a seat for international arbitration? Or in other words do you think our domestic arbitration institute capable of arbitrating international cases?
 - Do you think also disputant parties from international arena willing to conduct arbitration on the local arbitration institute.
 - If not, what should be done to upgrade the AACCSA AI to the international standard? And, also promote arbitration and establish more competent arbitration institutes? Compare with other African countries like Kenya, Nigeria, Egypt and etc.
- If you have any additional concluding remarks, opinion or view you are most welcomed.

