Open Access | Original Research
International Journal of Social Sciences and Economic Review, 1(3), 2019 | PP: 17– 24
https://doi.org/10.36923/ijsser.V1i3.42

Duty of Confidentiality In Arbitration Process In Ethiopia

Negesse Asnake Ayalew [1]

Abstract: The purpose of this study is to examine the status of arbitration confidentiality in Ethiopia, focusing on its legal basis, scope, application, and limitations. The research employs a qualitative approach, utilizing document reviews and interviews with professionals directly involved in arbitration cases. These professionals were selected purposively to provide informed insights. The findings reveal significant debates surrounding the duty of confidentiality in arbitration, highlighting ambiguities and inconsistencies in the current legal framework. The study suggests that the Ethiopian parliament should enact new arbitration laws, drawing on examples from the New Zealand Arbitration Act and WIPO arbitration rules. It also emphasizes the need for disputing parties to address gaps through confidentiality contracts and recommends limiting court control over arbitration proceedings to maintain confidentiality. Furthermore, it proposes that any publication of arbitral awards should omit the identities of the disputing parties. The study concludes that, despite the benefits of arbitration, its application remains low in Ethiopia, and these findings can serve as valuable reference material for students, disputing parties, policymakers, and lawmakers.

Keywords: Commercial Arbitration, Confidentiality, Privacy, Public Policy, Trade Secret

Check for updates

Article History:

Received: 03-07-2019
Accepted: 19-11-2019
Publication: 27-12-2019

Cite this article as:

Ayalew, N. A. (2019). Duty Of Confidentiality In Arbitration Process In Ethiopia. *International Journal of Social Sciences and Economic Review*, 1(3), 17–24. doi.org/10.36923/ijsser.v1i3.42

Corresponding Author(s):

Negesse Asnake Ayalew
Ethiopian Police University College, Ethiopia. Email: bichenalaw@gmail.com

1. Introduction

Disputing parties often choose arbitration over court litigation to benefit from its advantages, such as speed, the ability to select impartial arbitrators, procedural flexibility, privacy and confidentiality, binding and final awards, and the reduction of court dockets (Baker & Choi, 2018; Reuben, 2005). Common sayings about the importance of confidentiality include, “If I uphold my silence about my secret, it is my detainee. But if I let it slip from my tongue, I am its prisoner.” and “Rumor is more powerful than war.” These proverbs highlight that confidentiality is a cornerstone of a person's life. For instance, every business has its secrets critical to its success. If these secrets are disclosed to third parties, the business could lose its trust, goodwill, profit, reputation, and customers, and ethical values could be undermined. This is why one of the attracting factors for parties opting for arbitration over court litigation is to avoid adverse publicity that could force the disclosure of their trade secrets and customer information, which may negatively affect the good image of a businessperson, especially if the dispute is related to non-performance, reliability, and honesty of a party (Daly, 2005; Noussia, 2010).

Parties expect the privacy of arbitration proceedings and the confidentiality of their information. However, the legal basis, scope, application, and exceptions to confidentiality in arbitration are ambiguous. English, French, and New Zealand courts have recognized the implied confidentiality of arbitration, while courts in Australia, Sweden, and the USA have rejected the implied duty of confidentiality and allowed unlimited exceptions (Klein, 2004). Moreover, Ethiopian arbitration law is silent regarding the legal basis, scope, limitations, and application of the duty of confidentiality in arbitration. Based on the writer’s observation, arbitration awards are published by the Ethiopian Mediation and Arbitration Centre. As far as the writer's knowledge goes, this area has not been studied. Therefore, this uncertainty motivated the writer to explore this topic further.

2. Literature Review

Arbitration Arbitration involves settling a legal dispute through an arbitration agreement, known as an Arbitration Clause or submission, where the parties appoint arbitrators. These arbitrators, under a private service contract, render judicial services by hearing and handling the case and making an arbitration award, which will be recognized and enforced by the state according to existing arbitration laws (Buys, 2013). The advantages of arbitration over court litigation include privacy and confidentiality. Privacy refers to the right to isolate and classify one's personal information or the option to hide any information from others. It includes control over others' use of information about oneself, states of privacy, personhood and independence, self-identity and personal growth, and the protection of intimate

[1] Ethiopian Police University College, Ethiopia. Email: bichenalaw@gmail.com

relationships (Hwang SC & Chung, 2009). Thus, disputing parties have the right and privilege to exclude third-party participation in an arbitration proceeding, meaning only the parties participate in the proceeding and have access to confidential information.

Confidentiality refers to the extension of the right to privacy, meaning that the person who receives confidential information from their client has the duty to keep it. It pertains to a relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship (Baker & Choi, 2018; Smeureanu, 2011). A duty of confidentiality arises when one person places reliance on the integrity of another, who gains dominance or influence over the first. It also arises when one person assumes control and responsibility over another, when one person has a duty to act for or give advice to another on matters within the relationship's scope, or when there is a traditional bond involving fiduciary duties, such as a professional and client relationship.

Confidentiality extends beyond the secrecy of arbitration proceedings. All participants in arbitration processes, including parties, arbitrators, witnesses, and any other involved actors, must respect and maintain whatever they learn in arbitration as a secret. Moreover, arbitration submissions, testimonies, and communications are inadmissible in court proceedings, encouraging honest and free settlement negotiations. Unlike privileges and rights of refusal to testify, this confidentiality cannot be waived (Moses, 2014).

2.1. Legal Basis Of Arbitration Confidentiality

What are the legal sources of the obligation of confidentiality in the arbitration process in Ethiopia? Legal duties may arise from national law and contracts (Mulugeta, 2010). Some countries explicitly accept the implicit duty of confidentiality in arbitration processes, such as New Zealand, Norway, Spain, Romania, and Peru. Additionally, England, Singapore, and French law are silent, but their courts have recognized an implied duty of confidentiality in arbitration. For example, although the English Arbitration Act 1996 is silent about arbitration confidentiality, the cases of Dolling-Baker and Ali Shipping Corp vs. Shipyard Trogir established the implied duty of confidentiality in arbitration (Bahta, 2011; Laurent et al., 2011). However, Australian, Swedish, and United States courts have rejected the implicit duty of confidentiality in arbitration, as seen in the Australian High Court case Esso Australia Resources Ltd vs. Plowman. Thus, the existence of a duty of confidentiality in arbitration is debatable.

What if disputing parties choose institutional arbitration rules? Institutional rules such as those of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rule Arts 38(3), World Intellectual Property Organization (WIPO) Arbitration Rules Arts 73-76, International Chamber of Commerce (ICC) Arbitration Rules Art 22(3) and the Statutes of the International Court of Arbitration of the ICC Art 6, and London Court of International Arbitration Rules (LCIA) Rules Art 30 recognize the privacy of proceedings and confidentiality of information (Laurent et al., 2011).

Disputing parties have the freedom of contract to make their arbitration process confidential as long as they meet the legal requirements, such as consent, capacity, lawful and moral object, and form. This confidentiality contract should define the scope of the duty of confidentiality, including the definition of confidential information, the duration of the duty, the prohibition of personal use or disclosure to third parties or court, exceptions to the duty, disclosure procedures, the identification of persons bound by the contract, and the consequences of non-performance (Powers et al., 2018). Everyone who signs a confidentiality clause must obey it. For third parties who did not sign the confidentiality agreement, there is no obligation of confidentiality in the arbitration process, and the plaintiff cannot bring a claim against them. Therefore, it is best for parties to enter confidentiality contracts with all arbitration participants, including third parties, or stipulate that a party who calls a third party to participate will be responsible for any unauthorized disclosure committed by that third party.

Ethiopian arbitration law is governed by the Civil Code, particularly Articles 3325-3346, and the Civil Procedure Code, especially Articles 315-319, 350-357, and 371-461. The Addis Ababa Chambers of Commerce and Sectoral Association arbitration institution (AACSA AI), established by Proclamation No 341/2003, also plays a role (Birhanu, 2018).

2.2. Scope of Confidentiality In Arbitration

Every piece of information, irrespective of the medium in which it is expressed, is considered confidential when the party proves that the information is under their control, not in the public domain, and treated as confidential. Its disclosure must incur serious harm to the party owning it, or when a confidentiality advisor deems it confidential (WIPO, 1994). Confidential information includes any kind of business, commercial, or practical information and data transferred by or on behalf of the revealing party to the receiving party, except for information that is clearly non-confidential.

Arbitration is initiated when a dispute arises between parties and one party submits a statement of claim to arbitration institutions or arbitrators. Based on the timing of the arbitration proceeding, it may be classified into three phases (Powers et al., 2018). Firstly, the existence of a dispute is confidential under most institutional arbitration rules. For example, WIPO arbitration rule Art 73 states that no information regarding the existence of arbitration may be disclosed by a party to any third party, except to the extent legally required. Secondly, the confidentiality of the substance of the arbitration process is recognized by most arbitration rules, ensuring the

privacy of hearings and confidentiality of information. WIPO arbitration rule Art 74 provides that all new evidence presented by parties or witnesses in the arbitration process shall not be used or disclosed to third parties, and the party calling witnesses is responsible for ensuring they maintain the same obligation of confidentiality. If the witness is not employed by a party, this obligation is likely implemented through an express confidentiality agreement.

The processes of making any award are conducted in secret, but the confidentiality of the arbitration award is debatable. Most arbitral institution rules state that arbitral awards are confidential unless decided otherwise by the parties, such as Art 34(5) of the UNCITRAL Arbitral Rules, Art 27 of the AAA International Rules, WIPO arbitration rule Arts 75, Swiss Rules of International Arbitration Art 43.1, and LCIA Rules Art 30 (Emem, 2018).

In institutional arbitration, the disputing parties, the institution with its employees, and the arbitrators are part of the same contractual relationship. Arbitration institutions publish their rules containing confidentiality provisions, amounting to a standing proposal to prospective users. When disputing parties accept these rules by referencing them in their arbitration agreement, a contractual affiliation is recognized. Institutional arbitration employees sign confidentiality contracts within their employment contracts. Disputing parties and arbitrators enter a contractual services relationship when the arbitrator is appointed, and a pledged relationship is created among disputing parties, arbitrators, and arbitration institutions upon the institution's confirmation of the arbitrator's appointment (Kalimo & Majcher, 2017).

Most institutional arbitration rules include provisions on the obligation of confidentiality for all participants in arbitration. For example, the China International Economic and Trade Arbitration Commission arbitration rules Art 36 and 37 extend the obligation of confidentiality to parties, their representatives, arbitrators, and third parties such as witnesses, interpreters, experts, and relevant staff members of the secretariats (Loriot et al., 2013). WIPO Arbitration Rules Art 74(b) states that the party calling a witness is responsible for ensuring the witness maintains the same degree of confidentiality required of the party and that witnesses are not considered third parties. Expert witnesses can sign a confidentiality contract and have a professional duty of confidentiality under their codes of conduct. WIPO Arbitration Rules Art 52 adds that a confidentiality advisor, responsible for determining confidential or non-confidential information, can make binding decisions without disclosing information to adversaries or arbitrators.

2.3. Limitation of Confidentiality Of Arbitration

Human beings are social animals, so most rights are not absolute to protect the rights and interests of others. The New Zealand Arbitration Act 1996 Sections 14A to 14I provide detailed explanations about the limitations of the duty of confidentiality (Loriot et al., 2013). WIPO arbitration rule Arts 73-75 allow for disclosure when parties consent, in connection with a court challenge to the arbitration or enforcement of an award, when the information falls into the public domain, to a legitimate authority, or when the party feels obliged to disclose the arbitration's existence to its parent company as a preventive measure and to maintain good relations in the corporate group. Disclosure is also permitted in cases of suit for annulment, to fulfill fiduciary obligations to shareholders, as part of reporting duties to bankers and insurers, or to protect legal rights against third parties. However, these disclosures should be limited to what is legally required and conducted with notice to the Tribunal and the other party if during arbitration, or to the other party alone if after the arbitration, with specifics and reasons for the disclosure.

3. Methodology

This study employed a qualitative research approach and a descriptive research design. To explore and describe laws, institutional frameworks, and practices in Ethiopia, the study follows a qualitative phenomenological approach. This approach helps to discover and define the lived experiences of individuals within a particular context and time (Creswell, Hanson, Clark Plano, & Morales, 2007).

The target populations include arbitration institutions, court judges and registrars, and arbitrators in Ethiopia. Participants for key informant interviews were selected purposively, comprising a federal first instance judge, three federal high court judges and a registrar, three federal Supreme Court judges, an arbitrator, and the head of an arbitration tribunal. These participants were chosen because they have direct connections with arbitration cases.

The tools for data collection were document reviews and key informant interviews. The sources of data included both primary and secondary sources. The scope of this study is the Ethiopian arbitration system from 2016 to 2019. The collected data were analyzed thematically. Proper citation, respect for consent, and the identity of informants were maintained for ethical considerations..

4. Result And Analysis

Ethiopian arbitration law is silent on the matter of confidentiality. However, the Federal Democratic Republic of Ethiopia Constitution (hereinafter referred to as FDRE Constitution) Article 24 recognizes the right to honor and reputation for everyone. Additionally, Article 26(1 and 2) acknowledges the right to privacy for every person. Similarly, FDRE Constitution Article 20 (1) states that alleged persons have the right to a closed session by the conventional court of law. Article 29 (6) also adds that rights of view and manifestation could be limited only through specific laws to protect the honor and reputation of individuals. For instance, the Freedom of the Mass

Media and Access to Information Proclamation No 590/2008 (hereinafter referred to as access to information law) recognizes the right of every citizen to access information held by public bodies, except for confidential information as per Articles 2(8), 16(1), and 17, which include personal and commercial information.

Ethiopian Civil Code Articles 2032, 2044, and 2047(2) state that everyone has the right to expression unless the purpose of this expression is to make another living person vile, shameful, or ridiculous, or to jeopardize their credit, reputation, or future, even if these are true, as it constitutes defamation. The Ethiopian Criminal Procedure Code Proclamation No 185/1961 Article 33 also supports the right to privacy for any person unless there is reasonable suspicion of the existence of evidence of a crime in their premises, and the court provides a specific search warrant for the police to search it with an independent witness.

4.1. Who Has a Duty of Confidentiality in Arbitration?

The Ethiopian Federal Court advocates' code of conduct regulations No. 57/1999 Article 10 provides that advocates shall have a professional obligation to keep the personal or organizational information of their clients or any other information obtained in the course of their professional service secret for life. Moreover, Article 24 of the Civil Code also recognizes the professional obligation of confidentiality. The reading of these provisions shows that the duty of confidentiality extends to professionals. However, are arbitrators considered professionals in Ethiopia? Ethiopia does not yet have a governmental department or modern arbitration law responsible for training and licensing arbitrators, except for AACSA AI, which maintains a list of professional arbitrators. Therefore, among participants in the arbitration process, the duty of confidentiality has a legal basis only for lawyers and institutional arbitration arbitrators.

4.2. Judicial Perspectives on Confidentiality

Does a confidentiality and finality award contract between the parties confer legal privilege to arbitrators and render arbitration information inadmissible in subsequent court proceedings? Do courts recognize it as valid? How does the court's power to call a person for examination and everybody's duty to be a witness reconcile with professional privilege? These questions divided the informants of the research into two groups. Interviewees from arbitration institutions and arbitrators argue for parties' freedom of contract, including arbitrators' privilege and the inadmissibility of arbitration information in subsequent court proceedings because there is an implicit obligation of confidentiality in the arbitration process, and the contract is a law for contracting parties. They added that if parties selected AACSA AI with its arbitration rules, enacted in line with the country's laws based on the Chambers of Commerce and Sectoral Association Establishment Proclamation No 341/2003 Article 8(1) (e), which has provisions governing confidentiality in the arbitration process, then the court should respect the contract of the parties and the law enacted by parliament in line with the FDRE Constitution.

Conversely, most judge informants argue against it. They stated that Ethiopia has not codified evidence law, but there are legal principles supporting privilege and inadmissibility, such as the prohibition against self-incrimination and the inadmissibility of any evidence obtained through coercion as per Article 19(5) of the FDRE Constitution. However, if a party needs to present evidence on their behalf, they must do so before calling their witnesses, after taking an oath, and it is subject to the rule of cross-examination as per Article 261(2) of the Ethiopian Civil Procedure Code. Article 142(1) (3) of the Ethiopian Criminal Procedure Code states that once the witnesses for the victim party have been heard, the court shall inform the accused that they may make a statement in answer to the charge without oath and cross-examination, and may request witnesses in their defence. These provisions inform us that only the right of the disputing party to be a witness for their case is recognized, not for arbitrators and third parties. Every person has a duty to be a witness before a court unless they are liable for failure to aid justice as per FDRE Criminal Code Article 448. One interviewee judge shared an experience where a lawyer who mediated disputing parties later became a witness for one of the disputing parties in a court proceeding, and the other party objected based on the lawyer's duty of confidentiality. The court ruled that the lawyer violated their professional obligation of confidentiality to their client and became liable for it. They also noted the practice in Ethiopia's Federal Court annexed mediation, where assistant judges often act as mediators, and if mediation is unsuccessful, those assistant judges are prohibited from participating in subsequent court proceedings as witnesses or assistant judges. They concluded that banning a third party as a witness in subsequent court proceedings applies only to mediator-client and lawyer-client relations, where a fiduciary relationship exists. However, in the case of arbitrator-client relations, the possibility of exchanging confidential information is low, and arbitration proceedings are conducted similarly to Ethiopian civil court proceedings. Therefore, the court does not have a duty to support and control arbitral tribunals in closed sessions.

4.3. AACSA AI Procedural Rule Articles

AACSA AI procedural rule Articles 16 and 17, along with its revised Arbitration Rule Articles 21.7, 22.3, and 26.5, recognize the standard of privacy and confidentiality of all information. All information and documents are disclosed only to their members or authorized persons, and all arbitration information except the award should be destroyed at the end of the proceeding. Furthermore, the arbitration rules include a statement of acceptance and declaration of independence form for arbitrators, stating that arbitrators must keep confidential all information they become aware of as a result of their participation in the proceeding, as well as the contents of any award made by the Tribunal. While the arbitration institution rules recognize the privacy of arbitration proceedings and the confidentiality of information, the confidentiality contract is unclear on the scope of the duty of confidentiality

when disclosure is allowed, the meaning of confidential information, to whom the obligation extends, the consequences of non-performance of the confidentiality clause, and its remedies. Therefore, if the legal source of the duty of confidentiality is a contract, contractual liability will follow in case of breach. If the source of duty is the law, tort law may be applicable. Whether tort or contract law will apply if an employee discloses the confidential information of the employer after termination of the employment contract as per Article 2533 remains uncertain. The answer could be either, as the law imposes a duty of confidentiality per Article 2035, even if the employment contract is completed, or the duty may continue per Article 2037 of the Civil Code.

4.4. Scope Of Arbitration Confidentiality

As far as the researcher is concerned, there is no legal definition for the phrase "confidential information." However, there are indirect definitions such as "personal information" pursuant to Articles 2(8) and 16(1) and "commercial information of the third party" pursuant to Article 17 of the Access to Information law. The definition of confidential information divided the informants of this research into two groups. Interviewees from arbitration institutions and arbitrators stated that all new information acquired before, during, and after the arbitration process is confidential since the purpose of the duty of confidentiality is to maintain the goodwill, profit, and reputation of the parties. It may also be determined by criminal law, intellectual property laws of the country, and parties' contracts. However, arbitration participants may use arbitration information for non-commercial purposes, such as for research and teaching, without disclosing the identity of the disputing parties, but only upon the approval of arbitration institutions and the disputing parties.

Conversely, the interviewed judge stated that confidential information refers to any new information acquired during the arbitration proceedings only. It does not include written statements of claims and defences, even evidence for the arbitration process and arbitration award. An interviewee also added that in cases of crimes committed against women and corruption cases, the pleading does not annex evidence lists, the trial is conducted in a closed session, and documentation of the oral litigation process is prohibited. Additionally, the judgment is given without the identity of plaintiffs and witnesses for the purpose of witness and victim security and privacy. They also added that it is the arbitrators' responsibility to take necessary measures, such as ensuring privacy, preventing any documentation of the oral discussion between parties, and destroying it at the end of the process, especially the identity of disputing parties.

Generally, all informants and reviewed documents recognized the privacy of arbitration proceedings and the confidentiality of information, but the difference lies in its scope. The researcher supports a broad definition of confidential information because, in this age of technology, the medium of communication is complex. This definition is also similar to the definition of personal and business information given by the access to information law. It is a pro-arbitration process.

4.5. Who Is Bound By It?

Article 21.7 of the AACSA AI revised arbitration rules provides that the arbitral tribunal not only respects the confidentiality of arbitration information but also takes actions to defend trade secrets and confidential information. Ethiopian Criminal Code Article 399, entitled "Breaches of Professional Secrecy," also provides that advocates, legal advisors, attorneys, arbitrators, experts, jurors, translators and interpreters, notaries, directors, managers, students, probationers, inspectors, or employees of private companies who disclose a secret that has come to their knowledge in the course of their professional duties are committing a criminal act. Article 401 of the Criminal Code adds that anyone who, in violation of their legal, contractual, or occupational obligation, reveals economic, scientific, or technological development information, industrial or trade or scientific secrets, or scientific methods of its application to a person to whom they are not expected to do so, with intent to cause harm to its owner or possessor or to derive gain from it for themselves or another, is punishable with simple imprisonment not exceeding one year or a fine not exceeding ten thousand Birr.

From the reading of these criminal law provisions, the obligation of confidentiality may arise from law or contract. This provision also extends the obligation of confidentiality in the arbitration process even to third parties such as translators, interpreters, and witnesses. Most of the informants also support the obligation of confidentiality of arbitration participants, including third parties, if there is proper notice or a confidentiality contract between disputing parties and persons who know confidential information.

4.6. Exception to the Confidentiality of the Arbitration

FDRE Constitution Article 20 states that the standard for determining whether a public or closed session of court is to be held is the privacy right of the disputing parties. Additionally, FDRE Constitution Article 26(3) states that the right to privacy is limited when there is legality, necessity, proportionality, and adequate legal remedy. From the reading of these articles, privacy and confidentiality of arbitration proceedings is a principle unless it violates the rights of other persons and the public interest. For the purpose of this paper, exceptions to the duty of confidentiality are classified into three as follows:

4.6.1. Limitation Imposed by Law

FDRE Criminal Code Article 400 lists down limitations to arbitration confidentiality, such as the consensus of the party, special provisions of the law that permit or impose the obligation in the interests of public justice to provide

evidence before a court of law or to notify public authorities, and where revelation is explicitly ordered by law, by a court of law, or by the competent authority. The owner of the secret cannot invoke their professional obligation to maintain secrecy. The Proclamation for Prevention and Overthrow of Money Laundering and the Financing of Terrorism Proclamation No 590/2008 Articles 4-7 and Ethiopian Anti-Terrorism Proclamation No 652/2009 Article 22 state that any person, including those who have a duty of confidentiality, shall disclose confidential information, such as information on customers when requested by the competent authorities for examination or prosecution of crimes concerning money laundering or financing of terrorism or for taking regulatory measures. However, in Ethiopia, predicate offences are defined broadly, referring to any offence capable of generating proceeds of crime and punishable by at least one year of imprisonment. Therefore, the arbitrator shall disclose arbitration proceedings even for crimes punishable upon complaint to the crime investigation department.

Similarly, Federal Court Advocates' Code of Conduct Law Regulation Article 10 lists down a number of grounds in which the advocate may disclose the secret of their client when the information obtained from the client is necessary for the task they are representing; to defend themselves or claim their interests in a controversy with the client; when a controversy arises concerning their power of representation; or to perform their obligations as expressly provided otherwise by law and consent of their client. Government records are generally made available to the public for inspection on matters of public interest and general concern unless it affects national security, public order and morality, or trade secrets, or to prevent unfair competition. So, if one of the parties in the arbitration process is a governmental department, citizens have the right to access information pursuant to FDRE Constitution Article 12 and access to information law 590/2008.

4.7. Limitations Arising from Court Decision

State national courts may also decide on the disclosure of confidential information to avoid contradictory evidence, such as when witnesses appear to give materially different testimony in court than they did in prior arbitration proceedings, to prevent inconsistent expert evidence, or to avoid foreign courts being deceived where the same or similar claims were raised in various proceedings. It is compulsory for the courts to decide each application based on the circumstances of each case. An informant from the arbitration tribunal added that arbitration information is disclosed only for legitimate reasons to legitimate persons by an authorized person, such as tax authorities or a notary public. For instance, if the arbitration is managed by the Arbitration Institute of AACCSA, an award may be disclosed only to legitimate persons upon the written consent of both parties and the approval of the arbitration institution. Court control and support to arbitration should be confidential. However, most informants of this research stated that the court has been supporting and controlling arbitration cases in the same manner as any ordinary civil case based on the Civil Procedure Code of Ethiopia, from the filing of pleadings up to the enforcement of arbitration awards. This process is open to the public to attend the proceedings, and every piece of information is considered a public document. Moreover, no one has yet asked the court to make the arbitration process confidential before the court. Therefore, in Ethiopia, asking for court assistance amounts to consent to public disclosure because the issue of confidentiality in the arbitration process is limited within the arbitration institution.

4.8. Limitations Imposed by Public Policy Considerations

The concept of public policy is a very challenging term to define due to its different meanings from country to country. It has been described as a very uncontrollable horse, and once one catches it, they never know where it will carry them. It refers to the principles and rules relating to justice or morality or attending to the essential political, social, or economic interests of that place, such as the absence of due process and equality between the parties, the bias of the arbitrators, usurious interest, vending and inducements that are universal acts in commercial arbitration contrary to international public policy (Tecle, 2011).

In Ethiopia, the term public policy has not yet been clearly defined, especially the issue of non-arbitrability, which means what is the limit of the jurisdiction of the arbitration tribunal or not, and also the parties' freedom of contract for the finality of the arbitration award. For instance, Article 315 of the Ethiopian Civil Procedure Code states that disputes related to administrative contracts are subject to the arbitrator, but in the case of Zem Zem PLC Vs. Illubabur Education Department, the Federal Supreme Court Cassation Division considers it arbitrarily. Additionally, in the case of Beherawi Maden Corporation vs. Danee Drilling, the Federal Supreme Court Cassation Division adjudicated the case against the freedom of contract, stating that cassation review of awards always exists as long as there is a basic error of law in the arbitration award and court judgment, even if the parties agreed to the finality of the arbitration award. It also added that the objective of the cassation bench is the constant explanation and application of laws in Ethiopia. Therefore, the parties' contract does not limit the cassation power of the Federal Supreme Court. This is one limitation of the autonomy and freedom of the parties to determine how their disputes should be resolved.

In Ethiopia, as far as the researcher is concerned, arbitral awards have been published by the Federal Supreme Court Cassation Division and the Ethiopian Arbitration and Conciliation Center. For instance, the Ethiopian Arbitration and Conciliation Center published arbitral awards in 2008, Volume One, in a book entitled "Report of the Arbitral Award," and its preamble states:

"Ethiopian arbitration hasn't a legal framework to govern the confidentiality of the arbitration process. The lex-mercatoria recognizes the confidentiality of the arbitral process due to its benefits. Therefore, the editorial

board of this published report published 21 arbitration awards, which were collected from court documentation, some awards from parties' consent, and some awards from elsewhere. Its reason for publication is for educational purposes like the Federal Supreme Court Cassation Division publication."

From the reading of the preamble of this "Report of the Arbitral Award," the following points are important inputs for this paper. First, Ethiopia hasn't had a law to govern the obligation of confidentiality in the arbitration process, but the nature of arbitration recognizes an implied duty of confidentiality unless the disputing parties consent to its disclosure. This is the reason most arbitration rules insert the phrase "…unless parties agree otherwise," arbitration processes are confidential. Therefore, parties' consent to disclose is one of the exceptions to the duty of confidentiality in the arbitration process. Finally, as inferred from the preamble of the published "Report of the Arbitral Award," the justification of the Ethiopian Arbitration and Conciliation Center for publishing these arbitral awards is for educational purposes and also to explain the similarity between arbitration proceedings and court proceedings. However, it ignores the reason for disputing parties' opting for arbitration over court litigation, which, in the case of court, the parties' expectation is a public trial and transparency or public document. In addition to this, the Federal Supreme Court Cassation Bench judgments have been published for legal awareness and their binding effect in subsequent legal proceedings as precedent. However, the publication of arbitral awards without removing the identity of disputing parties also has legal awareness for the public, but the privacy of disputing parties is violated. Therefore, if the only purpose of publishing arbitral awards is legal awareness, it is better to publish arbitral awards without the identity of disputing parties..

5. Concussion And Policy Implication

Among arbitration laws (states & tribunals), court judgments, and contracts, the best legal source of the obligation of confidentiality in arbitration is that the parliament should enact new arbitration laws. In some countries, arbitration laws like WIPO extend the obligation of confidentiality in the arbitration process even to third parties, but this is not clear in Ethiopian arbitration laws. New Zealand arbitration law lists the exceptions to arbitration confidentiality, but Ethiopian arbitration laws are silent, and there is excessive court control over arbitration.

One reason disputing parties opt for arbitration over court litigation is the privacy of arbitration proceedings and the confidentiality of arbitration process information. However, the source, meaning of confidential information, by whom and how to identify it, the duration of the duty of confidentiality, and to whom such duty extends are not clear. Additionally, it is difficult to get a comprehensive list of limitations to the obligation of confidentiality.

6. Limitation of The Study

During this study, some limitations were encountered, including the lack of prior studies in Ethiopia to be used as a springboard, the lack of organized secondary data due to the absence of documentation and an organized database system in Ethiopia, and the lack of informants' willingness to provide information. However, the utmost effort was made to minimize these limitations.

7. Recommendation For Further Study

This study highlights the need for further research on several key aspects of arbitration confidentiality in Ethiopia. Future studies should focus on exploring the impact of disclosing arbitration information on trade secrets and the broader implications for businesses. Additionally, there is a need to investigate the effectiveness of existing legal frameworks in protecting confidentiality and to develop comprehensive guidelines that address the source, scope, and limitations of confidentiality obligations in arbitration. Research should also examine best practices from other jurisdictions, such as New Zealand and WIPO, to provide insights into how Ethiopia can enhance its arbitration laws. Moreover, the role of third parties in the arbitration process and the extent of their confidentiality obligations require further examination. These studies will be instrumental in informing policymakers and lawmakers as they work towards enacting new arbitration laws that balance the need for transparency with the protection of sensitive information.

Acknowledgement Statement: The authors would like to thank all participants and the reviewers for providing comments in helping this manuscript to completion.

Conflicts of interest: The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Funding statements: This research has not received any funding.

Data availability statement: Data is available at request. Please contact the corresponding author for any additional information on data access or usage.

Reference

Alves, G., Brønnick, K., Aarsland, D., Blennow, K., Zetterberg, H., Ballard, C., ... & Mulugeta, E. (2010). CSF amyloid-β and tau proteins, and cognitive performance, in early and untreated Parkinson's disease: The Norwegian ParkWest study. *Journal of Neurology, Neurosurgery & Psychiatry, 81*(10), 1080-1086. https://doi.org/10.1136/jnnp.2009.199950

Bahta, T. H. (2011). Recognition and enforcement of foreign arbitral awards in civil and commercial matters in Ethiopia. *Mizan Law Review, 5*(1), 105-140. https://doi.org/10.4314/mlr.v5i1.68771

Baker, S., & Choi, A. H. (2018). Reputation and litigation: Why costly legal sanctions can work better than reputational sanctions. *The Journal of Legal Studies, 47*(1), 45-82. https://doi.org/10.1086/696880

Birhanu, B. B. (2012). The degree of court's control on arbitration under the Ethiopian law: Is it to the right amount?. *Oromia Law Journal, 1*(1), 35-57.

Buys, C. G. (2003). The tensions between confidentiality and transparency in international arbitration. *American Review of International Arbitration, 1*(4), 121-138.

Creswell, J. W., Hanson, W. E., Clark Plano, V. L., & Morales, A. (2007). Qualitative research designs: Selection and implementation. *The Counseling Psychologist, 35*(2), 236-264. https://doi.org/10.1177/0011000006287390

Daly, B. (2005). The potential for arbitration of cultural property disputes: Recent developments at the Permanent Court of Arbitration. *The Law & Practice of International Courts and Tribunals, 4*(2), 261-280. https://doi.org/10.1163/1571803054515320

Emem, M. (2018). Monero cryptomining attack affects over 200,000 ISP-grade routers globally. *CCN Markets*.

Hwang, M. S. C., & Chung, K. (2009). Defining the indefinable: Practical problems of confidentiality in arbitration. *Journal of International Arbitration, 26*(5), 609-645. https://doi.org/10.54648/JOIA2009034

Kalimo, H., & Majcher, K. (2017). The concept of fairness: Linking EU competition and data protection law in the digital marketplace. *European Law Review*(2), 210-233.

Klein, N. (2004). State responsibility for international humanitarian law violations and the work of the Eritrea Ethiopia Claims Commission so far. *German YB Int'l L., 47*, 214.

Laurent, L. C., Ulitsky, I., Slavin, I., Tran, H., Schork, A., Morey, R., ... Barrero, M. J. (2011). Dynamic changes in the copy number of pluripotency and cell proliferation genes in human ESCs and iPSCs during reprogramming and time in culture. *Cell Stem Cell, 8*(1), 106-118. https://doi.org/10.1016/j.stem.2010.12.003

Loriot, Y., Bianchini, D., Ileana, E., Sandhu, S., Patrikidou, A., Pezaro, C., ... De Bono, J. S. (2013). Antitumour activity of abiraterone acetate against metastatic castration-resistant prostate cancer progressing after docetaxel and enzalutamide (MDV3100). *Annals of Oncology, 24*(7), 1807-1812. https://doi.org/10.1093/annonc/mdt136

Moses, M. (2014). Arbitration/litigation interface: The European debate. *Nw. J. Int'l L. & Bus., 35*, 1.

Noussia, K. (2010). *Confidentiality in international commercial arbitration: A comparative analysis of the position under English, US, German and French law*. Springer Science & Business Media.

Powers, W. J., Rabinstein, A. A., Ackerson, T., Adeoye, O. M., Bambakidis, N. C., Becker, K., ... Hoh, B. (2018). 2018 guidelines for the early management of patients with acute ischemic stroke: A guideline for healthcare professionals from the American Heart Association/American Stroke Association. *Stroke, 49*(3), e46-e99. https://doi.org/10.1161/STR.0000000000000158

Reuben, R. C. (2005). Confidentiality in arbitration: Beyond the myth. *U. Kan. L. Rev., 54*, 1255.

Smeureanu, I. M. (2011). *Confidentiality in international commercial arbitration* (Vol. 22). Kluwer Law International BV.