

## 5. ARBITRATION OF INTELLECTUAL PROPERTY DISPUTES IN ETHIOPIA: EXPLORING THE LEGAL AND INSTITUTIONAL GAPS

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### ABSTRACT

The protection of intellectual property rights (IPR) promotes investments in knowledge creation and business innovation. IPR protection also supports an increase in foreign direct investment (FDI) and technology transfer by providing legal protection for inventions. Ethiopian protection of IPRs is growing to promote technology transfer, trade and investment activities. Intellectual property (IP) legal disputes arise out of such trade and investment activities. In Ethiopia, IP disputes mostly arise out of trademarks and copyrights infringement. Ethiopia lacks an effective and efficient IP dispute resolution system, which is an important matter taken into consideration by foreign investors. IP disputes are becoming increasingly complex and involve highly technical issues. These disputes often require reliable and flexible dispute resolution mechanisms. Due to the complex and technical nature of IP disputes, arbitration is preferable to court litigation for trade related regimes. Arbitration gives parties the autonomy they need to tailor rules and procedure specific to their IP disputes. Unlike global trends, arbitration is an under-developed practice in Ethiopia. Litigation overburdens courts and due process suffers because of long-drawn-out litigation. As a result, trademark and copyright

litigation in Ethiopia suffers from delays and overcrowded court rolls. The legal and institutional challenges, as well as the dearth of IP professionals have an impact on the development of IP arbitration in Ethiopia. It also ultimately affects the attraction of investment and trade into the country.

**Keywords:** *intellectual property rights, trademark, copyright, arbitration, IP dispute, IP dispute arbitration*

### 1. INTRODUCTION

The global economy is increasingly based upon conceptual products, converged technologies and international networks.<sup>1</sup> Intellectual property rights (IPRs) continue to be the most valuable assets of many businesses.<sup>2</sup> Intellectual property (IP) has a commercial importance by allowing creators or owners of patents, trademarks, copyrighted works or other IPRs holders to derive financial reward from the use and exploitation of their work.<sup>3</sup>

Countries have laws to protect IP for two main reasons.<sup>4</sup> One is to give legal protection to the moral and economic rights of creators in their creations.<sup>5</sup> The second is to promote creativity and its accessibility.<sup>6</sup> The legal protection of new creations encourages the commitment of additional resources for further innovation.<sup>7</sup> The promotion and protection of IP encourages fair trading which would contribute to the economic growth and social development of the country.<sup>8</sup> In Ethiopia, laws were promulgated and an

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<sup>1</sup> Lukas Vanhonnaeker, *Intellectual property rights as foreign direct investments: From collision to collaboration* (Edward Elgar, 2015) 1.

<sup>2</sup> *ibid.*

<sup>3</sup> William Daley, 'In search of Optimality: Innovation, Economic Development, and Intellectual Property Rights', (GSDR Prototype Briefs, 2014) 1.

<sup>4</sup> 'Balew Mersha and G/Hiwot Hadush, 'Concept, Scope and Nature of Intellectual Property Rights' (Abyssinia Law, 13 December 2019) 2 <<https://www.abysiniaw.com/online-resources/study-online/item/467>> accessed 22 July 2019

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.* 5.

<sup>8</sup> *ibid.* 2.

autonomous body called Ethiopian Intellectual Property Office (EIPO) was established to protect IPRs. However, the introduction of legal and institutional framework with regard to IP is immature and a recent phenomenon compared to other countries.<sup>9</sup>

The industrial and commercial activity stemming from IP may engender legal disputes. IP disputes may arise out of ownership, licensing, validity and infringement of rights concerning, among others, patents, trademarks, copyrights, trade names, integrated circuits, plant varieties, designs and utility models.<sup>10</sup> In multiple jurisdictions, arbitration is increasingly being used in disputes arising from IPRs.<sup>11</sup> Disputes occurring out of IPRs often containing highly technical subject matter and can benefit by the distinctive nature of arbitration.

In Ethiopia, arbitration is not a well-developed practice for commercial and IPR disputes generally. This is in part, due to legal and institutional gaps and problems related to it. The main theme of this paper is to assess the challenges and problems associated with the legal and institutional aspects of arbitration to deal with IP disputes in Ethiopia. In this paper, the status of Ethiopia in protecting IPRs and the most IP disputes in Ethiopia will be discussed in brief. Arbitration as an alternative to court litigation for IP disputes and the major conundrum for effective utilization of arbitration in Ethiopia will also be explored.

## 2. INTELLECTUAL PROPERTY PROTECTION IN ETHIOPIA

The growing dependence on technology in the supply of goods and services, and the rise of high tech industries worldwide, has greatly increased the demand for patent protection.<sup>12</sup> Trademarks significantly secure and promote a market image across linguistic and cultural boundaries.<sup>13</sup> The need to protect and encourage scientific, artistic and literary works has extended the application of copyright laws.<sup>14</sup>

The Government of Ethiopia clearly recognizes the importance and need for IP protection under its various policies. These policies promote local creative, inventive and innovative activities as well as facilitate the acquisition and exploitation of foreign technology.<sup>15</sup> However, Ethiopia has no policy that specifically deals with IP.

The 1994 Constitution of the Federal Democratic Republic of Ethiopia (the FDRE Constitution) recognizes the protection of IP. The Constitution recognizes the right of every citizen to ownership of private property with certain restrictions. IP is recognized as a property right under the Constitution.<sup>16</sup> Moreover, the Constitution expressly requires the Federal Government to protect patents and copyrights.<sup>17</sup> However, neither a comprehensive legal framework nor laws accord protection to geographical indications, trade secrets, topography nor layout designs as required by TRIPS Agreement.<sup>18</sup>

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<sup>9</sup> Kiya Tsegaye, 'Copy Right Protection in Ethiopia: Shining law, Zero effect' (Addis Standard, 19 November 2012) 1.

<<http://www.abysinnialaw.com/blog-posts/item/1487>> accessed 14 August 2019.

<sup>10</sup> William Grantham, 'The Arbitrability of International Intellectual Property Disputes' (1996) 14(1) Berkley Journal of International Law 197-200.

<sup>11</sup> *ibid.*

<sup>12</sup> Teklay Hailemariam, 'The Socio-Economic Impact of intellectual Property Rights Regime of Ethiopia' (MA thesis, University of Addis Ababa 2012) 26-29.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> Getachew Mengistie, 'Intellectual Property as a Policy Tool for Development: The Ethiopian Fine Coffee Designations Trade Marking and Licensing Initiative Experience' (A case study commissioned by WIPO, World Intellectual Property Organization 2011) 17 <[https://www.wipo.int/edocs/pubdocs/en/licensing/1029/wipo\\_pub\\_1029.pdf](https://www.wipo.int/edocs/pubdocs/en/licensing/1029/wipo_pub_1029.pdf)> accessed 22 July 2019.

<sup>16</sup> Constitution of the Federal Democratic Republic of Ethiopia 1994, art 40(2).

<sup>17</sup> *ibid.*, arts 51 (19) and 77 (5).

<sup>18</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (15 April 1994) 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement]

<[https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf)> accessed 28 July 2019.

The specific IP laws that govern specific elements of IP in Ethiopia include Inventions, Minor Inventions and Industrial Designs,<sup>19</sup> Copyright and Neighbouring Rights,<sup>20</sup> Trademark,<sup>21</sup> Plant Variety Protection,<sup>22</sup> Genetic Resources, and Community Knowledge and Community Rights<sup>23</sup> and Unfair Competition Law.<sup>24</sup> These laws were promulgated to encourage creativity; to support the advancement of technology in the country and to promote trade and investment in the country.

Ethiopia's involvement in international IP agreements is very limited.<sup>25</sup> Ethiopia is not a party to multilateral conventions or treaties on IP except the 1981 Nairobi Treaty on the Protection of the Olympic Symbol<sup>26</sup> and the Convention Establishing WIPO.<sup>27</sup> The main reason for the insignificant engagement of Ethiopia to the international IP system lies in the absence of a comprehensive national IP framework.<sup>28</sup> The nonexistence of IP policy that directs and envisages the relationship between international conventions and economic growth of the Country contributes to the minor involvement of Ethiopia to the international IP agreements.<sup>29</sup> The resulting serious lack of awareness of IP due to the absence of a proper consideration by the government is also

a ground for not being a party to the international IP system.<sup>30</sup>

In 2003, the Ethiopian Intellectual Property Office (EIPO) was established by promulgation to administer and promote enforcement of IP and set out policy directives.<sup>31</sup> The EIPO emerged as an autonomous public office.<sup>32</sup> The office promotes the creation, protection and exploitation of local IP rights.<sup>33</sup> The EIPO sets out to acquire and exploit foreign technology either through licensing or mutual contractual regimes.<sup>34</sup>

The protection of IPRs requires an independent and competent judiciary with due integrity.<sup>35</sup> The judicial protection of IPRs determines the extent to which individuals and legal persons are ensured access, proper interpretation, efficient adjudication and appropriate judgment to their claims, counterclaims and defenses whenever disputes are adjudicated in courts of law.<sup>36</sup> This envisages competence, integrity, efficiency, judicial independence, predictability and consistency in judicial decisions.<sup>37</sup> At present there are two court systems in Ethiopia: Federal and Regional courts. The

<sup>19</sup> Inventions, Minor Inventions and Industrial Designs Proclamation No. 123 of 1995 (Ethiopia).

<sup>20</sup> Copyright and Neighbouring Rights Protection Proclamation No. 410 of 2004 and (Amendment) Proclamation No. 872 of 2014 (Ethiopia) [hereinafter CR (Amendment) Proclamation].

<sup>21</sup> Trademark Registration and Protection Proclamation No. 501 of 2006 (Ethiopia) [hereinafter TM Proclamation].

<sup>22</sup> Plant Breeders' Rights Proclamation No. 481 of 2006 (Ethiopia).

<sup>23</sup> Access to Genetic Resources and Community Knowledge and Community Rights Proclamation No. 482 of 2006 (Ethiopia).

<sup>24</sup> Trade Competition and Consumer Protections Proclamation No. 813 of 2014 (Ethiopia).

<sup>25</sup> Mengistie (n 15) 28.

<sup>26</sup> Nairobi Treaty on the Protection of the Olympic Symbol (adopted on 26 September 1981)

<<https://www.wipo.int/treaties/en/ip/nairobi/>> accessed 28 July 2019.

<sup>27</sup> Convention Establishing the World Intellectual Property Organization (signed on 14 July 1967 and as amended on 28 September 1979) <[https://www.wipo.int/treaties/en/text.jsp?file\\_id=283854](https://www.wipo.int/treaties/en/text.jsp?file_id=283854)> accessed 18 July 2019.

<sup>28</sup> Mengistie (n 15) 28.

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> Ethiopian Intellectual Property Office Establishment Proclamation No. 320 of 2003 (Ethiopia).

<sup>32</sup> *ibid.*, art 3(1).

<sup>33</sup> *ibid.*, art 5.

<sup>34</sup> *ibid.*

<sup>35</sup> Hailu Burayu, Elias N.Stebek, Murado Abdo, 'Judicial Protection of Private Property Rights in Ethiopia: Selected Themes' (2013) 7(2) Mizan Law Review, 351 <[www.ajol.info/index.php/mlr/article/view/108310/98129](http://www.ajol.info/index.php/mlr/article/view/108310/98129)> accessed 4 May 2020.

<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*

Federal Courts Proclamation<sup>38</sup> under Article 5 (8) grants the jurisdiction to entertain disputes involving IP to the Federal High court. Its decision can be appealed to the Federal Supreme Court whose decision is final.<sup>39</sup>

### 3. INTELLECTUAL PROPERTY DISPUTES IN ETHIOPIA: TRADEMARK AND COPYRIGHT INFRINGEMENTS

In Ethiopia, foreign investment and international trade have been increasing rapidly over time.<sup>40</sup> Ethiopia's economic policy encourages private ownership rights.<sup>41</sup> Ethiopia's access to preferential markets in Africa and other international markets contributes to the growing trade and investment in the country.<sup>42</sup> Investors and businesspersons have concerns with suitable dispute settlement mechanisms to settle disputes arising out of IP issues, and to preserve their business relationships.<sup>43</sup> Most IP disputes in Ethiopia arise out of the trademark, copyrights and neighbouring rights infringements.<sup>44</sup>

The owners of registered trademarks have exclusive rights to use their marks in trade and to exclude others from using the same or similar marks or symbols.<sup>45</sup> The infringement of a trademark relates to the unauthorized use of a registered trade mark by a third party on any goods or services identical with the goods or services specified in the register.<sup>46</sup> Ethiopian trademark law prohibits the registration and use of another's mark in relation to either similar or dissimilar goods to protect the interests of the trademark owner.<sup>47</sup> The law

provides for the protection of unregistered, well-known trademarks even though Ethiopia is not a member of WIPO standard setting treaties such as the Paris convention.<sup>48</sup> The legislation also provides for proceedings on trademark opposition, infringement, invalidation and cancellation issues.<sup>49</sup>

Most trademark disputes in Ethiopia arise during the registration stage when the existing trademark holder lodges an opposition objecting to the application for registration on legal grounds.<sup>50</sup> Using similar trademarks without the authorization of the trademark owner is also another cause of a trademark dispute in Ethiopia.<sup>51</sup> In *Ethio-Ceramic P.L.C v Ethiopian Intellectual Property office & Ovorgiga Technology Limited*<sup>52</sup> case, the petitioner claimed that it had obtained registration certificate under the trademark 'Ethio Cement' to use it for marketing its cement products. It also alleged that allowing the 2nd respondent to use this trademark will infringe its right and will create confusion in a manner prejudicial to its business.

In Ethiopia, Trademark disputes are also related to the use of internationally acclaimed trademarks by local investors without the recognition or permission of the rightful holders of the brand.<sup>53</sup> For example, in the US based IN-N-OUT Burger case, the dispute has been that the local company (IN-N-OUT Burger) uses the trademark of the US based company for its burger and chicken restaurants in Addis Ababa.<sup>54</sup> Other

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<sup>38</sup> Federal Courts Proclamation No. 25 of 1996 (Ethiopia).

<sup>39</sup> *ibid*, art 9.

<sup>40</sup> Michael Teshome, 'Laws and Practice of Commercial Arbitration in Ethiopia: Brief Overview' 2.

<<https://www.abyssinialaw.com/uploads/ArbitrationbyMichael.pdf>> accessed 2 August 2019.

<sup>41</sup> *ibid*.

<sup>42</sup> *ibid*.

<sup>43</sup> *ibid*.

<sup>44</sup> Tsegaye (n 9) 2.

<sup>45</sup> Kim Rampersadh, 'Trademarks in Ethiopia - What you need to know' (Adams & Adams, 2018) 2

<<https://www.adams.africa/insights/trade-marks-ethiopia-need-know/>> accessed 25 July 2019.

<sup>46</sup> *ibid*.

<sup>47</sup> TM Proclamation, arts 7(3) and 26(2).

<sup>48</sup> *ibid* art 23.

<sup>49</sup> *ibid* arts 13, 20, 35, 36, 40 and 41.

<sup>50</sup> Burayu, Stebek, Abdo (n 35) 365.

<sup>51</sup> *ibid*

<sup>52</sup> *Ethio-Ceramic P.L.C v. EIPO and Ovorgiga Tech. Ltd*, 12 Fed. Cas. 544-548 (No.57, 179) (2003).

<sup>53</sup> Dawit Endeshaw, 'Rising trademark Debacle' *The Reporter* (Addis Ababa, 2 September 2017) 3.

<<http://www.thereporterethiopia.com/content/rising-trademark-debacle>> accessed 5 August 2019.

<sup>54</sup> *ibid*.

trademarks disputes include those between Intercontinental Hotel and Intercontinental Hotels' (IHG);<sup>55</sup> and between Crown Hotel and International Crown Plaza Hotels and Resorts.<sup>56</sup> The disputing parties have submitted their case to the Federal High Court of Ethiopia over the trademark.<sup>57</sup> In these cases, the local companies use internationally known trademarks without permission or licensing to use the mark.

Ethiopian copyright law has a purpose of encouraging creativity by protecting companies' and individuals' right to ownership of their work.<sup>58</sup> The protection of copyrights are expressed by giving authors or owners of copyrightable works exclusive rights of reproduction, sale, rent, transfer, and other communication of their works to the public.<sup>59</sup> The protection granted by the law to owners of copyright ensures a fair balance between the needs of a copyright user and the rights of a copyright owner.<sup>60</sup>

Most copyright disputes in Ethiopia arising out of licensing and contractual relationships between the owner of the copyrighted work and the other contracting party.<sup>61</sup> The scope of use of copyrighted works and the geographical use of works are the major grounds that trigger disputes.<sup>62</sup> In a dispute between *Artistic Printing Press v Dr. Getahun Shiberu*,<sup>63</sup> the copyright owner of the translated book (Dr. Getahun Shiberu) claims damages from the publishing company based on their contract of publishing the work. In another case between *Samuel Hailu and Horizon Printing Press PLC v Simret Ayalew*,<sup>64</sup> the successors of the ownership right of the copyrighted work claim for damages and

injunction order against the misuse of the work. These all disputes out of copyright and trademark issues were entertained by the Federal High Court of Ethiopia and appealed to the Federal Supreme court cassation division. The time taken to resolve these disputes in regular courts are around 2 years, so that the parties could not be served with a speedy resolution of disputes at a reasonable time.

#### 4. ARBITRATION FOR INTELLECTUAL PROPERTY DISPUTES

The growing involvement of intangible and intellectual assets in today's commerce has increased disputes concerning IPRs between private parties.<sup>65</sup> IP disputes may take several forms including those concerning the validity, contract, ownership and infringement of patents, trademarks and copyright.<sup>66</sup> Disputes arising out of IP often engage multiple jurisdictions due to the globalization of trade and the increasing international exploitation of IP.<sup>67</sup> IP disputes have distinctive characteristics of involving highly technical matters and confidential information. Due to these features of IP disputes, parties often look for flexible resolution processes that can be customized to their needs that enable them to control the mechanics of the proceedings.<sup>68</sup>

Recourse to state courts for settling IP disputes often proves to be a cumbersome activity. The main challenge involved in submitting the case to regular courts pertain to the inability of the judiciaries of many countries to respond in a timely and

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

<sup>58</sup> CR (Amendment) Proclamation, art 7.

<sup>59</sup> *ibid.*

<sup>60</sup> Tsegaye (n 9) 1.

<sup>61</sup> Yemane Gesesew, 'Infringement and Remedies of Economic Rights of Audiovisual Works under the Ethiopian Copyright Law: Law and Practices in Addis Ababa' (LLM thesis, University of Addis Ababa 2010) 47.

<sup>62</sup> *ibid.*

<sup>63</sup> *Artistic Printing Press v. Getahun Shiberu*, 10 Fed.Cas. 339-341 (No. 44,520) (2002).

<sup>64</sup> *Samuel Hailu and Horizon Printing Press PLC v. Simret Ayalew*, 13 Fed Cas. 576-581 (No. 68,369) (2004).

<sup>65</sup> In Situ, 'Arbitration in International Intellectual Property Disputes' 1 <<https://www.itwillbefun.eu/arbitration-in-international-intellectual-property-disputes.html>> accessed 28 July 2019.

<sup>66</sup> Grantham (n 10) 200.

<sup>67</sup> Situ (n 65) 3.

<sup>68</sup> Heike Wollgast, 'WIPO Alternative Dispute Resolution- Saving Time and Money in IP Disputes' WIPO Magazine (Switzerland, November 2016) 2 <[https://www.wipo.int/wipo\\_magazine/en/2016/si/article\\_0010.html](https://www.wipo.int/wipo_magazine/en/2016/si/article_0010.html)> accessed 28 July 2019.

effective manner to requests for enforcement of IP rights.<sup>69</sup> In recent years, arbitration has emerged as an increasingly attractive option and used to resolve disputes involving IPRs, especially when involving parties from different jurisdictions.<sup>70</sup>

Arbitration can offer genuine advantages in IP disputes. Parties may choose a panel of arbitrators who possess a particular expertise suitable to resolve the complicated and technical nature of disputes involving IP.<sup>71</sup> In complex technology disputes, selected arbitrators could have deeper understanding and knowledge about the question at issue involved in the case than judges who do not have a specialist background.<sup>72</sup> The parties are not bound to state appointed tribunal members and may choose their preferred adjudicators.<sup>73</sup> Unlike the one-size-fits-all procedural rules in court litigation that are applicable to all cases, parties to arbitration choose actions that best serve their interests. Parties also choose the applicable law, rules and procedures, place of arbitration and language of the proceedings.<sup>74</sup> Moreover, preservation of the business relationship, time and cost benefits, flexibility, confidentiality of the proceedings, avoidance of the risk of inconsistent judgments and international enforcement of arbitration awards are among

the most cited benefits of arbitration.<sup>75</sup> Due to these advantages of arbitration, IP disputes are especially suitable for resolution by arbitration than by court litigation.<sup>76</sup>

It must be emphasized that arbitration is not without its limitations. Unless there is a prior contractual relationship between the parties, it may be difficult to persuade an adverse party to agree to arbitration after a dispute arises.<sup>77</sup> The arbitration agreement is only binding on the parties to the agreement. Unlike court decisions, it does not set a precedent that can be used as a deterrent to infringement from other parties.<sup>78</sup> The benefits of arbitration may also be lost if the IP arbitration clause is unclear about important elements such as the place of arbitration, applicable law, the language of proceedings, appointment of an arbitrator.<sup>79</sup> If the parties fail to agree to these ground rules, it creates ambiguity which may later lead to difficulties and delays in the arbitration proceedings. The parties also need to resort to a court to sort out ambiguous issues which allows for judicial intervention.<sup>80</sup> Moreover, in the case of the need to take emergency protective measures such as interim measures,

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<sup>69</sup> Dario Moura Vicente, 'Arbitrability of Intellectual Property Disputes: A Comparative Survey' (2015) 31(1) *Arbitration International*, 151 <<https://academic.oup.com/arbitration/article-abstract/31/1/163/252786>> accessed 2 August 2019.

<sup>70</sup> WIPO, 'Why Arbitration in Intellectual Property?' 1 <<https://www.wipo.int/amc/en/arbitration/why-is-arb.html>> accessed 2 August 2019.

<sup>71</sup> Jakkrit Kuanpoth 'Resolving IP Disputes through Arbitration' (2017) 1 <<https://www.tilleke.com/resources/resolving-ip-disputes-through-arbitration>> accessed 2 August 2019.

<sup>72</sup> *ibid.*

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

<sup>75</sup> Bryan Niblett, 'The Arbitration of Intellectual Property Disputes' (Worldwide Forum on the Arbitration of Intellectual Property Disputes, Switzerland, 3-4 March 1994) 2 <<https://www.wipo.int/amc/en/events/conferences/1994/niblett.html>> accessed 19 August 2019.

<sup>76</sup> Why Arbitration in Intellectual Property? (n 70) 1.

<sup>77</sup> Joseph P. Zammit and Jamie Hu, 'Arbitrating International Intellectual Property Disputes' (2009) *Dispute Resolution Journal* 2-3.

<sup>78</sup> Douglas Fox and Roy Weinstein, 'Arbitration and Intellectual property disputes' (American Bar Association 14<sup>th</sup> Annual Spring Conference, Washington D.C, April 2012) 3 <[http://www.micronomics.com/articles/Arbitration\\_and\\_Intellectual\\_Property\\_Disputes.pdf](http://www.micronomics.com/articles/Arbitration_and_Intellectual_Property_Disputes.pdf)> accessed 26 June 2020.

<sup>79</sup> Ekaterina Kupchina, Olga Kuznetsova and Kamo Chilingaryan, 'IP Dispute Resolution through International Commercial Arbitration: US Experience' (6<sup>th</sup> international conference on Education and Social Sciences, Dubai, February 2019) 469 <[http://www.ocerints.org/intcess19\\_e-publication/papers/201.pdf](http://www.ocerints.org/intcess19_e-publication/papers/201.pdf)> accessed 26 June 2020.

<sup>80</sup> Patricia A Martone, 'How Arbitration Clauses in Patent License Agreements can Simplify International Patent Disputes' (WWL, 11 June 2019) <<https://whoswholegal.com/features/how-arbitration-clauses-in-patent-licence-agreements-can-simplify-international-patent-disputes>> accessed 26 June 2020.

the arbitration tribunal has no its own coercive apparatus and must rely on the voluntary conduct of the parties.<sup>81</sup>

The other reluctance on the use of arbitration to resolve especially international IP disputes is the fact that arbitrability issues in many legal systems remain unsettled.<sup>82</sup> Most national legal systems allow arbitration of disputes concerning contracts for the licensing and transmission of registered IP rights.<sup>83</sup> Countries also permit arbitration for claims concerning compensation for damages inflicted through the infringement and registration of IP rights.<sup>84</sup> In countries, such as Germany, France and England, infringement of patent, trademark and copyright are arbitrable disputes.<sup>85</sup> Despite this, several national legal systems traditionally reject the arbitration of disputes that concerning validity of registered patent and trademark rights.<sup>86</sup> The invalidation of these rights is reserved for state courts.<sup>87</sup> In any event, the issue of arbitrability is subtly different from jurisdiction to jurisdiction.<sup>88</sup> Although prevailing trends are shifting towards making most IP disputes arbitrable, the issue has been explicitly resolved by legislations of only a handful of countries.<sup>89</sup>

All major arbitration centres, such as the International Chamber of Commerce International Court of Arbitration (ICC

ICA), the London Court of International Arbitration (LCIA) and the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, have adapted their arbitration rules to better suit IP disputes.<sup>90</sup> As a result, literature showed that the number of IP cases heard by these centres continues to rise.<sup>91</sup>

## 5. ARBITRATION OF TRADEMARK AND COPYRIGHT DISPUTES IN ETHIOPIA: AN OPTION TO LITIGATION

Literature shows that Ethiopian judicial system for commercial disputes can be expressed as one of the unpredictable system.<sup>92</sup> The prolonged adjournment of cases due to the excessive backlog of cases and lack of competent judges are some of the problems facing the growing commercial transaction in the country.<sup>93</sup> As research indicates, the average time taken to resolve commercial disputes in the Federal High Court is more than 1 year and 8 months and the longest period is more than 6 years and 3 months.<sup>94</sup> This depicts the inefficiency of courts and demands a reform mechanism. To deal with this problem, the FDRE Supreme Court adopted a code in 2019 to have specialized commercial benches in Federal courts.<sup>95</sup> The main objective of the code is to create a system that would allow commercial disputes to be dispensed in a speedy, cost effective and

<sup>81</sup> Jovic, Njegoslav, 'Benefits and Limitations of International Arbitration in Intellectual Property Law Disputes' (2019) 1 *Godišnjak Pravnog Fakulteta u Banja Luci* 155 <[https://www.researchgate.net/publication/337356397\\_BENEFITS\\_AND\\_LIMITATIONS\\_OF\\_INTERNATIONAL\\_ARBITRATION\\_IN\\_INTELLECTUAL\\_PROPERTY\\_LAW\\_DISPUTES](https://www.researchgate.net/publication/337356397_BENEFITS_AND_LIMITATIONS_OF_INTERNATIONAL_ARBITRATION_IN_INTELLECTUAL_PROPERTY_LAW_DISPUTES)> accessed 26 June 2020.

<sup>82</sup> Vicente (n 69) 151-152.

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.*

<sup>85</sup> Grantham (n 10) 205-212.

<sup>86</sup> Vicente (n 69) 151-152.

<sup>87</sup> *ibid.*

<sup>88</sup> *ibid.*

<sup>89</sup> Situ (n 65) 1.

<sup>90</sup> Mark Hines, 'Rethinking IP Disputes - A Useful Role for International Arbitration' (Heenan Blaikie, 2013) 1 <[www.lexology.com/library/detail.aspx?Rethinking-IP-disputes-a-useful-role-for-international-arbitration](http://www.lexology.com/library/detail.aspx?Rethinking-IP-disputes-a-useful-role-for-international-arbitration)> accessed 2 August 2019.

<sup>91</sup> *ibid.*; Michael Woller and Michaela Pohl, 'IP Arbitration on the Rise' (Kluwer Arbitration Blog, 16 July 2019) <<http://arbitrationblog.kluwerarbitration.com/2019/07/16/ip-arbitration-on-the-rise>> accessed 28 June 2020; WIPO Case Load Summary <<https://www.wipo.int/amc/en/center/caseload.html>> accessed 28 June 2020. See also Adjudicating IP Disputes, An ICC Report on Specialized IP Jurisdictions World Wide (2016) <<https://iccwbo.org/content/uploads/sites/3/2016/04/ICC-report-on-Specialised-IP-Jurisdictions.pdf>> accessed 28 June 2020.

<sup>92</sup> Zemedkun Mekasha, 'The Scope and Structure of Specialized Commercial Court for Ethiopia: Lessons from Abroad', (LLM thesis, University of Hawassa 2017) 82.

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*

<sup>95</sup> FDRE Federal Courts Commercial Bench Proceedings Code of 2019 (Ethiopia).

predictable manner.<sup>96</sup> Among others, disputes related to IPRs particularly trademarks are submitted to the jurisdiction of commercial benches.<sup>97</sup> Despite this effort has been made, delay in the court decision, inconsistent decision and unpredictability, lack of judges with specialization in IP law, lack of knowledge and misapplication of the law in relation to IP matters are still the major challenges since establishing a commercial bench is a recent phenomena.<sup>98</sup>

These major problems of Ethiopian regular courts have fuelled the need for a special dispute resolution mechanism in Ethiopia.

In a global world, arbitration has become the preferred method of resolving IP disputes due to its distinctive features. The success of arbitration is a function of several components such as, an enabling legal framework, qualified and dependable human resources and the institutional support.<sup>99</sup> In Ethiopia, arbitration is the most undeveloped and unpractised regime.<sup>100</sup>

Arbitration presupposes the arbitrability of the matter in dispute, which is a requirement for the validity of arbitration agreement. The existing legal framework regulating arbitration in Ethiopia does not prohibit arbitration of IP disputes.<sup>101</sup> Moreover, specific laws of Ethiopia regulating IP do not expressly prohibit or not have the intention to prohibit arbitration of IP disputes. In general, there is no statutory or other bar to arbitration in IP disputes.

So far, however, IP disputes arising out of trademark and copyright issues are not submitted to arbitration in Ethiopia.

The problem for effective utilization of arbitration is partly related to the gaps with respect to the legal and institutional frameworks of arbitration.<sup>102</sup> An insignificant number of qualified IP expertise's also contribute to the problem.<sup>103</sup>

## **6. THE LEGAL AND INSTITUTIONAL FRAMEWORKS OF ARBITRATION: THE CONUNDRUM**

Ethiopia proclaimed its arbitration laws through the enactment of the Civil Code of 1960<sup>104</sup> and the Civil Procedure Code of 1965.<sup>105</sup> For more than half a century, Ethiopia has been applying these laws on commercial disputes. However, Ethiopian arbitration laws are vague, outdated and do not cope with the emerging modern laws and practices in international commercial arbitration in general and international IP dispute arbitration in particular. In Ethiopia, functional institutions for arbitration to dispose of or provide services in cases of IP disputes to the business community are very limited in number. As a result, Ethiopia is not endowed with workable, modernized and institutionalized commercial arbitration.

### **A. ARBITRATION LEGAL FRAMEWORK UNDER THE ETHIOPIAN LEGAL SYSTEM**

Arbitration as a means of conflict resolution is available under the Ethiopian legal system. Articles 3325-3346 of the Civil Code regulate substantive aspects of arbitration in Ethiopia, while Articles 315-319, 350-357 and 461 of the Civil Procedure Code govern procedural aspects. Both Codes, enacted more than 5 decades ago are criticized as 'outdated, not comprehensive as well.'<sup>106</sup> The arbitration legal

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<sup>96</sup> FDRE Federal Courts Commercial Bench Proceedings Code of 2019 (Ethiopia) 2.

<sup>97</sup> *ibid*, part 1(D).

<sup>98</sup> Abraham Rega, 'New Court Proceedings for commercial Disputes' 3 <<https://www.mtalawoffice.com/legal-updates/entry/new-court-proceedings-for-commercial-disputes-1>> accessed 28 June 2020.

<sup>99</sup> Tewodros Meheret, 'Ethiopia's Arbitration Law Challenges' (2018) 1 <<http://www.lexafrica.com/2018/10/ethiopias-arbitration-law-challenges/>> accessed 5 August 2019.

<sup>100</sup> *ibid*.

<sup>101</sup> The Civil Code of Ethiopia of 1960 (Ethiopia) (The Civil Code), arts 3325-3346.

<sup>102</sup> Teshome (n 40) 14-21.

<sup>103</sup> *ibid*.

<sup>104</sup> The Civil Code (n 101).

<sup>105</sup> The Civil Procedure Code of Ethiopia of 1965 (Ethiopia) (The Civil Procedure Code), arts 315-319, 350-357 and 461.

<sup>106</sup> Elodie Dulac, 'International Arbitration through the Prism of Users from a Developing Country, Ethiopia' (Young ICCA) 12 <<https://www.youngicca-blog.com/international-arbitration->

framework does not create an enabling legal infrastructure to make arbitration effective. The law is also criticized for allowing huge involvement of national courts early in the arbitration proceedings and exercise wider judicial review power on awards.<sup>107</sup>

Ethiopian arbitration law seems to be designed for domestic arbitration.<sup>108</sup> This Law is scattered between the 1960 Civil Code and the 1965 Code of Civil Procedure and suffers from ambiguities, inconsistencies and gaps.<sup>109</sup> When arbitration law becomes obsolete or outdated, courts widely intervene in arbitration proceedings.<sup>110</sup> This results in a number of practical and conceptual difficulties. Reading through the substantive and procedural provisions on arbitration, it appear to only regulate family matters than commercial or investment issues and therefore not qualified yet to settle IP disputes.<sup>111</sup>

A dispute resolution mechanism should take into account the needs and aspirations of foreign investors in addition to local needs.<sup>112</sup> The existing arbitration law of Ethiopia is inconsistent with the modern laws and practices of international commercial arbitration and fails to regulate international arbitration matters.<sup>113</sup> This can be attributed to the fact that Ethiopia's arbitration law is not drafted based on or in accordance with United Nation Commission of International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (UNCITRAL Model Law).<sup>114</sup>

UNCITRAL Model Law tries to harmonize and modernize domestic and international law to enhance predictability in

cross border commercial transactions.<sup>115</sup> It bases its principle on parties' autonomy and limits the interference of courts in arbitration proceedings.<sup>116</sup> It has principles and standards on key aspects of arbitration process which are acceptable to nations having different legal systems and levels of economic and social development.<sup>117</sup> The Model Law covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award.<sup>118</sup> The key aspects of arbitration process addressed by the model law contribute for its efficiency to settle commercial disputes in general. Particularly, IP disputes arbitration based on the Model Law is benefited since aspects of the arbitration process of the Model are modern and has efficiently deal with complex issues.<sup>119</sup>

Unlike the UNCITRAL Model law, provisions dealing with arbitration in the Ethiopian Civil Code do not have detailed and comprehensive rules regarding neither ad hoc nor institutional arbitration. In most cases, foreign investors reject Ethiopia's arbitration law since it is not compatible with international investment and commercial practices.<sup>120</sup> Arbitration proceedings on the appointment and disqualification of arbitrators are not based on the UNCITRAL Model law to accommodate international interests.<sup>121</sup>

Under the Civil Code of Ethiopia, parties may enter into an arbitration agreement, either in the form of an arbitration

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through-the-prism-of-users-from-a-developing-country-ethiopia/> accessed 16 July 2019.

<sup>107</sup> Teshome (n 40) 18.

<sup>108</sup> *ibid* 26.

<sup>109</sup> Dulac (n 106) 12.

<sup>110</sup> Meheret (n 99) 2.

<sup>111</sup> *ibid*.

<sup>112</sup> *ibid*.

<sup>113</sup> Teshome (n 40) 16.

<sup>114</sup> *UNCITRAL Model Law on International Commercial Arbitration 1985: with amendments as adopted in 2006* (United Nations

Commission on International Trade Law, Vienna: United Nations, 2008).

<sup>115</sup> Alemayehu Yismaw Demamu, 'The Need to Establish a Workable, Modern and Institutionalized Commercial Arbitration in Ethiopia' (2015) 4 *Haramaya Law Review* 37, 46.

<sup>116</sup> *ibid*.

<sup>117</sup> *ibid*.

<sup>118</sup> *ibid*.

<sup>119</sup> *ibid*.

<sup>120</sup> Teshome (n 40) 16.

<sup>121</sup> *ibid* 20.

submission or arbitration clause.<sup>122</sup> However, it is silent about the doctrine of separability which presumed that an arbitration clause has an independent existence of the main contract in which it is placed. The doctrine of separability is adopted in different jurisdictions and legal orders, including in UNCITRAL model law.<sup>123</sup> The doctrine keeps an arbitration clause from being affected by the main contract and empowers arbitrators to handle any dispute that arises from the main contract.<sup>124</sup> Moreover, the doctrine of competence-competence is not fully adopted under Article 3330 of the Civil Code of Ethiopia. Sub (3) of the same Article prevents arbitrators from sitting to decide on the validity of the arbitration agreement. The doctrine refers to the powers of a tribunal to make a decision as to its own jurisdiction when the validity or scope of the agreement to arbitrate is in doubt.<sup>125</sup> Moreover, Article 3329 of the Civil Code requires provision of the arbitral submission concerning the jurisdiction of arbitrators to be interpreted restrictively. However, this method of interpretation is outdated; rather, it is liberal approach which is adopted under Article 16 (1) of UNCITRAL model law.<sup>126</sup> Thus, Ethiopian arbitration laws have no doctrines and standards comparable with modern international commercial practice.

The Civil Procedure Code on arbitration also stipulates that parties can waive their right to appeal, if it is made with full knowledge of the circumstances.<sup>127</sup> However, there is inconsistency among the decisions of the Federal Supreme Court Cassation Division on this issue. In the case between *National Motors Corporation v General Business Development*,<sup>128</sup> the Cassation Division held that the award of

the arbitration council will not be appealed before the cassation division if the litigant parties agree to settle their disputes through arbitration and make the award final. Whereas, on the same dispute between *National Mineral Corporation v Danny Drilling Plc*,<sup>129</sup> the cassation division allowed an appeal despite the existence of the arbitration finality clause and courts should entertain appeals.

Currently, several questions from concerned bodies and investors are outstanding on the appropriate code or legislation to be incorporated into a new modern Arbitration law.<sup>130</sup> A new draft arbitration law prepared by certain scholars of the Faculty of Law of Addis Ababa University was submitted to the Ethiopian Attorney General 10 years back.<sup>131</sup> This law was supposed to advance the status of Ethiopian arbitration law in such a way that it regulates international arbitration and IP commercial disputes. However, the draft arbitration law ended up being shelved.<sup>132</sup>

The country's failure to ratify the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention) until recent times was also another reason for the malfunction of the existing arbitration law to regulate international arbitration matters.<sup>133</sup> This was creating fear for foreign investors to come and invest in the country as they may not want to give their hand for local courts. As a result, the country's overall transactions, particularly its international business transactions were affected.<sup>134</sup> Taking into consideration of all these problems, Ethiopia has now formally ratified the New York Convention

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<sup>122</sup> The Civil Code (n 101), art 3328.

<sup>123</sup> United Nations Commission on International Trade Law (n 114), art 16 (1).

<sup>124</sup> Demamu (n 115) 43.

<sup>125</sup> *ibid.*

<sup>126</sup> Solomon Emiru Gerese, 'Comparative Analysis of Scope of Jurisdiction of Arbitrators under the Ethiopian Civil Code of 1960' (LLM thesis, CEU University 2009) 55-56.

<sup>127</sup> The Civil Procedure Code, art 350(2).

<sup>128</sup> *National Motors Corporation V. General Business Development*, Fed. Cas. (No. 21,849) (1997) (unpublished).

<sup>129</sup> *National Mineral Corporation plc V. Danny Drilling plc*, Fed. Cas. (No. 42,239) (2010) (unpublished).

<sup>130</sup> Meheret (n 99) 2.

<sup>131</sup> Interview with Meaza Haymanot, Civil Claim Prosecutor, Directorate of Civil Claim Prosecution, Attorney General (Addis Ababa, Ethiopia, 9 July 2019).

<sup>132</sup> *ibid.*

<sup>133</sup> Teshome (n 40) 16.

<sup>134</sup> Demamu (n 115) 46.

on 13 February 2020.<sup>135</sup> The convention is widely recognized as a basis of international trade and investment law.<sup>136</sup>

Before ratifying the New York convention, the Civil Procedure Code of the country omits recognition but only sticks to enforcement of foreign arbitral awards. It was unclear why legislators wanted to concentrate only on execution of foreign arbitral award.<sup>137</sup> In spite of the fact that recognition and enforcement are often read together, the legal effect they have is different at domestic and international levels. An award may be recognized, without being enforced. However, if an award is enforced, then it is necessarily recognized by the court that orders such enforcement.<sup>138</sup> Being a member to the New York Convention settle this issue as the Convention contains provisions for recognizing and enforcing international arbitral awards.<sup>139</sup> Moreover, unlike the New York Convention, Ethiopia's Civil Procedure Code did not define foreign arbitral award. It was left to the discretion of courts to offer meaning to the term.<sup>140</sup> In addition, the grounds set forth for the recognition and enforcement of a foreign arbitral award under the Civil Procedure Code were obsolete and stringent and did not match up with the current development in international commercial arbitration.<sup>141</sup> For instance, the doctrine of reciprocity has been retracted in the New York Convention as it is more of political than serving the purpose of arbitration and protecting the prevailing interest of the parties.<sup>142</sup>

Ethiopia's ratification to the convention will enable foreign arbitral awards, including IP arbitration awards, to be

enforced before Ethiopian courts as if they are decided locally as far as the flexible grounds under the convention are fulfilled. Similarly, international arbitration which will be held in Ethiopia will be enforced in other member states to the convention.<sup>143</sup> However, without having a modern and comprehensive arbitration framework, the arbitration service in Ethiopia cannot function competitively with a mere ratification of the New York Convention in the context of IP dispute arbitration.

## B. INSTITUTIONAL FRAMEWORK

Functional institutions for arbitration in Ethiopia are organizations or associations created by law to be centres of dispute settlement. The centres will dispose of or provide services to interested groups who need a private settlement mechanism for their disputes. Centres of arbitration established and duly registered have the responsibilities to provide a venue for the disputants and introduce the arbitration systems to the public and legal place of work.<sup>144</sup>

Ethiopia has certain institutional structures for IP disputes like the internal committee of EIPO, the regular courts, the Federal Trade Competition and Consumer Protection Appellant Tribunal. IP disputes by their nature involve technical matters. Settling trademark and copyright disputes through courts often take many years.<sup>145</sup> This is because Ethiopia's judicial system is labelled as inadequately staffed and judges are general practitioners, unskilled, and inexperienced to entertain IP disputes.<sup>146</sup> To overcome this problem, the Copyright and Neighboring Rights Protection

<sup>135</sup> 'Ethiopia Ratifies the New York Convention' (Capital Ethiopia, Addis Ababa, 3 March 2020) <<https://www.capitalethiopia.com/society/ethiopia-ratifies-the-new-york-convention/>> accessed 4 May 2020.

<sup>136</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 U.N.T.S. 38 [hereinafter New York Convention].

<sup>137</sup> Teclé Hagos Bahta, 'Recognition and Enforcement of Foreign Arbitral Awards in Civil and Commercial matters in Ethiopia' (2011) 5(1) Mizan Law Review 105, 107.

<sup>138</sup> *ibid.*

<sup>139</sup> *ibid.*

<sup>140</sup> *ibid.* 109.

<sup>141</sup> *ibid.* 140.

<sup>142</sup> *ibid.* 122.

<sup>143</sup> *ibid.*

<sup>144</sup> Sahilemariam Wodajo Mamo, 'Factors Determining the Choice between Public and Private Adjudication in Ethiopia: Focusing on Commercial Disputes' (LLM thesis, University of Addis Ababa 2018) 48.

<sup>145</sup> Tsegaye (n 9) 3.

<sup>146</sup> World Bank, 'Ethiopia: Legal and Judicial Sector Assessment' (Washington DC 20433, 2004) 38.

Proclamation stipulates for the establishment of a special IP tribunal to entertain IP disputes.<sup>147</sup> Though the IP office has started some activities to establish this tribunal under its realm, trademark and copyright disputes has been entertained by regular courts so far despite delays and congested court rolls.<sup>148</sup>

Ethiopia's existing arbitral institutions are the Addis Ababa Chamber of Commerce Sectoral Associations (AACCSA) Arbitration Center (the Center) and the recently established Bahirdar University Arbitration Center. These Centers provide commercial arbitration services to various undertakings. However, the Centers do not have any experience in conducting and administering trademark and copyright disputes.<sup>149</sup> This is attributed to the fact that Ethiopia lacks sufficiently qualified IP arbitrators.<sup>150</sup> Beside these two centres, there is not any other commercial arbitration institution in Ethiopia. In fact, there had been Ethiopian Arbitration and Conciliation Center (EACC) established by a group of Ethiopian lawyers.<sup>151</sup> However, due to the enactment of the Charities and Societies Proclamation, the centre is dissolved.<sup>152</sup> This indicates that, the role of the government to establish a formal commercial arbitration system is insignificant.<sup>153</sup>

Moreover, the Centers have not supported by a modern arbitration law that accommodate international arbitration. International arbitration is out of reach of the Centers.<sup>154</sup>

### **C. INTELLECTUAL PROPERTY EXPERT AS AN ARBITRATOR**

IP expertise plays a useful role in the administration, protection and dispute settlement of IP.<sup>155</sup> However, in Ethiopia, because the field is new, there are insignificant

numbers of IP experts adequately qualified to advise clients on settling disputes through arbitration.<sup>156</sup>

There are no professional associations in Ethiopia, which carry out aspects of dispute resolution, provide training and particularly work on arbitration.<sup>157</sup> Finding qualified and experienced IP arbitrators without the existence of a well-functioning professional association is challenging. The main reason for the absence of these associations, especially in the area of IP, has been the dearth of a significant number of well qualified IP expertise and Arbitration practitioners.<sup>158</sup>

The absence of professional associations has an impact on the development of IP and its dispute settlement through arbitration.<sup>159</sup> This in effect decreases the countries' opportunity for foreign investment.<sup>160</sup> Cognizant of the problems, EIPO has organized training programs for lawyers with the support of WIPO and promoted distance learning to practitioners.<sup>161</sup> Nevertheless, a lot remains to be done to build the capacity of those involved in IP and in promoting IP dispute Arbitrators in the country.<sup>162</sup>

## **7. CONCLUSIONS**

In most Countries, arbitration has been put into practice due to its typical features to settle the complex nature of IP disputes. However, most developing countries do not have a well-established legal and institutional framework to settle IP disputes through arbitration. In Ethiopia, disputes arising out of Copyright and Trademark have been entertained so far by regular courts since arbitration practice is immature due to lack of well-structured legal and institutional infrastructure. Providing a strong and modern arbitration system is fundamental to protect IP rights efficiently and effectively.

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<sup>147</sup> CR (Amendment) Proclamation, art 44.

<sup>148</sup> Meheret (n 99) 2.

<sup>149</sup> Interview with Yohannis Woldegebriel, Director, AACCSA Arbitration Institute (Addis Ababa, Ethiopia, 10 July 2019).

<sup>150</sup> *ibid.*

<sup>151</sup> Demamu (n 115) 47.

<sup>152</sup> *ibid.*

<sup>153</sup> *ibid.*

<sup>154</sup> Woldegebriel Interview (n 149)

<sup>155</sup> Mengistie (n 15) 27.

<sup>156</sup> *ibid.*

<sup>157</sup> Haimanot Interview (n 131).

<sup>158</sup> *ibid.*

<sup>159</sup> Woldegebriel Interview (n 149).

<sup>160</sup> *ibid.*

<sup>161</sup> Mengistie (n 15) 27.

<sup>162</sup> *ibid.*

Stronger IP right protection provides stronger incentives for innovators. However, in Ethiopia, in the absence of an enabling system of arbitration to settle IP disputes, the aim of stimulating local creative, inventive and innovative activities may not be achieved. This could impact the country's attractiveness to FDI and adversely affects its economic development.

Given the increasing demand of protecting IPRs to promote FDI and technology transfer for the social and economic development of the country, the legal and institutional frameworks of arbitration should be advanced and improved. This requires the country to become arbitration friendly and to modify the existing arbitration legal framework in a way it regulates arbitration of commercial disputes including IP disputes. The modification in this regard should model the basic international principles and standards of the UNCITRAL Model law. It should also consider other relevant international commercial arbitration treaties, which are internationally compatible to regulate arbitration. The government should enact comprehensive and inclusive laws to strengthen the existing arbitration centres and to establish the new ones in order to make arbitration accessible to the business community. It should also encourage and facilitate the establishment of professional associations on IP, which have the aim of increasing qualified expertise in the area of IP and arbitration. These will help the country not only to enhance its attraction as a venue for international commercial including IP arbitration but also to create an enabling environment for investors to come to invest and to boost its economy.

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