Law Journals
A Treasure Trove of Legal Knowledge.

Journal of Taxation and Regulatory Framework
Volume 1, Issue 1
(January-June)
www.stmjournals.com

Confidentiality and Transparency: Balancing Competing Claims under OHADA Law on Arbitration Proceedings

***Ayuk Macbert Nkongho*[1,] *, *Nchufua Anita Nyitioseh*[2]**
Research Scholar
[1,2]Department of English Law, University of Dschang, Cameroon

Abstract

Arbitration has become an effective alternative dispute resolution mechanism and its basic purpose is to bring about cost-effective and expeditious resolution of dispute. We are aware that arbitration is the expression of party autonomy hence, parties to such disputes may decide whether on confidentiality and/or transparency rules to settle their disputes. The problem of arbitration law and proceedings especially those in the OHADA zones are many and difficult. This is so because of the tension to put in place an appropriate balance between confidentiality and transparency, and the question of defining these terms in the context of the OHADA Uniform Act on arbitration proceedings. Also, it has failed to make clear provisions on the sanctions in case of breach of these principles. In view of the above difficulties, this paper aims at examining the effective application of confidentiality and transparency in arbitration proceedings after a lucid analysis of both concepts. The paper also seeks to bring out the possible balance between confidentiality and transparency and to examine procedural peculiarities of confidentiality and transparency without leaving out their effects in case where both concepts are respected and where they are not respected in the course of arbitration proceedings. In order to attain the above objectives, analytical and doctrinal research methods have been adopted. It is therefore recommended that arbitral institutions, especially those in the OHADA zone, should strive to remove uncertainties on confidentiality and transparency protection regime in international arbitrations by making detailed confidentiality and transparency provisions with effective implementation. This will go a long way to ensure smooth functioning of arbitration as an effective tool for conflict resolution.

Keywords: *Confidentiality, Transparency, Claims, OHADA, Arbitration Law, Proceedings, Cameroon*

****Author for Correspondence*** E-mail: ayuckmacbert@yahoo.com

INTRODUCTION

Arbitration, as a method of resolving disputes, can be traced as far back as ancient times, with the first signs of arbitration-like conciliation procedures appearing in the sixth century B.C. Different cultures, ethnic groups and traditions united by the city-states of ancient Greece and the Roman Empire knew arbitration, mainly applying it to political disagreements and territorial misunderstandings [1]. As we advanced to the early Middle Ages, arbitration became less frequent, since until the twelfth century war was the primary tool for settling disputes [2]. The thirteenth century witnessed an increase in certain areas of Europe. For instance, the Baltic states frequently used arbitration not just as a method of interstate dispute resolution but applied to matters between individuals as well [3]. As international trade gained more and more ground in the early modern period in Europe, the arbitration of private commercial disputes emerged simultaneously. Private merchants submitted their disputes to specialized tribunals having their seats at commercial centers (such as port cities of the Mediterranean Sea) through Europe, seeking the reasonable resolution of their domestic or international business matters.

The development and the rise of international arbitration arrived in the eighteenth, nineteenth and twentieth century, respectively, with the signing of treaties, conventions, decrees with respect to arbitration. The first treaty is the 1794 Jay Treaty concluded between Great Britain and the United States, establishing an arbitral tribunal consisting of an equal number of arbitrators delegated by both parties [4]. Furthermore, in 1768, the New York Chamber of Commerce was established, promoting the use of arbitration between its members as well as providing the only civil tribunal in the United States during British occupation. Arbitration was also promoted by chambers of commerce in New Haven and Philadelphia at the turn of the eighteenth and nineteenth centuries. With regards to Conventions, we have The Hague Convention, concluded as part of the 1899 and 1907 Hague Peace Conferences, and the New York Convention of 1958. These Conventions set forth, with respect to the domestic courts of signatory states, the obligation to recognize and enforce arbitral awards adopted in another signatory state (subject to certain limitations relating to procedural issues). The ICSID 1966, created under the auspices of the World Bank group to which Aron Brochet stated that, while developing the idea of the ICSID Convention; the Convention would offer a means of settling directly, on the legal plane, investment disputes between the State and the foreign investor and would insulate such disputes from the realm of politics and diplomacy [5]

The UNCITRAL Arbitration Rules 1976, creating its Arbitration Rules, provided a thorough set of procedural rules which the signatory states may utilize and agree upon to regulate their arbitration (both ad hoc and institutional), arising as a consequence of their commercial disputes. We also have the UNCITRAL Model Law 1985, with the purpose of guiding the member states with respect to the modernization and development of their domestic regulations regarding arbitration, and to provide a model which the parties might incorporate into their national laws [6]. The BITs 1990, NAFTA Agreement 1994, and the 1995 WTO Agreement concluding the Marrakesh Agreement signed by 123 states [7] were some of the agreements signed in favor of arbitration. The reputation and widespread use of international arbitration grew even further in the new millennium. As a renowned legal scholar stated, “We now have (thanks to the ingenuity of the legal fraternity) a rule of law regime in which investors in foreign countries can, through the instrumentality of bilateral treaties, exercise direct rights of action against the state entity in which the investment is made even without contractual relations with that state entity”[8]. Apart from investment and general trade disputes, arbitration appeared in a number of sub-sectors of the global industry, including construction, insurance, shipping, and securities, labor and sports arbitration. Parties welcome arbitration because it provides a certain degree of neutrality and it helps parties to be partially free from anyone’s local jurisdiction this is an important factor to foreign investors. However, arbitration cannot be completely isolated from national jurisdiction, since the award must be recognized and enforced by domestic courts. Foreign investors doubt African national judicial systems, which have been plagued with corruption, long and costly procedures, and lack of efficient enforcement of the law [9]. Because of the suspicions foreign investors had as to the judicial system of Africa, the early 1990s witnessed a reduction in investment. As a result, the West and Central African countries decided to combine their efforts to solve the above problem in order to encourage the investors who felt reluctant coming to Africa because of the disparity of and lack of cohesive business laws across borders. These countries established a high-level mission led by Mr. Keba Mbaye (former Vice President of the International Court of Justice), in order to diagnose the problem and find an appropriate solution. To solve this problem, the Mission proposed the creation of a new business law intended to be modern, harmonized, and interpreted by lawyers well trained in business law, the application of which would be secured by a unique supranational court [9]. This idea led to the signing of the Port-Louis Treaty in 1993, which created the Organization for the Harmonization of Business Law in Africa (OHADA). The treaty’s main aim was the harmonization of business laws in contracting states by the elaboration and adoption of simple common rules adapted to their economies, by setting up appropriate procedure, and encouraging arbitration for the settlement of contractual disputes [9]. The OHADA Uniform Act is based on the UNCITRAL Model Rules and today the main sources of OHADA laws are Uniform Acts which are treated by Art. 5 Section 1 of the treaty related to a harmonization of business law in Africa [10]. Arbitration being the private method of dispute resolution brought with it features such as enforceability, neutrality, flexibility, finality, confidentiality, and transparency to name a few. Historically, arbitration proceedings as well as arbitral awards have been considered fully confidential [10].

We know that arbitration is an expression of party autonomy. This autonomy has to be expressed in a contract known as the arbitration agreement. Most of the times, parties agree upon the characteristics of the future proceedings in such agreements. Among those features or rules of the game, such as the applicable law, the seat of arbitration, and the language of the proceedings, parties may also include a provision to govern confidentiality and transparency issues. For this reason, an arbitration clause may contain, among others, a specific provision on confidentiality and transparency [11]. A great number of users of international commercial arbitration assume when choosing arbitration that it is inherently confidential. However, this assumption appears not to be the case given that many national laws and arbitral rules do not currently provide for confidentiality and those that do vary in their approach and scope including the persons affected the duration, and the remedies. Parties can, however, by agreement provide for confidentiality and determine the scope, extent and duration of the obligation as well as the available remedies. Typically, confidentiality aims to bind the arbitrators, arbitral institutions and, if applicable, secretaries to the arbitral tribunals, as well as other persons under their control [12]. In the last decade, transparency has become a fundamental principle in international adjudication. It is usually defined as including concepts such as public access and disclosure of documents or information. Due to the high impact of the activities of international institutions on civil societies and the growing relevance of individuals as subjects of the international community, it became evident that there was a need to make the decision-making processes of international organizations more transparent, increase the accountability of the international institutions towards civil societies, and give access to the public to international dispute settlement mechanisms [13]. Recently, these proposals have taken on a greater sense of urgency and an apparent determination to impose transparency reforms on unwilling parties [14]. Perhaps incited by the procedural deficiencies in other international tribunals or by the difficulties in regulating multinational companies in a globalized world, these new transparency advocates exhort the general public's stakeholders in many issues being adjudicated in international commercial arbitrations. This stake hold, arguments, necessitates greater transparency through, among other things, compulsory publication of international commercial arbitration awards [15]. Confidentiality and transparency can be found both at the level of arbitration proceedings and award as there is a need to be conceptualized.

CONCEPTUAL FRAMWORK OF CONFIDENTIALITY AND TRANSPARENCY IN ARBITRATION PROCEEDINGS

This section of the paper examines the concept of confidentiality and transparency in arbitration proceedings.

The Concept of Confidentiality in Arbitration Proceedings

Confidentiality is often assumed to be a common feature of international commercial arbitration, and the privacy of arbitral proceedings has facilitated and encouraged recourse to arbitration [15]. It is generally assumed by parties that arbitration proceedings will be both private and confidential [16]. Indeed, surveys suggest that confidentiality is one of the main reasons commercial parties choose arbitration over court proceedings along with the flexibility of the process and the ability to nominate an arbitrator of their choice [17]. Hence, there is the need for its applicability in arbitration proceedings.

Application of the Concept of Confidentiality in Arbitration Proceedings

Confidentiality refers to the obligations of the parties not to disclose information or documents concerning arbitration proceedings to third parties, including the initial submission of the dispute to arbitration, and the documents produced in the proceedings [17]. The lack of uniformity amongst national laws and the diverse treatment of confidentiality raise a question of the choice of law. This will usually be the law applicable to the contract which is the subject of arbitration. The law governing an arbitration agreement determines its validity and effects [18]. The choices for the law governing confidentiality would seem to lie between the law applicable to the arbitral proceedings (lex arbitri) and/or the law of the place where the issue of confidentiality arises (lex fri) [19].

The Legal Basis for Confidentiality in Arbitration Proceedings

Establishing a legal basis for confidentiality is important for understanding the different approaches taken internationally. Confidentiality may exist under the applicable national law. It may also arise as a result of contractual provisions concluded between the parties to the arbitration (party autonomy). It may also result from the choice of institutional rules as seen below:

National Laws

Most national arbitration statutes do not provide for a general principle of confidentiality, for example, the United States and New Zealand [20], and this is also seen in *Esso Australia*, the High Court of Australia held that arbitration is private but it declined to find a duty of confidentiality attached to documents and information obtained during the course of confidentiality that arose in two circumstances. The first was where the parties had made express provision for confidentiality. Secondly the High Court held that confidentiality is attached to documents which are produced by a party subject to a number of exceptions including the public's legitimate interest in obtaining information about the affairs of public authorities [21]. In this regard, New Zealand Arbitration Act of 1996 provides an explicit duty of privacy and of confidentiality in14A60 that arbitral proceedings must be private. Also, Australia has recently updated its legislation to include a similar obligation not to disclose confidential information in arbitrations governed by the International Arbitration Act of 1974.

Party Autonomy

A fundamental principle governing arbitration agreement is party autonomy. According to Asari, it is the backbone of arbitration proceedings [21]. Abdulhay in his Book *"International Trade and Commercial Arbitration"* states that party autonomy is the freedom of the parties to construct their contractual relationship in a way they see fit [22]. This means that the parties have the right to decide without any control, the law to govern their arbitration, i.e., the choice of law and the conduct of the arbitral proceedings. Redfern and Hunter [23] commended on Article 19(1) of the UNCITRAL Model Law which provides that subject to the provision of this law, the parties are free to agree on the procedure to be followed by the arbitral tribunal conducting the proceedings. Party autonomy will be recognized and enforced by domestic courts [24]. A good approach can be seen in the English courts, where the Court of Appeal has held that in agreeing to (arbitrate) both parties waived their right to a hearing before the courts (except in accordance with the 1996 Arbitration Act). They also waived their right to a public hearing.

Choice of Institutional Rules

Most contractual confidentiality agreements tend to adopt the provisions of institutional rules and incorporate them into the arbitration clause. International arbitration institutional rules include the following:

Firstly, UNCITRAL Arbitration Rules [25]. These institutional Rules deal with privacy and confidentiality. As far as privacy is concerned, Article 25(4) [26] of the UNCITRAL Arbitration Rules provides: Hearings shall be held in camera unless the parties agree otherwise.

Secondly, International Chamber of Commerce (ICC) is one of the most widely used arbitration institutional rules which have never contained provisions which expressly require either the parties or the arbitrators to protect the confidentiality of arbitration [27]. Rather, certain provisions of the ICC Rules of Arbitration apply to specific situations. For example, Article 6 provides as follows: The work of the Court is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity. The Court lays down the rules regarding the persons who can attend the meetings of the

Court and its Committees and who are entitled to have access to the materials submitted to the Court and its Secretariat [28]. The Arbitration Rules of the ICC, which is the most established and prominent arbitration institute, allow the Arbitral Tribunal to take measures for protecting trade secrets and confidential information. The rules also prescribe that any parties, persons not involved in the proceedings, shall not be admitted at the hearings [28].

A third category of arbitration rules is the WIPO Arbitration Rules. Article 73 states that: (a) except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to do so by law or by a competent regulatory body, and then only (i) by disclosing no more than what is legally required; and (ii) by furnishing to the Tribunal and to the other party, if the disclosure takes place during the arbitration, or to the other party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it [29].

The Duty of Confidentiality in Arbitration Proceedings

The duty of confidentiality can either be implied by the law or expressed by the parties in their agreement.

Implied Duty of Confidentiality in Arbitration Proceedings

Courts consider the privacy of the arbitral process as a crucial element in ensuring utmost secrecy, which in turn requires an implied obligation of confidentiality as a vital prerequisite of an arbitration contract, irrespective of any clear confidentiality arrangement struck between the parties [30], and which may take the form of case law oriented.

Case Law Relating to the Implied Duty of Confidentiality

English law holds that arbitral parties are subject to an implied duty of confidentiality, a position made particularly significant by London’s role as a situs of many international arbitrations [31]. The English position on confidentiality was first enunciated in the case of *Dolling-Bakery. Merrett* [32], where the Court of Appeal highlighted the significance of private character of arbitration as a vital component of the process, and held that all arbitration contracts must inevitably contain an implied duty not to disclose or use for any other purpose any documents prepared for and used in the arbitration save with the consent of the other party, or pursuant to an order or leave of the court. The same view was held in the English Court of Appeal’s December 1997 decision in the leading case of *Ali Shipping Corp. v. Shipyard Trogir* [33]. The approach to confidentiality in the United Kingdom is known as the “classical view” on confidentiality, which at an international level remained unchallenged until the late 1980s. According to this classical view, the private nature of arbitration obliges those participating in the proceedings to maintain confidentiality, without questioning its legal basis or scope. While some countries such as England recognize the implied duty of confidentiality, others rejected this duty and provided for express duty of confidentiality.

Express Duty of Confidentiality in Arbitration Proceedings

Through the provisions of express terms in the arbitration agreement, parties control the confidentiality process in the sense that they may prohibit the disclosure of any documents or information presented during the proceedings, or agree not to disclose any aspect of the arbitral process, including waiving the right to amend or change part of the confidentiality agreement as well as returning or destroying documents used once the arbitral process has been completed.

Case Law Relating to the Express Duty of Confidentiality

The Swedish Supreme Court has ruled that according to Swedish law, the arbitration proceedings are not confidential unless the parties themselves expressly and specifically agree to such obligation, or when arbitration set of rules which apply confidentiality has been adopted [33].In the leading case, *United States v. Panhandle E Corp.*, the federal government sought to have Panhandle, a U.S. company, produce documents from an

International Chamber of Commerce (ICC) arbitration between Panhandle's subsidiary and the Algerian State Oil Company [34]. Panhandle sought to block discovery, arguing that arbitration is confidential in nature and that disclosure would frustrate the party's expectations. The court held that there is no inherent duty of confidentiality unless the party's contract for it, and that the ICC Rules place no obligation of confidentiality on arbitrating parties. It therefore granted the government's request to compel production of the documents [34].

Parties Charged with the Duty of Confidentiality

The confidentiality of arbitration is both an obligation imposed upon the arbitrators as well as upon the parties and other procedural participants [35].

Parties to the Arbitration

The duty of confidentiality is more complicated on the parties themselves. This is because, in the absence of express confidentiality agreement between the parties, the duty of parties to maintain the confidentiality of the existence and the details of the proceedings may vary significantly depending upon the tribunal and the applicable law and procedures, as well as the type of information at issue and the way in which the information may be used [35].

The Arbitrators

It has generally been recognized that arbitrators have an ethical duty to maintain confidentiality. Rule 6 of the ICSID Rules of Procedure for Arbitration Proceedings requires an arbitrator to sign a declaration promising to keep confidential all information coming to the arbitrator's knowledge as result of his or her participation in the proceeding, as well as the contents of the award [36].

Third Parties

It is generally accepted that third parties are not bound by any duty of confidentiality, if there are no specific contractual arrangements to this effect. An [expert] witness and legal representative in arbitration proceedings normally appears voluntarily and is not subject to any obligation in the agreement as a third party to arbitrate [36]. It would seem unrealistic and even dangerous to attempt to impose a duty of confidentiality on witnesses.

Exceptions to the Duty of Confidentiality in Arbitration Proceedings

The private nature of arbitration and the obligation to maintain the duty of confidentiality is not absolute [37]. The principle of privacy and confidentiality is in certain circumstances subject to limitations under international commercial arbitration. These include:

Discloser with the Consent of the Parties

The consent of the parties to public disclosure of the existence of arbitration as well as arbitration-related information is one of the exceptions to the implied obligations of confidentiality in commercial arbitration, whether express or implied, or their chosen set of arbitration rules or applicable laws containing a provision to that effect.

Disclosure as a Result of Court Order

Where a party to litigation seeks disclosure of documents generated in arbitration, the court can order the disclosure of such documents regardless of whether there is an implied or express duty of confidentiality on the said document, and only if it considers it necessary for the fair disposal of the case bearing in minds the confidentiality of the documents. This was the position in *Hassneh Insurance Co* where Colman J. advised on the disclosure of arbitration documents subject to an obligation of confidentiality as follows: If a party is put in a potentially extremely hazardous position and cannot decide whether to disclose documents as in doing so he may therefore be in breach of his duty of confidentiality to the opposite party to the arbitration or be accused of failing to disclose a relevant document in his possession which would be necessary for fairly disposing of the litigation, he should first write to his opposite party in the arbitration, inviting consent to disclose; if this is not forthcoming, he should decline to let the third party inspect the same without first obtaining an order of the court under O 24 r 11 of the Rules of Court.

Disclosure for Public Interest

The nature of the arbitration may give the public a legitimate interest in certain aspects of the arbitration. This was the position in *Esso Australia Resources Ltd v Plowman* (Minister for Energy and Minerals) where Mason C.J. in this case referred to a legitimate exception that the public may have in knowing what transpired in the arbitration. He said that, different criteria applied when considering governmental secrets rather than personal secrets and that the courts had to consider governmental secrets through different spectacles. He further explained that in the public sector, the need is to compel openness not for burgeoning secrecy [38].

Challenging Arbitral Award in Court by Parties to the Agreement

In this case, a scenario could be where a losing party breaches its duty to satisfy the arbitration award, whereby the winning party may go to court to have the award enforced. With respect to this, the terms of the award can become a public fact to the extent that it is required for public and private interests by the courts while leaving substantial aspect of the arbitral proceedings secret. Arguably, this approach is still within the purview of general duty of confidentiality which demonstrates the efficiency of Arbitration procedure [39].

The Meaning of Transparency in the Context of Arbitration Proceedings

Transparency is not clearly defined in international law. Synonymous to openness or accountability, transparency is often invoked but seldom defined. It is an information-centric concept that relies on openness and access to information, viewed as a more accountable, more democratic, and more legitimate system of global governance. In the arbitral realm, it involves the disclosure of documents or other materials, open hearings, the participation of third parties in the arbitration process, and public access [40].

Debates for Transparency in Arbitration Proceedings

In the past, arbitration was praised for its confidentiality. Supporters of this view also stress that not only the arbitral procedure should be confidential but also the outcome of that procedure, thus preventing the publication of the arbitral award [41]. Today the situation is quite different. A series of reforms have made international commercial arbitration considerably more transparent, meaning that the rules that regulate decision making are more readily available to interested parties, who in this instance are the users of the system. At the same time, a growing number of voluntary and involuntary disclosures provide increased information to the users, as well as to the general public, about numerous individual cases. Modern trends are also in favor of transparency and openness, especially in the field of investor state arbitration [42]. Generally, there is also human right issue at stake whenever decisions are made behind closed doors [43].

Transparency under the UNCITRAL Model Rules

The UNCITRAL Rules on Transparency, which became effective on the 1st April 2014, provide for various measures aimed at increasing transparency in investor-state arbitration. However, there is an express exception to the rule as examined below:

Standards Regarding Amicus Curiae Submissions

Articles 4 and 5 of the UNCITRAL Rules on Transparency deal with amicus curiae issues. The situation of amicus curiae submissions varies from jurisdiction to jurisdiction. However, as a universal definition, amicus curiae are non-disputant third parties (for instance certain NGOs intervening in high-volume ISAs in order to provide knowledge or expertise in a certain matter) granted with the right to participate in a given procedure through amicus curiae briefs. Article 4 grants the right to intervene and sets a standard in this regard for non-disputing parties that are not parties to the treaty within the scope of the dispute. Article 5, however, sets different standards for non-disputing parties that are in the same time parties to the treaty within the scope of the dispute [44]. The main difference between the two is that in case of amicus curiae that are a party to the treaty within the scope of the dispute, the arbitral tribunal has less discretion when it has to decide whether it allows the third party to enter the arbitration. This approach shows that the rights of a party to a treaty are more fundamentally implicated by an arbitration regarding that treaty than the rights of a thirdparty that is not a party to the treaty [45].

Mandatory Open Hearings

Article 6 of the UNCITRAL Rules on Transparency determines regulations with regards to hearings. As a default rule, it establishes that all hearings shall be held in public, which was uncommon in international arbitration priory, and is a clear indication towards increasing transparency. Furthermore, Article 6 determines the obligation of the tribunal to make logistical arrangements in order to ensure the public access to hearings (video links). However, Article 7 sets out the exceptions to transparency, based on which the tribunal, if needed, orders the hearings to be held in camera [46]. The Working Group developing the content of the UNCITRAL Rules on Transparency had heavy debates regarding the nature of the hearings, with certain states disagreeing with open hearings as a default rule [46]. However, with the final decision of the Working Group, it is clearly indicated that states, in general, are directed towards a transparent approach and have understood its importance in investment-related disputes.

Transparency under the ICSID Rules on Arbitration Proceedings

The International Centre for Settlement of Investment Disputes (ICSID) was created by the 1965 Washington Convention, which has been ratified by states. It is a division of the World Bank, which administers arbitrations under its own rules. ICSID was created to promote international trade and investment, by providing a neutral and specialized forum for the settlement of disputes between a host state and an investor from another state, which has arisen out of an investment made in the host state [47]. In 2004, ICSID Secretariat presented draft proposals on possible improvements of the framework for ICSID arbitration, including in relation to transparency and third-party participation. ICSID Secretariat proposes to amend Arbitration Rule 48(4) and the corresponding provision of the Additional Facility Arbitration Rules, Article 53(3) to make it mandatory for ICSID to publish promptly the excerpts of the legal conclusions or the Tribunal [47].

CONFIDENTIALITY AND TRANSPARENCY IN ARBITRATION PROCEEDINGS

This section of the paper examines the manifestation of confidentiality and transparency in arbitration proceedings.

The Manifestation of Confidentiality

In international practice, it might be argued that arbitrations cannot be completely confidential because there are often instances in which a private party in arbitration needs to reveal information regarding the proceeding, or even may be legally obligated to reveal such information. For instance, the party may well have the duty to disclose the fact of the arbitral proceedings, the names of the participants, the nature of the dispute and the possible financial consequences thereof to auditors, creditors, insurance companies, etc. Generally, drafters are reluctant to specify to which extent this obligation of confidentiality may extend, or alternatively, the contents that might be subject to disclosure. For Tsafack Djoumessi [48], what is private need to be preserved (Ce qui estprivédoitêtre preserve). This means since arbitration is a private method of dispute settlement, there is the need to keep the deliberations, documents and information private and confidential. That notwithstanding, confidentiality in arbitration proceedings manifest at the level of the hearing, proceedings and at the level of the award.

The Existence of Arbitration

Regarding the existence of the arbitration proceeding, it seems unrealistic and undesirable to establish an absolute prohibition against unilateral publication of the mere existence of the arbitration. In some cases, the mere fact that an arbitration broke out and is now pending before an arbitral tribunal may be viewed as a secret [49]. Professor Francois Dessemont offers an explanation for the reluctance to create a blanket rule by stating that the arbitration clause is chosen in many instances in view of the confidential nature of the information at stake. This means that there is no uniform rule on confidentiality, as such, each country or arbitration institution treats confidentiality in different ways, and it is now left for the parties to make provision on this issue. When this happens, any party who discloses the confidential information shall be in breach of this duty. There are numerous practical reasons why the existence of the arbitration may not, or even should not, remain confidential. First, whenever courts become involved-to interpret arbitral rules or to enforce arbitral awards, for example, the fact that arbitration is or was in existence will become public record [49]. Thus, a concerted effort to maintain the confidentiality of the existence of the arbitration ultimately may be undermined when one of the parties pursues judicial involvement.

Confidentiality of the Hearing

The position is, perhaps, least controversial in relation to the privacy of the hearing. Subject to the parties agreeing otherwise, the arbitration held pursuant to an agreement to submit to arbitration is private in the sense that it is not open to the public. The arbitrator will exclude strangers from the hearing unless the parties consent to attendance by a stranger. For example, the China International Economic and Trade Arbitration Commission (CIETAC) determined that hearings shall be held in camera. Article 25(4) of the Arbitration Rules of the UNCITL also gives the same provision with the International Arbitration Rules-Milan Chamber of Commerce (2004) require keeping all in constitution relating to the proceedings confidential. Thus, hearing shall be confidential in so far as parties have not agreed otherwise. It is, however, worth noting that the Arbitration Act of 1996 is silent on the issue of who may attend an arbitration hearing, and it may be thought that arbitrators have a discretion subject only to their overriding duty in Section 33(1)(a) of the 1996 Act to secure a fair hearing.

Confidentiality of the Proceedings

The confidentiality of the proceedings is the least controversial aspect of any sort of duty of confidentiality. This protects the interests of the parties and ensures an uninterrupted and fair resolution of the dispute before the arbitral tribunal [50]. The purpose here is to protect confidential materials and information in arbitration.

Confidential Materials

Confidential materials are all documents produced, filed or exchanged in arbitration proceedings. In general, documents produced during, or in preparation for an arbitration, as well as evidence introduced during the arbitration, are protected by a duty of confidentiality. This was the position in Ali shipping which provided that any pieces of paper, and the information contained on them, are protected by a duty of confidentiality that binds all of those involved in the arbitration such as; the parties, the arbitrators, the lawyers, and the witnesses [50]. Examples of these documents include all correspondence between or among the parties, the tribunal and/or any third parties in relation to the arbitration; all documents filed in the arbitration, including all pleadings, memorials, submissions, witness statements, annexes, and other evidence, and all documents produced (whether by a party or a third party); all awards, decisions and orders and directions of the Tribunal that have not been subject to redaction, all minutes, records (including recordings), and transcripts of hearings, meetings and conferences; and, information contained in or derived from any such documents [51]. The same decision was reached in *John Forster Emmott v. Michael Wilson & Partners Ltd, (the Emmott Case)* [52], where the implied duty of confidentiality in arbitration proceedings was recognized both at national and international level. Also, in *Dolling-Baker v Merrett,* the court of appeal restrained a party to arbitration from disclosing on discovery in a subsequent action documents relating to the arbitration [53].

Confidential Information

Confidential Information shall be any information not in the public hearing. This information includes: business confidentiality such as information relating to past, present or contemplated future business activities of the claimant; the financial affairs of the claimant or any of its affiliates; the past, present, or contemplated future management or operational policies, procedures, or practices of the claimant or any of its affiliates; the manufacturing, supply, or distribution process and techniques of the claimant or any of its affiliates; the value of the claimant or any of its affiliates or any of their respective assets; the granting of licenses or the provision of goods or services to or by the claimant or any of its affiliates; and any other information that is proprietary or competitively sensitive and which, the public disclosure of which may cause competitive injury. François Dessemontet suggests that the arbitration community also should consider Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) [54] which provide: the course of ensuring effective protection against unfair competition as provided in Article 10 of the Paris Convention (1967), members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3 below. The arbitration rules of the World Intellectual Property Organization (WIPO) have quite rigorous confidentiality protections, reflecting the focus of WIPO proceedings on intellectual property and trade secrets [29, 55]. The Arbitration Rules of the ICC also allow the arbitral tribunal to take measures for protecting trade secrets and confidential information [56].

Return or Destruction of Confidential Document

Another way in which confidentiality manifests is through the return or destruction of documents containing confidential information and any copy made or submitted as evidence. The solution adopted in practice appears to vary greatly, as to their clarity and timing. When an obligation is expressed in such broad terms, one difficulty to the parties is to determine until when the documents may be returned; this difficulty arose in an UNCITRAL state-investor arbitration when parties sought to agree to a specific date by which the investor should destroy its copies of the raw footage of films about the alleged wrongful actions of the investor, relied upon by the state in the arbitration. In this case, the investor contended that the undertaking was too broad since it was impossible to determine when enforcement proceedings will take place [56]. The tribunal agreed and did not order the destruction of the documents. However, in other cases the tribunal ordered for the return or destruction of the documents. Because of these difficulties, it is necessary for parties to fix a specific time when documents containing confidential information must be returned or destroyed. It can be immediately after the issuance of the award, or a few weeks or a few years later. A usual approach adopted in several cases is to fix different recipients of the confidential information and in particular to allow for longer period of time for the party's counsel. This was the decision in telecommunications industry where all confidential documents were ordered to be destroyed upon termination of the proceedings, but the counsels were entitled to retain the said documents for ten years [57].

Confidentiality of Arbitration Awards

In principle, as part of the arbitral procedure, the award should not be disclosed. However, there is an increased pressure on institutions to allow access to their awards by full or redacted publication [58]. An objecting party may need to show that they did not intent for the agreement to cover the award for publication to be allowed. It has been considered in the Court of Appeal that contracting parties should not be obliged by public policy to make a compulsory contribution to the worthy cause of coherent evolution of commercial law [59]. Institutional rules which play supportive rule to confidentiality of award include the LCIA Rules which emphasize that an award shall not be published without the prior written consent of all parties and the Arbitral Tribunal [60]. Also, Section 14(1) of New Zealand's Arbitration Act (1996) provides to this effect. Publication of award was held to be breach of confidence by Colman J. in *Hassneh Insurance V Mew*; and *Ali Shipping V Shipyard Trogir,* an order was thus given to discharge the set award [33].

Manifestation of Transparency in Arbitration Proceedings

Transparency also features as one of the obligations imposed upon states by international investment treaties. Many treaties, for example, include a requirement that states make publicly available any laws and regulations which affect investment activities. Arbitral tribunals have also interpreted the fair and equitable treatment obligation (FET) to require that states accord transparency to foreign investors [61]. Transparency can manifest in the following ways.

Impartiality and Independence of Arbitrators

Much has been said about independence and impartiality of arbitrators. To be independent, an arbitrator should not have any financial interest in the outcome of the arbitration, nor should he have any professional connection with any of the parties. An arbitrator should also refrain from communicating only with one of the parties, e.g., oral communications made in the absence of the other party or written communication where a copy of the document is not sent to the other party at the same time [62]. The arbitrator is under the legal obligation of disclosure, if he or she is aware of any circumstances for challenge against person, he must inform the parties about it and he can accept his mission only with the unanimous written agreement of the parties [63]. Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce made provision to this effect where it provides in its Article 14 that every arbitrator must be impartial and independent. Before being appointed as arbitrator, a person shall disclose any circumstances which may give rise to justifiable doubts as to his/her impartiality or independence. If the person is appointed as arbitrator, he/she shall submit to the Secretariat a signed statement of impartiality and independence disclosing any circumstances to that effect. The Secretariat shall send a copy of the statement of impartiality and independence to the parties and the other arbitrators.

Equal Treatment and Opportunity to Be Heard

Parties in arbitration proceedings are given equal treatment at all stages and also the opportunity to present their case. In Switzerland, the right to be heard is embodied in article 29(2) of the Swiss Federal Constitution. If the parties are not all heard concerning a question in an adversarial proceeding, these rights will be violated. The right to equal treatment and the right to be heard are closely related. Each party must have an equal opportunity to present its case, within reasonable non-discriminatory period of time except justified inequalities [64]. The parties must have the opportunity to participate in the proceedings, especially the evidentiary stage, as an expression of their right to be heard. Right to equal treatment only means that the parties have to be treated equally in comparable situations. Equal treatment of the parties, guaranteed by articles 182(3) and 190 (2) (d) of SPILA, implies that the proceedings must be organized and conducted in such a way that each party has the same possibilities to present its case. Under that principle, which also applies to the time limits within which the briefs must be filed, the arbitral panel must treat the parties in the same way at all stages of the proceedings.

Access to Hearing

Non-disputing parties and state usually have access to the hearing through the submission of amicus curiae. The term amicus curiae refer to a person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter [66]. Such petitions are not limited to investment arbitration. All international courts and tribunals have experience requests by non-disputing parties to participate in international proceedings [66]. In *Canfor v. United States of America* case, the arbitral tribunal allowed parties to the dispute agree to make the hearings open to the public. In the *United Parcel Services of America v. Canada case,* the Canadian Union of Postal Workers and the Council of Canadians made a case about having a direct interest in the subject matter of the claim and in the broader public policy implications of the dispute [67]. In addition, they noted their interest in addressing the lack of transparency that has historically attended international arbitral processes and based their request on Article 15(1)30 of the UNCITRAL Arbitration Rules which gives discretion to the arbitral tribunal to conduct the arbitration in a manner it finds appropriate. Also, Article 6 of the UNCITRAL Rule provide; Subject to article 6, paragraphs 2 and 3, hearings for the presentation of evidence or for oral argument (hearings) shall be public [68]. The important point drawn from the above cases is that debating and developing the law would be much better served by investment awards being public.

Publication of Arbitral Awards

The case for transparency may not appear convincing in relation to private international commercial arbitration. There are a number of key areas in which the public has an interest in investment arbitration that tend not to arise in ordinary commercial arbitration.

Nature of Arbitration and Arbitral Award

The idea that the public interest has some implication in relation to arbitral awards requires an acceptance that arbitration, or at least the award, is not exclusively private. It has been argued, however, that there is no public interest in international commercial arbitration; that it is the product of an agreement between two contracting parties that is of concern to them, and only them. Arbitration can be contrasted with litigation before national courts and this supports the position that arbitration is purely private. This is in the sense that, the jurisdiction of the court is exercised over the parties, not on the basis of their consent, but by virtue of the power of the court as an emanation of the relevant state [69]. Arbitration is also grounded in the rule of law, and must therefore be governed by, and be consistent with, the rule of law. The public at large has an interest in seeing, for instance, that rules are applied consistently, that the system operates with some coherence, and that the system is fair. Allowing for this to be observed requires some degree of transparency [70]. In a move to improve transparency and credibility, the Common Court of Justice and arbitration (CCJA) of OHADA recently published 30 new decisions which shine lights on important legal issues of OHADA law, including its procedure, conservatory measures, as well as insolvency and commercial legal issues. While the published decisions mainly concern the issue of jurisdiction, they also convey the CCJA's support of the arbitration process [71].

Public Interest in the Publication of Arbitral Awards

The public at large might be interested in specific arbitration in circumstances where the government is involved as a party in some form. This was the position in *Esso Australia Resources Ltd v Plowman* case [72]. This is because such arbitrations concern, or at least have an impact upon, the public in general and it follows that it is reasonable to impose obligations on the state to disclose certain information to the public. In these situations, the public has not only an indirect interest in the publication of an award, but it also has a direct interest in the subject of the individual arbitration for much the same reason as investor-state arbitrations are of interest to the public at large [72]. A greater degree of transparency in relation to these arbitrations would therefore promote democratic principles because the public can observe and evaluate the outcome of the proceedings.

Balancing Confidentiality and Transparency in Arbitration Proceedings

Professor Buys notes, there are, of course, costs to making arbitration more transparent... It is true that if arbitration is made more transparent, parties will not be able to so easily hide damaging allegations [73]. This potentially negative consequence should be weighed against the greater efficiency and democracy achieved by allowing the public to observe and hold the parties accountable for their actions just as is the case with an order for security for costs, the duty of confidentiality may also become a two-edged sword [74]. On one hand, the result of an absolute right to confidentiality may be that a party to an arbitration does not receive justice; on the other hand, the unfettered or loosely restrained right of disclosure may lead to the public/private interests being misused. As a result, the tribunal should strike an extremely cautious balance. This will gain worldwide acceptance and to build confidence in arbitration as an effective means of international dispute resolution. One of the most commented case regarding the balance between confidentiality and transparency is the Biwater Gauff case, decided by an ICSID tribunal. In this case, the tribunal stated that there is no provision, whether in the ICSID Convention or in any of the applicable rules, that imposes a general duty of confidentiality or transparency in an ICSID arbitration procedure. In this sense, it is within the discretion of each individual tribunal to find the proper compromise when conducting proceedings. Additionally, taking into account the possible disruption that an arbitral process could suffer due to the disclosure and publication by the parties of certain kinds of documents, the tribunal concluded that the disclosure of decisions, orders and directions should be considered on a case-by-case basis [75]. Finally, a more transparent process could result in an unwillingness of parties to admit certain facts or take certain positions because of fear of public reaction [74]. All of these potential costs must be weighed in any determination of where to draw the line between confidentiality and transparency in arbitration. Another way in which a balance can be strike between confidentiality and transparency is by ensuring transparency without necessarily breaching confidentiality duty. Parties can agree that disclosure will be made only when it is necessary, for instance, disclosing the occurrence of the arbitration to insurers, auditors, bankers and courts often is mandatory. Thus, there can be no breach of confidentiality for the disclosure of such information. In situation of publication of award, the names of the parties can be removed before publication in other to guarantee certain transparency and confidentiality. In most cases, it is more likely than not that such a balancing will at least result in a decision to publish the sanitized arbitral awards to the benefit of the parties and the international arbitration community as a whole [76].

THE EFFECTS OF CONFIDENTIALITY AND TRANSPARENCY IN ARBITRATION PROCEEDINGS

This section of the paper is based on the effects of breach and respect of confidentiality and transparency in arbitration proceedings.

Effects of Confidentiality in Arbitration Proceedings

Our aim at this juncture is to discuss the effects of confidentiality when it has been respected, that is, where the existence of the hearings, information concerning the proceedings, the award has not been disclosed to any third party on the one hand and on the other hand, when it has not been respected, that is, when it has been breached or disclosed any information to a third party.

Effect of Confidentiality When It Has Been Respected

Parties valued arbitration over litigation for several reasons. One of these reasons is confidentiality of arbitration proceedings. Some authors are of the view that for arbitration proceedings to be confidential, the parties must make provision to this effect while others consider confidentiality as the future of all arbitration proceedings, as part of the original clause or as a natural consequence of such agreements, no matter whether the confidentiality clause has been included in the contract or not. The survey conducted by Queen's Mary College shows that 50% of corporations interviewed consider arbitration confidential even when there is no specific clause to that effect. That notwithstanding, when the duty of confidentiality is respected or has not been breached, it will result into numerous advantages: These advantages include:

Confidentiality Leads to the Respect of the Principle of Party Autonomy

Confidentiality reinforces the notion of party autonomy, whereby parties are ideally given a choice of the applicable law and rules to govern their relationship. It is traditionally up to the parties to determine the parameters of the arbitration proceedings, which is reflected by the arbitration agreement and rules [77]. Hence, when a party decides on confidentiality issue and it's maintained, there is no doubt that party autonomy has been respected.

Confidentiality Leads to Effective Resolution of Dispute between Parties to Arbitration

Confidentiality reduces the possibility of external influences on arbitral proceedings and allows for effective resolution of dispute between parties [77]. Confidentiality is necessary to preserve the pure dispute settlement nature of investment arbitration. Public participation may have a negative effect on the proceedings such as escalating the dispute between the parties or imposing on the arbitral tribunal the obligation to establish a coherent body of law, instead of simply resolving the dispute at hand. This may result into long and cumbersome proceedings. It may also lead to high cost, defeating the flexible, fast and cheap nature of arbitration [77]. Hence, the respect of confidentiality limits the above-mentioned difficulties.

Confidentiality Safeguards the Integrity of the Disputing Parties

Parties to arbitration may not wish to expose certain allegations to the public. These may include allegations of bad faith, misrepresentation, incompetence, lack of adequate financial resources, etc. Privacy of arbitral proceedings also safeguards the integrity of the disputing parties by preventing the exposure of related matters to arbitral proceeding to the wider public. It protects the party's public image and may contribute to a reduction of tension between the parties [78]. The confidential nature of arbitral proceedings averts alarming other foreign investors, who may be thinking of investing in the host states, as well as current or potential shareholders in the company instituting the arbitration [77].

Confidentiality Contributes to De-politicization of Investment Disputes

Confidentiality, or privacy as it is often termed, contributes to the de-politicization of investment disputes, which may facilitate moves towards negotiated settlement in view of a long-term relationship between an investor and a host state [77].

Confidentiality Protects Intellectual Property Agreement and Sensitive Information

Confidentiality of arbitral proceedings protects proprietary information such as trademarks, patents, investment strategies, and sensitive business information that could harm future business as well as government sensitive information [77].

Effects of Confidentiality When It Has Been Breached

The violation of confidentiality and its consequences is not covered at all by any of the Arbitration Rules discussed above. Accordingly, any breach of the arbitration agreement is governed by procedural law (i.e., the lex arbitri) [79]. Thus, based on this theory, some scholars consider that no compensation for damages may be awarded further to a violation of confidentiality. Other scholars highlight the fact that the legal nature of the agreement is controversial, and they share the view that nothing prevents a party who has suffered damages because of a violation of an arbitration agreement to claim compensation. In such a case and if the existence of an obligation of confidentiality is not doubtful, be it as a result of an agreement between the parties or from a reference to a comprehensive set of Arbitration Rules, then the violation of such an obligation may be treated as a breach of contract, pursuant to Article 97, and following the Swiss Code of Obligations (applicable as the lex arbitri). According to the Stockholm City Court, any breach of this duty would be regarded as a material breach of contract, giving the other party the right to set aside the arbitration agreement [80]. Nevertheless, a breach of confidentiality may give grounds to the following effects:

Injunction by a Tribunal with Competent Jurisdiction

A tribunal can issue an injunction against future breaches of confidentiality. This was the position of *Equatoriana Fishing Ltd. Vs. A Mediterraneo Trawler Supply AS* [81], but if the horse has bolted from the stable, such an injunction appears to be of limited value if arbitration information has been disclosed [81]. In arbitration proceedings taking place in Switzerland, both courts and arbitral tribunals have jurisdiction to order interim measures (Art. 183 para. 1 and 2 of PILA). However, a party who wants to secure confidentiality will want to avoid state court proceedings, since such proceedings would not be confidential [82]. It is thus advisable that such party requests interim measures from the arbitral tribunal itself. The next issue is to identify the source of unwanted disclosures, in order to enable the arbitrators to direct their orders at specific entities [83]. Since the arbitrators' authority is limited against parties to the dispute, it should be contemplated that any third party accessing confidential information such as an expert witness enters into a separate confidentiality agreement providing for the jurisdiction of the same arbitral tribunal in case of a dispute [84]. In Singapore, an application can be made to court for an injunction to prevent future breaches and the court can impose sanctions for such breaches if the party is within the jurisdiction of the court [84]. A further question here is whether an injured party can claim repudiatory breach of contract and terminate the arbitration proceedings. Although the issue of sanctions against parties to arbitration is unclear, arbitrators are held to their duty of confidentiality. Arbitrators who breach their duty of confidentiality may be subject to termination of their contract, or even to personal liability.

Claims for Damages

The contractual source of confidentiality determines the sanctions of a breach. This implies that compensation for a prejudice suffered will be assessed under the contractual liability regime. In principle, the party that ignored the obligation of confidentiality will engage its responsibility and will have to compensate the prejudice suffered by the other party as a result of the disclosure [84]. The injured party could sue the adverse party in order to obtain monetary damages as was in the case of *Equatoriana Fishing Ltd. Vs. Mediterraneo Trawler SupplyAS*, but those are sometimes difficult to establish since certain conditions must be satisfied before he can claim the said damages. Indeed, the injured party will have to show that (i) a duty of confidentiality exists between them, (ii) a breach of that duty has been committed, (iii) the adverse party is the author of the breach, (iv)the latter caused an injury, and (v) the injury is quantifiable and compensable in monetary damages [84]. Further, it is difficult to assess the monetary effect of unauthorized disclosures of information; without a clear calculus for the determination of monetary damages, any damage awards for breach of confidentiality are arbitrary [84]. As Gaillard and Savage conclude, it will not be easy to establish the source of disclosure, and it may be difficult for the disclosing party to prove that it suffered a loss as a result of any breach by its adversary [84].

Effects of Transparency in Arbitration Proceedings

Investment disputes under international investment agreements have a public characteristic, fundamentally because they incorporate claims which are directed towards host state activities in exercising their public power [85]. However, as discussed above, investment disputes were usually handled with procedures based on the approach of ICA, where privacy and confidentiality play a massive role, thus the possibility for the public to receive information or to participate in a process was almost excluded. This constitutes an important factor behind states starting to incorporate elements in their investment agreements and treaties increasing the degree of transparency [85]. Our discussion here is based on the effects of transparency when it has been respected and the effects when it has been breached.

Effects of Transparency When It Has Been Respected

Jeremy Bentham famously said: Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial [86]. Thus, the respect of transparency will ensure justice, predictability, consistency, etc. The aim of this head is to discuss the advantages of transparency which can be witnessed only when transparency has been respected in arbitration proceedings [86]. These advantages include the following:

Transparency Ensures Predictability and Consistency

The respect of transparency ensures predictability and consistency to business people who dislike uncertainty. More visible proceedings and transparent award will ensure high level of predictability and consistency which will thus, enhance the legitimacy of the process itself, with parties having greater understanding of it [87]. Furthermore, although arbitral awards are exclusively binding only on the parties involved and a compendium of authorities readily cases, the publication of arbitral awards would undoubtedly provide a degree of predictability and contribute to arbitral jurisprudence [87], which could in turn help parties to understand the inner workings of arbitration, make informed decisions as to their chances of winning, and avoid unnecessary disputes [73]. These numerous advantages will make the parties to always submit their disputed to arbitration.

The Respect of Transparency Ensures Public Trust and Confidence towardsArbitration

The effect of enhanced transparency on arbitral awards is twofold. First, arbitrators would be aware that their decisions would be dissected by academics and professionals [87]. Second, because the public, the parties, and other stakeholders would be able to see the reasoning of the arbitral panel, the arbitral process will benefit from greater public confidence and parties would face greater pressure to abide by their awards [77]. Transparency provides solid grounds for increasing the legitimacy of ADR methods, most importantly ISA, as it has long been standing in the center of criticism based on the lack of transparent functioning and accountability, let be related to documents produced in the procedure, the reasoning of the award, evidences presented by the parties or the very existence of the dispute. Thus, higher degree of transparency can be used to tackle certain criticisms directed towards ISA since its appearance in Arbitration.

Transparency Helps to Evaluate the Quality of Services Provided by Individual Arbitrators and Arbitral Institutions

More transparency may help users to control and evaluate the quality of services provided by individual arbitrators and arbitral institutions. With transparency of arbitral awards, future arbitrating parties will be able to access how a particular arbitrator handled past similar proceedings in order to determine whether that individual will be appropriate to be appointed in a similar future arbitration or not, based on his or her level of specific technical skills [77]. Transparency will also make people learn from the mistake of others in order to avoid future disputes.

Transparency Ensures Compliance with International Obligations Relating to Human Rights and Business

Transparency is an important instrument in the monitoring of the activities of multinational companies. The United Nations Guiding Principles in Business and Human Rights (UN Guiding Principles), adopted in 2011, set forth obligations on behalf of states and business enterprises, according to which they have the duty and responsibility to protect and respect human rights in their business related activities conducted under domestic or foreign jurisdictions [77]. While making remarks on the UN Guiding Principles, the Special Representative of the Secretary-General pointed out that "The responsibility to respect human rights requires that business enterprises put in place policies and processes through which they can both know and show that they respect human rights in practice". Bearing in mind the sensitive public issues and large amounts at stake in ISA, as well as the potential impact which the outcome of such cases may have, a higher degree of transparency assists in complying with obligations set out by the UN Guiding Principles [77].

Encourages Progress and Improvement of State Policies in Connection with the Conclusion of International Agreements and Treaties

Higher degree of transparency constitutes an important instrument in the development of states' approach towards the conclusion of inter-state agreements, since future challenges can be tackled easier with the knowledge acquired from previous cases. Information relating to previous ISA procedures and the publication of rendered awards are valuable assets for states when it comes to the preparation and drafting of investment treaties. However, a lower degree of transparency deprives states from including already-existing knowledge in their policies regarding the conclusion of such agreements [88].

Contributes to the Education and Training of Arbitrators

Access to arbitral awards may also contribute to the education and training of future and less experienced arbitrators. Academics and practitioners are also set to benefit from the publication of arbitral awards in that, they will have the opportunity to understand, analyze, critique, and improve the dispute resolution system. The non-publication of arbitral award leaves parties, arbitrators, and judges without guidelines in legally and factual similar cases. Also, the efficiency of the proceedings would benefit from the public availability of arbitral award [87].

Ensures the Protection of Foreign Direct Investors

Foreign investors benefit from increased transparency, since the publication of arbitral awards in investment matters provides them with valuable information regarding host states' regulations and policies. Publishing arbitral awards in investor-state transforms the claim raised by the investor against the host state visible and publicly accessible, thus, third party investors can get an insight on challenges brought against [89]. When assessing whether the investment-related regulations of a host state might be suitable for a particular foreign investor, knowledge acquired from previous arbitrations, where host state laws have been challenged provides a great advantage. Furthermore, an overview of a host state's regulatory policy increases predictability with respect to its investment-related legislation [90].

Effects of Transparency When It Has Been Breached

While the parties involved in a commercial arbitration can voluntarily disclose that their disputes involve public interest concerns, such voluntarism is rarely seen in practice because parties prefer to keep their disputes private [91]. It is reasonable that private disputants be given the choice of a private forum to settle their disputes. However, it is undesirable to allow multi-national corporations to shroud their corporate practices, some of which may possibly affect millions of people behind a confidentiality clause. [77]. Because of the importance attached to transparency, the breach will give the party a number of remedies. A party in arbitration is given the right to apply for the removal of an arbitrator if he/she can prove that the arbitrator was partial or have a financial interest in the outcome of the arbitration. Also, he can challenge the award in the court where it was made or resist enforcement of the award where it is sought and lastly, he/she can set aside the said arbitral award [92], as examined below:

A Breach of Transparency Attracts an Application for the Removal of the Arbitrator

If one party to arbitration finds that an arbitrator is partial and dependent, the party in question may apply for the removal of the arbitrator on the ground that the arbitrator was not impartial and independent. For the challenge to be considered, initially, there should be applicable laws which determine the ground for challenging arbitrators. In an institutional arbitration, these grounds are enumerated in the institutions "rules whereas, in the case of pure ad hoc arbitration, impartiality and independence of the arbitrators is measured in the light of the local arbitration law, usually by the judicial courts of the seat of arbitration. Therefore, challenging the arbitrators could provide potential grounds for national courts to get involved in arbitration proceedings [92]. The court will intervene to remove the arbitrator in a situation where he has been found bias and when he has financial interest in the outcome of the arbitration. Arbitration Act of 1996 provides in it Article 24(1) (a-d) that a party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on the grounds that; circumstances exist that give rise to justifiable doubts as to his impartiality; that he does not possess the qualifications required by the arbitration agreement; that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so; that he has refused or failed properly to conduct the proceedings, or to use all reasonable dispatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant [93]. However, Article 24, (2)-(6) provides that if there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that institution or person. The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending. Article 24(4) also proves that, where the court removes an arbitrator, it may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses, or the repayment of any fees or expenses already paid. Also, Article 24(5) posits that, the arbitrator concerned is entitled to appear and be heard by the court before it makes any order under section 24 (2).

Challenging the Award in the Court of the Country Where Arbitration Takes Place

The UAA recognizes to parties the rights of challenging the arbitrators. Nevertheless, it does not enumerate the grounds under which such challenging may be undertaken. Article 7, which deals with matters of challenging arbitrator, only stipulate that the challenging of an arbitrator will be admitted only for the grounds revealed after the arbitrator has been appointed (paragraph 5). Thus, it may be understood through this provision that the challenging of an arbitrator will be exercised only when the appointment procedure has been carried out whereas, before such procedures, parties or one of them still has the freedom to go against the appointment of an arbitrator [94]. The evident partiality does not require a show of actual bias or corruption, but rather is focused on whether an arbitrator's non-disclosure might lead to a reasonable perception of bias [95]. The test for evident partiality is slightly more lenient in Texas state courts. This is justified in the leading case of *Burlington Northern Railroad Co. v. TUCO, Inc.*, where the Texas Supreme Court found evident partiality where an arbitrator failed to disclose explaining that he had accepted a substantial referral from the law firm of a non-neutral co-arbitrator during the course of the arbitration. [95]. The court held that: A prospective neutral arbitrator selected by the parties or their representatives exhibits evident partiality if he or she does not disclose facts which might, to an objective observer, create a reasonable impression of the arbitrator's partiality. The Texas Supreme Court revisited the evident partiality standard five years later in *Mariner Financial Group, Inc. v. Bossley* [95]. In that case, the court found that a fact in issue existed as to whether the chair of the arbitration panel was evidently partial based on the arbitrator's failure to disclose a prior adverse relationship with one of the parties' expert witnesses. The court emphasized that under TUCO's objective test, the consequences for non-disclosure are directly tied to the materiality of the unrevealed information.

Resist Recognition and Enforcement of the Award

Due process or procedural fairness is an important ground for resisting recognition and enforcement of arbitral award. The New York convention gives no reference as to which law is to govern the determination of procedural fairness, and this silence has led to international differences [11]. The court of the forum state will naturally have its own concept of what constitutes a fair hearing. With this regard, the New York Convention essentially sanctions the application of the forum state's standards of due process in a leading case in the US. [11]. If there can be said to be a system of international commercial arbitration, then the keystone in that system is the New York Convention, to which most countries in the world are parties. The committee established by the United Nations Economic and Social Council to draft the New York Convention did not envisage an agreement that would sacrifice any state's ability to formulate and protect its own public policy, but rather an agreement that would facilitate the enforcement of foreign arbitral awards [and] at the same time maintain generally recognized principles of justice and respect the sovereign rights of States [96]. However, where challenges are made to enforcement of an arbitral award, the challenge will normally be made pursuant to Article V of the Convention, which sets out that recognition and enforcement may be refused where [97]: a) A party is under some incapacity or the agreement to arbitrate is not valid either under the law to which the parties have subjected it or where the award was made; b) The losing party was not given proper notice of arbitral proceedings or was otherwise unable to present his case; c) The award deals with a dispute beyond the scope of the submission to arbitration; d) The arbitral procedure was not in accordance with the agreement of the parties or the law of the seat state; e) The award has not yet become binding, has been set aside, or suspended; f) The subject matter of the dispute is not capable of settlement by arbitration in the enforcing state; and g) The enforcement of the award would be contrary to the public policy of that country [98]. These limited grounds are the only grounds on which enforcement can be refused and the enforcing court is not obliged to refuse enforcement if one of the grounds is proved to exist. Notably, the Convention does not allow for the review of the merits of an arbitral award. This was the position in the case of *Kanoria v Guinness*, [99] where the English Court of Appeal decided that the respondent had not been afforded the chance to present his case when critical legal arguments were made by the claimant at the hearing, which the respondent could not attend due to serious illness. The court in that circumstance decided that this is an extreme case of potential injustice and resolved not to enforce the arbitral award. However, a different view was held in *Minmetals Germany v Ferco Steel*, [100]. In this case, the losing party (respondent) in arbitration in China opposed enforcement in England on the basis that the award was founded on evidence that the tribunal had obtained through its own investigations. An English court rejected his defense on the basis that the respondent was eventually given an opportunity to ask for the disclosure of evidence at issue and comment on it, but he declined to do so. The court held that due process defense to enforcement was not intended to accommodate circumstances in which a party failed to take advantage of an opportunity duly accorded to it.

Set Aside the Award

The underlying principle in the law of arbitration with regard to the finality of the Award is that: an award given at the end of the process is binding and enforceable. Thus, the finality of the award is not only recognized legally but is also considered in law as an implied term of the arbitration clause [101]. Section 26 of the Arbitration Act of Sri Lanka, Section 58(1) of the English Arbitration Act of 1996, Section 35 of the Indian Arbitration and Conciliation Act of 1996 and Article 31(1) of the UNCITRAL Model Law all specify that (subject to the limited grounds of appeal as set out in the respective laws) an arbitral award shall be final and binding on the parties and persons claiming under them. Ordinary appeals are not available and, a party may contest the validity of the award on a limited number of grounds. In conducting the arbitration proceedings, arbitrators must treat the parties equally and give them the same opportunity to present their case. Violation of this principle is grounds for setting aside an award. The grounds upon which parties to such proceedings may be based may be that: There was no arbitration agreement, or the arbitration agreement was null and void or has expired by the time the tribunal gave its award; The arbitral tribunal failed to comply with its terms of reference; There was a lack of due process in the proceedings; The award does not contain reasoning; or The arbitral tribunal violated a rule of international public policy of Member States. Under article 25 of the OHADA Uniform Act, recourse against the award is not the exclusive right of the award debtor and, the setting aside procedure is not the exclusive means of recourse against an award. However, the other procedures of recourse contained in article 25 are not brought before the court that has jurisdiction to set aside. Also, Article 27 of the Uniform Act allows the setting aside application even after the award has been declared enforceable, though this must be done within one month as from the date of notification of the award but are laid before the arbitral tribunal. A third party who was not called, and who has suffered harm as a result of the award, may file an objection before the arbitral tribunal.

CONCLUSION AND RECOMMENDATIONS

From the foregoing, we have examined in detail the concept of confidentiality and transparency in arbitration proceedings without leaving aside how both concept manifests in practice by parties bound by arbitration contract. Thus, after a lucid examination of the effects of confidentiality and transparency, it is but obvious to submit that the concept of confidentiality and transparency are one and indivisible. Against this backdrop, the following recommendations are inevitable:

It is recommended that Arbitral institutions especially those under OHADA Law should consider repealing and replacing the outdated arbitration rules in its arbitration system in order to meet with the current trend of international commercial arbitration.

It is also recommended that arbitral institutions should strive to remove uncertainties on confidentiality and transparency protection regime in international arbitrations. This goal can only be attained by making detailed confidentiality and transparency provisions which cover important aspects of arbitration rules and regulations.

Also, parties to arbitration are advised to draft a detailed confidentiality and transparency clause in the arbitration agreement stipulating relevant provisions.

Parties are also advised to choose arbitral institutions which make provision on confidentiality and transparency. For example, New Zealand Arbitration Act which makes detailed provisions on confidentiality and the U.S., and which do not impose any legal duty of confidentiality.

However, effective and efficient implementation of the aforementioned recommendations by all the relevant parties and institutions governing arbitration will certainly go a long way to ameliorate and guarantee trusts and confidence to arbitration as a neutral forum for disputes settlement by parties, inter-states and the globe at large.

REFERENCES

1. Emerson Frank D. History of Arbitration Practice and Law. *Cleveland State Law Review*; 1970. 19 (1). 155-156pp.
2. Gabor S. Relations between a Private Environment and a Fundamental Requirement, maters. Thesis. *Tiburg University, 2016, 6pp.*
3. Trakman L. Legal Traditions and

International Commercial Arbitration. American Review of International Arbitration. *UNSW Law Research Paper No*. 2007-29. 2007, 5-6pp.
4. Newcomb JT. New Light on Jay's Treaty. *American Journal of International Law, 1934,* 28 (4), 686-689pp.
5. Lowenfeld AF. The ICSID Convention, Origins and Transformation. *Georgia Journal of International and Comparative Law*. 2009, 38 (1): 49-53pp.
6. Petrochilos G. Introductory Note to the 2010 UNCITRAL Arbitration Rules. *International Legal Materials*. 2010; 49 (6). 1640-1643pp.
7. Twiss T. International Arbitration in the Middle Ages, Law Magazine and Law Review. 1896, 22, (1); 6-7.
8. Slomanson WR. Historical development of arbitration and adjudication, Miskolc. *Journal of International Law*. 2004; 1(2): 238p.
9. Ruddahindwa JB. International Commercial Arbitration in Africa: The Organization for the Harmonization of Business
10. Law in Africa (OHADA) Set the Tone.*Indiana University. 2011.* 7p.
11. Current Member States include Benin, Burkina-Faso, Cameroon, Central African Republic, Chad, Union of Comoros, Congo, Cote d'Ivoire, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Niger, Senegal and Togo.
12. Sheshe B. The procedure for Challenging and Resisting Arbitral Award., Master's Thesis. University of Dschang, Faculty of Law and Political Science. 2017. 3p.
13. Paulsson J., Rawding N. The trouble with confidentiality.*Arbitration International. 1995;* 3; 315-319pp.
14. Ajibo KI. Confidentiality in international commercial arbitration: Assumptions of implied duty and a proposed solution. *Latine American Journal of International Trade Law*. 2015. 3 :337-359pp.
15. Ruscalla G. Transparency in international Arbitration. *Gro JRL*. 2015. 3(1), 1-26p.
16. Catherine A. Transparency in International Commercial Arbitration. 2006, 54; 1301p.
17. Richard S. Is Arbitration Confidential? *Fwnwick Elliot Aldwych House*. 2013. 1p.
18. Zealand Arbitration Act of 1996 Section 14A.
19. Ansari J. Party autonomy in arbitration: A critical analysis. *Researcher*. 2014, 47: 53 (ISSN: PP.1553-9865).
20. Abdulhay S. Corruption in International Trade and Commercial Arbitration. London: *United Kingdom Kluwer International*. 2004. 159p.
21. Redfern, Hunter. Law and Practice of International Commercial arbitration. Lecture Note. 1999. 10p.
22. Edward R Leahy, Carlos J Bianchi. The Changing Face of International Arbitration. *J Intl Arb.* 2000:17 (4): 1pp.
23. UNCITRAL Arbitration Rules Article 25(4). Dimolitsa A. Institutional rules and national regimes relating to the obligation of confidentiality on parties in arbitration.*ICC Ct Bull*. 2009. Supp 5: 8pp.
24. International Chamber of Commerce ICC Rules of Arbitration (2012), art 34(2).
25. International Chamber of Commerce (ICC), Rules of Arbitration, art. 21.3 (effective 1 January 1998).
26. Article 73 [a] of WIPO Arbitration Rules.
27. Henkel C. The Work-Product Doctrine as a Means toward a Judicially Enforceable Duty of Confidentiality in International Commercial Arbitration, 37 N.C. *J. of INTL L*. 2012. 1059-1060pp.
28. Jeffrey W. Sarles. Solving the Arbitral Confidentiality Conundrum in International Arbitration Law. 5pp.
29. *Dolling-Baker v. Merrett* (1990) 1 WLR 1205 (K.B). Using the Dolling-Baker decision as the test for finding an implied duty of confidentiality in arbitration proceedings. 2001. 977pp.
30. Lloyd's Rep. 643 (Eng. C.A. 1998). For an overview of the case and brief discussion of its implications, see Audley Sheppard, Case Comment.
31. *Ali Shipping Corp. V. Shipyard "Trogir";* 1(3) INTL ARBS. L. REV. 53-54 (1998).
32. *United States v. Panhandle E*. Corp. 118

F.R.D. 346 (D. Del. 1988).
33. Gu Weixia. *American Review of International Arbitration*. 2006. 15: 9pp.
34. Rule 6 of the International Centre for the Settlement of Investment Dispute (ICSID) Rules of procedure for arbitration proceedings.
35. Misra and J Jordans R. Confidentiality in International Arbitration: An Introspection of the Public Interest Exception, 23 (1). *Journal of International Arbitration*. 2006, 39. 39-40pp.
36. *Esso Australia Resources Ltd v Plowman* (Minister for Energy and Minerals) [1995] 128 ALR 391 at 404.
37. Michael Y. Simon C. Confidentiality in international arbitration: Does the exception prove the rule? Where now for the implied duty of confidentiality under English Law?*ASA Bulletin. 2009, 27 (1):* 26-47pp.
38. Pedro J. Martinez-Fraga. Juridical Convergence in International Dispute Resolution: Developing a Substantive Principle of Transparency and Transnational Evidence Gathering. LOY. U. CHI. *INTL L. REV.2012;* 37. 71pp.
39. Julie A. Maupin. Transparency in International Investment Law: The Good, the Bad, and the Murky, in Transparency in International Law. 2013. 142pp.
40. Loquin E. Les Obligations de Confidentialité dans l'Arbitrage, 2 Revue de l'Arbitrage. 2006. 323, 344pp.
41. Hope J. Transparency in international arbitration Law. 2016. 1pp.
42. UNCITRAL, Report of Working Group II (Arbitration and Conciliation) on the Work of its Fifty-eighth Session (New York, 4-8 February 2013), A/CN 9/765, 13 February 2013, para 44. See also, Levine, E. (2011). Amicus Curiae in International Investment Arbitration, the Implication of an Increase in Third-Party Participation.
43. UNCITRAL Rules on Transparency. Articles. 4-5pp.
44. UNCITRAL Rules on Transparency. Article 6, paras. 1-3pp.
45. Harwood S. *An introduction to international arbitration: A guide from Stephenson Harwood* LLP. 2016. 9pp.
46. Tsafack D. Confidentialité Dans La Procédure Arbitrale Dans Le space OHADA. *Revue Trimestrielle De Droit Africain*. 2016. 57-73pp.
47. Blackaby N. Public Interest and Investment Treaty Arbitration, Investment Treaties and Arbitration, ASA Swiss Arbitration Association, Conference in Zurich on January 25, 2002.
48. Charles S. Baldwin. IV, Protecting Confidential and Proprietary Commercial Information in International Arbitration, 31 TEX. INTL L J. 451, 456 n.21 at 456 (citing Hassneh Ins. Co. of Israel v. Mew, 2 Lloyd's Rep. (Q.B. 1993). 1996. 243-247pp.
49. Böckstiegel (President), Kaufmann-Kohler, Donald M. McRae. Procedural Order NO.5 Regarding Confidentiality. 2012. 15-22pp.
50. *John Forster Emmott v. Michael Wilson & Partners Ltd*. EWCA Civ 184. 2008.
51. *Dolling-Baker v Merrett*. 1991. 2 All ER 891.
52. Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.
53. WIPO Rules Article 52-75.
54. Article 20.7 of the ICC Arbitration Rules.
55. Baizeau D. Richard J. Addressing the issue of confidentiality in arbitration proceedings: How is this done in prqctice? INTL L Review. 62-63pp.
56. Olivia de Lovinfosse. Arbitration and confidentiality: Illusion or disillusion? *Universite Catholique de Louvain*. 2015. 44p.
57. Hillind HW. LLB, op cit. 2015. 13-14pp.
58. LCIA Rules 30.3.
59. Shirlow E. Three Manifestations of Transparency in International Investment Law: A Story of Sources, Stakeholders and Structures.*Goettingen Journal of International Law* 8, 1. 2017. 73-99pp.
60. Nah Thomas F. International Arbitration Law, unpolished note. 2016. 72p.
61. Francis Ulrich NdingaYocka. The features of the arbitration proceedings under the OHADA Uniform Act on arbitration law. *Global Scholars Journal of Law and Conflict Resolution*. 2014. 1(1): 1-15pp.
62. Pair LM. Consolidation in International

Commercial Arbitration, the ICC and SwissRules. *University of St. Gallen*. 2011. 210-213pp
63. Sands PJ. Mackenzie R. International Courts and Tribunals, Amicus Curiae: In Max Planck Encyclopaedia of Public International Law. *Oxford University Press,* online ed, 2008. 2011.
64. Ben Juratowitch QC. op. cit. 2017. 5-6pp.
65. UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (2014).
66. Noussia K. Confidentiality in international commercial arbitration: A comparative analysis of the position under English, US, German and French Law Berlin. *Springer. 2010.* 179p.
67. Comrie-Thomson P. Necessary and practical: A national law obligation to publish international commercial arbitration awards. 2016. 9p.
68. Mellersh N. op. cit. 2015. 1p.
69. *Esso Australia Resources Ltd v Plowman* (1985) 183 CLR 10 (HCA).
70. Cidy G, at P. 138. And Gu, W, at p. 25.
71. Gu, W, (2006) op. cit., at P. 27.
72. San Laverde, op. cit., at P. 122.
73. Awojobi AF. Confidentiality and Third-Party Participation in International Investor-StateArbitration.*University of Cape Town. 2015.* 59-61pp.
74. Knahr C. Reinisch A. Transparency versus Confidentiality in International InvestmentArbitration. The BiwaterGauff Compromise. *The Law and Practice of International Courts and Tribunals*. 2007. 97: 105p.
75. Simon G. Damages for Breach of Arbitration Agreements, in: Arbitration in Switzerland, The Practitioner's Guide, Part XII. *Wolters Kluwer Law & Business. 2013. 7p.*
76. Bagner H. Confidentiality. A fundamental principle in international commercial arbitration. *Journal of International Arbitration. 2001.* 18(2): 245p.
77. Kluwer Law International. Printed in Netherlands.
78. MIchael Burkhardt PatrikGubler. Memorandum for Respondent. *University of Basel*. 11p.
79. Smeureanu IM. Confidentiality in International Commercial Arbitration. *Kluwer Law International*. 2011. 169p.
80. Lembo S. Guignet V. Confidentiality in Arbitration: From Myth to Reality. 2015. 1-20pp.
81. Olivia de Lovinfosse, op. cit. 2015. 71-74pp.
82. Szalay G. Arbitration and Transparency Relations between a Private Environment and aFundamental Requirement.*Tilburg University LLM International Business Law*. 2016. 21-23pp.
83. Ben Juratowitch QC. Seminar on 8 June 2017 in London on Difficult Issues in Commercial, Investor-State, and State-State Dispute Resolution: Differences and Commonalities, Departing from confidentiality in international dispute resolution.
84. Andrew T. Confidentiality v. Transparency in Commercial Arbitration: A false contradiction to overcome Transnational Notes Reflection on transnational litigation and commercial Law. December 28, 2012.
85. Fernandez CG. Puyana DF. Principles of Transparency and Inclusiveness as Pillars of Global Governance. The BRICS Approach to the United Nations. *BRICS Law Journal*. 2015. 2 (2): 15-16pp.
86. Suh GP. *Internal Mechanisms for the Settlement of InvestmentDisputes in Cameroon.* LLM Dissertation, (Unpublished). University of Dschang. 2016.
87. Fiezzoni SK. Striking consistency and predictability in international investment law from the perspective of developing countries. *Frontière of Law in China. 2012.* 7, Issue.
88. Poorooye A. Ron´an Feehily, op. cit. 2017. 312p.
89. Alahill N. The Optimization of Court Involvement in International Commercial Arbitration.*University of Manchester. 2016.* 101-104pp.
90. Francis Ulrich NdingaYocka, op. cit. 2014. 1-15pp.
91. Trachtenberg M. Challenging Arbitration Awards. 2014. 6P.
92. Hanson J. Setting Aside Public Policy:

The Pemex Decision and the Case for Enforcing International Arbitral Awards Set Aside as Country to Public Policy. 2014,245-287pp.

93. [93]. Watson Farley and Williams. Enforcement of Arbitration Award. 2016, 3pp.
94. New York Convention for the recognition and enforcement of arbitral award.
95. *Kanoria and Others v. Guinness* [2006] EWCA Civ 222; [2006] Arb LR513.
96. *Minmetals Germany v. Ferco Steel* (1999) XXIV YbkCommArb 739.
97. Mustill and Boyd. Commercial Arbitration (2nd Edition) page 47.
98. Chandak J. The concept of public policy in setting aside of arbitral awards: A comparative study of the approach of Courts in Sri Lanka and India. 1-2pp.
99. Rudahindwa JB. International Commercial Arbitration in Africa: The Organization for the Harmonization of Business Law in Africa (OHADA) Sets the Tone. Indian University School of Law. 2011. 56pp.
100. Article 26 of the 1999 Uniform Act on Arbitration.
101. Mamoudou S. Effectiveness and remedies of arbitral awards in OHADA's system and in the People's Republic of China Wuhan University Law School. *Journal of Politics and Law: 2011. 4 (1).* 68-69pp.

Cite this Article

Ayuk Macbert Nkongho, Nchufua Anita Nyitioseh. Confidentiality and Transparency: Balancing Competing Claims under OHADA Law on Arbitration Proceedings. *Journal of Taxation and Regulatory Framework*; 1(1). 17–39p.