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Addis Ababa University
College of Law and Governance Studies
School of Law
Multi-tiered Amicable Construction Dispute Resolution in Addis Ababa:
Legal and Institutional Dimensions.

By:- Samuel Tadesse

Adviser: Dr. Aschalew Ashagre

A Thesis Submitted to the School of Graduate Studies Addis Ababa University in partial fulfilment of the requirements for the degree of Master of law (LL.M) in Business law

March. 16, 2023
Addis Ababa, Ethiopia

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Declaration

I, Samuel Tadesse, hereby affirm that the work contained in this thesis is entirely original, has not been submitted for credit at any other university, and the materials used in this paper have been properly acknowledged.

Declared by

Name: - Samuel Tadesse

Signature_____

Date_____

Name of Advisor: - Dr. Aschalew Ashagire

Signature_____

Date_____

Acknowledgements

Almighty God: I appreciate your help; you have always been dependable and consoling. God deserves all the praise for designing my destiny and path.

Glory to the All-Seeing God, who is the Originator and Source of All Life, and I Thank Him for His Grace in providing for my Physical Well-being and His Direction in My Study.

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Acronym

- AACCSA-AI=Addis Ababa Chamber of Commerce and Sectoral Association Arbitral Institute.
- AACCSA= Addis Ababa Chamber of Commerce and sectorial association.
- BATCoDA=Building and Transport Construction Design Authority office.
- DAB=Dispute Adjudication Board.
- DRA=Dispute Resolution Adviser.
- DRB=Dispute Review Board.
- ECCSA-AI=Ethiopian Chamber of Commerce and Sectoral Association Arbitral Center.
- EACC = Ethiopian Arbitration and Conciliation Centre.
- FIDIC =French acronym for the International Federation of Consulting Engineers.
- ICC=International Chamber of commerce.
- MoWUD=Ministry of Work and Urban Development.
- MTDRM= Multi-tiered dispute resolution mechanism.
- PPPAA=Public procurement and property administration Agency.

Abstract

The construction sector has a significant impact on the growth of a state, either directly or indirectly. Since the growth of infrastructure is crucial for Ethiopia. However, due to the numerous players in the market which makes things complicated, disagreements are frequent and often unavoidable. So, it needs to use dispute resolution procedures properly.

Globally, strategies of dispute prevention and amicable dispute settlement are strongly advised as being a more efficient way to resolve disagreements. One of the most productive ways to resolve a disagreement amicably is by using each multi-peaceful tier technique step-by-step and employing a variety of amicable tools are efficient.

Therefore, the goal of this study is to analyze the legal framework and institutional practice of amicable dispute settlement via multi-tier mechanisms in Ethiopia, particularly in the Addis Ababa construction industry. Further, the study adopted a qualitative research design. Both doctrinal and empirical approaches were employed in data collection.

However, multi-stage peaceful conflict settlement mechanisms, such as med-arb and mini-trials, are uncommon in the construction industry. Furthermore, disputants rarely settle disputes using multi-tier amicable resolution processes.

Consequently, developing a thorough legislative framework, guidelines and procedures, raising awareness, and introducing institution centres that serve both the nation and the rest of the world suggested a major recommendation.

Prevention of dispute is Better than cure.

‘Sai On Chung’

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Chapter One

1. Research proposal

1.1. Background of the Study

In many countries, the building sector has played a significant economic role. In a similar vein, the Ethiopian economy is expanding and the construction industry is essential to it. The construction sector is dynamic and complicated by nature due to the involvement of several stakeholders, including owners, suppliers, financiers, designers, contractors, consultants, employer representatives, subcontractors, and other sector actors. Though, disagreements in the sector are common and occasionally unavoidable.¹ The industry needs active management, adequate dispute minimization, and amicable dispute resolution methods to move forward and finish the job on schedule.²

Further, the industry has created mechanisms for managing disputes through practices for both dispute prevention and resolution.³ It is possible to categorize dispute prevention methods into Partnering, DRA (Dispute Resolution Adviser), and DRB (Dispute Review Boards). These mechanisms involve the collaboration of project management and neutral experts hired at the start of the relationship between the contracting parties to prevent disputes from developing into actual disputes.⁴

Moreover, if conflict avoidance mechanisms aren't successful in resolving disputes, other choices include the diplomacy processes, consensual methods, and hybrid methods, which contain features of both. The parties' participation is voluntary in the most informal processes, and the third party rarely enters and exercises minimal power upon them respectively. In the end, binding dispute resolution is utilized to resolve the matter.⁵

¹ Badmos & Raji Barakah . A, the conceptual framework of modern construction dispute resolution in Nigerian construction industry, (2018) p. 141-142.

² *ibid.*

³ Fisher R. & Ury .W, *Getting to Yes: Negotiating Agreement Without Giving*, In: Bruce Patton (ed). 2nd edition(1991).

⁴ *ibid.*

⁵ *ibid.*

The sector's method for reducing, and peaceful dispute settlement is always a top priority, although in many cases, different claims may not be resolved through pre-real dispute settlement methods while being resolved either via expensive and time-consuming arbitration or litigation.⁶

The construction sector has grown as Ethiopia's economy has remained stable. Ethiopia is also at risk from this. Due to the building industry's complexity and the ensuing disputes.⁷ Although the self-regulatory regime addressing the issues of proactive and peaceful dispute resolution in the construction industry is vital for the performance and sustainable expansion of the sector.

Although it is difficult to claim that the country's current laws are exhaustive, there aren't any precisely articulated guidelines or procedures that encourage the use of a multi-tiered approach to settling disputes amicably. Additionally, peaceful dispute resolution procedures such as med-arb and mini-trial are unexpected, and there is no apparent practice of using multi-tier amicable dispute solutions exclusively to resolve conflicts. In general, Ethiopia's peaceful, multi-tiered dispute resolution process is not adequately governed by the law.⁸

Furthermore, there are no visible organizations to sustain the tradition of peaceful dispute resolution, and it is neither well-established nor feasible, and a legal requirement for conciliation is violated without the appropriate justification in court. The distinction between conciliation and mediation is not entirely captured by the law, which makes implementation challenging. The primary goal of the study is to pinpoint the shortcomings in the amicable mechanism for resolving workplace disputes as well as the practical and legal issues they raise and to provide its findings and suggested solutions.

1.2. Statement of the Problem

The lawsuits and disputes in construction are a direct outcome of the industry's intricate work's intrinsic complexity.⁹ Disputes in construction projects are viewed as an unavoidable practice, thus finding acceptable and effective procedures to resolve them is crucial for timely project

⁶ *ibid.*

⁷ Tecele Hagos, 'Adjudication and Arbitrability of Government Construction Disputes' (2009). 3(1) Mizan Law Review 4(2009) [here in after, Tecele. H, Arbitrability of Government Construction Disputes].

⁸ *ibid.*

⁹ Sagar Soni, Mukesh Pandey and Sohith Agrawal, 'Conflicts and Disputes in Construction Projects: An Overview International Journal of Engineering Research and Applications' (July 2017) 40.

completion.¹⁰ A further factor that greatly helps the successful completion of projects within the allotted budget, time, and quality is the use of amicable dispute settlement strategies and the timely, efficient, and professional resolution of disputes that arise in the construction industry.¹¹ Unresolved construction conflicts, however, affect the larger social, economic, and political realms of society.¹²

A trained professional special adjudicator with industry-specific expertise and experience is necessary to resolve disputes surrounding the sector.¹³ A judge who has received training in both law and the building industry will be able to comprehend the technically sophisticated issues that arise in the field.¹⁴ To assure fairness and effectiveness in resolving such industry-specific issues that call for specialized expertise and experience, numerous dispute resolution procedures, including binding mechanisms, are in place in various regions of the world.¹⁵

On a global scale, it is strongly encouraged to use amicable dispute resolution channels to settle differences that are not managed or monitored through prevention. Compared to the official adjudication system, they are the most affordable and efficient method of resolving disputes in the construction industry.¹⁶ The effective resolution of construction disputes for both domestic and international building projects is attributed to several numbers of arbitration's beneficial qualities.¹⁷ Construction conflicts make up the majority of institutional arbitration cases in many countries, even at the domestic level.¹⁸ Construction disputes are decided by the Addis Ababa chamber of commerce more often than other particular business situations in Ethiopia, where it has long been the sole institutional arbitrator.¹⁹

An amicable settlement is recognized to be more efficient in terms of time, money, and predictability than arbitration and litigation. They don't frequently fail to provide a win-win

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

¹³ Michael J. Elliott, 'Arbitration and the Construction Industry' (1978) 3 *Glendale L. Rev.*, Vol, 29, 30-31.

¹⁴ *ibid.*

¹⁵ *ibid* 30.

¹⁶ David Kiefer and Adrian Cole, 'the guide to construction Arbitration, Suitability of Arbitration Rules for Construction Disputes, *Global Arbitration review*' (2017) ,81. (here after Kiefer and Cole)

¹⁷ *ibid.*

¹⁸ *ibid* 81.

¹⁹ The 2016, 2017 and 2018 report of the Addis Ababa Chamber of Commerce and Sectoral Association Arbitral Institution. The report is presented by Yohannis W/Gebriel who is Director of the Arbitration institute of Addis Ababa Chamber of Commerce and Sectoral Association.

resolution and maintain friendly relations between the disputing parties. Additionally, having a defined statutory provision for a multi-tiered, amicable dispute resolution procedure creates confidentiality, trust, and standard resolution mechanisms. All of these data demonstrate that amicable dispute resolution is being employed in the legal systems of many countries to address construction disputes.

Moreover, Ethiopia's present reality demonstrates the need to establish an efficient, modernized framework for dispute peaceful dispute resolution, which is crucial for institutionalized dispute resolutions that support the public justice system. This framework will be necessary for the fast-growing infrastructure development and construction via domestic and foreign investors.

The amicable dispute resolution processes particularly the multi-layer, however, are still minimally implemented in Ethiopia and therefore there is a backlog of building litigation in the courts.²⁰ Furthermore, since the 1940s, arbitration has been the primary institution in Ethiopia for administering justice after the courts.²¹

It is necessary to examine the legal framework and practical difficulties of resolving construction disputes through multi-stage friendly dispute resolution in Ethiopia, notably in Addis Ababa, for the reasons previously mentioned.

The paper looks at the existing legal structure for peaceful dispute settlement as well as the existence of organizations that employed amicable multi-tiered construction dispute resolution. It also introduces the concepts guiding friendly multi-tiered dispute resolution in the construction industry. In the contractual provisions, the construction partner has also included peaceful dispute settlement procedures, which the court finds difficult to carry out.

The Ethiopian construction industry does, however, employ a variety of legal dispute settlement procedures. They do not, however, pertain to the legislation's intended outcome, and most construction dispute cases are resolved by win-loss litigation. The study attempts to address the

²⁰ Kiefer and Cole (n16) 81-82.

Also the Federal High court data base that accessed in July 2, 2022 indicates, from 2009 up to 2014 E.C the pending case are 218 files and 966 dead files.

²¹ Hailegabriel G. Feyissa, 'the role of Ethiopian courts in commercial arbitration', Mizan Law Review, Vol. 4 No.2, Autumn, 2010, 46.

issue of the discrepancy between the legislation and practices in the field of construction dispute settlement, particularly amicable settlement.

1.3. Research questions

The investigation will tackle the following issues:

1. What does the term "multi-tiered dispute resolution mechanism" mean to Ethiopian construction in particular and the construction sector as a whole?
2. What institutions and legal frameworks are applied in Ethiopia's multi-tiered amicable dispute resolution procedures for the construction industry?
3. What are the practical and legal shortcomings in Addis Ababa or Ethiopia's amicable multi-tiered construction dispute settlement system?
4. In Ethiopia (Addis Ababa), what discretion does the party have to disregard provisions for multi-tiered amicable construction dispute resolution?

1.3. Objectives

1.3.1. General objective:

The overall goal of the study is to evaluate the difficulties or gaps in the law and practice that have arisen in Ethiopia/Addis Ababa while resolving construction disputes through multi-tiered amicable dispute resolution.

1.3.2. Specific objectives:

The research will address the following specific objectives:

1. To examine the idea of multi-tiered dispute resolution methods in Ethiopian construction in particular and the construction sector as a whole.
2. To investigate the institutions and legal frameworks employed in Ethiopia's multi-tiered construction amicable dispute settlement system.
3. To determine whether there are legal and practical loopholes in Ethiopia/Addis Ababa's multi-tiered construction amicable dispute settlement system.
4. To explain the party's discretion in disregarding Ethiopia's multi-tiered amicable construction dispute settlement provisions (Addis Ababa).

1.4. Scope of the study

The paper thoroughly examines and identifies the deficiencies in the legal and practical framework that prevent disputes from being resolved amicably through multi-tiered dispute resolution in Ethiopia, notably in Addis Ababa.

According to the country's pertinent legislation, the current legal system and practice evaluated the efficiency of peaceful dispute settlement. However, the investigation's focus will be on the gaps in law and practice that exist in multi-stage amicable dispute resolution processes for the construction industry.

1.5. Significance of the study

The study's relevance is as follows:

The study's conclusions are intended to be useful to judges, experts, mediators/conciliators, arbitrators, and arbitration institutions engaged in construction dispute settlement throughout Ethiopia. So that they could perform to the best of their abilities in scenarios involving amicable, and adjudicative dispute settlement. This prevents things like project completion delays, additional expenses, and strained business ties with the construction industry. Given that the subject is mostly unexplored and a delicate socio-economic problem in the country's current economic policy, it is too advantageous to begin and act as a springboard for further study on the problem. It also demonstrates to legislators the value of having a robust regulatory legislative framework for amicable multi-tiered construction dispute resolution.

1.6. Research Methodology

The research frequently concentrates on a limited amount of cases and in-depth interviews. Therefore, the qualitative study is the most appropriate research methodology for the work. Because of its adjustability and participants' varying subjective interpretations, a construction dispute resolution is commonly utilized. In the context of how they affect the construction sector, the researcher will explore and analyze theoretical, practical, and legal issues related to construction disputes and their resolution.

Consequently, both doctrinal and qualitative research is used in this work. Because it examines the theoretical and legal issues surrounding the resolution of construction disputes using secondary data sources, the researchers used a doctrinal approach.

The study contains the characteristics of qualitative research since it has focused on the explanations, justifications, or logical arguments of legal provisions and applicable instances to demonstrate the practical and legal difficulties encountered in resolving construction disputes. The conclusion of the doctrinal research will thus be followed by a qualitative inquiry and examination of the resolution of construction disputes in Ethiopia and Addis Ababa in the setting of real-world practice.

1.7. Sources of data and collection methods

We'll utilize both primary and secondary data.

Primary data

The researcher primarily employs the pertinent law, cases and interview data-gathering methods to get primary data. The interview will be used in the ways listed below.

Interview

Semi-structured interviews are used by the researcher. Engineers, judges with experience in the construction industry, arbitrators, mediators, and construction attorneys will all be contacted for the interview. Since it is considered that these unit members are educated in the field. And Interview candidates will be chosen based on their professional relevance and their engagement in building dispute settlements.

Documents

Laws that influence how construction disputes are resolved are examined.

Secondary data

Relevant documents from various sources will have been evaluated in the course of this investigation. As a result, books previously published research and studies, plans, policies, and

initiatives, reports by the relevant governmental authorities, and various official documents are the main secondary data sources.

Data Analysis

Organizing and arranging raw data to extract useful information from it is the method of data assessment. Understanding what the data contains and does not contain depends on how the data are organized and thought about. The majority of the raw data for this study came from interviews. Since the data is qualitative, content analysis is used to analyze. The in-depth discussions the researcher had with the respondents while conducting the interview helped the researcher conclude. The data were then analyzed by the researcher based on their kind and nature.

1.8. Literature Review

A multi-tiered dispute resolution is a multi-stage process for settling a disagreement before arbitration or litigation. Early, pre-arbitration portions of this method often aim to reach a harmonious agreement between the parties by negotiation, mediation, and expert opinion. The disagreement may then be brought to arbitration or litigation for resolution if the parties are unable to settle it amicably via the use of the pre-arbitration stage.²²

Since the parties in the construction business must cooperate over a lengthy period and prevent unnecessary delay, multi-tiered dispute resolution procedures are particularly helpful in this sector. The courts have historically been unwilling to impose multi-tiered dispute resolution in a significant number of jurisdictions. However, in many well-publicized cases over the past several years, judges have indicated a readiness to sustain them. This compendium's objective is to provide a succinct summary of the present legal landscape across a wide range of jurisdictions worldwide.²³

The paper discusses legislation such as the civil code, proclamations, regulations, and civil procedural laws of Ethiopia. Additionally, to determine Ethiopian dispute settlement practices,

²²Jollies Alexander: *‘Consequences of Multi-tier Arbitration clauses:Issues of Enforcement’*, 329 reprinted 2006 Arbitration (Sweet and Maxwell, London).

²³ *ibid.*

specifically Addis Ababa construction dispute resolution procedures, and court cases, decisions are used.

There are many published and unpublished works of literature in Ethiopia that deal with dispute resolution. Some of them are:

The title of Abera Bekele's research project is "alternative dispute settlement procedures in the construction business."²⁴ The other published writing by Tecele Hagos is titled adjudication and arbitrability of government construction dispute.²⁵ Too Amicable Dispute Resolution in Civil and Commercial Matters in Ethiopia.²⁶

However, they differ from the subsequent discovery. First, this paper aims to illustrate the institutional aspects, legal framework, and appearance of amicable multi-stage dispute resolution in Ethiopia's construction projects. Second, this paper has outlined the apparent legal voids and practical difficulties that Ethiopia, particularly Addis Ababa, faces in resolving construction disputes through peaceful settlement. Additionally, look at the party's discretion in disregarding multi-tiered construction dispute settlement provisions.

1.9. The Paper's Organization

There are four chapters in the thesis. The first chapter focuses on the research proposal; it introduces the topic, background information, and justification for the investigation. It also details the study's goals and objectives, and methods, and provides a synopsis of its overall structure. Chapter 2 is covered a broad overview of dispute settlement in the construction business. This chapter analyzes sources of dispute, the party autonomy in its provisions as well as a basic review of multi-stage construction dispute processes and claims. Chapter 3 is covered the institutional and legal mechanisms for multi-stage construction dispute resolution in Ethiopia. The research is based on actual instances that were resolved by preventive or amicable resolution, and it examines whether Ethiopian laws and practices, particularly those in Addis

²⁴ Abera Bekele, 'Alternative Dispute Resolution Methods in Construction Industry: An Assessment of Ethiopian Situation' (MSc thesis, Addis Ababa University, 2005).

²⁵Hagos T(n7).

²⁶Tecele Hagos, 'Amicable Dispute Resolution in Civil and Commercial Matters in Ethiopia:Negotiation, Conciliation and Compromise' 13(1) Mizan Law Review(2019).

Ababa, have an accommodating system for resolving building disputes. Chapter 4 based on the study's findings, recommendations are presented going forward.

Chapter Two

2. General Overview of Multi-tiered Construction Disputes Settlement Mechanisms.

2.1. Introduction

The construction industry is complex due to many parties participating at different levels to meet the goal of the project. In this complex environment, participants from various professions, each have their own goals and each expects to make the most of its benefits. Disputes are one of the main factors which prevent the successful completion of the construction project. Thus, it is important to be aware of the causes of disputes to complete the construction project in the desired time, budget and quality. And to proper management of claims and disputes via dispute minimization, and amicable settlement, effective and efficient.

The complexity of the construction business results from the involvement of several parties at various levels to complete the project. Participants from a variety of occupations participate in this complicated environment with their aims and expectations about how best to gain from it. Disputes are one of the main reasons that keep a construction project from being effectively completed. To finish the construction project on schedule, within budget, and with the necessary level of quality, it is crucial to understand the reasons why disagreements arise. And to the effective and efficient administration of claims and disputes via the reduction of conflicts and peaceful resolution.

The definition of a dispute in the construction industry, reasons why disputes arise, ways to prevent conflicts, techniques for resolving disputes amicably, and legally binding dispute resolution processes are the first topics covered in this chapter.

In the end, there is the option to reject using many levels of amicable dispute settlement and submit the case straight to binding dispute resolution.

2.2. Disputes in the Construction industry

When two parties to a relationship or partnership disagree on anything or reject one another's claim or assertion, there is a dispute.²⁷

The International Chamber of Commerce defines construction disputes as "all types of conflicts arising out of construction project work, including in particular civil, mechanical, and engineering services, and those activities essential for the completion of construction projects."²⁸

Failure to deliver materials on time, work completed outside of the scope, payment delays, inappropriate construction methods, delays brought on by the subcontractor, and differences in the contract terms between the parties are the conflicts that regularly arise in this sector.²⁹ It is also obvious that the owner's financial constraints, price inflation, client-driven design revisions, inferior designs, environmental issues, and poor construction work all play a part as significant sources of conflict in the business.³⁰ Be a result, the industry has long been considered one of the most competitive and troublesome industries.³¹

Disputes have the effect of delaying the project, which adds time and money.³² Therefore, it has to be resolved properly; otherwise, the contract will be terminated without the project being properly completed, the disagreement will grow into a dispute, and the performance of the construction project as a whole will decline.³³

2.3.The Sources and Sorts of Disputes in Construction Projects

The majority of disputes are caused by poor project management, poor materials, and poor craftsmanship, as well as poor construction management. The contractor may request payment of the value of changes and/or reimbursement for loss and expense, or it may request an extension

²⁷ Pribadi Djarot, *Alternative Dispute Resolution*. Surabaya : (University Narotama 2003).

²⁸Falilat Olubunmi Idowuetal, 'An evaluation of the use of ADR in the Nigerian public construction project disputes', *International Journal of Sustainable Construction Engineering & Technology* (ISSN: 2180-3242), Vol 6, No 1, 2015, p. 17.

²⁹Queen Marry University of London and Pinsent Masons LLP, *International arbitration survey –driving efficiency in international construction disputes, how can international construction disputes be resolved more efficiently whilst maintaining fairness and access to justice?* 2019, p. 7.

³⁰ Noor Mohamed Mohmed Nihaaj, 'Critical analysis of arbitration method used in the construction industry in Sirilanka' Department of Civil Engineering University of Moratuwa, Sri Lanka, thesis for Master of Science in Construction Project Management, p. 15.

³¹ Badmos Raji Barakah . A, *supra* note 1, p. 141.

³² *ibid*

³³Noor Mohamed Mohmed Nihaaj, *supra* note 30.

of time for the project's completion. A contract's confusing language and improperly drafted documents might lead to disagreements.³⁴

To categorize the sources of disagreements, they were divided into designer, owner, contractor, contractual, and other associated problems.

2.3.1. Conflicts Associated with the Designer

The client, who is the actual owner of the design, usually sets the deadline for completion and submission. The design may lack precise details and precision if the design time is highly constrained. Poor design happens when it lacks functionality, has parts that are missing, and does not adhere to the owner's specifications. Construction delays can be brought on by technical plans and standards that are inadequate or lacking. Changes in material requirements and the approval process that follows them may take some time, as well as lead to disagreements over the extra prices of the new materials and delivery delays as a result of the difficulties in obtaining the materials. The owner and designer must pay for all of these, which results in arguments. Time constraints in the design phase may lead to disagreement³⁵

2.3.2. Contractual Quarrels

A building contract needs to be carefully and correctly worded; otherwise, it leads to conflicting interpretations of the same issue, which sparks a debate that eventually turns into a dispute. As a result, to eliminate performance disputes and ensure that they are paid for the work they have completed, contractors, subcontractors, architects, engineers, and developers must prepare their contracts appropriately.³⁶ Considerable risk of exposure to change order requests and claims is usually associated with construction contracts taken into by different parties. These claims cover a wide range of topics, including contract ambiguities, modifications and additions, different site conditions, schedule delays, stop-work orders, errors and omissions in the contract plans and specifications, acceleration of the contract by the owner/employer, sub-work by the contractor seeking indemnification from third parties, warranty/guaranty clauses, and the recovery of

³⁴ Rizwan U. Farooqui et al, 'Dispute Resolution in the Pakistan Construction Industry: An Assessment of Current Methods' (Third International Conference on Construction in Developing Countries (ICCIDC-III), Bangkok-Thailand, 4-6 July, 2012).

³⁵ Jeffery M. Hall, 'Ineffective Communication: Common Cause of Construction Disputes' (2002) 13(2), Esq. Folk & Associates 9.

³⁶ Kifle Semus 'Project Paper Thesis on Major Causes of Dispute in the Ethiopian Construction Industry' accessed at <<https://www.scribd.com/doc/125265141/y>>1/7/2022 1:06 pm. [hereafter, Kifle Semus]

liquidated damages. Therefore, the contract's assertions should be consistent with the work's scope and should be fully understood by all parties.³⁷

2.3.3. Contractor-Related Disputes

To properly complete the construction process, finances play a key role. Inadequate funding provided by the contractor during construction causes delays, job interruptions, and subcontractors' work to be of poor quality. Construction delays might result from the contractor's lack of labourers and lead to disagreements. Low productivity might also result in disputes.³⁸ Inadequate site investigations might lead to several conflicts. Uncertainty over the scope of the task is one cause of contractor disputes. To avoid accidents and delays in the building procedure the contractor's monitoring and site management should have been effectively carried out. Construction disputes that are driven by the contractor frequently include site management. Making the wrong choice is the result of the construction/project manager's inappropriate leadership style.³⁹

2.3.4. Disputes Associated with the Owner

According to the owner's preferences and decisions, the construction project is planned and designed. The owner must decide on the design and plans as soon as possible; else, the construction process will be delayed.⁴⁰ It is therefore the most typical cause of disputes and raises the owner's costs. Therefore, careful planning ahead of time is required to avoid conflicts and excessive expenses. Owners frequently fail to issue interim judgments on requests for time extensions and compensation. As the project nears completion, this can result in issues that are much harder to settle. Conflicts need to be settled before the project is concluded; otherwise, resolving them will be more difficult and expensive.⁴¹ Owners may ask for changes, such as adding to or removing from the scope that was previously agreed upon, which can lead to disagreements because some changes may need more time and money. Construction will be

³⁷ *ibid*

³⁸ Artan .D Bakioglu .G Modeling ‘the relationship between risk and dispute in sub contractor contracts’ J.Leg. Aff. Disput. Resolut. Eng. Constr. 2018, 10, 04517.

³⁹ Martin G. & Thompson .A, ‘Effective management of construction dispute resolution’ J. Leg. Aff. Disput. Resolut. Eng. Constr. 2011, 3, 67–70.

⁴⁰ Mishmish .M & El-Sayegh .S, ‘Causes of claims in road construction projects in the UAE’ Int. J. Constr. Manag. 2016, 18, 26–33.

⁴¹ Steen .R, ‘Five steps to resolving construction disputes Without litigation’ J.Manag. Eng. 1994, 10, 19–21.

delayed if the owner is unable to finance the project on time, and the project may even come to an end for a while until the owner is prepared to finance it, which leads to disagreements.⁴²

2.4. Multi-tiered Dispute Resolution in Construction Industry.

It is a multi-step or multi-stage dispute resolution method that enables differences between parties to be done amicably.⁴³ It is used in complicated construction contracts because it may result in cost savings and effective dispute resolution.⁴⁴ For some reasons, the most popular of which is to facilitate the swift and effective resolution of routine disputes with the least possible disruption to the parties' relationship and the underlying transaction, it is chosen or the parties choose not to submit the dispute directly to arbitration or litigation. Due to their fundamental nature, construction contracts and other agreements requiring the parties to collaborate over an extended period make good use of them.

Multi-tiered dispute resolution can be beneficial, but it can also prevent unnecessary delays in time-sensitive circumstances or when discussion or mediation is unsuccessful. It prevents opportunistic parties from using a delaying strategy.⁴⁵

Before beginning a binding settlement, multi-tiered dispute resolution in the construction industry requires contractual parties or claimants to engage in many amicable dispute resolution methods. MTDR is a procedure that entails some steps, different individuals, and the use of various tools to settle and, if that fails, to end with the arbitration (or adjudication) of the issue.⁴⁶

2.5. Multi-tiered Disputes Resolution Mechanisms in Construction

In the construction sector, disagreements can be settled in several ways.⁴⁷

They are categorized as a dispute avoidance mechanism, non-binding (amicable), and binding for this study.⁴⁸ The following sections go over these:

2.5.1. Dispute-Prevention Mechanism

⁴² Mitropoulos, P.; Howell, G. Model for understanding, preventing, and resolving project disputes. *J. Constr. Eng. Manag.* 2001, 127, 223–231.

⁴³ Klaus Peter Berger: 'Law and Practice of Escalation Clauses' *Arbitration International*, 2006, Vol. 22, No. 1.

⁴⁴ Pryles Michael: 'Multi-Tiered Dispute Resolution Clauses', Volume 18, no. 2(2001), *Journal of International Arbitration*, 159.

⁴⁵ Stipanowich, Thomas and Lamare, Ryan J. "Living with 'ADR': Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1,000 Corporations (2013)". 19 *Harvard Negotiation Law Review* 1; Pepperdine University Legal Studies Research Paper No. 2013/16

⁴⁶ Duprey, Pierre, Practical considerations in the drafting and use of a multi-tiered dispute resolution clause, Paper presented at the IBA-Conference Durban 2002: Committee D Session on Multi-Tiered Dispute Resolution Clauses and their Enforcement.

⁴⁷ Michael P(n28)159.

⁴⁸ Fisher R. and Ury W(n3).

It requires a conflict avoidance procedure that minimizes and prevents conflicts by the practice of sound contract administration, proactivity, planning, and controlling future work, as well as by raising any issues that may lead to disputes early on. Additionally, clear contract documentation is necessary to handle certain conditions and is project-specific.⁴⁹

Additionally, some neutral experts assist in preventing potential conflicts from developing into actual ones by providing advice at the start of the relationship between the contracting parties. These include developing strong working connections, a novel idea in dispute resolution that is proactive and may avert arguments, and fostering cooperation amongst the project participants to handle issues before they happen. This is achieved through encouraging cooperation, open communication, and confidence; it does not result in legally enforceable obligations, but rather depends on the growth of shared objectives and principles that enable the Parties to cooperate in the direction of a common objective. Conflicts are likely to occur less frequently and may be resolved swiftly when they do.⁵⁰

2.5.1.1.Alliancing

A generic term for measures intended to foster improved cooperation between all project team members right away is "alliancing."⁵¹ Simply said, allying is the formation of a team approach for the mutually beneficial resolution of continuing challenges and issues that frequently develop on a construction project.⁵²

Developing a climate where trust and candour reduce disputes, foster a cooperative bond for everyone's benefit, and make it easier to complete a successful project, aims to lay the groundwork for a better and more productive working environment and relationships on the project.⁵³ Its major goal is to get the parties to a contract to stop communicating in an adversarial way and start working together as a team instead.

⁴⁹ Gould N, Capper P, Dixon G & Cohen M, '*Dispute Resolution in the Construction Industry*' (Thomas Telford, London 1999).

⁵⁰ Dighello J, 'Dispute Resolution: When does an everyday disagreement develop into a genuine dispute or potential claim' (Hartford, United Kingdom: Kelly and Spelly 2000).

⁵¹ Fisher R. and Ury W(n3).

⁵²Partnering 'A Concept for Success, Associated General Contractors of America', Washington, D.C., sept 1991.

⁵³Charles R.Glagola and William M. Sheedy, 'Partnering on Defense Contracts' (2002) 128(2) Journal of Construction Engineering and Management, American Society of Civil Engineers 7.

The ideas and practices of allying are created to bring the many layers of management together to function as a team.⁵⁴

Additionally, a preconstruction workshop conference is held amongst important stakeholders.⁵⁵ The inaugural workshop's main goals are to create teams to deal with various challenges that are anticipated during the project and to create and sign a non-binding project charter.⁵⁶ The meeting, which is overseen by a neutral third party, may go on all day. An accepted charter or mission statement captures the outcome. The parties get to know one another, establish shared objectives, enhance communication, and encourage a problem-solving mindset among the group of people who will be working as a team on the project. Setting shared objectives can promote cohesion, personal development, high morale, enthusiasm, teamwork, and performance.⁵⁷

It has repeatedly been noted that partnering on numerous projects has increased the number of projects finished on time or earlier, improved contract administration practices, decreased claims, decreased owner engineering and administrative costs (often by 5 to 15 per cent or more), and increased value engineering.⁵⁸

Following the preconstruction workshop, project leaders continue to meet (either with or without the third party's support) to determine performance metrics for each of the common goals. All parties then discuss and revise the draft of these measures. Such meticulousness might not be necessary for smaller undertakings. Larger projects could require additional workshops to provide for review, welcome new team members, and gauge progress. It's critical to measure and keep track of team goals. For each goal, ideal measurements, whether objective or quantitative, are established. Then, participants routinely test their performance against these and discuss their results. It has been said that allying is a "covenant of good trust." Although morally compelling, it is not meant to change in any way the obligations that already exist or are specified by the

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ Joseph C. Lavigne, 'Construction Contract Claims and Methods of Avoiding Contract Litigation through Dispute Resolution Alternatives' (MSc thesis, University of Florida 1993) 83-96. [Hereafter, Joseph C.]

⁵⁸ Thomas R. Warne, '*Partnering for Success, American Society of Civil Engineers*', New York (1994).

agreements between the parties. If the covenant is violated, their contractual obligations and other legal obligations will take precedence.⁵⁹

2.5.1.2. Dispute Review Boards

The first DRB recommendations to the building sector were given in 1974 by the U.S. National Panel on Teleportation Technology. When the second tube of the Eisenhower Tunnel in Colorado was being erected, the DRB mechanism was first applied. The first DRB heard arguments on three disputed issues, which were then satisfactorily resolved to the parties satisfaction. The DRB process has now been applied to a variety of owners and projects across numerous jurisdictions.⁶⁰

The DRB is established at the start of the project and is made up of a group of neutral experts who give an objective evaluation of potential sources of conflicts and keep track of the development of construction.⁶¹

A DRB normally had three members: the chairman, who was chosen by the first two shortly after the contract was awarded, and one member each chosen by the contractor and owner. For smaller contracts, the panel might just have one member, which is comparable to hiring a professional conciliator or mediator for the duration of the contract. The contract guidelines and details are provided to the DRB members, made aware of the project's processes and participants, and brought up to date on advancements and job progress.

During routine site inspections, the DRB meets with the principal and contractor representatives and promotes the resolution of issues at the project level.⁶² The procedure aids the parties in resolving issues before they turn into significant disputes. The DRB members periodically visit the job site throughout construction and are informed of the status of the project. They can see problems as they arise and, thanks to their prior construction expertise, have a thorough

⁵⁹ Glagola Ch and Sheedy W(n53).

⁶⁰ Better Contracting for Underground Construction, U.S. National Committee on Tunneling Technology, Standing subcommittee No. 4 Contracting Practices, U.S. Department of Transportation, Urban Mass Transit Administration, Washington, D.C., 1974.

⁶¹ Constructor, AGCA survey, Washington, D.C., January 1997.

A 1996 AGCA survey found the “perceived effectiveness” of various ADR procedures to be led by partnering, followed by mediation, early neutral evaluation (Standing or Project Neutral), binding arbitration, non-binding arbitration, and DRB’s order.

⁶² Fisher R. and Ury W(n3).

understanding of the technical intricacies and legal repercussions involved.⁶³ Members of DRB are respected in the business, frequently have extensive knowledge of the sort of construction involved, and approach their duties impartially and neutrally.⁶⁴

In addition to ordinary inspections, the DRB itself chooses sites for special, private meetings and hearings with the consent of the parties.

The DRB schedules a hearing as soon as a disagreement cannot be resolved on the job level and at either party's request. Each party submits position papers to the DRB (as well as the other party), together with all necessary supporting materials.

The parties may occasionally agree to create the accompanying documentation binder together (s). The DRB hearing normally takes place at or close to the job site and is unstructured. In the hearings, the DRB may consult with witnesses, specialists, and other sources who may have knowledge that will be useful to the DRB in making a judgment. Note that a DRB hearing may be requested at any moment by either party. Typically, the project participants make presentations, and there are no attorneys present at the hearing (although the parties may use attorneys to help prepare their briefs and some DRBs allow attorneys to attend the hearing but not participate).

The DRB publishes a written report that includes a detailed explanation of its decision-making process as soon as practicable after the hearing is over.⁶⁵

The DRB's recommendations are not legally enforceable and are meant to be used by the parties in their negotiations to settle the contentious matter. The appraisal of the facts, the contract clauses, and the logic behind the DRB's decisions are all explained in the report. The parties trust in the DRB member's knowledge, personal familiarity with the project's conditions, and practical judgment, as well as the party's opportunity to be heard, facilitate acceptance by the parties. The

⁶³ Lavigne J(n66)81.

⁶⁴Robert M, Matyas A.A, Matthews, Robert J. Smith and P.E. Sperry, Construction Dispute Review Board Manual, McGraw Hill, New York, 1996.

⁶⁵ Fisher R. and Ury W(n3).

parties are free to use any dispute resolution mechanism specified in the contract if talks break down.⁶⁶

2.5.1.3. Dispute Resolution Consultants

Dispute Resolution Advisors (DRA), who are typically subject matter specialists, assist the parties in spotting contractual difficulties early on and resolving them to mutually acceptable terms. The DRA must have some mediation abilities. The advantages include fewer disagreements, fewer financial surprises, and easier cash flow for the parties to the contract.⁶⁷

2.5.2. Non-binding Dispute Resolution Mechanism in Construction

It is a non-judgmental procedure that brings the disputing parties to a round table and allows them to amicably resolve or deliver the conclusion to their issue through negotiation, mediation, conciliation, mini-trials, etc. Since they rely on the disputants to freely resolve their differences, the methods are non-binding.

A dedication to an agreement between the parties at the desk is also a consensual and inclusive process. A settlement that the party entered willingly is binding and cannot be altered once it has been achieved. If a party's awareness or willingness to sign into the agreement is contested, or if a difficulty arises with its enforcement, the court should be contacted, not as a matter of appeal but as a matter of first resort under contract law.

2.5.2.1. Negotiation

It is a form of consensual bargaining dispute resolution in which the parties try to settle a problematic or potentially contentious issue without using a third party's help. It is an informal process that both parties have secretly and confidentially agreed to.⁶⁸ Direct negotiation is successful when it avoids taking sides in a dispute and instead seeks solutions that meet the

⁶⁶ Randy Hafer, 'Dispute Review Boards and Other Standing Neutrals: Achieving "Real-Time" Resolution and Prevention of Disputes, International Institute for Conflict Prevention & Resolution, CPR Construction Advisory Committee, Dispute Resolution Board Subcommittee', (New York, 2010).

⁶⁷ Fisher R. and Ury W(n3).

⁶⁸ Marzooq Abdul Karim, 'The Dispute in the Construction Industry in the Kingdom of Bahrain' (MSc thesis, University of Salford-Manchester, 2015) 18[Hereafter, Marzooq A.,].

So, Negotiation is the process by which one or more parties come to a mutually beneficial agreement. This is a quick, economic and efficient method as the parties settle the claim by direct communication. It is a sort of approach in which each party tells the other one, what it can give to the other party and what does it expects in return. All negotiations share one common goal of having both parties coming out better than what they started. This requires a great deal of mutual trust, confidence and belief that problems can be sorted out through mutual discussions and meetings.

requirements and interests of both parties.⁶⁹ However, whether the negotiation process is effective will depend on how well the parties communicate with one another. When a disagreement arises, negotiation should be the first step taken and should settle the issue. In negotiations, parties approach one another for dialogues to come to a mutually acceptable resolution to the conflict. Partisans who support each of the parties to the negotiations may or may not be present. Both parties must be willing to try this approach to resolution. Negotiation will not be possible if the parties' relationship has soured beyond this point.

There are many different ways to negotiate, from a casual phone call or chat between the parties or their attorneys to a highly structured and intricate procedure lasting a long time. It has been determined that supported negotiation, in which a third party plays a partisan role for each of the parties, differs from straightforward bilateral negotiation, which does not include third parties in the process, the substance, or the settlement. Any involvement of a third party does not include serving as a mediator or arbitrator.⁷⁰

2.5.2.2. Mediation

The parties carry on their negotiations with the guidance of a mediator through mediation, which is a widely utilized strategy. Additionally, when a disagreement has been recognized and conventional negotiation has failed, it is the private, informal, and consentaneous submission of a dispute to a forum where the parties are supported by an impartial third party in finding a voluntary settlement. Mediation may be agreed upon and done at any time after a disagreement develops, including following a trial or during the appellate process. No procedure or specifics are required for a mediation agreement.⁷¹

It is a rapid, inexpensive process that is fundamentally different from arbitration or litigation in that a mediator is brought in to help the parties negotiate but does not control the negotiation.⁷² So that the parties can decide for themselves and have complete control over the result, which is initially non-binding. However, the parties may agree to be bound by their decision. Through the mediation process, a third party who is impartial meets with the disputing parties and helps them

⁶⁹ Chaitanya Khakale, Nityan and Futane, 'Management of Claims and Disputes in Construction Industry' (2015) 4(5) International Journal of Science and Research (IJSR) 853.

⁷⁰ *ibid*

⁷¹ Pretorius P., *Dispute Resolution Kenwyn, South Africa: Juta & Co.* (ed 1993).

⁷² Yuena H, 'Introduction to Alternative Dispute Resolution and Mediation', ADR workshop, 2-6 Oct. (Hong Kong 2002).

identify potential areas of the agreement. The rules for the mediation are up to the parties. And the party can fix the situation represents his client and engaging in negotiations on his behalf.⁷³ It is inappropriate for mediation to conclude if the person who will make the decision is not present. To produce possibilities, assist disputants in better understanding their different viewpoints, and control emotions, the mediator goes between the parties. Even if the mediator is in control of the procedure, he or she does not impose a resolution or provide an evaluation of the case's merits, supporting a win-win scenario and allowing the disputants to determine the resolution on their own. In addition, mediation is an adaptable, private, and private process that safeguards the parties' legal rights if an agreement cannot be reached.⁷⁴ Mediation is an ADR that is rapidly growing and has been successfully adapted for multiple-party dispute resolution. There are several reasons why mediation is steadily becoming in popularity as a means of settling construction-related disputes. Since mediation is less expensive and time-consuming than arbitration or litigation, contractors, owners, developers, and design professionals may choose it.⁷⁵ Before the mediation can start, the parties and their attorneys must sign a legal contract.⁷⁶ Commercial executives can benefit from mediation in several ways, including reduced legal fees, decision-making control, reduced emotional stress, continued business connections, and the quickest path to a full and satisfactory resolution of disputes.

Whether a qualified mediator can resolve any kind of conflict in the construction sector is a hot topic. Some people support the notion that a mediator, regardless of the subject of the argument, may reconcile warring parties. Furthermore, the mediator's proficiency in the process, experience, and subject-matter expertise lend credibility.⁷⁷

The mediation method was often initiated with a joint meeting. Each side will have a chance to present its stance to the other parties during that meeting. There are no witnesses allowed, no opportunities for cross-examination, and the importance of conciseness and brevity is stressed. The party, the attorney, or both may talk at the same time.⁷⁸ The goal of the first meeting is for each participant to hear information and arguments that have not yet been presented to the

⁷³ Abdul Karim M(n52)19.

⁷⁴ *ibid.*

⁷⁵ Civil law Mediation Act 2003 (Zivilrechts-Mediation-Gesetz, BGBl I 2003/29) Published 6 June 2003.

⁷⁶ What are the characteristics of mediation? Essential Mediation, <http://www.essentialmediation.co.uk/what-is-mediation/what> are the characteristics of a mediation accessed on April 20, 2022.

⁷⁷ *ibid.*

⁷⁸ Yuena H(n56).

decision-maker. The fundamental idea is that most conflicts start because of a communication breakdown, and the first session is a step in the process by which communication starts. The parties will be divided into their respective chambers after the opening session, or occasionally in place of it, and the mediator will move back and forth between them in a manner like prominent and modern shuttle diplomacy.⁷⁹ The mediation will begin with the caucuses in cases where the mediator thinks that a combined meeting could intensify hostilities or if the viewpoints of the parties have been fully communicated. In a caucus, the mediator and the parties communicate in private, and the mediator thoroughly discusses each party's viewpoint in a separate caucus. With the mediator's assistance, each side conveys to the others its perspectives, issues, and suggestions.

A complete and final decision is typically reached following numerous rounds of caucuses. The mediator will avoid discussing unimportant details and focus on and overcome the biggest barriers to resolution throughout the process. The mediator will concentrate on the actual economic expenses of the dispute and assist the parties in coming to a fair financial resolution after an acceptable exchange of information.⁸⁰

2.5.2.3.The court-annexed Mediation

In some circumstances, a court may provide court-annexed mediation. Court-annexed mediation has been used to resolve construction dispute cases voluntarily. If a settlement has been reached, it may be noted and a court order may be issued to conclude the dispute. If a settlement cannot be reached, the case will be heard by a separate judge in the usual manner. As a result, the new judge would not have participated in any of the confidential settlement negotiations and could not have been influenced when handling the matter in the usual manner.⁸¹

2.5.2.4.Conciliation

It is a mechanism of dispute settlement where a conciliator, a neutral third person, is chosen to talk with the parties about the conflict. Except for the fact that he creates a bit of non-binding advice/recommendation, it is comparable to mediation. There are debates on how the degree of third-party engagement distinguishes the two peaceful methods of dispute resolution from one

⁷⁹ *ibid.*

⁸⁰ What are the characteristics of mediation? /Essential Mediation, <http://www.essentialmediation.co.uk/what-is-mediation/what-are-the-characteristics-of-amediation/>. Accessed on April 20, 2022

⁸¹ *ibid.*

another. Scholars use many arguments to suggest their differences. While a conciliator simply presides over parties' meetings, a mediator actively participates in discussions and negotiations as well. Additionally, a mediator is more involved in the dispute's core concerns than a conciliator is, sometimes even drafting a report.⁸²

From different angles, the conciliator is the active one in probing the merits and defects of the parties' claims, offering suggestions and counsel, identifying strong arguments in favour of and against each side's positions, and coming up with fresh concepts that might persuade the participants to resolve their conflict. If the participants are unable to agree, he must draft and offer what, in his opinion, is a fair and reasonable compromise of the issue.⁸³ However, the mediator doesn't actively propose any ideas as to how the dispute might be resolved; instead, the mediator merely performs the task of persuading the participants to alter their positions in the hope of reaching a degree where those positions coincide. This can be a sort of diplomacy.⁸⁴

The mediator could be thought of as the solution's creator in practice. What he believes to be reasonable and fair. It will be binding on the disputing unless it is rejected within a given time range.⁸⁵ The conciliator meets individually with each party to hear an oral presentation of their cases before considering the proposed resolution together with all applicable supporting material. The conciliator may have as many private discussions with the parties as necessary to resolve. Therefore, the proceedings are adaptable enough to allow for this process. The mediator makes an effort to appease both parties. He or she searches for agreement while doing this, crafting a solution for the parties without imposing one on them.⁸⁶

2.5.2.5. Mini-trial

A mini-trial is an optional, private, and non-obligatory process. The "Minitrial" is in no way a trial. Instead, it is an organized settlement process where either senior representatives or impartial parties hear an extremely condensed summary of each side's argument. This is

⁸²Doug Jones, 'Various Non-binding (ADR) Processes', in *New Horizons in International Commercial Arbitration and Beyond*, in (ed.), Albert Jan van den Berg, ICCA, Kluwer Law International(2005)368.

⁸³ Nael Bunni, *The FIDIC Form of Contract: the Fourth Edition of the Red Book*, 2nd ed., (London: Blackwell Science Ltd., 1997)337, citing D.E Cullivan to have told the anecdote in a seminar held in Jakarta (Oct. 1984)426-428.

⁸⁴ *ibid* 425-426.

⁸⁵ Keane D, '*Building and the Law*', Royal Institute of the Architects of Ireland, Dublin (4th ed 2003).

⁸⁶ Dighello J(n34).

typically utilized in large projects where it's possible that senior decision-makers are unaware of the actual situation and that subordinates are unaware of the demands and goals of the parties.⁸⁷ The organization of this method consists of two basic steps. The parties exchange information before starting a negotiation so that each can discover the benefits and drawbacks of their position as well as the cases of the other parties. In a mini-trial, the judge is replaced by a senior professional or other significant business people from both sides to hear the case. The representative should be given complete settlement authority. The neutral third party, who typically sits next to the party representative to hear the facts and arguments and has the power to regulate the process, is usually given this role. The neutral may offer advice, mediate disputes, or offer advisory opinions at any time.

Following the presentations, the litigants' representatives meet to deliberate on a settlement, either with or without the neutral. Frequently, the neutral is asked to serve as a mediator during the discussions or to offer a non-binding analysis of the likely court decision.⁸⁸

The system's benefits include the comparably cheap cost (in comparison to litigation or arbitration) and the fact that each side is allowed to present their whole case, just as they would in arbitration or court. Additionally, rather than making a judgment, the neutral counsels and supports the top management of both parties in determining how to settle the issue. This ADR type also has the benefits of non-binding outcomes, confidentiality, party participation, and process control.⁸⁹

The Minitrial system's major drawback occurs when senior management staff members are directly engaged in the issues at hand. Because of this, they might be unfit to serve on the panel. Disputes involving legal or credibility-related concerns have additional drawbacks since management employees may not be equipped to handle them or be able to do so. Last but not least, if the dispute is not particularly expensive, this technique might not be cost-effective.⁹⁰

2.5.2.6. A Hybrid Construction Dispute Settlement

⁸⁷ *ibid*

⁸⁸ *ibid*

⁸⁹ *ibid.*

⁹⁰ Eldon H, Crowell and Charles Pou Jr, *Appealing Government Contract Decisions: Reducing the Cost and Delay of Procurement Litigation with Alternative Dispute Resolution*, Maryland Law Review, Vol. 49, Issue 1, October 15, 2012.

A further ADR technique is a dual procedure, often known as Med-Arb (mediation-arbitration). The main function of Med-Arb is for the third member of the board will first act as a mediator, and if that fails to resolve the matter, they will then act as an arbitrator. The parties concur that the mediator will act as the arbitrator for the remaining disputes per the conditions of the original Med-Arb agreement. As a result, the mediator also acts as the arbitrator. If a resolution cannot be reached during mediation, arbitration must be conducted instead. Some people think that this method profitable is and that it is more productive and cost-effective.

However, one of the benefits of mediation is that the parties can meet privately with the mediator to discuss matters related to the dispute and work toward a resolution.⁹¹

Both parties have the chance to hear the accusations made against them and respond, which is one of the essential principles of arbitration. Therefore, the parties cannot have a private conversation with the arbitrator. Furthermore, if parties believe that the mediator may later serve as an arbitrator, they are unwilling to reveal personal information to the mediator during private sessions. The arbitrator will find it extremely challenging to forget whatever they have learned while serving as a mediator.⁹²

2.6. The Validity of Claims Ignoring the Amicable Dispute Resolution Stage.

In a multi-stage dispute resolution agreement of parties, the so-called clauses have commonly recognized the issue, which is the privacy of the party. But the issue is whether the claims might be enforced through a regular justice before being brought to the amicable multi-tier.⁹³

The most prevalent challenges in the jurisdiction are disputes that emerge and are addressed by amicable multi-tiered clauses that result in a binding resolution. To bring the matter before the binding processes, the aggrieved party is required to exhaust all stages of peaceful dispute resolution. However, the harmed party may forego any or all of the phases outlined in the multi-

⁹¹ Goldberg SB, *Dispute Resolution: Negotiation, Mediation and Other Processes*, 2nd edn, Little Brown & Company, Boston(1992)17.

⁹² *ibid.*

⁹³ Kayali Didem, 'Enforceability of Multi-Tiered Dispute Resolution Clauses', Kluwer Arbitration site, *Journal of International Arbitration*, (© Kluwer Law International; Kluwer Law International 2010, Volume 27 Issue 6)552.

tiered clause leading to a binding settlement and instead bring the matter to arbitration or court; however, the legal consequences are still debatable.⁹⁴

Since the fact that these methods are by definition optional and non-binding, the parties are free to decide whether or not to take part. The outcomes then, are they?

If the parties' contract provides a multi-tiered mechanism that is either a mandatory requirement or an obligation, courts, and arbitral tribunals will enforce all mandatory amicable tiers that lead to a binding settlement, compelling the claimant to employ all of these procedures to settle the issue. However, if they are utilized just as a claimant's right to use them, they will not be required to be used by the claimant in their entirety.⁹⁵

It is the claimant's right but not the obligation to submit the dispute to the non-binding.⁹⁶ In general, it is not prohibited by the law to directly submit matters to a binding settlement unless the respondents object.⁹⁷

On the other hand, the right to submit a case without using non-binding dispute resolution methods is subject to two hypotheses:

The first is the substantive view, which maintains that a contract's parties are allowed to forego employing any of the agreed-upon dispute resolution procedures. Because it is a contractual obligation, the party that violates it must pay the difference; nonetheless, the violation has no bearing on the tribunal's authority or how it will operate.⁹⁸

Due to the approach's flaws, the respondent's entitlement to a peaceful resolution of the conflict and the claimant's obligation to perform as per their contract have been ignored. If the respondent obtains an injunction directing the Claimant to attempt a peaceful resolution of the dispute, the

⁹⁴ICC case no. 6276 from January 1990, a Swedish contractor v The Secretary of the People's Committee for a municipality of an Arab State and the Secretary of the People's Committee of Health of that municipality, Partial Awards, ICC Case Nos. 6276 and 6277, 1990, *International Journal of Arab Arbitration*, (© *International Journal of Arab Arbitration*; *International Journal of Arab Arbitration* 2009, Volume 1 Issue 4)363–367.

⁹⁵ *ibid.*

⁹⁶ Varady, Tibor, John J. Barcelo III, Arthur T. Von Mehren: *International Commercial Arbitration, a Transnational Perspective*, (Fifth Edition, 2012, American Case books)14.

⁹⁷ Alexander J(n22)331.

⁹⁸Christopher Boog in: “How to Deal with Multi-tiered Dispute Resolution Clauses - Note - 6 June 2007 - Swiss Federal Supreme Court”, who says the following: “If the breach of an obligation to engage in pre-arbitral proceedings is considered a question of substantive law, the consequence of such breach should only be, at least from a dogmatic point of view, the remedies provided for under contract law, without having any procedural effect...”. Christopher Boog: “How to Deal with Multi-tiered Dispute Resolution Clauses - Note - 6 June 2007 - Swiss Federal Supreme Court”*ASA Bulletin*, (© *Association Suisse de l'Arbitrage*; *Kluwer Law International* 2008, Volume 26 Issue 1) 107. Also, see Alexander J(n22)336.

arbitral procedure need not end and may proceed concurrently with the Claimant's attempt at a peaceful resolution. The Claimant would be allowed to attempt to resolve the issue amicably parallel. But, for instance, continuing the arbitration while working out an agreeable settlement might make things tense between the parties when it comes time to negotiate. Additionally, it negates one of these multi-tier clauses' key benefits.⁹⁹

The second is the procedural view, which contends that before any binding resolution processes may start or continue, efforts at peaceful tiers of dispute settlement must be attempted. If a party brings a claim without employing an amicable resolution provision, the arbitral panel or court has the power to stay/prolong or dismiss the arbitration or the claim.¹⁰⁰

2.7. Conclusion

The construction projects' fundamental essence is inherently disputable. Construction management and dispute prevention techniques are required for the construction time to be completed effectively. The most well-liked and academically tested technique of resolving disagreements amicably should be used, before filing a claim with the binding dispute resolution system.

Chapter Three

3. Ethiopia's Amicable Multi-tier Construction Dispute Resolution Scheme: the law and the Practice.

3.1. Introduction

Ethiopia's construction sector lacks a robust dispute resolution mechanism compared to other countries. The construction sector lacks a proactive dispute avoidance strategy or disagreement management system. A mechanism for reducing construction disputes through collaboration, dispute review boards, and expert judgment is yet just in theory.

This chapter will first offer an overview of disagreements in Ethiopian buildings, followed by a discussion of their reasons. Furthermore, a country-specific discussion will include a dispute avoidance tool and an amicable dispute settlement method.

⁹⁹ *ibid.*

¹⁰⁰ Gregory Travaini, 'Multi-tiered dispute resolution clauses, a friendly Miranda warning', available at: <http://kluwerarbitrationblog.com/blog/2014/09/30/multi-tiered-dispute-resolution-clauses-a-friendly-miranda-warning/> 2006) 72 *Arbitration* 4 (Sweet and Maxwell, London) 331.

Finally, it will be explored why disputants in Ethiopia bypass multi-tiered peaceful conflict resolution processes in favour of presenting their cases to adversarial dispute resolution, as well as the enforceability of such processes.

3.2. The General Overview of Disputes in Ethiopian Construction.

The construction business is tremendously broad and intricate. Huge capital investments are necessary,¹⁰¹ and since it is so sophisticated and labour-intensive, disputes frequently arise. It requires a proactive dispute management strategy as result. Disputes are frequent and routine in Ethiopian building projects, and the number of cases pending in court is large.¹⁰²

The project's dispute poses a major risk to the participants, if not handled appropriately. It could make it harder to finish construction projects on schedule, on budget, and with the quality you want. The primary problems preventing the effective completion of building projects in Ethiopia are the disagreements that are listed in the paper.¹⁰³

3.3. The Primary Sources and Kinds of Construction Disputes in Ethiopia

As to the interviews indicated¹⁰⁴ and research by various scholars, payment delays, inadequate construction details or contract documents, problems with the owner-directed work sequence, claims of variation work, disregard for site instructions, and coordination issues are the main causes of construction disputes between the parties.¹⁰⁵ The main causes of disputes in each conflict category are discussed in great length below.

3.3.1. Payback Delayed

Financing is essential for starting and finishing a construction project on time. Construction in Ethiopia typically starts once the project owner makes the advance fee and persistent inability to pay for a task when it's completed on schedule and with enough cash.¹⁰⁶ The division of the government body that owns the project from the financiers (costs of the project) is the cause of

¹⁰¹ Werku Koshe, K. N. Jha. 'Investigating Causes of Construction Delay in Ethiopian Construction Industries' *Journal of Civil, Construction and Environmental Engineering*. Vol. 1, No. 1, 2016,18-29.

¹⁰² Abebe D. and Girmay K. 'claim in an international construction project in Ethiopia' *African Journal of EEA* Vol.20 2003.

¹⁰³ Pınar Irlayıcı Çamak, 'Causes of Disputes in the Turkish Construction Industry: Case of Public Sector Projects' (2016) 13(3) *ITU* 110-118.

¹⁰⁴ Interview with Yakob Mekuria, Presiding Judge, Federal High Court Construction Bench, Lideta (Addis Ababa, Ethiopia, 9 May 2022) [Hereafter, Interview with Mr. Yakob].

¹⁰⁵ Ashenafi R and Mattusala B, 'Evaluation of Causes of Claims on Construction Projects of Southern Nation Nationality and People Region (SNNPR), Ethiopia' *International Journal of Engineering Research & Technology (IJERT)* Vol. 8 Issue 12 (December 2019) 155.

¹⁰⁶ Interview with Mr. Yakob (n107).

payment delays in public construction. In the case of the Addis Ababa Water and Sewerage Authority, the Addis Ababa Finance Bureau instead of the authority issues project payments.¹⁰⁷

If the Finance Bureau should not have prepared adequate cash in advance or released payments on time, the Authority has no payment authority other than coordinating.¹⁰⁸

According to the interview, contractors need upfront money to arrange construction materials or start early work on the site. However, the owner's tardy payments to the contractor or subcontractors make it impossible to finish the project on time, which sparks disagreements.¹⁰⁹ It is a result of the Ethiopian building projects' poor or non-existent financial planning for the project.¹¹⁰

3.3.2. Disputes arising from a contract

The other reason for the disagreement is due to a contract that was poorly drafted or had insufficient information or was unclear or imprecise.¹¹¹ This may lead to disagreement in the interpretation of contracts, especially on risk allocation.¹¹²

Additionally, the most common reason for disagreements is a claimed contract violation while the job is being done.¹¹³ This is a well-known fact in the sector. Unfortunately, contract disputes over non-performance, particularly in engineering projects, are a common occurrence in Ethiopian building projects.¹¹⁴ Contractors aiming to win the bidding of several projects through corruption at the same time without having the resources to deploy, bidding mistakes, insufficient resources, lack of experience in competitive bidding, etc. are some of the contributing factors etc.¹¹⁵

¹⁰⁷ Interview with Zebeba Redie, Sub-Process leader of Construction Planning and Contract Administrator, Addis Ababa Water and Sewerage Authority, Megenagna (Addis Ababa, Ethiopia, 7 May 2022) [Hereafter, Interview with Eng.Zebeba].

¹⁰⁸ Ibid.

¹⁰⁹ Interview with Eng. Niway W/Yes, Led Engineer in the Ethiopian Road Authority or Administration (Addis Ababa, Ethiopia, 12 May 2022) [Hereafter, Interview with Eng. Niway].

¹¹⁰ Interview with Mr. Yakob (n107).

¹¹¹ Interview with Almwaw Wolie, the former Presiding Judge, Federal Supreme Court Cassation Bench, know a day attorney (Addis Ababa, Ethiopia, 14 May 2022). [Hereafter, Interview with Almwaw]

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Interview with Derebew Tewabe, Presiding Judge, Federal High Court Construction Bench, Lideta (Addis Ababa, Ethiopia, 5 May 2022) [Hereafter, Interview with Derebew].

¹¹⁵ Interview with Gemechis Tilahun, Sub-Process leader of Construction Supervisor and Contract Administrator, Addis Ababa Water and Sewerage Authority, Megenagna (Addis Ababa, Ethiopia, 7 May 2022) [Hereafter, Interview with Eng. Gemachis].

Drafting a standard contract clause with the participation of an engineer and lawyer that is practical and contextually appropriate based on a case-by-case approach by the government is essential to reducing contract-related disputes.¹¹⁶

3.3.3. The Challenge of Handover of the Site

Recently, claims of possession or ownership over a site and a failure to clear the site as a requirement for the project's start have added to the difficulties in handing over the site in Ethiopia, particularly in Addis Abeba, which is the source of conflict and the reason the project has been delayed.¹¹⁷

A claim for delay fees for additional expenses spent by the contractor may be made to the late handover of site ownership. The owner must prepare the property for building and turn it over on schedule and under the terms of the contract, if they don't, they risk being held liable for a violation.¹¹⁸

The project's owners should be required to protect the site against third-party claims and ensure that it is sophisticated enough for building.¹¹⁹

3.3.4. Insufficient Design

The design phase of a construction project is when the bulk of the work is completed.¹²⁰ If the projects' designs are not thoroughly planned, mistakes in the designs may cause delays and extra expenses that are the topic of disagreements.¹²¹ Inadequate design detail and design mistakes were found to be the two main reasons for design conflicts that were important causes according to the interviews.¹²² A design modification made by the owner after construction has started will cost the contractor more money, which can lead to conflict.¹²³

3.3.5. Inflationary Elements

The lack of currency is presently a major issue for the country's building sector, notably in Addis Ababa, and it has an impact on performance times.¹²⁴ The cost of labour, building materials,

¹¹⁶ Interview with Mr Almaw(n114).

¹¹⁷ Interview with Eng. Zebeba (n110).

¹¹⁸ Interview with Mr Sintayehu, the former Federal High Court Judge and legal advocate and experienced in construction dispute and arbitrator at AACCSA AI[Hereafter, Interview with Sintayehu].

¹¹⁹ *ibid.*

¹²⁰ Interview with Eng. Gammachis(n118).

¹²¹ Interview with Eng. Gammachis, Niway and Mr. Almaw and Yakob.

¹²² Interview with Eng. Niway and Mr. Yakob.

¹²³ *ibid.*

¹²⁴ Interview with Mr Sintayehu(n121).

tools, equipment, etc. increases as a result of project delays due to currency inflation.¹²⁵ To imply that a lack of appropriate money most often causes the cost of supplies, machinery, and other project inputs to rise. To reduce project delays, inflation variables must be properly taken into account during estimating, unless they are unanticipated.¹²⁶

3.3.6. Contractor Error

Planning and scheduling are essential components of construction from the outset through project completion.¹²⁷ A major cause of project delays and conflict is poor site management, oversight, and administration.¹²⁸ Construction work might be potentially defective due to contractors' frequent lack of control over the site, which lowers the quality.¹²⁹ Another criticism is the professionals' inefficiency. The education and training capacity provided by various higher institutions, organizations, etc. is insufficient to meet the demand for the substantial number of skilled workers in the Ethiopian construction sector, which affects the quality of the construction. This ineffectiveness is a major source of disputes.¹³⁰

3.4. Amicably Resolving the Construction Dispute in Ethiopia via Multi-tier Resolution Scheme.

The resolution of all types of disputes connected to civil and business transactions in Ethiopia has been greatly influenced by the traditional or customary standards of dispute settlement.¹³¹

In Ethiopia, the methods for peaceful dispute resolution are very relevant in resolving civil and business problems. Even more significant than negotiations are direct bargaining and conciliation. In contrast to the other non-adversarial conflict resolution techniques, arbitration is more analogous to the courtroom than to other dispute resolution processes.¹³² The fundamental legislative guidelines by which these peaceful resolution processes and arbitration were intended

¹²⁵ Koshe W(n104).

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ Interview with Mr Yakob (n107).

¹²⁹ *ibid.*

¹³⁰ Koshe W(n104).

¹³¹ TilahunTeshome, 'The Legal Regime Governing Arbitration in Ethiopia: A Synopsis', Ethiopian Bar Review, Vol.1, No.2, (2007) 117-118.

(where it is stated that shimglina was and still is "... the dominant mode of alternative dispute resolution, particularly in the rural areas where access to law enforcement organs is very much limited.) For a critical analysis of the distinctions between the traditional 'shimglina' and the modern ADR methods and Arbitration.

see Fekadu Petros, 'Underlying Distinctions Between ADR, Shimglina and Arbitration: A Critical Analysis', Mizan Law Review, Vol. 3, No.1, 105-133.

¹³² Hagos T(n26)1.

to function are laid forth in the 1960 Civil Code. As a result, legal recognition has been given to direct negotiation, conciliation, Concilio-arbitration, and arbitration have been legally recognized in Ethiopia.¹³³

It is possible to settle disagreements using a progressive succession of multi-step dispute resolution methods. In advance as a contract clause between commercial endeavours, parties may decide to do so when a specific disagreement develops. The agreement may allow for a binding decision if no resolution has been reached at any of the prior phases.¹³⁴

Let's examine each one in turn:

3.4.1. Dispute Avoidance Mechanism.

A frequently used or advised strategy to prevent disagreements from the inception is a dispute avoidance mechanism in the construction business. But these proactive conflict-handling strategies are not visible in our nation, particularly in Addis Ababa.¹³⁵ The interviews show that there is no legal framework to serve as a basis, even though we can't locate contractual provisions outlining pathways for the execution to avoid claims or avert disputes in construction projects in Ethiopia.¹³⁶ Furthermore, the interviews made clear that although there are no real advanced dispute avoidance mechanisms used in the sector, we realize from contractual clauses that dispute resolution procedures rarely permit amicable dispute settlement and typically call for arbitration before court proceedings.¹³⁷

3.4.2. Creating Teams

It is an intriguing method see chapter two from pages 15-17. According to the respondents in the interviews, partnering is an intriguing strategy for reducing dispute and claim through mutually agreed-upon goals that allow the parties to shift from a hostile relationship to cooperative teamwork or from a win-lose strategy to a win-win plan or understanding to solve problems proactively before they become a dispute. While there is no legal prohibition against such a practice in our building business, it is essential to develop a tradition of cooperation under the umbrella of contractual obligations. The regular processes are an individual's attempt, at a

¹³³ René David, 'Arbitration in International Trade', Kluwer Law International, (1985)7.

¹³⁴ Zekarias Kenea, 'Alternative Dispute Settlement Mechanisms', Lecture note (2020).

¹³⁵ Interview Mr Almaw, Darribew, Sintayahu, Eng. Zebeba and Eng. Niway.

¹³⁶ *ibid.*

¹³⁷ Interview Mr Almaw, Darribew, Sintayahu.

different level of employment, to engage in a talk about such a difference of opinion after a dispute emerges.¹³⁸

Even if no such clause provides a construction council or team that acts as a pact to clutter disputes from the onset, there is generally no legal framework or norm to offer such collaboration in Ethiopia, especially in Addis. Hence, creating a rule and custom demands dedication on the political, economical, and technological levels.¹³⁹

3.4.3. Dispute Review Boards

See chapter two, pages 17–19, for another intriguing approach. The DBR members are subject matter experts who have the potential to become familiar with the project, its protocols, and the process for assisting parties in resolving issues before they become significant disagreements.¹⁴⁰ As a result, including the global trend in the contract form is advantageous for our building business. However, the nation as a whole, including Addis Ababa, does not appear to be experiencing a change in the way that law is applied or valued.¹⁴¹

3.4.4. Dispute Resolution Advisors

The building project in Addis does not utilize DRA for dispute resolution.¹⁴² Another comparable procedure is DRE employed by the ERA (Ethiopian Road Authority) to settle disputes involving the construction of roads.¹⁴³

The owner and contractor choose skilled professional engineers at the beginning of the building project to settle disputes with the help of experts.¹⁴⁴ The experts must conduct at least four annual site visits and use every effort to help the parties reach an amicable solution without holding a formal hearing. It has a preventive impact by crystallizing parties' communication and

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ Interview with Mr Almaw(n114).

¹⁴¹ Interview Mr Almaw, Darribew, Sintayahu, Eng. Zebeba and Eng. Niway(n138).

¹⁴² Interview Eng. Niway (n112).

¹⁴³ *ibid.*

¹⁴⁴ Alemu Mosisa, Wubishet Jekale, Tamene Adugna, 'Assessment of Effectiveness of Dispute Review Expert Practice in Ethiopian Federal Road Projects' (2015) 3 (8) International Journal of Engineering and Technical Research (IJETR) 15-20. [hereafter Alemu etal, Effectiveness of DRE]

encouraging collaboration at the earliest stages of conflict to avoid it from escalating into disputes.¹⁴⁵

The DRE's recommendation is now final and binding on the owner/employer and the contractor, and unless it is contested within 15 days, it will be admissible as evidence in any future dispute resolution proceedings, including any arbitration or litigation, that are related to the dispute to which the recommendation relates.¹⁴⁶

The respondent claimed that no early intervention for dispute avoidance strategies such as selecting a DRE member only after the matter had developed into a disagreement and a site visit had been implemented etc.¹⁴⁷ The intriguing aspect of the business is that the expert team also includes attorneys from the Addis Ababa Chamber of Commerce.¹⁴⁸

3.5. Non-binding Dispute Settlement in Ethiopian Construction.

It is a peaceful way to resolve disputes.

3.5.1. Negotiation

See chapter two page 19 for the detail of the negotiation. The Engineer serves as the primary component of the dispute resolution system under the international standard form of contract outlined in the FIDIC forms of contract.¹⁴⁹ According to the document, disputants must provide the Engineer with their claim or demand. However, if one or both parties disagree with the Engineer's conclusion, then a peaceful dispute resolution process, such as a negotiation process, proceeds. Any endeavour by the parties to resolve the disagreement amicably must have been undertaken before the arbitration of the matter may begin. Negotiation is one of the ways to settle disputes under FIDIC, provided that, unless the Parties agree differently.¹⁵⁰

Negotiation has been added as a first-tier dispute resolution procedure in our nation of Ethiopia under the federal government's 2006 PPA (public procurement Agency) standard bidding document or condition. The paper states that before turning to the courts for the resolution of

¹⁴⁵ibid.

¹⁴⁶ ERA Manual, 'Standard Bidding Documents for Roadwork Contracts ICB, Dispute Resolution Procedure' Addis Ababa: Ethiopian Roads Authority, unpublished.

¹⁴⁷ Interview with Eng. Niway and Mr Almaw.

¹⁴⁸ Interview with Mr Sintayahu (n121).

¹⁴⁹ Girmay Kahsay, 'Claims in International Projects in Ethiopia: A Case Study' (MSc thesis, Addis Ababa University, 2003) 46

¹⁵⁰ ibid

issues, a direct discussion between a contractor, supplier, or service provider and the procuring entity is now the only option.¹⁵¹

Additionally, the mining Proclamation specifies that, to the extent practicable, any disagreement, controversy, or claim between the Licensing Authority and a licensee [mining concession company] arising from or connected to an agreement for reconnaissance, exploration, retention, or mining, or the interpretation, breach, or termination thereof, shall be settled through negotiation.¹⁵²

Moreover, the federal government's Public and Private Partnership Law outlines the process for amicably resolving disputes in privately financed infrastructure projects.¹⁵³

Similarly to this, the investment proclamation states that any disagreement relating to the investment between an investor and the government would be addressed by dialogue or negotiation, without affecting the right of access to justice through a qualified organization with judicial competence.¹⁵⁴

Further, the Petroleum Operations Proclamation allows for the use of discussion to settle disputes before arbitration.¹⁵⁵

If we look at how our courts operate, the federal supreme court's cassation bench rendered an authoritative ruling in 2008 E.C. stating that the documents from the negotiation between the contractors and the owner regarding the amount of payment and for the completed work are sufficient evidence before the court.¹⁵⁶

The interview also shows that there is a practice of a set of clauses, if there is a disagreement between parties, it should first be resolved by negotiation. If that doesn't work, it should move on to the next level.¹⁵⁷ Additionally, the results of case studies show that setting a clause for

¹⁵¹ General Conditions of Contract (GCC) of the Standard Bidding Documents (SBD) for supplies, construction and services issued by the Federal Public Procurement and Property Administration Agency (FPPAA) in 2011 Art.26, available at :<http://www.ppa.gov.et>.> (Last visited on 16 March 2022).

¹⁵² The mining proclamation no.678/2010 art. 76(1), Federal Negarit Gazeta, Year 16, No.45, 2010.

¹⁵³ To provide for the Public and Private Partnership Proclamation No. 1076/2018, Federal Negarit Gazeta, 24th Year No. 28 ADDIS ABABA 22nd February 2018, art. 31,39,40 and 61.

¹⁵⁴ Investment Proclamation No. 1180/2012 , 26th, Federal Negarit Gazeta, Year No. 28 ADDIS ABABA 22nd February 2018, art.28 (1).

¹⁵⁵ Petroleum Operations Proclamation No. 295/1986 article 25(1). Year 45, Federal Negarit Gazeta, No.6, 1986.

¹⁵⁶ Engineer Solomon Getachew vs Edget Yelebse sefet plc (2009) Cassation file.no. 117449..

¹⁵⁷ Interview Mr Darribew, Eng. Zebaba and Interview with Tsegenet Beshaw, Assistant Judge, Federal High Court Construction Bench, Lideta (Addis Ababa, Ethiopia, 9 May 2022) [Hereafter, Interview with Tsegenet].

negotiation first.¹⁵⁸ However, the issue is that when disagreements arise, parties are seen going directly to arbitration or court, ignoring this agreement. As a result, they are unable to communicate with one another and rationalize their already adversarial relationship, they are free to avoid their differences by going through the expensive, time-consuming, and unsuccessful process.¹⁵⁹ Therefore, the continuation of civil litigation is not limited by the fact that the disputing parties are discussing.¹⁶⁰

However, the Addis Abeba Water and Sewerage Authority's modest projects, which are built to aid small and medium-sized businesses as part of the government's effort to create jobs for the unemployed, are successful at resolving disputes amicably through dialogue.¹⁶¹

3.5.2. Conciliation and Mediation

There are parallels and distinctions between the two peaceful dispute resolution methods, mediation and conciliation. The level of engagement of the third party sets them apart from one another. Scholars use many arguments to indicate their differences. While a conciliator simply presides over parties' meetings, a mediator actively participates in talks and negotiations as well. In addition, a mediator is more involved than a conciliator in the dispute's core concerns, sometimes even writing a report.¹⁶²

According to a different perspective, the conciliator is the active one in probing the merits and defects of the parties' claims, offering suggestions and counsel, identifying strong arguments in favour of and against each side's positions, and coming up with fresh concepts that might persuade the parties to resolve their conflict. If the parties are unable to agree, he must draft and offer what, in his opinion, is a fair and reasonable settlement of the issue.¹⁶³ The mediator, however, merely carries out the task of persuading the parties to the dispute to change their respective positions in the hopes of arriving at a point where those positions coincide, a form of shuttle diplomacy without proactively putting forth any ideas as to how the dispute might be resolved.¹⁶⁴

¹⁵⁸ Chai Zone Technology Joint Venture with Syspoen Systems Project Engineering Plc vs Adiss Ababa City Administration Road Traffic Management Agency (Fed. H. Ct construction bench, file no. 288982, 2014)

¹⁵⁹ *ibid supra* note 157 .

¹⁶⁰ Defence Force Foundation vs Mr. Phawlos Zeleke (Fed. H. Ct construction bench, file no. 258599, 2013)

¹⁶¹ Interview with Eng. Zebeba (n110).

¹⁶² Doug Jones, 'Various Non-binding (ADR) Processes', in *New Horizons in International Commercial Arbitration and Beyond*, in (ed.), Albert Jan van den Berg, ICCA, Kluwer Law International (2005)368.

¹⁶³ Nael G. Bunni, *FIDIC Forms of Contract*, 3rd ed., Blackwell Publishing(2005)426-428.

¹⁶⁴ *ibid* 425-426.

As Blackaby and Partasides noted:

The terms ‘mediation and ‘conciliation’ are often used as if they are interchangeable, and there is no general agreement as to how to define them.¹⁶⁵

In Ethiopia, the distinction is also unclear still, the lawmaker and other stakeholders found it difficult to keep them apart, and they were frequently used interchangeably.¹⁶⁶ Additionally, it is legal for the conciliator or mediator to suggest the conditions of a settlement agreement when it is essential and when the situation calls for it.¹⁶⁷

Even though the civil code only includes provisions for compromise and arbitration; mediation is not mentioned there.¹⁶⁸ To provide contending parties in civil and commercial proceedings with a minimally effective legal framework, the civil code of 1960 included rules on conciliation and compromise. The laws governing compromise and conciliation are found in the Arts. 3307–3317 and 3318–3324, respectively. Additionally, the Civil Procedure Code of 1965 has some measures on compromise (Arts. 274-277).¹⁶⁹

Since conciliation plays a significant part in dispute resolution and offers several benefits, the practice was opposed, and there is now no established method of amicably resolving disputes through conciliation even if it is legal. Due to Establishment Proclamation No. 341/2003 of Chambers of Commerce and Sectorial Associations, which set forth the powers and obligations of the chamber, it was stipulated that, upon request by either party, disputes arising out of business dealings between members be resolved through arbitration. It did not include conciliation in its purview.¹⁷⁰

The 1991 E.C. cooperative societies proclamation and the 2008 E.C. amendment also state that the issue should have been resolved amicably through conciliation before being sent to arbitration.¹⁷¹ However, they lacked an article on the use of mediation to settle disputes amicably.¹⁷² The water resource management proclamation further requires that, to the utmost possible, negotiations may be used to settle any dispute, controversy, or claim between the

¹⁶⁵ Nigel Blackaby, ‘Redfern and Hunter on International Arbitration’, 5th ed. OUP(2009)46.

¹⁶⁶ Almag W(n114) 437.

¹⁶⁷ Hagos T(n26)1.

¹⁶⁸ *ibid* 1.

¹⁶⁹ *ibid*.

¹⁷⁰ *ibid*.

¹⁷¹ Federal Negarit Gazeta Proclamation No. 147/1998 To Provide For The Establishment Of Cooperative Societies art. 46 and 49 and Proclamation No. 985/2016 Cooperative Societies art.61,62 and 63 respectively.

¹⁷² Almag W(n114) 427.

Supervising authority and the permit holder arising for reasons relating to the permission. The arbitration will be used to resolve the dispute if negotiations fail to resolve it.¹⁷³

Similarly to this, the Ethiopian Water Resources Management Regulations allow either side to request arbitration if a dispute between the supervisory authority and the permit holder cannot be resolved amicably within 60 days.¹⁷⁴

However, according to the public and private partnership proclamation, the disputants are free to choose any peaceful dispute resolution method, including mediation, to resolve their disagreement. The contracting authority may require the private party to establish a straightforward and effective mechanism for handling claims made by its clients or users of the infrastructure facility if, by the proclamation, the private party renders services to the general public or manages infrastructure facilities open to the general public.¹⁷⁵

The proclamation states that any peaceful dispute settlement procedure may be used if the disputants are willing to do so.¹⁷⁶

A court-annexed mediation is a novel idea for the domestic legal system that was recently adopted by the federal supreme court under the federal court proclamation.¹⁷⁷ Following the proclamation, cases that are to be heard by the Federal First Instance Court and Federal High Court primarily civil cases like labour disputes, business disputes, construction disputes, family disputes, succession disputes, and disputes involving contracts and torts shall be referred to Court Annexed Mediation before the first hearing.¹⁷⁸

Based on the proclamation, court proceedings must be started by filing a letter signed by the mediators stating that the disputants have been unable to settle their disagreement through the court-annexed mediation process. However, if the parties can agree, the mediator must ensure that the settlement agreement is approved by a court by clearly outlining its terms and obtaining the parties' signatures. Once the settlement agreement is approved, it will be carried out just like any other court order.

Even though court-annexed mediation is a recent invention in the legal system, our court's experience demonstrates that mediation is one of the effective methods for resolving disputes

¹⁷³ Ethiopian Water Resources' Management Proclamation no. 197/2000 art. 9 (3 and 4) 61st Federal Negarit Gazeta Year No. 25, ADDIS ABABA 9th March 2000.

¹⁷⁴ The Council of Ministers Ethiopian water Resources Management Regulation No. 115/2005 art. 9(3).

¹⁷⁵ Procl. No. 1076/2018 (n156)art. 62(1).

¹⁷⁶ *ibid.*

¹⁷⁷ Federal Courts Proclamation No.1234/2021, 27th Year No.26 ADDIS ABABA 26th April 2021 art. 45.

¹⁷⁸ The Federal Court court-annexed mediation directive no.12/2014 art 13 (1).

amicably.¹⁷⁹ Additionally, a mediator, who is a third party, helps the parties settle but does not force one on them.¹⁸⁰ He is a qualified individual with the power of the court to persuade parties, define and frame issues for disputants, and resolve disagreements. The mediator's primary responsibility is to convince the party in the conflict.¹⁸¹ He presides over the case, takes part in discussions, and should revise the draft recommendation made by the disputant or their agent.¹⁸² The disputing parties only decide on their cases during mediation; the mediator has no power to make a judgment. Too it is forbidden to coerce or threaten the other party into accepting the formulated issue.¹⁸³

Contrarily, the civil code lacked a definition of conciliation; instead, the 2013 E.C. amendment proclamation governed conciliations from articles 54 to 76. Under this proclamation and directive conciliation and mediation don't have strong differences from one another. The roles of conciliator and mediator are both passive. The proclamation defined conciliation as a process facilitated by a third party designated by contracting parties to resolve existing or future disputes that may arise from the contractual or non-contractual legal relationship.¹⁸⁴ By maintaining his independence and impartiality, the conciliator will help the parties to the agreement to resolve their conflict. The conciliator may, at any stage of the conciliation proceedings, forward proposals for conciliation. He shall not be obliged to put his proposals in writing and provide reasons thereof.¹⁸⁵

If the agreement to settle a dispute amicably is made in writing, the subject of the agreement may be raised as a preliminary objection in the lawsuit brought to court and the court may be prevented from hearing the case. The parties to a contract may state their intention to use conciliation to settle any future or current disputes in writing or by any other method.¹⁸⁶ Therefore, it is merely observed that the conciliator plays no active role in providing suggestions, offering counsel, producing persuasive arguments for and against each participant's perspective, or coming up with fresh ideas.¹⁸⁷

¹⁷⁹ Mukamel Muhammed vs Miftah Kadir (Fed. Sup. Ct, 2009) Cassation bench file.no. 38794 vol. 9.

¹⁸⁰ Almag W(n114) 428.

¹⁸¹ The Federal Court court-annexed mediation directive no.12/2014 art 2 (5).

¹⁸² *ibid* art 15(1).

¹⁸³ *ibid* art 34.

¹⁸⁴ Arbitration and Conciliation Working Procedure, 2021 Proclamation No. 1237 /2021 to provide Art. 2(9), 54-76.

¹⁸⁵ *ibid* art 61 (1 & 4).

¹⁸⁶ Procl. No. 1237 /2021(n182) art.54 and 55(2).

¹⁸⁷ *Ibid*.

The respondent's interview revealed that the organization of the law is weak and no complete legal framework and no guideline that addresses mediation and conciliation, but no law forbids including it in contractual clauses. The two amicable dispute resolution mechanisms are not sufficiently governed and differentiated by the current laws. Since it is a contract, the law of contracts does not forbid using such strategies to resolve a dispute. Additionally, adopting both amicable dispute resolution methods in a multi-tier is advised since it saves the parties time and money and is cost and time effective.

Recently, laws have been passed encouraging those methods. However, in practice, we witness many court rulings and decisions overrun the two dispute resolution procedures as well as negotiation.¹⁸⁸

Additionally, Bahir Dar University's Arbitration Center recently began offering arbitration services through the Addis Ababa Chamber of Commerce and Sectoral Association Arbitration Institute. There are only these two centres for commercial arbitration in Ethiopia. The Ethiopian Mediation and Arbitration Center were established by a group of Ethiopian lawyers (EMAC). But after the Charities and Societies, Proclamation was adopted, it was dropped.¹⁸⁹

It recently started to provide its previous service again in 2020. Although it supports the federal supreme court's project for court-annexed mediation. Despite this, it cannot deliver the usual type of service.¹⁹⁰

Therefore, there is no adequately constituted institution and legal framework to organize, regulate, or consider the dispute by mediation or conciliation. While there are several proclamations spread out, it is impossible to say that they are all ordered and comprehensive laws.¹⁹¹

Furthermore, since the court-annexed mediation is under the jurisdiction of the federal supreme court, there is no well-established body in the court and no institution that is completely operational to conduct case maintenance as the directive indicated., it is still taking a long time

¹⁸⁸ Interview with Mr Almaw (n114) and Defence Force foundation vs Ato Phawelos Zeleke (Fed. H. Ct construction bench, file no. 258599, 2013)

¹⁸⁹ *ibid.*

¹⁹⁰ The welcoming speech of Mrs. Haregewyn Ashenafi, Board Chairwomen, Ethiopia mediation and arbitration center, on the first arbitration Day, (July 23 2020).

¹⁹¹ Interview with Mr Almaw (n114).

for it to be put into effect. In general, they are helpful and recommended for use in resolving court disputes that have been overly inflated.¹⁹²

3.5.3. Mini-trial in the Construction Dispute SettlementError! Bookmark not defined.

It is a small-scale trial for the resolution of the construction dispute. See Chapter 2 for the Explanation on Pages 23 and 24. Both the terms of the building contracts and the national laws don't appear to refer to such legislation. However, it is not prohibited by the law to do so.¹⁹³

3.5.4. Hybrid Construction Dispute SettlementError! Bookmark not defined.

It uses many amicable dispute resolution mechanisms as a means of dispute settlement. One of the hybrid dispute resolution processes is called Med-Arb, which is an abbreviation for the mediation-arbitration process. The parties to a med-arb agreement agree to mediate any disputes, with the understanding dispute that cannot be addressed via mediation will be decided by arbitration, with the same person serving as both the mediator and the arbitrator.¹⁹⁴

The respondent stated that although such dispute resolution methods are uncommon and obscure, they have substantial advantages. Nothing, however, prevents us from including it in the construction contract or other documents.¹⁹⁵

3.6. Setting a Side of Claims for court Ignoring the Amicable Settlement.

Before the disputants submit their disagreements or claims to the binding dispute resolution, there are laws or various standard contract clauses that provide multi-stage amicable dispute resolution methods like negotiation, mediation, mini-trial and conciliation. Such agreements outperform arbitration in terms of cost, time, speed, flexibility, etc. Arbitration and lawsuit are quite similar.¹⁹⁶ Some academics contend that while claimants agree to use the amicable tier of dispute resolution as a mandatory requirement, they do have the option to decline. Others, on the other hand, claim that they must settle their dispute out of court first.¹⁹⁷

According to the approaches of the Federal High Court construction bench, if a contract contains a clause that uses a multi-tiered dispute resolution system as a mandatory requirement, the courts

¹⁹² Interview with Endalkachew Beser and Dawit Fanta , Mediator, Federal First Instant Court, Yeka (Addis Ababa, Ethiopia, 8 May 2022) [Hereafter, Interview with Endalkachew or Dawit].

¹⁹³ Interview with Derribaw(n117).

¹⁹⁴ Zekaries Keneaa, Conciliation As A Means of Setting Commercial Disputes (unpublished),ADDIS ABABA UNIVERSITY, Faculty of Law, LL.M PROGRAM, Notes to the Commercial Disputes Resolution (Laws -624) Addis Ababa.p.3

¹⁹⁵ Interview with Mr Almaw (n114).

¹⁹⁶ Interview with Mr Almaw and Sintayehu.

¹⁹⁷ *ibid.*

will enforce all tiers that result in binding resolutions.¹⁹⁸ If the opposing party's denial is affirmed by the court, it is assumed that the claimant's options have run out. Because the disputants have lost their willingness and their relationship have changed into rivalry. And the court can not engage in and continue to participate in multi-tier dispute resolution because amicable dispute resolution methods are non-binding and by their nature voluntary depending on the parties' free will.¹⁹⁹

However, as per the law mandatory or the permissible nature of agreements is not considered if contracts are signed to settle disputes on their subject matter, and may be submitted as a preliminary objection in a lawsuit and prevent the court from hearing the case.²⁰⁰

In addition to this, the party who requests conciliation must give a notice of his request either verbally or in writing, describing the issue at hand and the deadline for a response. If the opposite party indicates acceptance within the specified day or time, the conciliation proceedings will start.²⁰¹

The party who asked the conciliation may treat the failure of the other party to respond within 30 days of the other party's date of notification or at the expiration of the date for a response as a rejection of the invitation to conciliate and may revoke his invitation, which he must notify the other party of.²⁰²

Further, it is against, the principle of contract law, their agreement is regarded as a law between the parties according to art. 1731 of the civil code, *pacta sunt servanda*, the contract is a law, and the contracting party is obligated by their agreement. Therefore, the contracting party is merely expressing their opposition to an amicable resolution and accepting of right, by the court, it is against the law.²⁰³ And, it disregards the legal requirements that provide for notifying the

¹⁹⁸ Interview with Mr Darribaw(n117).

¹⁹⁹ *ibid.* And F.D.R.E Defence Force foundation vs Ato Phawelos Zeleke (Fed. H. Ct construction bench, file no. 258599, 2013), Oromia Agricultural Research Institute vs Tesfaye Asfere Construction (Fed. H. Ct construction bench file no. 242761, 2013), Phemex Global International plc vs Addis Ababa water sewerage Authority (Fed. H. Ct construction bench file no. 269708, 2014).

²⁰⁰ Procl. No. 1237 /2021(n182) art. 55(1).

²⁰¹ *ibid* art. 56(1 & 2)

²⁰² *Ibid* art. 56 (3)

²⁰³ Procl. No. 1237 /2021(n182) art. 56.

opposing party of the conciliation, waiting for their answer within 30 days, and at the expiration of the date withdrawing the invitation to the opposing party.²⁰⁴

Also, they have to discuss and a settlement must be started since they are required to do so by their contract and must first pursue peaceful dispute resolution unless the contract contains permissive language.²⁰⁵

On the other hand, the claimant will not be forced to employ all of these methods if their contractual language only grants them a simple right to be exercised by the claimant. The claimant is free to bring the disagreement to a binding resolution, they are not required to do so. According to the court's methods, respondents' opposition to a non-exhaustion peaceful settlement is admissible in lawsuits, but rejecting an amicable solution without taking into consideration the language of the contract is against the principle of the privacy contract.²⁰⁶ If the contractual agreement contains a clause requiring an amicable settlement as a permissive prerequisite to employing a dispute resolution method or a binding settlement, it should be recognized and the parties should be allowed to disregard it. If not, it goes against the contractual party's intentions.²⁰⁷

Ethiopian approaches to multi-stage amicable dispute resolution mechanisms are not well established, neither obvious contractual terms nor legal provisions that explicitly state a tier of dispute resolution that provides if the negotiation is unsuccessful, mediation/conciliation will continue, or if mediation is unsuccessful, the other peaceful dispute resolution method or conciliation or other peaceful resolution methods will be implemented. But, the common practice in the construction industry for contractual parties or claimants to engage in multi-tiered conflict resolution includes a negotiation of parties unsuccessful the binding settlement continuing, and mediation/conciliation of parties unsuccessful the binding settlement continues or other which means if one of the amicable dispute resolutions is unsuccessful binding settlement commences.²⁰⁸

²⁰⁴ *ibid.*

²⁰⁵ Interview with Mr Almaw (n114).

²⁰⁶ Interview with Mr Darribaw (n117).

²⁰⁷ Interview with Mr Almaw (n114).

²⁰⁸ Defence Force foundation vs Ato Phawelos Zeleke (Fed. H. Ct construction bench, file no. 258599, 2013).

Chapter Four

4. Conclusion and Recommendation

4.1. Conclusion.

Using information about Ethiopia's construction dispute resolution processes from the literature, laws, original data, and research. The study can draw the following main conclusion:-

1. The construction sector, from its unique feature, experienced complexity, due to the involvement of different stakeholders in the project exposed to disputes which hinder the completion of the project on time.
2. In the recent international arena, the vitality of multi-tier amicably settling disputes is the preferred construction dispute settlement. Because curing a dispute amicably via multi-level is better, if prevention isn't fruitful, it is more cooperative and sustains the trust of the contracting party each other and doesn't cost and consume time as well its result is a win-win or less adversarial dispute settlement.
3. However, in our nation's building business, multi-stage peaceful dispute resolution mechanisms including med-arb and mini-trial aren't common. Additionally, they do not entirely resolve conflicts through multi-tier amicable dispute methods. since the majority of people aren't aware of the opportunity.
4. In addition, there are very few instances in the national construction business where a dispute is appropriately managed through peaceful dispute resolution mechanisms, and a pre-requisite for conciliation under the laws is disregarded without the required justification in court. However, the legislation does not fully capture the distinction between conciliation and mediation, which causes difficulty in implementation.
5. The adoption of laws encouraging the use of multi-level amicable conflict resolution, which is absent in our law as well as the establishment of centres assists in increasing understanding of and trust in amicable dispute resolution. But in Ethiopia, the study reveals that Ethiopia's amicable multi-tiered dispute resolution mechanism is not properly regulated by law. For private professionals and partners, there are no appropriate institutions for resolving conflicts amicably. Also, the existing laws are not supported by a guideline and procedures, and as a result not comprehensive.

4.2.Recommendation

On the bases of the above findings, the following recommendations are made:

1. The government or private dispute settlement institution should have to work on the creation of awareness of the importance of the amicable settlement of disputes level by level in the construction industry towards the construction communities or customers (users).
2. In general, the government has to provide detailed guidelines and procedures to make complete amicable dispute resolution mechanisms to properly distinguish peaceful settlements from each other and sustain uniformity in the construction industry.
3. The government should have to work on the establishment, increment and encouragement of private (professionals and partners) dispute settlement institutions.
4. As in other jurisdictions, the private dispute settlement institution and the government have to develop the standard condition of construction contracts.
5. Courts should have to follow a procedural approach when enforcing multi-tiered DRM by staying the proceeding until they comply with the mandatory term of the contract.
6. Per the legislation, conditions must be met to terminate conciliation and start a lawsuit; these requirements should have been secured in court.
7. MTDRM clauses should specify the time each tier will start and terminate, as well as when it will do so. Either side may proceed to the next level if a settlement cannot be achieved.
8. The other is a mini-trial, which is a broad notion whose legal context, practical gaps, and application of peaceful dispute resolution are not discussed in this study. For future studies, it is advised that these problems be investigated, discussed, and analyzed.

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Appendices

Appendix A: Interviews Conducted

Interviewee	Date	Place	Position
1. Mr Yakob Mekuria Federal High Court	9 May 2022	Addis Ababa	Presiding Judge of
2. Zebeba Redie (Eng.) Construction Planning and Authority	7 May 2022	Addis Ababa	Sub-Process leader of Contract Administrator, Addis Ababa Water and Sewerage
3. Mr Almaw Wolie Federal Supreme Court Cassation Bench and know a lawyer.	14 May 2022	Addis Ababa	the former Presiding Judge,
4. Niway W/Yes (Eng.) Ethiopian Road Authority or Administration	12 May 2022	Addis Ababa,	Led Engineer in the
5. Mr Derebew Tewabe High Court Construction Bench, Lideta.	5 May 2022	Addis Ababa	Presiding Judge, Federal
6. Eng. Gemechis Tilahun Construction Supervisor and Authority	7 May 2022	Addis Ababa	Sub-Process leader of Contract Administrator, Addis Ababa Water and Sewerage
7. Mr Endalkachew Beser Court Assistant Judge and Mediator	8 May 2022	Addis Ababa	Federal First Instant
8. Mr Dawit Fanta Court Assistant Judge and Mediator Addis Ababa Registrar at AACCSA AI	8 May 2022	Addis Ababa	Federal First Instant
9. Ms Tsegenet Beshaw Construction Bench Assistant Judge	9 May 2022	Addis Ababa,	Federal High Court
10. Mr Sintayehu Zeleke Court Judge and legal advocate and experienced construction dispute arbitrator at AACCSA AI	13 May 2022	Addis Ababa	the former Federal High

Appendix B:

Interview Questions

Interview questionnaires are designed for the judges, mediators, arbitrators and lawyers, contractors, and consultants to examine the legality and practicality of the multi-tiered dispute settlement mechanism before the dispute is blown to the binding settlement in the Ethiopian legal regime.

Part I.

Introduction:

- a. Greeting.....
- b. My name is.....
- c. I'm from the AAU law faculty with.....LL.M in business law stream.
- d. The research title: Multi-tiered Construction Dispute Resolution in Addis Ababa: Legal and Institutional Dimensions.
 - a) What is your name....?
 - b) What is the name of your institution?
 - c) What is your position in the institution?

Part III. Main questions:

I. Causes of Dispute

1. From your experience, have you worked on a dispute case in Ethiopia/Addis Ababa specifically in the construction sector?
2. How long did that last?
3. What was the main cause of the dispute in that construction project or what has escalated the dispute? What are the factors generating the dispute?

4. Can you talk to me about the nature of those disputes?
5. What else could contribute to disputes in Ethiopia/Addis Ababa? Is there any difference?
6. What are the major types and causes of claims/disputes during: During the design phase Bidding and contract awarding Performance/execution?
7. What factors frequently led to claims/disputes related to Clients/Employers/owners Contractors Consultants Others?
8. What are the most frequent claims made by: Clients/Employers/owners Contractors Consultants Others?
9. What to do about avoiding claims and minimizing disputes?
10. Is there anything you would like to add?

II. Dispute Settlement/Resolution in Ethiopia

In the international arena, preventive and amicable dispute resolutions are highly advocated by the scholar for the construction of disagreement or claims before disputes are blown to the binding dispute resolution (adjudication, arbitration and litigation), as a result of cost-effective, speedy, win-win or non-adversarial effect etc.

1. What about Ethiopian construction? Which type of dispute resolution is most often used in construction matters, in Ethiopia/Addis Ababa? Why? If there have been preferences in the past five years, what caused this?
Is there a practice of multi-stage dispute resolution including preventive mechanisms? Is this type of dispute resolution clause enforceable? How? The parties of the amicable dispute resolution can waive the multi-tier of the amicable settlement and can directly bring the case to a binding settlement mechanism. Or it is mandatory to use the amicable one before they bring the case to the binding one? How is the clause multi-tier interpreted?
2. Are there special or applicable laws on resolving construction disputes in Ethiopia/Addis Ababa?

3. What are the legal frameworks for settling construction disputes via multi-stage in Ethiopia/Addis Ababa? How do you evaluate their role in promoting early and amicable dispute settlement culture?
4. What looks like the institutional setup of construction dispute settlement schemes in Ethiopia/ particularly in Addis Ababa? How do you evaluate them their effectiveness and efficiency in resolving disputes? including Courts and Arbitration institutions. Or simply is there an institutional setup of construction amicable dispute settlement except for Courts and Arbitration?
5. What to do about promoting excellence in early, amicable, and efficient dispute resolution systems? Concerning: Capacity/Knowledge Building or System Building/ Institution Building?

Is there anything you would like to add?