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**ADDIS ABABA UNIVERSITY  
FACULTY OF LAW  
SCHOOL OF GRADUATE STUDIES**

**FACTORS DETERMINING THE CHOICE BETWEEN  
PUBLIC AND PRIVATE ADJUDICATION IN ETHIOPIA:  
FOCUSING ON COMMERCIAL DISPUTES**

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**ADDIS ABABA**

**JANUARY, 2018**

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## ***DECLARATION***

I, the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been duly acknowledged.

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## CONTENTS

DECLARATION .....	III
ACKNOWLEDGMENTS .....	IV
ABSTRACT .....	X
CHAPTER ONE .....	1
1.INTRODUCTION .....	1
1.1.BACKGROUND.....	3
1.2.LITERATURE REVIEW .....	6
1.2.1.OVERVIEW OF THE CONCEPTS OF ADR AND CIVIL COURT LITIGATION.....	6
1.2.2.THE LEGAL FRAMEWORKS OF ADR AND LITIGATIONS IN SOME OTHER JURISDICTIONS .....	8
1.2.3.PUBLIC AND PRIVATE CIVIL JUSTICE SYSTEMS IN ETHIOPIA.....	9
1.3.STATEMENT OF THE PROBLEM.....	10
1.3.1.GENERAL PROBLEMS .....	10
1.3.2.SPECIFIC PROBLEMS.....	11
1.4.RESEARCH QUESTIONS .....	12
1.5.OBJECTIVES OF THE STUDY.....	12
1.5.1.GENERAL OBJECTIVES.....	12
1.5.2.SPECIFIC OBJECTIVES .....	12
1.6.SIGNIFICANCE OF THE STUDY .....	13
1.7.SCOPE OF THE STUDY .....	13
1.8.RESEARCH HYPOTHESIS .....	14
1.9.RESEARCH DESIGN AND METHODOLOGY .....	14
1.10.LIMITATIONS OF THE STUDY .....	15
CHAPTER TWO.....	16
2.THE LEGAL AND CONCEPTUAL FRAMEWORKS OF PUBLIC CIVIL AND PRIVATE CIVIL JUSTICE SYSTEMS .....	16
2.1.THEORETICAL REVIEW OF PUBLIC CIVIL JUSTICE SYSTEM .....	16
2.2.CHARACTERISTICS OF PUBLIC CIVIL JUSTICE SYSTEM.....	18
2.3.ADVANTAGES AND DISADVANTAGES OF PUBLIC CIVIL LEGAL SYSTEM .....	20
2.3.1.ADVANTAGES OF PUBLIC CIVIL LEGAL SYSTEM.....	20
2.3.2.DISADVANTAGES OF PUBLIC CIVIL LEGAL SYSTEM.....	21

2.4.CHARACTERISTICS OF PRIVATE JUSTICE SYSTEM.....	21
2.4.1.TAYPES AND MECHANISMS OF PRIVATE JUSTICE SYSTEM.....	25
2.4.1.1.MEANING AND CONCEPT OF NEGOTIATION.....	27
2.4.1.1.1.MEANING OF NEGOTIATION.....	27
2.4.1.1.2.CHARACTERISTICS OF NEGOTIATION.....	28
2.4.1.2.MEANING AND CONCEPT OF MEDIATION /CONCILIATION.....	29
2.4.1.2.1.CHARACTERISTICS OF MEDIATION.....	30
2.4.1.3.MEANING AND CONCEPT OF ARBITRATION.....	32
2.4.1.3.1.CHARACTERISTICS OF ARBITRATION.....	33
2.4.1.3.2.SIMILARITIES OF ARBITRATION AND LITIGATION.....	34
2.4.1.3.3.DIFFERENCES BETWEEN ARBITRATION AND LITIGATION.....	35
CHAPTER THREE.....	37
3.PROBLEMS IN THE CHOICE BETWEEN PUBLIC AND PRIVATE CIVIL ADJUDICATION IN ETHIOPIA FOR COMMERCIAL DISPUTES.....	37
3.1.THE POSITION OF ADR MECHANISMS IN THE ETHIOPIAN LEGAL REGIME.....	37
3.2.THE LEGAL FRAMEWORKS OF COMMERCIAL DISPUTE RESOLUTION MECHANISMS IN ETHIOPIA .....	40
3.2.1.THE LEGAL POSITIONS OF ADR IN THE 1960 CIVIL CODE OF ETHIOPIA.....	41
3.2.1.1.COMPROMISE UNDER ETHIOPIAN LAW.....	43
3.2.1.2.CONCILIATION UNDER ETHIOPIAN LAW.....	44
3.2.1.3.ARBITRATION UNDER ETHIOPIAN LAW.....	46
3.2.1.4.COMMERCIAL ADR INSTITUTIONS IN ETHIOPIA.....	48
3.2.1.5.THE ETHIOPIAN ARBITRATION AND CONCILIATION CENTRE (EACC).....	49
3.2.2.THE ADDIS ABABA CHAMBER COMMERCE AND SECTORIAL ASSOCIATION ARBITRATION INSTITUTE (AACCSA- AI) AND BAHIR DAR UNIVERSITY ARBITRATION CENTER.....	49
CHAPTER FOUR.....	52
4.RESEARCH DESIGN AND METHODOLOGY.....	52
4.1.RESEARCH DESIGN.....	52
4.2.POPULATION AND SAMPLING TECHNIQUES.....	53
4.3.SOURCES OF DATA.....	53
4.4.DATA COLLECTION INSTRUMENTS.....	54

4.4.1.QUESTIONNAIRE .....	54
4.4.2.INTERVIEW.....	55
4.4.3.DATA COLLECTION PROCEDURES .....	55
4.5.DATA ANALYSIS .....	55
CHAPTER FIVE .....	57
5.RESULTS AND DISCUSSION .....	57
5.1.RESULTS AND FINDINGS.....	57
5.1.1.AWARENESS ON COMMERCIAL DISPUTE RESOLUTION MECHANISMS AND INSTITUTIONS IN ETHIOPIA .....	57
5.1.2.TIME EFFICIENCY .....	60
5.1.3.ENFORCEMENT.....	62
5.1.4.COST.....	65
5.1.5.INSTITUTIONAL CAPACITY .....	67
5.1.6.PREFERENCE .....	70
5.1.7.THE DETERMINANT FACTORS TOWARDS THE PREFERENCE OF COMERCIAL DISPUTANT .....	71
5.1.7.1.MODEL SPECIFICATION .....	72
5.1.7.2.RESULT .....	73
5.1.7.2.1.MODEL FITNESS FOR MODEL_1 .....	73
5.1.7.2.2.COEFFICIENT ESTIMATION .....	73
5.1.7.2.3.INTERPRETATION .....	74
A.MODEL FITNESS FOR MODEL_2.....	75
B.COEFFICIENT ESTIMATION (MODEL_2).....	75
C.INTERPRETATION OF COEFFICIENTS (MODEL_2) .....	76
5.1.8.SUMMARY OF RESULTS AND DISCUSSIONS WITH RESPECT TO THE RESEARCH HYPOTHESIS ...	76
5.1.9.CHALLENGES AND OPPORTUNITIES.....	78
5.1.9.1.CHALLENGES .....	78
5.1.9.2.OPPORTUNITIES .....	80
CHAPTER SIX .....	82
6.CONCLUSIONS AND RECOMMENDATIONS.....	82
6.1.CONCLUSIONS.....	82
6.2.RECOMMENDATION.....	84

7.REFERENCE.....	85
8.APPENDICES .....	91
APPENDIX I: SURVEY QUESTIONNAIRE .....	92
APPENDIX II: INTERVIEW QUESTION FOR THE DIRECTOR OF AACCSA-AI.....	97
APPENDIX III: INTERVIEW QUESTION FOR JUDGES .....	99
APPENDIX IV: LIST OF INTERVIEWEES .....	100

## Acronym

1. ADR = Alternative Dispute resolution
2. CDR= commercial dispute resolution.
3. PCCDR= Private civil commercial dispute resolution.
4. PCJS= Private civil justice systems.
5. PUCJS= Public civil justice systems.
6. PCMA = Paris Centre for Mediation and Arbitration.
7. ICC= International Chamber of Commerce.
8. EACC = Ethiopian Arbitration and Conciliation Centre.
9. AACCSA= Addis Ababa Chamber of Commerce and sectorial association.
10. AACCSA-IA = Addis Ababa Chamber of Commerce and sectorial association institute of arbitration
11. SPSS =Statistical Package for Social Science
12. WTO = World Trade Organization
13. PUCCJS= Public civil commercial justice systems
14. PCCJS=- Private civil commercial justice systems

## ***Abstract***

*In this day, an alternative commercial dispute resolution mechanism is a very popular topic in the globe. It is one of the crux interests of business communities and important aspects in legal studies. The focus of current study is to understand the effect of determinant factors on the choice between public and private adjudication in Ethiopia upon commercial disputes. To identify the research problem, the back bone on this study is the primary data sources which are comprised of customer and expert opinion and the researcher use also a secondary data which are a comprehensive literature review. Three Hypotheses are developed to see the determinant factors on the choice between public and private justice systems in Ethiopia. Of all the independent variables on the overall customer preference are cost, time, and enforcement. The hypotheses show that all these have significant determinate factors on the choice between public and private justice systems in Ethiopia in the commercial disputes. These hypotheses came from the literature review and the researcher first impression opinion. All the hypotheses have also proved with the help of customer and expert opinions through primary data. But results show that enforcement is a major determinant factor. Surprisingly, through the course of the research the study has got other major determinant factors which are: awareness and institutional capacity though they were not set as factors on the first hypothesis. Cost and time have not considered as the major determinant factors on the choice between public and private adjudication in Ethiopia upon commercial disputes. The regression analysis on the result discloses that cost and time are insignificant, which means they are not consider as major determinant factors on the choice between public and private adjudication in Ethiopia upon commercial disputes. By and large, the result shows in the regression analysis, if all the independent variable (determinant factors) is found to be there, customer preference probably will increase as that of the resulted factors on the coefficients, keeping other things are constant. The Researcher has proved the hypothesis through empirical data. However, the literature reviews have important places on this study.*

**Keywords:** The choice between Public and private civil justice systems in commercial dispute settlement mechanisms with respect to cost, time, enforcement, awareness, capacity.

## CHAPTER ONE

### 1. INTRODUCTION

Commercial dispute arises from different situations, like payment defaults on delivery of goods and services or a dispute in relation to payment upon finalization of projects or in relation to non-performance of other obligations.<sup>1</sup> Usually, dispute settlement clauses in commercial contracts indicate that an existing or a future dispute should be settled as per a dispute settlement clause.<sup>2</sup> For any business or commercial practice, located anywhere in the world, if disputes are not addressed swiftly, efficiently, and cost-effectively, the consequence will be grave.<sup>3</sup> This means, commercial disputes, if not addressed swiftly, can have effects and jeopardize profitability, reputation, relationships and sometimes may bring about a negative impact on existence of a business itself.<sup>4</sup>

Mechanisms on the settlement of commercial dispute between commercial disputants are one of the main issues in business environment. A mechanism that is available in the legal framework to choose the best alternatives is a critical consideration. When such commercial disputes are rising between business men, disputes are resolved either with public or private justice systems.

With regard to public justice system, the most notable generic name that comes up would be "litigation", whereas the corresponding counterpart in the private justice system is known as "Alternative Dispute Resolution". Arbitration, negotiation and mediation are very important elements of the private civil dispute resolution mechanisms which are different from litigation. Here the interest of the research is, to identify which systems are familiar in the Ethiopian business communities and more importantly, what are the determinant factors on the choice between the two systems in Ethiopia. Hence, these are the crucial points of the interest of the study to assess such problems that are determining the choice between public civil and private civil adjudication in Ethiopia. In this day, most business communities are interested to resolve their disputes in very critical elements of legal environment such as effective enforcement,

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<sup>1</sup> Financial Dispute Service, [www.cpradr.org/CPRneutrals](http://www.cpradr.org/CPRneutrals). Accessed on March, 18 2017.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

capacity in terms of infrastructure and expert, time and cost effectiveness and confidential trial. The discussion of this paper does not explore the whole aspects of determinant factors of the choice between public and private justice systems in Ethiopia. So, the study will focus only on critical determinant factors that will affect the choices between public and private adjudications in Ethiopia. In this study, the experience of some developed nations will be incorporated for the sake of comparison only because they are known by their success of business and economic worth and probably they have good experience in the resolution of commercial disputes. Thus it will help to understand in what ways to solve such commercial disputes when they face.

The paper is organized in to six chapters. The first chapter contains proposal of the study, it has Background, Literature Review, Statement of the problem, Research Questions, Objectives of the Study, Significance the study, Scope of the study, Research hypothesis, Research Design and Methodology, and Limitations of the study.

The second chapter deals with the Conceptual Frameworks of the legal aspect and an overview of Public and Private Justice System. The chapter comprises the theoretical review, elements, processes, structures, conceptual highlights, nature and types of public and private justice systems.

The third chapter deals with the theoretical aspects of the choice between public and private adjudication in Ethiopia focusing on commercial disputes. It will be exposed the general characteristics, historical Background, legal frameworks of ADR system in Ethiopia, Functional institutions of ADR system in Ethiopia and factors on the Choice between Litigation and ADR system in Ethiopia.

The fourth chapter will deal with research design and methodology. It will deal with Population and Sampling Techniques, method of data collection, procedures of data collections, data analysis.

The fifth chapter will deal with the Results/Findings and discussions of the study which are the determinant factors of the choice between Private civil commercial dispute resolution (hereafter, PCCDR) mechanism and Public (court) civil justice (hereafter, PUCJS) systems in Ethiopia.

The last chapter will deal with conclusion and recommendations on the basis of the findings of the study. In this chapter an attempt will be made to demonstrate the determinant factors on the choice between of public and private justice systems in Ethiopia, focusing on commercial disputes and will present such possible recommendations to resolve the problems there to the two systems.

## 1.1. BACKGROUND

The acronym ADR shows for Alternative Dispute Resolutions but this designation holds many reservations about the importance of the expression. Jean R. Stern light, expert of Conflict Resolution has the following to say:

*Is Binding Arbitration a Form of ADR? An Argument That the Term "ADR" Has Begun to Outlive (survive) Its Usefulness, 2000 J. DISP. RESOL. 97. As argued in that article, arbitration and mediation are extremely different from one another, and arbitration is more similar to litigation than it is to mediation or negotiation. [Jean R. Stern light,] generally prefer the phrase "appropriate dispute resolution" because it more accurately captures the notion that litigation, arbitration, mediation, and negotiation are alternatives to one another.<sup>5</sup>*

ADR supporters said that disputes should be resolved, not only in public trials, but also through other private mechanisms such as negotiation, mediation, and arbitration.<sup>6</sup>

In the current global world, countries have been trying to modernize their domestic laws, because, many bilateral relationships and the interdependence of one nation to another nations increase global commercial transactions. States are obliged to reform their laws in compliance with international dispute settlement standards. So, the influence of technology and compelling international reality is pressurizing nations to search for alternative dispute settlement systems than litigation.

At present reality, ADR mechanisms are growing and have been given strong recognition among legal scholars and attorneys, in comparison with the inefficient traditional court system in

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<sup>5</sup> Jean R. Stern light, Michael and Sonja *Is Alternative Dispute Resolution Consistent with the Rule of Law?* William S. Boyd School of Law, University of Nevada Las Vegas, *56 De Paul Law Review* 569 (2006). Under footnote 1 of p.2

<sup>6</sup> Ibid, p.3

dealing with commercial disputes.<sup>7</sup> This is a testimony that, the world understands the indispensability of ADR in recent years, books and articles have been written on commercial arbitrations and conferences have been held on mediation, centers for mediation have been established, and a variety of courses offered by law schools on ADR around the world.<sup>8</sup> As the result of many efforts that have been put in, numerous arbitration centers and other alternative dispute resolution mechanisms have been brought public attention for the strengthening of commercial dispute settlement system in the globe.<sup>9</sup>

On the other hand, litigation is a term that is used to describe such proceedings that are initiated between two opposing parties to enforce or defend a legal right.<sup>10</sup> Litigation is usually settled by agreement between the parties, but it may also be heard and given decision by a judge.<sup>11</sup>

Ordinarily, litigation is not just another name for a lawsuit. It is beyond that and it comprises a number of activities before, during, and after a lawsuit in order to enforce or defend a legal right by someone.<sup>12</sup> Apart from an actual lawsuit, litigation may also involve, pre-suit negotiations, arbitrations, mediations facilitations and appeals may be considered as part of a litigation process.<sup>13</sup> Generally, formal court litigation has many steps and activities.<sup>14</sup> In this study, the main focus would be on factors that determine the choice between public and private adjudication in Ethiopia by focusing on commercial disputes. Many legal scholars have discussed the significance of ADR in Ethiopia by indicating that ADR is the most used dispute

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<sup>7</sup> Steven C, *Alternatives to Litigation of International Disputes*, the International Lawyer, Vol. 23, No.1(Spring 1989),Published by: American Bar Association, available at <http://www.jstor.org/stable/40706229>, visited on Mon March 20, 2017, p.2

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Free legal Advice, "*What is Litigation?*" <http://www.FreeAdvice.com/Litigation> › *Lawyers, Law Firms & Procedures* › ARTICLE accessed on March20, 2017. p.1

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid- "The formal lawsuit is what most people think of when they hear the term litigation. A lawsuit involves a plaintiff filing a formal Complaint with the appropriate court, and then serving a copy upon a defendant to provide them notice of the impending court case. The defendant then files an Answer within a prescribed amount of time, and the lawsuit commences. The rules involving formal lawsuits vary from city to city and state to state. Suffice it to say that litigation of a formal lawsuit generally involves three stages: Discovery, Trial, and Post-Trial."

settlement mechanism. For instance Shipi M. Gowok wrote about the Ethiopian ADR system in the following way:

*Ethiopia has for centuries been using traditional methods of dispute resolution. The institutions of Gadaa among the Oromo, the Shimagelle by the Amhara, and the other ethnic groups were used. But Alternative Dispute Resolution has not attained any significant position of usage and acceptance in its modern form. Recent incorporation of Alternative Dispute Resolution mechanisms in the legal polity (an organizational structure of the government of a state) has been greeted with a lukewarm (not very enthusiastic of an idea, unexcited) attitude by the government, judiciary and the civil society. However, existing realities on the ground and in practice have pepped-up the need to resort to other means of dispute resolution rather than relying entirely on the conventional courts.<sup>15</sup>*

As Shipi M. Gowok mention in the above, because of less consideration to ADR system, disputants brought their cases in to ordinary courts and litigation is considered as a common means of settlement. Because of a number of reasons, court litigation or lawsuits in Ethiopia is so costly, slow to achieve results and susceptible to corruption.<sup>16</sup>

ADR in Ethiopia has been considered as part and parcel of the Ethiopian legal system.<sup>17</sup> In olden days, if disputes arose among individuals or communities, the disputants were fist required to settle their dispute amicably by old- aged people in the society that are called "elders" or "Shimagelle" or some groups among societies that serve as ad-hoc tribunal for the settlement of a particular case or dispute.<sup>18</sup> ADR is in general, a mechanism that disputants look for alternative other than the conventional, formal, coercive institution of modern states known as court.<sup>19</sup> Yohannis has expressed court dispute settlement mechanisms in Ethiopia as follow:

*Courts are the ultimate legitimate recourse to conflicts. Courts exercise their constitutional judicial power to resolve disputes, interpret and administer laws, with the full backings and blessings of the state. Once disputes are submitted to courts, in legal terms, parties hardly have any role to influence the course of any ruling or decision issued by a judge and it is up to the judge to dispense justice in accordance with the law regardless of any cooperation, good will, support or consent given by the parties.<sup>20</sup>*

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<sup>15</sup>Shipi M. Gowok, Alternative Dispute Resolution in Ethiopia - A Legal Framework, <http://www.ajol.info/index.php/afrrrev/article/download/41054/8478>, accessed on March24, 2017.p.1.

<sup>16</sup> Ibid,p.2

<sup>17</sup> Ibid, p.6

<sup>18</sup> Ibid

<sup>19</sup>Yohannes woldegebriel, Current Status of Alternative Dispute Resolution in Ethiopia, [www.addischamber.com](http://www.addischamber.com),Aug12, 2014 Addis Ababa, Ethiopia. p.1

<sup>20</sup> Ibid

On the other hand, ADR system expressed as a process of mutual agreement of disputants that are established on the free consent, cooperation, and confirmation for the approval of the decisions on the case.<sup>21</sup>

## **1.2. LITERATURE REVIEW**

The issue of public and private civil justice systems in the realm of legal framework is one of the popular topics over the globe. Disputes are perpetual phenomena, as long as, societies interact each other. In the history of human being, to solve such problems, societies have developed their way of dispute settlement mechanisms. In this regard, ADR mechanisms have own benefits in relation to cost and speed when it has compared to conventional court proceedings.<sup>22</sup>

### **1.2.1. OVERVIEW OF THE CONCEPTS OF ADR AND CIVIL COURT LITIGATION**

With the development of commercial activities over the globe, the interest of solving disputes by ADR mechanism grew significantly.<sup>23</sup> Even though, it has a growing effect, there are negative attitudes or arguments towards private civil justice system (hereafter, PCJS). Among those, some argue that, if PCJS is allowed and disputants settle their problems by themselves, will bring an adverse effect on the interpretation of laws that have been made in PUCJS (court trials) and it would also endanger the publication of court decisions.<sup>24</sup>

In a similar fashion, others also argue that, resolving disputes privately by ignoring public court trials, the consequence will reduce the responsibilities of the community.<sup>25</sup> Others also argue that, if disputes are resolved privately, it will have such consequences in the necessary functions

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<sup>21</sup> Ibid

<sup>22</sup> National Alternative Dispute Resolution Advisory Council, *ISSUES OF FAIRNESS AND JUSTICE IN ALTERNATIVE DISPUTE RESOLUTION DISCUSSION PAPER*, CANBERRA, AUSTRALIA, NOVEMBER 1997.p.1

<sup>23</sup> Jean R. Stern light, supra note 5, p.3

<sup>24</sup> Ibid

<sup>25</sup> Ibid

of education.<sup>26</sup> Other groups have condemned ADR system in fear of reducing the powers and positions of communities' legal norm.<sup>27</sup>

Since, the right to use court systems is one of the important attributes in the realm of criminal, constitutional and administrative laws as safeguards of justice, but it is not always true court litigation is necessary in civil and contract laws, especially when it has seen in terms of time, cost, maintaining good relationships and other private matters.<sup>28</sup>

Hence, commercial disputants who are equal in their legal status, having the chance of choosing their own dispute resolution mechanism.<sup>29</sup> Nosyreva, has described the importance of ADR as follow:

*"The practice of out-of-court means of dispute resolution is mostly characteristic of the legal system in the United States. These methods are an alternative to litigation, which despite its usefulness and significance for society is a very formal, expensive, time-consuming and complicated process for disputing parties. The need to find other means that are simpler, less expensive, faster and more efficient has led to the use of "non-formal justice" for legal disputes resolution. The methods such non-formal jurisdiction is known as alternative dispute resolution ("ADR")."*<sup>30</sup>

In the year 2001, ADR system in Russia was in the stage of babyhood and was not well-developed compared with the United States, even though courts are congested with civil cases there is no reaction to the justice system on having alternatives, but the Russian society was badly in need of less costly and flexible dispute resolution mechanisms.<sup>31</sup> The US went through many paths to achieve organized ADR system, and has become the main government concern and within this, the society has benefited from the system.<sup>32</sup> Among the benefits, that ADR system brought to the US society are: it reduced the disputants' costs, time, court congestion, and brought public satisfaction, maintained relationships, offered accessibility to meet disputants'

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<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Nosyreva, Elena (2001) "Alternative Dispute Resolution in the United States and Russia: A Comparative Evaluation," *Annual Survey of International & Comparative Law*: Vol. 7: Issue. 1, Article 3. Available at: <http://digitalcommons.law.ggu.edu/annlsurvey/vol7/iss1/3>. p.1 . Accessed on March22, 2017.

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid, p.5

free and accelerated dispute settlement, and it gives accesses to "teach the public to try procedures that are more effective than violence or litigation for settling disputes".<sup>33</sup>

### **1.2.2. THE LEGAL FRAMEWORKS OF ADR AND LITIGATIONS IN SOME OTHER JURISDICTIONS**

The United Kingdom (UK) embraces four distinct nations; which are: England, Wales, Scotland and Northern Ireland.<sup>34</sup> In UK, there are three different legal jurisdictions which are: England and Wales, Scotland and Northern Ireland (all are collectively called, UK law) and each of them have their own dispute settlement mechanism within their jurisdiction, but "the jurisdictional rules that apply across the UK are largely similar"<sup>35</sup> Accordingly, there are three different jurisdictions in the UK, among which England and Wales have similar legal system and Scotland and Northern Ireland have their own distinct legal systems.<sup>36</sup>

If any dispute occurs in the course of business communication in the UK, the primary focus does not only know the rule of each particular jurisdictional power for the settlement of the dispute but also the dispute resolution mechanisms.<sup>37</sup> If for example, in England and Wales in relation to civil business matter proceedings, they have the same procedural legal system. On this point, Garrett has said the following:

*Litigation regarding civil business matters is first however carried out in the Queen's Bench Division of the High Court, or in the County Courts, depending on the importance of the matter and the size of the matter in monetary terms. There are also alternative courts where proceedings may be commended for specialist matters, such as the Commercial Court, Mercantile Court, Technology and Construction Court, and the Chancery Division. The majority of commercial claims will commence in either the relevant County Court, or within the Queen's Bench Division of the High Court.*<sup>38</sup>

In the UK, regard to ADR, a highly appreciated practice is the pre-trial phase of court actions; when commercial disputants bring their cases to the attention of the traditional court and soon

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<sup>33</sup> Ibid

<sup>34</sup> Mackrell Turner Garrett, "Dispute Resolution in England & Wales" [www.mackrell.com/pdf/dispute-resolution](http://www.mackrell.com/pdf/dispute-resolution). Accessed on March 24, 2017. p. 1

<sup>35</sup> PLC- comparing commercial dispute resolution in the UK, <http://us.practicallaw.com/7-505-7851>. Accessed on March 24, 2017

<sup>36</sup> Garrett, supra note 34.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

after parties as want to proceed their cases in ADR system, then the court as thinks it is suitable, will allow automatically to resolve their disputes as they want.<sup>39</sup> Especially in England and Wales ADR methods are considered as best mechanisms for settlement of commercial disputes and also a well- known practice, but, if some cases in need of expert oriented and need special attention on expert evaluations, it will see with respect to that matter.<sup>40</sup> England has good reputation by a well-organized ADR system, by its good name, many business people's over the globe have been shown their interests to resolve their commercial disputes in that jurisdiction.<sup>41</sup>

In France, both litigation and arbitration are used in large commercial disputes, but the practice of mediation is not that much important.<sup>42</sup> The jurisdiction of commercial courts come in to picture when disputants are merchants and disputes are commercial in nature which means for example commercial nature dispute arise in corporate units and it may be bill of exchange, promissory notes and security.<sup>43</sup> Arbitration may arise either by inserting an arbitration clause on their contract or agreeing on in a separate document.<sup>44</sup> The main ADR centers in France are the Paris Centre for Mediation and Arbitration (PCMA), French Arbitration Association (Association française d'arbitrage) and of which, the most prominent ADR center in French is the International Chamber of Commerce (ICC).<sup>45</sup>

### **1.2.3. PUBLIC AND PRIVATE CIVIL JUSTICE SYSTEMS IN ETHIOPIA**

From the very creation of human being, dispute is part of societal phenomena and if that is not well taken and resolved early, disputes between two individuals will grow and become the threat

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid

<sup>42</sup> PLC- Litigation and enforcement in France: overview- practical law, <http://us.practicallaw.com/9-502-0121>. Accessed on March24, 2017.

<sup>43</sup> Ibid. - The French litigation system cannot be described as purely inquisitorial or adversarial. It borrows aspects from both systems, depending on the stage of litigation and on the nature of the matter. For example, the supervising judge (*juge de la mise en l'état*) acts in a way similar to a manager, and the procedure before him or her is more inquisitorial. By contrast, at trial, the judge is more like a referee, and the procedure before him or her is more adversarial. The system is also more inquisitorial in criminal matters than it is in civil and commercial matters. Large commercial disputes can also be resolved through arbitration. Arbitration is a widespread method of dispute resolution in France. Mediation is not compulsory in commercial disputes in France, but is a growing method of commercial dispute resolution.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

of national security, peace and stability.<sup>46</sup> For centuries, ADR mechanisms have used in Ethiopia and Resolving disputes in different manners and called in different names such as: "Shimagele" and "Gadaa" through different social schemes.<sup>47</sup> Following the introduction of modern laws in Ethiopia, works has been done on settlement of commercial and industrial disputes through the Imperial order no. 90/1947, and has established the Addis Ababa Chamber of Commerce; and this law has given power to the private sectors to implement institutional arbitration in commercial and industrial disputes.<sup>48</sup>

Yohannes explained that, ADR system in Ethiopia, especially in commercial disputes resolution mechanisms, "with specific and dedicated work unit" is a recent phenomenon.<sup>49</sup> As Shipi M. Gowok mention, because of less consideration to ADR system, disputants brought their cases in to ordinary courts and litigation is considered as a common means of settlement.<sup>50</sup>

But, the importance of ADR institution, not only benefited commercial disputants but also maintaining social norms by facilitating some convenient discussions between disputants.<sup>51</sup> Now- a -days, the only functional institutions in ADR mechanism is the Addis Ababa Chamber of Commerce and sectoral association (AACCSA).<sup>52</sup>

### **1.3. STATEMENT OF THE PROBLEM**

#### **1.3.1. GENERAL PROBLEMS**

As can be seen and heard in the modern world, ADR mechanisms, on the settlement of commercial disputes are one of the most indispensable tools, but in the Ethiopian legal system, it is not given much attention. PCJS needs an efficient, comprehensive, well equipped infrastructure and capacity. However in Ethiopia, even though institutional ADR system is allowed but not well-developed. ADR mechanisms in Ethiopia have constraints in capacity with

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<sup>46</sup>Tefera Eshetu and Mulugeta Getu, "*Alternative Dispute Resolution*", Teaching Material, Justice and Legal System Research Institute(unpublished) Addis Ababa, 2009

<sup>47</sup>Yohannis woldegebriel, supra note 19.p.2

<sup>48</sup> Ibid,p.3&4

<sup>49</sup> Ibid.

<sup>50</sup> Ship, supra note 15

<sup>51</sup>Tefera Eshetu and Mulugeta Getu, supra note 46, p.177

<sup>52</sup> Ibid

well-trained legal personnel to satisfy the business communities in institutional and ad hoc level.<sup>53</sup> ADR is known, simple, less expensive, quicker and more efficient type of use of "non-formal justice" for legal disputes resolution.<sup>54</sup>

Giving solutions to the problems of the practical aspects of ADR mechanisms are the most necessary points to maintain business communities in their perpetual good relationships and business activities. Therefore, establishing a non-formal jurisdiction [non formal legal atmosphere] for commercial disputants are best alternatives to business communities.<sup>55</sup>

Through the course of the research, the study will explore: available infrastructure to render ADR service; enforcement mechanisms, national and international arbitration rule; cooperation of the national legal institutions (courts) to ADR mechanism.

Similarly, the researcher may suppose excessive cost and delay in justice are the most adverse consequences in court litigation when compared to ADR mechanism. All the above negative connotations that are probably supposed as problems in both systems, not only harm business communities but also adversely affect national economy. If disputants are unsatisfied by both ADR and court systems of justice, they will suffer in lack of justice. Ordinary court system is very strict, expensive, time taking and complicated process.<sup>56</sup> So the paper will study, what are the probable determinant factors on the choice between court litigation and PCCDR mechanisms upon commercial disputes in Ethiopia.

### **1.3.2. SPECIFIC PROBLEMS**

The specific problems that the research will be trying to address are:

1. Problems that is associated with capacity in terms of expert and infrastructure to entertain commercial disputes through PCCD settlement institutions in Ethiopia.

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<sup>53</sup>Yohannis woldegebriel, supra note 19,p.7

<sup>54</sup>Supra note 30

<sup>55</sup> Elena (2001), supra note 28, p.8

<sup>56</sup> Ibid.

2. Problems associated with the effective enforcement mechanisms on arbitral decision and the binding effects of arbitration clause in the preceding contract and execution of arbitral decision on the realm of government legal enforcement institutions.
3. Problems associated with time and cost in commercial dispute settlement mechanisms in Ethiopia.

#### **1.4. RESEARCH QUESTIONS**

The study will try to address the research problem by answering the following questions:

1. What are the main factors that determine the choice between public (court) and private civil justice systems in Ethiopia, focusing on commercial disputes?
2. Is the Ethiopian legal regime convenient for the proper implementation of PCCD settlement mechanisms?
3. What are the challenges of private justice systems in Ethiopia?
4. What are the opportunities of private justice system in Ethiopia?

#### **1.5. OBJECTIVES OF THE STUDY**

##### **1.5.1. GENERAL OBJECTIVES**

The general objective of the study is to analyze the main factors that determine the choice between public and private justice systems of commercial disputes in the Ethiopian legal system. Analyzing the operational and regulatory frameworks of ADR mechanisms in the Ethiopian legal system is other tasks of the study.

##### **1.5.2. SPECIFIC OBJECTIVES**

1. To study and identify the determinant factors in the choice between public (court) and private civil justice systems in Ethiopia in the resolution of commercial disputes, with respect to, the issue of: time, cost, capacity and enforcement.
2. To explore challenges of private civil justice system in Ethiopia.
3. To explore opportunities of private civil justice system in Ethiopia.

## **1.6. SIGNIFICANCE OF THE STUDY**

The study may bring some contribution to understand the principle, benefit and practices of ADR system in Ethiopia. The study may also give some inputs for the legislature to enact appropriate laws for the development of ADR rules to resolve commercial disputes. In addition to these, the study may help students who will have interest to know the determinant factors in the choice between public and private justice systems in Ethiopia upon commercial disputes. Furthermore, it may give some additional information for instructors who are engaged in teaching and learning process to their students. More importantly, it may also helpful for PCCD settlement institution to improve their services, and to investors and to other commercial business participants to choose an appropriate system of dispute settlement mechanisms in Ethiopia.

## **1.7. SCOPE OF THE STUDY**

The study principally confines itself to factors determining the choice between traditional court litigation and private dispute settlement mechanisms in Ethiopia on the resolution of commercial disputes. With this limit, the study will find determinant factors of the choice between court litigation and private dispute settlement mechanisms on commercial disputes in Ethiopia. Thus the study will focus on cost effectiveness, time efficiency, capacity and enforcement mechanism as factors determining the choice between PUCCDJS and PCCDJS in Ethiopia.

The study will go through surveying, interviewing of the purposely selected business communities, PCCD settlement institution and the concerned groups<sup>57</sup> in Ethiopia. Even though, interviews and discussions will administer and focus mostly in Addis Ababa city only, but if necessary, ADR systems outside the capital will also be considered.

In general, the study will not be assessed all factors that determine the choice between Public and private adjudications in Ethiopia upon commercial dispute. So, it will focus only on enforcement, capacity, time and cost of the two justice systems.

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<sup>57</sup> Governmental legal institutions which are like police and court staff members (like judges) and lawyers in a systematically selected areas in order to represent the study population.

## **1.8. RESEARCH HYPOTHESIS**

The main critical problems in ordinary court litigation system are: strict formal process cost and time. Whereas in ADR mechanism the main critical problems are: capacity (Expertise in terms of knowledge and competence and convenient infrastructures.), less enforcement operational tools (laws and procedural rules). Problems relating to the above issue still remained, especially, when something happen on high monetary values and complicated commercial disputes. To investigate the problems that factors determining the choice between public and private justice systems in Ethiopia, upon commercial disputes, the researcher has developed a research hypothesis towards the specific problem. As known, hypothesis development is an important mechanism in the socio-legal research, why because; acceptance and rejection of a hypothesis will show the significance of the study. Hence, on the basis of the available Literature review and on such known theoretical frameworks, the study has developed the following hypothesis. Therefore the first hypothesis is:

- H1: Cost is a significant determinant factor in the choice between public and private justice systems in Ethiopia. But, to confirm the significance of cost, the service given to the disputants in specific time period has also an effect. Therefore, the researcher's second hypothesis is:
- H2: Time is a significant determinant factor in the choice between public and private justice systems in Ethiopia. But, again to confirm the significance of time, during and after proceedings of commercial disputes, enforcement has a great effect on the choice between public and private justice systems. So, the third hypothesis is:
- H3: In Ethiopia, Enforcement, in the choice of the two legal systems, has considered a major determinant factor.

## **1.9. RESEARCH DESIGN AND METHODOLOGY**

Research is defined as "systematic investigation towards increasing the sum of human knowledge", which means, through process it will identify and investigate information or problems in particular interest of getting such findings that will suitable for probable

solution.<sup>58</sup>The study mainly depends on field research. Discussions will be conducted to the respective body. The study will focus on commercial dispute resolution institution, courts, professional judges and lawyers and more importantly on business communities. To strengthen results of the finding, the legal experience of other countries will slightly be overviewed, and library documents on literature review will be incorporated.

Generally, data's will be collected from primary and secondary sources. It is obvious that the Primary data will gather through interviews, and survey. Whereas, secondary data come from sources that are legislations, domestic and foreign literatures pertain to the subject of the study. Lastly, after the data are collected and organized then result analysis, discussion and interpretation will be employed. Interviews, survey questioners and other assessments will be engaged at Addis Ababa area and if it obliged, may cover into regional states of Ethiopia. Therefore, the research will use both doctrinal and non-doctrinal legal research methodologies.

#### **1.10. LIMITATIONS OF THE STUDY**

During the pre-assessment of the study, the researcher could not find available documents on this particular title. So, lack of prior researches in relation to this particular title may be the main challenge of the study. The method that the researcher has intended to conduct also may be a little bit difficult because, the empirical socio-legal research methodology needs particular economic budgets in order to collect sufficient data from the large populations. Equal to economic constrains, time constraint, availability of data collection area are significant limitations to do the research. Hence, the research will be limited to deal with factors that may determine the choice between public and private justice systems in Ethiopia.

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<sup>58</sup>KhushalVibhute, FiliposAynalem",*Legal Research Methods*" Teaching Material, Justice and Legal System Research Institute (unpublished), Addis Ababa, 2009.

## CHAPTER TWO

### 2. THE LEGAL AND CONCEPTUAL FRAMEWORKS OF PUBLIC CIVIL AND PRIVATE CIVIL JUSTICE SYSTEMS

#### 2.1. THEORETICAL REVIEW OF PUBLIC CIVIL JUSTICE SYSTEM

Before one directly goes into the notions of Public civil justice system, it would be better to know something about the main categories of world's legal system. At this point, legal scholars have described two major types of legal systems; Common Law legal system and the Civil or Continental legal system.

Nations who follow common law legal system are characterized by the following: even though the Americans have written constitution, mostly no written constitutions or codified laws; court decisions have a binding effect on the future similar case.<sup>59</sup> Relatively have extensive freedom of contract than the civil law legal system, but some exceptions, like private consumers may be implied with some written rule.<sup>60</sup> Thus, those that are categorized in this system are those that were former British colonies or British protectorates and the United States also fall into common law legal system.<sup>61</sup>

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<sup>59</sup> Key Features of Common law or Civil Law Systems, <http://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment/legal-syst>. Accessed on April 10, 2017.

<sup>60</sup> Ibid

<sup>61</sup> Ibid, Note: "**Common law** is the body of law developed from the thirteenth century to the present day, as case law or precedent, by judges, courts, and similar tribunals. As a common law court decides a single case, when the parties disagree on what the law is, a common law court decides what the law is as applicable to the present case by looking to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is usually bound to follow the reasoning used in the prior decision (a principle known as *stare decisis*). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter [case] of first impression"), and legislative statutes are either silent or ambiguous on the question, judges have the authority and duty to resolve the issue (one party or the other has to win, and on disagreements of law, judges make that decision), and to state an opinion that gives reasons for the decision. Thereafter, resolution of the issue in one case, and the stated reasons (considered in combination with past decisions), become precedent (or **Common law**) to bind future courts and litigants. *Stare decisis*, the principle that cases should be decided according to consistent principled rules so that similar facts will yield similar results, lies at the heart of all common law systems. Thus, common law is that body of law that is made by judges, in contrast to and on equal footing with statutes which are adopted through the legislative process, and regulations which are promulgated by the executive branch. A "common law system" is a legal system that gives great precedential weight to common law. Common law systems originated during the Middle Ages in England, and from there propagated to the colonies of the British Empire. Today, one

Public civil justice system implies court litigation in civil disputes. Whereas in the continental legal system, even though, the law limits the state government, at the same time, the law gives such powers to state government.<sup>62</sup> The origin of continental legal system emerged from Roman law which was codified in sixth century A.D by the Roman king Justin.<sup>63</sup> The attributes of codified law is described in the following manner:

*It includes the law of individuals, the family, inheritance, property, torts, unjust enrichment, and contracts and the resolutions by which interest falling within these groups are judicially defended. Continental law legal system is fundamental law to majority of civil lawyers. Basically, continental system produces common values or principles and makes a distinction between substantive rules and procedural rules.*<sup>64</sup>

The basic characteristics of continental legal system is, making legislation that is considered as the primary foundation of law and the court system is normally called inquisitorial<sup>65</sup> which is not bounded by precedent and the system is organized by law professionals and the intentions of the continental legal system is, establishing the link between the existing norm and the written set of laws with highly observable social context and strictly pursued by every adjudicator.<sup>66</sup> Conceptually, the public civil justice system is known for supporting the respected public orders and economic activities, but now with many changes in the reality of global situation, the value and role of public civil justice system has deteriorated and has lost its charisma and as a result, public civil courts have been gone into status of dilapidation.<sup>67</sup>

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third of the world's population live in common law jurisdictions or in systems mixed with Civil law".(common law- Wikipedia, [https://en.wikipedia.org/wiki/Common\\_law](https://en.wikipedia.org/wiki/Common_law) accessed on April 10,2017 )

<sup>62</sup> Contrast between Common and Continental Legal Systems, <https://www.lawteacher.net/free-law-essays/constitutional-law/contrast-between-common-and-continental-l>. Accessed on March26, 2017.

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Ibid, Note: "The inquisitorial system is a method of legal practice in which the judge endeavors to discover facts while simultaneously representing the interests of the state in a trial. It is defined by comparison with the adversarial, or accusatorial, In the Adversary system; two or more opposing parties gather evidence and present the evidence, and their arguments, to a judge or jury. The judge or jury knows nothing of the litigation until the parties present their cases to the decision maker". (Read more on Inquisitorial system legal definition of inquisitorial system, <http://legaldictionary.thefreedictionary.com/Inquisitorial+System>. Accessed on April 18, 2017.)

<sup>67</sup> The civil justice system, "JUDGING CIVIL JUSTICE"<https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies>. Accessed on March 30, 2017.

Currently, public civil justice systems have failed; court services are slow, expensive, complicated, and too adversarial towards the interests of the disputants.<sup>68</sup>

## 2.2. CHARACTERISTICS OF PUBLIC CIVIL JUSTICE SYSTEM

The main characteristics of the traditional court litigation mainly focus on the existing laws that are applicable on trials by courts of law.<sup>69</sup> On this process, disputes are tried on the basis of legal rights that are given to the society by constitutions, statutes, rules of the courts and through other sources of law.<sup>70</sup> On the basis of this, individual disputants or business organizations or other entities, who are interested in exercising their legal rights in the system, have to go first through the legal procedural rules.<sup>71</sup> Generally, in traditional court litigation system, the claimant and defendant should exhibit their facts and legal rights before court of law in line with procedural rules and present their issues of dispute to get the required decision.<sup>72</sup> The legal proceedings are run according to strict and complicated rules and accompanied by evidence and procedures.<sup>73</sup> So, litigations dominantly are highly formalized processes and pass through structural bodies or agents. The duties of judges are to answer questions of law and facts and dispense decision on the basis of the correct application of the law.<sup>74</sup> Besides, advocates who stand on litigation on the parties, also go through applicable law.<sup>75</sup> To this end, courts system is basically separated in to two civil and criminal divisions. The civil procedure is used in administering civil disputes and which are not criminal cases.<sup>76</sup> Criminal cases are tried at public courts with high involvement of government, because, governments have full responsibilities towards every crime to protect and provide relief to the general public, for this reason, governments punish an individuals who

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<sup>68</sup>Hazel Genn, "UNDERSTANDING CIVIL JUSTICE" [https://www.ucl.ac.uk/laws/judicial-institute/files/Understanding\\_Civil\\_Justice.pdf](https://www.ucl.ac.uk/laws/judicial-institute/files/Understanding_Civil_Justice.pdf). Accessed on April 10,2017. Note: The adversarial system or **adversary system** is a legal system used in the common law countries where two advocates represent their parties' case or position before an impartial person or group of people, usually a jury or judge, who attempt to determine the truth and pass judgment accordingly.

<sup>69</sup> Richard C. Reuben, *Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice*, University of Missouri School of Law, 2000. P.961

<sup>70</sup> Ibid

<sup>71</sup> Ibid

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup>Civil procedure legal definition of civil procedure- Legal Dictionary, <http://legal-dictionary.thefreedictionary.com/civil+procedure>. Accessed on March30, 2017.

participate in criminal acts.<sup>77</sup> On the other hand, civil trials may be initiated by any interested party who has legal rights that may be enforced, redressed, or protected through court system.<sup>78</sup>

In much modern society, government always needs comprehensive and competent laws for the purpose of enforcing a just and peaceful settlement of disputes between members of a particular society.<sup>79</sup> In order to maintain law and order, governments should establish mechanisms that provide justices.<sup>80</sup> Scholars have described the public civil justice system in the following manner:

*The [public] civil courts contribute quietly and significantly to social and economic well-being. They play a part in the sense that we live in an orderly society where there are rights and protections, and that these rights and protections can be made good. In societies governed by the rule of law, the courts provide the community's defense against arbitrary government action. They promote social order and facilitate the peaceful resolution of disputes. In publishing their decisions, the courts communicate and reinforce civic values and norms. Most importantly, the civil courts support economic activity. Law is pivotal to the functioning of markets. Contracts between strangers are possible because rights are fairly allocated within a known legal framework and are enforceable through the courts if they are breached. Thriving economies depend on a strong state that will secure property rights and investments.*<sup>81</sup>

In order to secure, those who fail into the public civil justice system, in addition to the substantive rule, the presence of procedural rules should be inevitable. In any legal system procedural rules are so crucial for the protection of fundamental social values and legal interest.<sup>82</sup> Moreover, the main objectives of civil procedure is administering any disputes within unbiased legal court in fair and reasonable way as much as possible with respect to time and cost.<sup>83</sup> To this end, the significance of civil procedure is, such that litigants appearing in a law suit are treated equally and can enforce their rights with that of the respective duties and more importantly, civil procedure keeps the balance between all litigants to exercise their legal rights

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<sup>77</sup> Ibid

<sup>78</sup> Ibid

<sup>79</sup> GENN, JUDGING CIVIL JUSTICE, Cambridge University Press, United Kingdom, 2010.

<sup>80</sup> Ibid

<sup>81</sup> Ibid

<sup>82</sup> Alem Abraha, Tafesse Habte , *Law of Civil Procedure I*, Teaching Material, Justice and Legal System Research Institute(unpublished), 2009, p16.

<sup>83</sup> Ibid

to get reasonable decisions within logical, fair and prompt time.<sup>84</sup> Adrian Zuckerman, professor of civil Procedure, wrote:

*Court adjudication of civil disputes is a public service. Like all other public services, it must meet reasonable public expectations within necessarily finite resources. The public expects court adjudication to provide adequate resolution of civil disputes within reasonable time and at a proportionate or affordable cost.*<sup>85</sup>

To render proper public civil service in court litigations, the public civil adjudication institution should develop such court management system, else; disputants may face problems in the course of their litigation and may be subject to disproportionate and unpredictable costs.<sup>86</sup> Hence, court system should be organized being cost effective and time efficient service, if not, courts will be exposed to deficiencies that may result in reducing the service at reasonable time and proportionate cost.<sup>87</sup>

## **2.3. ADVANTAGES AND DISADVANTAGES OF PUBLIC CIVIL LEGAL SYSTEM**

### **2.3.1. ADVANTAGES OF PUBLIC CIVIL LEGAL SYSTEM**

Conceptually, the public civil justice system is known for supporting the respected public orders and economic activities.<sup>88</sup> More over advantages of civil courts are: the court may have a legally qualified judge, the doctrine of judicial precedent will be applied by the judge and which will leads to a reasoned decision, also have an appeal system if a party is unhappy with the decision of the trial judge and legal aid is available for those on a low income.<sup>89</sup>

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<sup>84</sup> Ibid

<sup>85</sup> Court Adjudication of Civil Disputes: A Public Service, <http://www.ajja.org.au/ac06/Zuckerman>. P.1. Accessed on April 10, 2017.

<sup>86</sup> Ibid

<sup>87</sup> Ibid

<sup>88</sup> The civil justice system supra not 67.

<sup>89</sup> Advantages and Disadvantages of the civil courts- Law Teacher, <https://www.lawteacher.net/PDF/...system/Adv%20&%20Dis%20of%20Courts.pdf>, P.1. Accessed on April 10, 2017.

### **2.3.2. DISADVANTAGES OF PUBLIC CIVIL LEGAL SYSTEM**

Despite the significant of public civil justice system, there are also some disadvantages of public civil justice system. Among the main shortcoming of the traditional court litigation is cost. Cost of litigation is so high with respect to legal fees such as, filling fees and costs that are related with impositions against the losing disputant party and in some cases, the cost of trying the case may be exceed the amount of the claim.<sup>90</sup> In similar way, the most central criticisms of public civil justice systems are: lack of prompt solutions on claims, as well as complexities of procedures and procedural rules.<sup>91</sup> All the above points are considered as the main shortcomings of civil court litigation.

There are also other criticisms on civil court litigations, in which the civil courts are open to the public on the ground that people have the right to see and listen court trials, and which will lead to adverse publicities, as they are usually generalized, Judges on civil benches have lack of technical expertise.<sup>92</sup>

### **2.4. CHARACTERISTICS OF PRIVATE JUSTICE SYSTEM**

ADR system is a system of dispute resolution mechanisms that resolve disputes other than through the traditional court system. Public civil courts have the power to review the validity of ADR methods, and that ADR system fulfills the requirements of law which includes checking valid contract between parties with respect to the law, ADR decisions, and awards will be binding on the parties.<sup>93</sup> The practice and existence of other alternative methods rather than litigation, as an informal way was practiced in different nations, but in the 1970's, ADR system has come as a formal technique to resolve disputes and as a result, won the popular senses of business communities.<sup>94</sup> ADR described by some scholar as follow:

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<sup>90</sup>supra note 46, P.22

<sup>91</sup>Advantages and disadvantages, supra note 89.

<sup>92</sup> Ibid

<sup>93</sup>Alternative Dispute resolution- Wex Legal Dictionary,  
[https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution). Accessed on April 18, 2017.

<sup>94</sup>John R. Allison, "Five Ways to Keep disputes Out of Court"- Harvard Business Review,  
<https://hbr.org/1990/01/five-ways-to-keep-disputes-out-of-court>. Accessed on April 16, 2017.

*Many have come to view ADR as "privatized justice," the devolution of public power to private authority that is a byproduct of the downsizing of government at the close of the twentieth century. Under the traditional bipolar[involving both extremes(poles) at the same time or relating to] model, civil dispute resolution is generally divided into two spheres: trial, which is public in nature and therefore subject to constitutional due process, and alternative dispute resolution (ADR), which is private in nature and therefore not subject to such constraints.<sup>95</sup>*

ADR system is flourished with the concept of constitutional ideology, in which the constitutional standards has brought: the right to an impartial round - table discussion; the right to bring valuable evidence to get justice, the right to face and challenge such adverse evidence that may harm disputants on both sides; the right to get competent advice.<sup>96</sup> So, these positive developments have contributed for the significant growth of ADR system in contrast with the continuing popular dissatisfaction of the public justice system.<sup>97</sup>

Presently, commerce and commercial activities have got an important position over the globe. In trade, people interact with each other in one or another. Due to the fact that, disputes are inevitable as long as commercial interactions exist. Many options are available for the settlement of commercial disputes.<sup>98</sup> If dispute occur in relation to commercial activities, business organizations or business owners should first consider, which settlement mechanism are best for the particular dispute, which means, they should know whether they want to use alternative dispute resolution (ADR) mechanisms or pursue the more traditional mechanism of litigation.<sup>99</sup> Currently, the popularity of ADR has increasingly grown due to various advantages of the system.<sup>100</sup> The Canadian legal author Shea described the importance of ADR at an annual review of November, 2014 in world financier, as follows:

*In our existing commercial environment, we advise clients that mediation or arbitration is preferable to litigation in effectively resolving disputes. Unlike litigation, dispute resolution offers contracting parties commercial adaptability, timeliness, flexibility and privacy, as well as the prospect for*

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<sup>95</sup> Supra note 67, P.1and P.953

<sup>96</sup> Ibid,p.2 and 953

<sup>97</sup> Ibid

<sup>98</sup> *Litigation and Alternative dispute resolution*, financier worldwide (Annual review), Birmingham, United Kingdom, 2014. P.1

<sup>99</sup> Ibid

<sup>100</sup> Ibid

*preservation of existing business relationships. These processes can be predictable with foresight and considered drafting of a dispute resolution clause.*<sup>101</sup>

Alexander A. Yanos from the United States has described the problem of ADR in the following way, He said the main problems that face ADR in the U.S is in relation to its concept, which means when the disputant parties choose ADR system to settle their dispute, they come up with the idea of its fastness and less cost, but in reality, commercial disputants who inter in to the system to settle their dispute, recognize that ADR is slower and costly than traditional court litigation.<sup>102</sup> ADR mechanism especially in commercial disputes has several advantages, among which, the chance of selecting neutral forum and maintaining confidentialities of the parties may be mentioned.<sup>103</sup>

In some countries, for example in India, ADR is known as an external dispute resolution and comprises dispute resolution processes, the system uses in favor of disputant parties to settle their disputes with or without the involvement of third party.<sup>104</sup> Even though, through history, ADR has passed many challenges, now, ADR system is popular in the world and has won many acceptances from the public and legal professionals.<sup>105</sup> The causes of the choice of ADR to litigation are: the traditional court litigation is encircled with many problems which are unsolved till now, a) ADR requires less cost than litigation, b) it has great confidentiality than litigation, c) it gives power to parties to control the case ranging from selection of individuals who will direct or decide over their disputes.<sup>106</sup>

On the other hand, Alternative Dispute Resolution is known as "private justice system". And this private justice system comprises a broad set of techniques with the objective to resolve disputes outside of the traditional trial court system.<sup>107</sup> Advocates who are in favor of ADR say that ADR

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<sup>101</sup> Ibid,P.10

<sup>102</sup> Ibid, P.6

<sup>103</sup> Ibid

<sup>104</sup> Alternative dispute resolution, Wikipedia[https://en.wikipedia.org/wiki/Alternative\\_dispute\\_resolution](https://en.wikipedia.org/wiki/Alternative_dispute_resolution). Accessed on April 10,2017.

<sup>105</sup> Ibid

<sup>106</sup> Ibid

<sup>107</sup> Joon Shin, *Discussion on the Models of ADR*, Legal Studies Honors Thesis, spring 2011, <http://legalstudies.berkeley.edu/files/2012/02/Joon-Shin-Sp11.pdf>. Accessed on April 18, 2017.

mechanism is a well-organized and cost-reducing system, others say ADR is "ineffective and burdensome".<sup>108</sup> The following is among the major positive recommendations of ADR:

*There are now many alternatives to litigation that can nip [squeeze] lawsuits in the bud, resolve long-standing disputes, and even produce win-win solutions to old and bitter fights that would otherwise only leave both sides damaged. U.S. corporations pay more than \$20 billion a year to litigation attorneys—an alarming fact that distracts our attention from other and often more important business costs of litigating our disputes. Lawyers' fees and other direct costs get the most attention because they're easy to measure. But the indirect business costs of litigation, the cost of diverting key personnel from productive activities, for example, or the cost of destroying a profitable relationship with a former business ally, are perhaps equally important. From the company's perspective, they may be more important.*<sup>109</sup>

Other advocates in support of ADR system also say that, in U.S courts, there is a big change in the settlement of disputes. For example, among hundred civil disputes, only less than two were brought to the attentions of court and were disposed their case by trial, This shows that, there is a significant change in the resolution of disputes.<sup>110</sup> Disputants preferred ADR mechanisms to court litigation because of its flexibilities in the resolution of disputes, so, ADR mechanisms are definitely –appropriate” methods that seen to be working in the settlement of disputes.<sup>111</sup>

Moreover, ADR also reduces unwanted delay, and creates the advantages of time and cost effectiveness.<sup>112</sup> Similarly, researches reveal that, back in the 1980's, professionals and executives preferred ADR mechanisms to litigation, because, the characteristics of ADR is so sensible with regard to cost and time and it keeps corporations out of courts.<sup>113</sup>

Richard C. Reuben offered the following:

*An already sluggish [slow] civil trial process is further slowed by the gamesmanship of litigation, increasing direct costs to parties, and indirect costs to the system itself, which are reflected, for example, in higher insurance premiums and lower public confidence." Moreover, the complexity of the process, the trauma often associated with trial, and a general dissatisfaction with the traditional legal system have led to a search for new approaches to resolving disputes.*<sup>114</sup>

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<sup>108</sup> Ibid

<sup>109</sup> John R.Allison, *Five Ways to Keep Disputes Out of Court*, Harvard Business School Publishing, 2017.P.1

<sup>110</sup> Nicholas Uzl, *The Use of Alternative Dispute Resolution in Will Interpretation in Probate Courts*, the Ohio State University Moritz College of Law Volume 12, Issue 2 - June 2014. PP.3-4

<sup>111</sup> Ibid

<sup>112</sup> Ibid

<sup>113</sup> Alternative Dispute Resolution: Why It Doesn't Work and Why It Does, <https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does>. Accessed on April 18, 2017.

<sup>114</sup> Supra note 67, p.962. And also additional information about direct and indirect costs which are: E.g. U.S. corporations pay more than \$20 billion a year to litigation attorneys—an alarming fact that

### 2.4.1. TAYPES AND MECHANISMS OF PRIVATE JUSTICE SYSTEM

A private justice system is known for less formal its cost effectiveness and less time consuming when compared to traditional court litigation. Thus people choose ADR instead of court trials.<sup>115</sup>

The existence of effective mechanisms is one of the main issues in domestic and international legal systems for the settlement of disputes in order to have effective and efficient resolutions to social problems.<sup>116</sup> Currently, People are interested to involve directly in ADR mechanisms rather than bring their cases to the traditional way of dispute settlement which is mostly known as ineffective and inefficient.<sup>117</sup>

Ordinary people think ADR system, as means of settlement mechanism that are out of government control, but it is not. Even though, ADR is an alternative mechanism to settle disputes, it is directed through government legal institutions in a particular nation. On this point, ADR is described as:

*Though the word Alternative in ADR seems to connote the normal or standard nature of dispute resolution by litigation and aberrant [abnormal] or deviant [unexpected] nature of other means of dispute resolution mechanisms, it is not really the case. ADR is not an alternative to the court system but only meant to supplement the same aiming on less lawyering.<sup>118</sup>*

Generally, the main components and types of mechanisms in the private justice system are described by scholars in the same way. For instance, the frequent types of mechanisms in the private justice system described in most civil cases are negotiation, mediation, settlement conferences, neutral evaluation, and arbitration.<sup>119</sup>

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distracts our attention from other and often more important business costs of litigating our disputes. Lawyers' fees and other direct costs get the most attention because they're easy to measure. But the indirect business costs of litigation, the cost of diverting key personnel from productive activities, for example, or the cost of destroying a profitable relationship with a former business ally, are perhaps equally important. From the company's perspective, they may be *more* important. (John R. Allison, Five Ways to Keep disputes Out of Court- Harvard Business Review, <https://hbr.org/1990/01/five-ways-to-keep-disputes-out-of-court>. Accessed on April 16,2017)

<sup>115</sup>ADR Types and benefits- alternative dispute resolution, <http://www.courts.ca.gov/3074.htm>. Accessed on April 116, 2017.

<sup>116</sup>Supra note 46, Mulugeta, P. 3

<sup>117</sup>Ibid

<sup>118</sup>Ibid

<sup>119</sup> Supra note 112.

Even though, there are many types of ADR systems and procedures, the most common types are mediation and arbitration which may emanate from court-order to settle disputes which are crucial to save time and money.<sup>120</sup> So, for the sake of this study, particular attention will be given to the most popular types of ADR mechanisms which are: negotiation, mediation /conciliation and arbitration.<sup>121</sup>

There are types of ADR mechanisms which compose of such elements that facilitate the process of ADR and are called "hybrid" dispute resolution techniques which include: the mini-trial, early neutral evaluation, med-Arb, rent-a-judge, and the ombudsman and all of them are considered as out of court dispute settlement mechanisms.<sup>122</sup>

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<sup>120</sup>Types of Alternative Dispute Resolution (ADR)/ Legal Mach Law, <http://www.legalmatch.com/law-library/article/types-of-alternative-dispute-resolution-adr.html>. Accessed on April 16, 2017.

<sup>121</sup>Mulugeta Getu, supra note 46, p.26

<sup>122</sup>Nosyreva, Supra note 28, P.4. And additional notes on this are: **Med-Arb** is a mixture of arbitration and mediation that combines the benefits of these two methods. Basically, parties commence with mediation, and if an agreement had not been reached, they move on to arbitration. The same or different third-party neutral may conduct the mediation and the arbitration sessions of Med-Arb (Types of Alternative Dispute Resolution (ADR)/ Legal Mach Law, <http://www.legalmatch.com/law-library/article/types-of-alternative-dispute-resolution-adr.html>. Accessed on April 16, 2017).

**Mini-trial** is a mechanism for the parties to test their case and shed light on settlement discussions. In a mini-trial, each party's attorney presents an abridged version of the case. The information is presented to a panel of representatives chosen by both parties. The panel representatives actually decide a mini-trial outcome. Unlike other ADR mechanisms, mini-trial is unique in that it often occurs after commencement of formal litigation (Types of Alternative Dispute Resolution (ADR)/ Legal Mach Law, <http://www.legalmatch.com/law-library/article/types-of-alternative-dispute-resolution-adr.html>. Accessed on April 16, 2017). *Mini trial* is a hybrid of mediation, traditional settlement negotiation, and adjudication. It is a completely voluntary procedure normally initiated by the disputants themselves, although judges may suggest or encourage it where suit has already been filed (John R. Allison, Five Ways to keep disputes Out of Court- Harvard Business Review, and <https://hbr.org/1990/01/five-ways-to-keep-disputes-out-of-court>. Accessed on April 16, 2017).

**Summary Jury Trial (SJT)** is essentially a mock trial with a neutral jury that produces a verdict. It is similar to a mini-trial but is ordered by the court rather than being stipulated by the parties. After hearing the verdict, the court usually requires parties to attempt settling their case before litigating in court (Types of Alternative Dispute Resolution (ADR)/ Legal Mach Law, <http://www.legalmatch.com/law-library/article/types-of-alternative-dispute-resolution-adr.html>. Accessed on April 16, 2017). *Summary jury trial* is based on the observation that litigants are often unable to settle their disputes quickly because of the huge gap in their differing expectations of how a jury will view their claims (John R. Allison, Five Ways to keep disputes Out of Court- Harvard Business Review, and <https://hbr.org/1990/01/five-ways-to-keep-disputes-out-of-court>. Accessed on April 16, 2017). **Early Neutral Evaluation (ENE)** usually occurs when a case has just been filed. The early neutral evaluation may be conducted by a judge-appointed evaluator from who provides parties learn insights about the case. For example, after case examination, an evaluator may educate parties about their arguments' relative strengths, chances of winning, and settlement options (Types of Alternative Dispute Resolution (ADR)/ Legal Mach Law, <http://www.legalmatch.com/law-library/article/types-of-alternative-dispute-resolution-adr.html>. Accessed on April 16, 2017).

## 2.4.1.1. MEANING AND CONCEPT OF NEGOTIATION

### 2.4.1.1.1. MEANING OF NEGOTIATION

The balk's law dictionary defines negotiation as: "Deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction".<sup>123</sup> Negotiation is also defined in another source as: any type of communication that may be direct or indirect, on which, disputants who have such conflict of interest on some relationships or kinds, create a joint action of discussion to deal with on disputes, and manage and bring final resolution upon the dispute between them.<sup>124</sup> It is employed as mechanism of dispute resolution of an already-existing problem or dispute and also will establish important good relationships in the future career or communication between the parties.<sup>125</sup> Negotiation is also defined as a consensual bargaining process, through which disputants try to get in touch with agreement of dispute or blocked form potential disputed material.<sup>126</sup> Furthermore, the meaning and essence of negotiation are elaborated by the writers Tefera Eshetu and Mulugeta Getu as follows:

*'Even though some writers try to distinguish negotiation from bargaining, in popular usage the terms are interchangeable. Hence, the terms are used interchangeably...and as defined here, negotiating or bargaining', as to Chronicle [cited by Tefera and Mulugeta], means "the method by which two or more parties communicate in an effort to agree to change or refrain from changing; their relationship with each other; their relationship with others; their relationship with respect to an object or object. " Negotiation can also be defined as: a non-binding procedure involving direct*

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**The rent-a-judge program** is a novel variant of arbitration where the parties to the dispute choose a retired judge to hear their case much as an arbitrator would. Retired judges are occasionally used in traditional arbitration too, but the rent-a-judge program uses normal trial court procedures (sometimes modified by the disputants). Moreover, the judge's decision has, by statute, the legal status of a real court judgment. The experiment has enjoyed a significant measure of success and acceptance in the jurisdictions where it has been authorized, notably California, but it's too early to tell how widespread it will become (John R. Allison, Five Ways to Keep disputes Out of Court- Harvard Business Review, <https://hbr.org/1990/01/five-ways-to-keep-disputes-out-of-court>. Accessed on April 16, 2017).

**Ombudsmen**-Are impartial referees who adjudicate on complaints about public and private organization. Generally ombudsmen serve as a last resort when complaints cannot be or are not resolved through the internal complaints procedure of the organization complained about (MulugetaGetu, supra note 46, p.29).

<sup>123</sup>HENRY CAMPBELL BLACK, M. A.,BLACK'S LAW DICTIONARY (REVISED FOURTH EDITION) ST. PAUL, MINN.WEST PUBLISHING CO.1968.p.1188

<sup>124</sup>Negotiation- Dispute Prevention and Resolution services, <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html>.Accessed on April 20, 2017.

<sup>125</sup> Ibid

<sup>126</sup>MulugetaGetu, supra note 46, p.29.

*interaction of the disputing parties where in a party approaches the other with the offer of a negotiated settlement based on an objective assessment of each other's position.*<sup>127</sup>

#### **2.4.1.1.2. CHARACTERISTICS OF NEGOTIATION**

As an ADR mechanism, Negotiation has its own characteristics, and one should know particular features of Negotiation. Different literatures have described characteristics of negotiation as the same concept but in different ways. Among the prominent features of negotiation, at least two parties should participate in the negotiation process; both parties have pre-determined objectives that they desire to achieve; there is a conflict of pre-determined goals, some of which are not common to both parties; there should be expectation of outcome from the negotiation; both parties consider such results from the negotiation which should be acceptable by both parties; both sides should show such willingness to compromise, which may modify their position; incompatible positions on such modifications may result in difficulty; both parties should understand the aim of such negotiations.<sup>128</sup>

Particular features and characteristics of negotiation are also described by other sources in the following ways: It is a voluntary action between the disputants, which means no one is forcing them to inter into the process of negotiation and they have freedom to reject or accept of the outcome and have the right to withdraw without any preconditions during the process of the negotiation. In addition to these freedom, disputants may themselves physically appear or be represented by their agents or in other convenient manner in the process of negotiation.<sup>129</sup>

A negotiation may be bilateral between nations or individuals or multilateral parties are involved.<sup>130</sup> It is also, non-adjudicative which means the negotiation between the parties is only to reach an agreement irrespective of third-party impositions on the outcomes.<sup>131</sup> Beside these, it is informal and confidential, because there is no prearranged rules in a negotiation, in this

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<sup>127</sup> Ibid,p.30

<sup>128</sup> Characteristics of Negotiation and steps of Negotiation process...  
<http://www.managementstudyhq.com/characteristics-and-steps-of-negotiation-process.html>. Accessed on April 20, 2017.

<sup>129</sup> Negotiation-Dispute prevention and resolution services, <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html>. Accessed on April 20, 2017.)

<sup>130</sup> Ibid.

<sup>131</sup> Ibid

respect parties will agree upon issues, which means set the subject matter, timing and place of negotiations, and which documents may be used and in the latter case, confidentiality is one of the major ingredients of negotiation, and to this end, one of the important worth of negotiation is its flexibility and its scope also depends on the choice of the parties.<sup>132</sup>

#### **2.4.1.2. MEANING AND CONCEPT OF MEDIATION /CONCILIATION**

Among ADR mechanisms, mediation is one of the most important whereby the mediator [a neutral and impartial third party] makes easy dialogue between disputants in a structured multi-stage process in order to help parties to reach a decisive and mutually satisfactory agreement in their interest.<sup>133</sup> Generally, one could say that mediation is a “peaceful” dispute settlement mechanism and its solution tool that is considered as complementary to the existing court system and the practice of arbitration.<sup>134</sup> Mediation, according to another source, is defined as a process of facilitation by a third party in an impartial and independent way, in which disputants undertake such communication and negotiation.<sup>135</sup> Through the assistance of mediation, parties will promote a voluntary decision on their dispute and reach a mutually satisfactory solution.<sup>136</sup> The role of mediation and mediator is described in such a way presented below:

*Whereas arbitration imposes solutions, mediation helps parties resolve their own disputes. The mediator’s functions vary depending on the personalities and wishes of the disputants, the nature of the issues, and the personality and skills of the mediator. Mediators can play many roles: getting participants to talk to each other, setting the agenda, helping disputants understand their problems, and suggesting possible solutions.*<sup>137</sup>

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<sup>132</sup> Ibid

<sup>133</sup> Arbitration, Mediation and Conciliation: differences and similarities,  
<http://www.mediate.com/articles/sgubinia2.cfm>. Accessed on April 20, 2017

<sup>134</sup> Ibid

<sup>135</sup> Mediation in Commercial Disputes, Dillon Eustace,  
<http://www.dilloneustace.com/download/1/Mediation%20in%20Commercial%20Disputes.pdf>. Accessed on April 20, 2017.

<sup>136</sup> Ibid

<sup>137</sup> Supra note 112

Mediation is also defined as a process, in which professionals facilitate assistance to disputing parties, through which they will reach at a solution.<sup>138</sup> Thus, even though, professionals are involved between the parties in the process, it is considered always as a neutral process.<sup>139</sup> Generally, the power of mediator is only to facilitate the process of mediation, and the disputing parties, would resolve their problems by themselves, because mediation is principally a voluntary process, in which the role of a neutral third party only assists the disputants to reach to their own settlement.<sup>140</sup>

#### **2.4.1.2.1. CHARACTERISTICS OF MEDIATION**

Historically, Mediation and Conciliation have been the most prominent practices in dispute resolution processes, and mediation process has been practiced over centuries in the east, because mediation is a known and customary practices of the eastern social domain, especially, Greece has been used mediators for settling such disputes all through the history of international and domestic dispute resolution.<sup>141</sup> Since, in the middle of 19<sup>th</sup> century, in UK, conciliation has been existed in the area of industrial relations.<sup>142</sup>

The significant features of mediation is that the whole process is controlled by parties themselves, which means the disputing parties without any other third party involvement choose mediation process, control the process and select such terms of the resolution.<sup>143</sup> Mediation has its own characteristics that distinguishing it from other ADR mechanisms. Among the distinguishing factors: It is a voluntary process which means parties choose and enter into mediation, if they want to resolve their dispute and depart or withdraw from the process, without any condition; it is also a confidential and private. Any information which are related to the

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<sup>138</sup>ZekariasKeneaa(Professor), *Mediation as one means of Resolving Commercial Disputes*(unpublished), Material on Commercial Dispute Resolution, Addis Ababa University, Faculty of Law, LL.M Program.p.1

<sup>139</sup> Ibid

<sup>140</sup> Ibid

<sup>141</sup>Michel Kallipetis, “Fop 5 Things Everyone Should Know About Mediation”, 25th May 2016. <http://www.ciarb.org/docs/default-source/ciarbdocuments/Policy/APPG/mediation-in-commercial-disputes.p.1>. Accessed on April 20, 2017.

<sup>142</sup> Ibid

<sup>143</sup>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, 2017.

party should be kept as secret because "both parties will be required to sign a confidentiality agreement prior to the commencement of the mediation" when they enter into mediation process, and even unless agreed to share information to the other party, information not be disclosed to the other party, which one party provided to the mediator; Mediation without considering the historical background of the dispute, focuses only the future relation and sustainable communications between the parties<sup>144</sup> Further its character and unique advantages are not treated as a quasi-judicial process. Its advantages and characteristics are described briefly as follow:

*It is not imposed and takes place at a time and location agreed by the parties; It provides remedies for resolving disputes that may not be available by pursuing legal proceedings; It is informal and flexible allowing for a combination of joint and individual meetings; All parties participate and it is not colored by "legal speak" or involve cross examination; It is quick to arrange and people focused; It allows parties to be open, provide their views and air strong feelings in a neutral setting directly to each other; Avoids unnecessary legal costs; Improves the channels of communication and understanding between the parties thus preserving relationships; It increases the chances of a mutually beneficial outcome for all parties; It does not require you to disclose everything; It is much less stressful than going to court.<sup>145</sup>*

Similar to what is quoted above, the characteristics of mediation is the same as in business cooperation which focuses on future relationships to maintain communication between the parties. Mediation provides the realm of opportunity to convey feelings or dissatisfaction that may be hinder negotiations, so, by disclosing all malicious condition and by paving the way and go in to conducive environment towards settlement.<sup>146</sup>

Mediation is non-adversarial, because the process is covered on directly by the parties themselves. Due to these characteristics, mediation as a mechanism creates "*understanding, reconciliation, agreement or settlement*" between the disputant parties.<sup>147</sup> Because of all the above characteristics, a mediation process gives chance for the parties to understanding the issue very well and creates good shared perception of their relationship and this may help them

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<sup>144</sup> Ibid

<sup>145</sup> Ibid

<sup>146</sup> Zekarias Keneaa (Professor), Supra note 138, p.1

<sup>147</sup> Ibid

understand the interests of each other.<sup>148</sup> So, with all the advantages of mediation, parties can control the result of the process, why, it deals with all issues of the disputants freely.<sup>149</sup>

### 2.4.1.3. MEANING AND CONCEPT OF ARBITRATION

WIPO (World Intellectual Property Organization) Arbitration and Mediation Center defined arbitration in a very brief and succinct manner, and it reads: "Arbitration is mostly the best known dispute settlement mechanism to traditional court litigation and in which parties in dispute as per their agreement choose a private dispute resolution procedure as an alternative to court, and submit their case to one or more arbitrators for the interest of a decision".<sup>150</sup>

According to black's law dictionary, arbitration is defined as:

*ARBITRATION: The submission<sup>151</sup> for determination of disputed matter to private unofficial persons selected in manner provided by law or agreement. [There are two types of arbitration] Compulsory arbitration is that which occurs when the consent of one of the parties is enforced by statutory provisions. Voluntary arbitration is by mutual and free consent of the parties. In a wide sense, "arbitration" may embrace the whole method of thus settling controversies, and include all the various steps. But in a more strict use, the term denotes only the submission and hearing, the decision being separately spoken of, and called an "award." An award is the judgment or decision of arbitrators or referees on a matter submitted to them. It is also the writing containing such judgment.<sup>152</sup>*

As it is known, arbitration is one of the known ADR mechanisms. And it is an out- of- court dispute settlement mechanisms in which disputants first chooses the system and then submits their case to the arbitrator for a decision.<sup>153</sup> In arbitration, the duty of the arbitrator is control the process of case, and gives chance to each party to present an oral argument or conduct hearing, present documented evidence, exhibits and testimony and then go to decision.<sup>154</sup> The disputant parties may agree, in some occasions in setting procedure or way of administering the case.<sup>155</sup>

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<sup>148</sup> Ibid

<sup>149</sup> Ibid

<sup>150</sup> What is Arbitration? - WIPO, <http://www.wipo.int/amc/en/arbitration/what-is-arb.html>. Accessed on April 20, 2017.

<sup>151</sup> Henry Campbell Black, Supra note 123, pp.135 and 136. The *submission* is an agreement by which parties agree to submit their differences to the decision of a referee or arbitrators. It is sometimes termed a reference.

<sup>152</sup> Ibid

<sup>153</sup> Tefera Eshetu and Mulugeta Getu, supra note 46, pp.45 and 46

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

The decision is obvious, it will fall on one side of the parties like in an ordinary court trial, but it [the award] is different from an ordinary court judgment, which means, arbitral decision may not have a wide range of appeal chance in order to avert the arbitral award.<sup>156</sup> Some authors argue that, they say "it is difficult to say arbitration is a quite true ADR mechanism".<sup>157</sup>

Others define arbitration as a form of ADR, or technique of ADR in which the selected arbitrator, out of traditional court method, delivers a settlement resolution upon the disputant parties.<sup>158</sup> In arbitration, the arbitrator may be one or more persons [arbitrators, arbiters or arbitral tribunal], and parties could agree to be bound by the arbitration decision [award].<sup>159</sup> The effect of arbitration is such that, the arbitrator [third party] would have power to review the disputable case, evidence submitted and then imposes on both sides a legally binding decision [award] that is enforceable in an ordinary court system.<sup>160</sup>

As similar view, arbitration is a type of dispute resolution method by a private, judicial determination of a dispute, by an independent third party.<sup>161</sup> The process may utilize an individual arbitrator or a tribunal<sup>162</sup> and the number of arbitrator obviously one or three and over this point, once disputants choose arbitration as a method to settle their dispute, both parties should require to hand over their power to decide the dispute to the arbitrator(s) then the decision (award) is final and binding when it is compared with other ADR system, like mediation, negotiation and conciliation which are known as non-binding.<sup>163</sup>

#### **2.4.1.3.1. CHARACTERISTICS OF ARBITRATION**

People may use arbitration as dispute settlement mechanism in disputes such as family, labor, succession etc. and it is difficult to study the whole types of arbitration in a single paper. With

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<sup>156</sup> Ibid

<sup>157</sup> Supra note 133,p.2

<sup>158</sup> Arbitration- Wikipedia, <https://en.wikipedia.org/wiki/Arbitration>. Accessed on May 5, 2017.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid

<sup>161</sup> What is Arbitration? - Mediate.com, <http://www.mediate.com/articles/grant.cfm>. Accessed on May 5, 2017.

<sup>162</sup> Ibid- A tribunal may consist of any number of arbitrators though some legal systems insist on an odd number for obvious reasons of wishing to avoid a tie.

<sup>163</sup> Ibid

regard to commercial arbitration, it is widely practiced in modern developed nations and it is opted by many business persons as a way to resolve commercial disputes because it has remarkable contributions than ordinary traditional court litigation.<sup>164</sup> In the process of arbitration, parties will enjoy such benefits which are: lower cost and shorter time, flexibility, privacy, fair awards (which are final and enforceable), arbitrators are selected by the free consent of the disputant parties, and because of this, have a broad user satisfaction.<sup>165</sup> The unique feature of arbitration as a private dispute resolution mechanism, in which the authority of arbitrators is to resolve a dispute that is derived from a contract (that is, an arbitration agreement or arbitration clause) thus, depending on that particular contract or prior agreement, arbitrator will deliver an award (decision) that finally resolves the dispute and that award will have binding effect on the parties.<sup>166</sup>

#### 2.4.1.3.2. SIMILARITIES OF ARBITRATION AND LITIGATION

The Similarities of both systems are, parties in dispute are involving like Adversarial process which means, parties are required to bring their all contending issues which are described their position to the decision- maker and also parties want to be convince the decision- maker to rule in their favor. Besiding to this, the rule of natural justice policy is applicable, such as: notice, fairness, impartiality; and unless parties agreed to use other way, the entire decision always goes in compliance with the law; Even though the disclosure of facts towards the result, streamlined and focused but obligations of disclosure to opposite party is applied; Principle of res judicata<sup>167</sup>

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<sup>164</sup>Benefits of arbitration for commercial disputes- American Bar [http://www.americanbar.org/content/dam/aba/publications/dispute\\_resolution\\_magazine/March\\_2012\\_Sus](http://www.americanbar.org/content/dam/aba/publications/dispute_resolution_magazine/March_2012_Sus). Accessed on April 20, 2017.

<sup>165</sup> Ibid

<sup>166</sup>International Arbitration: Basic Principles and Characteristics, <http://www.financepractitioner.com/operations-management-best-practice/international-arbitration-basic-pri>. Accessed on April 21, 2017.

<sup>167</sup>TeferaEshetu and MulugetaGetu, supra note,p.56 and 57 Note: Res judicata or res iudicata, also known as **claim preclusion**, is the Latin term for "a matter [already] judged", and refers to either of two concepts: in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal; and the legal doctrine meant to bar (or preclude) continued litigation of a case on same issues between the same parties. In this latter usage, the term is synonymous with "preclusion". In the case of res judicata, the matter cannot be raised again, either in the same court or in a different court. A court will use res judicata to deny reconsideration of a matter. The legal concept of res judicata arose as a method of preventing injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources in the court system. Res judicata does not merely prevent future judgments from contradicting earlier ones, but also prevents litigants

and issue estoppel<sup>168</sup> is applied; Appeal is possible unless expressly excluded by their original contract; like court judgments arbitration awards are enforceable at law.<sup>169</sup>

### 2.4.1.3.3. DIFFERENCES BETWEEN ARBITRATION AND LITIGATION

In arbitration, the disputing parties incur costs for accommodation (facilities) (e.g. room rental fees, court reporters) which do not occur in litigation; In arbitration, parties pay the decision makers fee but in litigation it is different, and the plaintiff pays court fees and lawyers' fees and also susceptible to other running costs.<sup>170</sup> In arbitration, the process of hearing and other procedures are flexible and informal but in Litigation hearing and other procedures are stringent (not flexible) and formal, whereas arbitral decision is not precedential, which means stare decisis<sup>171</sup> does not apply, but in litigation, depending on the legal system (which means civil and common legal system) decision is precedential and stare decisis does apply accordingly.<sup>172</sup> Furthermore, arbitration processes are both private and confidential, but litigation processes are not private and confidential. In arbitration process, the process cannot be initiated without the consent of both or all parties either by way of arbitration clause or an agreement to arbitrate, but in litigation if one parties wants to bring a case to the attention of the court, she/he would have

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from multiplying judgments, and confusion (Res judicata-Wikipedia, [https://en.wikipedia.org/wiki/Res\\_judicata](https://en.wikipedia.org/wiki/Res_judicata). Accessed on April 29, 2017).

<sup>168</sup> Ibid. Notes: **Issue estoppel** is the proposal that an argument is moot (debatable, unsettled) as it has been previously decided, distinctly put in issue in an earlier proceeding where it was fundamental to the decision. Issue estoppel is a species of res judicata. It applies where an issue in a cause of action was decided in a previous action. It must be a finding that is fundamental to the outcome of the decision, so fundamental that if a different conclusion had been reached on the issue, the outcome would have been different. If such is the case, then this issue cannot be raised in subsequent litigation."(Issue of Estoppel Definition- Duhaime.org, <http://www.duhaime.org/LegalDictionary/I/IssueEstoppel.aspx>. Accessed on April 29, 2017).

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid. Notes: Stare decisis is a Latin term meaning "to stand by that which is decided". Stare decisis is a legal principle which dictates that courts cannot disregard the standard. The court must uphold prior decisions. In essence, this legal principle dictates that once a law has been determined by the appellate court (which hears and determines appeals from the decisions of the trial courts) to be relevant to the facts of the case, future cases will follow the same principle of law if they involve considerably identical facts. (Stare Decisis- Investopedia[http://www.investopedia.com/terms/s/stare\\_decisis.asp](http://www.investopedia.com/terms/s/stare_decisis.asp)). In other term, stare decisis a noun, in line with Law, which means the doctrine that rules or principles of law on which a court rested a previous decision are authoritative in all future cases in which the facts are substantially the same. (Stare Decisis /Define Stare Decisis at Dictionary .com <http://www.dictionary.com/browse/stare-decisis>)

<sup>172</sup> Ibid

the right to do so without the need of the other party's consent or agreement.<sup>173</sup> In arbitration, third party's claim as a defendant does not exist, unless the plaintiff and the third party agree, but in litigation anyone who has a vested interest in the disputed issue with or without consent of the parties has the right to participate in the case. In arbitration, Parties select the decision maker, whereas in litigation disputes are submitted to sovereign appointed judges. In arbitration, parties choose the decision- maker, but not true in litigation because the process is run by the state.<sup>174</sup>

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<sup>173</sup> Ibid

<sup>174</sup> Ibid

## CHAPTER THREE

### 3. PROBLEMS IN THE CHOICE BETWEEN PUBLIC AND PRIVATE CIVIL ADJUDICATION IN ETHIOPIA FOR COMMERCIAL DISPUTES

*Disputes are inevitable in business transactions. One way to resolve disputes is to use a formal dispute resolution mechanism, such as litigation, which happens through the courts. However, court litigation in Ethiopia is marred [to damage, spoil] by many problems—so much so that members of the business community have been forced to expend much money, energy and time in the process. Due to the backlog of cases and lack of expertise, dispute settlement through courts often takes many years. And to make matters worse, in cases where the dispute involves technical matters, as in the construction industry, insurance and banking transactions, dispute settlement can take decades.*<sup>175</sup>

#### 3.1. THE POSITION OF ADR MECHANISMS IN THE ETHIOPIAN LEGAL REGIME

As discussed in the previous chapter, because of many ADR mechanisms, it is hard to discuss all types of ADR methods in this narrow topic. Thus, the paper will focus on some specific topics for better understanding of ADR systems in Ethiopia. Accordingly, the aim of the study will be assessing in a more specific manner commercial dispute resolutions with reference to the choice between public and private adjudications in Ethiopia. ADR is divided into two major aspects, which are Private ADR mechanisms and ordinary Court system.<sup>176</sup> As this point, one should know that, ADR may not only be confined to private processes but may also include "court-affiliated", or "court-annexed" or "court-sponsored" alternative dispute resolution mechanisms.<sup>177</sup> Currently, the following are the most notable ADR systems on the globe, which are negotiation, mediation/ conciliation and arbitration.<sup>178</sup> ADR systems will present as follow:

*In negotiation, the parties to a dispute, through communication and discussion, convey their position to each other and attempt to persuade the other to take a position by making compromise. Mediation / conciliation are negotiation by nature, the only difference being the appointment of one or more neutral third parties to the conduct of the negotiation. In mediation proceeding there are different processes in which the mediator performs different activities starting from setting the table for parties discussion to proposing alternative solutions for parties agreement. Both in negotiation and mediation if parties reached in terms of agreement to settle their difference, their agreement would bind them and has legal effect based on law of contract. Arbitration is a mode of settling differences*

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<sup>175</sup>School of law- Bahirdar University, <http://www.bdu.edu.et/law/?q=content/arbitration-center>. accessed on May 10, 2017.

<sup>176</sup>Professor Zekarias Keneaa, ALTERNATIVE DISPUTE SETTLEMENT MECHANISMS (ADR)(unpublished), Addis Ababa university, school of law, Notes to LL.M- in business law student, 2016(2008 E.C). p.2

<sup>177</sup> Ibid

<sup>178</sup>Tefera Eshetu and Mulugeta Getu, supra note 46, p.74.

*through the investigation and determination, by one or more unofficial persons selected for the purpose of some disputed matters submitted to them by contending parties for decision and award, in lieu of [instead of, in the place of] a judicial proceeding.*<sup>179</sup>

As mentioned above, ADR refers to a variety of processes that help parties resolve disputes without a trial. Other mechanisms that may be described as typical ADR processes include mediation, arbitration and neutral evaluation.<sup>180</sup> These processes are generally confidential, less formal, and less stressful than traditional court proceedings and also often save money and are speedy.<sup>181</sup> In ADR processes such as mediation, parties play an important role in resolving their own disputes and this often results in creative solutions, longer-lasting outcomes, greater satisfaction, and improved relationships.<sup>182</sup>

Arbitration considered as a means of decisional mechanism, involves a neutral person called an "arbitrator" who hears arguments and evidence from each side and then decide.<sup>183</sup> Therefore, arbitration is less formal than a trial and the rules of evidence are often relaxed.<sup>184</sup> Two arbitration and mediation centers have been created in Ethiopia, namely the Ababa Chamber of Commerce Arbitration Institute and the Ethiopian Arbitration and Conciliation Center (ECCA), currently, ECCA has been dissolved.<sup>185</sup>

Traditionally, in all societies and in all parts of the world, have been experienced in a various private justice systems; negotiation, mediation and arbitration.<sup>186</sup> Less satisfaction and complexity of ordinary court litigation brought the emergence of modern ADR systems in many parts of the world in 1970s.<sup>187</sup> ADR mechanism is preferred in the resolution of commercial dispute, because of: less formality than court proceedings; streamlined/smooth/ nature of the

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<sup>179</sup> Ibid

<sup>180</sup> What is ADR? - Alternative Dispute Resolution-N.Y state Courts, [https://www.nycourts.gov/ip/adr/what\\_Is\\_ADR.shtml](https://www.nycourts.gov/ip/adr/what_Is_ADR.shtml), internet source, accessed on, March.24, 2017.

<sup>181</sup> Ibid

<sup>182</sup> Ibid

<sup>183</sup> Ibid

<sup>184</sup> Ibid

<sup>185</sup> Tefera Eshetu and Mulugeta Getu, Supra note 46, P. 192.

<sup>186</sup> training manual on ADR and restorative justice, [www.unodc.org/.../Training\\_manual\\_on\\_alternative\\_dispute\\_resolution\\_and\\_restorati...p:16](http://www.unodc.org/.../Training_manual_on_alternative_dispute_resolution_and_restorati...p:16), internet source, accessed on, April 20,2017

<sup>187</sup> Ibid

process; can be offered in the languages and cultural context of the disputants; and speedily resolve cases.<sup>188</sup>

It is obvious that, before the introduction of modern laws centuries ago, ADR mechanism were practiced in Ethiopia. The traditional institutions such as the 'Shimagele', in central and northern Ethiopia, and the 'Gadaa', in the west, central eastern and southern Ethiopia were practiced as dispute settlement mechanisms in families, clans, tribes' nations and nationalities.<sup>189</sup> There are also other traditional ADR institutions in Ethiopia, such as: 'Awchachign' and 'Afersatta', and which had the power of laying legal sanction as of modern conflict resolution mechanisms.<sup>190</sup> At the end of 1950s and beginning of 1960s, things vigorously changed, and the notion of modernizing ADR mechanism came in to picture in the Ethiopian legal system.<sup>191</sup> The new law that is governing ADR system is more focused on such kind of contractual disputes which arise from contractual relations like: sales, loan, works, services and the like.<sup>192</sup>

In Ethiopia, ADR mechanisms have been practiced since long time ago before the introduction of the civil law. In modern sense, prominent ADR improvements have been brought in to the Ethiopian legal regime with the establishment of the Addis Ababa Chamber of Commerce through the Imperial order No. 90 of 1947.<sup>193</sup> Primarily, the intention of the order was to allow parties who are engaged in commercial activities, which are –commercial and industrial disputes” in nature, to settle their disputes through institutional arbitration center than court litigation.<sup>194</sup> Even though, Ethiopia didn't have arbitration law because of the Civil Code and the Civil Procedure Code of Ethiopia were not proclaimed, order No. 90 of 1947 lay down a remarkable legal land marks in the Ethiopian legal system in resolving commercial disputes through the instrumentality of ADR mechanisms at the time.<sup>195</sup>

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<sup>188</sup> Ibid

<sup>189</sup>Yohannes woldegebriel, Supra note 19, P.2

<sup>190</sup> Ibid

<sup>191</sup> Ibid

<sup>192</sup> Ibid

<sup>193</sup> Ibid

<sup>194</sup> Ibid

<sup>195</sup> Ibide,p:3

### 3.2. THE LEGAL FRAMEWORKS OF COMMERCIAL DISPUTE RESOLUTION MECHANISMS IN ETHIOPIA

In business communities, contracts and other business interactions are common phenomena. On this reality, towards the proper function of a market, the capacity of the parties who are enter in to a contract, enforcements of such contract and resolving disputes are the most sensitive considerations in business environment.<sup>196</sup> A nation has to develop a conducive and a fine enforcement mechanisms and procedural rules in the applicability of laws, because it increases predictability and also decrease uncertainty in commercial relationships by giving such guarantees to investors, in which ~~their~~ contractual rights will be upheld promptly by local courts ".<sup>197</sup>

In contrast, if procedural rules and enforcement mechanisms are sophisticated, commercial transactions do not show any confidence towards in their respective obligations and they become reluctant upon the resolution of such disputes with regard to time and cost effectiveness, then, the consequence in Commercial efficiency, will fall on a harsh condition and the economy also affected.<sup>198</sup>

Generally, legal frameworks, in commercial activities have great functions in creating good relationships, increasing confidence in commercial transaction and have a vibrant role in motivation of the economy.<sup>199</sup> If nations do not have good legal frameworks, the business communities and financial institutions will be in danger. An author described as follow:

*Traders depend more heavily on personal and family contacts; banks reduce the amount of lending because they cannot be assured of the ability to collect on debts or obtain control of property pledged as collateral to secure loans; and transactions tend to be conducted on a cash-only basis. This limits the funding available for business expansion and slows down trade, investment, economic growth and development.*<sup>200</sup>

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<sup>196</sup> Contract enforcement and dispute resolution- OECD,  
<https://www.oecd.org/investment/toolkit/policyareas/investmentpolicy/contractenforcementanddisputeresol>. Accessed on, April 16, 2017.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid

<sup>200</sup> Ibid

Currently, ADR mechanisms are understood over the globe as an indispensable tool on the dispute settlement method. ADR mechanisms have been practiced long times ago in Ethiopia, but in a modern sense, Ethiopia has been done a major developments on its arbitration law upon the introduction of the 1960 civil code of Ethiopia and on its civil procedure code of 1965.<sup>201</sup>

Business communities are interested promptly control and handle their disputes as much as possible. To do so, they run in to different directions which they believe effective dispute resolution mechanism. If they cannot solve their dispute privately, they will bring their case in to the power of ordinary court.<sup>202</sup> Alemayehu has been described the importance of private commercial dispute resolution mechanism in Ethiopia as follow:

*More importantly, having effective, well-run and institutionalized commercial arbitration, as opposed to litigation in national courts, can contribute to the aspirations and needs of Ethiopia and its nationals, whilst at the same time satisfying the expectations of international investors and traders for profit, security and stability, and ensuring fairness and justice to both disputant parties.*<sup>203</sup>

With the notion of this point, rather the customary or traditional ADR practice, the paper will deal with the legal positions and frameworks of ADR mechanism in the Ethiopian legal system focusing on commercial dispute resolution.

### **3.2.1. THE LEGAL POSITIONS OF ADR IN THE 1960 CIVIL CODE OF ETHIOPIA**

Before directly see to the position of ADR in Ethiopia, it would better to assess the difference and similarities of Mediation and Conciliation. Both mediation and conciliation are the known system of conflict or dispute resolution mechanisms through the involvement of third party. Most authorities confirm that mediation and conciliation are similar except in some small differences. For instance, Professor Zekarias, has given such exposition in these two system of ADR method, and has said, mediation and conciliation do not have major differences, and the difference may fall on to extent of involvement of neutral third party in which the facilitative

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<sup>201</sup> Alemayehu Yismaw, *The need to establish a Workable, Modern and Institutionalized Commercial Arbitration in Ethiopia*, <https://www.ajol.info/index.php/hlr/article/download/148617/138119>. Accessed on, April 16, 2017. p.1

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

role of third party to which one may engage in simple role and the other in active role on their proposal of such solution.<sup>204</sup>

Another authority in the same fashion described mediation and conciliation as: Both of them are methods of conflict resolution by third party involvement, and the role of mediator and conciliator may vary from one system to another system, but both are referred to dispute resolution process by which two or more parties who are in dispute may reach in agreement through the instrumentality of third part.<sup>205</sup> The only differences that exists in relation to mediation, mediators support the parties in the mediation process in view of assisting the disputant parties to find a solution by themselves, whereas, the conciliator, in his involvement may play an active role in the conciliation process, which means for the sake bring to an end the dispute or conflict, a conciliator can propose presented a solution.<sup>206</sup> The difference and similarities of mediation and conciliation is presented as follows:

*Though the two terms have a number of similarities, there are also some differences between conciliation and mediation, no matter which definition is used. In both cases, a neutral third party seeks to help two, or possibly more, opposing sides find a suitable resolution to a conflict. In some cases, the differences between these two processes will determine how that neutral third-party acts. No universal definition currently exists for these alternative forms of dispute resolution, but there are still some distinct differences. In some cases and jurisdictions, the differences between conciliation and mediation are determined by the amount of power the third party has. In mediation, the mediator will facilitate a discussion between the parties, and may or may not offer opinions on the strength of each side's argument. When no opinion is offered, it is called facilitative mediation. In cases where an opinion is offered, it is evaluative mediation. Overall, no matter which method is chosen, the mediator still does not have the right to impose his or her will on the two parties. This could be the major difference based on some definitions of conciliation and mediation. For example, a conciliator will not only offer an opinion on the relative strengths of the case, but also issue a binding opinion, if the parties agree to that ahead of time. The opinion offered is likely to be based on the law, but may factor in other less concrete considerations if the parties agree. This type of dispute resolution process is often more formal, simply because the decision will be binding, at least on a temporary basis. In some localities, the difference between conciliation and mediation is the same as the difference between facilitative mediation and evaluative mediation. In other words, under this definition of conciliation, the conciliator can still offer an opinion, but that opinion has no legal weight, though it may be based on legal concepts. Therefore, unless the parties agree, the conciliator's opinion makes no difference, but it may be used by one party or the other in court to bolster [strengthen] a case. No matter what definition is used, the major difference between conciliation and mediation ultimately is the power of the third party. In all cases, conciliation gives*

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<sup>204</sup> ZEKARIAS KENEAA, *CONCILIATION AS A MEANS OF SETTLING COMMERCIAL DISPUTES*(unpublished),ADDIS ABABA UNIVERSITY, Faculty of Law, LL.M PROGRAM, Notes to the COMMERCIAL DISPUTE RESOLUTION (Laws -624) Addis Ababa.p.3

<sup>205</sup>What is the difference between mediation and conciliation? Site CMAP, [www.cmap.fr/faq/what-is-the-difference-between-mediation-and-conciliation/](http://www.cmap.fr/faq/what-is-the-difference-between-mediation-and-conciliation/)? Lang. Accessed on May 6, 2017.

<sup>206</sup>Ibid

*slightly more power to the third party than the mediation. Conciliation or mediation may be ordered by the court system as a way of resolving disputes and relieving some of the pressure on court calendars. This is especially true in the case of marriage dissolution in some countries, though it could also be used for labor disputes, or nearly any type of contract disagreement.*<sup>207</sup>

When we proceed to consider the use of the terms in the Ethiopian law, in view of the above explanation, dominantly, the 1960 Civil Code of Ethiopia in Articles 3318-3324 and the Federal Courts Advocates' Code of conduct Council of Ministers Regulations No. 57/1999, article 19(1, 2) and article 20(1/a and 2), use the term conciliation and conciliator rather than mediation. Generally, negotiation, mediation, conciliation, arbitration and Ombudsman are considered as the known sources of ADR mechanisms under the Ethiopian law.<sup>208</sup> To this end, the paper will assess such ADR mechanisms under the Ethiopian law.

### **3.2.1.1. COMPROMISE UNDER ETHIOPIAN LAW**

The 1960 Civil Code of Ethiopia, from article 3307 to the 3317 provides about compromise. Compromise has taken a wide range in the Civil Code of Ethiopia, and the term is used as a departure to ADR systems in Ethiopian law.<sup>209</sup> The 1960 Civil Code of Ethiopia, article 3307 defines compromise as follow:

*Art. 3307. - Definition*

*A compromise is a contract whereby the parties, through mutual concessions, terminate an existing dispute or prevent a dispute arising in the future.*<sup>210</sup>

The above definition in the Civil Code indicates that, parties who enter in a compromise agreement, their agreement should be made in a form of contracts pursuant to contract law. If that is a contract agreement, it should be reduced in to writing form accordingly. Since it is a contract, parties who enter in a compromise agreement, will be bound by the terms which found in that particular contract they declare and accept it. This condition also supported by the

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<sup>207</sup>What is the Difference between Conciliation and Mediation? <http://www.wisegeek.com/what-is-the-difference-between-conciliation-and-mediation.htm>. Accessed on May 6, 2017.

<sup>208</sup>Shipi M. Gowok, *Alternative Dispute Resolution in Ethiopia - A Legal Framework*, <http://www.ajol.info/index.php/afjrev/article/download/41054/8478>. Accessed on April 21, 2017.p.279.

<sup>209</sup> Ibid

<sup>210</sup> The Civil Code of the Empire of Ethiopia, Proclamation No 165 of 1960, *NegaritGazeta*, 19<sup>th</sup> year, No. 25<sup>th</sup>, May, 1960. Article 3307.

Ethiopian Civil Procedure Code of 1965 article 276 <sup>211</sup> about the contents of compromise agreement including such particulars as regards to costs, damages and execution.

If a compromise is concluded between parties and that is accepted, as per the Civil Code, then "the compromise shall have the force of res judicata without appeal", which means, a compromise agreement between parties are taken as final and binding.<sup>212</sup> Even though, the law says, a compromise shall have the force of res judicata without appeal; it may expose in to appeal, if mistakes are happen on object of a contract that is contrary to the law or public morality, or found is there on the contract, the compromise undoubtedly shall be of no effect.<sup>213</sup>

### 3.2.1.2. CONCILIATION UNDER ETHIOPIAN LAW

Another private dispute settlement mechanism in Ethiopia is conciliation. Amusingly, it is in the Civil Code only that the process of conciliation is dealt with, but the rules that work towards fulfillment of the substantive rules, i.e. the Civil Procedure Code, is silent about this important topic.<sup>214</sup> If Ethiopia is intersected to involve in international trade, it is inevitable that she has to borrow such aspects of trade agreement rule "from international procedures as ratified by the United Nations Commission on International Trade Law (UNCITRAL) Rules".<sup>215</sup>

The 1960 Civil Code of Ethiopia, chapter one of section two, from article 3318-3324 deals about conciliation. The cumulative readings of article 3318 and 3320, they provide for conciliators appointment and duties. The main objectives of conciliator would be bringing the disputant parties together and facilitate a discussion environment in order to reach as far as possible a negotiated settlement, and to do so, conciliator "may be appointed, at the request of the parties, by an institution or by a third party".<sup>216</sup> The very essential duties of a conciliator are that, s/he shall give first opportunity to the parties to state their views before the conciliator presents proposals of settlement. Then as the ground of their (disputant parties) view, conciliator shall

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<sup>211</sup> The Civil Procedure Code of the Empire of Ethiopia, Decree No. 52 of 1965, *NegaritGazeta*, Extraordinary issue No. 3 OF 1965 Addis Ababa. 1965. Article 276.

<sup>212</sup> Civil Code supra notes 206. Article 3312(1).

<sup>213</sup> Ibid, Article 3316.

<sup>214</sup> *Shipi M. Gowok Supra note 204. p.271*

<sup>215</sup> Ibid, p.273

<sup>216</sup> Civil Code supra notes 206. Article 3318

prepare such written proposals that would help the parties to communicate with each other.<sup>217</sup> The definitional aspects of conciliation in the Civil Code shows that, conciliation is a voluntary activity on the process of mediation based on negotiation between the two or more disputant parties for the harmonious settlement of their dispute.<sup>218</sup>

Article 3319 of the Civil Code states that:

- (1) *The parties shall provide the conciliator with all the information necessary for the performance of his duties;*
- (2) *They shall refrain from any act that would make the conciliator's task more difficult or impossible.*<sup>219</sup>

The Civil Code also gives such guarantees to the conciliation process by setting such rules on conciliators carry out their duties and further provides that the conciliator shall conduct his duties within the period of time fixed by the parties. In addition to this, the law provides that, if parties did not fix any time limit, to this effect, as a rule, within six months the conciliator shall finish his work from the date of her/his appointment.<sup>220</sup> The Civil Code also sets an importance rule in article 3320(2) in which the parties are forbidden to bring their case in front of the ordinary court before the expiry of the fixed period of time except in case where the conciliator draws up a memorandum of "non-conciliation (a negative outcome) or it may end up in drawing a compromise (a positive outcome)".<sup>221</sup>

Outside the Civil Code of Ethiopia, Professor Zekarias kenea, offered the following:

*Thus, under the Civil Code, it may be said, conciliators do have a less active role and do not suggest solutions to the parties. When we see Articles 141 of the Labour proclamation No. 377/2004, certain disputes enumerated under Art. 142 are compulsorily submitted to conciliators assigned by the Ministry of Labour and Social Affairs or the corresponding regional bureaus. The process is compulsory and the conciliators role is limited to bring the parties to settlement or to recommend solutions. Based on the experience of [Professor Zacharias], the recommendations of the conciliators base the decisions of the Labour Board in the majority of cases. But consensual conciliation is also*

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<sup>217</sup> Ibid. Article 3320.

<sup>218</sup> Introduction to the Ethiopian Legal System and Legal Research, <http://www.nyulawglobal.org/globalex/Ethiopia.html>. May 10, 2017.

<sup>219</sup> Civil Code supra notes 206. Article 3319.

<sup>220</sup> Introduction to the Ethiopian, supra note 214

<sup>221</sup> Civil Code supra notes 206. Article 3320(2) and Introduction to the Ethiopian, supra note 214. Further considerations with regard to this idea is in effect the parties cannot take their case to a court before a negative or positive outcome of the process of conciliation to which they have submitted themselves voluntarily (see Article 3321 (1) and (3) of the Civil Code).

*allowed under Article 143 of the Proclamation. Since, the proclamation does not state the power of such conciliators; it may be argued that the power of the conciliators could be similar to that of the conciliators under Arts 141 and 142 of the proclamation. Or it may be possible to construe Article 143 of the Labour proclamation in light of Articles 3320(1) and 3322(1) of the Civil Code, to say the role of the conciliator does not include recommending solutions.*<sup>222</sup>

### **3.2.1.3. ARBITRATION UNDER ETHIOPIAN LAW**

It is certain that, for the resolution of commercial disputes, arbitration and other alternative dispute resolution mechanisms, which are entertained out of ordinary court, are the most appropriate and convenient means of dispute resolution mechanisms.<sup>223</sup> The Civil Code of Ethiopia has recognized the procedure of arbitration outside the ordinary courts, in order to resolve such disputes. The provisions of the Civil Code from article 3325—3345 have come up with some provision on arbitrator. The 1960 Civil Code of Ethiopia, has given more provisions to Arbitration, when compared to the other ADR mechanisms in the Code, which means more provisions than compromise and conciliation, but Ethiopian arbitration laws are sketchy and non-comprehensive to be utilized widely in the country.<sup>224</sup>

The Ethiopian arbitration law, which has been described in the Civil Code, has set rules of arbitration. Parties who involve in arbitration, their agreement should be compatible in line with the general contract laws, which means, the contract should have a free and sustainable consent, capacity, and free from any defects that related to mistake, fraud and duress.<sup>225</sup>

Hence, the basis of arbitration may be a pre-existing contract between parties, and if that is the case, the law requires that the parties before entering into a valid arbitration agreement, they must give their free consent and must have capacity for concluding contracts, but the Civil Code of Ethiopia Article 3326(1) gives the impression that the capacity of the parties, requirement

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<sup>222</sup> ZEKARIAS KENEAA, *Supra* note 204.p.4

<sup>223</sup>Yohannes Woldegebriel, *Resolving disputes by arbitration: an encouraging paradigm shift*, articles upon: National Bank of Ethiopia (NBE), organized a discussions on the draft *National Payments and Settlement System proclamation*.(Unpublished).

<sup>224</sup>Alemayehu Yismaw, *supra* note 197.p.42

<sup>225</sup> ZEKARIAS KENEAA, *ARBITRATION AS A MECHANISM OF RESOLVING COMMERCIAL DISPUTES*(unpublished), ADDIS ABABA UNIVERSITY, FACULTY OF LAW LL.M PROGRAM, Material to the COMMERCIAL DISPUTE RESOLUTION (Laws -624) Addis Ababa. See also civil Code of Ethiopia Art. 1678, 1679, 1680 in relation to elements: capacities, consent and agreement of a parties who inter in to such contract, also consider Civil Code of Ethiopia Art 1696-1708.

implied in this article is directly about –special capacity” which are not governed by general capacity provisions and that a person needs special capacity to accomplish juridical acts.<sup>226</sup>

Professor Zekarias has special emphasis on this and described as follows:

*As gatherable from the provisions of Article 194 of the Civil Code, special disabilities/capacities may be prescribed by reason of the functions exercised by physical persons. Per the provisions of Article 3326, therefore, if an arbitration agreement is to be made concerning a right that may be disposed of without consideration; the agreement must be made by a person that has the requisite special capacity to dispose of such a right without consideration. Note also that in similar vein, Article 3049(3) of the Civil Code imposes the requirement of “special capacity” on a person that secures the debt of another person by mortgage.<sup>227</sup>*

By and large and from the reading of Civil Code Article 3325, arbitration is accompanied by the involvement of a third party, who is entrusted to settle dispute pursuant to the law and this implies that, the appointed arbitrator should have such knowledge of law, but the legislator at the time of enactment of law did not take into cognizance the level of legal knowledge of the majority of the populace.<sup>228</sup>

As a legal system, is not highly developed, because of this, the requirement of settling disputes in arbitration process has been in problem after the enactment of the law, but, the civil Procedure Code of Ethiopia which is enacted in 1965 has tried to improve the defects of the 1960 Civil Code by giving some legal effectiveness for arbitration and to the arbitration structure.<sup>229</sup> Arbitration may come in a position by law, in the appointment of the parties, or on party’s mutual agreement before court of law or either in clauses which put in the original contract or later. Arbitrators may be one or several but during the original contract, number is not specified. , then each party has the right to appoint their respective arbitrator.<sup>230</sup>

There may be different types of disputes that may be submitted to ADR institution in Ethiopia, for instance family dispute, labor dispute and insurance dispute, investment dispute, contract dispute, damage in relation to expropriation of property etc.

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<sup>226</sup> Ibid. see also civil Code of Ethiopia Art.3325 and 3328 with that of 1678.

<sup>227</sup> Ibid.

<sup>228</sup> *Shipi M. Gowok Supra note 204. p.276*

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

The study will interest to identify factors that determine the choice between public civil and private civil adjudications in Ethiopia in relation to commercial disputes. But for the sake of understanding the researcher will see functional institution of commercial ADR systems in Ethiopia.

#### **3.2.1.4. COMMERCIAL ADR INSTITUTIONS IN ETHIOPIA**

Ethiopia has proclaimed its arbitration laws through the enactment of the Civil Code of 1960 and the Civil Procedure Code of 1965. For more than half a century Ethiopia has been applying these laws on commercial disputes, but she is not lucky to have a very good workable laws, because the laws are sketchy and are not compatible with the current important modern laws and also do not satisfy the prevailing principles of the international commercial arbitration rules.<sup>231</sup>

Generally, when discussing functional institutions of ADR systems in Ethiopia, reference is made to such organizations or associations that are organized by law as centers of dispute settlement in private matters in which the centers will dispose of or give services towards interested groups to all who need a private settlement mechanism over their dispute. Those centers of ADR that are established and duly registered have the responsibilities not only to facilitate a meeting arena for the disputant parties but also have the duties to introduce the ADR systems to the public and legal place of work.<sup>232</sup>

The very known ADR institution in Ethiopia are: the Ethiopian Arbitration and Conciliation Centre (EACC) but now is not an active institution and the Addis Ababa Chamber of Commerce and sectoral associations (AACCSA), these institution has contributed to organize such dispute settlements by arbitration and in addition to the mandatory laws which are enacted by the state, and they developed rules in line with the law in order to direct arbitration proceedings.<sup>233</sup> Therefore, for the sake of such understandings of ADR system in Ethiopia, the paper has chosen

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<sup>231</sup> Alemayehu Yismaw, supra note 197. P.

<sup>232</sup> Tefera Eshetu and Mulugeta Getu, Supra note 46, P. 177.

<sup>233</sup> Ibid

the above two institutions because of their ages of establishment. The institutions present as follow:

### **3.2.1.5. THE ETHIOPIAN ARBITRATION AND CONCILIATION CENTRE (EACC)**

Even though, at present time is not active or collapsed , the Ethiopian Arbitration and Conciliation Centre(hereafter, EACC), was instituted by the Ethiopian lawyers as an independent body, within the objective of rendering services out of traditional court environment who need to resolve their disputes in a private resolution mechanisms.<sup>234</sup> And the institution was provided some services, like a mediation services on the commercial, labor, construction and family disputes.<sup>235</sup>

Generally, Ethiopian Arbitration and Conciliation Center (EACC) was a national NGO, and was established with the aim of enhancing the usage of alternative mechanism for private dispute solutions.

### **3.2.2. THE ADDIS ABABA CHAMBER COMMERCE AND SECTORIAL ASSOCIATION ARBITRATION INSTITUTE (AACCSA- AI) AND BAHIR DAR UNIVERSITY ARBITRATION CENTER.**

With regard to Commercial arbitration in Ethiopia, Alemayehu said, at this time, arbitration service is so limited in Ethiopia and could not show a progressive aspect and currently, there are only two institutionalized commercial arbitration centers in Ethiopia, namely: the: Addis Ababa Chamber of Commerce and Sectoral Association Arbitration Institute and Bahir Dar University Arbitration Center.<sup>236</sup> Bahir Dar University Arbitration Center, as center of arbitration, the general objectives is to facilitate businesses and other segments of society to resolve their disputes swiftly, economically and firmness.<sup>237</sup> Specific objectives of the center are: first to support the deliverance of "ADR services in a professional and sustainable manner" secondly,

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<sup>234</sup> Ibid

<sup>235</sup> Ibid

<sup>236</sup> AlemayehuYismaw, supra note 197. p.42 PDF

<sup>237</sup> Arbitration Center- Bahir Dar University, [www.bdu.edu.et/law/?q=content/arbitration-cente](http://www.bdu.edu.et/law/?q=content/arbitration-cente). accessed on 27Feb,2018.

"to ensure that relevant stakeholders, including government officials, judges, lawyers and the business community, have appropriate levels of understanding about the legal framework governing arbitration and other ADR mechanisms".<sup>238</sup>

In general description, the aim of the Center is presented as follow:

*provide arbitration, mediation and conciliation services; conduct training for arbitrators, mediators and conciliators; undertake moot court competitions among law students of undergraduate and postgraduate studies; To serve as a research center both for domestic and foreign business people who wish to know, consult and analyze the trade and investment environment of Ethiopia in general and the state of Amhara in particular for their investment or trade purposes.*<sup>239</sup>

The Addis Ababa Chamber of Commerce and Sectorial Associations, established in 1947, provides services to the business communities, and among the service: technical and advocacy services that has given a significant help to the business people as their start business, run, and grow their businesses.<sup>240</sup> More importantly, the Addis Ababa Chamber of Commerce and sectoral Associations (AACCSA) instituted pursuant to the Proclamation No. 341/ 2003 which was given the power to settle such disputes which arise out of business transactions.<sup>241</sup>

As the preamble of the proclamation, that describe the aim of establishing Proclamation No. 341/ 2003 is to re-establish Chambers of Commerce and Sectorial Association in line with the free market economic policy of the country. The current government is believed that "Chambers do play significant role in the promoting of trade, industry and investment".<sup>242</sup> From the cumulative readings Art.5(6, 11) of Proclamation No. 341/ 2003, the law gives power to the ADR institution to settle disputes which arising out of business transactions between members,

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<sup>238</sup> Ibid

<sup>239</sup> Ibid

<sup>240</sup>Yohanneswoldegebriel, supra note 19

<sup>241</sup> Ibid

<sup>242</sup> Chamber of Commerce and sectoral Associations establishment of Ethiopia, the Proclamation No. 341/ 2003, NegaritGazeta, 9<sup>th</sup> Year No. 61 of 2003 ADDIS ABABA, 2003

by way of arbitration, when the parties so request. And has the power to charge fees for the services it provides.<sup>243</sup>

The Centre as legally authorized, is exercising the power of settling commercial disputes. The institution is supported by the Netherland Embassy, with the intention of rendering its activities of the resolution of commercial disputes throughout the country.<sup>244</sup> The Addis Ababa Chamber Commerce and Sectorial Association Arbitration Institute (ACCSA-IA), the Arbitral Institution was been established in 2002, and it is a pioneer and the first of its kind in the country.<sup>245</sup>

It was established during the Imperial era with the aim of realizing and providing Arbitral services to the disputants who need resolving their dispute in private civil adjudicative manner by giving legally mandated power to the Chamber since 1947.<sup>246</sup> The major activities rendered by AACCSA AI are presented as follow:

*Facilitating the settlement of commercial disputes in accurate accord with the arbitration rules of the chamber; Organize and offer workshops, seminars and training services on arbitration and ADR mechanisms; Providing adjudication services for construction disputes; Providing mediation /conciliation services; Providing advisory services concerning commercial arbitration and other ADR mechanisms in Ethiopia; Providing the Arbitration institute good offices to ad hoc arbitration services at a reasonable cost; Conducting studies on arbitration and ADR procedures; Serving as an appointing authority when so designated in commercial contracts; Contract drafting and reviewing services.*<sup>247</sup>

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<sup>243</sup> Ibid Art.5(6, 11)

<sup>244</sup> Yohanneswoldegebriel, supra note 19

<sup>245</sup> Addis Ababa Chamber Of Commerce, [www.addischamber.com](http://www.addischamber.com), internet source, accessed on, Dec.26, 2016.

<sup>246</sup> Ibid

<sup>247</sup> Ibid

## CHAPTER FOUR

### 4. RESEARCH DESIGN AND METHODOLOGY

The purpose of this chapter is to present the research method that is being used for the study. It presents details of the research design, population size and sampling techniques, methods and procedures of data collection, and methods used in the analysis of data collected.

#### 4.1. RESEARCH DESIGN

Legal research is meant for increasing the sum of knowledge about the law by the process of systematic investigation.<sup>248</sup> "Legal research is, thus, the process of identifying and retrieving information necessary to support legal decision-making. It includes in it each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation".<sup>249</sup>

Accordingly, the researcher adopted a research design that meets all the desired quality a legal research should adhere to; As the main objective of this research is to identify the determining factor that affect the preference between public and private justice systems in Ethiopia focusing on commercial disputes; and as the other objective also is to assess opportunities and challenges of ADR systems in Ethiopia.

The study mainly uses an exploratory and a descriptive research method; as, exploratory research method, endeavors to gain familiarity with incidents or helping to gain new insights or understanding about the determinants. As descriptive research method is used to describe the situation when deemed necessary. Generally the research method is adopted in doctrinal and non-doctrinal legal research approaches.

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<sup>248</sup>Khushal Vibhute, and Filipos Aynalem, supra note 58. pp. 2 and 22

<sup>249</sup> Ibid. p.23

## **4.2. POPULATION AND SAMPLING TECHNIQUES**

There are ten sub-cities in Addis Ababa City administration, and only two sub cities; "Arada" and "Gulelle" are purposively selected for the study. The selection is made based on the proximity and the convenience that the two Sub-cities have for the researcher.

Accordingly, the researcher identified the registered tax payers of "Arada" and "Gulele" sub cities as a target population group for the study. According to the aforementioned sub-cities micro and small tax payers branch office there are 3583 small and micro tax payers. Of the 3583 tax payers targeted for study were 358 (10%) which are randomly selected and administered in the sub-cities tax collection centers which are established for the purpose of collecting taxes from the micro and small tax payers.

Moreover, the study is supplemented by the information obtained from the courts and Private Civil Commercial Dispute Settlement Institutions (PCCDSI). "Lideta" Federal Court And AACCSA-AI purposively selected; as "Lideta" Court has all benches, which means, Federal First Instance Court, Federal High Court and this enabled the researcher to get different views that can be administered at all level. Likewise, AACCSA is purposively selected, as it is currently the only active functional PCCDSI.

## **4.3. SOURCES OF DATA**

This study mainly depends on primary data for the assessment of participant's progress, awareness, challenges, and opportunity of ADR mechanisms on settlement of commercial disputes. The data is collected from the registered micro and small tax payers that are involved in different business activities from the selected sub-cities and professionals who are working in the legal institutions and AACCSA for the study.

However, secondary data, such as reports and articles etc. that are obtained from libraries And AACCSA are also used to complement the study.

#### **4.4. DATA COLLECTION INSTRUMENTS**

Different data gathering instruments are deployed for the study. The researcher mainly relied on survey questionnaire and semi-structured interviews to gather the required information. Questionnaire was administered properly by the researcher after distributing each questionnaire to the randomly selected respondents sampled from the target population group. Interviews were made with judges and professionals in the selected institutions.

The data which are collected using structured questionnaire and interview from selected courts, commercial disputes settlement institution center and stakeholders (users of commercial disputes settlement institutions) will give the researcher an important opportunity to identify and measure the respondent's opinion.

##### **4.4.1. QUESTIONNAIRE**

Questionnaire with similar set of items was prepared and used to administer the main informants for the study in category A and B of micro and small tax payers. The questionnaire has three sections. The content of the first section has questions which are related directly to the respondent's personal profile. The second and third sections of the questionnaire are Likert scale and open ended questions that are focused on main objectives of the research which are: the challenges and opportunities of private commercial disputes settlement mechanisms in Ethiopia; which civil justice system is convenient for commercial disputants in terms of cost effectiveness, time efficiency and enforcement effectiveness. The questionnaire will have also such spaces that may give an opportunity to the respondents to describe their opinion without restriction, which is an open ended question focused on challenges and opportunities of the private commercial disputes settlement mechanisms in Ethiopia.

The Likert scale is used to make it easier for respondents to answer such question in a simple way and to attract and allow them to express their willingness to respond to the statements without difficulty. Apart from this, Likert scale also helps to make the quantitative analysis easier. The structured items in the Likert scale are measured based on the five likert rating scale methods which are meant to be rated and assigned for a continuous value. The rating in the

Likert scale is made in such a way that the respondents can assign a continuous value from strongly agree =1 to strongly disagree =5.

#### **4.4.2. INTERVIEW**

Structured interview is prepared and used to get detailed information from the judges and professionals in the selected legal institutions. The structured interview questions prepared to look at the position of PCCD settlement institution with respect to, enforcement capabilities, significances, awareness, time efficiency, cost effectiveness and capacity in Ethiopia.

#### **4.4.3. DATA COLLECTION PROCEDURES**

Having letters of support that is given from the AAU University college of Law and Governance studies school of law, the letters were submitted to the potential informants such as; selected court and ACCSA staff members, more importantly the letters were submitted to "Arada" and "Gulelle" sub-cities micro and small tax payers office. The data was collected from May 15, 2017, to June 15, 2017. As government has extended the tax payment time schedules and tax payers were given time to appeal on the tax grievance committee. The researcher has got the chance to collect additional data and extended the data collection period from July 8, 2017 to August 7, 2017.

#### **4.5. DATA ANALYSIS**

Data analysis, also known by other name analysis of data or data analytics, and it is a process of examining, refining, converting of data with the objective of discovering helpful information, suggesting conclusions, and supporting decision-making.<sup>250</sup> The term analysis shows a systematic examination and assessment of data or information, by splitting it into its constituent parts to reveal their interrelationships. It also refers to an examination of data and facts to uncover (reveal) and recognize cause-effect relationships, which provides basis for problem solving and decision making.<sup>251</sup> The process of data analysis goes through the following steps which are first

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<sup>250</sup> What Is Data Analytics, [www.zapmeta.ws/What+Is+Data+Analytics/](http://www.zapmeta.ws/What+Is+Data+Analytics/) Accessed on May 6, 2017.

<sup>251</sup> What is analysis? Definition and meaning- Business Dictionary.com, <http://www.businessdictionary.com/definition/analysis.html>. Accessed on May 6, 2017.

Pose a Question which means preparing the data for analysis, second analyzing the data(or measure and evaluate the data), and directly interpreting the data as meaningful object, that means summarizing and displaying data as proper function and having an important effect.<sup>252</sup> The researcher has analyzed the data collected with the objective of finding factors that determine the choice between public civil adjudication and private civil adjudication in Ethiopia in the commercial disputes. The data collected via questionnaires is analyzed using SPSS; an application software that can aid in quantitative data handling and a comprehensive system for analyzing data (E.g. for Descriptive and Regression analysis). The simple descriptive statistics<sup>253</sup> (percentage, average and tables) which facilitate efficient coding and analyses, while the regression analysis sought to find the association between factors that determine the customer's preference and the preference of customers towards the ADR system. Furthermore, the data that was collected through interview were analyzed with interpretation and narration, the review of documents was interpreted qualitatively. Generally the study will use both qualitative and quantitative analyses.

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<sup>252</sup>Steps in the Data Analysis Process,

[http://www.bcps.org/offices/LIS/researchcourse/data\\_process.html](http://www.bcps.org/offices/LIS/researchcourse/data_process.html). Accessed on May 6, 2017.

<sup>253</sup> Descriptive statistics are used to describe the basic features of the data in a study and they provide simple summaries about the sample and the measures and together with simple graphics analysis, they form the basis of virtually every quantitative analysis of data. With descriptive statistics one simply describing what is or what the data shows. Each descriptive statistic reduces lots of data into a simpler summary (Descriptive Statistics- Social Research Methods, <https://www.socialresearchmethods.net/kb/statdesc.php>. Accessed on May 7, 2017.

## **CHAPTER FIVE**

### **5. RESULTS AND DISCUSSION**

So far, in the preceding chapter the way the research is conducted and research approaches have been discussed which are the research design and methodology. With the methodology used the following chapter presents the results and discussions of the study.

#### **5.1. RESULTS AND FINDINGS**

In this part, the researcher presents the survey results that are obtained from sample selected group; Judges, business persons and private commercial dispute settlement institution, using simple descriptive statistics.

##### **5.1.1. AWARENESS ON COMMERCIAL DISPUTE RESOLUTION MECHANISMS AND INSTITUTIONS IN ETHIOPIA**

All stakeholders who are involved in the private civil commercial dispute settlement mechanisms should have sufficient information and should be well aware of the services provided by the private commercial dispute settlement institutions. Accordingly, customers were asked questions that were aimed at assessing their level of awareness about private commercial dispute settlement institutions and the services provided by the institutions.

The responses obtained from these questions show that there is low level of awareness about private commercial dispute settlement institutions and the services delivered by the institutions. The empirical result obtained from the Statistical Package for the Social Science (SPSS) analysis is presented below.

Table 1. Result on Awareness of commercial dispute resolution mechanisms

S.N	Item	Tax Payers Category	Rate					Total	P-Value from Chi-Square
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree		
1	The business community has full awareness about private commercial dispute settlement mechanism	Category B	48 (38.4%)	50 (40.0%)	22 (17.6%)	5 (4%)	0	125	0.841
		Category A	78 (34.7%)	101 (44.9%)	37 (16.4%)	8 (3.6%)	1 (0.4%)	225	
		<b>Total</b>	<b>126 (36.0%)</b>	<b>151 (43.1%)</b>	<b>59 (16.9%)</b>	<b>13 (3.7%)</b>	<b>1 (0.3%)</b>	<b>350</b>	
2	The level of awareness that the business community has determines their preference between the private and public dispute resolution institutions	Category B	0	4 (3.2%)	21 (16.8%)	45 (36.0%)	55 (44.0%)	125	0.263
		Category A	1 (0.4%)	8 (3.6%)	38 (16.9%)	104 (46.2%)	74 (32.9%)	225	
		<b>Total</b>	<b>1 (0.3%)</b>	<b>12 (3.4%)</b>	<b>59 (16.9%)</b>	<b>149 (42.6%)</b>	<b>129 (36.9%)</b>	<b>350</b>	

As it is presented in the above table\_1, majority (79.1%) of the respondents reacted negatively (43.1% disagree and 36.0% strongly disagree) for the positively stated Likert item that states “The business community has full awareness about private commercial dispute settlement mechanisms”. Only 4.0 % ( 3.7% agree and 0.3% strongly agree) of the respondents showed their agreement on the statement, while 16.9% of them were neutral. Moreover, as it is depicted in item-2 of the above table\_1, the majority (79.5%) of the business community (business person) participated in the study believed that "the level of awareness of the business community is one of the main factors that can determine their preference between the private and public dispute resolution institutions". 3.7% of the respondents reacted negatively, while 16.9% of them were neutral.

As it is presented in the above table the p-value from the chi-square test for both of the two items are greater than 0.05; which are 0.841 and 0.263 for item-1 and item-2 of the above table respectively, showing that there is no statistical significant opinion difference between the two respondents (category A and category B of the micro and small tax payers).

The disclosing and advocating of ADR systems to the user (commercial disputants) is important for the growth and development of the ADR institutions, which means transparent in operations

with equal provision of justice for all citizens and legal entities; procedural information simplified, use of oral procedures; rules and information available to all through a variety of channels for distributing information on cases, laws, regulations, procedures, filings, etc.

The training manual on ADR which is initiated by the United Nations has described that, 'Awareness' is so crucial for users of commercial dispute settlement institutions because when users of legal services come to courts and other justice related agencies (commercial dispute settlement institutions), users should have to be able to get prompt information, instructions, file proceedings, settle cases and have decisions upheld and enforced without unnecessary delay, expense or other hardship.<sup>254</sup>

The researcher interviewed the Federal First Instance Court Judge Ato Yared Tilahun with questions such as, are courts fully cooperative with the PCCD settlement institutions? Then he replied that courts are willing to cooperate with the PCCD settlement institutions as per the law, but some legal practitioners in courts may have less or low acknowledgement to the PCCD settlement institutions. Because of lack of information towards institutional PCCD, the institution may suffer a prompt cooperation through court. It is true that, currently, the importance of PCCD settlement institutions is unquestionable, and some improvements and awareness creation activities towards PCCD settlement institution is the tasks that should be done by both government and private institutions.

Ato Yohannis W/gebriel; director of AACCSA -AI said, so far, there were some gaps in the knowledge of PCCD settlement institutions among government legal institutions and service providing institutions, but now with the great effort of awareness creation program of AACCSA, a number of government institutions give such acknowledgements to the service that provided by the institution, but the institution believes that it is not enough and will do such awareness creations for the business communities through different information disseminating methods.

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<sup>254</sup>Training Manual on Alternative Dispute Resolution and Restorative Justice, United Nations, October 2007. p.2.

Generally, as it is observed from table\_1 and the response obtained from the interviews held with the legal experts, the level of awareness of the business community about private commercial dispute settlement institutions and the services that the institutions are providing have been found to be very minimal. Let alone others, experts in government institutions are not in a position to understand the importance of PCCD settlement institutions.

### 5.1.2. TIME EFFICIENCY

The length of time needed to settle commercial disputes is one of the expected potential factors that determine the choice between public civil and private civil justice systems in Ethiopia. To this end, the selected informants were asked to rate the time that private commercial dispute settlement institution took to settle commercial disputes in comparison with public civil justice systems (ordinary court). The general question was: Private civil commercial dispute settlement institutions in Ethiopia have provided their services in effective time intervals than public civil justice institutions (ordinary court)? The response obtained from the respondents analyzed and presented in the table below.

Table 2. Result on Time effectiveness of commercial dispute resolution mechanisms

S.N	Item	Tax Payers Category	Rate					Total	P-Value from Chi-Square
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree		
1	The private commercial dispute resolution mechanism is opted for the sake of time efficiency	Category B	3 (2.4%)	27 (21.6%)	95 (76.0%)	0	0	125	0.841
		Category A	0	59 (26.2%)	166 (73.8%)	0	0	225	
		<b>Total</b>	<b>3 (0.9%)</b>	<b>86 (24.6%)</b>	<b>261 (74.6%)</b>	<b>0</b>	<b>0</b>	<b>350</b>	
2	I believe that, time, it takes to settle cases is the main determining factor towards the choice between the private and public dispute resolution institutions	Category B	5 (4.0%)	28 (22.4%)	92 (73.6%)	0	0	125	0.417
		Category A	4 (1.8%)	56 (24.9%)	165 (73.3%)	0	0	225	
		<b>Total</b>	<b>9 (2.6%)</b>	<b>84 (24.0%)</b>	<b>257 (73.4%)</b>	<b>0</b>	<b>0</b>	<b>350</b>	

As can be seen from the above table 2, responses obtained for the stated question reveals that 261 or (74.6%) of the respondents responded –Neutral” for the item that states –The private commercial dispute resolution mechanism is opted for the sake of time efficiency”. This means,

according to them the time it takes to settle commercial disputes by the commercial dispute settlement institution and public justice system (courts) are almost similar. Likewise, majority; 257(73.4%)of the total respondents have rated neither positively nor negatively reacted for item-2 of the above table that states “I believe that time it takes to settle cases is the main determining factor towards the choice between the private and public dispute resolution institutions”, which means they response as neutral, which shows they do not worry about time efficiencies over their disputes, and they said that they don’t expect better and different methods of settling disputes from the private commercial dispute settlement institution with respect to time efficiency. Moreover, significant number 93 (26.6%) of them showed their disagreement for the statement that states private commercial dispute settlement institution settles disputes in relatively shorter time than public courts.

The p-value from the chi-square test for both of the items are 0.841 and 0.417 for item-1 and item-2 of the above table respectively, which are greater than the critical value 0.05; showing that there is no statistical significant opinion difference between the two respondents categories (category A and category B micro and small tax payers).

Even though ADR institutions described theoretically, reduce unwanted delay, and creating advantages of time and cost effectiveness, Alexander A. Yanos from the United States described in contrast with the above idea, and said the main problems that ADR faces is in relation to the concepts of time and cost which means that when disputant parties choose to settle their dispute through ADR mechanism, because of the idea of its fastness and less cost, but it has seen the reality the idea fail in to other direction, most of the time, with unknown reason or not well defined, users recognized that ADR is slower and costly than traditional court litigation.<sup>255</sup>

Interview has been conducted with W/ro Menen Abebe; an assistant judge in Federal High Court "Lideta" 7th Civil Bench. The researcher offered some questions with regard to the time effectiveness of PCCD institutions to settle disputants’ case. She replied that fortunately I (Menen) have got the chance to be court assigned arbitrator and served as on arbitrator to resolve civil disputes. The very problem is that, no enforcement mechanisms towards the tasks of

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<sup>255</sup> Alexander A. Yanos, *Supra* note 91.p.2

arbitrators by law. The presence of all the arbitrators is decisive to settle cases; however one of the assigned arbitrator may not come timely or completely, as a result, the arbitrators dissolved, and the assigned leader (umpire) will be forced to postponed the case by giving another appointment for other day, this also may not successful. Because of such kind of persistent rescheduling, the case might be delayed.

At an institutional level the researcher conducted an interview with Ato Yohanis, Executive Director of the Arbitral Institution of AACSA-AI. Yohanis respond with regard to time efficiency, the institution is so sensitive in time efficiency but to make clear things for the sake of prudent measure and by considering many positive aspects of the arbitral proceedings (selection of the arbitrator, organizing available document etc.) may lead to delay, but the delay is for the sake of positive reactions of the case.

To sum up, The responses obtained from the business community (from the purposely selected micro and small tax payers) and experts by using both questionnaire and interview shows, though ADR system is sluggish in its service than the public court in issue of time, the institutions take time to settle such cases was not found to be as the main factor that to be considered as a determinant on the choice between PUCCJS and PCCJS in Ethiopia.

### **5.1.3. ENFORCEMENT**

Any legal institution should have a full-fledged legal power to enforce the dispensed decision of the institution towards plaintiff- defendant's complaint. If there is no such enforcements on the decisions of legal institutions, one can say simply there is no justice at all. Hence legal enforcement is the crux of legal decisions. Accordingly, the Ethiopian private commercial dispute settlement institution should have a certain effective enforcement mechanism towards its decision. This enforcement emerged through government legal institutions like court and police.

The 1960 Civil Code of Ethiopia has been given recognitions on legal applications of ADR mechanisms in Ethiopian legal regime from article 3307-3346 and the Civil Procedure Code of Ethiopia of 1965 also consider ADR mechanism and arbitral decisions equal as civil court decision. Art. 317(1) Civil Procedure Code of Ethiopia confirmed that Procedure before arbitration tribunal shall, as near as may be, the same as in a civil court and art.244 (2) (g) parties

as ground of prior arbitration clause on their contract can have the right to raise Preliminary objections before court of law and the claim is to be settled by arbitration or has previously been made the subject of a compromise or scheme of arrangement. Besides, Art. 317(3) arbitration institutions have an authority to issue summons for the attendance of witnesses who may be sworn. Pursuant to the Ethiopian Civil Laws PCCD settlement institutions should get a significant cooperation from government legal institutions.

The enforcement power of legal institution is considered as one of the main determining factors that affect the credibility of the institution, and the capability of the institution to compel all stakeholders towards its decision. To this end, respondents from the business community, who are registered as a micro and small tax payers in Arda and Gullele sub-cities were asked as a general question, to rate the enforcement capacities and mechanisms of ADR system in relation to the public legal system. The response obtained from the respondents presented in the table\_3.

Table 3.Result on Effective enforcement mechanism of the PCCD institution

S.N	Item	Tax Payers Category	Rate					Total	P-Value from Chi- Square
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree		
1	Awards (Arbitral decisions) which are given from the private commercial dispute settlement institution, effectively enforced by the government legal institutions (by court, police etc.)	Category B	48 (38.4%)	50 (40.0%)	22 (17.6%)	5 (4%)	0	125	0.841
		Category A	78 (34.7%)	101 (44.9%)	37 (16.4%)	8 (3.6%)	1 (0.4%)	225	
		<b>Total</b>	<b>126 (36.0%)</b>	<b>151 (43.1%)</b>	<b>59 (16.9%)</b>	<b>13 (3.7%)</b>	<b>1 (3%)</b>	<b>350</b>	
2	Awards (arbitral decisions) given by the private commercial dispute settlement institution is fully accepted and respected by the disputants	Category B	51 (40.8%)	48 (38.4%)	23 (18.4%)	3 (2.4%)	0	125	0.611
		Category A	78 (34.7%)	101 (44.9%)	37 (16.4%)	8 (3.6%)	1 (0.4%)	225	
		<b>Total</b>	<b>129 (36.9%)</b>	<b>149 (42.6%)</b>	<b>60 (17.1%)</b>	<b>11 (3.1%)</b>	<b>1 (0.3%)</b>	<b>350</b>	
3	The ADR system has equal enforcement effectiveness to the court.	Category B	49 (39.2%)	50 (40.0%)	23 (18.4%)	3 (2.4%)	0	125	0.707
		Category A	77 (34.2%)	102 (45.3%)	37 (16.4%)	8 (3.6%)	1 (0.4%)	225	
		<b>Total</b>	<b>126 (36.0%)</b>	<b>152 (43.4%)</b>	<b>60 (17.1%)</b>	<b>11 (3.1%)</b>	<b>1 (0.3%)</b>	<b>350</b>	

As it is depicted in the above table 3 majority of the respondents (79.1%) of the respondents reacted negatively (126 or 36.0% strongly disagree and 151 or 43.1% disagree) for the positively sated likert item-1 of table 3 that states –Awards (Arbitral decisions) which are given from the private commercial dispute settlement institution, effectively enforced by the government legal institutions (by court, police etc.)”. Similarly, most (79.5%) of the respondents have shown the reluctant of disputants in accepting and fully respecting the Awards (arbitral decisions) given by the private commercial dispute settlement institution. The respondent’s opinion on item-3 of the above table reveals an astonishing result that, most (79.4%) of the total respondents reacted negatively and shown their disagreement on the statement that states the ADR system has similar enforcement provision and mechanism to the public legal system.

As it is presented in the above table\_3, the p-value from the chi-square test for all of the three items are greater than 0.05, and that could be interpreted as there is no statistical significant opinion difference between the two respondents categories (category A and category B tax payers).

The interview has conducted with Ato Yohannes woldegebriel; Director of Arbitration Institute, also strengthen the result obtained from the respondents. Yohanis respond, with regard to an effective enforcement to the general operations of the institution, the institution currently well accepted by some government institutions and even some government institutions like National Bank of Ethiopia, Ministry of Urban Development, Housing & Construction and the like have given recognitions to AACCSA. This is a big achievement towards AACCSA. But in some other government institutions, like police and some courts not in a negative way but with some sort of gaps of understanding may show a less cooperation to AACCSA. When difficult things are happen in enforcement of AACCSA operation, like execution, summons, and the institution promptly has gone into a particular area and solve the problem as much as possible. For the ADR development the following author says that:

*The legal system should recognize ADR as an acceptable, valid and lawful act. All settlements arising from legitimate transactions should be guaranteed prompt enforcement and review in cases of fraud or duress and similar other irregularities by the judicial authorities. The state and its institutions should help and support, take pro ADR stance, encourage citizens to use and properly regulate the conduct of institutions and persons administering ADR.*<sup>256</sup>

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<sup>256</sup>Yohanneswoldegebriel supra note 19.p.1

Both the above mentioned judges, Menen and Yared replied on the enforcement of PCCD settlement institutions, in this time, as far as they know, courts are willing to cooperate in line with the law to the PCCD settlement institutions. But sometimes gaps may create in court environment because of lack of knowledge and understanding in ADR system.

To recap, though the 1960 Civil Code and the 1965 Civil Procedure Code of Ethiopia have given such acknowledgement to the ADR system and provided similar enforcement power like the public legal system or courts, the practical implementation observed in the ground doesn't akin to the laws. The result that is obtained from the analysis, which obtained from different stakeholders and the reviewed literatures shows that, though the laws provide the ADR system with similar enforcement mechanism with that of PUCCJS, there is huge gap between the what the laws states on its practical implementation; the respondents perceives that the ADR system has no strong enforcement capability as the PUCCJS do.

#### 5.1.4. COST

The cost that the disputants are expected to incur to get the service is one of the potential factors that determine the preference of the customers towards the private or public legal dispute settlement institutions. To see the reaction of the respondents on the cost of the services provided in the private and public dispute settlement institutions, respondents were asked to compare the costs in the two institutions. The response obtained from the informants is presented in the table below.

Table 4. Results on Costs for Private commercial dispute settlement institution

S.N	Item	Tax Payers Category	Rate					Total	P-Value from Chi-Square
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree		
1	Public justice system is more costly than the private commercial dispute settlement mechanism.	Category B	48 (38.4%)	50 (40.0%)	22 (17.6%)	5 (4%)	0	125	0.841
		Category A	78 (34.7%)	101 (44.9%)	37 (16.4%)	8 (3.6%)	1 (0.4%)	225	
		<b>Total</b>	<b>126 (36.0%)</b>	<b>151 (43.1%)</b>	<b>59 (16.9%)</b>	<b>13 (3.7%)</b>	<b>1 (0.3%)</b>	<b>350</b>	
2	Cost is considered as the main determining element of the choice between private and public justice system	Category B	5(4.0%)	28 (22.4%)	92 (73.6%)	0	0	125	0.417
		Category A	4 (1.8%)	56 (24.9%)	165 (73.3%)	0	0	225	
		<b>Total</b>	<b>9 (2.6%)</b>	<b>84 (24.0%)</b>	<b>257 (73.4%)</b>	<b>0</b>	<b>0</b>	<b>350</b>	

As it can be seen from the above table\_4, only 14 (4.0%) of the total respondents were said that the cost of private commercial dispute settlement institution is relatively lower than the public litigation system. Most of the respondents responded negatively; 36.0% of the respondent expressed their strong disagreement, while 151 (43.1%) of them have shown their disagreement for the positively stated item that is expressed as “Public justice system is more costly than the private commercial dispute settlement mechanism”. On the other hand, majority 257 (73.4%) of the respondents were found to be “Neutral” and doesn’t consider cost as a main factor towards their preference, as they don’t see a visible difference between the cost of settling cases in Public justice and private commercial dispute settlement mechanism.

The p-value from the chi-square test are 0.841 and 0.417 for item-1 and item-2 of the above table\_4 respectively, which are greater than the critical value 0.05; showing that there is no statistical significant opinion difference between the two respondents categories (category A and category B tax payers).

However, the information obtained through interview was not found to be consistent; while judges reflected similar opinion with the customers; the director of AACCSA-AI has expressed the service charge that private commercial dispute settlement institution collecting from its customers is reasonable and it only enables them to cover the operational costs, which means administrative cost and arbitrator costs that the institutions incurred during the dispute settlement process. The director says the service charge that customers are required by the institution has its own maximum and minimum cost scheme which are measured by the nature of the case, complexity of the case, times in which the case taken and the number of arbitrator (man powers) over the case involved are the major parameters of cost determination.

Although, theoretically, commercial dispute settlement institutions thought be substantially reduce cost and save money that would have spent on attorney’s fee, court (filling) fee, and others’ fees; empirical researches that have been conducted on various forms of ADR in hopes of savings money and accelerating case processing time, have not yet been conclusive and unable resolve the debate that ADR saves substantial amounts of money, the reason why to evaluate the

cost effectiveness of ADR is technically very difficult because of lack of evidence on cost savings.<sup>257</sup>

Both the above mentioned judges, that the researcher interviewed, Mennen and Yared replied on the issue of costs as they have never experienced or heard of such kind of cases regarding cost grievance on PCCD institutions. But, people who went to PCCD settlement institutions have aggrieved on justice than cost.

Generally, the data obtained from questionnaire and the interview, the issue of cost is not given remarkable attentions on the Ethiopian PCCD settlement mechanisms, and it is not considered as a major determinant factor on the choice between PUCCJS and PCCJS in Ethiopia.

#### **5.1.5. INSTITUTIONAL CAPACITY**

Institution should deliver service at least in a competitive way and appeal to their customers through increasing their satisfaction and meet their expectation. Especially, the capacity of institution in delivering credible and full-flagged legal services has not been compromised by its customers. Accordingly, the service provider should strengthen its capacity to deliver a better service and meet its customers' expectation.

To this end, tax payers in both categories under the study (Category A and Category B) were made to rate on the Liker scale items that requested them to show their level of agreement on the statements related with the capacity and organization of private commercial dispute settlement institutions in providing service that satisfies its customers and meet its customer's expectation. The reaction of the respondents on the statement were analyzed and presented in the table below.

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<sup>257</sup>Stacey Kear, Reducing the Costs of Civil Litigation: Alternative Dispute Resolution, public law research institute, <https://gov.uchastings.edu/public-law/docs/plri/adr.pdf>. Accessed on May 30, 2017.

Table\_5. Results on the capacity of ADR system

S.N	Item	Tax Payers Category	Rate					Total	P-Value from Chi-Square
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree		
1	Private commercial dispute institution is easily accessible to commercial disputants	Category B	66 (52.8%)	39 (31.2%)	20 (16%)	0	0	125	0.087
		Category A	93 (41.3%)	95 (42.2%)	37 (16.4%)	0	0	225	
		<b>Total</b>	<b>159 (45.4%)</b>	<b>134 (38.3%)</b>	<b>57 (16.3%)</b>	<b>0</b>	<b>0</b>	<b>350</b>	
2	The current commercial dispute institution has a full capacity to entertain any kinds of commercial disputes in city	Category B	49 (39.2%)	50 (40%)	23 (18.4%)	3 (2.4%)	0	125	0.707
		Category A	77 (34.2%)	102 (45.3%)	37 (16.4%)	8 (3.6%)	1 (0.4%)	225	
		<b>Total</b>	<b>126 (36%)</b>	<b>152 (43.4%)</b>	<b>60 (17.1%)</b>	<b>11 (3.1%)</b>	<b>1 (0.3%)</b>	<b>350</b>	
3	The current commercial dispute institution has compatible and organized procedural rules in order to accomplish their duties properly	Category B	51 (40.8%)	48 (38.4%)	23 (18.4%)	3 (2.4%)	0	125	0.611
		Category A	78 (34.7%)	101 (44.9%)	37 (16.4%)	8 (3.6%)	1 (0.4%)	225	
		<b>Total</b>	<b>129 (36.9%)</b>	<b>149 (42.6%)</b>	<b>60 (17.1%)</b>	<b>11 (3.1%)</b>	<b>1 (0.3%)</b>	<b>350</b>	
4	Professionals in the private commercial dispute resolution institution is well acquainted with the required expertise to tap the benefits expected from the private commercial dispute resolution institutions	Category B	49 (39.2%)	50 (40%)	23 (18.4%)	3 (2.4%)	0	125	0.707
		Category A	77 (34.2%)	102 (45.3%)	37 (16.4%)	8 (3.6%)	1 (0.4%)	225	
		<b>Total</b>	<b>126 (36%)</b>	<b>152 (43.4%)</b>	<b>60 (17.1%)</b>	<b>11 (3.1%)</b>	<b>1 (0.3%)</b>	<b>350</b>	

As it is presented in the above table\_5, no respondent was found to react negatively and disagreed on the statement that states “Private commercial dispute institutions are easily accessible to commercial disputants”. Similarly, most of the respondents have shown their negative attitude towards the capacity of the private commercial dispute settlement institutions and have questioned the capacity of the current commercial dispute settlement institutions to entertain any kinds of commercial disputes in city.

Moreover, 42.6% of the respondent expressed their strong disagreement, while 36.9% of them have shown their disagreement for the positively stated statement that is expressed as, “The

current commercial dispute institutions have compatible and organized procedural rules in order to accomplish their duties properly”.

Similarly, as it is depicted by item-4 of the above table\_5, more than one third of the informants 278 (79.4%) have rated the capacity of the experts in private commercial dispute resolution institutions as poor and are not well acquainted with the required expertise to tap the benefits expected from the private commercial dispute resolution institutions.

Literatures explained about the significant of capacity in ADR institutions as the major functional tools. The ADR process also integrated with a well ADR specialist who is like a hearing officer, discovery referee, or a special master; all these are the required special capacity to such ADR institutions through which specialist will hear evidence and make determinations on legal or factual issues.<sup>258</sup> On the other, USAID (United States agency for international development) guideline document for ADR system says the importance of ADR institutions should have in all its aspects, a well-developed capacity. Capacity require a substantial amount of time to have a significant impact on leadership skills; problem-solving processes and fulfill the human and institutional capacity that has been necessary to think creatively and develop ways to meet all of these challenges; having outlined a detailed plan for achieving financial sustainability; identified new, cutting- edge role that it can fill to continue to generate demand for its services. Adequate supply of trained/ trainable judges/ staff exists adequate and sustainable funding available.<sup>259</sup>

The researcher has made an interview with the director of AACCSA-AI, regarding the institutional capacity which includes training facility, preparation of suitable institutional procedural rules, and plan for improving the sector and equipped by professional human power. Yohanis says the institution endeavor in all aspects of capacity buildings not only for the institution but also for national level by its own initiative to help ADR mechanisms in the Ethiopian legal regime. The government do not help the institutions with finance and other

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<sup>258</sup>What is ADR? - Mediate.com, <http://www.mediate.com/rams/pg2.cfm>. Accessed on March29, 2017.

<sup>259</sup>ADR- Guide - usaid, <https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf>. Accessed on March29, 2017.

infrastructures, but the institution consider as a great support when the institution prepare such forum on training and development, government institutions by giving such acknowledgement reverend our call and submit to participate in our programs. Yohanis also say in his believe the capacity of the institution not cover the whole aspects of ADR system and can satisfy the whole business communities in Ethiopia.

Therefore, the result from questionnaire and the interview, the issue of capacity has given a remarkable attention on the Ethiopian PCCD settlement mechanisms to bring customers satisfaction and it is regard as a major determinant factor on the choice between PUCCJS and PCCJS in Ethiopia.

### 5.1.6. PREFERENCE

It has been said that one of the main objectives of the study was to identify the determinant factors of preferences towards the public and private commercial dispute settlement institutions. In doing so the preferences of the customers towards private commercial dispute settlement institutions was assessed and used as dependent variable for the forthcoming regression analysis. Before the regression analysis, the response obtained from the customers is presented in the following table.

Table\_6. Results on preferences of customers towards private and public justice systems

<b>Tax_Payers_Catagory * I prefer the private commercial dispute settlement institution to the public litigation system Cross tabulation</b>						
			I prefer the private commercial dispute settlement institution to the public litigation system		Total	<b>P-Value from Chi-Square</b>
			No	Yes		
Tax_Payers_Catagory	Catagory B	Count	100 <sub>a</sub>	25 <sub>a</sub>	125	<b>0.778</b>
		% within Tax_Payers_Catagory	80.0%	20.0%	100.0%	
	Catagory A	Count	183 <sub>a</sub>	42 <sub>a</sub>	225	
		% within Tax_Payers_Catagory	81.3%	18.7%	100.0%	
Total	Count		283	67	350	
	% within Tax_Payers_Catagory		80.9%	19.1%	100.0%	

As it is presented in the above table 6; only 67 (19.1%) of the informants said they prefer the private commercial dispute settlement institution to the public litigation system to settle

commercial disputes. On the other hand majority 283 (80.9%) of the respondents were reacted negatively stating their preference against the private commercial dispute settlement institution.

The information obtained from the director of AACCSA-AI reveals that there were only few cases came to their institution since it's legally allowed to settle commercial disputes in 2002. The number of cases that the private institution sees in the past decades also shows that disputant preference is against the private institute; the research conducted by the center revealed that only few cases seen by the institution.

The p-value the preference item of the above table\_6 is 0.778 which is by large greater than the critical value, 0.05; showing that there is no statistical significant opinion difference on the preference of private institution between the two respondents categories (Category A and Category B).

#### **5.1.7. THE DETERMINANT FACTORS TOWARDS THE PREFERENCE OF COMERCIAL DISPUTANT**

Regression means in a simple description, an analytic method or an explanatory technique to measure the associations of one or more independent variables with a dependent variables. Hence, within this Regression analysis result, the researcher wants to show such knowledge or information's towards PCCD settlement institutions in a scientific statistical analysis to infer PCCD settlement development and to render better services to customers. The researcher hopes that stakeholders who are responsible for the development of ADR systems in Ethiopia, will be supported their judgment, point out flaws (defect) in management thinking and provide new insights that can help decision makers move their efforts towards a more satisfactory future.

To this end, the research was conducted using sample collected data from two sub cities ("Arada" and "Gulele") and those are small tax payer's categories A and B included in the study. So the result obtained from this regression analysis can be interpreted on the bases of the specified population the sample was selected from.

### 5.1.7.1. MODEL SPECIFICATION

***Preference on Private*** =  
 $f(\text{Awareness, Confidentiality, Cost, Enforcement, Institutional Capacity, Time})\dots$   
..... (Mode)

Through the courses of the analysis the researcher has identified a certain kind of linear relation between the variable and the model that incorporated. But the whole independent variables suffered from a problem of multi co-linearity. As a result the analysis was made using two models so as to capture the effect of the independent variables on the preference of the business community towards the private legal institutions.

In the first model the researcher tried to see the effect of Awareness, Capacity, and Time efficiency on the preference of the business community toward the private legal institution.

***Preference on Private*** =  $f(\text{Awareness, Capacity, Time efficiency.})\dots\dots\dots$  (Model\_1)

Based on the mathematical model specified above, the independent variables (covariates/factors) that are used for the analysis of the factor that determines the customer's preference are defined as follows:

1. Awareness: the level of awareness that the business communities have on the private legal institutions were captured from the lickert scale items stated in table\_1. The response obtained from the respondents were categorized in to negative response (strongly disagree and disagree) and positive response (Agree and strongly Agree). Here the variable awareness is redefined as a dummy variable that can assign for 1 if the response is Agree and strongly agree, and it assigned for a value 0 if the response is negative (strongly disagree and disagree).
2. Time: The time it takes to settle cases in the private legal institution in relative to the public legal institutions is measured using different likert scale items that are presented in section 5.1.2 of this chapter. The response obtained from the respondents were categorized in to negative response (strongly disagree and disagree) and positive response (Agree and strongly Agree). Here the variable time is redefined as a dummy variable that can assign for 1 if the response is Agree and strongly agree, and it assigned for a value 0 if the response is negative (strongly disagree and disagree).

3. Similarly, the responses obtained for the Institutional Capacity, were also categorized in to negative response (strongly disagree and disagree) and positive response (Agree and strongly Agree). And the variables were redefined as a dummy variable that can assign for 1 if the response is Agree and strongly agree, and it assigned for a value 0 if the response is negative (strongly disagree and disagree).

The dependent variable and the central elements of this study is the customers' preference towards the private dispute settlement institutions is treated as a dependent variable. The preference of commercial disputants assigned a binary value (1 if the respondent preferred the ADR and 0 if not).

As a result, a binary logistic model is selected for the regression analysis and the result obtained from the regression analysis of preference on its contemplated determinants is presented below.

### **5.1.7.2. RESULT**

#### **5.1.7.2.1. MODEL FITNESS FOR MODEL\_1**

Step	Chi-square	Df	Sig.
1	1.358	2	.507
2	.614	4	.961

The result from the Hosmer and Leme analysis shows that the model is adequately fit as the significant level in the second step is 0.961 which by large is greater than 0.05. The significant value 0.961 shows, the binary logistic model used in the analysis explains 96.1% of the data.

#### **5.1.7.2.2. COEFFICIENT ESTIMATION**

The result from the binary logistic regression analysis is presented in the table\_8 below and the interpretation of the results also presented following the table\_8. The coefficient estimate for the significant variables is presented in the last column. As it is shown in the table\_8 below, both Awareness and institutional capacity are statistically significant and are found to be the main determining factor for the disputant's preference towards the ADR system. (i.e. on the significant

column the p-value of Awareness and Capacity is 0.023 and 0.00 respectively; which are less than the critical value 0.05.)

Table 8. Results from binary logistic regression analysis using Binary logistic model 1							
		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 <sup>a</sup>	Awareness(1)	-2.277	1.005	5.133	1	.023	.103
	Capacity(1)	-5.157	1.269	16.514	1	.000	.006
	Time efficiency(1)	-.477	1.318	.131	1	.717	.621
	Constant	3.808	.895	18.103	1	.000	45.082
a. Variable(s) entered on step 1: Awareness, Capacity, Time efficiency.							

### 5.1.7.2.3. INTERPRETATION

**Awareness:** the coefficient obtained from the analysis corresponding to the awareness row of the above table\_8 is interpreted as:

Being Aware of (increasing the awareness level of the business community) the ADR institution increases the probability of preferring private commercial dispute settlement institution by a factor of **0.103**; keeping other things constant.

**Capacity of Institutions:** keeping other things constant; building the capacity of the institution and make the business community to believe in the capacity of the ADR institution will increase the probability of preferring private commercial dispute settlement institution to be preferred by the business communities will be increased by a factor of **0.006**.

The second model specified to see the effect of other variables on the dependent variable (Preference). Accordingly, the following binary logistic model\_2 is specified for analysis.

$$Preference_{onPrivate} = f(Enforcement_{capability}, Cost, Institutional_{Capacity}, ).....$$

(Model\_2)

Using a similar binary logistic regression analysis as we have deployed for the first model the researcher has found the model fitting and coefficient estimation results presented below.

## A. MODEL FITNESS FOR MODEL\_2

Step	Chi-square	Df	Sig.
1	1.358	2	.507
2	.614	4	.961

As it is presented in the above table similar result is found as we obtained in the previous model\_1. The result from the Hosmer and Leme analysis shows that the model is adequately fit as the significant level in the second step is 0.961 which by large greater than 0.05. The significant value 0.961 shows, the binary logistic model used in the analysis explains 96.1% of the data.

## B. COEFFICIENT ESTIMATION (MODEL\_2)

The result from the binary logistic regression analysis is presented in the table\_10 below and the interpretation of the results also presented following the table. The coefficient estimate for the significant variables is presented in the raw corresponding to the step 2. As it is shown in the table\_10 below, both institutional capacity and enforcement effectiveness are statistically significant and are found to be the main determining factor for the disputant's preference towards the ADR system. (i.e. on the significant column the p-value for both Enforcement Effectiveness and Capacity is 0.00 which are less than the critical value 0.05). In the contrary, Cost effectiveness with p-value 0.908 is not taken as a main factor towards the preference of the ADR institutions by the business community.

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 <sup>a</sup>	Enforcement Effectiveness(1)	-4.198	.913	21.127	1	.000	.015
	Cost effectiveness (1)	.177	1.532	.013	1	.908	1.194
	Capacity(1)	-4.757	1.342	12.555	1	.000	.009
	Constant	4.329	1.004	18.595	1	.000	75.894

a. Variable(s) entered on step 1: Enforcement Effectiveness, Cost effectiveness, and Capacity.

## C. INTERPRETATION OF COEFFICIENTS (MODEL\_2)

**Enforcement Effectiveness:** keeping other things constant; improving the enforcement effectiveness of the ADR institution and building the trust of the business community on the ADR institution will increase the probability of the business communities to prefer the ADR institution by a factor of **0.015**.

**Capacity of Institutions:** the result obtained from the second model is almost similar to the first model.

### 5.1.8. SUMMARY OF RESULTS AND DISCUSSIONS WITH RESPECT TO THE RESEARCH HYPOTHESIS

**H1: Cost** is a significant determinant factor on the choice between public and private justice systems in Ethiopia. But the result from this empirical analysis is different from the hypothesis. As it is presented table\_4, Most of the respondents responded negatively; 36.0% of the respondent expressed their strong disagreement, while 151 (43.1%) of them have shown their disagreement for the positively stated statement that stated, private commercial dispute settlement institution settles commercial disputes in relatively lower cost than the public litigation system. In addition, the results obtained from the binary logistic regression analysis shows that cost was not included in the result table of the SPSS analysis as cost is found to be statistically insignificant. Generally, the result of this empirical study shows that cost is not significant or determining factor on the choice between PUCCJS and PCCJS in Ethiopia and the result does not confirm the researcher's first hypothesis H1.

**H2: Time efficiency** is a significant determinant factor on the choice between public and private justice systems in Ethiopia. However, the result that depicted in table\_2 reveals that 261 or (74.6%) of the respondents have responded "Neutral" for the item that states "The private commercial dispute resolution mechanism is opted for the sake of time efficiency". This means, according to them the time that takes to settle commercial dispute by the commercial dispute settlement institution and public justice system (courts) are almost similar. Likewise, majority; 257(73.4%)of the total respondents have neither positively nor negatively reacted for item-2 of the above table that states "I believe that time it takes to settle cases is the main determining

factor towards the choice between the private and public dispute resolution institutions” . Besides, the results obtained from the binary logistic regression analysis shows that time was not included in the result table of the SPSS analysis as time is found to be statistically insignificant. Generally, the result of this empirical study shows that time is not significant or determining factor on the choice between PUCCJS and PCCJS in Ethiopia and the result does not confirm the researcher’s second hypothesis H2.

**H3: Enforcement Mechanism** of the two legal systems has a major determinant factor on the choice between public and private justice systems on commercial disputes in Ethiopia. However, the result depicted in table\_3 shows that, majority of the respondents (126 or 36.0% strongly disagree and 151 or 43.1% disagree) have negatively reacted for item-1 of table\_3 that states –Awards (Arbitral decisions) which are given from the private commercial dispute settlement institution, effectively enforced by the government legal institutions (by court, police etc.)”. Similarly, most of the respondents have shown the reluctant of disputants in accepting and fully respecting the Awards (arbitral decisions) given by the private commercial dispute settlement institution. The respondent’s opinion on item-3 of the above table reveals an astonishing result that, most (89.4%) of the total respondents reacted negatively and shown their disagreement on the statement that states the ADR system has similar enforcement provision and mechanism to the public legal system.

The results obtained from the binary logistic regression analysis shows that enforcement effectiveness was included in the result table\_8 of the SPSS analysis, as enforcement effectiveness is found to be statistically significant. Generally, the result of this empirical study shows that enforcement effectiveness is significant or determining factor on the choice between PUCCJS and PCCJS in Ethiopia and the result of the study confirm the researcher’s third hypothesis H3.

However, rather surprising result was found through the course of the research. From the study it has been found there are other factors that determine the choice between PUCCJS and PCCJS in Ethiopia.

**Institutional capacity:** the result in table\_5 shows that, more than one third of the informants 278 (79.4%) have rated the capacity of the experts in private commercial dispute resolution

institutions as poor and are not well acquainted with the required expertise to tap the benefits expected from the private commercial dispute resolution institutions. Besides, the results obtained from the binary logistic regression analysis shows that institutional capacity is highly correlated with enforcement effectiveness and the result in table\_10 affirmed that institutional capacity is found to be statistically significant and it is significant or determining factor on the choice between PUCCJS and PCCJS in Ethiopia.

**Awareness:** as it is presented in table\_1, and the response obtained from the interviews held with the legal expertise, the level of awareness of the business community about the private commercial dispute settlement institution and the services that the institution is providing was found to be very minimal. However, similar to institutional capacity, the result in table\_10 of the SPSS analysis confirmed that level of awareness on ADR is found to be statistically significant and it is significant or determining factor on the choice between PUCCJS and PCCJS in Ethiopia.

Generally, the results we found so far shows that, Awareness on ADR, Capacity of PCCJS and Enforcement Effectiveness are found to be the determining factor on the choice between PUCCJS and PCCJS in Ethiopia. While, the other two hypotheses H1 & H2 are rejected; showing that both costs and time are not the determining factor on the choice between PUCCJS and PCCJS in Ethiopia.

## **5.1.9. CHALLENGES AND OPPORTUNITIES**

### **5.1.9.1. CHALLENGES**

One of the objectives of the PCCD settlement institutions is creating other optional private justice systems out of the traditional court system. The operational effectiveness and rendition of excellence service to customer are the major targets of the institution. Then this would be achieved by the institutions service would be compatible with acceptable time, quality and cost and certainties on enforcement mechanisms. How would the institutions operate its function is a crucial point towards the resolution of commercial disputes settlement on the business communities. The PCCD settlement institutions may not surely be fitting with that of government legal institutions this may have a trouble in doing by confidence the functions of the institution and may cumbersome to customer to use the system from the institution. The institution should fulfill the minimum requirement in order to maintain its services to the

commercial disputants. In this regards the AACCSA-AI interview result showed that ACCSA tried to build its capacity in different mechanisms like providing training to the employee, to the concerned bodies (public court representatives, law schools, and some business community) in order to create such awareness about commercial dispute settlement mechanisms.

Based on the information obtained from open ended items in the questionnaire and in depth interviews conducted with the experts (ACCSA- AI and court judges) and AACCSA staff members, the following potential challenges are identified as main challenges of the PCCD settlement institutions.

1. One of the challenges found by the research is lack of government supports with respect to infrastructure and capacity buildings towards the development of private civil commercial dispute settlement institutions in Ethiopia. On this issue, infrastructure and capacity buildings includes providing houses (working area), training facilities, adopting or incorporating modern laws, regulations, operational procedural rules, plan for improving the sector, equipped professional human power and facilitating such communications to the public civil justice system and establishing well trained customer support team(promotional work team) are the main challenges.
2. Legal Challenges; private commercial dispute settlement institutions are not well supported by modern law to implement their function properly. Inadequate regulatory and legal frameworks. Lack of adequate regulations in the private commercial dispute settlement institution affecting the development of the private commercial dispute settlement institution in Ethiopia. Intervention/ unexpected interference by government legal institutions such as court is consider as challenge. Lack of rules or legal consequence upon arbitrator who negligently serve their responsibilities also the main challenges.
3. Lack of Harmonization of government legal institutions and private commercial dispute center on laws and Regulations. Lack of timely communications and prompt awareness on the modern commercial dispute resolution mechanism between the two institutions (court and private justice institution) towards the new rules and regulations over the commercial dispute resolution method.

4. Lack of evaluation of the regulatory frameworks and system to have constant legal policy dialogue/meeting upon commercial dispute resolution mechanism.

#### **5.1.9.2. OPPORTUNITIES**

Increased mutual cooperation between the business communities, improve accuracy and timeliness of services. It is an easy mechanism for the settlement of such commercial disputes. Provide additional alternate channels for delivering their disputable commercial case in conferrable manner as agreed by the parties. The institutions deliver their services more quickly and easily. It increase the productivity, profitability and performance of business communities by saving their time and cost. Create better relationship among the business communities. Modern Private Commercial dispute resolution mechanism, increase reliability and accessibility of services to the commercial disputants.

The following are some of the opportunities that are worth mentioning implied by the experts in PCCD settlement institution.

1. The growing level of cooperation and recognition given by some governmental organizations.
2. The rising number of foreign business both in production and services that have detailed awareness and prefer the PCCD settlement institution.

From the regression analysis we have conducted in the previous section shows that if PCCD settlement institutions increasing their performances in one scale the institutions increases as the result found on the table. Moreover the importance of PCCD dispute settlement is:

- Easy to settle commercial disputes.
- Increase mutual relationships among the business communities
- Effective and efficient commercial disputes resolution mechanism
- Bring customer satisfaction, good relationship as well as attractions to business communities
- Create simplicity on the institution to settle disputes in a very amicable way.
- Used as alternative channels in settling commercial disputes.

Generally, in Ethiopia, if PCCD settlement institutions organized in a very competent mannered and supported by the government, the service will play an important role for the benefit of the business communities.

## CHAPTER SIX

### 6. CONCLUSIONS AND RECOMMENDATIONS

#### 6.1. CONCLUSIONS

Human beings, from its very nature are experienced living together, this communal life (living style), exposed in to different kinds of conflicts. It is true that disputes are created within societies in one or other way. So, to make this communal living amicably, disputes have been resolved in different dispute settlement mechanisms. Commercial disputes are one of the realities that happen in different business transactions. Disputes are arising from different situations like from payment default on the delivery of goods and service or a dispute in relation to payment upon finalization of projects or in some particular obligations etc. In this modern world commercial disputes resolved in to two justice systems which are PUCCD justice system and PCCD settlement institutions.

Among the most central criticisms of public civil justice systems are: most of the civil courts are so expensive and the civil case cost is exceed than the claim that being demanded; lack of prompt solutions on the claim on civil courts; Moreover, to get such solutions in the civil court system, the procedures and procedural rules are also so complex. All are consider as the main important issue of the main shortcomings of civil court litigations; other criticisms on the civil court litigations are, civil courts are open to the public on the ground of, people have the right to participate and listen court trials, so this will lead such adverse publicities, beyond this, judges on the trial may lack technical expertise and the trial service of the court is chosen by the court itself. Because of these, PCCD settlement institutions have chosen as dispute settlement mechanism. The existence of effective dispute resolution mechanism is one of the main issues for domestic and international legal system on the settlement of disputes.

In this 21<sup>st</sup> Century, the importance of commercial disputes settlement mechanisms are so increasing in relation to the fast growth of international business. And also what are the preferred methods of commercial dispute settlement is one of the crux points of this global legal environment. If commercial disputes not addressed swiftly, the ramification will jeopardize commercial profitability, defaming good reputation, put a black spots on the perpetual relationships. To reach

on such benefits from dispute settlement mechanism, disputants searching on the best functional mechanisms that are available on a country legal framework. With this idea, the interest of the study has been focused to assess such problems on the determinant factors of the choice between public civil and private civil adjudication in Ethiopia which is focusing on commercial disputes. Living in a rapid and vibrant world, business environment and technological trade innovations, transactional improvements are changed the climate of global realities. In line with this reality, Ethiopia should see its laws towards the world's commercial movement.

The research has been reviewed and tasted in systematic research methodology, the determinant factors on the choice between public civil and private civil dispute settlement mechanisms in Ethiopia by focusing on commercial disputes. Among the variables which supposed the determinant factors are time efficiency, cost effectiveness and competent enforcement laws in compliance with the private civil commercial dispute settlement methods. In addition to the above main objectives of the study, the research also somewhat assesses the awareness and capacities of private civil commercial dispute resolution mechanisms and the private civil commercial dispute settlement institutions in Ethiopia. The extent of government supports private civil commercial dispute settlement methods and institutions with infrastructures and capacity building activities has been assessed in the study.

The level of awareness that the business communities in the selected sub-cities have, on the private civil commercial dispute settlement methods and institutions were very minimal and surprisingly, most of them do not know or used the private civil commercial dispute settlement institutions in Ethiopia. Moreover, Enforcement and institutional capacity of the center were found to be the significant determinant factors on the choice between PUCCD justice system and PCCD settlement institution.

The research may give some knowledge to the concerned bodies (stakeholders) to identify such problems and may find an alternative for the improvement of the private civil commercial dispute settlement mechanisms in their course of action. It will also help to the private civil commercial dispute settlement institution who is legally established in Ethiopia or who will want to join the sector to increase the services to the business communities. The researcher hopes that the study will increase awareness and understanding of the private civil commercial dispute

settlement mechanisms at national and international level. Moreover, government legal institutions (courts and police), business communities and the private civil commercial dispute settlement institutions have a significant role to contribute to the development of the private civil commercial dispute settlement mechanism in the future.

## **6.2. RECOMMENDATION**

To develop or improve the PCCD settlement institution in Ethiopia:

1. The PCCD settlement institution in Ethiopia should work on the awareness of the commercial dispute settlement mechanisms towards the business communities or to customers (users).
2. The PCCD settlement institution in Ethiopia should increase their capacity in order to satisfy its users.
3. Government should encourage and support the existed and the emerged PCCD settlement institution in Ethiopia by enacting such modern PCCD settlement laws and regulations etc.
4. Government legal institutions, such as courts and police should absolutely cooperate with the PCCD settlement institution in Ethiopia in order to build and increase their enforcement capabilities to the institutions.

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## **8. APPENDICES**

## **Appendix I: SURVEY QUESTIONNAIRE**

### **SURVEY QUESTIONNAIRE ON THE CHOICE BETWEEN PUBLIC CIVIL AND PRIVATE CIVIL ADJUDICATION IN ETHIOPIA: FOCUSING ON COMMERCIAL DISPUTES.**

This survey is anonymous and your response will be kept highly confidential and used only for the intended purpose.

Please note that, the very important thing in this survey is your feedback or response for the question rather than mentioning your name. So I humbly request you, do only in line with the question.

I give my great pleasure and thanks in advance for your willingness to respond to this questionnaire. And with regard to the objective of the study, the researcher has developed the following questionnaire to evaluate the determinant factors on the choices between public (court) and private justice system in Ethiopia upon commercial disputes and also the study will see an overview of the significance, opportunity and challenges of commercial dispute settlement mechanisms. The study will be presented to Addis Ababa University Faculty of Law, school of Graduate studies in partial fulfillment for the requirements of master of laws (LL.M in Business Law)

**May, 2017**

**Addis Ababa**

# SURVEY QUESTIONNAIRE

## General Instruction

This questionnaire contains three parts and seven pages including the cover page that will be expected to take approximately 25 to 30 minutes to complete. Please provide your responses to the questions based on the instructions under each part.

## Part 1: -Personal Profile

Please indicate your choice by circling the letter like this or \_\_\_\_\_

1. Sex
  - a) Male
  - b) Female
2. Age \_\_\_\_\_
3. Educational level
  - a) High school
  - b) Diploma
  - c) Degree
  - d) Masters and above
  - e) Others
4. How long have you worked or engaged in business?
  - a) < 1 year
  - b) Between 1 and 3 years
  - c) Between 3 and 6 years
  - d) Between 6 and 10 years
  - e) Above 10 years
5. Which category best describe your position?
  - a) Top management
  - b) Middle management
  - c) Judge
  - d) business owner
  - e) Lawyer
  - f) Others
6. What is your professional occupation?
  - a) Legal professional
  - b) Business man/women)
  - other

## Part 2: - Questions about commercial dispute resolution mechanisms and institutions:

1. Do you have information about private commercial dispute resolution mechanism?
  - a) Yes
  - b) No
2. Do you have information about private commercial dispute resolution mechanism institutions in Ethiopia?
  - a) Yes
  - b) No
3. Which private commercial dispute institution do you use or participate? \_\_\_\_\_
4. How many kinds of private commercial dispute settlement institution do you know?  
\_\_\_\_\_

5. How many kinds of private commercial dispute mechanisms do you know?  
\_\_\_\_\_ If you can, please enumerate them \_\_\_\_\_
6. How many of them functional in Ethiopia? \_\_\_\_\_
7. How many of them directly access to users? \_\_\_\_\_
8. Please mention year of establishment of the commercial dispute resolution centers in Ethiopia \_\_\_\_\_
9. If you are participating or using the private commercial dispute resolution mechanism, is that satisfied for the services they render? a) Yes b) No
10. I prefer the private commercial dispute settlement institutions to the public litigation system. a) Yes b) No

**Part-3:**

Instruction: Below are lists of statements which are relevant to find out such information, attitudes towards the choice between public and private adjudication in Ethiopia. To which the statement is important to evaluate the two civil justice systems in terms of Time, cost and enforcement aspects. It is also relevant to assess progress, opportunity and challenges of private commercial dispute settlement mechanisms. Please put a tick-mark like this (✓) on the spaces provided that indicates your choices agree or disagree over each statement. The options are range from “strongly agree” to “strongly disagree” each choice identified by numbers from 1 to 5. NB : SA = Strongly Agree, A = Agree, N = Neutral , DA = Disagree and SD = Strongly Disagree

	Item	Choice				
		SD (Strongly Disagree)	DA (Disagree)	N (Neutral)	A (Agree)	SA (Strongly Agree)
Government support in terms of infrastructure, capacity building and enforcement effectiveness						
1. Government support in terms of infrastructure and capacity buildings						
	Government has provided full infrastructure (building, Telecom ...) to the Private civil commercial dispute resolution institutions.					
	Government has allocated budget and provided financial support to the private commercial dispute resolution institutions.					
	Government has shown its commitment to expand and support the private commercial dispute resolution institutions so as they can improve their service in respond to the expanded global commercial transaction activity in Ethiopia.					
	The current commercial dispute institutions are easily accessible to commercial disputants.					
	The current commercial dispute institutions have a full capacity to entertain any kinds of commercial disputes in city.					
	The current commercial dispute institutions					

	have compatible and organized procedural rules in order to accomplish their duties properly.					
	Professionals in the private commercial dispute resolution institutions are well acquainted with the required expertise to tap the benefits expected from the private commercial dispute resolution institutions.					
	Government is very supportive to dispute settlement institutions in building the capacity of commercial dispute resolution experts					
	Awards (Arbitral decisions) which are given from the private commercial dispute settlement institution, effectively enforced by the government legal institutions (by court, police etc.).					
	Awards (arbitral decisions) given by the private commercial dispute settlement institution is fully accepted and respected by the disputants.					
	Due to its enforcement effectiveness commercial disputants prefer private commercial dispute settlement mechanisms to court.					
	The enforcement effectiveness is the main factor to be considered for the choice between private commercial dispute settlement mechanism and court.					
	The private commercial dispute resolution mechanism is opted for the sake of time efficiency.					
	Due to its time effectiveness commercial disputants prefer private commercial dispute settlement mechanisms to court.					
	I believe that time it takes to settle cases is the main determining factor towards the choice between the private and public dispute resolution institutions.					
	Cost is considered as the main determining element of the choice between private and public justice system					
	Public justice system is more costly than the private commercial dispute settlement mechanism.					
	Commercial disputant prefer private commercial dispute settlement mechanism to the court, as private commercial dispute settlement mechanism is less costly than the court.					
	Public civil justice system has Lack of confidentiality					
	Commercial disputant prefer private commercial dispute settlement mechanism to the court because it is the private system is more confidential.					
	Confidentiality is the main determining factor					

	towards the choice between the private and public dispute resolution institutions					
	The business community has full awareness about private commercial dispute settlement mechanism.					
	The level of awareness that the business community has determines their preference between the private and public dispute resolution institutions					

**Part 4.**

The following are open ended questions which are focused on legal challenges and opportunities of commercial dispute resolution mechanisms.

1. Please describe those you knows about the legal challenges of the private commercial dispute resolution mechanisms in Ethiopia.....  
 .....  
 .....  
 .....

2. What are the potential opportunities of the private commercial dispute resolution mechanisms in Ethiopia, if it organized in all government support and competent professionals? please enumerate as you possible your expected opportunities.....  
 .....  
 .....  
 .....

3. Please give your ideas or opinions that all you think which any of the problems, opportunities and suggestions of private civil commercial dispute settlement mechanisms in order to improve the service for the business communities in the Ethiopian legal regime.....  
 .....  
 .....  
 .....

Regards

SahilemariaWodajo

## Appendix II: Interview question for the Director of AACCSA-AI

This Interview designed for the private civil Commercial dispute settlement institutions and government legal institutions in relation to the choice between PUCCDSI AND PCCDSI and progress, opportunity and challenges of commercial dispute settlement mechanisms in Ethiopia.

Part I: Introduction:

- a) Greeting.....
- b) My name is Sahilemariam Wodajo
- c) I'm from AAU law faculty, LL.M program, business law stream
- d) The research title: Factors Determining the Choice between Public and Private Adjudication in Ethiopia: Focusing on commercial disputes.

Part II.

- a) What is your name....?
- b) What is the name of the institution?
- c) What is your position in the institution?

Part III. Main questions:

1. When did you join this private civil Commercial dispute settlement institution?
2. When did this institution actively inter in to implementations to render private civil Commercial dispute settlement mechanism services?
3. How long time did the institution take to introduce itself to the business communities?
4. Is the following factors considered in your institution as barriers for the implementation of private civil Commercial dispute settlement mechanism in Ethiopia?
  - a) Government support towards infrastructure and capacity building activities.
  - b) Capacity and well equipped experts of the institution
  - c) Enforcement effectiveness upon on the excision of the award, summon and other enforcement issues
  - d) Lack of appropriate regulations and procedural framework in compliance with private civil Commercial dispute settlement institution.

- e) Regarding time efficiency.
  - f) Regarding cost.
5. What are the opportunities from the service of private civil Commercial dispute settlement institution to the business communities?
  6. What are the basic current challenges of private civil Commercial dispute settlement institution in Ethiopia?
  7. Do you have a planned to present current challenges of private civil Commercial dispute settlement institution to the concerned government body?
  8. What are the benefits/opportunities gained by the private civil Commercial dispute settlement institution to the business communities?
  9. What are your opinion that will contribute for the development and improvement of private civil Commercial dispute settlement institution in Ethiopia?

THANK YOU

## Appendix III: Interview question for Judges

Interview questionnaires designed for the Judges and lawyers to examine the opportunity and challenges of private civil Commercial dispute settlement institution in the Ethiopia legal regime.

### Part I. Introduction:

- a. Greeting.....
- b. My name is.....
- c. I'm from AAU law faculty.....LL.M in business law
- d. The research title: Factors determining the choice between public and private adjudication in Ethiopia: focusing on commercial disputes.
  - a) What is your name....?
  - b) What is the name of the institution?
  - c) What is your position in the institution?

### Part III. Main questions:

1. What are the opportunities of establishing private civil Commercial dispute settlement institution in the Ethiopian legal regime?
2. What is the benefits/opportunity of implementing private civil Commercial dispute settlement institution in the Ethiopia legal regime?
3. Are in your opinion, the Ethiopia legal regime or laws convenient/enough for the proper functioning of private civil Commercial dispute settlement mechanism?
4. Are there any special standards in the government legal environment that help and cooperate the private civil Commercial dispute settlement institution activity?
5. Are the private civil Commercial dispute settlement institutions and their activities having a threat or negative impacts to the court environment?
6. What are in your opinion, the potential challenges of private civil Commercial dispute settlement institutions and their activities in the countries legal systems?

## **Appendix IV: List of Interviewees**

1. Ato Yohannis W/gebriel; director of AACCSA -AI
2. Ato Yared Tilahun; Federal First Instance Court Judge
3. W/ro Menen Abebe; an assistant judge in Federal High Court "Lideta" 7th Civil Bench.