

**ONLINE DISPUTE RESOLUTION FOR ELECTRONIC
COMMERCE UNDER ETHIOPIAN LEGAL FRAMEWORK:
THE NEED FOR REFORM**

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ABSTRACT

With the advent of the internet, the international business trend is changing as the traditional business trend is replaced with Electronic-Commerce. This paradigm shift has posed a severe and substantial challenge on how to resolve cross-border disputes. In response to these challenges, online dispute resolution (ODR) has emerged as the best avenue to resolve cross-border electronic disputes. In 2020, Ethiopia adopted the "Electronic Transaction Proclamation" and "Digital Strategy for Inclusive Prosperity 2025". This plays a vital role in the advancement of Electronic commerce. The advancement of electronic commerce has led to an increase in the volume of cross-border disputes, whereby resolving such disputes could be a challenge. The purpose of this article is to assess the legal and institutional framework for online dispute resolution under Ethiopian law, identify its shortcomings, and explore opportunities for proper regulation. To this end, it has employed a doctrinal legal research methodology. The paper's finding shows that there is no legal and institutional framework for online dispute resolution under Ethiopian laws despite constitutional backup. Hence, there is a pressing need for Ethiopia to adopt online dispute resolution. First, as the dispute is inevitable and the traditional dispute settlement is unsuitable for resolving online disputes, there should be a proper avenue to settle online disputes to enhance consumers' confidence in E-commerce. Second, the adoption of ODR is necessary for competing at a global level and the facilitation of cross-border trade. Finally, ODR has the potential to ensure the right to access justice enshrined under the FDRE constitution. To this end, Ethiopia should facilitate the room for online dispute resolution by adopting a proper legal and institutional framework.

Key words: *ADR, ODR, Electronic commerce, Online disputes*

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1. INTRODUCTION

With the advent of the internet, the international business trend is changing. There was a paradigm shift as traditional business trends, which require a physical presence, are replaced with virtual business transactions, commonly called E-Commerce. E-Commerce has brought far-reaching challenges to the business community.¹ One of the main challenges facing E-commerce is how to resolve cross-border disputes in the electronic business environment. Distances between parties, linguistic and cultural differences, difficulties determining the applicable law, and competent jurisdiction and enforcement of judgments are among the main obstacles that could significantly increase the cost of doing business online.²

E-commerce has posed challenges to the conventional dispute resolution mechanism.³ “The use of conventional litigation for disputes arising in this forum is often inconvenient, impractical, time-consuming, and expensive due to the transactions' low value and the physical distance between the parties.”⁴ The reality of E-commerce transactions is that they typically involve small-value claims, and it is not economically viable for consumers in these transactions to take formal legal action against the suppliers if a dispute were to arise.⁵ The cost of court proceedings and the length of time it would take to resolve these disputes is a significant deterrent. The volume of claims that could potentially arise in this manner could be overwhelming for the already strained court systems, and the small value of any possible gains would mean that the traditional court system would not be the best option for resolving disputes arising online.⁶

¹ Mark Lubbock & Louise Krosch, E-commerce Doing Business Electronically: A Practice Guide (2000)

²E-commerce and Development Report (United Nations Conference on Trade and Development, 2003), https://unctad.org/system/files/official-document/ecdr2003_en.pdf <last visited Jun 3, 2021>

³ Pablo Cortes, *Online Dispute Resolution for Consumers in the European Union* (Routledge, 2011)

⁴*Ibid.*

⁵ Robin Cupido, *Online Dispute Resolution: An African Perspective*, in Scientific Cooperation's on Social Sciences, P183, available at http://ase-scoop.org/papers/IWLP-2016/3.Cupido_IWLP.pdf <last visited Jul 5, 2021>

⁶ *Ibid.*

Besides, we have the issue of jurisdiction, especially when dealing with cross-border transactions, where the entirety of the transaction takes place online between parties from different countries.⁷ Furthermore, courts may lack the resources and the expertise to keep up with the growth in cross-border disputes arising from an ever-emerging E-commerce.⁸ Given that traditional dispute settlement mechanisms may not provide adequate redress in E-commerce transactions, there is a need to consider alternative dispute resolution (ADR) means that would provide speedy, low-cost redress for claims arising from online interactions.⁹

Thus, the modern legal systems face a crucial choice: either adapt traditional dispute resolution methods that have served the legal systems well for hundreds of years or find new ways better suited to a world not anchored in territorial borders.¹⁰ To meet the challenges that this new method of commerce creates, there has been a growing recognition that alternative dispute resolution measures would be well suited for resolving disputes that originate online.¹¹ The traditional ADR procedures (arbitration, mediation, and negotiation) arguably provide an ideal framework to solve offline disputes. However, some aspects of electronic contracts and conflicts are not addressed by the existing rules.¹² Thus, a new system tailored to address the particular issues arising from electronic commercial transactions is required. This system has come to be known as online dispute resolution (ODR).¹³

⁷Angelica Rosu, *Electronic Commerce– An International Phenomenon, Generating Commercial Litigations*, 7 in *European Integration-Realities and Perspectives*, available at <http://www.proceedings.univ-danubius.ro/index.php/eirp/article/view/1342/1190> <last visited Jul 6, 2021>.

⁸ Pablo Cortes, *supra* note 3.

⁹ E-commerce and Development Report (2003), available at https://unctad.org/system/files/official-document/ccdr2003_en.pdf

¹⁰ Pablo Cortes, *supra* note 3.

¹¹ Esther Evan Den Heuvel, *Online Dispute Resolution as a Solution to Cross-border E-disputes: An Introduction to ODR*, available at <http://www.oecd.org/dataoecd/63/57/1878940.pdf> < last visited Apr 27, 2021>

¹² Julia Hörnle, *Online Dispute Resolution – The Emperor’s New Clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration*, 17 *International Review of Law, Computer and Technology*, (2003), Pp27–37

¹³ Robin Cupido, *supra* note 5, P184

The concept of online dispute resolution came with the development of E-commerce.¹⁴ UNCITRAL defines "ODR" as a solution that "can assist the parties in resolving the dispute in a simple, fast, flexible, and secure manner, without the need for physical presence at a meeting or hearing," which includes but is not limited to ombudsmen, complaints boards, negotiation, conciliation, mediation, arbitration, and others.¹⁵ There are also other different definitions of online dispute resolution, but in its simplest form, the term refers to the use and adaptation of traditional alternative dispute resolution models (most commonly mediation, negotiation, and arbitration) to resolve disputes which arise online.¹⁶ "Online Dispute Resolution (ODR), originally an offshoot of Alternative Dispute Resolution (ADR), takes advantage of the speed and convenience of the internet, becoming the best and often the only option for enhancing consumers' redress and strengthening their trust in E-commerce".¹⁷

Coming to the context of Ethiopia, the concept of E-Commerce is in its infancy stage. The absence of a legal framework was the major obstacle to the development of E-Commerce in Ethiopia. To cope with international business trends and digitalize its economy, in 2020, Ethiopia has taken two significant measures that legalize and promote E-Commerce. The first measure is the adoption of the electronic transaction proclamation.¹⁸ This would solve the conundrum that underlies the absence of a legal framework that regulates E-Commerce. The second measure is adopting the strategy called "the digitalization of economy 2025" as a part of its prosperity plans.¹⁹ The second measure is that the Ethiopian Ministry of Innovation and Technology has developed a digital economy strategy entitled "Digital Strategy for Inclusive Prosperity 2025".²⁰ The Council of Ministers has approved the Digital Ethiopia

¹⁴ Poonam Kumari & Geetika Sood, *Online Dispute Resolution: Methods and Effects*, 8 International Journal of Science and Research (2019),1594

¹⁵ UNCITRAL, Technical Notes on Online Dispute Resolution, uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf <last visited May 6, 2021>

¹⁶ *Ibid.*

¹⁷ Pablo Cortes,, *supra* note 3

¹⁸ Federal Electronic Transaction Proclamation of Ethiopia (2020).

¹⁹ Ethiopia Digital Strategy 2025 <https://tapethiopia.com/category/downloadable-pdfs> <last visited Jul 3, 2020>

²⁰ *Ibid.*

Strategy 2025 designed to align with the country's national development vision, policy objectives, and priorities.²¹

Adopting the proclamation that regulates electronic transactions and strategies for the digitalization of the economy has a tremendous role in enabling our country to share from the chalice of E-Commerce. This may not be realized as Ethiopia may face challenges in handling disputes that arise online. As dispute is part and parcel of life, with the increase of E-commerce, the number of disputes arising from internet transactions would inevitably increase. This naturally requires an efficient and innovative way of addressing these disputes, especially in consumer transactions. Yet, Ethiopia may not share in the chalices of E-Commerce, as the proclamation has no proper dispute resolution mechanism for online commercial disputes. Further, the other law that deals with alternative dispute resolution has no rules on online commercial disputes.

Therefore, this article aims to assess the legal and institutional framework for online dispute resolution under Ethiopian law, identify its shortcomings, and explore opportunities for a workable legal and institutional framework for online dispute resolution. To this end, doctrinal legal research methodology is employed to investigate the pertinent provision of the FDRE Constitution, Electronic transaction proclamation, federal arbitration and conciliation working procedure proclamation, and Addis Ababa chamber of commerce and sectorial association arbitral rules

The article is divided into seven sections. The second section will uncover a general overview of online dispute resolution. The third section will present the advantages of online dispute resolution and its feasibility for online commercial disputes. The fourth section will unveil common online dispute resolution (ODR) methods. The fifth section will present global initiatives toward the adoption of ODR. The sixth section will analyze the place of electronic commerce and online dispute resolution under Ethiopian law. The seventh section will present the need for online dispute resolution under the Ethiopian framework. Finally, the article ends with brief concluding remarks.

²¹ Capital Ethiopia Newspaper <https://www.capitalethiopia.com/interview/digital-ethiopia> < last visited Jul 3, 2020>

2. GENERAL OVERVIEW OF ONLINE DISPUTE RESOLUTION

The history of ODR is only 30 years, as it arose in the late 1990s as an outgrowth of ADR.²² ODR emerged from the synergy between ADR and ICT to resolve disputes arising online and for which the traditional means of dispute resolution were inefficient or unavailable.²³ It focuses on how to best use information or communications technology to help disputants resolve their disputes.²⁴ In the literature on the subject, the terms online dispute resolution (ODR), electronic ADR (E-ADR), online ADR (O-ADR), and internet dispute resolution (IDR) are treated as synonymous.²⁵ ODR uses technology to resolve disputes between parties through negotiations, mediation, arbitration, or a combination of all three; may be fully automatic or involve human intervention.²⁶ Initially, ODR focused on resolving online disputes. Recently, however, the focus has shifted to non-financial conflicts and disputes that do not arise online but as a result of “normal activities.”²⁷

ODR arose on the international level first and then was adopted in each country.²⁸ The ODR can be divided into two parts: the first part is concerned with developing specific dispute resolution applications that can be used to resolve online and offline conflicts, while the second part looks at the future of the ODR, using tools that will provide a support system for mediation and arbitration.²⁹ The first part is an important online dispute resolution program,

²² Zhengmin Lu & Xinyu Zhu, Study on the Online Dispute Resolution System in China, 129 *Advances in Engineering Research* (2017).

²³ Pablo Cortes, *supra* note 3, P79.

²⁴ Ethan Katsh & Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass) (2001).

²⁵ Karolina Mania, *Online Dispute Resolution: The Future of Justice*, *International Comparative Jurisprudence* (2015), Vol.1, P78.

²⁶ Jeremy Barnett & Philip Treleaven, *Algorithmic Dispute Resolution—The Automation of Professional Dispute Resolution Using AI and Blockchain Technologies*, *The Computer Journal* (2018), Vol.61, Pp.399–400

²⁷ John Zeleznikow, *Can Artificial Intelligence and Online Dispute Resolution Enhance Efficiency and Effectiveness in Courts*, *International Journal for Court Administration* (2017), Vol.8, Pp30–35

²⁸ Colin Rule, *Online Dispute Resolution and the Future of Justice*, *Annual Review of Law and Social Science* (2020), Vol. 16, P282.

²⁹ Sersshiv Reddy, Implementing a South African e-dispute Resolution System for Consumer Disputes, 2021, P42; http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532021000200010#back_fn62_<last visited Jul 20, 2021>.

which involves using an online site for the dispute resolution process, assisting parties by collecting and constructively presenting information, but planning, collaboration, and decision-making remain dominated by human party system users.³⁰ The second system refers to an online dispute resolution system that helps resolve disputes and is often enabled by artificial intelligence to provide automated feedback. Such an online system may require human beings to further their operations or rely on machines to perform the process automatically.³¹ The ODR has become very popular over the last few years because it represents a more promising solution to disputes than litigation and may offer a free, simple, effective, transparent, and fair system.³²

Based on the institution involved, there are two leading ODR forums; Private and public forums. One important difference between public and private ODR forums is that private programs are often industry-sponsored and used for profit. In contrast, public forums are generally non-profit, funded by the public, and/or legally supported.³³ Two types of ODR platforms are private: self-contained and complete service. The first one is designed to resolve disputes between the public, such as an online marketplace such as eBay, Amazon, or Etsy. In such cases, Members of that community agree to be governed by the terms of service and related agreements governing the community and to determine how and when that ODR platform is used.³⁴

The first self-contained private platform was eBay back in 1999.³⁵ The eBay forum allowed the customer to file a complaint online and start a redress process. If the redress process fails, the online mediation process will begin.³⁶ The forum was designed to diagnose the problem and conduct an automated negotiation followed by mediation or mediation. This model, which has

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ Suzanne Van Arsdale, *User Protections in Online Dispute Resolution*, Harvard Negotiation Law Review (2015), Vol.21, P120.

³⁴ Anjanette H. Raymond & Scott J. Shackelford, *Technology, Ethics, and Access to Justice: Should an Algorithm Be Deciding Your Case?* Michigan Journal of International Law (2014), Vol.35, P501.

³⁵ Deepika Kinhal, Tarika Jain, Vaidehi Misra & Aditya Ranjan, *ODR: the Future of Dispute Resolution in India*, <https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-India> <last visited May 5, 2021>

³⁶ *Ibid.*

evolved into a complex variety widely used by other private and provincial organizations alike, has been renamed ODR.³⁷ In contrast, the full-service forum is open to any opponent who fits the ODR approach — in the form of a dispute type, cost, or other factors. Modria is one popular and new role model.³⁸

The second platform for ODR is the public platform. Such kinds of platforms are facilitated by government agencies and public organizations, often non-profit, publicly funded, and/or judicially supported. Accordingly, several government agencies and public organizations have developed and implemented their own ODR systems as a voluntary alternative or supplement to court proceedings in traditional disputes.³⁹ National and international ODR programs have been instituted in Mexico, Canada, and the United States.⁴⁰ After a period of running, ODR is considered an effective means of dispute resolution, and currently, people worldwide accept ODR.⁴¹

3. ADVANTAGES OF ONLINE DISPUTE RESOLUTION AND ITS FEASIBILITY FOR ONLINE COMMERCIAL DISPUTES

Online Dispute Resolution (ODR) is often referred to as a form of ADR, which takes advantage of the speed and convenience of the internet and ICT.⁴² It adapts traditional ADR methods, such as digital communication technologies, to help people resolve disputes outside of litigation.⁴³ While ODR shares many features with ADR, its technological component gives rise to a unique set of benefits and pitfalls.⁴⁴ The benefits of ODR are presented as follows:

³⁷ *Ibid.*

³⁸ Suzanne Van Arsdale, *supra* note 33, P121.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Zhengmin Lu & Xinyu Zhu, *supra* note 22

⁴² Pablo Cortés What Should the Ideal ODR System for E-Commerce Consumers Look Like? The Hidden World of Consumer ADR: Redress and Behaviour, available at <https://www.law.ox.ac.uk/sites/files/oxlaw/thehiddenworldofconsumeradr-conferencenote.pdf> <last visited Jun 3, 2021>

⁴³ Suzanne Van Arsdale, *supra* note 33, at 109

⁴⁴ *Ibid.*

3.1. COST-EFFECTIVE

Litigating a dispute can be costly. A significant portion of the expense is the cost of hiring an attorney. In many instances, parties engaging in online dispute resolution through ODRs will not have to consult an attorney at all. For example, if each party knows the range within which he will settle the case, the parties may use a settlement instrument type of ODRs like automated negotiation to resolve their dispute. Additionally, ODRs can save the parties the cost of long-distance calls and teleconferencing.

Further, it is beneficial for resolving cross-border disputes and issues that may arise because of multiple jurisdictions.⁴⁵ For this reason, early adoption of ODR has been in resolving E-commerce transactions where parties are in different jurisdictions, and in low-value disputes arising out of business-to-business and business-to-consumer transactions, where going to courts makes little economic sense.⁴⁶ Accordingly, ODR offers a lower cost than offline procedures as there are no travel and accommodation expenses, which in international consumer disputes are frequently higher than the value of the dispute.⁴⁷

3.2. TIME-SAVING

Using the internet to resolve disputes can speed up the Procedure since parties have more flexibility when using ODR asynchronous communications as ODR allows parties to work at any convenient time.⁴⁸ In some cases, the parties may reside in different countries. If the parties are far apart, at least one party will have to travel far to litigate. This may be time-consuming. Online communication solves the problem as parties can sit at their home computers and settle the matter.⁴⁹

⁴⁵ Deepika Kinhal, Tarika Jain, Vaidehi Misra & Aditya Ranjan, *supra* note 40.

⁴⁶ *Ibid.*

⁴⁷ Pablo Cortes, *supra* note 3, P80.

⁴⁸ *Ibid.*

⁴⁹ Lan Q. Hang, *Online Dispute Resolution Systems: The Future of Cyberspace Law*, Santa Clara Law Review (2001), Vol.41, P837; available at <http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/4> <last visited Apr 14, 2021>

3.3. THE CONVENIENCE OF THE PROCEDURE

“Asynchronous communications allow the parties to be prepared to produce their best response without being easily intimidated or bullied.”⁵⁰ Moreover, some scholars consider that asynchronous communications allow parties to think more thoroughly than in verbal exchanges before actually sending their message.⁵¹ It also opens lines of communication that are not used in the more formal offline legal procedures. Ponte and Cavenagh maintain that ODR often uses confidential approaches which encourage parties to be more honest in a trusting environment that fosters settlement.⁵²

3.4. APPROPRIATENESS

ODR seems to be the most effective tool for resolving online disputes. Ponte and Cavenagh realized that the online community is looking for conflict resolution options that reflect Web speed and efficiency.⁵³ However, it would be foolish to view ODR as a solution to consumer disputes as ODR faces many difficulties in its implementation.⁵⁴ Related to the Law Merchant concept, online users are more likely to adhere to the judgments of their virtual communities than the laws of physical space far away from where they live. People are more likely to accept a system of law that evolves from the public it governs. This could be true of computer-generated communities.⁵⁵

3.5. CONTROL OVER OUTCOMES

The ODR agreement gives the parties more control over the outcome, enhances dispute resolution options, and promotes law enforcement.⁵⁶ The parties may enter into agreements without restriction. In addition, when the parties voluntarily agree on a decision, there is a better chance of voluntary compliance than when the decision is handed down by a judge as, in the latter case, one party will usually feel dissatisfied with the decision.⁵⁷ Besides, law

⁵⁰Pablo Cortes, *Online Dispute Resolution for Consumers in the European Union* (Routledge, 2011)

⁵¹ *Id.*, Pp63-64

⁵² Lucille M Ponte & Thomas D Cavenagh, *Cyber Justice, Online Dispute Resolution for E-Commerce* (Upper Saddle River, New Jersey: Pearson Prentice Hall 5th ed., 2005)

⁵³ Pablo Cortes, *supra* note 3, P58

⁵⁴ *Ibid.*

⁵⁵ Lan Q. Hang, *supra* note 22.

⁵⁶ Pablo Cortes, *supra* note 3, P80

⁵⁷ *Ibid.*

enforcement is complex, slow-moving, and expensive, especially when enforcing border decisions.⁵⁸

Despite the advantages, online dispute resolution has some weaknesses. One critical element that makes ADR successful is its confidentiality aspect. When this process is conducted online, there is naturally some room for data privacy during and after proceedings. One of the ways to safeguard parties' interests is to ensure that there are guidelines and standards, which mandate encryption of documents and a stringent privacy policy, the details of which should necessarily be informed to the parties.⁵⁹ Further, lack of face-to-face contact, technological problems, language barriers, legal difficulties, and loss of public access and pressure could be other challenges of ODR.⁶⁰ However, it should be noted that most of these challenges could be mitigated with appropriate practice, technologies, and law.⁶¹ Further, it must be pointed out that some of the advantages and difficulties perceived above are arguable since they are based on certain assumptions that would need reliable empirical data to be categorically confirmed.⁶²

As mentioned above, in the internet context, parties located in different parts of the world make contracts with each other at the click of a mouse.⁶³ However, when a dispute arises, litigation for these disputes is often inconvenient, impractical, time-consuming, and expensive due to the low value of the transactions and the physical distance between the parties. When access to courts is difficult because of the parties' location or for some other reason, ODR may be the only possible means of resolving a dispute. In such cases, ODR is the best (and often the only) option for enhancing the redress of consumer grievances, strengthening their trust in the market, and promoting the sustainable growth of E-commerce.⁶⁴ Hence, the law should seek ways to overcome the hurdles in the development of ODR. An effective ODR will

⁵⁸ *Ibid.*

⁵⁹ Esther Evan den Heuvel, *supra* note 11.

⁶⁰ Pablo Cortes, *supra* note 3, Pp80-81.

⁶¹ *Ibid.*

⁶² Philippe Gillitron, *From Face-to-Face to Screen-to-Screen: Real Hope or Fallacy?*, Ohio State Journal of Dispute Resolution (2008), Vol.23, P319 available at https://www.wg-avocats.ch/wp-content/uploads/2020/10/2008_From_F2F_to_S2S_-_Ohio_State_Dispute_Resolution.pdf <last visited May 12, 2021>

⁶³ Pablo Cortés, *supra* note 45, Pp21-23.

⁶⁴ *Ibid.*

install greater confidence in consumers while increasing their access to justice and recognizing consumers' legitimate rights.⁶⁵

4. COMMON ONLINE DISPUTE RESOLUTION METHODS

The collective term "Online Dispute Resolution (ODR)" is used internationally for different forms of online dispute settlement employing ADR methods.⁶⁶ ODR is the deployment of applications and computer networks for resolving disputes with ADR methods.⁶⁷ ODR platforms are modeled after traditional ADR mechanisms, such as negotiation, arbitration, early neutral evaluation, and mediation. The processes and interactions thus look similar but use different technologies.⁶⁸ Accordingly, the typical online dispute resolution is presented as follows:

4.1. ONLINE ARBITRATION

Online arbitration, which refers to amicable proceedings conducted via the internet, may take either a synchronous or an asynchronous form.⁶⁹ Arbitration is a process where a neutral third party (the arbitrator) delivers a decision, which is final and binding on both parties.⁷⁰ The Procedure begins after a complaint is submitted via electronic means, whereby the formal examination of the complaint is done.⁷¹ After verifying the authenticity of the complaint, the relevant Procedure begins in the form of formal administrative procedures - in which the other party is informed through the electronic means of communication.⁷² Then the other party will be allowed to submit a response within specific periods. In line with this, the appointment of a list of members of an administrative panel consisting of one or three people would follow. Upon the consent of both parties, a single-member panel will be appointed. If one of the parties objects, the complainant and the other party is entitled to

⁶⁵ *Ibid.*

⁶⁶ Esther Evan den Heuvel, *supra* note 11, P8.

⁶⁷ *Ibid.*

⁶⁸ Suzanne Van Arsdale, *supra* note 33, P111.

⁶⁹ Poonam Kumari & Geetika Sood, *supra* note 14, P1595.

⁷⁰ Green Paper on Alternative Dispute Resolution in Civil and Commercial Law, <https://op.europa.eu/en/publication-detail/-/publication/61c3379d-bc12-431f-a051-d82fefc20a04> <last visited Jun 4, 2021>

⁷¹ Poonam Kumari & Geetika Sood, *supra* note 14, P1595

⁷² Karolina Mania, Online Dispute Resolution: The Future of Justice, International Comparative Jurisprudence (2015), Vol.1, P78

choose three people from the list of panelists.⁷³ Then, the panelists render a decision after hearing arguments and looking at the evidence. Once the decision is rendered, the award is enforceable in most countries owing to the wide adoption of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Moreover, arbitral awards frequently prove easier to enforce than court decisions overseas.⁷⁴ Despite this, arbitration is probably the least popular ODR method for resolving consumer disputes, especially at an international level.⁷⁵

4.2. ONLINE MEDIATION

Mediation is voluntary dispute resolution facilitated by a neutral third party (mediator) and is a common form of ODR for small consumer disputes.⁷⁶ Unlike an arbitrator, the mediator does not render a decision, instead of helping the disputants reach an agreement by encouraging constructive discussion and resolution. The mediator may improve dialogue, encourage parties to share information, cultivate empathy and understanding of the other party's interests, and perhaps even offer suggestions or proposals.⁷⁷ Mediators use information management skills to encourage the parties to reach a peaceful agreement; in doing so, they enable the parties to communicate effectively by redefining their issues.⁷⁸ The Procedure of online mediation starts when an e-mail is sent to the parties having the basic information on proceedings.⁷⁹ Most of the time, online mediation is done through text-based communication and real-time meetings through teleconferences.⁸⁰ Yet, the mediator may facilitate the Virtual meetings carried out separately with each party or concurrently with all parties.⁸¹

⁷³ Poonam Kumari & Geetika Sood, *supra* note 14, P1596

⁷⁴ Pablo Cortes, *supra* note 3, P 91.

⁷⁵ *Ibid.*

⁷⁶ Ethan Katsh & Janet Rifkin, *supra* note 24, P 56.

⁷⁷ Deborah Greenspan, Helping Clients Determine Whether the Alternative Dispute Resolution Process is Appropriate and How to Reach a Fair Remedy, in Trends in Alternative Dispute Resolution, <https://www.blankrome.com/people/deborah-greenspan> < last visited Jun 5, 2021>.

⁷⁸ Online Dispute Resolution Alternative Dispute Resolution, available at [_https://en.wikipedia.org/wiki/Online_Dispute_Resolution](https://en.wikipedia.org/wiki/Online_Dispute_Resolution) < last visited Jul 3, 2020>

⁷⁹ Poonam Kumari & Geetika Sood, *supra* note 14, P1595.

⁸⁰ Karolina Manja, Online Dispute Resolution: The Future of Justice, International Comparative Jurisprudence (2015), Vol.1.P78

⁸¹ *Ibid.*

The use of technology can help mediators be more efficient and effective in various ways. First, technology can enable parties to communicate asynchronously via text as opposed to synchronous face-to-face interaction.⁸² This can give the parties a bit of cooling distance that allows them to be more reflective and thoughtful in their communications with the other party. Furthermore, it gives the chance disputants to do a little research before they respond to a message from the other side, which can help them be more informed and increase the likelihood that any resolution achieved will not be predicated upon false or erroneous information.⁸³ Again in the case when the mediators prefer Asynchronous communication, it gives a chance for the mediator to facilitate the room for all parties to participate in the Procedure at the same time, enabling them to have a private caucus conversation with each party individually while allowing both parties and the mediators to conduct a joint discussion.⁸⁴ This can enable the mediator to clarify issues individually with parties that may be blocking resolution and to reality test proposed outcomes privately while encouraging private progress in the joint session.⁸⁵

4.3. AUTOMATED NEGOTIATION

Automated negotiation is carried out exclusively by an ODR platform without the intervention of a neutral third party.⁸⁶ In negotiations, the parties cooperate without the help of a third party who is neutral and instead communicate directly or through lawyers. They may therefore determine the structure or procedure for resolving disputes and resolving some or all of the problems.⁸⁷ Automated dispute resolution systems are very different from other conventional ADR procedures. When the problem does not require neutral human flexibility, algorithms may be designed and used in ODR software and tools to resolve disputes with the default ADR processes in full. “Double-blind bidding is the most popular automated negotiation system.”⁸⁸ It occurs when one party invites the other to negotiate the amount of money in dispute. If the other party agrees, they start a blind bidding process whereby

⁸² Colin Rule, *supra* note 24, P286.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Pablo Cortes, *supra* note 3, P89

⁸⁷ Suzanne Van Arsdale, *supra* note 33, P113.

⁸⁸ *Id.*, P114.

both parties make secret offers, which will only be disclosed if both offers match specific standards.⁸⁹ Such kind of method is used when parties have already agreed that monetary compensation is due but have not determined what amount.⁹⁰ Parties can usually submit up to three offers, and if the offer is more significant than the demand, the dispute is settled. However, if the demand and offer difference are less than a certain percentage or a given amount of money, the settlement will be the mid-point of the two offers.⁹¹ This type of automated negotiation is limited to dealing with numerical interests only, such as distributing funds in insurance disputes.⁹² “Smart settle is a program that provides a multivariate blind bidding system, which can resolve disputes among any number of negotiators and involving any number of numerical or binary interests.”⁹³

4.4. MED-ARB

Med-Arb allows parties to use a tiered process in which the parties are given a chance to negotiate on their own or with the assistance of a mediator. If the parties are incapable of reaching an agreement, then they may ask the online mediator to act as an arbitrator and to render a decision on the unresolved issues, which can be binding or not binding, as the case may be.⁹⁴

4.5. NEUTRAL EVALUATION AND MINI-TRIALS

Both evaluation and mini-trials combine elements of other dispute resolution processes to advise parties on the likely outcome (s) of a trial, should the parties resort to litigation.⁹⁵ In evaluation, a neutral third party makes a decision based on the written submissions and evidence provided by the parties. However, the decision takes the form of a non-binding recommendation.⁹⁶ This feature may make participation more attractive for the parties, but it cannot ensure the resolution of the dispute.⁹⁷ Square Trade offered these types of services when the mediator suggested settlements.

⁸⁹ Pablo Cortes, *supra* note 3, P89

⁹⁰ Suzanne Van Arsdale, *supra* note 33, P114.

⁹¹ *Id.*

⁹² Pablo Cortes, *Supra* note 3, P64

⁹³ *Id.*, P65

⁹⁴ Lucille M Point & Thomas D Cavenagh, *supra* note 55, P98

⁹⁵ Suzanne Van Arsdale, *supra* note 33, P114.

⁹⁶ Lucille M Point & Thomas D Cavenagh, *supra* note 55, P98.

⁹⁷ *Ibid.*

Kaufmann-Kohler and Schultz believe that there is clear potential for the development of neutral evaluation.⁹⁸ In mini-trials, also called summary jury trials, a jury of peers renders a non-binding determination of issues based on documents and other allowed submissions. Volunteers acting as if they were a jury take the place of the neutral third-party evaluator.⁹⁹

5. GLOBAL INITIATIVES TOWARD THE ADOPTION OF ONLINE DISPUTE RESOLUTION (ODR)

As mentioned in other parts of the paper, the advent of the internet has eventually led to the origination of many cross-border disputes and, consequently, innovative techniques for resolving such complex disputes.¹⁰⁰ As the traditional dispute settlement mechanism was unsuitable for online commercial disputes, various attempts were towards the adoption of ODR. "In 1999, the OECD published "Guidelines for Consumer Protection in the Context of Electronic Commerce."¹⁰¹ These guidelines encourage businesses, consumer representatives, and governments to work together to provide consumers with reasonable access to alternative dispute resolution and redress without unnecessary expense or liability. Special attention is given to cross-border sales. Special emphasis is placed on the new use of information technology in the implementation of ADR programs.¹⁰²

In 2010, the United Nations Commission on International Trade Law (UNCITRAL) established a working group dedicated to online dispute resolution.¹⁰³ Since 2010, Working Group III of UNCITRAL has started its work on ODR. After six years of analysis and discussion, Technical Notes on Online Dispute Resolution (TNODR) was adopted in 2016.¹⁰⁴ Technical Notes on Online Dispute Resolution (TNODR) is to establish guidance in the field of ODR relating to cross-border electronic commerce transactions, which includes low-value sales or service contracts (including B2C transactions)

⁹⁸ Gabrielle Kaufmann-Kohler & Thomas Schultz, *Online Dispute Resolution: Challenges for Contemporary Justice* (Kluwer law international Schulthess, 2004).

⁹⁹ Suzanne Van Arsdale, *supra* note 33, P115.

¹⁰⁰ Deepika Kinhal, Tarika Jain, Vaidehi Misra & Aditya Ranjan, *supra* note 40.

¹⁰¹ OECD Guidelines for Consumer Protection in the Context of E-Commerce, <https://www.oecd.org/digital/consumer/1878940.pdf> <(last visited Jun 5, 2021)>

¹⁰² *Ibid.*

¹⁰³ Robin Cupido, *supra* note 5

¹⁰⁴ General Assembly of UN, Resolution Adopted by the General Assembly on 13 December 2016 <https://undocs.org/pdf?symbol=en/a/res/71/258> <last visited Jul 24, 2021>

concluded using electronic communications.¹⁰⁵ TNODR has no binding, and the content is the consensus of its member countries.¹⁰⁶

The International Standards Organization is currently leading an effort to make ODR available for all global E-Commerce purchases. ODR is now the default resolution process for global E-Commerce, but widespread adoption within individual countries is in development.¹⁰⁷ The United States is arguably the world leader in the law relating to online dispute resolution¹⁰⁸, with the most operational online dispute resolution providers (both government-run and private).¹⁰⁹ Regarding consumer contracts specifically, eBay (an American company) was one of the first E-commerce companies to develop its system of online dispute resolution, the Resolution Center.¹¹⁰ The European Union has also contributed to the development of the law relating to ODR.¹¹¹ Online dispute resolution was first addressed in the EU Directive on alternative dispute resolution for consumer disputes in 2013. It was explicitly legislated for the regulation of online dispute resolution for consumer disputes in the same year.¹¹²

Again, some institution has adopted the framework for online dispute resolution. Prominently, in late 2001, the Hong Kong International Arbitration Centre and the China International Economic and Trade Arbitration Commission jointly launched the Asian Domain Name Dispute Resolution Centre (ADNDRC), which became the only ICANN approved domain name dispute resolution provider in Asia.¹¹³ ADNDRC was the first project in Asia to offer online filing of disputes and technology-facilitated case evaluations, all according to the established rules of the Uniform Domain-Name Dispute

¹⁰⁵ Zhang Juan Juan, Cross-border Online Dispute Settlement Mechanism in China-Following UNCITRAL Tnodr and Alibaba Experience, https://www.wgtn.ac.nz/data/assets/pdf_file/0004/1642594/10-juanjuan.pdf

¹⁰⁶ *Ibid.*

¹⁰⁷ Colin Rule, *supra* note 28, P282.

¹⁰⁸ Lan Q. Hang, *supra* note 22.

¹⁰⁹ Robin Cupido, *supra* note 5, P186.

¹¹⁰ *Ibid.*

¹¹¹ Lilian Edwards & Caroline Wilson, Redress and Alternative Dispute Resolution in Cross-border E-Commerce Transactions, <http://www.europarl.europa.eu/document/activities/cont/201406/20140602ATT84796/20140602ATT84796EN.pdf> < Last visited Jul 17, 2021>

¹¹² Robin Cupido, *supra* note 5, P186.

¹¹³ Colin Rule, The New Frontier for Online Dispute Resolution in Asia, available at <https://www.mediate.com/Integrating/docs/34worldviews.pdf> <last visited May 5, 2021>

Resolution Policy (UDRP). ADNDRC's reach extended throughout Asia, and as such, it exposed many to ODR tools for the first time.¹¹⁴

6. THE PLACE OF ELECTRONIC COMMERCE AND ONLINE DISPUTE RESOLUTION UNDER ETHIOPIAN LAWS

6.1.THE PLACE OF ELECTRONIC COMMERCE IN ETHIOPIA

internet use in Ethiopia dates back to 1993 when the UN Economic Commission for Africa (UNECA) launched an E-mail store and forwarding service called PADIS Net (Pan African Documentation and Information Service Network), which connected daily through a direct call to Green Net internet way London.¹¹⁵ As there was no other way, the centre was widely used by international organizations and NGOs, certain academics, individuals, and private companies.¹¹⁶ The absence of laws dealing with E-Commerce and E-signature was causing uncertainty as to the legal nature and validity of the information presented in a form other than a traditional paper document.¹¹⁷ In Ethiopia, those who transact in this way are doing the business without getting a guarantee or rights protection as a consumer. This undermines the prospects for the successful development of E-Commerce.¹¹⁸

Currently, electronic commerce is proliferating as the governments take various steps. The first step is the adoption of an electronic signature proclamation in 2018.¹¹⁹ Further, in 2020, Ethiopia has taken two significant measures that legalize and promote E-Commerce. The first measure is that the Ethiopian House of Peoples' Representative has approved the Electronic Transaction Proclamation in its session on May 29, 2020.¹²⁰ The second measure is that the Ethiopian Ministry of Innovation and Technology has developed a digital economy strategy entitled "Digital Strategy for Inclusive

¹¹⁴ *Ibid.*

¹¹⁵ International Telecommunication Union , Internet from the Horn of Africa: Ethiopia Case Study, <http://www.itu.int/osg/spu/casestudies/ETH-cs1> <last visited May 5, 2021>

¹¹⁶ Meron Eresso, *Sacralising Cyberspace: Online Religious Activism in Ethiopia.*, 3 Modern Africa: Politics, History and Society (2015), Pp127-154 <https://edu.uhk.cz/africa/index.php/ModAfr/article/view/99> <last visited Jul 3, 2020>

¹¹⁷ *Ibid.*

¹¹⁸ Tigist Ashenafi, The Legality of E-Commerce and E-Signature under Ethiopian Law (2017), P32.

¹¹⁹ Federal Electronic Signature Proclamation of Ethiopia (2018)

¹²⁰ Federal Electronic Signature Proclamation of Ethiopia (2020)

Prosperity 2025".¹²¹ The Council of Ministers has approved the Digital Ethiopia Strategy 2025 designed to be aligned with the country's national development vision, policy objectives, and priorities.¹²² The Digital Transformation Strategy is a plan that helps to transform the dominantly analog economy into a digital economy, which is an economy mainly supported by the applications of digital technologies.¹²³ As indicated in the strategy document, the Ethiopian Digital Transformation Strategy is an avenue through which Ethiopia will move to a digitally enabled society as technology will allow for more efficient and inclusive interactions between citizens, governments, and businesses, thereby catalyzing its progress towards its national priorities.¹²⁴ Hence, electronic commerce has given sufficient coverage under the Ethiopian legal framework.

6.2.THE PLACE OF ONLINE DISPUTE RESOLUTION UNDER THE ETHIOPIAN LAWS

6.2.1. The Constitutionality of Online Dispute Resolution under FDRE constitution

Online dispute resolution (ODR) is a form of online settlement that uses alternative methods for dispute resolution (alternative dispute resolution).¹²⁵ As the ODR is alternative dispute resolution assisted by the internet, the constitutionality of online dispute resolution is traced to the constitutionality of alternative dispute resolution under the FDRE constitution. It is crystal true that the FDRE constitution has an explicit provision for alternative dispute resolution. One of the prominent rights recognized by the FDRE constitution is access to justice. This is clear from Article 37 of the FDRE constitution. It provides that: "Everyone has the right to bring a justifiable matter to and to obtain a decision or judgment by, a court of law or *any other competent body with judicial power*."¹²⁶ From this provision, it is clear that though the court is the primary institution empowered to settle disputes, it is not the only

¹²¹ Ethiopian Digital Strategy, 2025, *supra* note 19

¹²² Capital newspaper, *supra* note 21.

¹²³ Abiot Bayou, Interview with Capital Ethiopia, <https://www.capitalethiopia.com/interview/digital-ethiopia/> <last visited Jul 3, 2020>

¹²⁴ Ethiopian Digital Strategy, *supra* note 19

¹²⁵ Karolina Mania, *supra* note 25, P78

¹²⁶ FDRE Constitution, Art.37.

institution with such power. Though the article fails to specify them, it tells us that there might be other organs with judicial powers other than courts of law as long as it did not take away from the court of law.¹²⁷

Further, as long as we have not prohibited citizens from taking their cases to the court of law and do not prohibit appeals from going to ordinary courts, the government has the right to establish specific courts. This can be witnessed in Art. 78 (5) of the FDRE constitution. It provides that: "According to sub-Article 5 of Art. 34 the House of Peoples' Representatives and State Councils *can establish or give official recognition to religious and customary courts*".¹²⁸ This article empowered the House of Peoples Representative, as the case may be, State Councils to establish or be obliged to give recognition to the established customary and religious courts. The existing Sharia court is an example of a religious court established in the nation under state recognition.¹²⁹ In the same talking, the House of Peoples Representative can establish other institutions with judicial power or give recognition if private individuals have established them.¹³⁰ In line with this, arbitration, conciliation, and compromise have been given due recognition via incorporation of domestic laws like civil code, family code, civil procedure code, new arbitration and conciliation working procedure, and other subsidiary legislation. Further, the establishment of Addis Ababa chambers of commerce and sectoral association as the private platforms for Alternative dispute resolution has a prominent role in promoting constitutional access to justice principles.¹³¹

From the facts mentioned above, it is clear that the FDRE constitution has recognized alternative dispute resolution irrespective of the avenue by which it may be implemented. Accordingly, as online dispute resolution is a part of ADR conducted online, it has a constitutional backup. That means, since online dispute resolution is part of alternative dispute resolution, which is

¹²⁷ Tefera Eshetu & Mulugeta Geta, *Alternative Disute Resolution, (Justice and Legal System Research Institute (2009), P 81*

¹²⁸ The FDRE Constitution, Art. 78 (5)

¹²⁹ Tefera Eshetu & Mulugeta Geta,*supra* note 127

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

recognized by the FDRE constitution, it is the author's position that online dispute resolution has a constitutional base.

6.2.2. Online Dispute Resolution under Electronic Transaction Proclamation

In 2020, the Ethiopian House of Peoples' Representative approved the Electronic Transaction Proclamation in its session on May 29, 2020.¹³² This proclamation has 46 provisions that give legal recognition to E-Commerce. As per the provision of Articles 7 and 8 of the Proclamation, information in electronic form has the same legal validity as the information in the written document. It also gives legal recognition to the electronic signature of the signatories, electronic stamps, and electronic signatures of witnesses as long as the requirements stated under Articles 9 to 11 are fulfilled.¹³³

The electronic transaction proclamation has a provision entitled "dispute resolution mechanism."¹³⁴ Accordingly, the primary solution for the electronic commercial dispute is in the hands of Electronic commerce platform operators as the proclamation imposes an obligation on them to establish a dispute settlement mechanism.¹³⁵ Though the proclamation imposes an obligation on electronic commerce platform operators to establish dispute settlement mechanisms, it is not clear on the nature of dispute settlement mechanisms that should be used. That means nothing is provided about whether the electronic commerce platform operator should use the traditional dispute resolution mechanism or the currently emerging dispute resolution mechanism for electronic commerce (online dispute resolution). If the electronic commerce platform operator resorted to a traditional dispute settlement mechanism, the traditional dispute settlement mechanism is not feasible for online or electronic commercial disputes. Further, if we claim that the electronic commerce platform operator can resort to online dispute resolution,

¹³² Federal Electronic Transaction Proclamation of Ethiopia (2020)

¹³³ Federal Electronic Transaction Proclamation of Ethiopia (2020), Arts. 9-11.

¹³⁴ Federal Electronic Transaction Proclamation of Ethiopia (2020), Art. 42.

¹³⁵ Federal Electronic Transaction Proclamation No1205/2020, Art.42 (1). For the purpose of electronic transactions, electronic commerce platform operator" means legal entities who, in electronic commerce, provide two or multiple parties with online sites for business operations, match-making, information release, and other services, for the latter to carry out trading activities independently. See, Article 2(14) of electronic transaction proclamation.

its implementation would be complex as no rule is provided under the proclamation. Let alone rules; the proclamation has not mentioned online dispute resolution.

Besides, it is not feasible to give the electronic commerce platform operator complete discretion to establish a dispute settlement mechanism. A dispute settlement is a systematic approach, and sometimes it requires special expertise. As the expertise on the parts of such operators matters, the functionality of such schemes is in a quotation. What makes things worse is that sub-article 3 of the same provision provides that "Any unresolved disagreement between parties which fall within the *ambit of Sub-Articles (1) and (2)* of this Article shall be submitted to arbitration per the *rules of arbitration of a dispute settlement mechanism established* under this Proclamation and the regulations and directives thereunder."¹³⁶ This is a default rule when the dispute settlement mechanism established by the electronic commerce platform operator is unsuccessful. Accordingly, arbitration, the prominent alternative dispute settlement mechanism, is there to solve any unresolved disagreement that may not be solved by the dispute settlement mechanism established by the electronic commerce platform operator. From this, it seems that the dispute settlement mechanism to be used by an electronic commerce platform operator is another dispute settlement mechanism other than alternative dispute resolution like arbitration, negotiation, and mediation.

Furthermore, though the proclamation provides arbitration as a default rule when the dispute settlement mechanism established by the electronic commerce platform operator is unsuccessful, the nature of arbitration to be used is not specified, as the traditional arbitral rules may not work for online commercial disputes. As mentioned, online dispute resolution has emerged as the best dispute resolution scheme for online commercial disputes since the traditional alternative dispute resolution is not suitable for such kinds of disputes. In line with this, various initiatives are taken to develop legal and institutional frameworks for online dispute resolution. In short, though the electronic transaction proclamation incorporates the provision on the issues of

¹³⁶ Federal Electronic Transaction Proclamation of Ethiopia (2020), Art.42 (3).

dispute resolution mechanism, nothing is provided on the online dispute resolution.

6.2.3. Online Dispute Resolution under the Federal Arbitration and Conciliation Working Procedure Proclamation

Ethiopia has no independent and comprehensive legislation that regulates alternative dispute resolution. The existing laws on alternative dispute resolution, which were used to regulate arbitration and conciliation for a long period in Ethiopia, are scattered in the Ethiopian Civil Procedure Code, Civil Code, Revised family code, and other laws. The existing rules are scanty and highly incompatible with the internationally recognized principles of commercial arbitration. To modernize and make its laws compatible with international trends, Ethiopia has reformed and adopted the new Arbitration and Conciliation Proclamation No.1237/2021.¹³⁷ This proclamation has amended various civil procedures and civil code provisions that talk about arbitration and conciliation. Accordingly, Articles 3318-3324 of the Civil Code, which governed conciliation, and Articles 3325 to 3346 of the Civil Code, which governed arbitration, are repealed.¹³⁸ Further, provisions of the Civil Procedure Code from Articles 315 to 319 and Articles 350, 352, 355-357, and 461, which deal with the arbitration, have also been repealed by the proclamation.¹³⁹

The new proclamation has incorporated various principles and rules compatible with international principles and practices by amending the existing laws. The incorporation of the Kompetenz-Kompetenz Principle can be taken as the best example.¹⁴⁰ As the promise of the paper is on online dispute resolution, addressing all amendments made by the new proclamation

¹³⁷ Federal Arbitration and Conciliation Working Procedure Proclamation No 1237/2021

¹³⁸ Federal Arbitration and Conciliation Working Procedure Proclamation No.1237/2021, Art.78 (1).

¹³⁹ Federal Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, Art. 78 (2).

¹⁴⁰ Federal Arbitration and Conciliation Working Procedure Proc. No.1237/2021, Art.19 (2). The principle of competency-competency allows the arbitrator to decide on their jurisdiction. Accordingly, this article provides that” The tribunal shall have the power to determine the existence or non-existence of a valid arbitration agreement between the contracting parties including as to whether it has jurisdiction to hear the case or not”

is beyond the scope of the study. In short, the new proclamation has made many changes to the existing arbitration and conciliation working rules. However, the issue of online dispute resolution, which is an emerging issue concerning online commercial disputes, is not addressed. In line with the Electronic Transaction Proclamation No.1205/2020, electronic signature proclamation, and other laws that recognize electronic communications as a valid means of creating a contract, the electronic arbitration agreement is recognized by the new proclamation.¹⁴¹

Beyond this, the new proclamation has no single provision that deals with online dispute resolution. It is optimistic that the proclamation has referenced the electronic transaction proclamation, which would facilitate electronic commerce. However, the reference should extend up to providing an avenue for online arbitration and conciliation. The mere recognition of an electronic arbitration agreement is not sufficient. As dispute is inevitable, there should be a Proper Avenue to settle online disputes to encourage the development of the E-commerce industry and enhance consumers' confidence in E-commerce. The new proclamation needed to offer complete packages for online dispute resolution

6.2.4. Online Dispute Resolution under Addis Ababa Chamber of Commerce and Sectorial Association Arbitral Rules

Addis Ababa Chambers of Commerce and Sectorial Association (AACCSA) was established, by General Notice Number 90/ 1947, in April 1947 as an autonomous, non-governmental, non-political, and non-profit organization to act on behalf of its members.¹⁴² The chamber re-establishment with the Proclamation Number 341/2003 further provides the legal framework for establishing Chambers of Commerce and Sectorial Associations.¹⁴³ Since its establishment, it has served its members in promoting socio-economic development and commercial relations with the rest of the world, and its

¹⁴¹ Federal Arbitration and Conciliation Working Procedure Proclamation No.1237/2021, Art. 6 (2) (3).

¹⁴²Addis Ababa Chamber of Commerce Sectorial Association, Brief Profile, [http:// addis chamber.com/wp-content/uploads/2016/08/AACCSA-Profile.pdf](http://addis-chamber.com/wp-content/uploads/2016/08/AACCSA-Profile.pdf) <last visited Jul 3, 2020>.

¹⁴³ *Ibid.*

primary objective is to encourage the establishment of conditions in which business in general and in Addis Ababa, in particular, can prosper.

Today, the AACCSA is one of the most dynamic civil society organizations representing business in Ethiopia and is active in matters of importance extending beyond its regional geographic base.¹⁴⁴ Addis Ababa chamber of commerce and the sectorial association has their own arbitration rules.¹⁴⁵ The rule has articles, which are put into different categories. Accordingly, the components of the subject matter regulated by the arbitral rule comprise initiation of the proceeding, composition of the tribunal, the arbitral proceeding, nature of the award, and the cost of arbitration.

Despite this, nothing is provided on the currently emerging dispute resolution mechanism related to an online commercial dispute. In fact, at the time when ACCSA adopted its arbitral rules, electronic commerce was not recognized under the Ethiopian legal framework. Hence, the institution may not be blamed for not adopting online dispute resolution. Yet, as a leading institution that works on commercial disputes, and to cope with the international practices, the institution should take an initiative to incorporate online dispute resolution to arbitral rules and extend its service to those concerned stakeholders that brought online commercial disputes to their institution. This would serve a pivotal role in enhancing electronic commerce as the existence of a proper dispute resolution mechanism increases the confidence of businesspeople and consumers.

7. THE NEED FOR ONLINE DISPUTE RESOLUTION UNDER THE ETHIOPIAN FRAMEWORK

As it has been mentioned, Ethiopia has taken a prominent measure that facilitates electronic commerce. The adoption of electronic signature proclamation, digital strategy 2025, and electronic transaction proclamation would significantly enhance electronic commerce as it increases the

¹⁴⁴Tefera Eshetu & Mulgugeta Getu, Addis Ababa Chamber of Commerce and Sectoral Association Arbitration Centre, <https://www.abysinnialaw.com/study-on-line/item/339-addis-ababa-chamber-commerce-and-sectorial-association-arbitration-center> <last visited Jun 4, 2021>

¹⁴⁵Addis Ababa Chamber of Commerce and Sectoral Association [http://www.addis-chamberr.com/file/ARBITRATION/20131126/Arbitration Rules \(English Version\).pdf](http://www.addis-chamberr.com/file/ARBITRATION/20131126/Arbitration%20Rules%20(English%20Version).pdf) <last visited Apr 25, 2021>

confidence of businesspeople and consumers. Further, the Covid-19 pandemic has necessitated online transactions (electronic commerce) as it paves the way for tackling the pandemic. Again, Ethiopia has taken its journey towards the partial privatization of public enterprise under the government monopoly. Not only this, Ethiopia has taken a strong position toward its accession to the world trade organization. All this would inevitably increase cross-border commercial transactions.

With the advent of the internet, there is a paradigm shift from physical to virtual environments whereby a commercial transaction is accelerated by information communication and technology. If there is a commercial transaction, the dispute is inevitable, as it is part of life. As mentioned above, online dispute resolution is introduced to redress online commercial disputes as the traditional dispute resolution mechanism may not apply to solving online commercial disputes. The resolution of online commercial disputes in court is often impractical because it is necessary to participate in complicated, expensive, and lengthy offline procedures.¹⁴⁶ This constraint contributes to the lack of trust that deters many potential consumers from purchasing online, as the judicial forum for enforcing their legal entitlements is unreachable. Consequently, the ability of the internet to support and expand international commerce may be curtailed to some extent by the lack of effective methods for simply resolving international disputes, quickly, and at a low cost.¹⁴⁷ Accordingly, it is believed that efficient mechanisms to resolve online disputes will impact the development of E-commerce. The tools with the potential for achieving this are ADR and ICT.¹⁴⁸

The development and adoption of ODR platforms may result in several other legal and policy challenges.¹⁴⁹ These challenges may include adhering to existing legal structure, building public trust in ODR mechanisms, and developing a system, which can improve and evolve with changes in technology and society.¹⁵⁰ To develop a robust ODR ecosystem, ODR frameworks should be based on certain key principles that will mitigate these

¹⁴⁶ Pablo Cortés, *supra* note 3, P74.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ Deepika Kinhal, Tarika Jain, Vaidehi Misra & Aditya Ranjan, *supra* note 40, P29

¹⁵⁰ *Ibid.*

challenges and steer the dispute resolution ecosystem into the future. This is equally true for both court-annexed and private platforms. Accordingly, the international experiences show a need for a legal and institutional framework for online commercial disputes as traditional dispute resolution is not feasible. Though online dispute resolution has emerged with electronic commerce, world communities have started to use online dispute resolution for family, employment, tax, and other related disputes.¹⁵¹ Further, the COVID-19 pandemic has necessitated online dispute resolution for all types of disputes as it plays a prominent role in tackling the pandemic.

Coming back to Ethiopia, the paper pleads for the adoption of online dispute resolution for electronic commerce disputes, as the electronic infrastructure may not allow for using online disputes for all types of disputes. The existing legal framework of Ethiopia is devoid of the concepts of online dispute resolution, which is the best and sometimes only option to resolve online commercial disputes. Besides, the existing reality shows that approaching online commercial disputes is challenging as traditional dispute settlement is not suitable for such disputes.¹⁵² Accordingly, there is a pressing need for Ethiopia to adopt the legal and institutional framework for online dispute resolution.

First, the mere adoption of the legal framework that regulates electronic commerce may not promote electronic commerce. In default of dispute resolution mechanism, the real potential of electronic commerce may not be realized.¹⁵³ To ensure that all parties concerned will feel they can safely participate in E-commerce transactions; E-disputes must be resolved adequately as uncertainty over the legal framework may inhibit both consumers from purchasing products or services over the internet and companies from entering the electronic marketplace.¹⁵⁴ As ODR developed alongside E-commerce, it seemed natural that related disputes would be

¹⁵¹ *Id*, Pp 23-25.

¹⁵² Interview with Ebba Abebe, Federal Public Prosecutor Working on the Online Transaction and Financial Crime Investigation, on June 24, 2021

¹⁵³ Pablo Cortés, *supra* note 3, P74

¹⁵⁴ Marc Wilikens, Around Vahrenwald & Philip Morris, Out-of-court Dispute Settlement Systems for E-commerce (European Communities) (2000), http://vahrenwald.eu/wp-content/uploads/2017/01/98.2000.JRC_EUR-19644-EN.pdf <last visited Apr 25, 2021>

resolved online for transactions originating in cyberspace.¹⁵⁵ As dispute is inevitable, there should be a Proper Avenue to settle online disputes to promote the development of the E-commerce industry and enhance consumers' confidence in E-commerce. If there is a proper legal and institutional framework for online disputes, it would increase the confidence of the businessperson and consumers that in turn enhances the implementation of electronic commerce.

In default of legal and institutional framework for redressing online commercial disputes, conducting electronic commerce would be meaningless as the traditional dispute resolution that requires the physical presence of the disputants is the only option for resolving such disputes. This would defeat the very purpose of legalizing electronic commerce, and it may not hit its targets in tackling the Covid-19 pandemic. In a nutshell, the need for an appropriate legal framework that is supportive of and conducive to E-commerce practice has been identified as a prerequisite for the growth of E-commerce in general and ODR in particular.¹⁵⁶ The proliferation of ICT applications and services, especially ODR schemes, requires the existence of a solid matrix of supporting laws and regulations.¹⁵⁷

Furthermore, the mere existence of a legal framework may not guarantee the implementation of online dispute resolution. The presence of a robust institution that supervises and works towards the implementation of online dispute resolution is mandatory. This may be either through integrating the online dispute resolution scheme into the court structure, establishing an independent tribunal, or establishing an independent institution that delivers online dispute resolution services. The only institution that works on the commercial dispute is the Addis Ababa chamber of commerce and sectoral association. This institution can extend its service to online dispute resolution. Hence, the institution must integrate rules that govern online commercial disputes and deliver its normal services and online dispute resolution.

¹⁵⁵ Henry H. Perritt, *Dispute Resolution in Electronic Network Communities*, 38 Villanova Law Review (1993), 349

¹⁵⁶ UNCTAD, 'E-commerce and Development Report 2003' 'Online Dispute Resolution : E-commerce and Beyond'' www.unctad.org/en/docs/ecdr2003_en.pdf <last visited Jun 15, 2021>

¹⁵⁷ Mohamed S. Abdel Wahab, Online Dispute Resolution for Africa <https://www.mediate.com/pdf/wahab1.pdf> <last visited May 20, 2021>

Therefore, under the auspices of this institution, it is easy to facilitate the avenue for handling online disputes.

Second, it is clear that the African continent in general and Ethiopia are still in the initial stages of accepting online dispute resolution as a viable model for resolving disputes that arise online. It is becoming increasingly clear that such a system's development is necessary for us to compete at a global level.¹⁵⁸ It is also essential for facilitating cross-border trade, which is necessary for the further economic growth of Ethiopia.¹⁵⁹

Third, access to justice is a constitutionally recognized right in Ethiopia. Access to justice is related to the growth of consumer protection and is noted in the United Nations Guidelines for Consumer Protection as Governments should establish or maintain legal and administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.¹⁶⁰ Hence since Ethiopia has recognized electronic transactions, there must be easy access for everyone involved in any dispute and redress mechanisms to provide effective remedies at a reasonable cost.¹⁶¹ One of the main advantages of ODR is access to justice for all small disputes, especially when the parties are away from each other and over long distances, or even in different countries. As a country, once we recognize the electronic transaction, we should deliver online justice. We need to have a legal and institutional framework that works on online dispute resolution to this effect.

Finally, United Nations Conference on Trade and Development (UNCTAD) has provided some recommendations for Developing countries on the usefulness of ODR.¹⁶² Although ODR is still in its infancy or non-existent in most developing countries, it has the potential to grow and provide fair and inexpensive adjudication of disputes arising out of online transactions.

¹⁵⁸ Robin Cupido, *supra* note 5, at 187

¹⁵⁹ *Ibid.*

¹⁶⁰ Fahimeh Abedi, *Legal Issues Arising in Online Dispute Resolution Systems*, Journal of Organizational Behaviour Research (2019), Vol.4,p206

¹⁶¹ *Ibid.*

¹⁶² E-commerce and Development Report (United Nations Conference on Trade and Development) (2003), https://unctad.org/system/files/official-document/ccdr2003_en.pdf <last visited Jun 3, 2021>

UNCTAD provides that developing countries wishing to promote and facilitate ODR as an alternative to national litigation can consider the following recommendations. First, developing countries should ensure that national legislation recognizes the validity and enforceability of electronic transactions.¹⁶³ Second, developing countries should ensure that national legislation facilitates the use of out-of-court dispute settlement schemes. Third, developing countries should consider acceding to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards¹⁶⁴, which allows the enforcement of foreign arbitral awards.¹⁶⁵ In light of UNCATD recommendations, Ethiopia has already recognized electronic transactions' validity and enforceability in 2020.¹⁶⁶ Besides, Ethiopia ratified the New York Convention on February 13, 2020.¹⁶⁷ Further, Ethiopia has already recognized the use of out-of-court dispute settlement schemes. Hence, it is the right time for Ethiopia to adopt ODR as all necessary recommendations that promote and facilitate ODR as an alternative to national litigation are fulfilled.

8. CONCLUDING REMARKS

With the advent of the internet, the traditional business trend that requires the physical presence of the businessperson is replaced with electronic commerce. These change the way we interact with each other, which in turn is changing the way we resolve our disputes. To this effect, online dispute resolution is emerged as the best option to resolve online commercial disputes. Online dispute resolution (ODR) is the study of how to use technology to help parties resolve their disputes effectively. ODR is understood to be any dispute resolution process, mainly carried out with the assistance of the internet and ICT. It is a solution that can assist the parties in resolving the dispute in a simple, fast, flexible, and secure manner, without the need for physical

¹⁶³ *Ibid.*

¹⁶⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf> <last visited Jun 6, 2021>

¹⁶⁵ E-commerce and Development Report (United Nations Conference on Trade and Development) (2003), https://unctad.org/system/files/official-document/ecdr2003_en.pdf (last visited Jun 3, 2021)

¹⁶⁶ *Ibid.*

¹⁶⁷ Ethiopia Ratifies the New York Convention, [https://mehrteableul.com/index.php/insights/news-and-updates/item/32-ethiopia-ratifies-the-new-york-convention#:~:text=](https://mehrteableul.com/index.php/insights/news-and-updates/item/32-ethiopia-ratifies-the-new-york-convention#:~:text= <last visited Jun 5, 2021 >)

presence at a meeting or hearing, which includes but is not limited to online negotiation, online mediation, online arbitration, Med-Arb, neutral evaluation mini-trials, and others.

ODR has several advantages. Cost-effective, time saving, the procedure's convenience, appropriateness, and control over the outcomes are the most significant advantages of ODR. That means ODR is timely, inexpensive, confidential, transparent, accessible, and more flexible than ADR and traditional court systems. As a result, ODR has essential potential to increase consumer access to justice. In this regard, ODR may be an alternative to lack of access to justice rather than an alternative to courts. However, ODR also has several pitfalls, such as the lack of face-to-face communications, technological burdens, legal restrictions, and so on. To release the full potential of ODR, a system must be designed in the best possible manner to reduce the number of difficulties and exploit all the advantages of ODR. Accordingly, various initiatives have been made to adopt ODR in a way that compromises such challenges. The steps taken by UNICITRAL, UNCTAD, European Union, and countries like America could be mentioned as an example.

Further, various international arbitral rules were reformed to accommodate the issues of online dispute resolution. The steps taken by the Hong Kong International Arbitration Centre and the China International Economic and Trade Arbitration Commission can be mentioned as an example. Overall, ODR has been accepted by the world communities as the best and only option for resolving online commercial disputes as the traditional dispute settlement mechanism is unsuitable for such disputes.

Coming to the context of Ethiopia, many attempts are made to facilitate electronic commerce. The adoption of electronic signature proclamation, electronic transaction proclamation, and digital strategy 2025 are prominent measures toward recognizing online commercial transactions or electronic commerce. One of the challenges that the world community faces with the adoption of electronic commerce is dispute settlement, as the traditional dispute settlement mechanism is appropriate for online commercial disputes. That is why online dispute resolution has emerged.

The existing legal framework of Ethiopia has no proper room for online dispute resolution. Although ODR has constitutional backup, the prominent legal frameworks like Electronic transaction proclamation, Federal arbitration, and conciliation working procedure proclamation have no online dispute resolution rules. Further, the Addis Ababa chamber of commerce and sectorial arbitration, the only institution working on commercial arbitration, has no rules for online dispute resolution. Hence, as traditional dispute resolution is unsuitable for online commercial disputes, there is a pressing need for Ethiopia to ODR. First, the mere adoption of the legal framework that regulates electronic commerce may not promote electronic commerce. As dispute is inevitable, there should be a Proper Avenue to settle online disputes to encourage the development of the E-commerce industry and enhance consumers' confidence in E-commerce. Second, the adoption of ODR is necessary for competing at a global level and the facilitation of cross-border trade. Finally, ODR has the potential to ensure access to justice, which is a constitutionally guaranteed right under the FDRE constitution. Based on the conclusion mentioned above, the followings are my recommendations:

- The Ethiopian government should revisit its legal framework and adopt public and private platforms for online dispute resolution. This could either be via incorporation into the existing framework or separate legislation.
- Addis Ababa chamber of commerce and sectorial association should adopt online dispute resolution schemes by integrating them into its arbitral rules.
- Awareness should be created on the usefulness of ODR in resolving online commercial disputes so that other private organizations or institutions would facilitate the private platforms for online dispute resolution.