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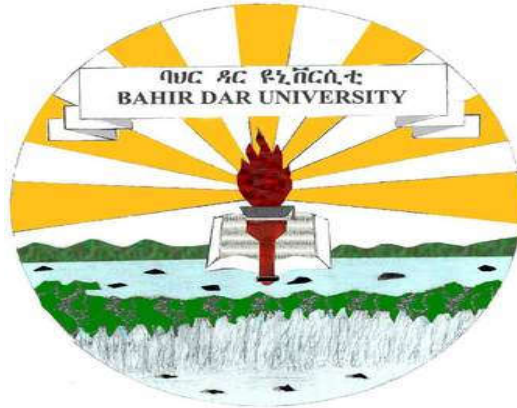
# The Judicial Protection of Consumers in Ethiopia; the Case of the Amhara National Regional State

Yosef Workelule

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**THE JUDICIAL PROTECTION OF CONSUMERS IN ETHIOPIA; THE  
CASE OF THE AMHARA NATIONAL REGIONAL STATE**

**BY**

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**July, 2020**

**THE JUDICIAL PROTECTION OF CONSUMERS IN ETHIOPIA; THE  
CASE OF THE AMHARA NATIONAL REGIONAL STATE**

**Thesis**

Submitted in Partial Fulfillment of the Requirements for the Degree of Master  
of Laws (LLM) in Business and Corporate law program at the School of Law,  
Bahir Dar University

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### Thesis approval page

The thesis titled “The Judicial Protection of Consumers in Ethiopia; The case of the Amhara National Regional State” by Mr. Yosef Workelule Tewabe is approved for the degree of Master of Laws (LLM)

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## **Declarations**

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can evoke criminal sanction from the State and civil action from the sources, which have not been properly cited or acknowledged.

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**Date**

## **Acknowledgment**

Before all, I would like to thank the almighty God, with his mother, the Virgin Mary for giving me an additional year in my age and strengthening to accomplish my masters' studies. Secondly, this work would not have seen the light of the day had not there been the support of many persons who involved at different stages of the study for which I am highly grateful. Primarily, I would like to express my heartfelt thanks to my advisor Associate Professor Solomon Abay (PhD) for his unreserved professional guidance, constructive advice, sharing his deep knowledge generously; critical and fruitful comments, which made the work, take its present shape. Indeed, my special thanks also go to my friends Mitku Muluye, Kidanemariam Abate and Getachew Anteneh for all the material and moral support they extended to me throughout my study time. I am also grateful to Habtamu Simachew (PhD) and Sonja John (PhD) for their constructive advice and comments at the proposal stage of my study, and to Eilidh and Tom for their support in editing the language errors of this work. And, last but not least, my deepest gratitude extends to all the interviewees of this study for their time and kindness.

## **Dedication**

This work is dedicated to my mother *Yeshalem Tewabe /Etalem/*. You are my special forever, may God bless your future times.

## **ACRONYMS**

ADR; - Amicable Dispute Resolution

ANRS; - The Amhara National Regional State

CISG; - United Nations Convention on Contracts for the International Sale of Goods

CPC; - Civil Procedure Code

EU; - European Union

FDRE; - The Federal Democratic Republic of Ethiopia

HPR; - The House of Peoples Representatives

ICCPR; - International Convention on Civil and Political Rights

ICESCR; - International Convention on Economic, Social and Cultural Rights

NGOs; - Non-governmental Organizations

OECD; - Organization for Economic Co-operation and Development

PIL; - Private International Law

TCCPA; - Trade Competition and Consumers Protection Authority

TCCPP; - The Trade Competition and Consumer Protection Proclamation

TPCPA; - Trade Practice and Consumers Protection Authority

UDHR; - Universal Declaration of Human Rights

UN; - United Nation

UNCTAD; - United Nation Conference on Trade and Development

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## Abstract

*Judicial protection is a crucial way of protecting citizen's fundamental rights. Judicial protection has both substantive and procedural aspects to it. First, the recognition of a right to judicial protection in legislation and providing remedies for people whose rights have been violated are the substantive elements of judicial protection. The procedural aspect of judicial protection is concerned with the establishment of pathways and a competent process that enables people to benefit from the remedies available in the existing pathways. Besides, consumer rights are also one aspect of citizens' fundamental rights in any given country, which requires a robust judicial protection arrangement. The main focus of this study is to analyse the state of consumers' judicial protection arrangements in the Amhara National Regional State (ANRS), which is one of the regional administrations of Ethiopia. Methodologically, in carrying out qualitative research, the researcher has employed both doctrinal and empirical methods. Subsequently, both primary and secondary data are employed. In doing so, this research has analysed the stipulations in the FDRE constitution; the ANRS revised constitution; the 1960 civil code and other pertinent proclamations, about the consumers' judicial protection arrangements in the ANRS region. The review of the substantive and procedural aspects of the available consumers' judicial protection arrangements has exposed several shortcomings in both sides. The substantive aspect of the judicial framework of the region has some limitation in the sense that the right to judicial protection right for consumers is explicitly stated as a right but the existing rules regulating this area are inadequate. The pathways for consumers to get judicial protection in the region are also fraught with competency problems and practical challenges in terms of ensuring fair, cheap and effective access to justice. Based on those findings, the researcher has provided specific recommendations for each responsible organ to resolve these incompetence and practical problems of the available arrangements for consumers in accessing judicial protection through structural changes or transformation measures within the existing framework without making new legislation to this effect.*

# CHAPTER ONE

## 1. INTRODUCTION

### 1.1. BACKGROUND

Theoretically, all Ethiopian citizens should be equal before the law as the current legal regime guarantees equal for all without any discrimination. To that end, the country's legislations and international human right instruments, including the Ethiopian constitution, clearly recognise equality for all citizens before the law.<sup>1</sup> However, the ability of citizens to exercise these supposedly equal right is in practice limited. There are various difficulties that citizen's face in their attempt to enforce their rights under the present legal framework. These practical difficulties may include economic, social, cultural, psychological or political constraints.<sup>2</sup> This assertion is also equally relevant to the citizens' right to judicial protection, in particular, the consumers' rights are the main concerns of this study. The difficulties in accessing judicial protection is the constant concern for Ethiopians, whether in civil disputes, family law, or small claims courts, the problems litigants face seem omnipresent. Literature in the area<sup>3</sup> indicates that economic constraints, long delays, rising costs, high legal fees and complex procedures are among the common problems identified in the system as factors that discourage complainants from bringing their case before the courts, or factors which cause them to give up along the way. Likewise, consumer also face similar obstacles in enforcing their rights.<sup>4</sup>

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<sup>1</sup> See UN, 'The Right to Equality and Non-Discrimination in the Administration of Justice', In *The UN Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* pp. 631-679. Available at [www.un.org/ruleoflaw/files/training9chapter13en.pdf](http://www.un.org/ruleoflaw/files/training9chapter13en.pdf)

<sup>2</sup> See Ibid p. 632.

<sup>3</sup> See Hodges, the European Approach to Justice and Redress. *Can Supreme Court Law Rev.* (2<sup>nd</sup> edition) Vol. 53, No.1, 2001., Pietro S. Toggia, et al, *Access to Justice in Ethiopia: Towards An Inventory of Issues*, Centre for Human Rights Addis Ababa University, ISBN: 978-99944-969-2-1, @2014., Yulia Vladimirovna Samovich, 'An Individual's Right to Judicial Protection - Whether it Protects', *Middle-East Journal of Scientific Research*, Vol. 14, No.12, 2013, PP. 1613-1617, and others related literatures.

<sup>4</sup> See Loos, M.B.M., 'Individual private enforcement of consumer rights in civil courts in Europe', in: R. Brownsword et al. (ed.), *The Foundations of European Private Law*, Oxford/Portland: Hart, 2011, p. 113-126.[Here in after Loos, M.B.M., 'Individual private enforcement of consumer rights in civil courts in Europe']

Today, there are many circumstances where people buy goods or services. For the purpose of this thesis, the term “customer” describes a person who engages in the daily transaction of goods and services for their own personal or dependents’ consumption. Those who are transacting for reselling purposes are not within the scope of “consumer”.<sup>5</sup> When discussing the topic on consumers, we should also consider the business persons, who are goods and/or services providers to the consumers. According to the theory of the firm, the primary goal of the business persons is to maximise their daily profit.<sup>6</sup> Sometimes, in an overzealous attempt to maximise profit, some business persons may engage in illegal activities. In this pure liberal or free market economic theory, some stakeholders in business may act freely and make decisions for their own interest. The market (demand and supply) will not decide everything and regulations may not always dictate a person’s behaviour.<sup>7</sup> There are many barriers, external as well as human factors which require the intervention of regulators to correct market failures that may arise due to those externalities, and barriers to the free market idea.

Consumer protection law is one of the legal, regulatory arrangements that are preferred by most of countries, including Ethiopia, to reduce the damages that may be created in the above circumstances.<sup>8</sup> The role of the consumer protection laws is to protect consumers from any illegal or unfair activities of the business persons in their day-to-day dealings. It guarantees the rights of consumers and it warns business persons not to infringe these rights failing which they may face potential sanctions.<sup>9</sup> In addition to stipulating and recognising their rights, consumer laws have a role in specifying the available remedies for consumers if the rights have been infringed by business persons and they are refuse to rectify the breach. The laws allow consumers to bring their claims to the regular courts, special authority, arbitration, alternative dispute resolutions (ADR)/, small claim courts or other judicial arrangements. Most of the writers on consumer law and access to justice agreed that access to justice is an essential requirement to uphold consumers’ rights protection within a given jurisdiction.<sup>10</sup> Without having robust, guaranteed access to justice, consumers’ rights cannot be protected at all.

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<sup>5</sup> We couldn’t find a unanimously accepted definition for consumers. The term consumer is defined by different literatures, dictionaries and legislations in various ways.

<sup>6</sup>Spulberg Daniel F., *the Theory of the Firm: Microeconomics with Endogenous Entrepreneurs, Firms, Markets, and Organizations*, Cambridge University Press, 2009.

<sup>7</sup> Ibid

<sup>8</sup> See Loos, M.B.M., *Individual private enforcement of consumer rights in civil courts in Europe*.

<sup>9</sup> Ibid

<sup>10</sup> See: Benöhr, I., ‘Consumers’ access to justice and procedural rights’, excerpted from *EU Consumer Law and Human Rights*, Oxford University Press, 2013.

However in practice, consumers often hesitate to go to court. The reasons being they encounter numerous discouraging difficulties, as many studies, conferences and documents indicate when considering the problems of consumer judicial protection.<sup>11</sup> Studies surrounding the Ethiopian consumers' protection law enforcement also considered the regular court arrangements for the consumers' dispute in the region as one of the main challenges of the consumers' protection law enforcement in the Ethiopia.<sup>12</sup> In other jurisdictions however, measures have been proposed by the government to eliminate problem in the consumers' judicial protection arrangements, for instance legal aid programs, legal expenses insurance, small claims courts, new proceedings, such as class actions and alternative dispute resolution mechanisms – all of which may help improve access to justice for the general public and for consumers specifically. Nowadays, there are many initiatives and discussions on identifying the most viable solution to enhance consumers' redress.<sup>13</sup>

In Ethiopia, particularly in the Amhara National Regional State (ANRS), there are many external factors that require regulatory intervention in order to correct the market failures and to better protect consumers. One of the primary reasons for the enactment of the Trade Competition and Consumers Protection Proclamation (TCCPP) No. 813/2013 is the existence of unfair practices by business persons in the market and the need to protect consumers from such unfair behaviours of the business persons.<sup>14</sup> Looking ahead, with the new administration of Ethiopia, there are special concerns in particular with private sectors, that consumers will face increasing difficulties hence requiring appropriate measures.<sup>15</sup> Like in other jurisdictions in Ethiopia, TCCPP also guarantees various rights for consumers in a separate section and it also addresses the institutional arrangements for consumers claim as of right. In order to eliminate the difficulties that consumers face in exercising their right to judicial protection, this proclamation also establishes an independent tribunal for the consumers' dispute. According to the TCCPP of Ethiopia, the competition and consumer protection authority has a first instance jurisdiction to adjudicate cases and to give a binding decision on all

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11 See Loos, M.B.M., *Individual private enforcement of consumer rights in civil courts in Europe* p. 113-126.

12 See Tessema Elias, Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia, *MIZAN LAW REVIEW*, Vol. 9, No.1, 2015, pp. 83-107. See also Dessalegn Adera, *The Legal and Institutional Framework for Consumer Protection in Ethiopia*, Addis Ababa University, School of Law, 2011, [unpublished available at law library].

<sup>13</sup> See Ibid Loos, M.B.M.

14 See the preamble of the Trade competition and consumers protection proclamation, 2012, *Federal Negarit Gazzeta*, proclamation No. 813/2013, 20<sup>th</sup> year, No.28. [Here in after the TCCPP].

15 The current Ethiopian government approaches in privatization of public enterprises and liberalization of different trading sectors can be mentioned as a supportive evidence for this assertion of the researcher.

consumers' claims. However, the jurisdiction of the tribunal is limited only to consumers who live in the two following federal cities; Addis Abeba and Diredawa.<sup>16</sup> The special tribunal has no power in consumer claims that may arise in the other nine federal units of Ethiopia including the ANRS. Furthermore, the proclamation gives discretion for the regional councils to establish special consumer court as they find necessary.<sup>17</sup> The regional council of ANRS has not yet decided to set up a court to this effect. Therefore, at the time of writing, the only options for consumers to bring a claim in the ANRS jurisdiction is to the regular courts in accordance with their legal hierarchy (from the social courts up to federal cessation arrangements). Tesema Elias, in his study on *Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia*, commented on the approach followed by the TCCPP.<sup>18</sup> He argued that this approach is totally against the intent of the FDRE Constitution, as it disregards the distribution of power between the regional states and the federal government. In his understanding, from the outset, the federal government has no power in enacting laws that govern consumers who live within the regional state jurisdiction. Furthermore, he indicated the non-existence of the consumers' tribunal at the regional states level is a core challenge in ensuring the enforcement of consumer protection laws in Ethiopia. Tesema Elias and other writers in the area of consumers protection in Ethiopia, even if they incidentally covered the consumer protection problems in the access to justice, their main aim is to identify the gaps and challenges in enforcing consumer protection laws in general. Even if they touched on consumers' access to justice in their studies, it was only for the purpose of filling their primary objectives. They have not elaborated the issue extensively. They did not go further to deal in details the consumers' right to judicial protection and what arrangements are available to ensure that, and consumers' difficulties in exercising their right to judicial protection. As a whole, consumers' judicial protection was not the primary concern of those writers. In contrast, the primary concern of this study is to explore in detail the available arrangements for the Ethiopian consumers to get judicial protection; to identify the consumers' difficulties in exercising their right to judicial protection in the ANRS; and to find the best solutions to eliminate these prevailing problems. It focuses only on the judicial aspect of the consumers' right to judicial protection.

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16 See the TCCPP Art. 32(1)C).

17 See *ibid.* Art 34.

18 See *Supra* Note 2

## 1.2. STATEMENT OF THE PROBLEM

The right to judicial protection should be the most basic right for individuals. It is the main instrument for exercising and protecting other rights. The recognition of a right without having a workable judicial protection arrangement is like having a gaming horse without a field. Judicial protection right is all about enhancing the capacity of individuals to use justice institutions to obtain solutions to their problems without difficulties. Including the UN consumers access to justice guideline, many publications stipulate the different criteria in measuring consumers' access to justice. A robust judicial protection arrangement is one of the most important tools to protect people's rights, in particular consumers' rights

In today's world, there are abundant consumer protection laws to close the gaps and problems caused by the free market. Enacting consumer protection laws without having a well-established institutional arrangement will not help improve access to justice. Any legal framework needs to be backed by a well-framed, robust justice system. For that reason, a citizen's right to judicial protection has been recognized by the numerous countries, domestic legal systems and in the international human right instruments as a fundamental human right. Scholars of consumer protection law also identify some viable solutions to improve access to justice from a consumer perspective, after considering the pros and cons of these alternative solutions.

For the same reason, Ethiopia has enacted consumer protection laws since 2010. The current TCCPP No. 813/2013 sets out the different rights of consumers and the procedures to address their claims. Furthermore, the FDRE Constitution and other international instruments that are ratified by Ethiopia also recognised the citizens' right to judicial protection. The TCCPP has given the responsibility to administer and control the implementation of the proclamation, and a special tribunal is established to adjudicate consumers related cases. Unlike in the context of the competition issues, the proclamation fully empowered the federal units' trade bureaus to administer consumer issues in their respective jurisdiction, and their regular courts to adjudicate consumer cases unless the regional state council established a special tribunal for this. Even though the ANRS Council has empowered the Trade and Market Development Bureau of the region to establish an administrative tribunal for the consumer disputes, it still does not have the final say to this end. However, Casual observation regarding the consumer judicial protection in Ethiopia, in particular in the ANRS, reveals that despite the government effort in the past years in ensuring the better protection of consumer rights protection, it is far

from being satisfactorily. Violation of consumers' right is the daily characteristic of business in the region and reverses to this the consumers' initiative in challenging the abusive practices is very less. For instance, in the 2011/2012 E.C budgeting year only 15 cases are entertained by the regular judicial arrangement of the ANRS. Comparable to the difficulties consumers face in exercising their right in the actual market, entertaining only 15 cases in a year can oblige us to questioning the state of the country judicial arrangement in the region. In addition, according to the different scholarly work in the area of consumers' justice, the traditional regular courts<sup>19</sup> arrangement is the most out-dated one and it is fraught with difficulties. In order to cope with the current developments in the area of consumer justice, countries should revisit the existing laws, identify the gaps and update the laws and legal system accordingly. This is not an option for Ethiopia rather a necessity. With the new difficulties that can be created by the current government, private sectors focused economic policies the pre-existing problems of consumers' justice will highly affect the daily life of consumers and it can create a substantial economic crisis both at the national and regional levels unless parallel solutions are envisaged for the difficulties. By taking into consideration these his personal assessment on the current situation of consumers response to the business persons unfair practices and the possible risk they may face the researcher in this study analysed the consumers' judicial protection arrangement in Ethiopia, the case of the ANRS.

### **1.3. RESEARCH QUESTIONS**

#### **1.3.1. Main Question**

What are the available judicial protection arrangements, and the practical difficulties consumers' face in exercising their judicial protection rights in the Amhara National Regional State ("ANRS")?

#### **1.3.2. Specific Questions**

1. How is the state of the consumers' judicial protection arrangements in Ethiopia?
2. What are the practical problems consumers' experiences in exercising their judicial protection right in the ANRS?

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<sup>19</sup> The phrase traditional court arrangement here in this chapter is used to refer those regular courts that are supposed to adjudicate all cases both a civil and criminal matters. The Ethiopian regular court arrangements except some special bench experience can be mentioned as a best experience for this type of courts arrangement.



3. What possible measures should be taken to eliminate the adverse effect of the shortcomings, and to tackle the practical problems faced by consumers in judicial protection in Ethiopia?

## **1.4. OBJECTIVES OF THE STUDY**

### **1.4.1. General Objectives**

The central objective of the study is to critically examine the current state of consumers' judicial protection in Ethiopia and the difficulties Ethiopian consumers face both before and after taking their claims into the regular judicial arrangements of the ANRS and to identify the most viable solution among the available alternatives in the literatures.

### **1.4.2. Specific objectives**

1. Describing the state of the existing consumers' judicial protection arrangements in Ethiopia.
2. Identifying the difficulties Ethiopian consumers have been facing in the ANRS while or before taking their disputes under the regular judicial arrangements in the region.
3. Pointing out the best available solution recommended in respective studies and applying them to with the difficulties faced by consumers in the region.
4. Pointing out the most viable solution among the available remedies suggested in the literature.

## **1.5. SIGNIFICANCE OF THE STUDY**

Consumers' judicial protection has always been a popular topic among academicians and practitioners in many countries. In Ethiopia, however, consumers' judicial protection issues receive little consideration or discussion from academicians. With respect to researchers' inquiry, there is no prior study on the legal and practical problems faced by consumers in trying to get judicial protection in Ethiopia, in particular, in ANRS. Hence, this study will have the following impact:

- It would identify the legal and practical difficulties of the consumers' access to the justice institution in the existing legal framework for consumers' justice in the

ANRS, it will therefore enable the law making bodies to identify the areas it needs to improve, amend or issue new laws.

- By pointing out the practical challenges, it would help courts and consumer authorities, including the trade and Market Development Bureaus, in identifying their gaps to change the way how they should operate and treat consumers.
- It would also motivate the academicians to give more focus and investigate more in this area.
- Finally, it would serve as an academic reference for researchers, students and others who have an interest to know about the consumers' access to justice in Ethiopia.

## **1.6. SCOPE OF THE STUDY**

The study focuses on the current state of the consumers' judicial protection arrangement in Ethiopia, identifying the practical difficulties faced by consumers in exercising their right to judicial protection in the ANRS. The federal competition and consumer protection tribunal court experience are included in this study for comparison purposes only, with alternative solutions provided in the literature. Experiences in other countries and similar experiences in Ethiopia are focused on only to describe their characteristics and make a comparison with the existing arrangement in the ANRS. All the practical analyses focus only on the ANRS.

## **1.7. RESEARCH METHODOLOGY AND METHODS**

### **1.7.1. Methodology and research Design**

In order to address the research questions framed, the objectives set and for the furtherance of the study, the researcher employed qualitative research methodology. Under the realm of qualitative research both doctrinal and empirical methods were used. The doctrinal approach of the study was an important instrument for the researcher in analysing legislations, policies, general principles, and literature to identify the legal frameworks of consumers' judicial protection and the prevalent problems in Ethiopia consumer justice through the power of reasoning. The empirical aspect of the study helped investigate the actual difficulties faced by consumers in the ANRS in taking their case before the available judicial arrangements in the region.

### **1.7.2. Data collection and sampling**

In this study, the researcher used both primary and secondary qualitative data. Primary data's are collected by using personal observations, semi-structured interviews (with court officials, judges, trade and market development bureau officials, attorneys, consumers), and by considering the relevant legislations. Secondary source of data's are included books, articles, journals, government reports and expert commentaries. The researcher also employed non-probability, (i.e. purposive sampling in identifying key informants of this study). Purposive sampling is proposed by the researcher because of its simplicity and the discretion it gives for the researcher in identifying pertinent informants to the particular issues. Since the primary goal of interviews is not to generalise the people's ideas or measuring variables in the study, while using their suggestions and recommendations in the reasoning's, the researcher's discretion does not affect the primary purpose of the study.

### **1.7.3. Data analysis**

After collecting both primary and secondary qualitative data, the researcher uses both descriptive and analytical qualitative data analysis methods. First, the researcher changed the collected data into an analysable structure in their relevancy. Secondly, the researcher assembled the data in order to put them in meaningful structure. Thirdly, based on the interpretation of the data, the researcher further developed the concepts and arrived at some general statements on the need to reform the existing framework for consumers' right to judicial protection arrangement in the ANRS. Finally, the researcher provided some conclusions and recommendations in relation to the primary goals of the study.

## **1.8. LIMITATION OF THE STUDY**

The researcher conducted the data collection by using both primary and secondary sources'. Conducting interviews was one of the instruments used by the researcher to collect reliable data directly from the persons who have deepened experience and knowledge in the area. To obtain sufficient data using these method require the cooperation from interviewees. The interviewees may lack sufficient time to be interviewed or they may be reluctant to cooperate with the researcher. To avoid these problems, the researcher has tried to conduct the interviews in informal ways by using all opportunities to educate them about the relevance of the study, by using tea breaks, or weekend and other open times to talk with them. The researcher also conducted some interviews through the telephone when time, place or budget is a constraint. The other

limitation of the study is also related with the time and financial constraint; due to this the researcher is obliged to limit his scope of study in the case of the ANRS. To mitigate these difficulties, the researcher has consulted literature, internet sources, reports from other countries' and other relevant authorities including professional recommendations. The Covid-19 outbreak presents another challenge to the researcher. Due to Covid-19, the researcher faced difficulties in finding volunteers to participate in interviews and had to adjust his timetable numerous times.

## **1.9. ORGANISATION OF THE RESEARCH**

This study has four chapters with supporting titles and/or sub-titles. Chapter one is the introductory chapter which includes the background of the study, the statement of the problem, research questions, objectives of the study, methodologies, scope of the study, the significance of the study, limitations of the study and organisation of the research paper. Under chapter two, the researcher incorporates the legal framework for consumers' judicial protection in Ethiopia and the Amhara National Regional State. In this chapter, all national, regional and international legal frameworks relating to the consumers' right to judicial protection are presented. It also includes the pathways of consumer to settle dispute in the ANRS. Under chapter three, the competency and practical problems of the consumers' judicial protection arrangements in the ANRS are discussed. In Chapter three, the relevant best solutions to mitigate prevailing problems are also incorporated as well as comments from legal experts, senior judges and consumer authority officials on this topic. Finally, Chapter four presents the conclusion and recommendations.

## CHAPTER TWO

### 2. THE SUBSTANTIVE AND PROCEDURAL LEGAL FRAMEWORKS OF THE CONSUMERS' JUDICIAL PROTECTION IN ETHIOPIA; THE CASE OF THE AMHARA NATIONAL REGIONAL STATE

#### 2.1. THE CONCEPT OF CONSUMERS AND JUDICIAL PROTECTION

##### 2.1.1. DEFINITION OF 'CONSUMER'

Before dealing with the issue of consumer judicial protection and other relevant issues for consumers, we first have to have a clear understanding of the concept of a 'consumer'. Having a clear definition of a consumer is imperative to understanding the consumer protection regime. Once the concept of a consumer is understood, both the regulatory bodies and the persons subject to the protection regime will have a clear understanding on who will be protected and who is responsible for that protection. Different countries' legislation and literature have been providing various definitions of 'consumer' depending on their understanding and the scope of the 'consumer' they wish to address.

When we look at the definitions provided by different countries' legislation and literature, there are discrepancies in terms of the scope and the focus in the definitions. Some definitions give primary focus in pointing out the nature of a consumer, whereas others may focus on the activities/transactions performed by the consumer. In some definitions, only natural persons are considered as a consumer, whilst in other definitions both legal and natural persons are treated as consumers as far as their transactions have similar characteristics. Some definitions characterise a buyer of goods and service for personal use as a consumer. Some others have also characterized both the purchasers and the end users within the scope of the consumer.

The Black's Law Dictionary defines a consumer as "a person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes"<sup>20</sup>. Cambridge Academic Content Dictionary defines a consumer as "a person who buys goods or services for their own

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20 B.A Garner; Black's Law Dictionary 8th Edition (St Paul Minnesota: West Publishing Co. Ltd.), p, 316, s.v. "Consumer"

use".<sup>21</sup> On the other hand, Business dictionary defined consumer as "a purchaser of a good or service in retail, or an end user, and not necessarily a purchaser, in the distribution chain of a good or service"<sup>22</sup>. Here, the Business dictionary in the first limb of the definition attempts to avoid the confusion of the term 'person' by replacing this with 'purchaser'. However, as we all know the term purchaser has equal applicability for both physical and legal persons, so this definition incorporates both physical and legal persons under the realm of consumer. Furthermore, the purchaser should make the transaction with the retailer. In the second limb of the definition, unlike the Cambridge Academic Content Dictionary, equal recognition is given to end users and purchasers of the product. When we look at definitions of consumer in literature, O' Grady defines a consumer as "the final or end user of all goods and services produced in an economy."<sup>23</sup> Tarr defines a consumer as "any person, natural or legal, to which goods, services or credit are supplied or sought to be supplied by another in the course of a business carried on by him."<sup>24</sup> Schiffman and Kanut, learned authors in their definition of consumer make a distinction between the personal consumer and the organizational consumer<sup>25</sup>. The personal consumer is the natural person, who buys goods and services for his own or/and family consumption. Whereas, organizational consumer is a private organization, which is buys goods or services to be able to pursue the objectives of such organizations.<sup>26</sup>

The foregoing definitions represent dictionaries and other business writer's on the idea of the concept of a consumer. The term consumer has also defined in legal statute. The Trade Practice and Consumer's Protection Proclamation No. 685/2010 ("**TPCPP**"), is the first proclamation specifically regulating consumers in Ethiopia. Like other countries' experience mentioned before, this proclamations also provided a definition of the term consumer. It has defined a consumer as "*a natural person who buys goods and services for his personal or family consumption, where the price is being paid by him or another person and not for manufacture or resale [Emphasis added]*."<sup>27</sup> The TCCPP has also provided a similar

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21 Definition of consumer from the Cambridge Academic Content Dictionary© Cambridge University Press, s.v, "Consumer" Available at <https://dictionary.cambridge.org/dictionary/english/consumer>

22 Read more: <http://www.businessdictionary.com/definition/consumer.html>

23 See O' Grady, Consumer Remedies, *Canadian Bar Review*, Vol. 60 No.4, 1982, p.549.

24 Tarr; Consumer Protection and the Market Place, *Otago Law Review*, Vol. 5, 1983, p.397

25 L.G Schiffman, L.L.Kanut, Consumer Behaviour Eaglewood Cliffs , *Pretice-Hall Inc*,1978 pp.4-8

26 Ibid

27 See Trade Practice and Consumers' Protection Proclamation, 2010, *Federal Negarit Gazeta*, Proclamation No. 685/2010, 16th Year, No. 49 Art 2(4)

definition.<sup>28</sup> Under the TCCPP, a consumer under Ethiopia law is characterized by two basic elements. One, the subjects of consumer protection law are only natural persons. Unlike some definitions discussed above, the TCCPP excludes juridical persons from the ambit of consumer and denies them all the entitlements of consumers. Hence, under the Ethiopian consumer protection regime there is not a concept of an institutional consumer. Two, these natural persons should buy goods or services only for personal or family consumption. If the goods and/or services are purchased for manufacturing or resale purposes, the purchaser will be automatically excluded from the scope of the consumer.

Unlike the Business dictionary definition, under Ethiopian law the goods and services can be bought from any seller. The focus of this definition is not on the seller of the product, it instead focuses on the nature of the buyer and the purpose of the transaction. The buyer must be a natural person and the purpose of the transaction should be for personal or family consumption. The term 'family' under this definition may create confusion in determining how widely the definition is to be interpreted. Some definitions, including the Business dictionary uses the end user instead of family members. Moreover, the person who makes the payment for the transaction is also avoided in defining the consumer. This may help us in interpreting family in the definition as an end user of the product. Unlike the Business Dictionary definition, in case of the TCCPP in order to consider an end user as a consumer there should be a prior sales transaction. The person should be a purchaser or a family member of the purchaser to be considered a consumer. Unlike under the Business dictionary definition, being an end user is a sufficient criterion without having a prior transaction.

On the whole, the term consumer has no unanimously accepted definition. Different definitions have been provided for consumers from different points of view. Countries' consumer protection policies and the understanding of scholars has their own impact in determining the definition of a 'consumer'. In order to implement the regulatory arrangements of consumer protection, the term consumer should be defined in a clear and precise way. As I stated before, most of the definitions of consumer revolve around three basic characterization elements. The first important element is determining the nature of the 'consumers' to be included in the definition, the boundary between natural persons and legal persons' protection. Secondly, the nature of the transaction should be considered. Thirdly, the purpose

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28 See Trade Competition and Consumers Protection proclamation, 2014, *Federal Negarit Gazeta*, Proclamation No. 813/2013, 20th Year, No. 28, Art 2(4) [Here in called after the TCCPP].

of the transaction should be addressed. After doing this, we can simply deal with different aspects of protection for those persons that are characterised as consumers.

### **2.1.2. THE CONCEPT OF THE JUDICIAL PROTECTION OF CONSUMERS'**

After characterising consumers, the next task of a given country's legal framework is creating a well-established consumer protection arrangement. The consumer protection arrangement may include giving constitutional recognition of consumers' rights, ratifying international treaties relating to consumers, enacting specific consumer protection laws specifying the consumers' rights and obligations, and creating well framed regulatory and judicial arrangements for the enforcement of consumer protection laws.

Judicial protection is the pillar for all legal arrangements regarding consumer protection. When we look at the very idea of human rights as a legal concept based on the principle of *ubi jus ibi remedium*, where there is a right, there should be a system of protection. According to this principle, the system itself should also incorporate into the law as a human right.<sup>29</sup>The right to judicial protection is a combination of the citizen's right to access to justice, the right to a fair trial and a right of execution of judgements.<sup>30</sup>The right to judicial protection right is both a substantive legal and procedural right. In order to analyse citizen's right to judicial protection we have to look both the substantive and procedural aspects.<sup>31</sup>First, it should be recognized as a citizen's right under the national legal system; in the constitution, and other legal instruments. In addition, there should be remedies for violation of the right. The procedural aspect should be considered when reviewing the feasibility of the right in potential situations. When assessing the procedural aspect of the citizen's right to judicial protection the availability of pathways, their competency and their practical status should be considered.

The notion of consumer rights has become popular and began to be used broadly by business literatures since it was raised by President J. F. Kennedy, in his address to the United States Congress. Following this address, consumer rights received focus from various international organizations, including the EU, OECD, and UN.<sup>32</sup>Nevertheless, until recent times there was

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29 See Yulia Vladimirovna Samovich, 'An Individual's Right to Judicial Protection - Whether it Protects', *Middle-East Journal of Scientific Research*, Vol. 14, No.12,2013, PP. 1613-1617.[here in after Yulia V. Samovich, An Individual's Right to Judicial Protection - Whether it Protects].

30 Ibid

31 Ibid

32 See United Nations Conference on Trade and Development, Trade and Development Board Trade and Development Commission Intergovernmental Group of Experts on Consumer Protection Law and Policy, Third



a problem with countries' legal systems in giving legal recognition to the consumer rights. Countries considered consumer rights as a moral right and there was a tendency to assimilate consumer rights with other social rights by prohibiting special focus for it.<sup>33</sup> However, in recent decades, especially after the UN guideline for consumer rights protection was issued, countries have given a special focus to consumer rights. Furthermore, consumer rights are considered as a basic human right of citizens because of its direct or indirect impact on their civil, economic or social rights.<sup>34</sup>

Yet this special focus for consumer rights protection is meaningless unless it is supported by well framed judicial protection arrangements. Similar to other citizens' rights, feasibility for the protection of consumer rights to be effective access to justice, a fair trial and enforcement of final judgements is required.<sup>35</sup> Both the substantive and procedural aspects of consumers' right to judicial protection should be presupposed in every aspect dealing with their rights and duties. In addition to specifying the consumers' rights in their legislation, countries should take into consideration how these rights will be enforced. The willingness of parties in the transaction, administrative measures of the regulator and the judicial arrangements for consumer rights protection are crucial things. If the judicial protection framework of the country's consumer rights regime is poorly established, its enforcement will also be very limited.<sup>36</sup> On the other hand, a state established, well-framed judicial protection arrangement (both in its legal and practical aspect) will allow for better enforcement of consumers' rights. So, the *ubi jus ibi remedium* principle is equally relevant for consumer rights as other human rights. If the legal system provides for the right, it should provide a corresponding enforcement system, especially the judicial protection arrangement.<sup>37</sup> This principle is equally applicable to all countries, irrespective of their location and level of development.

### **2.1.3. JUSTIFICATIONS FOR CONSUMERS' RIGHT SPECIAL FOCUS**

When we look at a different approach of discussing consumer rights, including the juridical protection of consumer rights, we may be faced with a question of 'why consumers?'. In the day to day life of people in the world, we all are consumers. No one can be outside of the

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session, Geneva, 9 and 10 July 2018, item 3 (d) of the provisional agenda, dispute resolution and redress, Note by the UNCTAD secretariat. [Here in after UNCTAD Conference Note]

33 Ibid

34 Ibid

35 See Geraint Howells & Rhoda James, 'Litigation In The Consumer Interest', *ILSA Journal of International & Comparative Law*, University of Sheffield, Vol. 9, No.1, 2002, pp. 2-56. [Here in after Howells and James, Litigation In The Consumer Interest]

36 See Ibid

37 See Supra Note 30.

scope of a consumer. Many individuals have been engaging in daily transactions with business persons for their own or their dependents' benefit. These daily transactions aren't always equally balanced between consumers and business persons. The business persons may directly or indirectly injure consumers' interests through unfair trade practices. Unfair practice of business persons against consumers should take into consideration in determining policies and making new legislations within a certain jurisdiction. To address this gap in the daily life of the people, countries have been enacting consumer protection laws. Under these consumer protection laws, consumers are granted a long list of rights, depending on the country of the issue.<sup>38</sup>

Ethiopia has also started to give special concern for consumers since 2010. The 2010 trade practice and consumer protection proclamation and the new TCCPP preambles stipulated that one of the primary justifications for the enactment of the two proclamations is the unfair acts of business persons against their clients, especially consumers. As many countries experience has shown, the first task of regulatory authorities in the process of protecting consumers is declaring the consumer's rights and duties in the legislation. Then in order to enforce these rights there should be a system of enforcement. One of the crucial ways to enforce consumer rights is establishing a well framed judicial protection arrangement which ensures that consumers have access to justice, a right to a fair trial and any remedies to compensate for a breach of the rights are effectively enforced.

In earlier times there was a tendency of assimilating consumer rights with other fundamental rights of citizens in a slimmed down version of a traditional model of justice. However, this tendency has now changed and countries, including Ethiopia, are starting to give special focus to the protection of the consumer rights for various justifications.<sup>39</sup> Consumers often have small claims, although the total harm caused by a particular problem to the consumers in group can be great. Even these small claims can have significant impact on consumers' welfare. Moreover, consumer problems are likely to be a greater irritant to consumer lives than their mere economic consequences might suggest, because of the distress and wasted

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38 See McGregor, S. L. T., *Conceptualizing consumer justice* [McGregor Monograph Series, No. 201703] Seabright, NS: McGregor Consulting Group. Retrieved from, <http://www.consultmcgregor.com>.

39 See UNCTAD, *Manual on Consumer Protection*, UNITED NATIONS PUBLICATION, 2016, pp. 2-10.[Here in after UNCTAD, Manual on Consumer Protection}

time the problems generate. This would have greater impact, especially when it is faced by disadvantaged groups, who haven't enough capacity to exercise their right to redress.<sup>40</sup>

Even for those that have economic capacity, consumer cases are unlikely to reach a judicial arrangement of a given state. Consumers might be discouraged by the time court proceedings take; the experience of the court process, multiple stage procedure and other related problems. Moreover, the bargaining power of consumers with the business persons is very limited. Business persons have more power than consumers due to their greater financial capacity and business knowledge. By using their marketing knowledge and better financial position, business persons can irritate consumers' interest to fight for protection of their rights. In particular, the knowledge gap of consumers in the business will affect their confidence to oppose the unfair acts of business persons, even where they have economic capacity.<sup>41</sup>

Due to these and other related problems, consumers may consider approaching the traders as the only remedy for their claims, and when the traders show a negative attitude towards being corrected for their mistakes, the fate of consumers will be accepting the challenge as it is. In order to reduce the adverse impact of these practical problems on consumers, we have to give special focus to raising awareness of the issue of protection of consumer rights in our policy making, legislation and researching activities. If we are assimilating the issues of consumer with other socioeconomic rights and minimize our special focus for it, the effect would be horrible. The powerful business persons would use the consumers as a means for their economic prosperity and in return the consumers will be in danger.

Not only are we relegating the issue of protection of consumer rights, even in systems where the issue received special focus, the technicalities of businesses are the main challenges of countries when enforcing the protection of consumer rights. The regulatory bodies and other authorities should work hard to keep up with the new innovations of business who seek to evade their legal and moral obligations.<sup>42</sup> Consumers should get special focus through: expanding consumers' and business person's education, legal aid arrangements, effective and efficient adjudication, effective enforcement of the adjudicative remedies, and researching

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40 See Ibid

41 See Ibid

42 See Dahiru Jafaru Usman, et al, 'An Inquiry on the Affordability of Legal Services and the Appropriateness of the Regular Courts for Consumer Redress in Nigeria', *Beijing Law Review*, Vol. 7, 2016, pp. 83-94. Available at <http://www.scirp.org/journal/blr>, <http://dx.doi.org/10.4236/blr.2016.72009>.

their practical problems and relevant solutions.<sup>43</sup> That is why the researcher has conducted this study by giving a special focus to consumers.

## **2.2. SUBSTANTIVE LEGISLATIVE BACKGROUNDS FOR JUDICIAL PROTECTION OF CONSUMERS IN ETHIOPIA**

As I mentioned before the judicial protection of consumers, first it should be preceded by the legislative declaration, as of a right. Declaration of consumers' judicial protection rights is starting with recognizing consumer rights as a legal right. Then, based on the principle of *ubi jus ibi remedium*, as I discussed before to make feasible the rights of a consumer the judicial protection systems should be built and this system should clearly incorporate in the legislations.<sup>44</sup> Countries that are building consumer protection arrangements may incorporate consumers' right of judicial protection in one way or another. The right of judicial protection for consumers may be included in the international legal instruments as a global obligation, or it may be stated in the constitution of a country or in different domestic laws. Before referring to the legislative framework of judicial protection right of consumers' in Ethiopia, it is important to identify those consumer rights which require a judicial protection as an introduction, then the judicial frameworks would discuss orderly.

### **2.2.1. CONSUMER PROTECTION RIGHTS UNDER ETHIOPIA LAW IN SHORT**

The FDRE Constitution under Art 41 and 43 constitutes the economic and development rights of citizens.<sup>45</sup> Under these stipulations, citizens have an equal right to engage in every aspect of the economic and developmental activities in the country without any discrimination. Art. 89 of the same statute also sets the government responsibility to work in creating equal opportunities for citizen engagement in the economic and development works in the country. In order to achieve this economic objective of the Constitution, there should be a legislative framework, which clearly states the conditions and standards of the citizens' economic rights protection. To this end, under Art 55 of the Constitution the federal government is empowered to enact laws that are important to one economic society in the country and those issues that may involve trans-boundary participatory. Following this constitutional legislative power the HPR has been enacting different federal laws that are concerned with the citizens' economic rights. One of the areas of laws that have a crucial role

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43 Ibid

44 See Yulia V. Samovich, *An Individual's Right to Judicial Protection - Whether it protects* cited above.

45 See Constitution of the Federal Democratic Republic of Ethiopia proclamation, (1994), *Federal Negarit Gazeta*, Proclamation No.1/1995, 1st Year, No.1[Here in after the FDRE Constitution].

in the protection of citizens' economic and developmental right is the existence of well framed trade competition and consumer protection legal framework. In Ethiopia, specific trade competition and consumer protection laws are a brief footnote in the country's legal history. Before 2003, both competition and consumer protection law were governed under the civil code provisions, commercial code provisions and other scattered laws. Proclamation No. 329/2003 was enacted to address only the trade competition issue in the country and in 2010 it was replaced by a new proclamation, which addressed both the consumer protection and competition subject matters. Proclamation No. 685/2010 was later replaced by the new trade competition and consumer protection proclamation No.813/2013. This proclamation has established various categories of consumer rights and business person's obligations under different sections of the proclamation. Most of these rights are directly mentioned in the section two of the proclamation. The rest are stated in the proclamation incidentally within the competition rules in the proclamation.

The free market policy of the country, protecting consumers from misleading activities of the business communities, prevent the proliferation of goods and services that endanger the health and well-being of consumers following the expansion of commercial activities, to ensure the safety and suitability to human health in a sustainable manner, to create a conducive environment in which consumers get goods and services equivalent to the price they pay and to ensure the implementation of the consumers' protection system are among the driving reasons for enacting the TCCPP.<sup>46</sup> These justifications are also mentioned again as an objective of the proclamation.<sup>47</sup> As a continuation to these justifications, the proclamation set out a long list detailing the rights of consumers and the obligations of business persons. As the researcher mentioned before, these consumer rights are stipulated in the proclamation both in a direct and an implicit way. The anti-competition regulatory provisions, under part two of the proclamation, have also an indirect effect on the protection of the consumer rights.<sup>48</sup> When business persons act in anti-competitive way, it doesn't affect only the business persons but also the consumers. Regulating anti-competitive practice of certain businesses has paramount importance for the protection of consumer rights. The abuse of dominant positions, anti-competitive practices, concerted practices and decisions, unfair competitions or mergers final destinations are damaging to consumers. The end result of business persons

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46 See the preambles of the TCCPP

47 See Ibid Art 3

48 See Ibid Art 5-13

undertaking one of these unfair activities is controlling the maximum number of consumers in the market over their competitors. In the middle those innocent consumers would be at risk. So, regulating competition has a great role in protecting consumer rights. When a certain legal framework obliges the business persons to act within a competitive legal framework, it can be considered as indirect protection of consumers.

When we look the direct stipulations of the TCCP on the consumer rights; part three of the proclamation is vested to this purpose.<sup>49</sup> Under Art 14 of the TCCPP, get sufficient information, free choice right, not obliged to buy in response of looked into the quality of the product and bargain the price, received humbly and respectfully by any business person, protected from such acts of the business person as an insult, threat, frustration and defamation; and claim compensation or related rights. In addition to these, provisions of the proclamation stipulated different rights of consumers in the form of business persons' obligations. According to those provisions, consumers have the right to see the display of prices of goods and services, labels of goods, receive receipts in respect of goods and services bought, request disclosure from the business, protection from false or misleading information, the right to report defected goods or services provided and request either replacement, refund of the price, or/and claim compensation. In addition, the proclamation also provides anti-hoarding rules to protect consumers when there is a scarcity. According to Art 21 of the proclamation, all these rights are essential rights of the consumer and they cannot be restricted, even by free contractual agreement.

The purpose of the consumer protections in the TCCPP is to protect the consumer from the unfair acts of business persons and prevent the businesses from unfairly taking advantage of consumer for their prosperity. However, solely stipulating of the rights of consumer' in legislation does not guarantee the appropriate protection of the consumer from activities of business persons. In conjunction with the listed consumer rights, as stated before, a system of protection should be established. In doing so the consumers' right to judicial right should recognize both a substantive and procedural aspect. Furthermore, the practical problems that may affect the proper operation of the judicial protection arrangement of consumer rights should be studied and appropriate measures should be taken by the appropriate organ. In the following sections of this research, the substantive and procedural aspects of the judicial

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49 See Ibid Art 14-26

protection of consumers, including those practical problems would be the main focusing of the research.

### **2.2.2. JUDICIAL PROTECTION OF CONSUMERS UNDER THE INTERNATIONAL LEGAL INSTRUMENTS RATIFIED BY ETHIOPIA**

In the previous section of this research, I have pointed out that consumer rights are extensions of different social and economic rights of citizens. The protection of consumer rights under the judicial legal framework of a given state has a decisive role in the feasibility of peoples' human rights. Consumer rights as a right should have a corresponding enforcement system. One of the most effective enforcement systems of individuals' rights is the establishment of well-organized judicial protection framework.

Ethiopia is a signatory state of many international agreements that deal with recognition and enforcement of citizens' rights. According to Art 9(4) of the FDRE Constitution, international agreements that are ratified by Ethiopia are integral parts of the laws of the country. Accordingly, international agreements have the status of proclamations in the legal hierarchy of the country. However, with regard to the interpretation of human rights that are incorporated under chapter three of the Constitution, international human right instrument principles, including the UDHR and International Covenants on Human Rights have an overriding role over other principles and rules.<sup>50</sup> So, it is appropriate to refer to international agreements that are ratified by Ethiopia in dealing with consumers' right to judicial protection, which is within the scope of peoples' fundamental rights.

When we are referring to different literatures on the judicial protection of individuals, the term judicial protection is mostly used when considering access to justice. Access to justice is one of the elements of a traditional concept of judicial protection. However, in most of cases, access to justice is mentioned in legislation to represent the generic term 'judicial protection'.<sup>51</sup> International legislation also follows this approach. The right to access to justice in different human right instruments are a reflection of the peoples' right to judicial protection.

The right to judicial protection is the most recognized right under the international human right instruments. Including UDHR, ICCPR and ICESCR all universal human rights

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<sup>50</sup> See the FDRE Constitution Art 13(2)

<sup>51</sup> See Yulia Vladimirovna Samovich, *An Individual's Right to Judicial Protection - Whether it Protects*, pp. 1613-1617.

instruments oblige the signatory states to establish an enforcement framework by recognizing access to justice as a basic human right.<sup>52</sup> Furthermore, the 2030 United Nations Agenda for Sustainable Development encapsulated in Goal 16, access to justice, as both a fundamental right in itself and a precondition for the enjoyment of other rights. By taking into consideration, the adverse impact of consumers' right violation over other social and economic rights of the people the UN has gave due care to' the judicial protection of consumers' rights in recent times, since President John F. Kennedy's address on consumer rights in 1962. As stated in the UN resolution on the guidelines of the consumer protection and the UNCTAD notes on consumer redress, signatory states of the UN charter have an obligation to give special consideration to consumer rights protection and creating an effective system of judicial protection. Section V.F: of the resolution provides that;

*Member States should encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases. Member States should encourage all businesses to resolve consumer disputes in an expeditious, fair, transparent, inexpensive, accessible and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers. Information on available redress and other dispute-resolving procedures should be made available to consumers. Member States should ensure that collective resolution procedures are expeditious, transparent, fair, inexpensive and accessible to both consumers and businesses, including those pertaining to over indebtedness and bankruptcy cases. Member States should cooperate with businesses and consumer groups in furthering consumer and business understanding of how to avoid disputes, of dispute resolution and redress mechanisms available to consumers and of where consumers can file complaints.*<sup>53</sup>

Ethiopia is one of the signatory states of the UN charter and other international human right instruments that declare judicial protection/access to justice as of a right of citizens. As a

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52 See S.B. Zharkanova and L.Sh. Kulmakhanova, 'Consumer Rights Protection in International and Municipal Law: Problems and Perspectives', *the Journal of European Research Studies*, Volume XVIII, Issue 4, Special Issue, 2015, pp. 147 – 166.

53 See *Trade and Development Board Trade and Development Commission Intergovernmental Group of Experts on Consumer Protection Law and Policy, Dispute resolution and redress*, Third session, Geneva, 9 and 10 July 2018, Item 3 (d) of the provisional agenda, pp. 3-4.



member state of the UN and the signatory state of the human right conventions it has an international responsibility to work for the promotion and observance of the people's judicial protection right within its jurisdiction. As a result, it should encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases. This encouragement should also express in the actions that are taken by the country in relation to consumers' judicial protection arrangements.

The other relevant international instrument for consumers' right to judicial protection is the CISG.<sup>54</sup> The CISG is an international law designed to regulate the international sale of goods. However, Ethiopia is not the signatory state of the CISG and according to Art 2 of this convention, goods bought for personal, family or household use is out of the scope of CISG unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have to know that the goods were bought for any such use. In case of contractual or extra-contractual product liabilities of the sellers and in a case of physical injury CISG states that these issues are to be legislated under domestic laws. So, in one or another, consumer issues are referred to domestic authorities under the international regimes. The role played by international regime is only recognising judicial protection right of consumers and creating guidelines for domestic regimes on how to implement the principles in their jurisdiction. Since Ethiopia is not a signatory state of CISG and other international agreements on the sale of goods, where the issue of consumer protection involves a foreign element, private international law rules would be applied. Again, Ethiopia does not have a comprehensive private international law. However, general jurisprudence, ignoring the foreign element and simply applying the *lex fori*, and looking towards the spatial conditioning of the internal rules are the most commonly used approaches by Ethiopian courts when PIL issue involved.<sup>55</sup> Therefore, the issue of the judicial protection of consumer rights that included foreign elements also would be treated using the same approach as with other PIL cases. In the coming sections domestic rules on the judicial protection rights of consumers would be investigated.

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54 See United Nations Convention on Contracts for the International Sale of Goods (CISG), 2010, UNITED NATIONS PUBLICATION Sales No. E.10.V.14 ISBN 978-92-1-133699-3

55 Araya Kebede and Sultan Kassim, *Conflict of Laws Teaching Material*: Sponsored By Justice and Legal System Research Institute, Addis Abeba, Ethiopia, 2009, pp.23-29

### **2.2.3. JUDICIAL PROTECTION OF CONSUMERS' RIGHTS UNDER THE DOMESTIC LEGAL FRAMEWORKS OF ETHIOPIA**

All persons, who are living in the universe, are consumers. Except some consumer association arrangements, in most of the case, unlike business people, consumers' are not systematically organized economic groups. They operate independently to achieve their respective private interest. This could create a gap for business persons' abusive practice. Business persons' are stronger than consumer groups and have a better bargaining power. Hence it becomes the state's duty to recognise the rights of consumers' and protect them from the business sector's abusive acts.<sup>56</sup>To this end, the national and international legal frameworks should recognise consumer rights and create an enforcement framework, particularly a judicial protection arrangement. Mostly, constitutions are the supreme law of countries and the instrument for recognition of the consumer rights with its system of enforcement.<sup>57</sup> In addition to the international perceptions, which I have mentioned before, the Ethiopian legal system has also created a substantive domestic legal framework, which concerns the consumers' judicial protection rights. These arrangements are constituted in the FDRE Constitution, the civil code of Ethiopia, the TCCPP and other appropriate laws as stated below.

#### **1. FDRE Constitution**

The FDRE Constitution is the supreme law of the land and all substantive laws should be the extension of its provisions. International agreements have also recognized in the Constitution with a substantive law status except in the interpretation of the fundamental rights of the people under chapter three of the Constitution.<sup>58</sup>When interpreting the fundamental rights of the people stated under chapter three of the Constitution, international human right agreements, including UDHR, the African Human Right Charter and ICCPR should be taken into consideration. This is also an empowerment of interpreters by the Constitution. We should not consider this as a declaration that it is an exception from constitutional supremacy. The FDRE Constitution recognises a long list of citizen rights. Along with these citizen rights, the right to judicial protection is also equally recognised in the Constitution.

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56 See Muhammad Nuruddeen, et al., 'An Examination of the Judicial Mechanism of Protecting the Rights of E-consumers in Nigeria', *Journal of Governance and Development*, Vol. 13. Issue 2, 2017, p. 77.

57 See A.G Ezeibe, Consumer Rights As Constitutional Rights-A Comparative Analysis Of Some Selected Jurisdiction; In the Legislative and Institutional Framework of Environmental Protection in the Oil, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Vol. 2, 2011, pp. 185-194.

58 See the FDRE Constitution Art 9 and 13(2).

To be specific, the FDRE Constitution drafters (after recognising the people economic and development right under Art. 41 and Art. 43, and setting economic and social objectives of the Constitution Under Art. 89 and 90 respectively) were required to create a system of enforcement for these and others rights recognised in the Constitution. The fundamental rights that are mentioned under the FDRE Constitution have a correlation with the protection of consumer rights. Because, consumers' rights are an integral part of the citizen's economic, social and developmental rights. As an integral part of citizens' economic and developmental rights that have recognition under the Constitution, all the stipulations in the constitution about the citizens' right to judicial protection and the arrangements for its execution are equally important for consumer rights.

The Preamble of the Constitution talks about the social, economic and political justice. Consumer justice is also one aspect of this social and economic justice. The Economic policy of the country is also required by the FDRE Constitution to secure social and economic justice for all citizens. Furthermore, the FDRE Constitution declared international agreements that are ratified by Ethiopia as an integral part of the law of the country. In these international agreements, the citizens' (including consumers') right to judicial protection is sufficiently addressed and oblige the member state to recognize peoples' access to justice, right to a fair trial, and execution of judgement rights. Art. 25 of the FDRE constitution provides for citizens' equality before the law and entitlements to the equal protection under the law without any discrimination. Accordingly, the law shall guarantee to all persons equal and effective protection, irrespective of their culture, religion, social status, property, political opinion and other characterisations. In our case, consumers and business persons should be treated equally before the law irrespective of their social and economic position. In order to fill the gap between unequal parties and to achieve the constitutional objectives of equal legal treatment, the government should have taken appropriate measures that can be narrowed this difference. The measures may include free legal services, providing consumers' training, creating a special platform to reduce any unequal footing, and other case by case actions.

Moreover, the constitution under Art 37 recognises the citizens' access to justice right. Art. 37 sets out that, everyone has the right to bring a justiciable matter to obtain a decision or judgement in a court of law or any other competent body with judicial power. This right may exercise by the private party himself or through representation. To execute this

constitutionally guaranteed judicial protection right, the constitution declares the establishment of independent courts.<sup>59</sup> These independent courts are established both at the Federal and regional level of administration. Each tier of the government has a First Instance Court, High Court and Supreme Court. The religious and customary courts are also recognized by the constitution to adjudicate civil disputes based on the consent of the parties. The competent judicial organs that are established by law are also recognized by the constitution to adjudicate cases within their legal framework.

These all constitutional specifications are equally appropriate for consumer rights protection as a parcel of the citizens' right to judicial protection in the Ethiopian legal system. Accordingly, the consumers have a constitutionally guaranteed access to justice right. As a result of this guarantee, when there is a violation of their rights under the law, they can freely bring their cases before courts, either the regular courts or other competent organ for consumer disputes. For the proper implementation of these stipulations all organs of the government should act responsibly starting from enacting a relevant law up to its execution.

## **2. Substantive Laws**

The legislative history of the consumer rights protection in Ethiopia dates back to the enactment of the civil code.<sup>60</sup> The civil code doesn't directly recognize the protection of consumer rights; rather it addresses the issue incidentally within the scope of the contractual and extra-contractual issues.<sup>61</sup> Even the 2003 trade practice proclamation doesn't recognise the issue of consumer protection. For the first time in Ethiopian history, consumer rights protection received direct recognition in the 2010 trade practice and consumers protection proclamation. In 2013 the TCCPP has also given a due consideration to the consumer rights protection and repealed the trade practice and consumer protection proclamation No. 685/2010. The 2004 criminal code of Ethiopia also considers crimes that could be performed against consumers. There are also other proclamations which incidentally address the judicial protection of consumers. In this section, the researcher focuses on assessing the state of the consumers' right to judicial protection under these substantive legal frameworks of Ethiopia.

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59 See the FDRE Constitution Art 78-81

60 See Andnet Haile, *Enforcement of consumer Protection Under the New Legal Regime of Ethiopia in the Light of the EU and Us Laws and Practice; A Comparative Analysis*, LL.M long thesis, Central European University, p. 7. [Unpublished Available at CEU eTD Collection].

61 Civil Code Of The Empire Of Ethiopia Proclamation, 1960, *Negarit Gazeta Gazette Extraordinary*, Proclamation No. 165/1960, 19th Year No.2, Art 1675. [Here In After the Civil Code].

## **A. The Civil Code**

The civil code of Ethiopia is the pioneer legislation in protecting consumers' right through a formal legislative framework. Under this legal framework, the issue of consumers' judicial protection is addressed incidentally with other civil transactions. There are not any direct provisions for consumer protection at all. The most relevant section of the civil code for the judicial protection of consumers' is Book, IV. In this section, both contractual and extra-contractual obligations of the parties are regulated.

### **I. Contractual Issues**

According to Art 1675 of the civil code of Ethiopia, a contract is an agreement whereby two or more persons as between themselves create, vary, or extinguish obligations of a preparatory nature. There are three stages within the concept of a contract. The primary stage is the pre-contractual stage, which constitutes the negotiation processes before an offer. The second stage is the formation stage starting from offer which requires four elements to be fulfilled to consider a certain transaction as a valid contractual agreement. The third stage is the performance of the contract. In addition, under the civil code of Ethiopia there are two broad categories of contract. These are the general and special contracts categories. The general contract provisions are guiding principles for all special contracts. Where there is a discrepancy between the special and the general contract provision, the special contract provisions will prevail.<sup>62</sup>

In the process of making a contractual transaction, disputes may happen between the contracting parties either at the pre-contractual, formation, or performance stage. At the pre-contractual stage, the withdrawal of one of the parties from the negotiation in bad faith is the main area of dispute. At the formation stage there is also the issue of invalidity or validity of the contract, and at the performance stage the full or partial non-performance of the contract are the points of dispute. Both the general and special contracts have contained specific rules regarding the judicial remedies that may be sought before the court regarding these scenarios. Parties may claim compensation for the withdrawal of one of the parties against the principle of good faith, whilst invalidation of the contract and non-performance remedies include; forced performance, cancellation or/and compensation. From the consumer' perspective, the

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62 See the Civil code Art 1676

general contract and the sales contract provisions are the governing rules in the civil code to regulate similar issues.

**a. Remedies at the Negotiation Stage**

In the process of concluding a contract, before the formation stage there might be a series of negotiations between the parties. This stage is also known as the pre-contractual stage. Leaving the negotiation in bad faith after making other party incur costs may result in a pre-contractual liability (*Culpa in contrahendo*). Pre-contractual liability can be defined as one form of liability that arises when one of the parties withdraws from the negotiation without having justifiable reason. It is all about the remedies for parties enters into negotiations before making the main contract in good faith and suffered loss because of unreasonable withdrawal of the other party.<sup>63</sup> The existence of pre-contractual relationship, breach of the obligation to act in good faith and damages are the commonly used pre-conditions of this type of liability. It has been recognized by different jurisdictions in the world.<sup>64</sup> Even though, good faith is the most commonly known principle in the Ethiopian contract law regime, nowhere a direct stipulation of the term pre-contractual liability in the civil code.<sup>65</sup>

According to Mulugeta M. Ayalew, in order to determine whether there exists such concept of pre-contractual liability Ethiopia, one has to go beyond looking for the phrase in the Civil Code or any other law. Before rejecting the case by saying that there is no a concept of pre-contractual liability in Ethiopia, first we have to check out the ways around.<sup>66</sup> Preliminary agreements are one aspect of considering the legal effect of any pre-contractual relationships. If there is a preliminary agreement, the liability of the party who withdrew from the negotiation out of good faith would be determined based on the terms of the contract at hand. Consequently, the injured party can apply for one of the remedies for breach of contract; forced performance, cancellation or/and damages. When there is no such an agreement between the parties, the only option of the injured party is to refer to the extra-contractual liability provisions. According to Art 2028 "*whosoever causes damage to another by an*

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63 See M. B. Filipović and Dr .M.T.Vehovec, Pre-contractual Liability in EU and Croatian Law, Prepared by the Commission on European Contract Law, 1999, pp. 13-32. Available at [http://frontpage.cbs.dk/law/commission\\_on\\_european\\_contract\\_law/pecl\\_full\\_text.htm](http://frontpage.cbs.dk/law/commission_on_european_contract_law/pecl_full_text.htm), last visited 10 July 2012.

64 Ibid

65 See Mulugeta M. Ayalew, '*Ethiopia*'. In *International Encyclopaedia of Laws: Contracts*, edited by J. Herbots. Alphen aan den Rijn, NL: Kluwer Law International, 2010, PP. 76-85.

66 Ibid

*offence shall make it good*". According to Art 2055 of the civil code, withdrawal of the contract after declaring intention is an offence. According to Mulugeta, the cross reading of these provisions entitle the innocent party the right to claim costs incurred with a view to conclude the contract, costs incurred as a result of being induced by the other party and arbitrary abandonment of the intention to enter into a contract before the court.<sup>67</sup> Accordingly for consumers, if the seller/business person withdraws from the negotiation and the consumer incurs some costs throughout this process he may claim compensation based on the preliminary agreement specifications, or through the tortious liability arrangements according to Art 2028 and 2055.

#### **b. Remedies at the Formation Stage**

The general contract law of Ethiopia stipulations under Art 1678 is equally applicable to the sales contract regime of Ethiopia since there is no a contrary stipulation under the special law of sales section of the civil code. A certain sales contract to be valid; the consent, capacity, object and form if any requirements should be fulfilled together. There are also additional requirements of the special law of sales section of the code to be fulfilled. These include the requirements in relation to the subject matters, and the price.<sup>68</sup> The subject matter of the law of sales shall be corporal chattels. Corporal chattels may include movable goods (except special movables), securities to the bearer, and natural forces of economic value. Intrinsic of immovable is also corporal chattels and the subject matters of the law of sales.<sup>69</sup>

In relation to a contract of service, according to Art 2269 of the civil code, the law of sales provision's applicability is limited only for contracts for the delivery of corporeal chattels to be manufactured or produced where the party who undertakes delivery is to provide the main materials necessary for the manufacture or production. When the subject of the contract is different from this, the governing law would be the contract of work provision starting from Art 2611 with the general contract provision. The other basic requirement for the formation of valid sales contract is the determination of the price. The price should be determined by the parties or by the delegated third party, otherwise there shall be no valid sales contract between the parties. There is no stipulation in the special sales contract law provisions as to the effect of sales contract missing one of these four elements of the formation of sales

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<sup>67</sup> Ibid

<sup>68</sup> See the Civil Code Art 2270 and 2271.

<sup>69</sup> See the Civil Code Art 1123 and the following provisions.

contract. Even so, the general contract law provisions have an answer for this. According to Art 1808 of the civil code the effect of those contracts missing their formation requirement is invalidation. One of the parties in the sales contract observing the non-fulfilment of one of the requirements has a right to provide a claim for invalidation of the contract before a competent organ. This legal arrangement at the formation stage is equally relevant to the consumer transactions with other contractual undertakings.

### **c. Remedies at the Stage of Performance**

After ensuring the validity of the contract, determining the upcoming subject matter of the contract and applicable regime (including contracts between business persons and consumers') is the performance of the contract. The performance of the contract refers the execution of obligations by the parties to a contract. Under the law of sales regime there are three categories of obligations: obligations of the buyer, obligations of the seller and common obligations. The Ethiopian sales law regime also constituted these three categories of the parties' obligations from Art 2273 to Art 2328 of the civil code.<sup>70</sup> The consumers and the business persons are also sharing these obligations with other parties to the sales contract. To this end, the obligations of the seller are the obligations of the business person and the buyer obligations are the obligations of consumers' in the case of consumer transactions. All the obligations of the seller are the legal rights of the consumers under the law of sales regime and the reverse is also true. The consumer has a right to require the enforcement of the seller's obligations based on the time period specified under the contract or under the civil code. If the business person refused to undertake his obligations, there are remedies available to the consumer. These include forced performance, cancellation of the contract or/and damages. These remedies are governed by both the general contract and the special sales contract provisions.

In relation to the first remedy, there are basic requirements to be fulfilled. The court before ordering forced performance should require the claimant to prove the necessity of the execution of the obligation to the claimant, the non-existence of a violation of individuals' right to liberty and impossibility of purchase as a replacement without inconvenience or

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70 To mention some of those obligations; the buyer has an obligation to pay the price, taking delivery and cooperation at the time of delivery, on the other side the seller obligations includes deliver the thing, transfer ownership, and warranty against dispossession, non-conformity or defects. There are also obligations of the seller in relation to the delivery of documents and insurance. The parties' common obligations are related with expenses and preservation of things.



considerable harm. The claims of forced performance may include making good defects or replacement of non-conforming goods with a new one. The second possible remedy of non-performance of the sales contract is cancellation of the contract. When there is a compulsory date in the contract, when there is a dispossession, partial performance or defect in the goods delivered, the buyer (the consumer in our case) may require cancellation of the contract, as stated from Art 2337 up to Art 2346 of the civil code subject to the specific conditions. A period of grace or notice may be required or granted by the court when conditions require. The effect of the cancellation is both restitution of parties to their previous positions and compensation, unlike invalidation that entails only the restitution effect. Acts done in the performance of the contract have no effect in principle; however it may have an effect where the third parties interest requires it to do so.

The third remedy of the parties that could be sought by a consumer against the seller of the product is damages. Damages may be claimed with or without the cancellation of the contract. When the contract is cancelled, the compensation may relate to the difference between the current prices of the good with the actual price at the time of the contract or restitution of the buyer's reasonable expenses in relation to the dispossession of right entitled in the contract. When the contract is not cancelled, the compensation may relate to recovering costs incurred by the buyer because of the seller's late performance as provided under Art 1790 and the following provisions subject to the forcemajeure defence. Absence of fault cannot be used as a defence by the non-performing party, unless the debtor had undertaken to do his best as specified under the law in a certain contract. Before claiming damages the claimant should provide reasonable notice to the debtor unless excluded by the parties' agreement.

To conclude, the contractual remedy of consumers under the civil code of Ethiopia contains three stages. The first stage is the pre-contractual stage, when there is a preliminary agreement between the consumer and the seller. Then at the formation stage, when one of the formation requirements is missing in the contract, the invalidation remedy is provided under the civil code. The final stage is the performance stage of the contract between the consumers and the business. To this end, the civil code provides three types of remedies; forced performance, cancellation and damages. All of these three stages are part of the substantive judicial protection of consumers in Ethiopia. Besides the contractual protections, the tortious liability section of the civil code also contains something that can be used for the consumers' interest.

## II. Tortious Liability

The concise Oxford dictionary defines a tort as “a wrongful act or an infringement of a right other than contract leading to legal liability”.<sup>71</sup> Tortious liabilities are legal liabilities a person may face without a preceded contractual undertaking with the beneficiary. Tortious remedies are one of the systems substantive protections for consumers. The Ethiopian civil code doesn't provide a definition of the term tortious liability. Rather, it preferred to list out the two broad categories of tortious liabilities. According to Art 2027 and the following articles of the civil code, tortious liabilities can be either fault based or non-fault based liabilities. Under the first category when there is a fault, irrespective of the negligent or intentional mental state of the wrongdoer, the injured person should be entitled to a remedy. The non-fault based liabilities have two more categories; strict liability and vicarious liability. Unlike the contract law provisions of the civil code, the tortious liability rules may apply both to the contracting consumer and the dependent consumer subject to a case by case analysis. The pre-contractual withdrawal, fault in relation to the design of the product, not providing appropriate warnings on the use of the product, false information, wrong simulation and other related offences of the seller or the manufacturer of the product may entail a tortious liability, when they are not addressed by the contract. The dependents are also may use the faults of the seller or manufacturer as a ground of claim.

In relation to the second category, tortious liabilities of the parties in the consumer transaction may arise from non-fault based grounds. Non-fault based liabilities may be either strict liabilities or vicarious liabilities. Under the vicarious liability category, the business person may be liable for the acts of his minor child, employees or other persons, for whom he is liable for their acts when they have been involved in the different stages of consumer transactions. In the case of strict liability, the most central issue is the manufacturer's strict liability for their products. The strict liability of the manufacturer in the Ethiopian tort law regime is clearly provided under Art. 2085 of the civil code, and it states that; *“(1) A person who manufactures goods and sells them to the public for profit shall be liable for any damage to another person resulting from the normal use of the goods. (2) No liability shall be incurred where the defect which has caused the damage could have been discovered by a customary examination of the goods.”* In order to establish strict product liability under the Ethiopian tort law regime, all elements stipulated under this provision should be fulfilled. The

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71 See Conscience Dictionary, Oxford University press, 10<sup>th</sup> Edition, s.v, “Tort”

manufacturer's liability here is not limited to the consumer who buys the product, but extends to all end users who may suffer from the defects of the product. When one of these grounds of claim is relevant to the injured party, consumers in our case, the consumer may bring his case before the court and seek adequate damages to be paid by the wrongdoer. The damages may include moral damages, actual damages or/and future damages. From this we can summarize that, in addition to the contractual remedies discussed before, the civil code of Ethiopia has also constituted a legal remedy to consumers in the form of tortious liability. This can be considered as one part of the substantive judicial protection of consumers in Ethiopia.

## **B. The TCCPP**

The substantive judicial protection of consumers has passed through several stages. The earliest stage was based on the contractual and extra-contractual liability legal frameworks. Later it began to base on different criminal, competition law and other regulatory arrangements. Still, these arrangements are not sufficient to protect consumers adequately. To complement the limitations of these private and public laws in consumer protection, countries instigated to enact a separate consumer protection law regime.<sup>72</sup> Similarly, the Ethiopia consumer protection arrangement also adopted a similar approach. As I indicated in the previous analysis, before 2010 there was no specific law dealing with the issue of consumers. The 1960 civil code stipulations on contractual and extra-contractual liabilities, the criminal code stipulations and the 2003 trade competition rules were the main sources of substantive judicial protection for Ethiopian consumers. Since 2010, consumers issues have been given due consideration by the Ethiopian legislatures and two proclamations have since come into effect. The 2010 trade practice and consumer protection proclamation have clearly established substantive framework for the protection of the consumer interests. This proclamation's legal effect came to an end with the enactment of the new Trade Competition Consumers' Protection Proclamation (TCCPP) No.813/2013.

Determining the powers and duties of the concerned organs, particularly, the organs in charge of the investigation, prosecution and judicial responsibilities; is one of the primary justifications for the enactment of TCCPP.<sup>73</sup> This objective has a direct relationship with the judicial protection of consumers. After stating those rights of consumers and the business

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<sup>72</sup> See Geraint Howells & Rhoda James, *Litigation in the Consumer Interest*, pp. 2-6.

<sup>73</sup> See the TCCPP Art 4.

person's responsibilities, the next step followed by the proclamation is creating a system for their feasibility. Art. 27 and the following articles of the proclamation constitute different remedies for violations of consumers' rights. These include administrative and judicial remedies. The judicial remedies include both civil and criminal remedies. In addition to the remedies, the proclamation also determines the responsible organ to implement them.

Before determining the frameworks of enforcement for consumers' right, the TCCPP grants consumers the right to claim compensation when there is a violation of their rights. Art. 14 of the proclamation after listing out the basic rights of consumers under sub Art. 5 grants the consumer the right to claim compensation or other related remedies either from the seller, manufacturer or any other person who causes the damages he has suffered resulting from the purchase or use of the goods or service. Those obligations of the seller from Art 15 up to 19 also indirectly constitute the consumer right to claim remedy. The obligations in relation to the price list, the label of the goods, issuing receipts and keeping pads, self-disclosure and commercial advertisement entail the consumer right to claim compensation and it should be read conjointly with the Art 14(5) stipulation. In addition to this, Art. 20 entitled the consumer to both administrative and civil remedies in relation to the defects of the goods. When there is a defect in goods or services, the consumer has the right to request replacement or a refund of the price of goods and redelivery or refund of the service within 15 days from the date of purchase. Separately, the consumer may claim payment of compensation for any damage resulting from the use of defective goods or service or from the failure of the seller to undertake his responsibility in accordance with the relevant laws of Ethiopia. This stipulation is a reference to the proclamation of the civil code stipulations in relation to the contractual and extra-contractual relationships with the consumer and the business person that I have discussed before in a separate section. Therefore, under the current Ethiopian consumers' judicial protection regime, the civil code rules on the obligations of persons has a great role in the feasibility of the consumers' rights enforcement through the judicial arrangements of the country. Moreover, the proclamation under Art 21 declared that any contractual agreement for the waiver of consumer rights in the proclamation has no effect. According to the understanding of the researcher, the background of this stipulation is found in the existence of a major difference between the consumers and business persons in their power of bargaining to reach such an agreement. In the name of free contract, the businesses, by using their higher bargaining power, may waive the consumer right to seek remedies and use their knowledge gap as a means of exploitation of consumer interest in their own side. In contrast to this, the

civil code under Art. 2272 gives discretion to the contracting parties to insert any special terms in their agreement that may include waiver of one or more of their obligations. Art. 21 of the proclamation can be mentioned as an exception to the principle of freedom of contract under the civil code. The negative obligations of the seller under Art 22, the sellers' unfair acts including distribution of unhealthy and unsafe products, hoarding of goods, and violating the price regulation or conditions of distribution of basic goods are also subject to the consumers' remedies within the scope of Art 14(5) entitlement and in accordance with relevant laws when they result in specific damage to the consumer.

The next task of consumer law after the entitlement of consumers to seek remedy should be deciding the appropriate organs that have jurisdiction to adjudicate the consumers' claims. When we look at the international experiences in relation to this, regular courts, special consumer courts, arbitration, ombudsman, or an administrative consumer dispute adjudicative bench are the most commonly used outlets.

In the Ethiopian case, the TCCPP under Art 27 established the Trade Competition and Consumers Protection Authority/TCCPPA/ as an administrative organ to control and supervise the implementation of the rules stated in the proclamation. The authority is accountable for the ministry of trade and organized by three organs. These are Director General and Deputy Director appointed by the Prime Minister, judges, and Investigative Officer. These three organs have a responsibility to enforce the administrative, adjudicative and criminal investigation roles of the authority respectively. The Authority has jurisdiction over all the country to administer competition issues and some specified consumer issues. According to Art 23(5) of the TCCPP the power of authority in consumer issues is limited to those direct empowerments under the proclamation. The rest are assigned to the Ministry of Trade at the federal level and Trade and Market Development Bureau in the regions. The TCCPP declaration on the cooperation of the federal trade competition and consumer protection authority with the domestic authorities under Art 30(14) is also referred the possibilities for delegation of consumer issues in the regions for the Trade and Market Development Bureaus. The adjudicative power of the judiciary organ of the authority on consumer cases is also limited to the two federal cities jurisdiction i.e. Addis Abeba and Diredawa.

The primary obligations of the authority in relation to consumers' right protection include taking appropriate measures to create market transparency, creating public awareness, study

and undertaking research, regularly announcing goods banned by the government, banning defective advertisements, organizing the judicial organ responsible for consumer disputes, establishing a procedure to resolve disputes, and providing necessary advice to the regional authorities. These activities of the authority are of paramount importance for the judicial protection of consumers. In the regions, as referred under Art. 23(5) of the TCCPP, the Trade and Market Development Bureaus are the responsible organs of the government for the execution of these obligations of the authority.

After stating the obligations of the authority under Art 30 as a preliminary remedy for consumers' rights violations, the TCCPP declare the establishment of an adjudicative organ with the power to take administrative measures and impose fines and order payment of compensation for violation of rules in the proclamation. This adjudicative branch has both an executive and judiciary character. As an executive it has the power to order an administrative measure of the anti-competitive practices of business and as a judiciary, it may order compensation for the business and consumers claim in relation to a violation of the competition and the consumer protection rules respectively. As the researcher pointed before, the adjudicative branch of the authority, jurisdiction on the consumer right is limited to consumer cases that may arise only in the two federal cities of Ethiopia; Addis Abeba and Diredawa. Claims of compensation and other remedies by consumers in the regions are out of the scope of the Federal Trade Competition and Consumer Protection Authority Tribunal adjudicative power. Under the proclamation there is no a specific stipulation as to the authority empowered to adjudicate consumer issues in the regions. The only stipulation is the Art 34 empowerment of the regional state councils to order the establishment of consumer judicial organ when it finds necessary. This stipulation gives full discretion to regions in deciding the form and other characteristic of the consumer disputes adjudicative organ to be established. The stipulation is not an obligation; the regions have a freedom to establish or continue without having a special organ for consumer dispute. Here, the question would be where the consumers in the regions can seek remedies for the violation of their rights? The right answer to this question is simple and clear. If there is no special organ which is established for this purpose, the traditional regular court arrangements would be the only choice of the consumer to seek remedies for the violation of their rights.

Generally, the TCCPP has dealt with the substantive consumers' judicial protection at different stages, starting with recognition of the consumer's right to seek remedy under Art. 14(5), up to establishing an adjudicative organ responsible for the feasibility of the right to

seek remedy. Hence, the TCCPPA has been empowered to adjudicate consumer disputes in the two federal cities of Ethiopia. Unlike this, the regional consumer cases are left to the traditional court arrangements in the regions subject to the establishment of special judicial organ in the regions, when regional councils find it necessary. According to the researcher investigation in his interview with the officer of the Consumers' Directorate Office of the Amhara Regional State Trade and Market Development Bureau, there is still no independent judicial organ established to adjudicate consumer disputes in the regions including in the Amhara Regional State. The only available pathways for the consumer dispute settlement at the regional level are the traditional court arrangements. By relating it with the special natures of consumer issues that are very small claims and requiring fast remedies, and the very natures of traditional regular courts that are surrounded by many procedural problems many writers criticize the traditional regular court proceeding approaches for the consumer disputes. The Ethiopian approach in the regions to this regard is also not free from such criticism. In the next chapter, the researcher will identify the problems of the traditional regular court approaches of consumer dispute settlement in the Amhara Regional State, one of the regional state administrative units of Ethiopia.

### **C. Other Proclamations**

In the Ethiopian legal regime, the FDRE constitution, the civil code and the TCCPP provisions are the major legal instruments that have properly addressed the issue of consumers' judicial protection arrangements. However, this does not mean that there are no other legal instruments that are related to the consumers' judicial protection in the country. There are also various other laws at the national level involving the daily life of a consumer which are related to consumer protection. These include; product quality and standard law, environmental protection laws, food, medicine and health care administration and control laws, laws regulating the service sector establishment and operation, advertising law, trademark law, drug administration law, malpractice regulations, and so on. These related laws not only play a supplementary role, but they also further refine the rights, duties, responsibilities and procedures of the parties concerned, which may contribute to better protection of the legitimate rights and interests of consumers. However, these related laws are enacted at a superficial level. Generally, they lack certain specific rules that are required for dealing in a consumer setting. It is difficult to find a concentration of special rules for consumers in these national laws. Therefore, in most consumer disputes, consumers cannot always get adequate, immediate and effective support from these laws.

#### **D. Criminal liability and Consumers' Judicial Protection**

Liabilities are responses for infringements of legal obligations. A person, who is violating a certain legal obligation, may face civil, criminal or administrative liabilities. Stipulation of the liabilities of a person is a pre-condition for creating a system of rights protection. Most violations of peoples' rights presupposed either of these obligations. Establishment of a system of protection, including the judicial protection arrangement, should proceed with specification of liabilities. These liabilities have their own objectives and targeted groups. The civil liabilities primary goal is compensating individual's injuries that occur because of the infringement of a legal obligation, and target private persons only or government at private capacity. Administrative liabilities main targets are the government representatives and individuals in different sectors and aims to punish them for their administrative faults. The criminal liabilities are targeted not on individuals, but rather the large sector of society or the public as a whole and its main objective is to protect or ensure the peace, security and safety of the general public.

In the consumer protection regime, individuals that are violating those legal obligations related to the consumer protection may also face civil, criminal or administrative liability. These forms of liabilities are preconditions for a well-designed system of consumer rights enforcement. When we deal with the judicial arrangement for consumers' rights protection first we have to ensure the existence or non-existence of liabilities to be executed under the system that would be established. Civil and criminal liabilities are the main subjects of a judicial protection arrangement.

As the researcher pointed before, criminal liabilities for violation of the consumer rights protection by business persons has been recognized by both the 2004 FDRE criminal code and the TCCPP. Art 43 of the TCCPP stipulated multiple criminal liability activities that may result in a criminal punishment, including fines and imprisonment. The TCCPPA prosecutor has jurisdiction to investigate and instigate charges in relation to those criminal issues in consumer disputes. However, the investigative power of the authority is constrained to the jurisdiction of the two federal cities, Addis Abeba and Diredawa. In relation to the criminal liabilities of consumers at regional level, the respective public prosecutor's office has a mandate to investigate cases and instigate claims before a competent organ since there is no special prosecutors group. In his interview with the officer of the consumers' directorate the researcher confirms the non-existence of a special prosecutor's office to investigate consumer criminal cases in the Amhara Regional State. Due to this and other factors, the number of



criminal cases that are related to consumers' right protection before the court is small.<sup>74</sup>In spite of this, since the mandate of investigating criminal and Administrative cases of consumer right violation is under the mandate of the government, compared with the civil disputes, the degree of business person's influence is significantly less. Accordingly, the researcher main focus in the coming sections will be in the civil aspect of consumer disputes. However, the researcher would like to recognize both the administrative and criminal liability sections of the proclamation and other laws stipulation as a crucial part of the consumer judicial protection regime of Ethiopia.

### **E. The Amhara National Regional State Laws**

Since 1991, Ethiopia is a federal state with ten regional state administrations and two federal city administrations. Following the establishment of a federal state administration framework in the country the powers of the state are also divided between the federal and regional state governments.<sup>75</sup>Similar to federal governments, the regional states also have a legislative, executive and judicial power within their limited jurisdiction. Furthermore, so as to determine the scope and the procedures of exercising these powers, the FDRE constitution empowered the regional states to enact their own constitution. Under the FDRE constitution the legislative powers of the regional states and the federal government are clearly demonstrated. Furthermore, they should exercise their own legislative power without intervention from each other. The legislative power on the issue of consumers is the exclusive jurisdiction of the federal government.<sup>76</sup>Consequently, the federal legislative organ/HPR/ has enacted two consumer laws that include proclamation no. 685/2010 and TCCPP no. 813/2013. The TCCPP is an active legislative framework for consumer protection issues at the current time. Under this proclamation, the regional states are delegated by the federal government to undertake three main things. These are; administering the consumer issues within their jurisdiction except in those areas exclusively given to the federal authority, adjudicating cases that are involving consumer issues within their jurisdiction, and deciding for the establishment of a regional consumer adjudicative body when found necessary<sup>77</sup>

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74 According to the Amhara National Regional State Supreme Court report, in the 2011/2012 working year, the total numbers of consumer cases (including both the civil and criminal matters) that are adjudicated by courts in the region starting from the Woreda up to the Supreme Court arrangements are only 15.

75 See the FDRE Constitution Art 50.

76 See the FDRE Constitution Art 55(4).

77 See the TCCPPP Art 23(5), Art 32(1(c), and Art 34.

The Amhara regional state has established bureaus to discharge its law enforcement duties. The new regional state proclamation, which repealed the earlier proclamation, proclamation No. 176/2010, to re-establish the state's executive organ, has clearly mandated the regional Trade and Market Development Bureau to be responsible for consumer protection. Art. 15 of the same proclamation extensively enlisted the following as the major task of the Bureau:

- 1) *Shall control and take administrative and legal measures on illegal trade practices disrupting the competitive trading system and harming the interest of consumers;*
- 2) *Shall support and coordinate efforts for the protection of consumer rights;*
- 3) *Shall establish a public prosecutor department that will administer civil and criminal cases in violation of trade competition and consumer protection laws;*
- 4) *Shall establish procedure enable to resolve disputes ,arise between consumers and traders, by mutual agreement and negotiation;*
- 5) *will use the regional police force to control illegal trade practices and investigate related criminal matters; and to execute administrative measures accordingly;*
- 6) *organize administrative judicial organ with jurisdiction on civil matters of trade competition and consumers protection in accordance with the provisions of this Proclamation;*
- 7) *It has authority to investigate, prosecute and litigate before courts of law on criminal matters of trade practice and consumer protection of the FDRE criminal law, criminal procedure law and other laws;*
- 8) *Shall conduct investigations where there is sufficient ground to suspect that an offence has been committed against the fair trade practice and consumers rights; initiate or order discontinuance of investigation; and*
- 9) *Shall based on prices set for by the Federal Ministry of Trade, determine the conditions of distribution, sale and movement of basic goods and services within the Regional state, and, as may be necessary, order business persons to replenish stocks of same.*<sup>78</sup>

This stipulation of the proclamation has constituted all the powers delegated by the TCCPP for the regional states trade Bureau. These empowerments of the Bureau are the first step in creating a system of consumers' judicial protection arrangement in the region. Among the mandates given to the Amhara Regional State Trade and Market Development Bureau under this proclamation supporting the efforts of consumer right protection, establishing a procedure for resolving consumer disputes through negotiation and creating an administrative

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<sup>78</sup> See the Amhara National Regional State Executive Organs Re-Establishment Determination of their Powers and Duties Proclamation, 2017, *Zikre Hig*, Proclamation No. 230/2016.

organ for a consumer, civil case adjudicative body are the primary functions of the Bureau that have a direct link with the consumers judicial protection issue this study is largely concerned with. The support may provide for consumers themselves or other authorities working in the area of consumer rights protection. In order to exercise their judicial protection rights, consumers must firstly be aware of their rights. Awareness creation activities should be addressed not only for consumers but also for businesses. The awareness creation activities may be undertaken either by the NGOs, public institutions, higher education's or the Trade Bureau itself. In addition to action by these groups, the Trade Bureau should always provide support for the proper execution of such activities.

Moreover, the Bureau has a responsibility to create a procedure that enables the resolution of disputes arising between consumers and traders, by mutual agreement and negotiation. This responsibility of the trade Bureau is mainly aimed at reducing the unnecessary wastage of time and costs involved in taking every dispute before an adjudicative body. This arrangement of the Bureau is not a strict procedure that should be followed by the disputing parties. If the disputing parties fail to reach agreement through negotiation or have chosen not to negotiate, they are free to bring their cases before a proper judicial organ. Subsequently, the Amhara Regional state council has empowered the Trade and Market Development Bureau to establish an administrative adjudicative body for consumer cases in their establishment proclamation.

Nonetheless, the Amhara Regional State Trade and Market Development Bureau don't make a decision to this effect. There is no an administrative consumer court in the region as promised by the proclamation. According to the researcher's assessment during the interview, the officials of the Bureau are not aware of this empowerment in the proclamation. They are still waiting for the federal government to build such a system in the region. At present, the only know alternatives for the adjudication of consumer cases in the Amhara Regional State is the traditional court arrangements. As the researcher confirmed in his interview with different concerned bodies that are including consumers, private attorneys, consumer Bureau officials, and the regional Supreme Court officials, the traditional regular court arrangement of consumer cases in the region is surrounded with many procedural and practical problems. Those problems that are facing the administration of consumer justice, following this approach of the region, will be discussed in detail in the coming sections of the research. The Amhara Regional State constitution stipulations on the people socio-economic rights, access

to justice right and three levels of court arrangement are also other sections of the substantive recognition of consumers' judicial protection right in the region.<sup>79</sup>

### **2.3. THE PROCEDURAL ASPECT OF THE CONSUMERS' JUDICIAL PROTECTION IN ETHIOPIA; THE CASE OF THE AMHARA REGIONAL STATE**

In the wave of consumers' judicial protection there are two essential undertakings. Firstly, the judicial protection itself should recognize as a substantive right of the consumers with the stipulation of different liability spectrums for consumer rights violation. The second undertaking is concerned with creating an effective process for the execution of the substantive consumer's right to have judicial protection. Literature in the area of consumer rights, after firstly identify consumer rights and studying the judicial framework for its implementation at the substantive level then it focus on analysing the most efficient and effective processes of dealing with the consumer disputes before a jurisdiction that have a power to adjudicate.<sup>80</sup> International instruments including the consumers' international report and the UN guidelines also follow the same theme. By pointing out the basic rights of consumers, they are also requiring member states to build accessible, efficient, fair and effective procedure for consumer dispute settlement. Hodges, in his work on the European approach to justice and redress has suggested three pillar models of integrated policies for enforcement and redress. 1. Setting standards for expected behavior. 2. Seeking to prevent things going wrong. 3. Putting things right when they are going wrong.<sup>81</sup> Accordingly, in order to ensure the consumer protection in the given state, there should be a clear identification of consumer protection standards and to tackle their violation, a preventive measure should be taken by a responsible organ, and to respond to any violation of such rights there should be a well-designed system of remedy. The system of remedy should include both stipulation of liabilities for the violation of rights and the process of seeking such liabilities against the wrongdoer. According to Hodges, to deliver model two and three of the integrated policy for enforcement and redress, countries may use either private or

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79 See the Revised Amhara National Regional Constitution approval proclamation, 2001, *Zikre Hig Proclamation No.59/2001*, 7<sup>th</sup> Year, No. 2. [Here in after the ANRS Revised Constitution]

80 See Scott, C.D., Enforcing consumer protection laws, in: G. Howells, I. Ramsay & Th. Wilhelmsson (ed.), and Handbook of Research on International Consumer Law, Cheltenham: Edward Elgar, 2010. See also Christopher Hodges, Current discussions on consumer redress: collective redress and ADR, *ERA Forum*, Vol. 13, 2012, pp. 11–33 DOI 10.1007/s12027-011-0245-5 and other similar sources referenced in this research.

81 See Hodges, 'The European approach to justice and redress', *Can Supreme Court Law Rev.* (2<sup>nd</sup> edition) Vol. 53, No.1, 2001.

public outlets.<sup>82</sup> Public actions include use of wide-ranging and powerful sanctions, with both public and private techniques, subject to democratic and court controls. On the other hand enforcement by private actors includes use of private actions through the courts, direct negotiation and resolution of issues, assisted by independent ADR pathways. International literatures, including the 2016 UN manual of consumer protection have identified the most commonly used pathways or outlets of consumer dispute settlements of the consumer dispute. These pathways are selected from the public and private arrangements. Those outlets of consumer dispute settlement have their own merits and demerits. By considering this characteristic, some countries have preferred to use a combination of two or more of them for consumers' redress in their jurisdiction. Literature has used different criteria to test the competency of one or more of those pathways for delivering cheap, fast and effective redress for consumer disputes. According to Smith's test, consumer access to justice should be based on three dimensions; consumer capability, the availability and quality of information, and the level of choice or the opportunity to switch.<sup>83</sup> Geraint Howells & Rhoda James in their works on litigation in the consumers' interest, stated "the kind of criteria against which to judge mechanisms for individual consumer redress are well known, and there is a general consensus in the literature about the kind of points which need to be met, certainly for a non-court based resolution scheme". The benchmarks recently adopted by the Australian Government are broadly representative of this consensus identifying considerations of accessibility, independence, fairness, accountability, efficiency and effectiveness."<sup>84</sup> The European Commission also uses these criteria when analysing the procedural aspect of consumers' protection in member states.<sup>85</sup>

The primary tasks of the researcher in this section will include indicating the commonly used outlets of consumers' judicial protection in the world with their merit and demerits as discussed in the literature and identifying the pathways of the consumer's dispute that are established in Ethiopia, in particular, in the Amhara Regional state.

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82 Ibid

83 Smith, N. C., 'Marketing strategies for the ethics era', *Sloan Management Review*, Vol.5, 1995, 85-97 Cited by Gretchen Larsen and Rob Lawson, 'Consumer Rights: An Assessment of Justice', *Journal of Business Ethics*, Vol. 112, No. 3, 2013, pp. 515-528

84 Howells & James, *Litigation in the Consumer Interest*, p. 12.

85 European Commission, *An evaluation study of the impact of national procedural laws and practices on the equivalence and effectiveness of the procedural protection of consumers under EU law*, National Reports – Consumer Protection Strand, JUST/2014/RCON/PR/CIVI/0082 .

### 2.3.1. COMMONLY USED PATHWAYS FOR THE CONSUMERS' JUDICIAL PROTECTION

Consumers may make complaints for various reasons. In the consumer law regime of each country there are many specific grounds of claim that may include problems related with product standard, poor information, problems with the price, fees or bills, and the desire to apology or reassurance. In order to respond to these and the other legal needs of consumers' countries may apply one or more pathways for dispute resolution.<sup>86</sup> According to the UNCTAD consumer's protection manual and different literatures stipulations of the consumers' dispute settlement, there are various forums for private or public consumer dispute resolution.<sup>87</sup> The most commonly known pathways of consumer dispute resolution include regular courts, public enforcement authorities, Alternative Dispute Resolutions/ADR/, ombudsmen, business customer care and complaint function/self-regulatory arrangements/, online dispute resolution, and special consumer court arrangements. These commonly used outlets for consumer disputes have their own specific features and differences. There are varying positives and negatives for each in respect of securing fast, cheap and effective consumer judicial protection. In this section the researcher will describe the main dispute settlement options for consumers and business persons.

#### 1. Courts

The traditional means of upholding justice for violation of legal rules by individuals is to bring a private claim by an individual faced with injury before the civil court. In the earlier periods, before the proliferation of the concept of consumer rights, the consumer disputes were assimilated with other civil claims of individuals. There was no specification of the juridical authority that has a competency to adjudicate the consumer cases.<sup>88</sup> With the development of the idea of consumer rights and incorporation of consumer rights as a specific area of legal protection in different jurisdictions, the issue of the pathways for judicial protection of those enumerated rights in the legislations is also becoming the concern of the regimes. In their formation stage of consumer rights protection framework, most of the countries was employed the traditional regular court approach as a pathway for the adjudication of consumer disputes in their jurisdiction.<sup>89</sup> The traditional court approach for

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86 See UNCTAD, Manual on Consumer Protection, UNITED NATIONS PUBLICATION, 2016, pp.91-97.

87 See Ibid, UNCTAD Conference Notes, and Howells and James, *Litigation in the Consumer Interest*.

88 See Howells and James, *Litigation in the Consumer Interest*, pp.3-6.

89 Ibid

consumer dispute is all about resolving the parties' dispute through litigation. Litigation as one form of adjudication has both a mandatory and optional condition.<sup>90</sup> According to Lon Fuller and Fekadu Petros, the mandatory elements include the conferring of the opportunity to present one's evidence and arguments; attention to such proof and arguments from the bench or the person to whom these presentations are made; and responsiveness of the decision. The parties' equality in all respects is also an optional requirement for litigation.<sup>91</sup> The traditional court approach is a system of dispute settlement which is supported by the well framed procedures predetermined by a competent legislative organ and the government enforcement authority. In addition, the appointment of the judges is preceded by well framed regulatory frameworks that entail liability for infringements of professional duties. Starting from initiation of claims up to the stage of enforcement of decisions, traditional courts have strict procedures and rules. By considering the procedural strengths of the traditional courts with the presumption of consumer protection law, an imbalance between businesses and consumers, we may prefer the traditional court approach as a right pathway for consumer dispute resolution. As stated in the UNCTAD conference note, "the information and bargaining power asymmetry between consumers and businesses justifies supplementing traditional civil court procedures with specific models to provide consumers with a level playing field for settling disputes and defending their rights."<sup>92</sup> However, the traditional court approach for consumer dispute is not a plain path for consumers. It is surrounded by significant barriers to consumers' cheap, fast and effective judicial protection. The cost of pursuing proceedings, including exposure to adverse costs if a case is lost, the lengthy duration of procedures, the complexity of the law and legal procedures, the costly requirements of legal assistance and, in particular, the low economic value of claims, are among the barriers that serve to deter consumers from undertaking ordinary judicial claims.<sup>93</sup> To make judicial proceedings more friendly to consumers, some countries have introduced different measures, starting from supporting consumers through consumers legal

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90 Essential conditions are conditions which are necessary for the ordinary existence of the given underlying dispute settlement institution. Without having these conditions we can't talk about it. Without having essential conditions we can't talk about election, contract, or adjudication. While the optimal conditions are ideal requirements what we expected from a certain dispute settlement institution, but it is difficult to achieve in the real world because of different preventing circumstance. Unlike essential conditions, optimal condition doesn't have effects on the existence of the institution.

91 See Fekadu Petros, 'Underlying Distinctions Between ADR, Shinglina And Arbitration: A Critical Analysis', *Mizzan Law Review*, Vol. 3, No.1, March 2009, [ here in after Fekadu Petros, 'Underlying Distinctions Between ADR, Shinglina And Arbitration] See also Lon L. Fuller and Kenneth I. Winston, 'Forms and Limits of Adjudication', *Harvard Law Review*, Vol. 92, No. 2 (Dec., 1978), pp. 353-409.

92 See Supra Note 26, P. 6.

93 Ibid

aid and consumers claim insurance, up to referring consumer cases for special consumer courts, consumer authorities judiciary branch, small claim courts, arbitration and other ADR arrangements.<sup>94</sup>

## **2. ADR/Amicable Dispute Resolutions/**

The disputes between ‘Amicable and Alternative’ in determining the scope of ADR between the scholars of dispute settlement is unending. Current literature is starting to use Amicable over alternative by considering the different criticisms that may arise on it. According to Fekadu Petros, since the ‘alternative to what question is not answerable’ and the arbitration has characteristics, which is shared with litigation as a family of adjudication, the term amicable should be used for ADR by excluding arbitration from the group. Arbitration should be constituted in the adjudication group of dispute settlement mechanisms and treat out of the scope of ADR.<sup>95</sup>The researcher also prefers to use amicable for the purpose of this analysis. The Oxford dictionary defined ‘Amicable’ as an activity characterized by friendliness or absence of discord.”<sup>96</sup>Accordingly, amicable dispute resolutions are the pathways for disputes based on the parties’ negotiation and agreement. ADR is characterized by the absence of third parties influence. Even in the case where the third parties have involvement, their role is delimited to facilitating the parties’ negotiation process. Unlike the case of adjudications (regular court procedure and arbitration), starting from initiation up to the final outcomes of the process, the parties’ agreement has a major role. Everything about the process is under the control of the parties. By referring to the role of negotiations and the parties’ agreement in the process, Lon Fuller and Fekadu Petros categorized ADR as a contractual form of dispute resolution mechanism.<sup>97</sup>Negotiation, mediation, conciliation and compromise are the commonly known Amicable Dispute resolution/ADR/ mechanisms. Except negotiation, others may undertake both at institutional or private level. In mediation, conciliation and compromises there is the involvement of third parties, albeit they have limited roles. The idea of resolving the disputes through ADR arrangements may come into parties mind either before or after the point of controversy has been created. Furthermore, the business may create one department as a self-regulatory arrangement for consumer disputes. This is also known as internal complaint-handling schemes.

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94 See Supra Note 82.

95 See Ibid Fekadu Petros, *Underlying Distinctions Between ADR, Shimglina And Arbitration*.

96 See the Concise Oxford Dictionary, 10<sup>th</sup> Edition, s.v, “Amicable”

97 See Ibid Fekadu Petros.



Empirical research shows that direct negotiations between consumers and businesses are by far the most popular form in which consumer complaints are made.<sup>98</sup> Compared with the adjudicative approaches that include arbitration and litigation, ADR is characterized with flexible procedure that is suitable for parties and the direct enrolment of the parties on the outcome of the process. Moreover, ADR arrangements can play a significant positive role in allowing consumers to make a complaint to a business in an inexpensive, rapid and generally efficient manner.<sup>99</sup> On the other hand ADR arrangements are criticized by some as enabling fraud practices and risks (i.e., delaying consumers' access to other forms of dispute settlement mechanisms, and prolonging the time for redress to be obtained). In addition, the bargaining power disparity between business and consumer may negatively affect the outcome of the parties' negotiation. Some negotiations may require expertise knowledge of the subject matter and due to illiteracy or other related factors; the consumers may be unable to persuade the business to provide remedies in these processes. Moreover, third parties in mediations and conciliations may lack independence and impartiality. They may influence the consumer's decision by supporting the business. These and other related factors may discourage consumers from using ADR as a pathway for dispute settlement.<sup>100</sup>

### **3. Arbitration**

Arbitration is an adjudicative form of dispute settlement mechanism. Like that of court litigation, arbitration also shares the mandatory and optional conditions of adjudication. Unlike the court litigation approach, arbitration emanates from the parties' agreement. There is the involvement of third parties, namely arbitrators. Unlike the third parties involved in mediation and conciliations, the third parties have a major role in controlling the process and have power to order binding awards. Parties may agree to refer their disputes to an arbitration tribunal and to be bound by the result found by arbitrators either at the time of contract or after the disputes has occurred.<sup>101</sup> According to the UNCTAD stipulation "For commercial disputes, well-known arbitration 'courts' exist, but for consumer disputes a variety of systems exist. There may be a permanent dispute settlement board, less formal or nebulous arrangements."<sup>102</sup> Further, they may be state sponsored, sectorial trade association funded or

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98 See Ibid.

99 See the UNCTAD Conference Notes p. 7-8.

100 Ibid

101 See Fekadu Petros, *Underlying Distinctions Between ADR, Shimglina And Arbitration*.

102 See UNCTAD Manual on Consumer Protection p. 93.

private industry.<sup>103</sup> Arbitration schemes may also vary on whether they are free to consumers (usually funded by business, but sometimes with State contributions) or require an access fee, which might or might not be refunded if the consumer wins.<sup>104</sup> Similar with the arbitration centres in commercial disputes, the consumer arbitration also has merits and demerits. Most of their demerits are similar with the ADR problems stated above.

#### **4. Small Claim Courts**

Smaller values of most consumer claims make access to justice very difficult given the high costs of litigation, difficult court procedures and formalities, and long lengthy procedural waiting times in the process of adjudicating the case. By simplifying the court procedure and formalities, and reducing legal expenses and waiting times, small claims courts aim to make the legal proceeding more accessible to citizens with small amount of claims. The characteristics of small claim courts vary in different jurisdictions. However, in general, they are characterized by oral procedures, simplified rules of evidence, no obligation to be represented by a lawyer, and a certain geographic proximity. Their jurisdiction is limited to proceedings below a certain financial level of claim.<sup>105</sup> In some countries there is a clear prohibition of representation by a lawyer. Various states already have in place viable low cost small claims tribunals for consumer claims.<sup>106</sup> These procedures vary significantly from country to country in terms of type of procedure; type of dispute and claim that may be heard; monetary thresholds; financial costs to parties; and overall accessibility to consumers. Duggan distinguishes two types of mechanisms for processing small claims; court based mechanism and tribunal based mechanism. The court based mechanism is corresponding to an ordinary court proceeding with simple procedures, restricted use of legal representation in many cases, reduced costs, and less possibility of appealing a judge's decision. On the other hand tribunal based mechanism differs from the ordinary courts by sometimes limiting admissible actions to certain categories of litigants, by allowing consumers to launch an action simply by filling out a form, by prohibiting legal representation, by having waiting

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103 The permanent consumer disputes board of Netherland and in Nordic states and less formal arbitration centres that are including the Tribunal for Consumer Complaints of Malaysia, the hierarchy of the consumers' arbitration tribunal in India, and the multi-sectorial matrix of Geschillencommissie operated by a single foundation in the Netherlands can be mentioned as an illustration to these.

104 The Lisbon Arbitration Centre for Consumer Conflicts in Portugal is one instance of consumer arbitration centres serving the community free of charge.

105 See UNCTAD Conference Notes, and UNCTAD Manual on Consumer Protection, pp. 93-94.

106 We find, in one form or another, small claims courts in Colombia, Brazil, Japan, France, Belgium, Italy, Malaysia, Malta, Australia, South Africa, Portugal, Pakistan and India<sup>70</sup>.

times counted in weeks rather than months, and by including tribunal members who do not necessarily have to be legal experts. The UN guideline of consumers' right protection and the 2007 OECD recommendations on the consumer dispute resolution and redress call for states to establish simplified court procedures for small claims.

Save the paramount importance of simplifying the court procedure, reducing waiting times and cost of litigation, it is also characterized by many difficulties. For instance, the restriction of representation by a lawyer may make the legal proceeding remain complex to the layman consumer. According to M. J. Trebilcock, prohibiting legal representation sometimes has the disadvantage of leading to poor preparation, and thus to lost time, ineffective use of court resources, and even bad decisions.<sup>107</sup> When there is a lack of resources such as an experienced judge, the time of proceeding may be longer in small claim arrangements and the outcome of the proceeding may not satisfy parties to the proceeding. Even if it reduces direct costs such as representation costs, it will raise opportunity costs, information costs and emotional costs. The working hours of small claim courts should also be taken into consideration.

## **5. Collective Action**

Collective action is one of the most important developments in judicial law in recent years. A collective action in consumer proceedings also emerges from the small amount of claims common feature of consumer cases.<sup>108</sup> Collective action ensures that similar individual claims will be treated collectively in a single case. It is important for consumers' justice where they have no interest to provide individual claims because of its amount. Members of the group have no obligation regarding the process. It therefore demonstrates an extraordinary commitment by the person who is volunteering to represent the group. Indirect costs of organizing collective action are very high.<sup>109</sup> Collective action has an importance in distributing direct economic costs between individuals within the group. In addition to reducing the direct costs to consumers proceeding, collective action has a deterrence or preventive function from the business person perspective. If there is a collective consumers' action practice in a given jurisdiction, since the outcomes of the proceeding would be burdensome, the business person will give a due consideration for the consumers' right

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107 Michael J. Trebilcock, 'Rethinking Consumer Protection Policy', p. 88., in C. E. F. Rickett and T. G. W. Telfer, *International Perspectives on Consumers' Access to Justice*, op. cit.

108 See Howells and James, *Litigation in the Consumer Interest*, pp. 31-49.

109 Ibid

protection.<sup>110</sup> Specific laws providing for collective action may vary substantially from state to state, depending on the overall legal framework. In addition to the difficulties in organizing those consumers that have common small claims, the collective action is difficult for a juridical body to manage in a short period of time. This difficulty may lead the system into the delay of time of proceeding and lawyers may discourage to represent such a claim. Because of the principle of ‘locus standing’ collective action was limited to representative claims by an individual who has a direct and personal interest in the matter to be litigated.<sup>111</sup> However, in recent times countries are starting to modify this strict rule. France, India, UK, China and Thailand are among the countries that have established a system in which the consumers’ interest can be represented by the consumer association before the court.<sup>112</sup> In addition, public authorities, i.e. ombudsman and civil society organizations are also the competent organs in representing the consumer interests in collective actions.

## **6. Online Dispute**

With the development of electronic transitions, the online consumers’ dispute also necessitates to build a parallel pathway. According to the UNCTAD manual stipulation “many online traders have built-in ‘online dispute resolution’ (ODR) arrangements, which can vary between using panels of legally-qualified and verifiable individuals on an arbitration model, to algorithmic generation of automated proposals based on the statistically most likely sum that both parties would be most likely to accept, to crowd-based ‘jury’ decisions.”<sup>113</sup> The United Nations Commission on International Trade Law (UNCITRAL) is also advised countries to build an online dispute resolution systems for a cross boarder e-commences.<sup>114</sup> However, it doesn’t mean that the online dispute resolution system is limited to online transactions.<sup>115</sup> Countries like India and Mexico has created an online dispute resolution system, which is working for all types of consumer disputes.<sup>116</sup> This platform is created to reduce the barriers of regular courts and other informal systems of consumer dispute. In spite of this, an online dispute resolution has many prerequisites in relation to the literacy of the beneficiaries and the level of the technological development in the country. Creating the

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110 Ibid

111 Ibid

<sup>112</sup> Ibid

113 See UNCTAD Manual on Consumer Protection, p. 95.

114 See Review of the Guide for the Incorporation of Domestic Law, *New Version of UNCITRAL Model Law*, New York, 2012.

115 See the UNCTAD Conference Notes, p.9.

116 Ibid

system without a competent system to implement is meaningless. So, countries in establishing an online platform for consumer disputes they should have considered the level of the consumers' technological literacy.

### **7. Public Authorities; Ombudsman and Consumer agencies**

The other alternative platform for consumer disputes to reduce the problems of the regular court process in the consumer cases is creating the public authorities competent to adjudicate consumer cases. The most commonly known platforms are ombudsman and consumer tribunal/agency.

The ombudsman is inherently a public body, which is responsible to represent the public interest when there is a maladministration practice. It had no an adjudicative power. Its power was limited to investigating the maladministration in the public offices following the peoples' grievances. Its primary focus has been ensuring effective public service for the peoples who live in a certain area. While, in recent times countries are starting to use an Ombudsman as a system to adjudicate private disputes.<sup>117</sup> The justification behind this new role of the Ombudsman is the existence of widespread problems of the regular court structure and other tribunals in ensuring cheap, fast and effective judicial protection. The ombudsman will play a gap filling role to other arrangements.<sup>118</sup> Unlike that of their earlier approach, here they would play a judiciary role. Mostly, the judges play an inquisitorial role. The procedure they apply and the cost they charge against consumer is very less compared with other arrangements. Based on this increasingly pivotal role, the ombudsman office is now widely recognized as being capable of making a significant contribution to human rights protections, both at the individual and wider societal levels.<sup>119</sup> International organizations such as the UN and EU are supporting the expansion of this trend in their member states. With development of consumer rights protection private sector Ombudsman have spread rapidly to offer consumers new paths for their complaints. In addition, most Ombudsmen are freely accessible to the consumers', to assure their access to justice need. Small claims of the

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117 See Julinda Beqiraj and Lawrence McNamara, *International Access to Justice: Barriers and Solutions*, Bingham Centre for the Rule of Law Report, 2014. See also the UNCTAD Manual on Consumers Protection, pp.94-95.

118 Ibid

119 Ibid

consumer, in particular, are the primary subject matters of the Ombudsman's adjudication. The private sector Ombudsman is widely known arrangement in European countries.<sup>120</sup>

The other well-known public arrangement for the consumer's dispute in different countries jurisprudence is the establishment of a special administrative tribunal for consumer disputes.<sup>121</sup> This form of consumer adjudicative bodies is mostly an arrangement within the executive branch of the government. It is one branch of the consumer authorities those are responsible for one of the government cabinet that regulates trade. Starting from deciding the rule of procedure up to the appointment of presiding judges the involvement of the executives is very high. Like in case of other formal and informal arrangements for consumer redress, the establishment of a consumer tribunal is also a response of the regular court arrangements problems in providing cheap, fast and effective judicial protection.<sup>122</sup> However, it is not free from critics. The critics are related to independence of the tribunal and judges, the process of adjudication, and bureaucratic bottlenecks.

The Ethiopian experience at the federal level can be taken as an instance for special tribunals to the consumer's dispute. As I described before, the breaking point of special focus for the consumer protection in Ethiopia is the enactment of the trade practice and consumers protection proclamation No. 685/2010. Before 2010 the issue of consumer was governed by different scattered laws. Under this proclamation the administrative authority, which was empowered to regulate the issue of consumer is the Trade Practice and Consumers Protection Authority/TPCPA/. Within this arrangement there was a judicial sub-branch it has an authority to adjudicate the consumer claims. The new amended TCCPP has also followed similar approach with the repealed proclamation. The TCCPP authorized the Trade Competition and Consumer Protection Authority (TCCPA) to regulate the enforcement of the proclamation included the consumer protection stipulations. TCCPA is accountable for ministry of trade. It is composed of three organs; Director General, judges and Investigative officers. The latter two are responsible to administer the judicial aspect of the authority responsibilities. Protecting consumers from unfair acts of business and organize judicial organs with a jurisdiction on issues of trade competition and consumer protection is among the power and responsibilities of the authority under Art 30 of the TCCPP. According to Art 23(5) of the TCCPP the powers of the authority are limited to those entitlements within the

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120 Ibid

121 See the UNCTAD Manual on Consumer Protection pp. 93-94.

122 Ibid

proclamation; the rest is left to the ministry of trade and regional bureaus. This principle is working for all branches of the authority. According to Art 32 of the TCCPP the adjudicative branch of the authority has a power to take both administrative and civil measures. The administrative aspect of the adjudicative bench of the authority is delimited to the competition issue. In accordance with Art 23(5) stipulation, since it is not explicitly given to the authority, the ministry of trade and regional trade bureaus would have an authority to take administrative measures on consumer issues.

On the other hand the adjudicative branch of the authority has a jurisdiction on both the competition and consumers civil matters. The adjudicative branch of the authority power in consumer issues is limited to the allegations that may arise in the federal cities of Ethiopia. The consumer disputes that may arise in the regions are left to the regional states platform. In addition the proclamation entitled the regions to establish regional adjudicative branch when it finds necessary. The public tribunal arrangement of the consumer disputes at the federal level is not limited to the adjudicative bench; there is also an appellate tribunal which is authorized to review the decisions of the adjudicative bench. As stated in Art. 33(3) of the TCCPP the appellate tribunal has a power to confirm, reverse or vary the decision, or remand the case, with necessary instructions, to the Authority or the adjudicative bench of the Authority, as the case may be upon examining an appeal submitted to it. With regard to the composition of judges, both the adjudicative bench and appellate tribunals has one presiding judge and two judges appointed by the prime minister. Professional qualification, educational background and experience are the criteria's in the selection process. Even if the proclamation declares independence of judges in the adjudicative bench or appellate tribunal, the appointment of the judges by the prime minister by itself has a negative impact on the independence of the adjudicative organs of the authority. In addition, since it is within the supervision of an executive organ TCCPA its independence is again at risk. Moreover, the proclamation is declared the appellate tribunal decision as a final decision except the error of law claims to the Federal Supreme Court bench. This would affect the consumers' judicial protection right by restricting the possibility of reviewing the tribunal decision by the regular courts. Procedurally, the proclamation referred the adjudication body to use the civil procedure rules. This is also another obstacle for the consumer, which is restoring the consumers into the regular courts long and technical procedures. The non-existence of clear rules for the conduct of the judges and other bureaucratic issues are also the main challenging in ensuring effective and efficient consumer protection under this arrangement. In addition,

according to Art 40 of the TCCPP parties to the dispute except the government office are expected to pay adjudication fee. This is also may discourage the consumers with a small amount of the claim. These dynamics should be considered in measuring the Ethiopian administrative approach for consumer disputes settlement at the federal level and taking experience for regions.

## **8. Special Consumer Court**

Special consumer court platform for the consumer dispute is the most recent development in the area of the consumers' judicial protection/access to justice regime. The idea of special consumer court is concerned with accommodating the merit and demerits of other pathways of the consumer disputes and creating the most effective judicial protection arrangement for the consumer.<sup>123</sup> From the regular courts arrangement, it takes the strengths such as the clear procedures, rules of the conduct of judges and their composition process, the appellate process and other relevant things. From other informal adjudicative arrangements, it seeks to take their merits in relation to cost and time of proceedings.<sup>124</sup> However, special consumer court may require huge amount of money and qualified professionals in the area.

### **2.3.2. THE PATHWAYS FOR CONSUMER DISPUTE RESOLUTION IN THE AMHARA REGIONAL STATE**

As I mentioned earlier, according to Art 23(5), Art. 32(1)(c) and Art. 34 of the TCCPP, the consumer dispute resolution process in the regions is left to each regional state platform. The regional states have discretion to decide for the establishment of a special adjudicative body or to use the existing platform. Following this stipulation of the TCCPP, as I pointed before, the Amhara National Regional State executive branches reestablishment proclamation has entitled the Trade and Market Development Bureau of the region to regulate the implementation of the consumer protection rules of the TCCPP in the region. Support the efforts of consumer right protection by establishing a procedure for resolving consumer disputes through negotiation, and creating an administrative organ to adjudicate the consumers' civil cases are among the power and functions of the Bureau under the

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123 See Simon Carreau, *Consumers and Access to Justice: One-Stop Shopping for Consumers*, Final Report of the Research Project Presented to Industry Canada's Office of Consumer Affairs, Union Des Consommateurs, 2011.

124 Ibid



proclamation that concerning with the creation of consumer dispute settlement outlets in the region.

Under this entitlement the Bureau has three basic powers and functions concerning the settlement of consumer dispute such as; supporting those entities that are working for consumers' right protection, establish a negotiation platform for the consumer dispute resolution and creating a public tribunal, like in case of the federal arrangement, for a consumer civil case dispute. According to this proclamation, the intended approaches for consumer's dispute settlement in the region are negotiation at the first stage and administrative (public) consumer tribunal for further claims. This approach of the region is a combination of the ADR and public authority from those pathways the researcher mentioned in the previous section. The proclamation doesn't say anything about the establishment of consumer arbitration, online dispute resolution, Mediation or conciliation centre, special consumer court, small claim court for consumers and others platforms in the region. Nevertheless, until the researcher has completed this work, there is no an administrative, judicial organ established in the region to adjudicate the consumers civil disputes. So, still the only choice of the consumers' in the Amhara Regional State to bring their claims before or after the negotiation is the traditional regular court arrangements. Under the regular court arrangement, since there is no a special bench for consumer disputes; it would share all circumstances of the adjudication process with other civil matters.

Since the enactment of the 1995 FDRE constitution, regular courts are established both at the federal and regional level. The jurisdiction of these two tiers of the court is limited to the subject matters that may arise in their area. In both jurisdictions there are a supreme court, high court and first instance court arrangements. In addition to these three arrangements at regions administration, there are also a city court and Kebele Social Court procedures. The city court arrangements are created to adjudicate some city administration related civil matters and to reduce the case flows of the Woreda courts. While, the Kebele social courts are comparable with the small claim court pathways in other jurisdictions. The Kebele social court and city court arrangements are still subject to the constitutionality debate. Regardless of this fact, Kebele social courts and city courts are actively working in different regional and city administrations of the country including in the Amhara Regional State.

Likewise of the FDRE Constitution, the Amhara Regional State revised constitution has also stated various social and economic rights of the citizen's and it has established the

judicial protection arrangements for their enforcement. Under Art 37 it declared the citizen's access to justice right in similar fashion with the FDRE constitution. It is also recognized an independent courts and other competent judicial bodies as pathways for implementing this right. According to Art 46(3), Art 66(1) of the same statute a judicial power of the region is vested only in the courts. Art. 64 prohibited the establishment of special or ad-hoc courts that are taking the judicial power of the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally established procedure.

Even though, the customary and religious courts are remaining functional as per Art 34(5) and Art 65 of the constitution. This constitution recognized three categories of courts in different level; the supreme court, high court and first instance courts. The Supreme Court is the highest judicial body in the region, and the First Instance Court is the lowest judicial body of the region. The Amhara Regional State Courts establishment proclamation is also acknowledged these three categories of courts and determined their jurisdiction.<sup>125</sup> Circuit courts at all levels are also recognized in this proclamation in order to make the courts accessible to the public and effective. According to Art 13 of this proclamation, the judicial power of the courts of the region is such indicated regional matters directly or by appeal, as provided in Art 80 of the FDRE constitution; as well as, Art 66 and 67 of the constitution of the region except cases that are clearly and specifically stipulated under the jurisdiction of the courts of the federal government.

These three categories of courts have both civil and criminal jurisdiction. The civil jurisdiction of the three categories of courts in the region is stated in the proclamation from two perspectives such as; subject matters that have pecuniary value and non-pecuniary subject matters. The pecuniary subject matters are also further categorized into suits regarding movables and immovable. Each level of courts has both a criminal and civil divisions. According to Art 19(2) of the courts establishment proclamation of the region, courts have discretion to organize more divisions/benches for the particular cases in order to make the judicial activity accessible and effective. Accordingly, in practice, the civil division of the Woreda Courts has a family, labour and other civil matters benches. Furthermore, the Supreme Court of the region has a cassation division, which is empowered by the constitution to see and correct the legal errors of the courts final judgements in the region.

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125 See A Revised the Amhara National Regional State Courts' Establishment Proclamation, 2015, *Zikre Hlg*, Proclamation No.223/2015, 20<sup>th</sup> Year, No. 4.[here in after The ANRS Courts Establishment Proclamation]

In addition to these three categories of court structures in the region, there are also a Kebele Social Court and a city court arrangement in the region. The Kebele social courts in the region are established at the Kebele level and have a jurisdiction to adjudicate civil suits not exceeding 15,000ETB for movables and suits not exceeding 25,000ETB for the immovable.<sup>126</sup> Whereas the city courts are established in the three cities of the region such as; Gondar, Bahir Dar, and Dessie city administrations to adjudicate urban cases pursuant to Gondar, Bahir Dar and Dessie city administration regulations. The urban cases are limited to matters that facilitate the work of the city administration. Most of the civil cases, including consumer disputes are out of the jurisdiction of the city courts in the region.

Accordingly, the formal court structures for the adjudication of consumer disputes are include the regular court structures from Woreda court up to cassation benches and the Kebele Social Court arrangements in the region. In some cases as Murado Abdu indicated in his article, the Federal Supreme Court cassation bench may have a cassation over cassation power over regional matters including the consumer dispute.<sup>127</sup> After taking these judicial arrangements of the consumer dispute resolution in the region, the task of the researcher in the coming sections of the study will be testing their competency and practical problems in ensuring cheap, fast and effective judicial protection for the consumers.

## **CHAPTER THREE**

### **THE COMPETENCY AND PRACTICAL PROBLEMS OF THE CONSUMERS' JUDICIAL PROTECTION ARRANGEMENTS IN THE AMHARA REGIONAL STATE**

#### **3.1. THE COMPETENCY OF THE AVAILABLE PATHWAYS OF CONSUMER DISPUTES RESOLUTION IN THE AMHARA REGIONAL STATE**

The existence of pathways for consumer dispute resolution in a certain jurisdiction is a one step in ensuring the consumers judicial protection right. Further to this, the available

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<sup>126</sup> See A Revised Social Courts Establishment and Determination of their Powers and Duties Proclamation of the ANRS, 2017, *Zikre Hig*, Proclamation No. 246/2017, 21th Year, No. 26.[ Here in After the Revised Social Courts Establishment Proclamation]

<sup>127</sup> Muradu Abdo, 'Review of Decisions of State Courts Over State Matters by the Federal Supreme Court', *Mizzan Law Review*, Vol. 1, No. 1, 2007, pp. 60-74.

pathways competency should be tested by using the commonly used judicial protection criteria's. As I stated in the earlier discussions the most commonly known criteria's of measuring the competency of the judicial protection arrangements, in particular the consumers redress system are included; accessibility, independence, fairness, accountability, efficiency and effectiveness.<sup>128</sup> Based on these criteria's, in this section, the researcher tested the consumers' dispute resolution pathways in the Amhara National Regional State (the regular court arrangements including the Kebele Social Courts) as follow;

## I. INDEPENDENCE

Independence of the judiciary is one of the most crucial characteristic of the competent pathway of consumers' dispute settlement. Judiciary independence requires that institutional arrangements should be in place to guarantee the independence of the decision making body and the impartiality of the decision.<sup>129</sup> In other word these prerequisites refer the necessity of both personal and institutional independence in the judiciary to have a fairer outcome at the final stage. The judiciary as an institution, it should be free from the influence of the parties to the dispute settlement and there should be a separation of power with the administrative organs of the government. Institutional independence is all about the administrative and financial independence of the scheme. The parties should have no role both in the decision making process of the judiciary and the administration of the scheme to guarantee institutional independence throughout the process of dispute settlement. Not only to this, in order to guarantee its institutional independence, the judicial body should not be received any financial or technical support from a party to the dispute.<sup>130</sup>

As far as the law is concerned the revised constitution of the Amhara Regional State, after declaring the establishment of an independent judicial organ in the region, it has recognized the independence of any level of courts from any interference or influence of any governmental body, official or any other sources.<sup>131</sup> Furthermore, the revised constitution clearly stated that judicial powers are vested exclusively in the courts of the region and any special or adhoc courts, which takes the judicial powers away from the regular courts or institutions legally empowered to exercise a judicial function and which don't follow legally

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<sup>128</sup> See Supra Notes 87 and 88.

<sup>129</sup> Howells James, *Litigation In The Consumer Interest*, pp. 12-15.

<sup>130</sup> Ibid

<sup>131</sup> See the ANRS Revised Constitution, Art 64-69.

established procedures shall not be established.<sup>132</sup> Stirring on to financial and administrative independence, the Revised Constitution also proclaims upon Regional Supreme Court the power to draw up and submit to the Regional Council the budget of the regional courts. Upon the approval of the budget by the council the regional Supreme Court will administer the details.<sup>133</sup> Through these constitutional stipulations we can possibly conclude that institutional independence of the judiciary is constitutionally enshrined in the region. However, according to Tegaye Gedion, the constitutional guarantee of the court's independence in Ethiopia as a whole is not free from a limitation.<sup>134</sup> He mentioned the controversy on the power of courts in the constitutional interpretation and the non-existence of a clear rule on the judicial review of other legally empowered institution's decision as obstacles of the judicial bodies' independence in the country. These limitations can be also equally mention as the legal limitations of the regular court's independence in the regions.

In relation to the Kebele social courts arrangements at the Kebele levels of the region, based on the revised constitution direction, the revised social court establishment proclamation No. 246/2017 stipulated that the judges of social court shall carry out their tasks free from the influence of any party; they shall not be directed either by other internal or external body influence without the law or local tradition and culture.<sup>135</sup> While it does not say nothing about what should be followed when there is a discrepancy between the law, local tradition and culture, and this may create uncertainty on the rules of the game in the system. In effect it may highly affect the independence of this pathway in the region. Especially, when the consumer, small claims brought to this table the difficulty in choosing between those three categories of rules may intensify and the final remark of judges on the controversy may endanger the consumers' interest. Finally, this system may lose its trust on the side of the consumers. In relation to the budgetary issues also the proclamation has followed a loose approach. The Kebele offices are taking a responsibility to cover the cost of the Kebele Social Court.<sup>136</sup> The researcher understands the intention of the law makers in this loosely drafting process, as they are given little consideration to the judicial power of the Kebele Social Courts. However, this is highly a wrong insight of the law makers. The judicial powers of the Kebele Social Courts in the proclamation are more than enough at the Kebele level, and even

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<sup>132</sup> See Ibid Art 64(2) and 66

<sup>133</sup> See Ibid Art 67(6)

<sup>134</sup> See Tegaye G. Hailu, *Amharic book on the Ethiopian Courts Civil Jurisdiction*, Mega Printing PLC, 2019, pp. 27-34.

<sup>135</sup> See the Revised Social Courts Establishment Proclamation, Art 16.

<sup>136</sup> See Ibid Art 31.

it is insignificant in amount a parallel rule should be set with the judicial arrangement at the Woreda and above levels in the region to ensure their financial or administrative independence. Consequently, their budget should be decided at least by the respective Kebele councils and administered by themselves, not by the executives at the Kebele level.

With regard to the personal independence of the decision maker the principle of independence requires; the judicial appointment should be undertaken without the companies saying, the appointment of the decision maker should be for a period of time sufficient to ensure independence, the decision maker should not be liable to be relieved of his duties without just cause and he should not be working for professional associations for a definite period of time. The Amhara Regional State revised constitution firstly it declared the personal independence of judges and consequently mentioned the instruments to guarantee this principle, such as, being solely guided by laws in making a decision, not removed from the tenure before the retirement age subject to exceptional circumstances<sup>137</sup>, and appointment of judges through a final saying of the state council. In this regard the constitution has created a strong approach that could be increasing the personal independence of judges in the region. While when we look the Kebele Social Court situation from this perception we can face a different condition. Only the appointment approach is set parallel to the regular courts judge nomination approach, in which, the Kebele council is empowered to have a final saying on it. In other cases, the judges are not expected to base their decisions solely by the law. The cultural rules and local tradition also can be used by the judges to render judgments. The grounds for removal of judges from their tenure are also poorly constructed in the proclamation. The lists in the proclamation are difficult to consider as neither an illustrative or exhaustive lists. The most important grounds that are listed for regular court judge's removal such as, incompetency, violation of disciplinary rules and inefficiency are not included in the proclamation lists.<sup>138</sup> These gaps in the Kebele Social Court frameworks may

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137 According to Art 66(4) of the ANRS revised constitution violation of disciplinary rules, gross incompetency, inefficiency and illness are the only grounds to remove the judges in the region from their tenure before their retirement age upon the judicial administration commission decision and approval of the state council by the majority vote.

138 Art 17 Removal from Social Court Judge

A judge of a social court may be discharged from his judiciary on the following reasons;

1. When the kebele council decides by majority vote based on the opinion collected from the residents to discharge him from the judicial power;
2. When the judge is sentenced in a criminal case;
3. When the judge submits request for resignation on his own will;
4. When the judge changes his kebele residence where he was elected;
5. When the judge dies.

highly affect consumers' judicial protection right in the region when potential disputes are taken before it based on its pecuniary jurisdiction as provided in the establishment proclamation.

Furthermore, the principle of independence requires the decision maker must possess the abilities, experience and competence, 'particularly in the field of law', required to carry out this function. In the regular courts structure of the region holding a first degree in law is a primary requirement to be a judge in the region. In addition, there are also age and other disciplinary related requirements to be a judge in the region. To be a Woreda judge in the region, successfully graduating from a law school in Ethiopia and completed the judicial training provided by the justice institute of the region are the standards in relation to the academic qualification. At the highest levels of courts, there is a years of experience requirement at different positions. Even though, since consumer law is not included in the curriculum of undergraduate courses in the law schools and there is no a separate module for it at the time of judicial training, those judges with a first degree in law and those not specialized in the consumer protection related area of laws may be challenged in applying the consumer protection law rules in their daily tasks of resolving consumer disputes. Not only to this, consumer disputes are required to have an interdisciplinary knowledge, including economics, accounting, financing and other related filed of studies. So, those qualification requirements for the nomination of regular court judge in the region are not sufficient in the consumers' dispute settlements point of view. To fill these gaps an intensive training should be provided for each judge in the area of consumer protection laws and interrelated disciplinarians. Such an arrangement may create by either of concerning bodies in the region.<sup>139</sup> When we look the Kebele Social Courts from this perception we could observe too funny occasion. For those judges who are empowered to adjudicate pecuniary matters up to 15,000ETB and 25,000ETB, their establishment proclamation sets the ability to write and read as the only qualification requirements to be appointed as a judge.<sup>140</sup> In particular, where a consumer cases are brought to this bench we can imagine that how they could be adjudicated the dispute. They couldn't have a capability to interpret consumer protection related laws that are put in different legal instruments of Ethiopia and set out the dispute based on their findings.

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<sup>139</sup> Universities, Justice Bureau, Trade Bureau and other governmental or NGOs may host this program.

<sup>140</sup> See the revise Social Courts Establishment Proclamation, Art 15.

## II. ACCESSIBILITY

Accessibility of the dispute settlement pathways can be envisaged in terms of its physical accessibility, cheapness and ease of use the system, and availability of legal information or education about the way of exhausting the existing pathways.<sup>141</sup> The judicial body should be physically accessible to the beneficiaries as much as possible. The physical accessibility has both a cost and psychological commitment implication to the beneficiary of the available arrangement. If the place of adjudication is very far from the place of residence of the consumer, who has a claim against a business person, he would be discouraged to go through the system of adjudication in fear of the high cost of transportation and loss of his commitment to seek justice due to the long distant walking necessity.<sup>142</sup> Physical accessibility is not enough by itself. In addition to making the system physically accessible for the consumers' the responsible organ should work to make the system too cheaply to the beneficiaries and ease the process of use.<sup>143</sup> The cost of legal advice, the cost of representation, the court fees and other direct or indirect cost of litigation should be made in reduced amounts. If the cost of litigation is very high the available judiciary arrangements couldn't be accessible to the beneficiaries. Especially, in most of the consumer cases the amount of claims is too small; as a result, it may require building a system that permits a costless litigation.

To ease the use of the system the redress procedure should be well publicized, there should be appropriate assistance to the disadvantaged complaints, able to make an oral presentation of the claim even though the system requires written complaints and conciliation, mediation and negotiation should be used to attempt to settle complaints and that a legalistic and adversarial approach be discouraged. In addition, providing legal information or education is the benchmark of enabling consumers' to use the system of dispute settlement without difficulty. The government and other responsible bodies' i.e., NGOs should have built a system of consumer education.<sup>144</sup> In this system the consumers should have learned about the content of their rights and the way of claiming its enforcement. Having a judicial arrangement for dispute settlement without a consumer's education system is meaningless. In

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<sup>141</sup>Bedner A. and Vel, J.A.C., 'An Analytical Framework for Empirical Research on Access to Justice', *Law, Social Justice & Global Development Journal (LGD)*, 2010, pp.14-18 Available at [http://www.go.warwick.ac.uk/elj/lgd/20010\\_1/bedner\\_vel](http://www.go.warwick.ac.uk/elj/lgd/20010_1/bedner_vel).

<sup>142</sup> Ibid

<sup>143</sup> Ibid

<sup>144</sup> Ibid



order to use the system of judicial protection without difficulty, first the consumer should have enough knowledge about his/her rights and the available remedies of its violation. The ADR and small claim courts are more preferable than other systems of adjudication in terms of accessibility.

The accessibility of the available pathways of consumer dispute settlement in the Amhara Regional State has a diverse situation. Concerning their physical accessibility both the revised constitution of the region and the revised courts establishment proclamation declare the establishment of Woreda courts, High courts and Supreme courts at the Woreda, Zone and Regional administration levels of the region respectively. To reduce the difficulties of beneficiaries to access the service of the court in the normal platforms a circuit court arrangement is recognized by the proclamation.<sup>145</sup> In addition, a Supreme Court branch is being established in some capital cities of the Zone administrations. In the regular courts arrangement of consumer dispute settlement in the region the consumers' accessibility difficulties could be increased when the case goes to the highest level of the court arrangements. The Kebele social courts arrangements are more physically accessible to consumers compared with the regular court arrangements, while they are working only for a limited period of time in a week. This limitation of the Kebele Social Courts in terms of the working days is resulting from the non-existence of a system of recruiting judges for regular tenure. Judges in the Kebele social court are accessible to the disputants only for two or three working days since it is unremunerated service and they may have other personal works to lead their life.

In terms of costs in the regular court arrangement of the consumers may face both direct and indirect costs. The direct costs are included representation costs, document preparation costs, court fees and reparation cost if he/she loss in the litigation. Indirect costs are also included transportation costs, accommodation costs, and other slight costs due to the litigation. The existence of these modalities of costs in the arrangements may highly discourage the consumers' commitment to provide claim before it. Concerning the indirect costs it is important to correct the physical accessibility problems and tries to adjudicate the case within a short period of time. Whereas the direct costs, in particular the representation and document preparation costs also can be reduced through the provision of a free legal aid service. The

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<sup>145</sup> See *the ANRS Revised Constitution*, Art 67 and *The Revised Courts Establishment Proclamation*, Art 3 and Art 21(4).

Kebele social courts are again more accessible in terms of costs for consumer disputes settlement compared with the regular arrangements in the region. In the Kebele Social Courts, there is no court fee, representation by the attorneys is not expected, statement of claims and statement of defences can be provided orally or in a less formal written document, and since the place of adjudication is not very far from their place of residence the transportation and accommodation costs may not be an issue. The provision of legal information about the consumers' judicial protection right is also very minimal as the researcher makes sure in his interview with judges, trade bureau officials, attorneys, and consumers.

### **III. ACCOUNTABILITY**

Accountability is all about creating a system of publicly account the judiciaries for their operation by publishing the determinations and specifying liabilities of violating their duty without affecting the independence scheme. The individuals, who is participating in the decision making process should be liable for the infringement of their responsibility before the law regarding the administration of justice. Accountability scheme is very important to guarantee independence and impartiality of the judiciary in line with the moral requirements. Without the accountability procedure, it is difficult for sure about their independence, and fairness in their decision making process. Even in the system where there is a strong accountability scheme, it is too difficult to control the unduly acts of the judiciaries.<sup>146</sup>

According to Art 12(1) and (3) of the revised constitution of the Amhara Regional State the conducts of the regional state shall be transparent and any public official or an elected representative shall be accountable for any failure in official duties. Accordingly, the judges in the judicial framework are also subject to this constitutional accountability principle. As I mentioned before, judges are expected to undertake their duties as per the professional or disciplinary standards that are stipulated in the revised constitution and relevant proclamations. If the judges are failing to undertake their duties properly, they may face administrative, criminal or civil liabilities. The administrative measures may range from a preliminary warning up to removal from the tenure. The judiciary administrative council is empowered by the constitution to administer this process and the final saying is for the state

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<sup>146</sup> See Howells and James, *Litigation in the Consumer Interest*, pp. 25-26.

council.<sup>147</sup> The civil liabilities of judges are in principle left within the structure of the government obligations. However, after compensating the claimant the government may request the judge to replace it. This approach has an importance to guarantee the judges independent by reducing unnecessary claims and equally to create the opportunity for the injured individual to be compensated without affecting the judicial independence. This immunity protection is not always working. According to Art 2126(2) of the civil code this protection of the employee is working only for the professional faults. With regard to the criminal liability, according to Art 59 of the criminal code of Ethiopia, likewise of other public officials if the judges committed a crime either intentionally or negligently the principle of independence wouldn't shield him/her from a criminal liability.

#### IV. EFFICIENCY

In addition to the independence, accountability and other criteria's a certain judicial arrangement to be considered as a competent pathway of consumer dispute settlement it should be an efficient. An efficient system is a system, which is working productively with minimum wasted effort or expense.<sup>148</sup> In other word a system can be considered as an efficient where it ensures a speedy and stream-lined/simplified process and regular review of its own performance under scrutiny from outside observers. Furthermore, an efficient judicial arrangement has a system for tracking complaints, timely notifying the parties' progress and provision for regular monitoring. The public arrangements, such as ombudsman and administrative tribunals are better off in satisfying these requirements compared with the other pathways.

In relation to efficiency there is a huge problem in the consumer dispute settlement arrangements in the region. Due to the duplication of cases and a time taking procedures in the region a speedy adjudication of cases can't be expected. Starting from providing a first instance claim before a competent judiciary arrangement up to the time of enforcement it may take a significant period of time. It may face a long period of time adjournment to comply with each relevant procedure in the civil procedure code of Ethiopia. In addition to their time taking process the available pathways for consumer disputes in the region are not subject to a public scrutiny. In the region there is no a system of scrutinizing a public opinion on the activities of the courts and improving their failures. Furthermore, the accessibility and

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<sup>147</sup> See *The ANRS Revised Constitution*, Art 69.

<sup>148</sup> See Howells and James, *Litigation in the Consumer Interest*, pp.26

independence problems have an impact on the efficiency of the courts. In terms of procedure and time of adjudication the Kebele Social Court arrangements are more advantageous compared with the regular court arrangements since they can use a simplified procedure throughout their adjudications. However, as I mentioned before, the Kebele Social Court limited working days are also another challenge to its efficiency. Moreover, since it is not their regular tenure, the judges of Kebele Social Courts may give less attention for its efficiency as well.

## V. EFFECTIVENESS AND FAIRNESS

Effectiveness refers the act of producing a desired or intended result. It is closely related with the principle of efficiency, but the former is focused on the operation of the scheme and the latter is focusing on the final result (the capacity of the scheme to deliver the intended results). On the task of dispute settlement the final intended result in one or another way is always to deliver justice. In the work of measuring effectiveness of a given judicial arrangement we may use different criteria's that are including the capacity of the scheme to cover a wide range of consumer disputes, the fairness of the decisions, enforcement frameworks of the decision and the possibility of an appeal for further judicial review.<sup>149</sup> Fairness is an independent standard of measuring the performance of the available pathway of dispute settlement. In spite of this fact, the researcher preferred to discuss it within effectiveness criteria, since fairness is the pillar component of effectiveness as I pointed before.

In the Amhara Regional State even though there is no a specific adjudicative body for consumer disputes, the available pathways are left to all forms of consumer disputes irrespective of the nature of the dispute as far as it is a justiciable matter. Both in the regular court and the Kebele Social Court arrangements the consumer cases are within the broad category of civil matters and they are treated likewise of other civil disputes in the jurisdiction. However, this approach of treating the consumer disputes with other civil matters and treating equally with others has its own impact on the effectiveness of the system. Because, as I mentioned before, since consumer disputes are special in their nature and they are a result of day to day transaction of the societies they may require a more speedy trial

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<sup>149</sup> See Garth Bryant G. and Cappelletti Mauro, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective', *Articles by Maurer Faculty*, Paper 1142, 1978, Available at <http://www.repository.law.indiana.edu/facpub/1142>.

than the others. If the adjudicative bodies treated them equally with the other and adjourn the case for a long period of time, even if the final judgement is just in its merit, it may not be satisfied the claimant since the time is going up. In addition to this, the approach has an impact in the number of consumer case to be adjudicated in a given bench. This may encourage the consumers not to take the cases before the available pathways and tries to resolve the dispute through informal outlets as these institutions are physically accessible, cheaper and speedier. According to Kokebe W. Jemaneh, “*Informal outlets/customary dispute resolution mechanisms have the potential to conflict with constitutional and human rights provisions and do not necessarily result in justice that upholds universally cherished human values[emphasis added].*”<sup>150</sup> In effect, the consumers’ judicial protection right would be at risk. Under this circumstance, it is difficult to conclude that the consumer dispute settlement pathways in the region are covering a wide range of disputes even though it opens the door for all forms of disputes.

The fairness criteria of a judicial protection competency are requiring the system must produce decisions which are fair and seen to be fair by observing the principle of procedural fairness. The decision maker should consider only the information provided before it and the specific legal criteria upon which its decision is based on the decision making process. The decision should be based on fairness, reasonable approaches, good practices/precedents, and relevant laws. Procedurally, due process or natural justice requirements should be observed. The decisions must be free from personal biases and other unduly practices. In addition, the equality of parties before the court and public hearings are also important to guarantee fairness in the adjudication of consumer disputes. In general, as far as the fairness of the decision concerned, we have to consider at least the following three elements. These are included, giving equal opportunities for the disputing parties to present their factual and legal arguments; the adjudicators should have an objective position and avoiding any bias, and supporting the decisions with sufficient reasons. To fulfil these conditions the courts should equally invite the parties for a hearing. After the invitation of the parties, the court should allow the parties to the dispute to have an equal opportunity to present their arguments and evidence. Again throughout the hearing process the court should treat the parties equally

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150Kokebe W. Jemaneh, ‘Reconsidering Access to Justice in Ethiopia: Towards A Human Rights-Based Approach’, In *Access to Justice in Ethiopia: Towards an Inventory of Issue*, Centre for Human Right, Addis Abeba University, 2014, p. 10

irrespective of their status or other scenarios. Finally, the decision should be reasoned out by the parties' arguments and relevant laws in the area.

Both the regular courts and the Kebele Social Courts in the Amhara Regional State are also obliged to comply with these three conditions in the revised constitution and in their respective establishment proclamation. The civil procedure code of Ethiopia is the supportive rule to properly undertake their tasks. Before starting the hearing of the case the courts should summon the defendant<sup>151</sup> and at the time of hearing they should be given equal chance to present their arguments. In addition, in all stages of the dispute settlement the judges should treat the parties equally. For instance amendment of claims as per Art 91, representation as per Art 38 and the ff., and other opportunities should be provided equally, when the circumstances so require. To avoid the conflict of interest problem, the CPC and the revised ANRS court establishment proclamation are further designed a change of venue or withdrawal of judge's procedure. Finally, the courts shall contain the point for determinations, the decision thereon, and the reason for such decision. Furthermore, the decision should be supported by the pertinent legal stipulation.

The CPC further provided procedures for review of judgement and enforcement of the court decisions.<sup>152</sup> Review of judgement by the court of rendition, opposition of judgements, appeal and cassation review are the three available remedies for review of court judgement in different conditions. The consumers also may use one of these remedies against the judgement of the court as well. After the court rendered judgement in the given point of dispute the debtor of the dispute is expected to perform his debt voluntarily. If the debtor of the judgement is not voluntary to perform his obligations in the judgement the CPC has also provided a clear procedure for enforcement of judgement.<sup>153</sup> To make the execution practicable the court may deliver different decree and orders, including the attachment and sale of the debtor's property.

### **3.2. THE PRACTICAL PROBLEMS OF THE CONSUMERS' JUDICIAL PROTECTION IN THE AMHARA REGIONAL STATE**

Violation of consumer rights is the day to day activity of business persons in Ethiopia. In the Amhara National Regional state also there is a continuing violation of the consumer rights.

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151 See the CPC Art 111-121

152 See the CPC Art 6, 329, 358 and 418.

153 See the CPC Art 376 and the ff.

To illustrate some of the consumers right infringements in the region; traders are not providing information about goods and services they sale to the consumer, consumers are not free in choosing the quality of goods they want, the traders are not disciplinary; insulting and frustrating the consumer are the day to day activities of the traders, traders are not responsive to the consumers request to replace defective goods, issuing receipt and using a legal measurement instrument, there is no displaying of price of goods and service, affixing labelling of goods is not common, most of the advertisements are transmitting misleading information about the products, and the overall activities of most of the traders are guiding with a traditional approaches of handling their clients.

While the consumers are facing these massive consumer rights violations, their response to the conducts of the traders is very insignificant. According to Ato Frew Tadesse<sup>154</sup> response in his interview with the researcher, only 15 consumer cases are adjudicated by the regular court arrangements of the region in the 2011/2012 budgeting year. Ato Abebaw Tadesse<sup>155</sup> and the Woreda Court judges<sup>156</sup> that are interviewed by the researcher also confirmed that the consumer cases flow in the region is very insignificant. The consumers and Advocates that are interviewed by the researcher also agreed that the culture of the consumers' in taking consumer rights violations into a judicial body and seeking remedy is not yet developed. Here, Ato Tegaye Workayehu<sup>157</sup> asserted that consumers are reluctant to their rights protection due to their unequal bargaining power with the business persons. He further added that even those bargains that may be undertaken between the consumer and the business person are usually untrue bargains. Consumers are just accepting the final remark without satisfaction. However, this approach of the consumers' is not coming without a justification. There are a variety of practical problems that are enforcing them to reach in this decision. According to the researcher assessment after conducting the interviewees with Consumers, Advocates, Court officials, Judges, and the Trade and Market Development Bureau officials the judicial protection arrangements for consumers in the Amhara Regional State are

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154Ato Frew Tadesse is the planning and Budget preparation or controlling officer of the Amhara Regional State Supreme Court.

155Ato Abebaw Tadesse is the Civil cases administration officer of the Amhara Regional State Supreme Court.

156Ato Kidanemariam Abate and Ato Meselu Derjaw are the Woreda Court judges in the Amhara Regional State that are interviewed by the researcher to share their experience in relation to the consumer justice at the lowest level of judicial arrangement of the region.

157AtoTegaye Workayehu is one of the judges in the ANRS state Supreme Court cassation bench. He has a 24 years' experience in the judicial system of the region. Furthermore, he is a president of the Amhara Regional State Court Judges Association.

surrounded with a variety of practical challenges. Hereinafter, the researcher orderly discussed such a consumer's challenge in exercising their judicial protection rights.

### **1. Willingness of Consumers to Take Action and Knowledge of Rights**

The willingness of the consumer to take action against the business person who is involved in the consumer right violation is the primary and an important step in the process of creating a consumer friendly environment in a given society. Without the consumers' willingness to take a private legal action against the violators of their rights, it is impossible to think about the assurance of a judicial protection in a certain jurisdiction. In the Amhara Regional State also the willingness of consumers to take action has a paramount importance in ensuring the consumers judicial protection. However, the practice in the region is very far from this perception according to the researcher observation and the interviewee's response in this regard. Most of the consumers in the region are giving less concern to the violation of their right by the business persons. There are different factors illustrated by the interviewees that are discouraging the consumers to take a private legal action against their right violations. According to Ato Euyiel Daniel<sup>158</sup>, the primary reason for this unwillingness of the consumers' to take a private legal action against their rights violation is the social stigmas. According to him, in the society, by considering the amount of claim, there is a tendency of assimilating a person who is trying to exercise his right as an ill minded person or as a person who loves litigation. He further narrates the consumer cases with that of environmental right violations in the region and discussed their similar characteristics in relation to the right holders discouraging attitude to institute claims against the violators of their right. Ato Tegaye Ayalew<sup>159</sup> in this regard argued that when we are letting the business persons without taking an action by considering only the amount of claims, in other way we are supporting their unlawful enrichment. Further, he stated that when we are thinking about taking a legal action against a business, we should not consider only its benefit at an individual level rather we have to consider its importance to the society at large.

The persons who are participating in the interview equally agreed that in addition to the social stigma, lack of legal awareness is also the main reason for the consumers'

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<sup>158</sup>Ato Euyiel Daniel is an Advocate in the Amhara Regional State with a first level attorney license, and he is also a PHD candidate at the Bahir Dar University. In addition, he was an instructor of laws in Adigrat University and a law school dean of the Debremarkos University.

<sup>159</sup>Ato Tegaye Ayalew is an Attorney in the Amhara Regional State with a first level attorney license, but in this research he is interviewed by the researcher in his consumer status.



unwillingness to take a legal action against the consumers who are violating their rights. Here Ato Euyiel and Ato Tegaye Ayalew agreed that if the consumer problem in relation to the legal awareness is resolved the social stigma problem can be over through by the consumers' themselves. They are equally recommended the legal awareness creation should not be conducted only for a ceremonial or a report's purpose. The concerning bodies should undertake their responsibilities in this regard for a societal change. In-depth training should provide for the consumers to change their attitude to the importance of taking action against the violators of their rights. According to Ato Haileyesus<sup>160</sup>, not only the consumers, the judges and the advocates who are working in the area are also less aware of the consumer rights and their significances. So, the awareness creation should constitute all the justice community, not only the consumers.

According to Ato Muhabaw Mulat<sup>161</sup> and Ato Desalegn Getahun<sup>162</sup>, in the 2012 budgeting year regarding consumer training, the consumer directorate has planned to reach only to 3,000,000 consumers in the region. Comparing with the number of population in the region this plan of the bureau is an insignificant number. Even in implementing this plan also, according to Ato Muhabaw, the directorate was faced with difficulties in relation to the local administrations false report, financial constraints, small number of staffs and lack of experts in the area of consumer law. In relation to the trainings that are conducted by the consumer Directorate, Ato Kindalem Yirga<sup>163</sup> pointed that, the subjects of different training that was conducted by the directorate in collaboration with the Legal research Institute in the region was the police officers, judges and public prosecutors. Ato Kindalem further argued that, this approach of the directorate should be changed and a due focus should be given for the consumer education. Trained judges and public prosecutors without creating awareness to the consumer are meaningless. According to him, even those trainings that are given for justice personnel's are not continuous and in-depth trainings. They are just a ceremonial and not focusing on changing their attitude.

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160Ato Haileyesus is an Attorney in the Amhara Regional State with a first level attorney license.

161Ato Muhabaw Mulat is the Director of Consumers Directorate of the Amhara Regional State Trade and Market Development Bureau.

162Ato Desalegn Getahun is the training officer of the Amhara Regional State Trade and Market Development Bureau Consumers' Directorate.

163Ato Kindalem Yirga is an Attorney in the Amhara Regional State with a first level attorney license. He was also a director of the Amhara Regional State Legal Research Institute Training and legal Advise Directorate.

In short, consumers' unwillingness to take a legal action against business persons is the basic problem of the consumers' judicial protection in the Amhara Regional State. This unwillingness is resulting from social stigmas, lack of legal knowledge, and in fear of other problems that may face them in the process of litigating before the regular court arrangements in the region. According to Ato Tegaye Workayehu, the delay of court proceedings, the cost of the proceeding and the amount of claims are also the discouraging factors for the consumers' willingness to bring their claims before the regular court arrangements.

## **2. Lack of awareness about the Possibility of Settlement of the Consumer Dispute by a Court**

Even those consumers that have a willingness to take a legal action are still in a challenge. This is also related to the awareness creation problem in the region. Awareness creation should be made to the consumers' not only about their right, but also about the system of enforcing their rights. The consumers and other informants who are interviewed by the researcher stated that, in the region the concerned bodies that are responsible to educate consumers are not executing their duty. Most of the consumers in the region are not aware of how they can settle their disputes. Even they don't have idea about the regular court's jurisdiction to adjudicate consumer disputes. In this regard also there is a limitation on the consumer directorate of the region, which responsible to administer the awareness creation activities in the area of consumer law. Ato Estibel, one of the consumers that are interviewed in this study, is wondering about the existence of such an institution in the region, which is responsible to undertake this activity. Other interviewees are also sharing the Ato Esibel question and discussed the non-existence of an adequate awareness creation for the consumers in the region in this regard. This suggested that ignorance of the consumers' as to the possibility to enforce their rights before a court is one of the main obstacles of the enforcement of consumers' judicial protection right in the region.

## **3. Cost of the Procedure**

There is growing evidence that the public often cannot afford to resolve their legal problems through the formal processes in courts across many countries. According to the interviewees' statement, the regular court arrangements of the Amhara Regional State are also too expensive. The costs the consumer may need to incur are manifold. First, the consumer may need to travel to the place where oral proceedings take place, and possibly also pay for accommodation. But even apart from such costs, there are many other expenses the consumer

may encounter: charges to start the procedure, including the costs for court fees, the costs of legal advice and representation, cost of documentation, and the expenses involved with the hearing of witnesses and expert opinions. There are also costs in relation to the loser pays principle. This is aggravated by the fact that many consumer complaints are of minor financial importance. In such cases the risks involved do not warrant instituting proceedings. The consumer may be discouraged to institute a proceeding before the regular court arrangements in the region. In short the costs of proceeding in the region are one of the obstacles for consumers' justice in the region. All the interviewees have mentioned the cost of the proceeding as a main reason for the discouraging attitude of consumers to bring consumer cases before courts in equivalent with the lack of awareness problem.

#### **4. Duration of the procedure**

In the Amhara Regional State the consumer cases are assigned to regular court arrangements that are characterized by accumulation of partly heard or old cases, and a shortage of judges with a long listed rule of procedure. The consumer disputes within the regular frameworks of dispute settlement in the region are treated equally with other high profile cases that may require a long period of time to hear arguments, investigate their evidences and reach a final judgement. In addition, the normal procedures that are indicated in the civil procedure code are very long and time taking processes. Starting from the submission of a statement of claim up to execution of judgement, there are so many procedures that the court will follow to resolve the dispute. According to Ato Haileyesus and Ato Hunie Getachew<sup>164</sup>, this procedure by itself is a discouraging factor for consumer when they think about taking their cases before the regular court arrangements. They further stated that the adjournment of cases for a long period of time is the common practice of judges in the region. When we look these features from the special characteristics of the consumer cases perspective, trying to resolve the consumer dispute through the existing arrangement and achieving consumers' justice would be a dream since consumer cases are, by their nature, requiring more speedy trial with a short procedure. To reduce the impact of regular courts problem in relation to the duration of the procedure an alternative solution should be seen go around. Furthermore, according to Ato Meselu Derjaw and Ato Kidanemariam Abate, there are also unethical lawyers who are contributing to the delay of the process by requesting unnecessary adjournments, providing

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164Ato Hunie Getachew is an Advocate in the Amhara Regional State with a first level attorney license.

long oral arguments and providing applications not having any purpose. This is also similarly a difficulty in ensuring a consumer justice in the region.

## **5. Corruption**

Corruption is a dishonest activity in return of money or personal gain. It is an evil act and morally unacceptable practice.<sup>165</sup> Corruption is highly related with the personal independence of the judiciary of a given country. As I mentioned before the judicial bodies of the Amhara Regional state are obliged by the constitution and the courts establishment proclamation to act independently both at the institutional and personal level. If the appointed judges are taking part in the corrupt practices, this is against the personal independence of the judiciary principle. Corruption is not affected, only the parties of the case at hand rather it will have an effect on the trust of the people in the overall judicial system. Due to this, peoples may be discouraged to take their case before a judiciary in fear of their corrupting attitude. In the Amhara Regional state, according to Ato Haileyesus, the judges starting from Woreda Courts up to the Supreme Court of the region have unveiled network for corruption activities. Further, he underscored that the corrupt practice of the judges in the region is out of the control of a human mind. Justice is continuing to be sold by money and those who don't have a capacity to pay for judges are experiencing injustice. However, according to him, there are also some judges in the region who are working for the truth. Though, the good practices of these judges are continuing to be dominated by the evil acts of their colleagues. Because of this and other related factors the judiciary arrangements in the region are characterized by distrust from the public. Consumers are also living in the same world with other peoples, so corruption will have an adverse impact on their judicial protection in tandem with their special features. What makes the consumer case special is the amount of their claim and their controversy with unequal party. In a corrupt environment, the chance of the consumers to win a case against business is very less. Moreover, because of this scenario, the consumers' may be highly discouraged to bring their case before this corrupt judicial system.

## **6. Competency of the Judges**

One of the critical points, the researcher find out through his personal assessment, and an interview with the Amhara Regional State Supreme Court officials and with the attorneys, is lack of the judges' competency in the area of consumer law. Most judges in the region have

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165 See the Concise Oxford Dictionary, 10<sup>th</sup> edition, s,v, "Corruption"

not a specialist in the area of consumer law. In addition, they do not have enough knowledge about the business. Not only to this, even they do not have adequately aware the consumer rights and obligations. According to Ato Euyiel and Ato Kindalem, this is not only the problem of the judges; this is also the problem of the justice system in the region as a whole. Even if the judges are expected to update themselves with a new rule and legislations, the administrator of the justice system also should work hard to increase the qualification of the judges in the region as much as possible. In this regard, Ato Abebaw also admitted the existence of the problem and he stated that providing an intensive training for judges in the area is requiring higher amounts of the budget and the flow of consumer cases in the courts of the region are very small in number. So due to the financial constraint of the judicial administration of the region and because of the low level of consumers case flow, the region has given less focus to the judges competency development in the area of consumer laws. However, the researcher does not find these reasons satisfactory to deny the responsibility of the judicial administration to equip judges with a new changes and developments. Even if the numbers of cases are very less in number, the judges should be well trained in the area to adjudicate even this small number of claims and to be responsive for new cases that may happen in the future.

The competency problem is highly increasing when we go down and look the composition of Kebele social courts of the region. The judges of the Kebele Social Courts are not expected to have a legal profession. The ability to write and read is the only criteria for their appointment. Not only in the area of consumer law, in the other area of laws also the knowledge of the Kebele Social Court judges is not adequate. Ato Abebaw, Ato Tegaye Workayehu and Ato Kindalem equally argued that the empowerment of the Kebele Social Courts to see cases in the region up to 15,000ETB for movables and 25,000ETB for immovable irrespective of the nature of the claim is inherently a problematic. To reduce the problem of the Kebele social courts in this regard, Ato Abebaw recommended, the legal professional at least with a diploma to be recruited with a regular tenure. In this regard Ato Kindalem has a different solution. He primarily emphasized on the very objective of establishing Kebele social courts in the region. He stated that since they are established with an objective to resolve disputes based on the customary rules of the society in that specific area, issues that are out of this scope should be excluded from the ambit of the Kebele social courts. According to him, recruiting professional judges in each Kebele social court with a regular tenure may be a cost intensive measure and it will affect the nature of social court. So, reducing some jurisdiction

that is inconsistent with the objectives of the Kebele social courts establishment proclamation can solve the problem of social courts in relation with competency. Ato Tegaye Workayehu has also shared Ato Kindalem idea and he recommended the legislature to exclude some of the cases that are requiring an expertize knowledge, from the scope of the Kebele Social Courts' power.

### **3.3. POSSIBLE WAYS OF SOLVING THE PROBLEMS OF THE CONSUMERS' JUDICIAL PROTECTION IN THE AMHARA REGIONAL STATE**

From the above analysis, we can conclude that the existing pathways of the consumer dispute settlement in the Amhara Regional State are surrounded by multiple difficulties or challenges. Following this remark, the researcher has investigated different possible solutions from the literatures and discussed with the interviewees about its conformity with the current real situation of the region. Generally the possible solutions can be seen from the two broad outlooks. The first and the most recommended solution is making a structural change in the existing platforms of the pathways of dispute settlement. The second possible solution is requiring changing the difficulty circumstances within the existing platforms without making a structural change.

The first solution is all about making the consumer disputes out of the regular court's jurisdiction. It requires the consumer disputes to be adjudicated by a different platform, which is specifically designed for it. It may be either a private or a public arrangement. From the public arrangements establishing an ombudsman or administrative consumer court is more common solutions to resolve the problems of consumers' judicial protection. The administrative court platform is also recognized by the TCCPP in our case, and the Amhara Regional State Trade and Market Development Bureau empowered to establish the administrative consumer court in the region. Though, as the researcher stated before, the Trade and Market Development Bureau is not starting any activities in relation to the establishment of this institution.

According to Ato Tegaye Workayehu and Ato Euiel, if this institution is coming into effect in the region most of the problems that we mentioned before can be resolved and the consumer's initiation to make a proceeding would be increased. However, since they would be responsible to the executive organ of the region and the nomination of judges' process would be controlled by the politicians' free will, the independence and effectiveness of the institution would be under question mark. In this regard, Ato Euiel has compared it with the

Amhara Regional State Labour tribunal judges' composition and the way they are appointed. So, following the administrative court approach of the TCCPP would have a viable limitation regarding the fulfilment of the competency requirements of the judicial institutions. In this regard Ato Tegaye Workayehu proposed an appellate procedure into the regular court as a solution to reduce the impact of the administrative court arrangements. In addition, according to, Ato Muhabaw, if the Bureau starts to exercise its power in the TCCPP, it would be highly challenged by the financial constraints and lack of expertise in the area.

When we come into the Ombudsman solution, in Ethiopia the Ombudsman's jurisdiction is limited to hearing and find solutions to the citizen's complaint against the maladministration practice of the government officials both at the regional and federal level.<sup>166</sup> In addition, within the existing framework of the Ethiopia Ombudsman office, providing recommendations is its premier privilege. Different from this the consumer disputes are requiring institutions that have a power to give a final decision. So, it's impossible to think about resolving consumer dispute within the existing platform of the Ethiopia Ombudsman. However, it is possible to empower the Ombudsman offices to adjudicate consumer cases by creating a special organ of consumer dispute settlement through the amendment of its establishment proclamation. Still, the financial constraints, lack of expertise knowledge and the executives influence might be challenging this arrangement. Furthermore, the maladministration claims by themselves are above the office capacity. So, adding the consumers' case in this situation might be intensified the difficulties of the office.

There are also other alternatives to resolve the consumers' judicial protection problems through the instrument of an institutional change. Establishing a consumer Arbitration or conciliation/mediation centres, Special Consumer Court and Small Claim courts are the most desirable solutions to reduce the consumers judicial protection problems through an institutional change. In relation to these alternatives Ato Tegaye Workayehu stated that, if there is any international experience that can resolve the problems of the consumers better than the administrative court arrangements, we should have followed those approaches by changing the existing arrangement. According to Ato Kindalem statement, even these alternatives are better options compared with the administrative consumer court arrangements; still it is vulnerable to the financial constraints and lack of expertise limitations.

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166 See the institution of the Ombudsman Establishment Proclamation, 2000, *Federal Negarit Gazzeta*, Proclamation No. 211/2000, 6<sup>th</sup> Year, No. 41, Art. 4(2)

When we come into the second option, it is concerned with making the existing pathways of the consumers' dispute settlement arrangements comfortable to the consumers without making an institutional change. To resolve the problems in relation to the lack of legal awareness and ignorance of the possibility of proceeding, the government should start a consumer education movement. To this end, the consumer directorate should create a network with higher education institutions, with the attorneys association and other NGOs to resolve its problem in relation to expertise knowledge and finance. Since the consumer awareness is a baseline for the promotion and protection of consumers' judicial protection rights in the region, the directorate should undertake all possible things to change the current state of the consumers' awareness. In due course the social stigmas also would be extinct with the development of each consumer's positive attitude to the protection of consumers' right. To resolve the problem of consumers in relation to the cost of proceedings; reducing the number of days for court appearance, creating a contingent fee system for representation payment, providing legal aid (without considering the wealth capacity of the consumer), avoiding the loser pay principle for consumer disputes, and covering the expert witness expenses by the government.

To resolve the problems in relation to the duration of the court preceding a short procedure for consumer disputes should be created within the existing system. In relation to competency problem recruiting a business lawyers or providing an intensive special training for judges can be taken as a better solution. In a case of Kebele Social Courts reducing the scope of their power can be taken as a solution. The consumer cases with other issues that are requiring expertise knowledge should be excluded from the scope of their jurisdiction. The problem of corruption and public distrust can be resolved by creating a strong law enforcement system in the region. Not only in the case of the judiciary, in the other public sectors also a strict law enforcement measure should be taken by the government to reduce corruption and to have a public trust. In order to implement all these transforming ideas at a time, the attorneys interviewed by the researcher recommended the establishment of a consumer bench within the existing platforms of the consumer dispute settlement. Here Ato Hunie asserted that the awareness creation should come first, before all other measures, since it is a baseline for other works.

According to Ato Kindalem, and Ato Hunie, finding solutions without making institutional change has a better advantage over those solutions that are requiring a structural change. Ato Hunie and Ato Kindalem are considering the current capacity of the region to satisfy the financial and expertise requirements of the newly established institution in reaching this



conclusion. The researcher is also sharing their contentions. However, he believed that in due course when those limitations of the region are resolved, making a structural change should be taken as a viable solution. Until that time the consumer bench for consumer disputes should be established in each of the regular court arrangements in the region. In this regard Ato Tegaye Workayehu argued that establishing a special administrative or other form of tribunal is the most viable solution compared with the transformative measures within the existing structure. Further, he mentioned the state of special benches of the labour and family cases in the region. According to him, these special benches are not working as expected. So, if we prefer the same approach to the consumer case, it will face the same challenge.

## CHAPTER FOUR

### 4.1. CONCLUSION AND RECOMMENDATION

#### Conclusion

The mere recognition of rights without a robust enforcement system is meaningless. According to the principle of *ubi jus ibi remedium*, countries are responsible to build a parallel enforcement system with the recognition of peoples' rights as a certain subject matter. Among those systems of enforcement, creating a well-designed judicial protection framework is of paramount importance to make sure the rights are protected in practice. Judicial protection is a broad concept which encompasses fairness, access to justice and effective enforcement of judgment. Nevertheless, the right to judicial protection is commonly known in existing literature and in legal instrument under the name "access to justice" (both domestically and internationally). To build a well-designed judicial protection arrangement, countries should consider both its substantive and procedural aspects.

The substantive aspect of judicial protection requires countries to openly recognise judicial protection as a right in their legal instrument. This recognition of judicial protection right may be implemented by using constitution, international treaties or other domestic laws of the specific country. Most countries recognise this right in their constitution as a fundamental right of the people. In addition, the substantive aspect of the right to judicial protection also includes the existence of legal remedies for the individuals whose rights have been violated. The procedural aspect of the right to judicial protection is mainly concerned with the creation of pathways or effective institutions, and a competent process to execute remedies within the existing pathways/institutions. The most commonly used criteria to measure the competency of a certain pathway to ensure judicial protection include independence, accessibility, efficiency, accountability, fairness, and effectiveness.

Consumer rights are one form of citizens' right that requires a parallel enforcement system. Consumer rights is an integral part of the people's fundamental rights, and therefore any constitutional or substantive stipulation in relation to the enforcement of people's rights should also include consumer rights frameworks. Judicial protection is one of the essential frameworks for the proper implementation of consumer rights in a given country. Likewise, as in other cases, specifically in the consumers' judicial protection regime, both the substantive and procedural aspects of judicial protection should be envisaged. The

constitutional and other substantive stipulations about the citizen's judicial protection right should always consider the consumer perspective. The procedural aspects of the judicial protection, such as the existence of a pathway and its competency, should be taken into consideration.

Ethiopia has recognised the citizens' judicial protection right under Art 37 of the FDRE Constitution. Furthermore, Ethiopia has ratified different international human right instruments that recognise the right to judicial protection as crucial right for the feasibility of other rights. Under Art 9(4) and Art 13(2) of the FDRE Constitution, these international human rights instruments are constituted within the Ethiopian legal framework. This constitutional declaration of the citizens' judicial protection right has manifold applications, and could be extended to all forms of other citizens' rights in the country. Although the consumer rights are not explicitly stated as a constitutional right of the citizens' in the FDRE Constitution, its violations may have a significant impact on affecting the socio-economic rights of the citizens. Therefore, we should categorise consumer rights as one of the citizens' fundamental constitutional rights.

Touching briefly on the regulations for consumer protection in Ethiopia, before the enactment of proclamation No. 685/2010, the only available rules that regulate consumer disputes are the implicit declarations of the civil code, the commercial code, the criminal code and other scattered laws. Now, the primary governing law of the consumer issues is the TCCPP No. 813/2013. However, those rules in the civil code and other legal instruments still have relevance if they do not contradict the TCCPP declarations. The TCCPP has stipulated various rights for consumers in part two. Those rights of consumers require a well-designed judicial protection arrangements in order to be enforced effectively. This judicial protection should be measured both in its substantive and procedural aspects, and it should be tailored to the special features of litigations surrounding consumer laws. Moreover, Ethiopia has a federal state structure with nine constituting states. Both the federal and regional states have legislative, executive and judicial organs. The legislative power to enact commercial laws is exclusively given to the federal government legislative body according to the constitution. Consumer protection law is one aspect of commercial laws. That is why the TCCPP has a nationwide application. Accordingly, most rules regarding consumer issues in the regional states are dependent on the federal legislations, including its judicial protection aspect.

The TCCPP has delegated the power to regional states to administer consumer protection in their respective region. In particular, the ANRS is delegated by the proclamation to ensure both administrative and judicial protection for consumers in the region. The substantive

aspect of the consumers' right to judicial protection in the region is dependent on the stipulations in the FDRE constitution or its regional constitution about access to justice and the socio-economic rights of the citizens; the civil code stipulations about contractual and extra-contractual obligations; international legal instruments stipulations that are ratified by Ethiopia, the TCCPP stipulations about the consumer rights and remedies for their violation; and other consumer related stipulations in the different domestic laws of Ethiopia. In relation to the substantive aspect of the consumers' judicial protection arrangement in Ethiopia, in this case the ANRS, this research has identified two basic shortcomings. The first shortcoming is related to the non-existence of a direct recognition of the consumer judicial protection right. This problem is directly related to the non-existence of an explicit stipulation in the constitution about the consumer right as a fundamental right of the people. The non-existence of an explicit stipulation about the consumers' judicial protection right in legislations has a negative impact in ensuring access to justice in this respect. The other shortcoming of the substantive aspect of the consumers' judicial protection is the non-existence of a comprehensive legal framework in the area. The consumers' judicial protection arrangements in Ethiopia are subject to scatter legal sources, i.e. the FDRE Constitution, the civil code, the TCCPP, Criminal Code, and other legal instruments. This shortcoming may negatively impact the accessibility and practicability of those stipulations on consumers' right to judicial protection as it is difficult for laypeople to access these scattered, convoluted laws.

When we look at the procedural aspect of the consumers' right to judicial protection in the ANRS, the only available pathways for consumer disputes are the traditional route of bringing a claim to the regular court in the region, which is including Kebele Social Courts and Woreda up to Supreme Court. These arrangements are characterised by their inadequacy in terms of independence, accessibility, efficiency, accountability, fairness and effectiveness. The lack of constitution interpretation regarding power of courts; the presiding judges may lack of the experience and competence in the area of consumer law and business related disciplines; not to mention the Kebele Social Courts' loosely constructed rules in relation to using either law or tradition based on their discretion, grounds for removal from their tenure and covering their budget from the Kebele offices are prevailing problems for ensuring independence in the region. If the consumer has to go to the highest level of regular courts, the accessibility of the consumers' judicial protection framework in the region becomes questionable. In addition, the Kebele Social Courts limited working days and the

direct/indirect costs of litigation in the region are the major challenges for consumers to get access to justice.

The efficiency of the regular courts is also highly affected by duplication of cases, lengthy convoluted procedures, and the non-existence of public scrutiny. The Kebele Social Courts are less efficient due to their limited working days, which is caused by the existence of the judges from another regular tenure and they serve the courts only part-time.

The fairness and effectiveness of the available judicial protection arrangement in the region are also highly affected by the problems of equal treatment for consumer cases with other civil matters irrespective of their special characteristics and other problems in relation to the aforementioned criteria. The existence of these problems affect the competency of the available pathways for consumers in the region, therefore becoming a stumbling block in achieving fair, cheap and effective consumer justice in the region. Furthermore, these available pathways are surrounded by other practical problems that include social stigma, low level of legal awareness, lack of knowledge about the existence of the legal system, high costs of legal procedures, slow and time-consuming process, incompetency of judges, and lack of expertise knowledge, budget constraints, and corruption/public distrust. These practical problems have direct impact in providing pathways to solve consumer disputes in the region. To resolve these problems, either a structural change or transformation measures within the existing framework without a structural change should be taken by each appropriate organ as provided in the recommendations below.

## **Recommendations**

This research evaluates the state of the consumer judicial protection arrangements in Ethiopia; specifically the ANRS, and identifies the practical problems faced by consumers in exercising their judicial protection rights in the region. The following recommendations are proposed as ways of improving the judicial protection for consumers' rights in ANRS.

### **1. The Federal Legislative Organ**

The Ethiopian federal legislators should reconsider (or perhaps consolidate) the substantive legal frameworks for the consumers rights in the region and promulgate a new comprehensive consumer protection laws in order to mitigate the problems caused by the scattered nature of the current consumer protection laws. Within this comprehensive framework, there should be a direct stipulation of the right to judicial protection for consumers, together with specification of the legal remedies for breach of such rights.

Furthermore, they should provide a clear rule on the pathways for consumers to access the justice system in the region. The discretion of regional states in TCCPP in relation to specifying the judicial organs for adjudicating consumer cases should be reconsidered and it should be replaced by a new specified arrangement.

## **2. The ANRS Trade and Market Development Bureau**

In order to reduce the current state of the consumer rights violation and to improve the consumer awareness about their rights/the possibility of a court proceeding against their rights violation, the Bureau should expand its consumer education program to the highest level and reach the local communities by creating a network with the Higher Education Institutions, Justice Sectors of the Region and NGOs to raise people's legal awareness. The awareness creation programs of the Bureau should focus on making an attitude change rather than ceremonial activities for reporting purposes. In addition, the Bureau should exercise its mandate to establish an administrative consumer court in the region by consulting the TCCPA judicial branch, experts in the area of consumer protection law and even international experts. In establishing this special adjudicative organ, the Bureau should consider the problems consumers face in exercising their right to judicial protection under the existing arrangements in the region and shape a new adjudicative body in such way which can resolve those problems. In relation to the financial constraints, it should consult the federal government based on the budget sharing principles under Art 94 of the FDRE Constitution and seek funds from private donors.

## **3. The ANRS Supreme Court**

The ANRS Supreme Court has a supervisory role in all levels of courts in the region, and it should therefore be considered a special platform for the consumer disputes that enable them to exercise their judicial protection right without fearing those incompetency's and other practical problems in the regular courts in the region. This special platform should be designed in such way that it can mitigate if not eliminate the consumers' problems mentioned above. Furthermore, the Supreme Court should work on improving the judges' competency in the area of consumer laws and business-related disciplines. In addition, the Supreme Court of the region should work on building public trust in the court by creating a strong accountability by allowing open public scrutiny.

## **4. The Amhara National Regional State Council**

The Amhara Regional State Council should reconsider the jurisdiction of the Kebele Social Courts of the Region and reduce some of their powers that are out of their scope of establishment objective and that may require expertise knowledge. It should also review the

Trade and Market Development Bureau of the region steps in exercising its power in relation to administrating consumer rights in the region and the establishment of a special administrative consumer court. Furthermore, it is recommended that the council should establish a special committee, which supports the Bureau in establishing this adjudicative body. In addition, the council should consider the possibilities of establishing an alternative special consumer disputes settlement platform in the region on top of the administrative consumer court arrangement.

#### **5. The Higher Education Institutions, Justice Institutions and NGOs**

By considering the alarmingly increasing consumer rights violations in the region and inadequate protection to consumers, the governmental and non-governmental institutions should organise and support consumer rights movement in the region. Through this movement, the respective institutions should organise awareness creation activities in the community, providing legal aid services to consumers, and technical support to those governmental institutions that are responsible to administer the consumers' justice. In addition, the higher education institutions of Ethiopia should include the consumer protection law in their undergraduate curriculum. The justice training institute of the ANRS should develop a training manual in relation to the consumers' protection law and other business related disciplines. This will have a significant impact in the long run in resolving the competency problem of judges in the area of consumer law and also would reap benefits in enhancing their initiative to ensure consumers' right to justice.

#### **6. The Consumers Cooperative Societies in the Region**

The Consumers Cooperative Societies in the region should work on increasing consumers' awareness to their rights and reducing the societal discouraging attitudes towards exercising their rights to judicial protection. If they are educated properly about their rights and the possibility of taking their case before a competent court, with time, with increasing consumers' initiatives to defend their rights, the risk of arbitrary price increase and other consumer rights violation by business persons' is likely to decrease and the aim of the Cooperative Societies will be achieved. In addition, the consumer associations, which aim work for the furtherance of consumers' right protection, should be intensified in the region. Furthermore, the consumer cooperative societies in the region should create a legal department to defend their members' rights through a representative/collective action claim.

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# Appendix

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## **Appendix; the Interview Questions**

### **Interview Questions for the Trade and Industry Bureau Officials**

1. How do you describe the level of consumer rights violations in the Amhara region based on research or empirical information in your office?
2. What are the solutions that consumers will take when faced with a violation?
3. What is your office doing to help consumers deal with consumer rights abuses?
4. How is the status of consumers in taking their cases to court in accordance with the law in case of consumer rights violations?
5. What problems do consumers face before or after filing a lawsuit? What can be done to reduce these problems? What activities is your office doing?
6. How do you see consumer litigation in the region continuing under the jurisdiction of the regular court arrangement? What are the pros and cons?
7. If the Administrative Court is established in accordance with the Trade Bureau's power to establish the Administrative Consumer Court of the Regions in accordance with the TCCPP No. 813/2013 and the Amended Executives reestablishment Proclamation of the Amhara Regional State, What will help to solve problems? How far has the Bureau gone in terms of establishing the administrative court?

### **Interview Questions for the Legal Attorneys**

1. How do you see the level of consumer rights violations in the Amhara region?
2. What are the solutions that consumers are following in the event of consumer rights violations in the region? How do you see their effectiveness in terms of ensuring consumers' judicial protection right?
3. What is the status of the practice of taking consumer rights violations into the courts in the region? What about the challenges?
4. How effective are the formal courts, which have jurisdiction over consumer disputes in the region, in light of the unique nature of consumer disputes?

5. What problems do consumers face when taking their cases to court? What solutions can be found to solve these problems?
6. What role could the Administrative Consumer Court, which is referred to in the Trade Competition and Consumer Protection Proclamation No. 813/213, if it would be established in the region?
7. What are the strengths and weaknesses of a formal court, which has jurisdiction over consumer disputes?
8. How do you review the Kebele social court's jurisdiction in the region to adjudicate civil litigation up to 15,000 and up to 25,000 ETB in terms of consumer protection rights? What are the challenges and opportunities?

#### **Interview Questions for the Consumers**

1. What transactions do you carry out on a daily basis for family or personal use?
2. How do you view the conduct of traders in terms of consumer rights when conducting transactions?
3. What is the next step for the consumer community, including you, in the event of a consumer violation?
4. How do you see the consumer's habit of taking the case to court and seeking redress in the event of a violation? What are the challenges?
5. Do you think the relevant government body, especially the Amhara National Regional State Trade and Market Development Bureau, is fulfilling its responsibilities in terms of enabling the consumer community to know its right to judicial protection?
6. What are some of the challenges consumers face in taking their cases to court?
7. What solutions do you think the consumer community should take before or after taking the case to court?

#### **Interview Questions for Court officials**

1. How do you describe the situation of consumer rights in the Amhara region?

2. What are the following remedial measures in the case of consumer violations in the region? How effective are these solutions in reducing consumer rights violations?
3. How is the culture of the consumer community in the region to take the matter to court and seek redress? What are the challenges?
4. Given the unique nature of consumer litigation, are there any specific procedural rules that courts in the region should follow when adjudicating consumer cases? If so, what do they include?
5. What problems do consumers face before or after coming to court? What remedial steps have been taken to address these issues?
6. What are the regular court arrangements Problems in ensuring consumer justice in the region? What solutions should be taken to address these issues?
7. How do you see the relevance of still entertaining the consumer dispute in the region through the traditional regular court arrangements?
8. How do you review the Kebele social court's jurisdiction in the region to view civil litigation up to 15,000 and up to 25,000 birr in terms of consumer protection rights? What are the challenges and opportunities?