

# Financial Consumer's Access to Justice: Considerations towards Adapting Financial Ombudsman Scheme in Ethiopia

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## Abstract

*Access to justice is one of the fundamental human rights of every human being. The Constitution of Federal Democratic Republic of Ethiopia constitutionalizes this right; however this can be ensured when there is an efficient and proper venue to adjudicate grievances. The inherent asymmetric relationship between financial institutions and consumers, and the complexity of financial services or products is a major barrier to easily access justice for financial consumers. One of the mechanisms to overcome such institutional inefficiency is to establish an out-of-court adjudication body, widely called financial Ombudsman. However, in Ethiopia, financial Ombudsman has never been established. This acutely limits consumers' access to justice. Also, the absence of this institution suggests that the country follows a laissez-faire approach in dealing with issues related to the subject.*

*This article explores dimensions of financial consumers' access to justice from the Ethiopian perspective. The study employed doctrinal research method to attain the desired end. The major finding of the exploration shows that financial consumers in this country have no access to an independent, efficient, impartial, free-of-cost, and professional out-of-court dispute resolution bodies such as financial Ombudsman to seek remedy for their complaints. Further, the findings shade light on crucial role of the financial Ombudsman for access to justice. Accordingly, adapting this scheme in Ethiopia will be an important alternative to financial consumers in the country. Though adopting such a scheme in Ethiopia may face possible challenges, it can be overcome through applying good design choices of the scheme. Finally, the results from the exploration indicated that the Policy landscape in this country has enabling environment on which interested bodies can capitalize on to adapt financial Ombudsman scheme.*

**Keywords:** Access to Justice, Ethiopia, Financial Consumer, Financial Ombudsman

## Introduction

Access to justice is one of the fundamental rights that the citizens of a country are entitled to enjoy in the exercise of their liberty, equality, and dignity. Accordingly, bills of rights unanimously recognize it not only as right in itself but also as an instrumental

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right safeguarding the protection of other rights.<sup>1</sup> Despite this recognition of international Bill of rights, the conceptualization and the extent of realizing these aspirations lack uniformity across jurisdictions. Thus, problems relating to enforcement of this right have been one of the subjects of concern for jurists, human rights activists and other bodies.

Looking into the Ethiopian law one could see that the right to access to justice is one of the fundamental human rights recognized in legislative documents.<sup>2</sup> Yet citizen in this country barely enjoy this right in many avenues of their lives particularly in their interaction with financial institutions. Financial institutions,<sup>3</sup> as a growing volume of theoretical and empirical evidences show, are vital instruments of socio-economic changes with direct link to economic growth and poverty reduction. As such, they are systems through which citizens make transactions of savings and investments, which in turn, influence human development measures such as life expectancy, literacy, and school attainment.<sup>4</sup>

Due to such roles, financial institutions in general and banks in particular are treated as special legal persons under national laws. In situations where disputes arise between financial institutions and their consumers, the law puts consumers in a disadvantaged position, by limiting them to access only judicial mechanisms which is inadequate to access justice. In specific terms, through this treatment, consumers are placed in unequal position with financial institutions which are far stronger in information power, expertise, and money.

Such effects from an asymmetric relationship between consumers and financial institutions are compounded with the complexity of the financial services or products which unjustly cost consumers to comprehend and explore their essence and operations. Given the connection between contemporary human life and financial institutions, consumers and in particular financial consumers have considerable vested interest in the operation of banks. Equally, they deserve reliable access to justice to redress grievances arising from the arrays of transactions they make with banks. As

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<sup>1</sup> Transforming Our World: the 2030 Agenda for Sustainable Development, United Nation (UN), (2015), Agenda 16, <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> [hereinafter UN (2015)].

<sup>2</sup> Ethiopia ratifies bill of rights, and also constitutionalize it. See, The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, *Federal Negarit Gazzeta*, (1995), Articles 9, 13, 37.

<sup>3</sup> Financial institution refers to banks, insurance companies, micro-finance institutions, and credit and saving institutions in this article.

<sup>4</sup> Ross Levine, *et-al*, Financial Intermediation and Growth: Causality and Causes, *Journal of Monetary Economics*, Vol. 46:No.1, (2000), pp.31-77; Ross Levine, International Financial Liberalization and Economic Growth, *Review of International Economics*, Vol.9 No.1, (2001).

conceptualized by Mauro Cappelletti<sup>5</sup> access to justice for such ends should encompass more than simple access to court and demands adopting special procedure, simplifying the procedure, and promoting alternative dispute settling mechanisms. It should also serve as way to achieve social inclusion through avoiding a multitude of societal barriers (such as poverty and educational impoverishment).<sup>6</sup> Making such elements of justice accessible to citizens requires establishing institutional mechanisms with varying setup.

Consumer Ombudsman or financial Ombudsman scheme is one of such mechanisms to attain such ends of justice. It is widely used by a growing number of States as an alternative venue for consumers and financial consumers in particular to access justice for their grievances in relation to financial products and services.<sup>7</sup> In Ethiopia, however, little evidence of experience is available with regard to dealing with consumers' right in general and financial consumer in particular. In more specific terms, it is hard to find a study focusing on the financial consumers' dispute resolution tools such as financial consumers' Ombudsman as alternative forum to access justice.

This article is a contribution to elucidation of ways by which financial Ombudsman can be used in the realization of the consumers' right to access justice. It is a common practice in many jurisdictions to employ different formats in the actualization of the enjoyment of the right to access to justice. Ethiopia also engages various actors and modalities with the view to help people exercise their right to access to justice.<sup>8</sup> Yet these mechanisms have strengths and weaknesses, making it imperative to use a combination of them at the same time with a collaborative effect.<sup>9</sup>

Financial consumers' protection comes as a new feature in the Ethiopian legal system, and private consumer Ombudsman scheme has never been adapted. Yet with adequate support in place, the coordinated use of the available mechanisms can have a

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<sup>5</sup> Mauro Cappelletti and Bryant Garth, Access to Justice: The Newest Wave in the World Wide Movement to Make Rights Effective, *Buffalo Law Review*, Vol.27, (1978), pp.181-292; Kokebe Wolde Jemaneh, Reconsidering Access to Justice in Ethiopia: Towards a Human Rights Approach, in Pietro S. Toggia, *et-al*, (eds.), *Access to Justice in Ethiopia: Towards an Inventory of Issues*, AAU, (2014), pp.13-14.

<sup>6</sup> Marc Galanter, the Duty Not to Deliver Legal Services, *University of Miami Law Review*, Vol.30:No. 4, (1976).

<sup>7</sup> Cappelletti and Garth, *supra* note 5, pp.210-211, 274-276; Christopher Hodges, *The Reform of Class and Representative Actions in European Legal Services*, Oxford: Hart Publishing, (2008), pp.257-258; Estelle Hurter, Access to Justice: to Dream the Impossible Dream?, *The Comparative and International Law Journal of Southern Africa*, (2011), Vol.44:No.3, p.423.

<sup>8</sup> Courts, Human Right Commission, Ombudsman (public), Tribunals (such as in tax and labor disputes), ADR mechanisms, Religious and Customary ADR mechanisms, Legal Aid Centers (though university based).

<sup>9</sup> See, Hurter, *supra* note 7, pp.419-421. "The battle for an accessible civil justice system cannot be a single front"

tremendous impact on the protection of the rights to access to justice for financial consumers. With a preliminary discussion of these modalities (access to justice as a human right and the role of financial Ombudsman to access to justice, and some justice actors in Ethiopia to show the non-existence of financial Ombudsman scheme in the country), this article explores the enabling environment to adapt the financial Ombudsman scheme in Ethiopia. By doing so, it identifies possible challenges, the fundamental design features of the financial Ombudsman scheme aiming to fill the knowledge gap in the area and use as guide by the policymakers.

To accomplish this, the researcher employed qualitative legal research method along with doctrinal research design. The explorations of the issues in the problem under study and the lessons drawn from different sources have been organized under three major parts.

The first section presents the conceptual basis of access to justice as a fundamental human right in international laws and in the Ethiopia legal regime. The second section deals with the concept of financial Ombudsman scheme and its role in access to justice. It particularly outlines the enabling environment and challenges with regard to the adoption of financial Ombudsman scheme in Ethiopia. The last section discusses the fundamental design features of the financial Ombudsman scheme with particular emphasis on the link between effectiveness of the financial Ombudsman scheme and quality of design feature in the adaptation of the scheme in Ethiopia. Finally, concluding remarks are made on the basis of analyses presented.

## **1. The Conceptual Framework**

### **1.1. Access to Justice as a Fundamental Human Right**

Access to justice is both a fundamental right in itself and a precondition for the enjoyment of other rights.<sup>10</sup> Currently it has become one of the subjects of scholarly dialogue among legal scholars and practitioners in human rights law.<sup>11</sup> In terms of human rights jurisprudence, the right to access to justice has developed tremendously ever since it has been incorporated in the bills of rights. Yet, despite its prominent importance in the modern democratic state, there is no uniform understanding of the term ‘access to justice’. It is not a term that is often expressly used or defined by international human rights conventions because some international human right

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<sup>10</sup> UN (2015), *supra* note 1.

<sup>11</sup> United Nations Development Programme (UNDP), Access to Justice, (2004), p.3. [http://www.undp.org/content/undp/en/home/librarypage/democraticgovernance/access\\_to\\_justice\\_andruleoflaw/access-to-justice-practice-note.html](http://www.undp.org/content/undp/en/home/librarypage/democraticgovernance/access_to_justice_andruleoflaw/access-to-justice-practice-note.html) [accessed on June 2021]; Anbesie Fura Gurmessa, The Role of University Based Legal Aid Centers in Ensuring Access to Justice in Ethiopia, *Beijing Law Journal*, Vol.9:No.1, (2018), p.362.

instruments use, as its equivalents, such phrasings as “right to an effective remedy”<sup>12</sup>, “fair public hearing”<sup>13</sup>, “right to have his cause heard”<sup>14</sup>. However, the recent international instruments that establish principles for the administration of justice employ the term ‘access to justice’.<sup>15</sup> Review of literature and policy papers on the issue of access to justice reveals that there are two approaches in conceptualizing the term. In the narrower sense, the term access to justice is equated with access to judicial remedies to vindicate rights recognized by law and/or resolve disputes. However, in the broader and recent phenomenon, it has included legal advice and representation, the adoption of special procedures (such as class action and public interest litigation) to represent diffuse group and public interest, the simplification of procedures, and the promotion of alternatives to the formal judicial process to settle disputes.<sup>16</sup> This conceptualization requires the inclusion of dispute resolution mechanisms as part of both formal and informal justice institutions.<sup>17</sup>

According to the traditional understanding (the narrow view) of access to justice, courts are the central ‘suppliers’ of justice for everyone, including financial consumers. To some extent that remains true. Courts are ultimately the arbiters of legal issues: able to declare what the law is, what the rights and obligations of parties are and enforce those declarations. It is now generally accepted that justice need not only be dispensed by the formal justice system.<sup>18</sup> Further, the cost of litigation, the slowness of the process, and its procedural complexity are usually still mentioned as factors

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<sup>12</sup> United Nations General Assembly Resolution 217A, Universal Declaration of Human Rights (UDHR), (1948), Article 8; European Convention on Human Rights (ECHR), Council of Europe, (1950), Article 13.

<sup>13</sup> International Covenant on Civil and Political Rights, United Nations, General Assembly Resolution 2200A (XXI), (1966), Article 14(1).

<sup>14</sup> African (Banjul) Charter on Human and Peoples Rights, Organization of African Union, (1981), Article 7.

<sup>15</sup> Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, The United Nations, Treaty Series, Vol.2161, (1998); UN General Assembly Resolution No. 67/187; Twelfth United Nation Congress on Crime Prevention and Criminal Justice Resolution No.65/230, Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and their Development in a Changing World, R/65/230, (2010), [https://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador Declaration/Salvador Declaration E.pdf](https://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador%20Declaration/Salvador%20Declaration%20E.pdf) [accessed on October 2022].

<sup>16</sup> Cappelletti and Garth, *supra* note 5; Jemaneh, *supra* note 5, pp.13-14.

<sup>17</sup> Julinda Beqiraj, *et-al*, Ombudsman Schemes and Effective Access to Justice: A Study of International Practices and Trends, *International Bar Association*, (2018), p.5.

<sup>18</sup> Bryant Garth, A Revival of Access to Justice Research?, in R. L. Sandefur, (ed.), *Access to Justice, Sociology of Crime, Law and Deviance*, Vol.13, (2009), p.255; Rebecca L. Sandefur, *Access to Justice: Classical Approaches and New Directions*, in Rebecca Sandefur (ed.), *Access to Justice, Sociology of Crime, Law and Deviance*, Vol.12, p.x.

obstructing or limiting access to justice.<sup>19</sup> The battle for an accessible civil justice system cannot be attained through a single route.

Thus, adapting various measures, including alternative dispute resolution (ADR),<sup>20</sup> is commendable to provide an accessible dispute resolution system.<sup>21</sup> With regard to the new approach, legal scholars such as Macdonald and Currie calls for comprehensive access to a justice strategy that is multidimensional and takes a pluralistic and multidisciplinary approach in which the justice system partners with interest groups, communities and institutional sectors to produce less costly, faster, and efficient solutions.<sup>22</sup> This primarily suggests that the problem of lack of access cannot be solved with a one-size-fits-all approach. Hence, one would argue that formal civil justice reformers should consider a new approach to make the justice system accessible, and should not limit their actions to reshaping formal justice.<sup>23</sup>

The neglect of the means for effective exercise of legal rights is especially acute in the case of the low-income consumer whose daily life is inextricably connected to the law.<sup>24</sup> The consumer with a grievance needs to have an appropriate mechanism to seek a settlement, or even a choice of method to attain this.<sup>25</sup> Economic constraints, long delays, rising costs, high legal fees and complex procedures are among the problems that have been identified in the system on many occasions as factors, discouraging complainants from bringing their case before courts or from giving up along the way.<sup>26</sup>

Grievances arising from disputes with financial institutions usually involve small amounts which are substantially less than the fee required to compensate members of the private bar.<sup>27</sup> To a large degree, the consumer's apathy rests on a belief that nothing can be done about his problem or feeling that they have to accept something that

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<sup>19</sup> Hurter, *supra* note 7, p.409.

<sup>20</sup> Robert M Goldschmid, *et-al*, Major Themes of Civil Justice Reform, Civil Justice Reform Working Group, (2006), para.6; Ab Currie, Down the Wrong Road-Federal Funding for Civil Legal Aid in Canada, *International Journal of the Legal Profession*, Vol.13:No.1, (2006), p.99.

<sup>21</sup> Hurter, *supra* note 7, p.421.

<sup>22</sup> Ab Currie, Riding the Third Wave-Notes on the Future of Access to Justice, Expanding Horizons: Rethinking Access to Justice in Canada, Proceedings of a National Symposium, Ottawa, (2000), pp.38-39

<sup>23</sup> Hurter, *supra* note 7, p.421.

<sup>24</sup> Thomas L. Eovaldi and Joan E. Gestrin, Justice for Consumers: the Mechanisms of Redress, *New York University Law Review*, Vol.66, (1971), p.282.

<sup>25</sup> Lord Chancellor, Access to Justice, Consumers' Association Lecture Proceedings, *RSA Journal*, Vol.141, (1992), pp. 21-32.

<sup>26</sup> Consumers and Access to Justice: One-Stop Shopping for Consumers?, Consumers International, (2011).

<sup>27</sup> Eovaldi and Gestrin, *supra* note 24, p.286.

cannot be changed.<sup>28</sup> Other consumers may resign themselves to their disappointment, perhaps experiencing a degree of self-blame for having allowed them to be duped.<sup>29</sup> In some cases, the apathy and inaction is traced to a lack of knowledge about sources of help.<sup>30</sup> Confronted with what they perceive to be an injustice, the only action taken by most poor consumers is self-help, which may be in the form of refusing to pay amounts which they do not believe are justly due, or lashed out violently against those elements in their midst which they perceived as symbols of oppression like the alienated inhabitants of the urban ghettos.<sup>31</sup> This problem is more serious for financial consumers due to the asymmetric relationship with financial institution and their lack of expertise.

Given the current socio-economic conditions in which the majority of citizens find themselves and their level of connection to financial institutions, it is imperative for legal institutions and other government bodies to devise just viable mechanisms that regulate the relationship between financial institutions and their customers. As part of an effort to suggest such mechanisms, this article in the next subsection evaluates the existing legal mechanisms in Ethiopia.

## **1.2. Financial Consumers' Access to Justice under the Ethiopian Legal Regime**

Discussion under this part tries to show why one looks for an additional alternative to access justice for financial consumers in Ethiopia. The discussion highlights the limitations of the existing grievance handling mechanism for financial consumers. Particularly, it explores the limitations of the judiciary and out of court commercial dispute resolution institutions such as Trade and Consumers Protection Authority, Addis Ababa Chamber of Commerce and Sectorial Association-Arbitration Institute, Bahir Dar University Arbitration and Conciliation Center, and the National Bank of Ethiopia from the perspective of the propriety for solving financial consumers' disputes.

Undoubtedly, the Ethiopian legal system recognizes access to justice as one of the cardinal rules of human right principles. This is because Ethiopia has negotiated and ratified the terms of major human rights bills which recognize access to justice. This includes the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (ICCPR), and the

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<sup>28</sup> *Id.*, p.284; David Caplovitz, *The Poor Pay More: Consumer Practices of Low Income Families*, (1963), p.172.

<sup>29</sup> Eovaldi and Gestrin, *supra* note 24, p.284

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, p.285.

African Charter on the Rights and Welfare of the Child (ACRWC). Access to justice is also recognized as a right under Article 37(1) of the FDRE Constitution which guarantees to all citizens the right to seek and access justice from “a court of law” or “any other competent body with judicial power”.<sup>32</sup>

The practical realization of the constitutional right, however, depends on the right to access institutional mechanism designed for access to justice.<sup>33</sup> Despite a demonstrated desire by the government to achieve access to justice, the majority of the public is still far from benefiting from this right. This can largely be attributed to the rampant disregard to and massive violation of human rights and freedoms. Also, the judiciary in Ethiopia has been known for its low levels of impartiality, integrity, inefficiency, and incompetency.<sup>34</sup> Kokebe, in recognition of this ordeal, writes that “[h]owever, the real application of the right for Ethiopia is fraught by a multitude of legal and practical challenges”.<sup>35</sup> With regard to access to courts and their performances, Assefa Fiseha also writes that because of the factors, external and internal to the judicial systems, “(...) the courts are far from accessible to the ordinary men and women”.<sup>36</sup> One of the factors particularly identified by commentators is the citizens’ low educational level in the country.<sup>37</sup> Such reality would pose a serious challenge in realizing access to justice for the society because the exercise of this right primarily requires awareness on the part of the individual targets of the right.

The other major problem contributing to the low level of access to justice in Ethiopia is the perception of people and institutions towards the level of independence and efficiency of the judiciary.<sup>38</sup> Several studies assessing the institutional performance of the justice system in this country reported low “level of trust and public confidence over courts, with national institutions rating them at 65%, parliament at 41%, the police at 68%, and the civil service at 59%”.<sup>39</sup> This low level of trust and confidence

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<sup>32</sup> FDRE Constitution, *supra* note 2, Article 37(1).

<sup>33</sup> K. I. Vibhute, Right to Access to Justice in Ethiopia: An Illusory Fundamental Right?, *Journal of the Indian Law Institute*, Vol.54:No.1, (2012), p.69.

<sup>34</sup> Leul Estifanos, Judicial Reform in Ethiopia: Inching towards Justice, <https://www.ethiopia-insight.com/2021/09/05/judicial-reform-in-ethiopia-inching-towards-justice/> [accessed on October 9, 2021].

<sup>35</sup> Jemaneh, *supra* note 5, p.10.

<sup>36</sup> Assefa Fiseha, Improving Access to Justice through Harmonization of Formal and Customary Dispute Resolution Mechanisms (CDRMs), in Pietro S. Toggia, *et-al*, (eds.), *Access to Justice in Ethiopia: Towards an Inventory of Issues*, AAU, (2014), p.99.

<sup>37</sup> Jemaneh, *supra* note 5, p.10; Statistical data available on UNICEF website on Ethiopia, (2018), [https://www.unicef.org/infobycountry/ethiopia\\_statistics.html](https://www.unicef.org/infobycountry/ethiopia_statistics.html) [accessed on December 9, 2021].

<sup>38</sup> Jemaneh, *supra* note 5, p.10.

<sup>39</sup> Assefa Fiseha, Separation of Powers and Its Implications for the Judiciary in Ethiopia, *Journal of Eastern African Studies*, Vol.5:No.4, (2011), p.709.

seems to have been the result of rampant corruption, gross incompetence and political patronage on the part of the judiciary.<sup>40</sup>

Further, considerable proportions of the population living in rural areas are far from the service of the judicial organ of the government. Most people have to travel a day or two to access justice through regular courts. Also, they incur considerable amount of expenses causing strain to their living. Even if they access the courts shouldering all the hardship from physical and financial inaccessibility, the majority of the population do not believe that they can redress their losses through the instrumentality of the judiciary.<sup>41</sup> This, in turn, affects their access to information, which is instrumental in the fight for the realization of access to justice for the individual members of the society.<sup>42</sup>

In addition to the above factors, like any developing country, Ethiopia faces considerable shortage of trained legal professionals, like judges, court personnel and sometimes even the court infrastructure itself.<sup>43</sup> The problem, when it comes to the legal representation, has been worsening from time to time because of the under-funding, high payment for lawyers, the limited attention paid to the problem and more importantly because of the failure to understand that representation is a fundamental right.<sup>44</sup> This led Wendmagen Gebre to conclude that justice currently has been “(...) a rare commodity which is accessible only to the privileged, the powerful and the rich, excluding the poor, the marginalized and the weak”<sup>45</sup>.

As a way to demonstrate instances of such barriers to justice in this country, this article examines the ways and processes through which the Trade Competition and Consumer Protection Authority (hereinafter TCCPA) handles financial consumers' complaints against financial institutions. TCCPA is an institution widely established in many countries as an agency responsible for protection of financial services consumers along with other goods and services.<sup>46</sup> In the same fashion, Ethiopia, introduced a consumer protection law and institution for its enforcement (i.e. TCCPA) which has the adjudicative authority, and also an appellate tribunal with authority to provide a

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<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Jemaneh, *supra* note 5, p.10.

<sup>43</sup> Fiseha, *supra* note 36, p.101.

<sup>44</sup> Jemaneh, *supra* note 5, p.10.

<sup>45</sup> Wendmagen Gebre, *The Role of Traditional and Informal Justice in Promoting Access to Criminal Justice: A Comparative Study of South Africa, Uganda and Ethiopia*, in Pietro S. Toggia, *et-al*, (eds.), *Access to Justice in Ethiopia: Towards an Inventory of Issues*, AAU, (2014), pp.123-124.

<sup>46</sup> Oya Pinar Ardicle *et-al*, *Consumer Protection Laws and Regulations in Deposit and Loan Services: A Cross-Country Analysis with a New Data Set*, WB Working Paper 5536, (2011), p.11.

binding decision as per Proc.No.813/2013. This proclamation gives protection for consumers of goods and services in general.<sup>47</sup>

In this regard, consumers of goods have unreserved right to claim remedy from this institution, but the financial consumers' access to this institution is doubtful. It is so because the definitional part of the proclamation defines 'service' as "any commercial dispensing of service for consideration (...)"<sup>48</sup>. Also the term 'consumer' is taken to mean "a natural person who buys goods and services for his personal or family consumption (...)"<sup>49</sup>. Here, the definition of consumer covers buyers of goods and services for consumption only. Yet financial consumers may buy financial products and services expecting income in the form of interest. Particularly, legal entities as financial consumers such as small scale firms cannot access remedy from this organ since the term consumer refers only to natural person under the proclamation. Being this as it may, TCCPA has also other limitations to be a forum for justice, in general and financial consumers in particular. The contributing factors for the inadequacy of the institution include: lack of designated unit which specifically deal with financial consumers' disputes, adjudicators' lack of knowledge about the financial market, and consumers' lack of awareness about this Authority.<sup>50</sup> Further, lack of special procedure to resolve disputes amicably<sup>51</sup>, the duty to apply the civil procedure or criminal procedure codes by the adjudicative bench and its appellate body<sup>52</sup>, and consumers' duty to pay fees<sup>53</sup> impede the Authority's capacity to provide speedy and less costly justice to consumers, contrary to expectations from a tribunal or an out-of-court dispute resolution institution.

The other forums to arbitrate commercial disputes are the Addis Ababa Chamber of Commerce and Sectorial Association, Arbitration Institute (hereinafter AACCSA-AI)<sup>54</sup>, and Bahir Dar University Arbitration and Conciliation Center (hereinafter

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<sup>47</sup> Trade Competition and Consumer Protection Proclamation, Proclamation No.813/2013, *Federal Negarit Gazzette*, (2013), preamble [hereinafter Proc.No.813/2013].

<sup>48</sup> *Id.*, Article 2(2).

<sup>49</sup> *Id.*, Article 2(4).

<sup>50</sup> Tewachew Molla, Protection of Bank Depositors in Ethiopia: Analysis of the Legal and Institutional Frameworks, Master Thesis, BDU, (2020), pp.104-106; Oya Pinar Ardicle et-al, *supra* note 46, p.11.

<sup>51</sup> Proc.No.813/2013, *supra* note 47, Article 32-33.

<sup>52</sup> *Id.*, Article 41.

<sup>53</sup> *Id.*, Article 40.

<sup>54</sup> Chambers of Commerce and Sectorial Association Establishment Proclamation, Proclamation No.341/2003, *Federal Negarit Fezetta*, (2003) [hereinafter Proc.No.341/2003]; The Revised Arbitration Rules of the Addis Ababa Chamber Commerce and Sectorial Associations, Addis Ababa Chamber of Commerce and Sectorial Association, (2008), Articles 4, 5 [hereinafter ACCSA Arbitration Rules].

BDU-ACC)<sup>55</sup>. The impact of these service providers is so limited that they could barely address the needs of financial consumers for judicial redress.<sup>56</sup> Several reasons underlie their limited impact on serving the ends of justice. Firstly, they lack the jurisdiction to arbitrate financial consumers' disputes. For instance, the AACCSA-AI is mandated to arbitrate and settle disputes arising only out of business transactions between members, but not between members and consumers.<sup>57</sup>

Another problem is the disputant parties in both cases are required to pay arbitration fee and to cover costs such as fees to arbitrators, application/registration fee, arbitration fee, and administrative cost. This makes the institutional service very costly and unjust for the economic situation of small financial consumers.<sup>58</sup> Setting aside small financial consumers even investors do not comfortably decide to pay such costs in their moves to settle their disputes through these institutions.<sup>59</sup> This suggests the need for institutions such as financial Ombudsman which minimizes such costs or adjudicates disputes free of cost.

Moreover, AACCSA-AI suffers from other limitations such as lack of business community's interest to join the association as members; lack of self-initiated but demand driven culture of the Chamber/business associations; failure to represent the real interest and views of its members but rather serving government policies and ideologies; lack of effective communication and internal engagement with the members; and lack of transparent governance system.<sup>60</sup> Furthermore, lack of necessary support from the government, absence of comprehensive and inclusive laws, failure to acknowledge the right of associations to advocate representing its members, and non-involvement of business associations in the policy debate damages its reliability as an access to justice in general.<sup>61</sup>

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<sup>55</sup> Arbitration, Mediation, and Conciliation Proceeding Regulation, Bahir Dar University Arbitration and Conciliation Center, (2014), Article 3 [hereinafter BDU Arbitration Regulation].

<sup>56</sup> Alemayehu Yismaw, The Need to Establish a Workable, Modern and Institutionalized Commercial Arbitration in Ethiopia, *Haramya Law Review*, Vol.4:No.1, (2015), pp.47-49; Yohannis Woldegebriel, Current Status of Alternative Dispute Resolution in Ethiopia, p.3.

<http://www.addischamber.com/file/ICT/20140812/Current%20Status%20of%20Alternative%20Dispute%20Resolutions.docx/> [accessed on May 2021].

<sup>57</sup> Proc.No.341/2003, *supra* note 54, Article 5 (6); ACCSA Arbitration Rules, *supra* note 54, Article 4, 5; BDU Arbitration Regulation, *supra* note 55, Article 3.

<sup>58</sup> ACCSA Arbitration Rules, *supra* note 54, Articles 32-35, Annex I-III; BDU Arbitration Regulation, *supra* note 55, Articles 77, 79, 80, 81, Annex-III.

<sup>59</sup> Civil Code of Ethiopia, Proc.No.165/1960, *Negarit Gazzeta*, (1960), Articles 3318-3346; Civil Procedure Code of Ethiopia, Proc.No.52/1965, *Negarit Gazzeta*, (1965), Articles 315-319.

<sup>60</sup> Yismaw, *supra* note 56, p.47; Bacry Yusuf, et-al, Situation Analysis of Business and Sectoral Associations in Ethiopia, Addis Ababa Chamber of Commerce and Sectoral Association, (2009), pp. 89-91.

<sup>61</sup> Yismaw, *supra* note 56, p.47; Bacry Yusuf, et-al, *supra* note 60.

For example, the BDU-ACC—except in a single pending commercial case which is unrelated to financial matters—was not functional since its establishment in 2014. Besides, both the BDU-ACC and the AACCSA-AI are looking for mandatory arbitration agreement in the form of arbitral submission or clause to establish jurisdiction<sup>62</sup>, which is criticized for not working to the parties with asymmetric business relationship like consumers and financial institutions.<sup>63</sup>

This evidence affirms that limited number of institutions cannot be reliable access to justice. It is the availability of different forums for access to justice that can widen the individual's choice. Authorities in this country come to see this reality and are showing concern for the challenges. Accordingly, based on the gaps with respect to courts, the TCCPA, and the two commercial arbitration institutions (AACCSA-AI and BDU-AC) to address financial consumers' demand for justice, Ethiopia has begun to devise a mechanism to fill this gap.<sup>64</sup>

Some of such moves include the issuance of financial inclusion strategy in 2017, financial consumers' protection directive in 2020, and amendment of the financial businesses (banking, insurance, and micro-finance) proclamation in 2019.<sup>65</sup> Further, the national Parliament, in 2019, confirms the minimum protection given to financial consumers' interest and understands the need as well as importance of protecting them, thereby giving mandate to the National Bank of Ethiopia (hereinafter represented by NBE) to issue a directive determining the minimum conditions for protection of financial consumers.<sup>66</sup> The NBE on its part issued the Financial Consumer Protection Directive stating that establishing clear and objective dispute resolution mechanisms are necessary to promote fair, professional, responsible and

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<sup>62</sup> BDU Arbitration Regulation, *supra* note 55, Article 3; Proc.No.341/2003 *supra* note 54, Article 4; ACCSA Arbitration Rules, *supra* note 54, Article 4.

<sup>63</sup> Mala Sharma, A Fair Alternative to Unfair Arbitration: Proposing an Ombudsman Scheme for Consumer Dispute Resolution in the USA, *Journal of the International Ombudsman Association*, (2020), pp.3,6; Mark E. Budnitz, Arbitration of Disputes between Consumers and Financial Institutions: A Serious Threat to Consumer Protection, *Ohio State Journal on Dispute Resolution*, Vol.10:No.2, (1995), pp.299-309.

<sup>64</sup> Cumulative reading of Banking Business (Amendment) Proclamation, Proclamation No.1159/2019, *Federal Negarit Gazette*, (2019), Article 57 [hereinafter Proc.No.1159/2019]; Insurance Business (Amendment) Proclamation, Proc.No.1163/2019, *Federal Negarit Gazette*, (2019), Article 59 [hereinafter Proc.No.1163/2019]; Micro finance Business (Amendment) Proclamation, Proclamation No.1164/2019, *Federal Negarit Gazette*, Article 26 [hereinafter Proc.No.1164/2019]; Financial Consumer Protection, Directive No.FCP/1/2020, NBE, (2020), Article 4.5.2 Cum. Article 2.12 [hereinafter FCP/01/2020]; Financial Inclusion Strategy, NBE, (2017).

<sup>65</sup> Id.

<sup>66</sup> Id., Proc.No.1159/2019 Article 57; Proc.No.1163/2019 Article 59; Proc.No.1164/2019 Article 26.

transparent financial transactions towards the financial consumers.<sup>67</sup> The directive also lays a ground for establishment of an out-of-court dispute resolution body that specifically serves financial consumers' claim for justice in addition to the internal dispute resolution system.<sup>68</sup> As such, it defines external dispute resolution body as "a dedicated scheme, to be established by the National Bank, for resolving disputes between the financial consumer and/or the security provider and financial service provider".<sup>69</sup> In addition, courts are also recognized as arbiter of financial consumers' disputes.<sup>70</sup>

Yet except these two provisions, the directive does not have any indication about the character or feature of the scheme to be established. From these evidences, one can infer that the NBE is still following a laissez-faire approach to the protection of financial consumers.<sup>71</sup> However, one can at the same time see that Ethiopia is in transition from general consumers' protection framework to particular sectors. For instance, in this transitional move, the issue of financial consumers' protection becomes part of the NBE's financial sector regulatory and supervisory role widely reported to have an important impact in protecting the rights of consumers in other countries.<sup>72</sup>

## **2. Financial Ombudsman Scheme as ADR Institution**

### **2.1. Its Concept and Role to Access Justice**

A closer look into the analyses made so far shows that despite the encouraging institutional moves to establish more ways of protecting consumer rights, the existing

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<sup>67</sup> FCP/01/2020, *supra* note 64, the preamble.

<sup>68</sup> However, this mechanism is subject to critics for its inadequacy in rendering justice to the financial consumer because of its inefficiency, lack of effectiveness and trustworthiness, and favor towards maximizing the interest of the respective employing institution. Kebede Teshale Shode, Determinants and outcome of Customer Satisfaction at the Commercial Bank of Ethiopia: Evidence from Addis Ababa, *African Journal of Marketing*, Vol.9:No.7, (2017), p.111, 118; Mulugeta Bekele, Practices of Customer Protection in Financial Institutions: The Case of Selected Private Commercial Banks, Master Thesis, St. Mary's University, (2015), p.35; WB (2011), p.26; Adeola A. Oluwabiyi, A Comparative Legal Analysis of the Application of Alternative Dispute Resolution to Banking Disputes, *Journal of Law, Policy and Globalization*, Vol. 38, (2015), p.5; Good Practices for Financial Consumer Protection, WB, (2012), pp.28-29 [hereinafter WB (2012)]; OECD, Effective Approaches for Financial Consumer Protection in the Digital Age: FCP Principles 1, 2, 3, 4, 6 and 9, Task Force on Financial Consumer Protection, (2019), p.46 [hereinafter OECD (2019)]; Allan Asher, *et-al*, Asean Complaint and Redress Mechanism Models, Models for Internal Complaint Systems and External Consumer Redress Schemes in Asean, (2013), pp.20-53;

<sup>69</sup> FCP/01/2020, *supra* note 64, Article 2.12.

<sup>70</sup> Id, Article 4.5.2 cum. Article 2.12.

<sup>71</sup> Sharma, *supra* note 63, pp.329-332.

<sup>72</sup> Oya Pinar Ardic, *et-al*, *supra* note 46, pp.11-12.

grievance mechanism or the moves to formulate others are far from meeting the growing demand for access to justice in Ethiopia. This suggests the need for a more practical move to establish new justice-dispensing institutions.<sup>73</sup> To this end, establishing an Ombudsman scheme as part of ADR systems can be one of the viable options to provide accessible, fair and faster remedies for aggrieved ones.<sup>74</sup>

Traditionally, Ombudsman refers to a public official with a role in the context of administrative justice (separate from the executive and judiciary) to deal with citizens' grievances and complaints against public bodies.<sup>75</sup> It addresses complaints from individuals, and acts to investigate, review and address individual or systemic violations or maladministration.<sup>76</sup> Their role evolved from being a prosecutor of official wrongdoing to defender of citizens' rights and interests in good administration.<sup>77</sup> Moreover, independence, impartiality, and confidentiality are taken to be critical attributes of an Ombudsman's complaint-handling mechanism.<sup>78</sup> The institution expanded its function as a provider of ADR and facilitator of dispute resolution over the ages.

In the late 20<sup>th</sup> century, the role of the Ombudsman was further transformed to accommodate the operations of private sector organizations and became an institutional means for the resolution of employee grievances, customer complaints, and workplace disputes.<sup>79</sup> This expansion of its role from governmental organizations to the private sector, open a space of opportunity to entertain a wider range of disputes. Specifically, the investigation of maladministration, which was a major function of Ombudsman in the public sphere<sup>80</sup>, gave way to address systemic institutional issues

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<sup>73</sup> Rescoe Pound, *The Administration of Justice in the Large City*, *Harvard Law Review*, Vol.26:No.4, (1963), pp.66-69; Eovaldi and Gestrin, *supra* note 24, p.302.

<sup>74</sup> Neville Melville, *Has Ombudsmania Reached South Africa? The Burgeoning Role of Ombudsmen in Commercial Dispute Resolution*, *South African Mercantile Law Journal*, Vol.22:No.1, (2010), pp.50, 54; H McVea and P Cumper, *The Financial Ombudsman Service and Disputes Involving Wider Implications Issues*, *Lloyd's Maritime and Commercial Law Quarterly*, (2007), pp.246-247.

<sup>75</sup> Phillip Rawlings and Willett Chris, *Ombudsman Schemes in the United Kingdom's Financial Sector: The Insurance Ombudsman, the Banking Ombudsman and the Building Societies Ombudsman*, *Journal of Consumer Policy*, Vol.17:No.3, (1994), pp.307-333; Sabine Carl, *The History and Evolution of the Ombudsman Model*, in Marc Hertogh and Richard Kirkham (eds.), *Research Handbook on the Ombudsman*, (2018), pp.17, 19.

<sup>76</sup> *Id.*

<sup>77</sup> Gerald E. Caiden, *et-al*, *The Institution of Ombudsman*, in Gerald E. Caiden (ed.), *International Handbook of the Ombudsman: Evolution and Present Function*, Greenwood Press, (1983), p.10.

<sup>78</sup> Donald C. Rowat, *The Parliamentary Ombudsman: Should the Scandinavian Scheme Be Transplanted?*, *International Review of Administrative Sciences*, Vol.28, (1962), pp.399, 400.

<sup>79</sup> Frank Evans and Shadow Sloan, *Resolving Employment Disputes through ADR Processes*, *South Texas Law Review*, Vol.37, (1996), pp.745, 751-52; Frank Elkouri, *et-al.*, *How Arbitration Works*, Kenneth May (ed.), 8th ed. (2016).

<sup>80</sup> Gerald E. Caiden, *et-al*, *supra* note 77, p.10.

in private organizations such as Financial Services Ombudsman scheme, energy, telecommunication, finance, etc.<sup>81</sup>

Further, consumerism and privatization of public services create private Ombudsman scheme with a goal of protecting economic interests and ensuring access to justice.<sup>82</sup> The scheme, which is widely known as (financial Ombudsman scheme), has become an indispensable ADR tool in the financial community.<sup>83</sup> It has a principal function of dealing with complaints of consumers about financial services providers by mediating and, where necessary, by investigating and adjudicating.<sup>84</sup> As such, like other Ombudsman schemes, the financial Ombudsman scheme addresses the policy concerns such as power imbalances between financial services providers and consumers.<sup>85</sup> In doing so, the financial Ombudsman scheme can be seen as a part of a broader scheme of providing access to justice which, in a liberal democratic society, fulfills the normative function of ensuring the rule of law.<sup>86</sup>

At this point it is important—as a way to rationalize the need for more institutions of access to justice—to understand the financial services and operation of contemporary financial institutions. Financial services have particular features which make the issue of consumer access to justice or remedy especially relevant. First, financial services often involve highly complex products.<sup>87</sup> This gives rise to inevitable information asymmetry, where financial service providers know a great deal more about their products than even cautious and prudent consumers. This, in turn, leads to unavoidable consumer difficulty in assessing the nature and quality of the product purchased. The complexity of the products also gives rise to potential abusive selling practices. Case studies on the operation of the financial Ombudsman scheme provide a range of examples of such practices.<sup>88</sup> Moreover, many financial services are purchased on a ‘credence’ basis whereby their value to the consumer becomes apparent only with the passing of time. For example, the determination of whether an insurance contract

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<sup>81</sup> Julinda Beqiraj, *et-al*, *supra* note 17, pp.7, 12, 27; Najmul Abedin, Conceptual and Functional Diversity of the Ombudsman Institution: A Classification, *Administration and Society*, Vol.43:No.8, (2011), p.896.

<sup>82</sup> Abedin, *supra* note 81, p.896; Julinda Beqiraj, *et-al*, *supra* note 17, p.12; Mary Donnelly, The Financial Services Ombudsman: Asking the Existential Question, *Dublin University Law Journal*, Vol.35, (2012), p.230.

<sup>83</sup> Walter Merricks, The Financial Ombudsman Service: Not Just an Alternative to Court, *Journal of Financial Regulation and Compliance*, Vol.15, (2007), pp.135-36.

<sup>84</sup> Donnelly, *supra* note 82, p.229.

<sup>85</sup> *Id.*, p.230.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*, p.233.

<sup>88</sup> There are numerous examples of mis-selling of products, including to elderly and uninformed consumers.

meets a particular consumer's needs typically becomes apparent to the consumer only when s/he makes a claim on the insurance policy.<sup>89</sup>

According to Cappelletti, the access movement identified obstacles which restrict individuals' access to justice, focusing especially on those individuals who were at a particular disadvantage, through poverty, asymmetric economic relationship with in the society, or lack of education.<sup>90</sup> Thus, financial Ombudsman scheme is a considerable help in empowering weak consumers in the fight against such barriers to justice. Further, this institution possesses many of the benefits offered by other ADR mechanisms. It allows economical utilization of time and money, flexibility, independence, efficiency, impartiality, convenience, non-binding decisions on consumers and confidential approach to the resolution of financial disputes.<sup>91</sup> In addition, unlike other ADR mechanisms, it plays a role in identifying and resolving systemic issues.<sup>92</sup> Experience in many jurisdictions show that such feature of the institution enables it to attain many of the ends of justice aspired by financial consumers.

The lessons from other countries suggests that establishment of a financial Ombudsman scheme requires consideration of such qualities. Among others, the financial Ombudsman scheme must be inexpensive and accessible to the needy.<sup>93</sup> The service should not only be made inexpensive to the economically strained parties, but should also be prohibited to the economically stronger parties who move to combine the inexpensive service from the institution with their strong economic power to improve their position relative to the weaker party. For example, it should prohibit stronger parties to have access to legal representation for lower costs in circumstances where this is unrealistic for the weaker party.<sup>94</sup> This depends on a variety of

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<sup>89</sup> Donnelly, *supra* note 82, pp.233-234.

<sup>90</sup> Mauro Cappelletti, Alternative Dispute Resolution Processes within the Framework of the World-Wide Access to Justice Movement, *Modern Law Review*, Vol.56, (1993), pp.282-287.

<sup>91</sup> Ben Bradford and Naomi Creutzfeldt, Procedural Justice in Alternative Dispute Resolution: Fairness Judgments Among Users of Financial Ombudsman Services in Germany and the United Kingdom, *Journal of European Consumer and Market Law*, Vol.7:No.5, (2018), pp.188-89; Nuannuan Lin and Weijun Hu, Systemic Issue Resolution in Two Dimensions: A Reflection Based on a Ten-Year Review of the Australian Financial Ombudsman Service, *Harvard Negotiation Law Review*, Vol.26, (2020), p.128.

<sup>92</sup> Christopher Hodges, Collective Redress: The Need for New Technologies, *Journal of Consumer Policy*, Vol.42, (2019), pp.59, 68; Chris Gill, *et-al.*, The Managerial Ombudsman, *Modern Law Review*, Vol.83, (2020), pp.797, 798, 829.

<sup>93</sup> United Nations Guidelines for Consumer Protection (as expanded in 1999), UN Conference on Trade and Development, UN, (2001); which requires governments to establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.

<sup>94</sup> Donnelly, *supra* note 82, p.233.

institutional and jurisdictional arrangements, operational methods and decision-making processes the financial Ombudsman scheme sets.

The provision of effective mechanisms for consumer dispute resolution also serves economic goals in addition to ends of justice. The same is true for the financial Ombudsman scheme. Particularly, the financial Ombudsman scheme contributes to a more efficient market in financial services.<sup>95</sup> Effective consumer redress contributes to heightened consumer confidence and improved market discipline.<sup>96</sup> However, the economic imperative for effective consumer dispute resolution is not concerned with poorer or more vulnerable consumers to level the need for access to justice compels.<sup>97</sup>

Looking into some historical developments of the financial Ombudsman scheme as an institution, one can see that it was mainly industry based or sector specific financial institutions such as banking, insurance, etc., though recently it is advanced to a harmonized financial Ombudsman to all financial institutions.<sup>98</sup> Fragile industry based financial Ombudsman confuses consumers in choosing among the financial sector Ombudsmen where to plead leads to a desire to eliminate “gaps, overlaps and inconsistencies” in the financial dispute resolution system by merging various sector specific dispute resolution services.<sup>99</sup> The industry based financial Ombudsman scheme in Australia could be an example which later on the financial Ombudsman scheme has consolidated various overlapping industry based dispute resolution systems that existed across the Australian financial sector to form a “one-stop shop” for consumers to resolve any of their disputes with financial services providers instead of navigating across multiple schemes based on the category where their disputes fell under.<sup>100</sup> Thus, the historical development of the financial Ombudsman scheme has a lot of lessons to draw for contemporary institutional establishment and practices.

## **2.2. Possible Challenges and Enabling Environments for Adapting Financial Ombudsman Scheme in Ethiopia**

Adaption of financial Ombudsman scheme in Ethiopia may face challenges though not exceptional. First, there is an economic constraint whereby certain classes of

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<sup>95</sup> Id., p.230.

<sup>96</sup> Id., pp.234-235.

<sup>97</sup> Id., p.235.

<sup>98</sup> WB (2012), *supra* note 68.

<sup>99</sup> Regulatory guide 267(RG 267), Oversight of the Australian Financial Complaints Authority, Australian Securities and Investments Commission, (2018); Paul Ali, *et-al.*, Australia's Financial Ombudsman Service: An Analysis of Its Role in the Resolution of Financial Hardship Disputes, *Conflict Resolution Quarterly*, Vol.34:No.2, (2016), pp.167-168.

<sup>100</sup> Lin and Hu, *supra* note 91, pp.124-125; Alternative Dispute Resolution Discussion Paper: Submission by Industry-Based External Dispute Resolution Scheme, Submission no.ADR/22, pp.1-3, 12.

people who, because of poverty and/or associated factors, have little or no access to information necessary for the vindication of their legal rights. The lower literacy level of citizens' causes them to have less motivation, information and power to take actions necessary to exercise his or her rights. The business community's skeptics towards institutionalized ADR methods and love of customary and traditional dispute resolution mechanisms may also be another challenge.<sup>101</sup>

Depending on the design choices, financial Ombudsman scheme demands sustainable financial source which can be generated from members (financial institutions), the government and service fees (paid by businesses or consumers). This may be a challenge in Ethiopia, where one third of the population is not able to meet their basic needs or pay service fee to access remedy for grievances. Further, the business community is substantially skeptical about the reliability of the remedy from institutional commercial arbitrators in the country. This in turn is a major source of failure to generate funds for these institutions from the business community.<sup>102</sup> Furthermore, lack of mediator or adjudicator with the required level of expertise in the field is another challenge.

*Albeit* these and other possible challenges, there are enabling environments for adapting the financial Ombudsman scheme in Ethiopia in the future than the past. First, the adoption of financial inclusion strategy by NBE is one fertile ground to suggest such scheme in Ethiopia.<sup>103</sup> This strategy puts financial consumer protection as one of its vision and mission for ensuring financial inclusion.<sup>104</sup> Consideration of financial consumers' protection as an explicit agenda by the policymakers, and issuing a law to that end shows the policymakers and the regulatory body's attention for financial consumers' protection and particularly financial consumers' dispute resolution.<sup>105</sup> This interest of the government to protect financial consumers smoothens the adaptation of financial Ombudsman scheme in Ethiopia. This also

<sup>101</sup> Yismaw, *supra* note 56, p.48.

<sup>102</sup> Booz Allen Hamilton, Ethiopia Commercial Law and Institutional Reform and Trade Diagnostic, United States Agency for International Development, (2007), p.70; Yismaw, *supra* note 56, p.48.

<sup>103</sup> Financial Inclusion Strategy, NBE, (2017), pp.33.

<sup>104</sup> *Id.*, pp.27-35.

<sup>105</sup> In Ethiopia, there was a general consumer protection law with no explicit reference to financial consumers until 2019. Trade Competition and Consumers Protection Proclamation, Proclamation No.813/2013, *Federal Negarit Gazette*, (2013), Article 14 and following provisions; Proc.No.1159/2019, *supra* note 64, Article 57; Proc.No. 1163/2019, *supra* note 64, Articles 54, 56, 58; Proc.No.1164/2019, *supra* note 64, Article 27. The *lex preparatories* of the amendment proclamations has also revealed the government's emphasis for protection of financial consumers' nowadays. የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ, 5ኛው የህዝብ ተወካዮች ምክርቤት, 4ተኛ አመት የስራ ዘመን, 44ኛ መደበኛ ስብሰባ ቃለ ጉባኤ, ጥራዝ 5, (2011), ገጽ 62-64.

uncovers the country's transition from attraction of investors in the market to consumers' protection issue.

In addition, NBE's consideration of financial literacy as part of the financial inclusion strategy to improve the financial consumers' financial education and awareness will maximize consumers' ability to exercise their legal rights in relation to financial products and services.<sup>106</sup> Theoretical and empirical evidence in the literature shows that financial education, information and guidance—while serving as an ingredient for the financial Ombudsman scheme efficacy—improve consumers' ability to manage their personal finances, protect themselves against risks, and not to be victims of financial fraud.<sup>107</sup> Moreover, the operation of the traditional or public Ombudsman lends a positive insight to the adaptation of the financial Ombudsman scheme, the private Ombudsman in Ethiopia. Experiences of institutions such as the Ethiopian Chamber of Commerce and Sectorial Association's and BDU Arbitration and Conciliation Center will have substantial contribution<sup>108</sup> to the adaptation process. As such, they can provide ancillary support for the architecture for the establishment and growth of a financial Ombudsman scheme by filling the knowledge gap in the area of conciliation and arbitration of financial disputes. Finally, the NBE as an authorized authority for determining the conditions for financial consumer protection can institute and integrate the financial Ombudsman scheme with the other justice machinery.

### **3. Fundamentals of Financial Ombudsman Scheme**

The financial Ombudsman scheme has long been promoted, in legal jurisdictions such the EU and WB, as a mechanism to solve consumer disputes.<sup>109</sup> It gradually becomes broadly accepted in other legal practices due to its independence, impartiality, convenience, efficiency and money and time saving qualities.<sup>110</sup> However, its effectiveness depends on applying good institutional design choices. Applying the good design principles helps the Ombudsman to fulfill its purpose and to sustainably maintain its legitimacy by users. In this section, the author outlines the issue of determining the necessary precautions or fundamentals of financial Ombudsman scheme, and suggests consideration for designers in choosing the design of the financial Ombudsman scheme workable in the context of Ethiopia.

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<sup>106</sup> See, *supra* note 103, strategy 4.

<sup>107</sup> WB (2012), *supra* note 68, p.29.

<sup>108</sup> BDU Arbitration Regulation, *supra* note 55, Article 4(b).

<sup>109</sup> Horst G. M. Eidenmuller and Martin Engel, Against False Settlement: Designing Efficient Consumer Rights Enforcement Systems in Europe, *Ohio State Journal on Dispute Resolution*, Vol.29:No.2, (2014), p.261; Gerhard Wagner, Private Law Enforcement through ADR: Wonder Drug Or Snake Oil?, *Common Market Law Review*, Vol.51:No.1, (2014), p.165.

<sup>110</sup> Chris Gill, *et-al*, Designing Consumer Redress: A Dispute Model Design (DMD) for Consumer to Business Disputes, *Legal Studies Journal*, Vol.36:No.3, (2016), p.439.

### 3.1. Jurisdiction

Determining which complaints fall within the jurisdiction of the scheme is one of the primary tasks in the formulation of a financial Ombudsman scheme. Such determination involves multifaceted considerations. Among others, the jurisdiction of the financial Ombudsman scheme is (a) split between compulsory and voluntary categories; (b) depend on membership requirement, and (c) reflects the varied background from which it evolved. “Compulsory category” denotes the obligation imposed on a regulated firm to submit to the procedure and comply with the decision of the Ombudsman. As the name implies, there is no obligation imposed on regulated firms to submit to the voluntary jurisdiction of the financial Ombudsman scheme.<sup>111</sup> Also, no such obligation is imposed on the complainant.

The jurisdiction of voluntary financial Ombudsman scheme depends on the “buy-in” by the financial institutions and limited to complaints with respect to products and services totally agreed by its members.<sup>112</sup> As a result, it has the opportunity to leave the significant area of complaints outside its scope.<sup>113</sup> This jurisdiction, limited only to member financial firms and agreed products or services, is perhaps the greatest threat to the credibility of the scheme.<sup>114</sup> In addition, concerns are widely raised about the independence of the voluntary schemes, which will be more futile when the scheme depends on industry funding.<sup>115</sup> To widen its jurisdictional scope by attracting membership, this type of scheme requires effort and expensive frequent advertisement campaigns.<sup>116</sup> However, others argue that voluntary financial Ombudsman scheme attracts financial sectors. This is mainly because membership of the schemes provides a competitive marketing advantage for participants who can advertise membership as a means of attracting customers.<sup>117</sup> In addition, the scheme provides a bulwark against the possibility of an externally imposed scheme, thus leaving some degree of control within the industry.<sup>118</sup> The non-existence of publicity associated with adverse judicial findings in this scheme also reduces the costs of breach, thereby justifying the benefits of this scheme. Still another reason for using a voluntary scheme is its role in dispute

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<sup>111</sup> Iain MacNeil, Consumer Dispute Resolution in the UK Financial Sector: The Experience of the Financial Ombudsman Service, *Law and Financial Market Review*, Vol.1:No.6, (2007), p.516.

<sup>112</sup> Ewart S Williams, The Benefits of having a Financial Services Ombudsman, at the 9th Annual Breakfast Meeting, Office of the Financial Services Ombudsman, Port-of-Spain, (2012), p.4.

<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> Donnelly, *supra* note 82, p.237.

<sup>116</sup> Williams, *supra* note 112, p.4.

<sup>117</sup> Donnelly, *supra* note 82, p.236.

<sup>118</sup> Id.

resolution. Through this scheme, dispute resolutions can be individualized and the consequences of binding precedents can be avoided.<sup>119</sup>

The fact that voluntary schemes were beneficial for financial service providers does not, of course, mean that they could not also serve an access function. The private sector schemes meet a genuine need among consumers for an accessible dispute resolution mechanism.<sup>120</sup> Yet it needs more actions to be inclusive of all consumers' complaints. Particularly, to attain inclusiveness, the voluntary scheme has to be backed by laws with appropriate sanctions for non-compliance.<sup>121</sup>

Now we turn to financial Ombudsman scheme with compulsory membership jurisdiction. This scheme, in contrast to the voluntary scheme, has a significantly different relationship with financial institutions it oversees.<sup>122</sup> Compulsory or mandatory scheme achieves high coverage of consumers' complaint because of the number of financial firms' and products or services membership, and provision of reliable, binding and a precedent decision. Due to that, it can ensure higher consumer confidence in accessing justice for their grievances, and enable financial firms to have effective quality management by learning from complaints and market development.<sup>123</sup> Also, it is important to note that an efficient functioning compulsory scheme needs adequate resourcing and increasing its capacity to cope with the changing financial market and strengthen its credibility in the eyes of consumers and service providers.<sup>124</sup>

Apart from such enabling inputs, financial Ombudsman scheme should have clear codes of conduct and standard contracts<sup>125</sup> binding to all financial sector businesses.<sup>126</sup> Also, it requires publicizing the scope of operation and services it provides.<sup>127</sup> Particularly, consumers should be clearly informed about the types of disputes the scheme entertains, the eligibility of consumers for the service (i.e. foreign consumers, small businesses or individuals), the time limit for bringing a complaint, and the limits on the amount of compensation.

### **3.2. Funding**

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<sup>119</sup> Id.

<sup>120</sup> Id.

<sup>121</sup> Williams, *supra* note 112, p.4.

<sup>122</sup> Chris Gill, *et-al*, *supra* note 110, pp.438-463; Donnelly, *supra* note 82, p.237.

<sup>123</sup> Financial Services User Group's (FSUG), Opinion on the Use of Alternative Dispute Resolution, FSUG c/o European Commission, EU, (2011), p.2 [hereinafter FSUG].

<sup>124</sup> Williams, *supra* note 112, p.4.

<sup>125</sup> WB (2012), *supra* note 68, p.29.

<sup>126</sup> Id.

<sup>127</sup> Consumer Empowerment and Market Conduct Working Group Survey Report: Alternative Dispute Resolution, (2017), p.5 [hereinafter CEMC Working Group].

One of the major questions surrounding the establishment and running of a financial Ombudsman scheme is whether funding the scheme will be met from the public purse or by the financial industry. The international experience shows that financial Ombudsman schemes are largely funded by the industries they oversee, although sometimes they are publicly funded. For instance, in Germany, the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) is funded by fees and contributions from the financial institutions and their subsidiary undertakings.<sup>128</sup> Countries that fully or partially fund the Ombudsman from public treasury include Sweden, Netherlands, Ireland and UK.<sup>129</sup> Still other use options of funding such as funding through general membership fees, levies, case fees or a combination of these.<sup>130</sup>

Decisions on such choices needs important considerations such as whether the funding model is aligned to the broader goals of the scheme; for example, whether the fee is used to incentivize the scheme at early stage and then will be curtailed. A related issue is whether the consumer is expected to pay a fee for using the scheme.

The international practice shows that there are varying models with regard to the nature of the fee and its underlying purposes. For instance, in Armenia, Cyprus and Denmark, claimants pay an arbitration fee and case hearing costs, but later recovered by the losing party.<sup>131</sup> Also in Singapore, both the consumers and the institution will pay case fee (though with disparity in amount) during adjudication process and exists returnable fixed amount.<sup>132</sup> In contrast to this model of States, in Germany, BaFin offers the services of an arbitration board free of charge for the consumer.<sup>133</sup> This same practice is widely used in most other States where Mauritius Office of Ombudsperson provides free access to justice to consumers.

<sup>128</sup> Federal Financial Supervisory Authority, Arbitration Board at BaFin, Federal Financial Supervisory Authority, Germany, <https://bit.ly/2LWzwQd> [last accessed on May 27, 2022].

<sup>129</sup> In Sweden the national board for consumer disputes is a public authority and is fully funded by the state. In the Netherlands, the *Geschillencommissies* system for resolving disputes receives some public funding. In the UK, only the Pensions Ombudsman is funded by government in the context of consumer to business disputes.

<sup>130</sup> See, WB (2012), *supra* note 68, p.6. In Ireland, Financial Services and Pensions Ombudsman (FSPO) is funded by levies on financial services providers and by a grant from the government. See, Financial Services Ombudsman, Annual Review, (2017), <https://bit.ly/2M6arPv> [accessed on January 02, 2022]. In Singapore, adjudication case fee applies. See, Policy Consultation on the Financial Industry Disputes Resolution Centre Ltd, Monetary Authority of Singapore, [https://www.mas.gov.sg/media/MAS/resource/publications/consult\\_papers/2004/Public\\_Consultation\\_Paper\\_FIDReC.pdf](https://www.mas.gov.sg/media/MAS/resource/publications/consult_papers/2004/Public_Consultation_Paper_FIDReC.pdf) [accessed on May 27, 2022].

<sup>131</sup> CEMC Working Group, *supra* note 127, p.6; The Law Relating to the Establishment and Operation of a Single Agency for the Out-of-Court Settlement of Disputes of Financial Nature, (2010), <https://bit.ly/2vpQmMP> [accessed on May 2021]; The Danish Financial Complaint Boards, Submitting a Complaint, <https://bit.ly/2mXiMKf> [accessed on July 2021].

<sup>132</sup> See *supra* note 129.

<sup>133</sup> See, *supra* note 128.

Finally, the European Union Directive on ADR schemes guarantees the right to free services of the scheme and requires nominal fee only where it will not cause a barrier for consumers.<sup>134</sup> From these analyses of the varying models one would see that a free financial Ombudsman scheme service is largely commendable as a way to avoid cost barrier for consumers.<sup>135</sup>

### **3.3. Governance**

Apart from the quality and modalities of service fee, the issue of the financial Ombudsman scheme governance also needs particular attention. The issue of financial Ombudsman scheme governance involves the proper consideration of the fulfillment of certain minimum requirements such as expertise, independence, impartiality, transparency and accountability of the financial Ombudsman to the national competent authority.<sup>136</sup> As such, designing a proper governance arrangement is helpful to demonstrate the scheme's independence, to build trust, and to ensure that appropriate oversight and accountability arrangements are in place.<sup>137</sup>

Independence in this context requires financial Ombudsman scheme to be legally independent of the financial firms, or at least from its expertise. To this effect, board members are required to be independent of the member financial firms.<sup>138</sup> Yet it is important to note that the issue of independence and accountability gets complicated when the Ombudsman is voluntary and funded by the financial firms. If the scheme is funded by firms to demonstrate sufficient independence, consumers should be equally represented in its management board. This, in turn, demands close regulatory supervision.<sup>139</sup> In any way industry funding must not lead to conflict of interest, and the Ombudsman must be neutral and independent of the financial firms, which, in one way or another, depends on the terms of reference, specific structure of the scheme, and the legal principles governing the scheme.<sup>140</sup>

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<sup>134</sup> EU's Directive on Alternative Dispute Resolution for Consumer Disputes (2013/11/EU), (2013), Article 8 (c) [hereinafter EU Directive]; A Known and Trusted Ombudsman System for All Consultation Policy Document, National Treasury, Republic of South Africa, (2017), p.26.

<sup>135</sup> CEMC Working Group, *supra* note 127, p.5.

<sup>136</sup> EU's Directive, *supra* note 134, Articles 6, 7.

<sup>137</sup> Chris Gill, *et-al*, *supra* note 110, p.455.

<sup>138</sup> CEMC Working Group, *supra* note 127, p.5.

<sup>139</sup> Steffek Flix *et-al.*, Guide for regulating dispute resolution: principles and comments, in Flix Steffek and Hannes Unberath(eds.), *Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads*, Oxford: Hart Publishing, (2013), p.29; EU's Directive, *supra* note 134, Article 6(4).

<sup>140</sup> FSUG, *supra* note 124, p.7.

Impartiality requires the Ombudsman to attain consumer trust and confidence to the effect of examining a case fairly, depending on relevant laws and precedents.<sup>141</sup> Many argue that such institutional trust and impartiality is attained where it is funded by the public. Others, however, hold that public funding may not be always necessary. If the Ombudsman is appropriately institutionalized, industry funded schemes can also work well. For instance, a German Insurance Ombudsman scheme for instance avoids the government funding and successfully functions through industry funding scheme.<sup>142</sup>

The principle of transparency demands the Ombudsman to make public its activities and operations, powers and procedures, type and effect of its decisions as well as case studies and guidance notes.<sup>143</sup> It is also expected to publish reports containing its work details at least annually to promote public accountability for its decisions and actions.<sup>144</sup> Public reporting requirement has positive impact on governance,<sup>145</sup> market regulation, and quality control.<sup>146</sup> Yet reporting requirement has to be in conformity with the confidentiality of parties' information.<sup>147</sup>

### 3.4. Accessibility

Accessibility is the fourth consideration in the adoption of an financial Ombudsman scheme setup. Global experience shows that efficient financial Ombudsman schemes are accessible to consumers.<sup>148</sup> For the scheme to be accessible, primarily the financial Ombudsman as well as the financial firms (during formation of contract and later when consumers are dissatisfied by its products and services as well as its internal solutions) should inform consumers about the place and the functions of the Ombudsman.<sup>149</sup> Further, design choices relating to accessibility should take into account the extent to which the scheme provides information, advice, representation, and whether the scheme takes a proactive approach in raising consumers' awareness.<sup>150</sup>

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<sup>141</sup> Williams, *supra* note 112, p.4.

<sup>142</sup> Steffek Flix *et-al*, *supra* note 139, p.7.

<sup>143</sup> David Thomas and Francis Frizon, Resolving Disputes between Consumers and Financial Businesses: Fundamentals for a Financial Ombudsman, WB, (2012), p.8; Steffek Flix *et-al*, *supra* note 139, p.5.

<sup>144</sup> Id; Christopher Hodges, *et-al*, *Consumer ADR in Europe: Civil Justice Systems*, Oxford: Hart Publishing, (2012), p.452.

<sup>145</sup> Richard Kirkham and Philip Wells, Evolving Standards in the Complaints Branch, *Journal of Social Welfare and Family Law*, Vol.36:No.2, (2014), p.190.

<sup>146</sup> Hodges *et-al*, *supra* note 144, p.452.

<sup>147</sup> Steffek Flix, *et-al*, *supra* note 139, pp.28-29.

<sup>148</sup> Chris Gill, *et-al*, *supra* note 110, p.456.

<sup>149</sup> Thomas and Frizon, *supra* note 143, p.8.

<sup>150</sup> Chris Gill, *et-al*, *supra* note 110, p.456.

Looking into the international practice in general, financial Ombudsman scheme, as an ADR service provider, maintained an efficient, convenient, inexpensive, and fruitful approach to the resolution of financial disputes in many jurisdictions. By providing free and convenient avenues for submitting complaints, it succeeds to resolve most disputes that were submitted to it.<sup>151</sup> In doing so, it minimizes time spent on dispute resolution and adds convenience to the dispute resolution process. Further, the introduction of online submission modalities (via financial Ombudsman scheme website or email) of disputes has become a cost-effective way of accessing the financial Ombudsman scheme 's services, while letters, phone and fax are also alternatives to submit complaints free of charge.<sup>152</sup> Finally, for such measures enabling access to be successful, they should follow the underlying principles of justice.<sup>153</sup>

### **3.5. Adjudication Philosophy**

Adjudication philosophy is still another principal issue of consideration in the design of financial Ombudsman scheme. This consideration is mainly about whether the scheme adopts a redress-focused model (rights based approach) or prevention focused model (interest based approach) of dispute resolution.<sup>154</sup> The former approach applies in areas of here-now consumer detriments issue with greater focus on meeting the needs of individual parties or solving disputes (i.e. to cure problems). As such, maintaining long term business relationship between the disputant parties is not its focus.<sup>155</sup> James Reason calls this a “personal approach” with a “long-standing and widespread tradition” of error analysis. It particularly focuses on active errors “arising primarily out of aberrant mental processes such as forgetfulness, inattention, poor motivation, carelessness, negligence, and recklessness.”<sup>156</sup> The associated countermeasures are therefore directed mainly to using regulatory and disciplinary measures to reduce “unwanted variability in human behavior”.<sup>157</sup>

Finally, it is important to point out the major weakness of the personal model. It excludes ways of dealing with unsafe acts of people which, in effect, cannot prevent similar errors from resurfacing again and again.<sup>158</sup> This deficiency of the approach makes it a traditional model, preferred only by scheme funded by the industry on the bases of individual case fees.

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<sup>151</sup> Lin and Hu, *supra* note 91, pp.126-128.

<sup>152</sup> *Id.*, p.127.

<sup>153</sup> Donnelly, *supra* note 82, p.233-34.

<sup>154</sup> Chris Gill, *et-al*, *supra* note 110, p .456.

<sup>155</sup> *Id.*

<sup>156</sup> James Reason, Human Error: Models and Management, *British Medical Journal*, Vol.320, (2000), p.768.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*, pp.768-69.

Now we turn to the prevention-focused model (interest based approach). This model works in areas of higher potential consumer detriment with the goal of meeting consumers' collective interest by engaging in standard-raising work such as the collection and provision of feedback data, advising and guiding consumers, and changing the behavior of financial firms.<sup>159</sup>

Financial Ombudsman scheme is expected to report systemic issues that were identified through disputes lodged with it to the regulator.<sup>160</sup> Such issues are “[variables] that will have an effect on other persons... beyond the parties to the dispute” or those that “have implications beyond the immediate actions and rights of the parties to the complaint or dispute”.<sup>161</sup> Accordingly, the prevention-focused model works through identifying the causes of systemic issues (latent errors which erodes the basic safety of the system).<sup>162</sup> Also, it works towards resolving the effects of systemic issues on customers or claimants. Advocates of this model such as James Reason recommend that the focus of the investigation of adverse events should shift from the personal approach, which focuses on individual errors to the systemic approach that targets “the error-provoking properties within the system at large.”<sup>163</sup> That is the adjudication philosophy should emphasize the proactive systemic defenses to prevent the recurrence of an issue or on similar mistake than reactive or remedial measures.<sup>164</sup>

In this second approach, financial Ombudsman scheme can provide policy guidance for future regulation based on the experiences of previous cases so that things can be improved in future for all consumers.<sup>165</sup> This approach is preferable when membership is compulsory and the funding model is different from individual case fee.<sup>166</sup> Practices

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<sup>159</sup> Chris Gill, et-al, *supra* note 110, p.456

<sup>160</sup> Financial Ombudsman Services Limited, Operational Guideline to the Terms of Reference, Financial Ombudsman Service Australia, (2012), p.107, <https://www.afca.org.au/media/879/download> [accessed on January 2022].

<sup>161</sup> Financial Ombudsman Services Limited, Terms of Reference-1 January 2010 (As Amended 1 January 2012), article 11.2(a), <https://www.afca.org.au/media/836/download> [accessed on September 2021]; Australian Security and Investment Commission, Regulatory Guide 139: Approval and Oversight of External Dispute Resolution Schemes, RG 139.119, p.26, (2013), <https://download.asic.gov.au/media/5689909/rg139-published-13-june-2013-20200727.pdf> [accessed on February 2022]

<sup>162</sup> Lin and Hu, *supra* note 91; Mark A. Latino et-al., *Root Cause Analysis: Improving Performance for Bottom-Line Results*, 5<sup>th</sup> ed., (2020), pp.25, 163-65, 257; James Reason, *Human Error*, (1990), pp.179-80.

<sup>163</sup> Reason, *supra* note 156, p.769.

<sup>164</sup> Lin and Hu, *supra* note 91.

<sup>165</sup> Sharon Gilad, Juggling Conflicting Demands: The Case of the UK Financial Ombudsman Service, Oxford University Press, *Journal of Public Administration Research and Theory*, (2009), Vol.19:No. 3, p. 663.

<sup>166</sup> Chris Gill, et-al, *supra* note 110, p.456.

shows the former approach is widely used by Ombudsman schemes although the latter approach can also work in the absence of natural defects.<sup>167</sup>

In addition, the determination of whether the decisions of financial Ombudsman scheme should be binding to the parties needs consideration. As such, decisions of financial Ombudsman scheme should be binding on financial firms as it would help consumers to trust the scheme. Yet the decisions should not be binding on consumers because this would restrict their access to such schemes. The widely acclaimed principle in this respect is financial Ombudsman scheme decision can be binding in all cases or at least up to a certain monetary value (if the value of the case goes beyond a recommendation character) or it can be determined based on type of complaint.<sup>168</sup> Moreover, in relation to the adjudication philosophy, whether the scheme adopts an inquisitorial or adversarial investigation approach is another design choice. Depending on other design features of the scheme, a more adversarial approach largely results in quicker and cheaper dispute resolution. This is mainly because the adjudicator is solely dependent on arguments and supporting evidences presented by the parties in adjudicating the case.<sup>169</sup> The Irish Financial Services Ombudsman, which is widely known for its highly formal processes, can be a good example for such an approach.<sup>170</sup>

The approach affords for high transparency of the adjudication process and high degree of party participation, for which some people takes it as a major positive attribute. Yet others argue that this may be time consuming and costly that <sup>171</sup> puts consumers at a disadvantaged position unless the imbalance of arms is addressed by imposing the burden of proof on the financial firms.<sup>172</sup>

In contrast to the adversarial approach, an inquisitorial investigation modality helps institutions to redress the imbalance between consumers and businesses, and to ensure that consumers are not disadvantaged by lack of knowledge on how to submit and prove their case.<sup>173</sup> Inquisitorial approach may also allow the scheme to uncover more problematic issues of the firm's business conduct and helps firms to learn from complaints.<sup>174</sup>

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<sup>167</sup> Id.; Horst Eidenmuller and Martin Engel, Against False Settlement: Designing Efficient Consumer Rights Enforcement Systems in Europe, *Ohio State Journal on Dispute Resolution*, Vol.29:No.2, (2014), p.261.

<sup>168</sup> FSUG, *supra* note 123, p.3.

<sup>169</sup> Chris Gill, *et-al*, *supra* note 110, p.457.

<sup>170</sup> Chris Gill, *et-al*, Models of Alternative Dispute Resolution, A Report for the Legal Ombudsman, *Queen Margaret University*, (2014), p.3.

<sup>171</sup> Id.

<sup>172</sup> Chris Gill, *et-al*, *supra* note 110, p.457; Chris Gill, *et-al*, *supra* note 170, p.78.

<sup>173</sup> Chris Gill, *et-al*, *supra* note 110, p.457.

<sup>174</sup> Id.; Chris Gill, *et-al*, *supra* note 170, p.3.

Finally, the issue of whether a dispute resolution process is predominantly adversarial or inquisitorial determines the decision maker and decision-making process. Particularly, it guides the determination of the identity of the decision makers in terms of their qualifications and skills and the extent of publicity of information about them. To this end, the EU Directive, for instance, requires the financial Ombudsman scheme adjudicator to be independent, impartial and to have the “necessary expertise”.<sup>175</sup> Expertise will be satisfied by having the “necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes as well as general understanding of law”.<sup>176</sup>

Many schemes involve single decision maker, albeit they often carry out their work in an organizational context (where several individuals may be involved in the decision).<sup>177</sup> The other decision-making approach is by using decision-making panels rather than relying on a single decision maker. This is particularly important in industries that require assurance regarding the competency of the decision makers and fairness of decisions to which they will be subjected (as the panel can include both consumer and industry representatives).<sup>178</sup> However, a single decision maker method is time saving and cost-effective compared to the panel method. Therefore, choice has to be made regarding the decision making modality.<sup>179</sup> Hence, while introducing the financial Ombudsman scheme in Ethiopia, it is recommendable to consider these and other precautionary measures in designing the scheme.

## Conclusion

As demonstrated in the hosts of analyses in this article, the right to access to justice has attained an emphatic recognition in international and national legislations. Yet, its application in Ethiopia is in a very poor shape. This is due to various reasons and has a direct negative effect on the financial consumers’ right to access to justice. Evidences show that the existence of economic and associated imbalances between the financial sector and consumers’ as well as the special complexity of financial services or products makes the issue of financial consumers’ access to justice special. This puts institutionalizing an effective grievance resolution mechanism in the sector as an important agenda globally. Particularly, institutionalizing formal and informal methods

<sup>175</sup> EU Directive, *supra* note 134, Article 6(1)(a).

<sup>176</sup> *Id.*, Article 6(6), 7(1)(d)).

<sup>177</sup> *See*, Chris Gill, *et-al*, *supra* note 170, p.3.

<sup>178</sup> *Id.*, pp.3, 61-63,171.

<sup>179</sup> Nick O’Brien, The Ombudsman as Democratic Alternative: Reading the EU Consumer ADR Directive in light of the PASC Reports, *Journal Social Welfare and Family Law*, Vol.37, (2015), p.274.

of resolving disputes in different forms is proposed as a better affordance to access to justice for such group of citizens. Financial Ombudsman scheme is accepted as one of such alternatives to redress the grievances of financial consumers'. It is widely acclaimed as a convenient, freely accessible, time and money saving, impartial, independent, and efficient way to identify and resolve consumers' grievances both in its remedial and systemic approach. This helps to ameliorate financial consumers' access to justice.

However, the effectiveness of the financial Ombudsman scheme depends on applying good design choices. The fundamental design choices include issues of jurisdiction, governance, accessibility, funding, and adjudication philosophy. With due consideration of such design features, this article suggests adapting the scheme in Ethiopia to advance the financial consumers' access to justice.

Finally, it is important to note that the policy landscape in this country has enabling environment to establish the institution. Notably, the policymakers and government show considerable attention for financial consumers' protection. Further, it shows commitment for efficient resolution of their grievances by courts and any other out-of-court mechanisms to be established by the NBE. Thus, human right agents, financial consumer communities, lawyers and other interest group should use the local fertile ground and the international experience to establish an efficient financial ombudsman scheme.