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**EXPLORING THE POSSIBILITY OF ONLINE DISPUTE RESOLUTION UNDER THE  
CONSUMER PROTECTION ACT: A SOUTH AFRICAN PERSPECTIVE**

**By**

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## **ABSTRACT**

This study aims to explore the possibility of the integration of Online Dispute Resolution mechanisms within the existing dispute resolution mechanisms in the Consumer Protection Act to address consumer disputes emanating from e-commerce transactions in the digital era. As e-commerce continues to transform the consumer context in South Africa, the study identifies an increasing demand for efficient, accessible, and digital friendly dispute resolution Mechanism. In addition, the study highlights that the Consumer Protection Act 68 of 2008 provides a strong framework for consumer protection, but its limited ability to meet the unique issues emanating from digital transactions necessitates a nuanced approach to consumer redress.

Moreover, the study emphasises the inadequacies of traditional dispute resolution mechanisms, such as Alternative Dispute Resolution (ADR), in dealing with the volume and variety of disputes emanating from ecommerce. It further proposes that that ODR, which uses technology to mediate, negotiate, or arbitrate disputes, is a potential option to combat these challenges. The study focuses on developing an ODR framework that is conducive to the SADC and subsequently South African context, with an emphasis on accessibility for consumers bearing in mind the different challenges such as digital literacy, accessibility, security concerns and bridging the digital divide.

Furthermore, the study embarks on a comparative analysis of the European Union ODR Regulation and the Association of Southeast Asian Nations ODR Guidelines so as to inform the development and design of an ODR framework in the Southern African Development Community region. In addition, the study examines the adequacy of the existing dispute resolution mechanisms in the CPA in resolving consumer disputes and suggests that ODR presents itself as a complementary mechanism to the alternative dispute resolution mechanisms in the CPA thereby enhancing efficiency in the resolution of consumer disputes in the digital age.

The study ultimately seeks to educate policymakers, consumer protection institutions, and ODR developers on the creation of an inclusive, and sustainable ODR system. In doing so, it aims to improve consumer trust, empower consumers, and maintain the relevance of CPA principles in the digital age.

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#### Declaration

1. I understand what plagiarism entails and am aware of the university and the Faculty's policy in this regard.
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Student

30 November 2024

Date

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*“Last but not least, I want to thank me. I want to thank me for believing in me. I want to thank me for doing all this hard work. I want to thank me for having no days off. I want to thank me for never quitting. I want to thank me for always being a giver and trying to give more than I receive. I want to thank me for trying to do more right than wrong. I want to thank me for just being me at all times”*

Philippians 4 v 13: *“I can do all things through Christ, who gives me strength.”*

## **LIST OF ABBREVIATIONS AND ACRONYMS**

<b>4IR</b>	Fourth Industrial Revolution
<b>ACCP</b>	ASEAN Committee on Consumer Protection
<b>ACER</b>	Annual Competition and Economic Development (ACER)
<b>ADR</b>	Alternative Dispute Resolution
<b>AHLPCP</b>	ASEAN High-Level Principles on Consumer Protection
<b>AMS</b>	Asian Member States
<b>ASAPCP</b>	ASEAN Strategic Action Plan on Consumer Protection
<b>ASEAN</b>	Association of South Asian Nations
<b>B2B</b>	Business-to-Business
<b>C2B</b>	Consumer-to-Business
<b>CADR</b>	Consumer Alternative Dispute Resolution
<b>CPA</b>	Consumer Protection Act
<b>CRD</b>	Consumer Rights Directive
<b>CGSO</b>	Consumer Goods and Services Ombud
<b>EU</b>	European Union
<b>FIAS</b>	Financial Advisory and Intermediary Services
<b>GDP</b>	Gross Domestic Product
<b>MIOSA</b>	Motor Industry Ombudsman of South Africa
<b>NCA</b>	National Credit Act
<b>NCC</b>	National Consumer Commission
<b>NCT</b>	National Consumer Tribunal
<b>OCJ</b>	Office of the Chief Justice

<b>ODR</b>	Online Dispute Resolution
<b>POPIA</b>	Protection of Personal Information Act
<b>SADC</b>	South African Development Community
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UCPD</b>	Unfair Commercial Practices Directive

## CHAPTER ONE: INTRODUCTION

### 1. INTRODUCTION

E-commerce refers to utilization of electronic networks to conduct economic transactions such as exchanging products, services, information and payments for commercial purposes.<sup>1</sup> It has significantly reshaped the consumer landscape in South Africa.<sup>2</sup> This growth, which offers consumers convenience and access to a wide range of goods and services digitally, gives birth to new challenges in consumer protection.<sup>3</sup> Moreover, the significant amount of online transactions undeniably leads to a massive increase in consumer disputes, which frequently involve issues such as invoicing errors, product quality, misrepresentation of products, delivery, and poor return processes.<sup>4</sup>

Previously, the body of consumer law was fragmented, outdated and dependent on old principles which are inconsistent with the democratic dispensation.<sup>5</sup> General consumer protection measures were scattered among different legislative pieces including, the *Consumer Affairs (Unfair Business Practices) Act*<sup>6</sup>, the *Sale and Service Matters Act*<sup>7</sup>, the *Alienation of Land Act*<sup>8</sup>, the *Trade Metrology Act*<sup>9</sup> and the *Trade Practices Act*.<sup>10</sup> As a result, the *Consumer Protection Act (CPA)*<sup>11</sup> was enacted as a result of South Africa needing a comprehensive structure for regulating consumer and supplier interactions through legislation, regulations, and government institutions.<sup>12</sup> The CPA provides a thorough framework for consumer protection and attempts to expand, enhance,

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<sup>1</sup> Papadopoulos & Snail 2022.

<sup>2</sup> Goga and Paelo “An E-Commerce Revolution in Retail?” <https://www.compcom.co.za/wp-content/uploads/2021/07/CCRED-Policy-Brief-An-ecommerce-revolution-in-retail.pdf> (accessed on 15 April 2024).

<sup>3</sup> Winn 2016:1.

<sup>4</sup> Mupangavanhu & Kerchhoff 2023:86–106.

<sup>5</sup> Jacobs, Stoop & Van Niekerk 2010:303.

<sup>6</sup> *Consumer Affairs (Unfair Business Practices) Act* 71 of 1988.

<sup>7</sup> *Sale and Service Matters Act* 39 of 1976.

<sup>8</sup> *Alienation of Land Act* 68 of 1981.

<sup>9</sup> *Trade Metrology Act* 77 of 1973.

<sup>10</sup> *Trade Practices Act* 76 of 1976.

<sup>11</sup> *Consumer Protection Act* 68 of 2008.

<sup>12</sup> Jacobs, Stoop & Van Niekerk 2010:303.

safeguard consumer rights while also eliminating unethical suppliers and improper business activities.<sup>13</sup>

The changing nature of online transactions creates new obstacles in maintaining these safeguards. This is because the rise of e-commerce has sparked significant interest among consumers, businesses, governments and international organisations.<sup>14</sup> Traditional dispute resolution systems, which are frequently time-consuming and resource-intensive, may fall short in keeping up with the changing nature of e-commerce.<sup>15</sup> This study aims to explore the possibility of introducing Online Dispute Resolution (ODR) as a facilitated measure by National Consumer Commission (NCC) as a way to resolve consumer disputes emanating from electronic transactions within the framework of the CPA. This emphasis on institutional introduction of ODR that can help with enhancing access to justice and potentially speed up the dispute resolution process. However, one has to be mindful of some of the factors that may hinder this proposed ODR, for instance the digital divide and digital literacy, which very dominant in South Africa especially in remote areas. Therefore, it is the aim of this study to suggest methods that could circumvent the realisation of ODR perpetuated by the digital divide and digital literacy.

In addition, the significance of this research extends beyond South Africa, as the development of an Online Dispute Resolution (ODR) framework has implications for both national and regional consumer protection mechanisms. In South Africa, the rapid growth of e-commerce requires a more efficient and accessible dispute resolution system to accommodate the increasing volume of digital transactions. The CPA provides a solid foundation for consumer rights; however, its existing dispute resolution mechanisms may not be adequately responsive to online consumer grievances. Thus, ODR presents an opportunity to complement these mechanisms, offering speed, accessibility, and cost-effectiveness.

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<sup>13</sup> Preamble of the *Consumer Protection Act* .

<sup>14</sup> Khare, Rajvanshi & Rajiv 2013:55-78.

<sup>15</sup> UNCTAD “E-commerce and Development Report 2003” [https://unctad.org/system/files/official-document/ecdr2003\\_en.pdf](https://unctad.org/system/files/official-document/ecdr2003_en.pdf) (accessed 15 May 2024).

At a regional level, the Southern African Development Community (SADC) faces similar challenges in consumer redress. The region lacks a harmonised approach to consumer protection, and existing commercial instruments do not adequately address the resolution of e-commerce disputes. The SADC Model Law on Electronic Transactions and Electronic Commerce does not provide sufficient focus on ODR, leaving consumers with limited options for cross-border disputes.<sup>16</sup> Establishing a regionally centralised ODR system, informed by best practices from the EU and ASEAN, could enhance consumer confidence in digital markets and promote economic integration within SADC. This study, therefore, aims to provide valuable insights that could shape national and regional policies on consumer dispute resolution in the digital era.

The study further aims to investigate the effectiveness of ODR in resolving consumer disputes specifically looking at how ODR systems can be structured to be accessible to all consumers, considering the continuing digital divide and various levels of technological literacy. Additionally, the study aims to identify best practices from regions that have shown commitment to such a system like the European Union (EU) and Association of Southeast Nations (ASEAN) in an effort to inform the development of consumer-friendly and a more effective ODR framework in the South African Development Community (SADC) region that can inform the South African national policy, legal and institutional framework in designing and implementing such a system.

Ultimately, this study intends to provide policymakers, consumer protection authorities, and ODR platform developers with valuable insights into the efficacy of ODR systems. The findings can help shape the design and implementation of effective ODR systems so as to empower consumers, make it more accessible, create trust in the online marketplace, and safeguard the principles of the CPA in the age of digital transformation. South Africa is currently on the Fourth Industrial revolution (4IR) and this evolution is rapid in its nature as it is moving at a higher pace and is affecting all industries.<sup>17</sup> This

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<sup>16</sup> Shumba 2014:271-272.

<sup>17</sup> Ncamane 2023:1.

transformation comes with its noble challenges and affects how things are done in the digital terrain and how people live their lives.<sup>18</sup>

## **2. PROBLEM STATEMENT**

With the significant growth of e-commerce in South Africa, consumer disputes emanating from online transactions are on a corresponding rise. Consumer interactions with goods and services in the age of digital transformation have been transformed significantly, and as a result of this technological evolution, consumer behaviour and expectations in the domain of e-commerce has been reshaped.<sup>19</sup> In South Africa, the CPA is the cornerstone legislative framework that protect consumer rights, provide remedies to consumer disputes and that enforces obligations in commercial transactions.<sup>20</sup> However, as consumer transactions become more prevalent on digital platforms, traditional ways of resolving disputes, often characterised by the need to be more concise and time-consuming<sup>21</sup> fall short.<sup>22</sup>

Although the CPA provides numerous channels for resolving consumer disputes, traditional approaches may not be sufficient in fast-paced, digital-driven marketplaces. Scholars have contended that online disputes involving suppliers and consumers mostly pertain to claims with minimal monetary value; yet, due to the high frequency of these disputes, a distinct dispute resolution mechanism is necessary for such circumstances.<sup>23</sup>

In response, ODR presents a promising option by utilizing technology to provide customers with a faster and more accessible means of resolving disputes. However, integrating such a mechanism within the already existing legal framework, with specific reference to the CPA, in so far as its effectiveness and suitability still need to be explored. This lack of exploration posits a significant challenge as an effectively integrated system that might enhance the efficiency of dispute resolution by facilitating processes, lowering backlog and being less costly for consumers and businesses.

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<sup>18</sup> Ncamane 2023:1.

<sup>19</sup> Mittal 2013:131-132.

<sup>20</sup> Jacobs, Stoop & Van Niekerk 2010:303-311.

<sup>21</sup> Reddy 2020:375.

<sup>22</sup> Sela 2017:636.

<sup>23</sup> Stenger 2017:347-348.

### 3. RESEARCH QUESTIONS

- 3.1 What is the nature and content of the dispute resolution mechanism for consumers under the CPA in South Africa?
- 3.2 How can the ODR system being designed to maximise its efficiency in resolving consumer disputes arising from online transactions so as to ensure accessibility for all consumers considering the issues of digital divide and digital literacy?
- 3.3 What are some of the best ODR practices from regions like the EU and ASEAN that South Africa can learn in an effort to inform the design and development of consumer-friendly ODR framework?

### 4. LITERATURE REVIEW

ODR refers to the utilisation of internet-based tools to help in resolving conflicts which draws on Alternative Dispute Resolution mechanisms such as mediation, negotiation and arbitration.<sup>24</sup> The current dispute resolution mechanism available for consumers is described as Alternative Dispute Resolution (ADR). This mechanism is provided for in the CPA specifically under section 70.<sup>25</sup> The Act states that:

“(1) A consumer may seek to resolve any dispute in respect of a transaction or agreement with a supplier by referring the matter to an alternative dispute resolution agent who may be

- (a) an ombud with jurisdiction, if the supplier is subject to the jurisdiction of any such ombud;
- (b) an industry ombud accredited in terms of section 82(6), if the supplier is subject to the jurisdiction of any such ombud;
- (c) a person or entity providing conciliation, mediation or arbitration services to assist in the resolution of consumer disputes, other than an ombud with jurisdiction, or an accredited industry ombud; or
- (d) applying to the consumer court of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court”<sup>26</sup>

This section explains the ADR mechanisms that are available to consumers when seeking redress. It enables a consumer to resolve a dispute that they have with a supplier through an alternative dispute resolution agent that is accredited under the Act.<sup>27</sup> Before a consumer files a complaint, the supplier must be given an opportunity to directly resolve

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<sup>24</sup> Clanton 2014:349.

<sup>25</sup> *Consumer Protection Act*:sec. 70.

<sup>26</sup> *Consumer Protection Act*:sec. 70.

<sup>27</sup> *Consumer Protection Act*:sec. 70(1)(a)-(d).

the dispute with the consumer. If the said supplier fails to resolve the dispute, then the consumer may resort to the ADR mechanisms outlined in the Act which are alternatives to the traditional court system.

According to Romualudi, such mechanisms were implemented as a result of high levels of civil litigation as well as limited human resources that causes delays in relation to resolving consumer disputes.<sup>28</sup> Most of these disputes are claims that are small in monetary value and are normally outweighed by the normal civil remedies and litigation costs.<sup>29</sup> Reddy argues that as a result of the excessive costs as well as slow processes associated with normal civil litigation, consumers seeking redress may often be left with unresolved disputes.<sup>30</sup> He further submits that a robust redress procedure is necessary in any legal system to ensure consumers receive adequate remedy for their legitimate concerns.<sup>31</sup>

The CPA further establishes different forums that consumers may approach to seek redress, which includes the establishment of the NCC. Mupangavanhu argues that the commission is primarily an investigative and enforcement body that has to carry out their duties and responsibilities in the manner that is cost effective and efficient.<sup>32</sup> Furthermore, she contends that the commission must exercise its functions in a way that is consistent with the principles and values that are enshrined in the Constitution<sup>33</sup>, specifically looking at section 195.<sup>34</sup> In addition, consumers may seek redress at the National Consumer Tribunal (Tribunal) which is a regulatory body established in terms of the National Credit Act under section 26.<sup>35</sup> The Tribunal has the power to confirm consent orders, consider matters involving prohibited conduct, and make decisions about whether conduct qualifies as being prohibited conduct under the Act.<sup>36</sup>

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<sup>28</sup> Romualudi 2018:51.

<sup>29</sup> Reddy 2020:373.

<sup>30</sup> Reddy 2020:373.

<sup>31</sup> Reddy 2020:373.

<sup>32</sup> Mupangavanhu 2015:322.

<sup>33</sup> Constitution of the Republic of South Africa:sec.195.

<sup>34</sup> Mupangavanhu 2015:323.

<sup>35</sup> *National Credit Act* 34 of 2005:sec.27.

<sup>36</sup> *National Credit Act* 34 of 2005:sec.27(a)-(c).

The Tribunal in discharging its duties must promote the purpose and spirit of the Act.<sup>37</sup> Furthermore, it must take all reasonable steps to make orders that are appropriate in order to give practical effect to the right to access to redress that the consumer has. According to Mupangavanhu, the Act does not provide definitions of the words such as “appropriate” and “practical effect” which causes difficulties because the definition of such words is left within the discretion of the presiding officer with regards to the consumer dispute at hand.<sup>38</sup>

Cortes argues ODR platforms make dispute resolution services more accessible, allowing consumers to file grievances and participate in the process from anywhere having an internet connection.<sup>39</sup> This form of accessibility can considerably enhance the likelihood that disputes are resolved rather than abandoned. He further argues that ODR can serve as the best option in terms of enhancing the redress of consumer disputes, promoting e-commerce’s sustainable growth and also help in strengthening the trust of consumers in the market.<sup>40</sup> ODR technologies are typically less costly than traditional court procedures or alternative dispute resolution methods that require face-to-face interactions.<sup>41</sup> This makes it more viable for customers to seek redress for even small concerns. To add, the proposed use of ODR in the consumer environment is more than just lowering the cost of settling disputes that could otherwise be resolved in person. It is mostly about developing novel solutions to address niche disputes that would otherwise go unsolved due to the high litigation expenses and face-to-face ADR methods.<sup>42</sup>

It is of paramount importance to consider the issue of accessibility when designing ODR systems and this considerations stems from varying levels of digital literacy and the digital divide. Katsh and Rabinovich-Einy contend that implementing user-friendly interfaces is one of the most important ways to improve accessibility.<sup>43</sup> ODR platforms should be simple and clear in design, with intuitive navigation and plain language or even have an

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<sup>37</sup> Mupangavanhu 2015:325.

<sup>38</sup> Mupangavanhu 2015:326.

<sup>39</sup> Cortez 2010:56.

<sup>40</sup> Cortez 2010:56.

<sup>41</sup> Wahab, Katsh & Rainey 2012:126-127.

<sup>42</sup> Cortez 2010:56.

<sup>43</sup> Katsh & Rabinovich-Einy 2017: 65-100.

option for a consumer to choose a language that they are comfortable with to suit users with varied degrees of digital literacy. This involves the use of clear instructions, easily recognized buttons, and simple processes that take consumers through each step of the dispute resolution system.<sup>44</sup> Moreover, providing access can be done in a way that adopts a multi-channel approach of engagement. Katsh and Rabinovich-Einy describes a multi-channel approach as having mobile applications, web based interfaces and integrating the already existing communication tools like SMSs and popular messaging apps.<sup>45</sup> Rule adds to this by suggesting that these platforms must offer services in multiple languages so as to ensure that diverse populations are catered for and that the language barriers do not stand in the way of dispute resolution and access to justice.<sup>46</sup> This will result in the empowerment of the right to access to justice as provided for in terms of section 34<sup>47</sup> of the Constitution because with the approaches that Katsh, Rabinovich-Einy and Rule propose, access to justice particularly for consumers seeking redress will be easier.

Furthermore, introducing numerous communication channels into the ODR system can greatly improve accessibility. Lodder and Zeleznikow highlights that while some users prefer text-based communication, others may find voice or video alternatives more useful.<sup>48</sup> Providing these alternatives can assist bridge the gap for those with inadequate reading or writing capabilities and accommodate people who have disabilities. Wahab mentions that he understands that the core of ODR systems is online and vouches for the provision of offline support through the utilization of local community assistance centers and telephone helplines, which will ensure that the consumers who do not have internet access to these online platforms or the necessary digital skills can still utilize the services of the online systems and not be excluded from the process of dispute resolution.<sup>49</sup>

Introducing this kind of system to South Africa needs one to think outside the box. Bygrave argues for the implementation of public access points in community centers, libraries or even government establishments. He contends that in these institutions internet access

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<sup>44</sup> Katsh & Rabinovich-Einy 2017: 65-100.

<sup>45</sup> Katsh & Rabinovich-Einy 2017: 65-100.

<sup>46</sup> Rule 2002:245-264.

<sup>47</sup> Constitution of the Republic of South Africa:sec.34

<sup>48</sup> Lodder and Zeleznikow 2010:18-38.

<sup>49</sup> Wahab, Katsh & Rainey 2012:126-127.

is not a problem and can be used to assist consumers who need guidance and lack devices that they can use to access the ODR systems.<sup>50</sup> Hornle holds the view that governmental institutions, like the National Consumer Commission (NCC) in the South African context, can help in developing guidelines and standards for providers of ODR which will ensure that the platforms for redress meet the accessibility criteria that accommodate every consumer regardless of geographical area and digital literacy and also protect consumer rights.<sup>51</sup> Furthermore, Cortes argues that institutions like the NCC with the help of the NCT, can lead programs on consumer education.<sup>52</sup> Consumer awareness is provided for in terms of section 96<sup>53</sup> of the CPA and according to this section, the Commission is responsible for increasing the knowledge of consumers about the consumer market as well as promoting awareness on matters of consumer protection. This can be done through education initiatives aimed at developing public awareness regarding the provisions of this Act.<sup>54</sup> Similar to what the CPA stipulates, these programs will be aimed on educating consumers on these ODR systems, their rights and how to effectively use them.

The European Union (EU) has pioneered the development and implementation of ODR systems, particularly for consumer disputes and several approaches and efforts emerge as potentially informative. It is further important to note that here is no specific country that has successfully enacted laws that give expression to ODR but at least at the regional level, the EU has shown commitment to such a system. Cortes argues that the success of the development and implementation of ODR in the EU is due to the establishment of a centralised ODR platform.<sup>55</sup> Cortés points out that this centralised approach has several advantages, including providing an easily accessible entry point for all consumers in the most clearest way possible and enhancing consistency and trust in standardizing different process to all member states.<sup>56</sup> Hornle further argues that the approach that the EU took

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<sup>50</sup> Bygrave “*Online Dispute Resolution – What It Means for Consumers.*”  
[http://www.cyberlawcentre.org/2002/Domain/Bygrave\\_ODR.pdf](http://www.cyberlawcentre.org/2002/Domain/Bygrave_ODR.pdf) (accessed on 25 June 2024).

<sup>51</sup> Hornle 2009:74-90.

<sup>52</sup> Cortez 2010:56.

<sup>53</sup> *Consumer Protection Act*:sec. 96.

<sup>54</sup> *Consumer Protection Act*:sec. 96(a).

<sup>55</sup> Cortez 2018:99-137.

<sup>56</sup> Cortez 2018:99-137.

on ODR integrates the already existing ADR mechanisms.<sup>57</sup> This integration as he contends, allows an existence of a comprehensive dispute resolution environment, where both online and offline ways of resolving consumer disputes complements each other.

A report from the Commission to the European Parliament and the Council on the functioning of the European Online Dispute Resolution platform established under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes noted that the EU has established a framework for frequent reporting and evaluation of its ODR platform and associated activities. This dedication to continuous enhancement enables the identification of difficulties and carrying out enhancements.<sup>58</sup>

Similarly, ASEAN has taken a stance, in embracing ODR. The adoption of the ASEAN Guidelines on ODR in 2021 serves as a blueprint for member nations to establish and execute ODR systems within their jurisdictions.<sup>59</sup> As noted by Sengpunya, these guidelines are designed to encourage the utilization of ODR for settling consumer disputes.<sup>60</sup> The author contends that the ASEAN Guidelines mark an advancement in standardizing ODR practices throughout the region and improving access to justice in the digital age.<sup>61</sup>

## 5. METHODOLOGY

This research will be conducted using a desktop approach methodology using publicly accessible primary sources (like legislation, case law, and government reports) as well as secondary sources (like library textbooks, reports, and academic journals) that are open to the general public. No primary data will be collected through involving consumers or organisations directly, interviews or surveys, as the study is mainly focused on the theoretical and legal framework rather than empirical data collecting. The majority of the research will be based on secondary sources, which are critical to comprehending the current state of ODR including its implementation in regard to the CPA in the South

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<sup>57</sup> Hornle 2018:27-41.

<sup>58</sup> A report from the Commission to the European Parliament and the Council on the functioning of the European Online Dispute Resolution platform available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0744>.

<sup>59</sup> ASEAN Guidelines on Online Dispute Resolution (ODR).

<sup>60</sup> Sengpunya 2020:58-74.

<sup>61</sup> Sengpunya 2020:58-74.

African legal framework. Additionally, the research will integrate primary sources, such as legal documents and frameworks that are publicly accessible.

Any member of the public can access all of the sources utilized in this study, whether through open-access platforms or the institutional collections available at public libraries and university institutions. As an example, South African legislation, government reports, and policy documents are publicly available online through official government websites. A legal database such as LexisNexis and academic repositories such as Sabinet, Juta, Google Scholar and HeinOnline allow open access to pertinent case law and scholarly literature.

## **6. CHAPTER OUTLINE**

### **Chapter One: Introduction**

This chapter will provide an introduction and background to the topic and also set the research problem, research questions and literature review. The methodology is briefly explained, and the chapter ends off with an outline of the chapters in the study.

### **Chapter Two: Historical Background of Consumer Protection in South Africa**

This chapter will examine the historical perspective of consumer protection in South Africa and take a look at the development that has taken place since 1994 on consumer redress focusing on alternative dispute resolution.

### **Chapter Three: An International Perspective on E-commerce**

This chapter provides a detailed comparative analysis of the chosen regions. It will discuss international instruments that protect consumers and fosters alternative dispute resolution and how best South African can learn from the said instruments.

### **Chapter Four: Existing Dispute Resolution Mechanisms in the Context of the CPA**

This chapter will examine the existing dispute resolution mechanisms encapsulated in the CPA which will assess whether the procedures and institutions (key role players in consumer protection) that were established for enforcing consumer redress in South Africa are effective and adequate. This chapter will critique the existing dispute resolution mechanisms for consumers in South Africa specifically looking at disputes emanating from online transactions.

## **Chapter Five: Summary of Findings, Recommendations and Conclusion.**

This chapter will summarise and conclude the findings of the study as well as providing recommendations emanating from the current study.

## **CHAPTER TWO: HISTORICAL BACKGROUND OF CONSUMER PROTECTION IN SOUTH AFRICA**

### **2.1 Introduction**

Ensuring fairness and justice in market economies has always been crucial when considering consumer protection. In South Africa, consumer protection evolution reflects a shift in the socio-political space, particularly the transition from an apartheid system to a democratic South Africa. This chapter delves into the progression of consumer protection in South Africa, specifically emphasising mechanisms for consumer redress and the emergence of ADR in the post-apartheid period.

Before 1994, the consumer protection landscape was limited and fragmented, characterised by laws and regulations that inadequately addressed most of the consumer's needs.<sup>62</sup> However, with the establishment of a democratic government and the adoption of the 1996 Constitution, newfound importance was given to consumer rights. Since then, South Africa has made substantial legal progress in the protection of consumer rights, most notably with the passing of the CPA in 2008. The CPA is a seminal piece of legislation defining consumer rights and establishing formal redress avenues. The formalisation of ADR was a key component of this shift, providing consumers with an efficient, accessible way of settling disputes without incurring the typically excessive costs and challenges of court litigation.

In light of these developments, this chapter will examine the evolution of consumer protection in South Africa from its inception to the post-1994 era. It will look at the challenges that consumers experienced before the democratic transition, the influence of key legislation on consumer rights, and the changing role of ADR in delivering consumer redress. Understanding these historical foundations will allow us to thoroughly comprehend the role that ODR will play as part of the digital transformation in consumer protection, which will be covered in subsequent chapters. The key sections to this chapter include, firstly, defining the important concepts to the study. In addition, it will look at the position of consumer protection before and after the transition to democracy in 1994

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<sup>62</sup> Jacobs, Stoop & Van Niekerk 2010:303.

and the implications thereof on consumer rights and access to redress mechanisms. Lastly, the chapter will look at how ADR has grown in providing consumers with efficient and accessible ways to seek redress on consumer disputes.

## 2.2 Defining Key Concepts

### 2.2.1 Consumer Protection

Consumer protection is defined as the legal and regulatory framework that protects consumers' rights and interests within their scope of interaction with businesses and service providers.<sup>63</sup> The main aim of consumer protection is to ensure fair, honest, and ethical business practices so as to empower consumers to make informed decisions about their consumer rights.<sup>64</sup> Consumer protection in South Africa is governed by multiple pieces of legislation,<sup>65</sup> but for the purpose of this study the main focus will be on the CPA. The CPA, which became effective in 2011, is a comprehensive piece of legislation that accommodates consumer protection in a set of initiatives aimed at promoting and improving the social and economic wellbeing of South African consumers.<sup>66</sup> The CPA is the drive for consumer protection as it establishes a robust framework aimed at achieving and maintaining a fair, accessible and efficient market place.<sup>67</sup> By maintaining these important principles, the CPA ensures that all consumers have access to redress mechanisms and that they have their consumer rights protected.

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<sup>63</sup> Akpan 2019:134.

<sup>64</sup> Woker 2019:386-407.

<sup>65</sup> The *National Credit Act* 34 of 2005 serves as an important piece of legislation for consumer protection in the credit market. In doing so, the Act aims to regulate credit providers so as to ensure that consumers are protected from predatory lending and that credit providers practice responsible lending practices. In addition, the Act regulates the establishment of the NCR in section which is predominantly responsible for overseeing the credit industry as well as ensuring that compliance is enforced. Another piece of legislation to note is the *Competition Act* 89 of 1998 which helps in promoting fairness in the market as well as ensuring that consumers are protected from anti-competitive practices. The Act regulates the establishment of the Competition Commission in section 14 as well as the Competition Tribunal in section 26 which basically deals with investigating issues such as price-fixing, abuse of dominance and market allocation. As a result, consumers benefit from this legislation in a form of better prices and service quality from because of the fair pricing and genuine market competition. Furthermore, the *International Trade Administration Act* 71 of 2002 establishes the International Trade Administration Commission in section 7 of the Act. This is an institution that ensures that the control measures of imports and exports are implemented to protect consumers and domestic industries. This includes ensuring a standard of safety on imported goods to reduce harm on local consumers and industries.

<sup>66</sup> Bernard 2015:116-139.

<sup>67</sup> Chitimira H & Magau P 2024:44.

### 2.2.2 Consumer

According to the CPA, a consumer is defined as any person<sup>68</sup> in terms of which goods or services are being marketed or supplied to them in the ordinary scope of the business of the supplier, unless the transaction in question is exempted from the scope of the application of the Act in terms of sections 5(2)<sup>69</sup> or 5(3).<sup>70</sup> To sum this, the court in *Eskom Holdings Limited v Halstead-Cleak*<sup>71</sup> held that

*“The definition of ‘consumer’ in section 1 is a person to whom goods or services are marketed in the ordinary course of a supplier’s business, or who has entered into a transaction with a supplier in the ordinary course of a supplier’s business. The definition includes a person who is a user of the goods or a recipient or beneficiary of the particular service irrespective of whether that person was a party to a transaction concerning the supply of the goods or services. This has the effect that the recipient of a gift from a consumer would also be considered a consumer in terms of the Act. The important features to note are that there must be a transaction to which a consumer is party, or the goods are used by another person consequent on that transaction”<sup>72</sup>*

Jacobs, Stoop and Van Niekerk submit that someone who uses, receives, or benefits from a product or service is considered a consumer even if they were not involved in the transaction for the purpose of the provision of the goods or services.<sup>73</sup>

### 2.2.3 Alternative Dispute Resolution

Alternative Dispute Resolution is commonly referred to as a way of resolving disputes without resorting to litigation or court adjudication.<sup>74</sup> It is important to note that ADR is not a replacement for the traditional litigation, it is rather a complementary mechanism aimed at offering consumers with other means of resolving disputes without having to go to court.<sup>75</sup> In addition, ADR consists of multiple ways for resolving disputes outside of court which include arbitration, mediation, negotiation and conciliation.<sup>76</sup> The High Court in the case of *Makhazi v African Products Retirement Benefit Provident Fund and Another*<sup>77</sup> shed some light when it comes to using ADR as a mechanism to resolve disputes as it

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<sup>68</sup> A juristic person is included in this definition in accordance with the definition of a ‘person’ in section 1 of the Act.

<sup>69</sup> *Consumer Protection Act 68 of 2008:sec.5(2).*

<sup>70</sup> *Consumer Protection Act 68 of 2008:sec.5(3).*

<sup>71</sup> *Eskom Holdings Limited v Halstead-Cleak* 2016 ZASCA 150.

<sup>72</sup> *Eskom Holdings Limited v Halstead-Cleak:para. 15.*

<sup>73</sup> Jacobs, Stoop & Van Niekerk 2010:303.

<sup>74</sup> Webster 1995:1.

<sup>75</sup> Omar 1996:126.

<sup>76</sup> Sela 2018:93.

<sup>77</sup> *Makhazi v African Products Retirement Benefit Provident Fund and Another* 2003 1 SA 629 (W).

held that, in situations where the use of ADR mechanism to resolve disputes is required before a court may be consulted, all correct procedures must be followed before the court can engage in the dispute. This means that all the means of resolving a dispute provided for in the CPA must be exhausted before a court can be approached to help in resolving the said dispute.

In so far as this type of dispute resolution mechanism is concerned, the parties to a dispute must have an agreement or consent to its use before any ADR methods can be employed or implemented.<sup>78</sup> As opposed to traditional court litigation, which is coercive in nature, ADR is therefore voluntary in nature. Moreover, it involves active participation from both sides and uses an impartial third party to settle disagreements and also encompasses multiple mechanisms for resolving disputes. In addition, the South African position in terms of ADR is reflected through the existing framework and the support that institutions of consumer protection offer. The CPA highlights the importance of ADR in section 69(d) which ensures that the dispute resolution mechanisms as provided in the Act are all exhausted before approaching the court. As a result, this reflects the importance of providing consumers with redress mechanisms that are not just court-based or limited only to the confines of the court system.

#### **2.2.4 Online Dispute Resolution**

Online Dispute Resolution can be defined as online redress systems, Internet-based forums where parties can settle their disputes.<sup>79</sup> The idea behind ODR is to employ and put into practice already-existing alternative dispute resolution methods with the supplement of the internet.<sup>80</sup> Simply put, Larson explains the idea behind ODR as a complementing redress in the following manner:

*“[The] ODR system was not intended to replace the existing NY Court system, rather, the goal was to increase access to justice by offering consumers an alternative approach that will supplement and complement existing court debt collection procedures[,] . . . [offer] consumers with an opportunity to better understand the process[,] . . . and provide the consumer and the debt holder with online tools to help settle the case within a limited period of time.”<sup>81</sup>*

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<sup>78</sup> Crous 2002:311.

<sup>79</sup> Sela 2018:93.

<sup>80</sup> Mania 2015:78.

<sup>81</sup> Larson 2019:83.

What the author was trying to emphasise here is that ODR systems are complementary mechanisms to existing mechanisms. The aim is to enhance the consumers' right to access to justice and seek redress by offering them with additional mechanisms to settle their disputes outside of court in a timely manner. This alternative approach seeks to streamline the process of dispute resolution, making it more efficient and accessible, especially to people who may find traditional court procedures intimidating or inaccessible. Therefore, ODR is a technology-enabled process that can be totally automated or require human interaction to help parties resolve their dispute through negotiation, mediation, arbitration, or a combination of all the three redress mechanisms so as to ensure that access to justice is achieved.<sup>82</sup>

### **2.2.5 Digital Transformation**

Digital transformation refers to the process of adopting digital tools and methods by organisations so as to keep up with the ever-changing pace of digital technologies.<sup>83</sup> According to the African Unions' Digital Transformation Strategy for Africa 2020-2030, digital transformation can be seen as a push for economic innovation, sustainable growth and inclusivity.<sup>84</sup> From a consumer protection perspective, digital transformation introduce opportunities and challenges and this requires the law to adapt in a way that consumer rights remain protected in the digital age. As a result, this will ensure that both consumers and businesses equitably benefit from the transformation.

### **2.3 Consumer Protection Framework before 1994**

Prior to 1994, consumer protection in South Africa was characterised by a fragmented and limited legislative framework that reflected the larger socio-political atmosphere of apartheid. Consumer protection was limited, with just a few laws addressing specific aspects of commercial transactions, and these laws were not intended to assist the entire community. The apartheid government prioritised supporting the privileged minority, leaving the underprivileged majority vulnerable in economic and consumer affairs.

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<sup>82</sup> Barnett & Treleaven 2018:399.

<sup>83</sup> Observatory Public Sector Innovation "Digital Transformation" <https://oecd-opsi.org/guide/digital-transformation/> (Accessed 01 November 2024).

<sup>84</sup> African Union "The Digital Transformation Strategy for Africa (2020-2030)" <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf> (accessed on 01 November 2024).

Several major legislations were passed during this period, although they frequently failed to provide complete consumer protection, particularly for disadvantaged people.

### **2.3.1 *Alienation of Land Act***

The *Alienation of Land Act*<sup>85</sup> (hereinafter “the *Alienation Act*”) is a piece of legislation that was enacted to provide some protection to consumers, primarily in matters of land transactions which at that time addressed a critical need within the property market. However, it is crucial to emphasise that while the *Alienation Act* afforded some protections, it was implemented in the context of apartheid-era South Africa. The majority of the population continued to have limited access to land and property ownership due to the larger socioeconomic and political situation. The act's provisions favoured individuals who were already able to carry out official land purchases.

### **2.3.2 *Consumer Affairs (Unfair Business Practices) Act***

The *Consumer Affairs (Unfair Business Practices) Act*<sup>86</sup> (hereafter referred to as “the Consumer Affairs Act”) was enacted to tackle unfair business practices and regulate the marketplace.<sup>87</sup> This Act provided channels for investigating consumer complaints regarding unethical company activities and authorised the Consumer Affairs Committee to conduct such investigations.<sup>88</sup> The Act empowered the government to prohibit some unfair or misleading corporate practices.

Although the *Consumer Affairs Act* was a step forward in consumer protection, it had serious limitations. The Business Practices Committee's investigative powers were limited, and enforcement measures were inadequate, frequently failing to give adequate assistance to customers.<sup>89</sup> Furthermore, the apartheid government's emphasis on the interests of businesses that were owned predominantly by privileged minorities meant that the Act was unevenly implemented, and disadvantaged consumers, particularly the underprivileged majority, often received little protection under the law.

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<sup>85</sup> *Alienation of Land Act* 68 of 1981.

<sup>86</sup> *Consumer Affairs (Unfair Business Practices) Act* 71 of 1988.

<sup>87</sup> Worker 2010:219.

<sup>88</sup> Bernard 2013:20.

<sup>89</sup> Worker 2010:219-221.

### **2.3.3 Trade Practices Act**

In order to regulate business practices in South Africa and protect customers from unfair commercial practices, the *Trade Practices Act*<sup>90</sup> was enacted. The fast-industrialising economy was giving rise to growing concerns about unethical commercial practices, which prompted the Act. It was one of the first major attempts by the government to deal with consumer protection through a formal legal framework. The Act provided tools for examining and addressing fraudulent or detrimental business practices. It addressed false advertising, misleading statements, and fraudulent practices that could affect consumers. Its principal duty was to prevent businesses from participating in price-fixing, collusion, or other anti-competitive acts that would limit customer choice or unfairly increase prices.

Despite its existence, the *Trade Practices Act* has significant limits. Enforcement was poor since it was entirely dependent on the government's desire to act, and there were insufficient channels to ensure that customers, particularly those from the disadvantaged Black majority, could file complaints or receive redress. The legal architecture of apartheid, including consumer protection laws, was mostly tailored to favour the white minority, and focused on market regulation rather than comprehensive consumer protection for all individuals.

### **2.4 Consumer Protection Framework after 1994**

In 1994, South Africa transitioned into a democracy and a major shift in the country's political regime was seen together with all the laws and regulations that were developed to protect the rights of all citizens.<sup>91</sup> The protection of consumer rights became apparent as a critical area of reform among these revolutionary steps that the country took as a way to work on the historical imbalances that were prevalent in the apartheid era.<sup>92</sup> The promulgation of the Constitution paved many ways to realizing the need to enact legislation that aimed at ensuring that historical imbalances are addressed in which we saw the enactment of the CPA which is specifically tailored for consumer protection and consumer rights. According to Bauling & Nagtegaal, the CPA as social justice driver and

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<sup>90</sup> *Trade Practices Act* 76 of 1976.

<sup>91</sup> Mosala, Venter & Bain 2017: 327-340.

<sup>92</sup> Mosala, Venter & Bain 2017: 327-340.

important piece of legislation in terms of consumer protection, has the transformational constitutional objective of sparking and driving socioeconomic change in impoverished South African society and thus making it necessary to be employed.<sup>93</sup>

#### **2.4.1 The influence of the Constitution on Consumer Rights**

Section 2 of the Constitution provides that the constitution is the supreme law of the country and that any other law that is inconsistent with it is therefore invalid.<sup>94</sup> It is safe to say that this provision allows for the introduction of legislative frameworks, as long as they are in line and consistent with its provision. Thus, any law that is enacted must be weighed with the constitution so as to ensure that the provisions of the legislation thereof are in line with the constitutional provisions. With this in mind comes the need to ensure that the foundation of reform measures, including those pertaining to consumer protection do not overlap with the provisions set out in the constitution. In addition to this, the Constitution not only declares human rights as paramount, but it also requires the government to develop conditions that allow for the protection and promotion of such rights. This is reflected in the Bill of Rights, which offers a wide foundation for the protection of economic rights and access to justice, even though it does not explicitly address consumer rights.

Du Plessis argues that majority of the time legislation is drafted in a way to shed light on the principles of public policy and *bonis mores*.<sup>95</sup> To supplement this argument, Worker adds to say that the CPA serves as a good example of such a legislation.<sup>96</sup> This is because the approach that the Act follows is rights-based resulting in the structure of the protection afforded to consumers to be classified in specific rights.<sup>97</sup> The Act offers a wide range of justifications of why it was enacted.<sup>98</sup> These can be found in the long title, preamble, and Part B of Chapter 1 of the Act, which states the purpose of the legislation.<sup>99</sup> The overarching goal is to improve the social and economic well-being of South African consumers. This broader goal of the CPA connects to the Constitution's transformative

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<sup>93</sup> Bauling & Nagtegaal 2015:151.

<sup>94</sup> *The Constitution of the Republic of South Africa*, 1996:sec. 2.

<sup>95</sup> Du Plessis 2012:91.

<sup>96</sup> Worker 2010:230.

<sup>97</sup> Meiring 2010:28. Also see Dlamini 2012:139.

<sup>98</sup> *Consumer Protection Act 68 of 2008*:sections 3 & 4.

<sup>99</sup> *Consumer Protection Act 68 of 2008*:sec. 3(1).

goals, as well as the intention to bring about social and economic reform throughout South Africa. Section 4(2)(b)(i) of the CPA specifically stipulates that the Act must be construed in a way that protects the most vulnerable consumers in our socioeconomic community.

One of the fundamental rights provided for in the Constitution is the right to access justice, which is vital for this study. Section 34 of the Constitution ensures that everyone has the right to have their disputes resolved by a court or, where appropriate, another independent and impartial authority.<sup>100</sup> According to Currie, this section guarantees a person who is involved in a dispute and seeks redress all the three rights.<sup>101</sup> This threefold nature of the right firstly provides a person the right to access to courts, forums of tribunal to have their dispute resolved.<sup>102</sup> In addition, it puts an obligation on forums and tribunals to be impartial and independent in the process of resolving disputes and lastly, it requires disputes to be resolved in a fair and public hearing.<sup>103</sup> They further submit that the threshold enquiry that must be met is that there should exist a dispute that can be resolved by the application of law and once that is established, the three components of impartiality, access, fairness and independence embodied in section 34 are triggered.<sup>104</sup> Moreover, this section can be translated to encompass ADR mechanisms provided for in section 70 of the CPA which are pivotal components of South African consumer redress systems for the purposes of echoing this fundamental right in the consumer atmosphere.<sup>105</sup> Therefore, this right to access to courts, forums or tribunals therefore ensures that, in this context, consumers have options for resolving their disputes promptly through redress mechanisms provided for in the CPA, and thus ensuring that access to justice for all is maintained.

Section 9 of the Constitution, which guarantees equality, has also played an important role in the protection of consumers. This reflected in section 8 of the CPA which speaks to the right of equality in consumer market.<sup>106</sup> This section confirms the right to equality

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<sup>100</sup> *The Constitution of the Republic of South Africa*, 1996:sec. 34.

<sup>101</sup> Currie & De Waal 2013:771.

<sup>102</sup> Currie & De Waal 2013:771.

<sup>103</sup> Currie & De Waal 2013:771.

<sup>104</sup> Currie & De Waal 2013:771.

<sup>105</sup> Olivier 2018:1.

<sup>106</sup> *Consumer Protection Act* 68 of 2008:sec.8.

by prohibiting suppliers of goods and services from discriminating unfairly against a person or group of people in terms of access, priority, supply, and pricing, as well as the enforcement of a judgment or the termination of an agreement<sup>107</sup>. Thus, in the constitutional standpoint, this approach has helped to level the playing field for historically disadvantaged and marginalized groups, allowing them to express their rights more effectively.<sup>108</sup>

#### **2.4.2 The Consumer Protection Act**

Though the concept of consumer protection was not directly introduced by the CPA, it laid the groundwork for South African consumers by establishing a single, comprehensive legal framework for consumer protection.<sup>109</sup> It clearly defines consumer rights and the duties of suppliers of products or services. Du Preez describes it as a far-reaching, ambitious, and the first legislation of its type in South Africa.<sup>110</sup>

The CPA's preamble outlines the importance of creating and utilizing novel approaches to uphold the rights of historically marginalized individuals and encourage their complete involvement as consumers; protect the welfare of all consumers; guarantee easy, transparent, and effective recourse for consumers who are mistreated or exploited in the marketplace; and implement globally acknowledged customer rights.<sup>111</sup> Stoop notes the preamble of the CPA reminds us that is vital to develop and implement novel methods that protect the interests of all consumers and to ensure restitution for those who are abused or exploited in the marketplace.<sup>112</sup>

In addition, the preamble emphasises that new and developing technology advancements, trade practices, patterns, and agreements have brought, and will continue to bring, novel advantages, opportunities, and challenges to the South African consumer goods and services market. Additionally, it is preferable to foster an economic climate

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<sup>107</sup> Jacobs, Stoop & Van Niekerk 2010:319.

<sup>108</sup> Bilchitz 2016:44.

<sup>109</sup> Du Preez 2009:58.

<sup>110</sup> Du Preez 2009:58.

<sup>111</sup> Stoop 2015:1091-1124. Also see *Barnado v National Consumer Commission and Others*:para. 2.

<sup>112</sup> Stoop 2015:1091-1124.

that bolsters and upholds a culture of consumer rights and duties, business innovation, and improved performance.<sup>113</sup>

For the reasons mentioned above, the CPA was passed in order to advance and safeguard consumers' economic interests as well as enhance the quality and accessibility of information required for consumers to make well-informed decisions based on their unique preferences and needs. Additionally, to shield consumers from risks to their health and safety, create efficient channels for consumer redress, advance and provide for consumer education, including instruction on the social and economic consequences of consumer choices. Furthermore, the Act facilitates the consumers' ability to band together and form groups in order to advocate and advance their shared interests and encourage consumer participation in decision-making processes pertaining to the marketplace and consumers' interests.<sup>114</sup>

Importantly, the CPA aims to safeguard and promote the economic interests of consumers as well as their economic welfare. It does this by creating a legal framework that facilitates the development and upkeep of a fair, accessible, efficient, sustainable, and responsible consumer market and mitigating the disadvantages that irate consumers, such as low-income, isolated, young, old, or illiterate individuals, face when trying to access any supply of goods or services.<sup>115</sup> Notwithstanding encouraging fair business practices, shielding consumers from unethical, unfair, unreasonable, unfair, or other improper trade practices as well as deceptive, misleading, unfair, or fraudulent conduct as well as enhancing consumer awareness and information, enhancing informed consumer choice and behavior. Lastly the CPA protects economic interest promoting consumer education and providing dispute resolution and enforcement systems.

### **2.4.3 How the CPA Enhance Redress Mechanisms**

One of the CPA's most important components is its emphasis on improving consumer redress methods. The Act sets up a multi-tiered framework for resolving consumer

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<sup>113</sup> Stoop 2015:1091-1124

<sup>114</sup> Preamble of the *Consumer Protection Act*.

<sup>115</sup> Naude & De Stadler 2019:2-32.

disputes, reflecting the fundamental right to access justice by providing multiple avenues of redress available to consumers.

*a. National Consumer Commission*

In accordance with section 85<sup>116</sup> of the Act, the NCC is a primary avenue that is responsible for ensuring that consumer rights are enforced. Furthermore, the Commission must carry out its functions in conformity with the values and principles entrenched in the Constitution, notably Section 195.<sup>117</sup> The Commission's investigative function includes receiving complaints about alleged banned conduct or violations, as well as investigating and evaluating them. The inquiry includes interrogations and searches.<sup>118</sup> The Commission makes a finding based on the information obtained from the inspector in charge of the investigation.<sup>119</sup>

*b. Consumer Courts*

Section 84<sup>120</sup> of the Act empowers provincial consumer courts to hear and adjudicate consumer disputes. Provincial consumer courts are governed by provincial legislation, and each province in South Africa is required to establish a consumer court.<sup>121</sup>

*c. ADR Agent*

Section 70<sup>122</sup> provides for the use of ADR agents to resolve consumer disputes. According to the Act, an "agent" could be a jurisdictional ombudsman, an industry ombudsman accredited under section 82(6), or a person or business that provides conciliation, mediation, or arbitration services for disputes between consumers. As stated above, a consumer may approach any of these individuals to conciliate, mediate, or arbitrate on the dispute, as long as the supplier is subject to the jurisdiction of the respective ombudsman or agent.<sup>123</sup> If the ADR agent determines that the issue cannot be resolved, the parties involved should be notified, and the consumer may then submit a complaint with the Commission. If the ADR agent successfully resolves the disagreement,

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<sup>116</sup> *Consumer Protection Act 68 of 2008:sec. 85.*

<sup>117</sup> Van Eeden 2009:264.

<sup>118</sup> Van Eeden 2009:264.

<sup>119</sup> Van Eeden 2009:264.

<sup>120</sup> *Consumer Protection Act 68 of 2008:sec. 84.*

<sup>121</sup> Du Plessis 2010:518.

<sup>122</sup> *Consumer Protection Act 68 of 2008:sec. 70.*

<sup>123</sup> *Consumer Protection Act 68 of 2008:sec. 70(1).*

they may record it as an order. With the parties' consent, the order can be submitted to the Tribunal or High Court for consideration as a consent order.<sup>124</sup>

*d. Ombuds*

Section 82<sup>125</sup> recognizes and encourages industry-specific ombud mechanisms for resolving consumer complaints in certain sectors. Some of the most significant aspects of the Ombudsman's office are its credibility with its users, accessibility, and efficiency.<sup>126</sup> As a result, the ombudsman must be allowed to act freely, without interference from the entity or industry in question. The presence of the Ombudsman's office is important since it goes a long way toward providing consumers with access to justice who would otherwise be unable to protect their rights.<sup>127</sup> The ombud also resolves disputes faster, cheaper, and less formal than traditional courts.<sup>128</sup> Quick and effective conflict resolution is critical since legal rights have little relevance unless they are properly enforced.

#### **2.4.4 The impact that the CPA has on Consumer Protection**

The CPA has had a significant impact on the landscape of consumer protection in South Africa. As Barnard points out, the Act has changed the balance of power in consumer interactions, giving consumers better legal safeguards and more effective means of defending their rights.<sup>129</sup> Transparency in consumer transactions has increased as a result of the Act's emphasis on information disclosure and plain language. This supports consumers' ability to make informed decisions and is consistent with their fundamental right to obtain information.<sup>130</sup> In the case of *Standard Bank of South Africa v Dlamini*,<sup>131</sup> the court ruled that the supplier must prove that reasonable means were taken to inform the consumer of the agreement's significant provisions. While the case of *Dlamini* focused on the plain language requirement in the *National Credit Act*,<sup>132</sup> Naude and Eiselen believe section 64 of the Act and section 22 of the CPA to have similarities.<sup>133</sup>

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<sup>124</sup> *Consumer Protection Act* 68 of 2008:sec. 70(3).

<sup>125</sup> *Consumer Protection Act* 68 of 2008:sec. 82.

<sup>126</sup> Mupangavanhu 2012:320-346.

<sup>127</sup> Melville 2010:50-65.

<sup>128</sup> Melville 2010:50-65.

<sup>129</sup> Barnard 2015:116-139.

<sup>130</sup> Stoop 2015:1091-1124.

<sup>131</sup> *Standard Bank of South Africa v Dlamini* 2013 1 SA 219 (KZD).

<sup>132</sup> *National Credit Act* 34 of 2005.

<sup>133</sup> Naude and Eiselen 2014:22.

The Act's acknowledgement and regulation of sector-specific ombud systems has further enhanced South Africa's ADR environment. This method of approach is in line with the constitutional requirement to give people access to justice through alternative forums and has worked well to settle consumer disputes in industries including banking, insurance, and telecommunications.<sup>134</sup>

## **2.5 Conclusion**

The post-1994 advancements in consumer protection in South Africa, particularly with the implementation of the CPA, mark a significant step forward in protecting consumer rights. These reforms, heavily influenced by the ideals entrenched in the Constitution, have created a comprehensive framework that strikes a balance between consumer protection and economic interests. The CPA's multifaceted approach, which includes a wide variety of consumer rights and multiple redress measures, demonstrates an awareness of the problems of consumer protection in a developing economy. The Act has helped to achieve broader aims of social and economic development by fostering transparency, justice, and accessibility in consumer transactions in the post-apartheid era.

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<sup>134</sup> Melville 2010:50-65.

## CHAPTER THREE: AN INTERNATIONAL PERSPECTIVE ON E-COMMERCE

### 3.1 Introduction

In an international context, consumer protection is a fundamental issue as consumers continue to be exposed to risks such as unfair practices, fraud and misrepresentations by e-commerce and global trade. Different regions across the world have made strides to approach the challenges introduced by e-commerce to develop comprehensive regulatory framework, technological platforms and institutions that aim at protecting consumer rights.<sup>135</sup> The development of ODR redress mechanisms in regions like the EU has provided efficient and seamless ways for consumers to resolve their disputes online, which in turn helps in making justice accessible in a digital economy. Similarly, ASEAN, too, has made a progressive stride with the issuing of the ODR guidelines that aim at pushing for harmonisation of dispute resolution mechanisms for their member states. This progressive measure reflects the importance of incorporating technological solutions in consumer protection matters.

This chapter will provide a detailed comparative analysis of EU and ASEAN dispute resolution models and how they have integrated ODR. In addition, it will investigate how both these models can be used to inform the development of consumer protection frameworks for the SADC. This comparative analysis will provide significant insights for policymakers, legal practitioners, and regulatory institutions in Southern Africa, assisting in developing more effective, accessible, and consumer-friendly dispute resolution processes.

### 3.2 Preliminary discussion on South Africa's commitment to International Law

As a point of departure, South Africa has witness positive changes regarding its position in international law particularly after the enactment of the Constitution.<sup>136</sup> Tladi contends that the South African Constitution is referred to as one of the most reputable and international law-friendly in the world.<sup>137</sup> This is because it accommodates the interpretation of the Bill of Rights to take into account international law under section

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<sup>135</sup> Babayev 2023:5.

<sup>136</sup> Dugard *et al* 2018:62.

<sup>137</sup> Tladi 2016:311.

39(1)(b).<sup>138</sup> Furthermore, it stipulates that when interpreting any legislation, courts must prefer any reasonable interpretation that is consistent with international law.<sup>139</sup> This position was also confirmed in the Constitutional Court case of *Law Society of South Africa & Others v President of the Republic of South Africa & Others* where it was stated that:

*“In interpreting the Bill of Rights, courts are required to consider international law. Our Constitution also insists that they not only give a reasonable interpretation to legislation but also that the interpretation accords with international law”*<sup>140</sup>

Thus, the Constitution seeks to ensure that international law is regarded in conjunction with national law, granting courts the authority to apply international law when relevant.<sup>141</sup>

### 3.3 The EU Framework for Consumer Protection

#### 3.3.1 Overview of Consumer Protection in the EU

The EU is an economic and political union consisting of 27 member states primarily established to ensure economic growth among its member states.<sup>142</sup> Its main economic engine is a single market, and it has established a robust framework for consumer protection, concentrating on transparency, fairness, and the safety of consumer rights among its member states. This approach tackles traditional consumer concerns and issues that the digital marketplace presents. For this study, the EU consumer protection legislation is built on two critical legislative acts: the Unfair Commercial Practices Directive<sup>143</sup> and the Consumer Rights Directive.<sup>144</sup> These legislative frameworks promote a balanced, fair marketplace for consumers while fostering trust in domestic and international transactions.

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<sup>138</sup> *Constitution of the Republic of South Africa*, 1996:sec.39(1)(b).

<sup>139</sup> *Constitution of the Republic of South Africa*, 1996:sec.233.

<sup>140</sup> *Law Society of South Africa & Others v President of the Republic of South Africa & Others* [2018] ZACC 51, 2019 (3) SA 30 (CC):para.5.

<sup>141</sup> *Coutsoudis & Du Plessis* 2020:158.

<sup>142</sup> Directorate-General for Communication (European Commission) “The European Union: What it is and what it does” <https://op.europa.eu/webpub/com/eu-what-it-is/en/> (accessed 26 November 2024).

<sup>143</sup> Unfair Commercial Practices Directive (2005/29/EC).

<sup>144</sup> Consumer Rights Directive (2011/83/EU).

a. *Unfair Commercial Practices Directive (2005/29/EC)*.

The Unfair Commercial Practices Directive (UCPD) is critical to safeguarding consumers against deceptive and aggressive business practices. It establishes consistent guidelines for combating dishonest marketing methods and ensuring businesses deliver accurate and transparent information about their products or services.<sup>145</sup> This directive covers all economic sectors and prohibits deceptive advertising, bait-and-switch tactics, and unethical pressure selling.<sup>146</sup>

Article 5 of the directive prohibits all unfair commercial activities, stating that any conduct that "distorts the economic behaviour of consumers" is prohibited and aggressive technique that limits consumers' ability to make informed choices.<sup>147</sup> Also, under Article 6, which addresses misleading actions, traders are not allowed to provide false information on any material aspects of a transaction, such as the existence or nature of a product, its cost, or any rights involved.<sup>148</sup> Article 7 deals with misleading omissions, or the failure of traders to disclose material facts, such as the product's primary features, the entire cost, and the terms of sale, that customers require to make an informed choice.<sup>149</sup>

Scholars like Katuoka and Navickaitė-Sakalauskienė have observed that the UCPD is applicable throughout the EU.<sup>150</sup> Cortés asserts that this directive has a crucial role in fostering cross-border trade and consumer confidence by standardising consumer protection regulations among member states.<sup>151</sup> Furthermore, Hornle emphasises that by guaranteeing fair competition for vendors doing business inside the EU, the regulation helps to strike a balance between consumer rights and business interests.<sup>152</sup>

Although the UCPD represents a major achievement in the EU's pursuit of a cohesive and consumer-oriented market; nonetheless, its implementation warrants both condemnation and scrutiny. A key insight is its emphasis on prohibiting techniques that distort consumer decision-making, which is crucial in the contemporary digital economy.

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<sup>145</sup> Vaqué L 2015:210.

<sup>146</sup> Vaqué L 2015:210.

<sup>147</sup> Unfair Commercial Practices Directive (2005/29/EC):art. 5(4)(b).

<sup>148</sup> Unfair Commercial Practices Directive (2005/29/EC):art. 6(1)(a)-(g).

<sup>149</sup> Unfair Commercial Practices Directive (2005/29/EC):art. 7.

<sup>150</sup> Katuoka & Navickaitė-Sakalauskienė 2016:19.

<sup>151</sup> Cortes 2017:16-42.

<sup>152</sup> Hornle 2008:36-44.

Nonetheless, the directive's expansive terminology, especially regarding terms such as "distorts the economic behaviour of consumers" is under criticism for allowing interpretative uncertainty.<sup>153</sup> Moreover, member states may encounter difficulties in uniformly implementing the regulation, particularly in cross-border disputes involving varied legal systems and market practices. As a result, this discrepancy could undermine the directive's primary objective of establishing a uniform consumer protection framework throughout the EU.

However, a notable advantage and key takeaway of the UCPD lies in its extensive applicability across all economic sectors, incorporating the increasingly intricate digital economy.<sup>154</sup> The provisions of the directive are adequately adaptable to address new difficulties in e-commerce, including deceptive online advertising and hidden expenses in digital transactions. Moreover, the incorporation of clauses like Article 7 on misleading omissions is significant, as it mandates businesses to reveal critical information necessary for customers to make educated choices, thus promoting a transparent and reliable market atmosphere.<sup>155</sup>

#### *b. Consumer Rights Directive (2011/83/EU)*

The Consumer Rights Directive 2011/83/EU (the CRD) was adopted on the 25<sup>th</sup> of October 2011. With this piece of legislative framework, the EU intended to improve consumer protection and internal market functioning by harmonising laws, regulations, and administrative requirements governing consumer-trader contracts across Member States.<sup>156</sup> The CRD revoked Directive 97/7/EC on consumer protection in distance contracts, as well as Directive 85/577/EEC, which protects consumers in contracts negotiated outside of business premises. The CRD established fully harmonised standards for distance (online) and off-premises contracting for goods and services,

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<sup>153</sup> Van Boom, Garde & Akseli 2014:2.

<sup>154</sup> Kaprou 2020:52.

<sup>155</sup> Burger 2017:58.

<sup>156</sup> European Commission "Report From The Commission to the European Parliament and the Council on the Application of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council" <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A259%3AFIN> (Accessed on 17 September 2024).<sup>7</sup>

including digital content. It also updated certain parts of Directive 93/13/EEC on unfair conditions in consumer contracts and Directive 1999/44/EC on certain elements of consumer goods sales and guarantees.<sup>157</sup>

One important thing that stands out from this directive is its success in harmonizing national regulations.<sup>158</sup> It establishes a harmonised legal framework that minimizes the regulatory fragmentation which historically obstructed cross-border e-commerce. And the results of this harmonisation have cultivated a more reliable and trustworthy legal framework for consumers and traders, consequently bolstering confidence among consumers and facilitating the expansion of the internal marketplace. Thus, the CRD illustrates how legislative harmonisation can simplify legal challenges and complexities in multinational contexts, serving as a model for other regions to enhance cross-border trade.

### **3.4 Online Dispute Resolution in the EU**

The ODR Regulation No 524/2013 was implemented by the EU as a complementing mechanism to the ADR Directive 2009/22/EC for resolving cross-border e-commerce disputes so as to offer consumers an opportunity to resolve their online disputes in a manner that is cheaper, quicker and a much more informal manner. The European Commission, in their press release, stated that one in five consumers in the EU encountered problems when buying goods or services in the Single Market, leading to financial losses estimated at 0.4% of the EU's GDP.<sup>159</sup> As a result of this, it was calculated that the creation of an appropriate and transparent ADR may save about €22.5 billion

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<sup>157</sup> European Commission "Report From The Commission to the European Parliament and the Council on the Application of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council" <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A259%3AFIN> (Accessed on 17 September 2024).

<sup>158</sup> Sears 2019:19.

<sup>159</sup> European Commission "A step forward for EU consumers: Questions & Answers on Alternative Dispute Resolution and Online Dispute Resolution" [https://ec.europa.eu/commission/presscorner/detail/en/memo\\_13\\_193](https://ec.europa.eu/commission/presscorner/detail/en/memo_13_193) (Accessed on 18 September 2024).

annually, or 0.19% of the GDP of the EU.<sup>160</sup> The ODR Platform's primary objectives are to protect the main participants in the market which are consumers, and advance ADR and ODR procedures for consumer disputes, which are shockingly undervalued in some Member States.

### **3.4.1 ADR Directive 2013/11/EU**

Given the crucial connection that exists between the ADR Directive 2013/11/EU and the ODR Regulation 524/2013, it is imperative to provide a quick overview of this Directive's fundamental elements. This directive's purpose is to compel Member States to guarantee that consumer complaints are handled by impartial, independent, and nationally certified alternative dispute resolution bodies.<sup>161</sup> Member states can satisfy their obligation by guaranteeing the existence of either public or private certified ADR programs, or by establishing a minimum of one residual certified ADR program that functions in all sectors.<sup>162</sup> The scope of the Directive includes out-of-court methods for resolving disputes originating from sales or service contracts in both local and international contexts, where the traders are EU residents and the customers are traders.<sup>163</sup> In actuality, this Directive does not cover trader complaints from both online and offline sales and service interactions; rather, it solely addresses consumer complaints.<sup>164</sup> The prohibition against traders acting as complainants is most likely a result of their beneficial position, as they have more information and resources than consumers do to support their arguments in the event of a dispute.

The access to a Consumer Alternative Dispute Resolution Entity (the CADR entity) is examined in Article 5 of the Directive. These ADR entities ought to have up-to-date, user-friendly websites where customers may file complaints both online and offline. Therefore, they ought to accept internal and cross-border disputes, such as those outlined in ODR Regulation 524/2013. It is, however, not mandatory for the CADR entities to provide their

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<sup>160</sup> European Commission "A step forward for EU consumers: Questions & answers on Alternative Dispute Resolution and Online Dispute Resolution"  
[https://ec.europa.eu/commission/presscorner/detail/en/memo\\_13\\_193](https://ec.europa.eu/commission/presscorner/detail/en/memo_13_193) (Accessed on 18 September 2024).

<sup>161</sup> ADR Directive 2013/11/EC:art. 1.

<sup>162</sup> ADR Directive 2013/11/EC:art. 5(3).

<sup>163</sup> ADR Directive 2013/11/EC: art. 2.

<sup>164</sup> Cortes 2016:20-21.

services in every language spoken in Europe.<sup>165</sup> As per Article 5(4) of the Directive, ADR bodies possess the authority to institute procedural rules that exclude particular categories of disputes, such as those deemed "frivolous," provided that the Member States grant authorization.<sup>166</sup> Articles 6 to 11 outline quality requirements, including expertise, independence, impartiality, transparency, effectiveness, fairness, and liberty. These principles are the minimal conditions for certifying CADR entities.<sup>167</sup> Member States may establish additional standards for certifying CADR entities as needed. In addition, article 7 of the Directive prohibits the publication of decisions as it contradicts the objective of transparency, despite its potential to improve predictability of dispute outcomes.<sup>168</sup>

### **3.4.2 ODR Regulation No 524/2013**

The ODR Regulation, which went into effect in February 2016, mandates the use of an online ODR platform that is accessible throughout all of Europe and is kept up to date by the European Commission and a supporting expert group. It is vital to emphasise that this Regulation solely pertains to local and cross-border disputes emanating from the online sale of goods or services between a customer and an EU Union-established business.<sup>169</sup> This Regulation only applies to the resolution of specific consumer-to-business (C2B) disputes; it does not address disputes between traders/businesses, referred to as business-to-business or B2B disputes. Undoubtedly, a sizable portion of the disagreements center on issues pertaining to faulty items, non-compliance with online orders, and issues with goods delivery.<sup>170</sup> Additionally, traders may file complaints against consumers if the national laws of their Member State permit the involvement of an ADR institution in the resolution of these disputes.<sup>171</sup>

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<sup>165</sup> Cortes 2016:22.

<sup>166</sup> ADR Directive 2013/11/EC:art. 5(4).

<sup>167</sup> ADR Directive 2013/11/EC:art. 6-11.

<sup>168</sup> ADR Directive 2013/11/EC:art. 7.

<sup>169</sup> Cortes 2015:41-42.

<sup>170</sup> European Union "Report from the Commission to the European Parliament and the Council on the functioning of the European Online Dispute Resolution platform established under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes"<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52017DC0744> (Accessed on 18 September 2024)

<sup>171</sup> ODR Regulation No 524/2013:art. 2(2).

One of the primary concerns arising from the ODR Regulation is the specific restriction placed on this platform to assist in the resolution of C2B e-commerce disputes, despite arguments that this mechanism could also be helpful in resolving other kinds of disputes, such as commercial disputes.<sup>172</sup> This limitation is easily understood, though, given that the Regulation represents the European Commission's first attempt at handling e-commerce dispute settlement. Therefore, a limited scope focused on business-to-business transactions is more practical for the development of complaint forms and necessary platform software, given that business-to-business and other dispute kinds may prove to be intricate and valuable. Taking all of this into account, it seems important to keep in mind that if the ODR platform operates successfully, it will likely be expanded to include additional, more complex, and highly contested disputed issues.

The online ODR platform covering the whole EU, founded on EU Regulation 524/2013, was formally launched on February 15, 2016, with an estimated implementation cost of €4.586 million.<sup>173</sup> This platform, available through the "Your Europe Portal," is intended to serve as a centralised, user-friendly online point of contact for customers to direct their concerns concerning online transactions to certified CADR entities or traders registered on the website of the European Commission.<sup>174</sup> Online services are rendered by Consumer Alternative Dispute Resolution (CADR) entities to the parties utilizing the platform's free electronic case management application. Preamble 18 of the ODR Regulation highlights that this management tool is optional for ADR entities that have not yet fully established their infrastructure for technology.

Article 5<sup>175</sup> of the Regulation examines the features of the platform that enable the parties to use the electronic case management tool to settle their disputes online. In summary, the ODR Platform enables disputants to commence the dispute resolution process by sending an electronic, user-friendly complaint form with accurate information in any

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<sup>172</sup> Cortes 2016:30.

<sup>173</sup> European Union "Buying online and solving disputes online: 24.000 consumers used new European platform in first year" [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_17\\_727](https://ec.europa.eu/commission/presscorner/detail/en/ip_17_727) (Accessed on 20 September 2024). Also see Hornle 2013:187-208.

<sup>174</sup> Cortes 2016:30. Also see the list of National ADR entities on <https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2>

<sup>175</sup> ODR Regulation No 524/2013: art.5.

language spoken in Europe.<sup>176</sup> It notifies the respondent party, identifies the appropriate ADR entity, and, if both parties agree, sends the complaint to the designated entity, which resolves the dispute online within 90 calendar days. Thus, in addition to the case management tool on the ODR Platform, there is also a free translation tool, a feedback system to gather user thoughts regarding the platform and the CADR schemes, and general information about ADR and CADR entities.

In addition, Article 9 of the ODR Regulation states that the online dispute resolution procedure starts when the complaint form is fully filled out and sent to the respondent party, together with any other information that is needed regarding the ADR institution. Through the platform, the same data is automatically and instantaneously sent to the ADR body selected by the parties. However, the complaint is being dismissed if the disputing parties are unable to agree upon an ADR body within thirty days of the complaint from being submitted or if the ADR body declines to take on the dispute process.<sup>177</sup> Under the EU ODR platform, the ODR procedure generally entails four stages:

- a. Consumers file complaints on the ODR platform, and the ODR notifies the trader of their submissions.<sup>178</sup>
- b. the parties designate one conflict resolution body:<sup>179</sup>
- c. it considers the complaint;<sup>180</sup> and
- d. announce the outcome of the complaint and closes it.<sup>181</sup>

According to this Regulation, all online traders and intermediaries operating within the Union are required to notify customers about the ODR platform, even if they have no intention of utilizing it, by posting on their website their email address and an "easily accessible" link. Businesses and consumer associations, the CADR entities, and the centres of the European Consumer Centres Network are also required to provide this link in their general terms and conditions of sales contracts or service contracts. Therefore,

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<sup>176</sup> ODR Regulation No 524/2013: art. 10.

<sup>177</sup> Cortes 2016:31.

<sup>178</sup> Sengpunya 2020:64.

<sup>179</sup> Sengpunya 2020:64.

<sup>180</sup> Sengpunya 2020:64.

<sup>181</sup> Sengpunya 2020:64.

to investigate whether online EU traders fulfil their responsibility to provide ODR links, a study titled "Online Dispute Resolution: Web-Scraping of EU Traders' Websites" was carried out using a database of 19,580 European online traders. The outcome of this study was very encouraging as the ODR link provided in most of the homepages of the survey were easily accessible (recorded 82%), well-functioning (recorded 100%), and was exactly the same on the page of the ODR platform.<sup>182</sup>

### 3.4.3 Binding effect of the ADR Directive and ODR Regulation

The ADR Directive mandates member states to develop and sustain ADR institutions for resolving disputes between consumers and traders.<sup>183</sup> It further stipulates that the ADR processes need to be independent, impartial, efficient, and equitable.<sup>184</sup> In addition, member states are required to ensure that traders communicate the availability of dispute resolution mechanisms to consumers in clear and accessible language. The binding effect of this directive emanates from its status of being an EU directive. According to article 288 of the Treaty on the Functioning of the European Union (TFEU), a directive will become binding for the outcome to be attained, for each addressed Members State, while permitting national authorities' discretion in the selection of forums and methods.<sup>185</sup> As a result, Member States possess the authority to transpose the ADR Directive into national legislation, resulting in variations in implementation between jurisdictions.<sup>186</sup> In the case of *Inter Environnement Wallonie ABSL v Regione Wallone*, the Court of Justice of the European Union (CJEU) highlighted that member states are required during the transposition period to abstain from implementing any actions that could significantly undermine the outcome mandated by the directive.<sup>187</sup>

The ODR regulation serves as a complementary mechanism to the ADR directive by developing a European ODR system designed as a digital tool for resolving disputes that

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<sup>182</sup> European Commission "Online Dispute Resolution: Web-Scraping of EU Traders' Websites" [https://commission.europa.eu/document/download/025c9368-7d25-42fa-b82a-caea6fa5baa6\\_en?filename=odr\\_webscraping\\_final\\_report\\_08\\_08\\_18.pdf](https://commission.europa.eu/document/download/025c9368-7d25-42fa-b82a-caea6fa5baa6_en?filename=odr_webscraping_final_report_08_08_18.pdf) (Accessed on 20 September 2024).

<sup>183</sup> Stamoulas 2022:195.

<sup>184</sup> Stamoulas 2022:194.

<sup>185</sup> Consolidated version of the Treaty on the Functioning of the European Union 2012:art. 288.

<sup>186</sup> Salim 2022:113-114.

<sup>187</sup> *Inter Environnement Wallonie ABSL v Regione Wallone* [1997] ECR I 7411.

emanate from online transactions in the region. In contrast to the directive, the regulation bears direct effect, denoting its immediate applicability across all Member States without necessitating national implementation.<sup>188</sup> The binding nature of the Regulation is clearly demonstrated by its obligatory requirements for traders in article 14 that mandates traders to include a link to the ODR platform on their official websites and within contractual agreements.<sup>189</sup> Failure to comply may lead to consequences under national enforcement mechanisms, highlighting enforceability of the regulation.

And therefore, it is this study's submission that the Directive and Regulation to function concurrently, with the directive guaranteeing the presence of high-quality ADR entities and the regulation establishing a digital framework to link consumers and dealers to these entities. This complementary link will enhance their combined binding effect, as the ODR platform depends on the existence of ADR entities formed pursuant to the Directive.

### **3.5 The ASEAN framework for Consumer Protection**

#### **3.5.1 Overview of Consumer Protection in ASEAN**

The Association of Southeast Asian Nations (ASEAN) has made tremendous progress in strengthening consumer protection among its member countries, recognizing the fundamental relevance of protecting consumer rights in an increasingly interconnected regional economy.<sup>190</sup> The formation of the ASEAN Committee on Consumer Protection (ACCP) in 2007 was an important development in the region's collaborative approach to consumer protection. This committee is the key coordinating organisation for the formulation and implementation of consumer protection policies and processes among ASEAN member states.<sup>191</sup>

The adoption of the ASEAN Strategic Action Plan on Consumer Protection (ASAPCP) 2016-2025 marked a significant milestone in ASEAN's consumer protection system. This comprehensive strategy sets strategic aims for improving consumer protection in the region, such as harmonizing consumer protection legislation, strengthening product

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<sup>188</sup> Rotondo 2013:438. Also see Consolidated Version of the Treaty on the Functioning of the European Union 2012:art. 288.

<sup>189</sup> ODR Regulation No 524/2013:art. 14.

<sup>190</sup> Yunita 2022:34-37.

<sup>191</sup> Secretariat ASEAN 2018:17.

safety enforcement, and encouraging sustainable consumption.<sup>192</sup> The ASAPCP reflects ASEAN's commitment to developing a consumer-friendly economy, while also addressing the challenges posed by member states' different legal systems and levels of economic development.<sup>193</sup>

The chairman of ASEAN Committee on Consumer Protection (ACCP) at the recent 4th ASEAN Consumer Protection Conference held on the 24<sup>th</sup> of August 2024, emphasised that the forthcoming ASEAN Strategic Action Plan on Consumer Protection 2030 will have, as its vision, the further enhancement of consumer empowerment that will ensure inclusivity and address the emerging challenges that result from digital and green economies to all member states of ASEAN.<sup>194</sup> This shows that ASEAN as a region is on an ongoing mandate to keep up with technological advancements given the rise of e-commerce in the region.

### **3.5.2 ASEAN Guidelines on Online Dispute Resolution (ODR)**

The ASEAN Guidelines on Online Dispute Resolution (ODR) are designed to help in establishing and improving the ODR system amongst ASEAN Member States (AMS) to address their consumer disputes in the ever-developing digital economy and rapid growth of e-commerce.<sup>195</sup> As digital transactions become more commonplace, there is a rising need for quick, easy, and cost-effective methods for businesses and consumers to settle disputes resulting from these transactions. These guidelines provide a strategic framework for improving consumer safety and trust in ASEAN-wide domestic and cross-border e-commerce.

The development of the guidelines was aligned with the ASEAN Strategic Action Plan on Consumer Protection (ASAPCP) 2016–2025<sup>196</sup>, with a focus on offering ASEAN nations a useful framework for designing and implementing their own national ODR systems. The purpose of the guidelines is to assist AMS in empowering consumers, maintaining

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<sup>192</sup> Sengpunya 2020:68.

<sup>193</sup> Sengpunya 2020:68.

<sup>194</sup> The ASEAN Secretariat “4th ASEAN Consumer Protection Conference empowers consumers in the digital and green economy” <https://asean.org/4th-asean-consumer-protection-conference-empowers-consumers-in-the-digital-and-green-economy/> (Accessed on 22 September 2024).

<sup>195</sup> Sengpunya 2020:69.

<sup>196</sup> ASEAN Strategic Action Plan on Consumer Protection (ASAPCP) 2016–2025.

transparency, and providing efficient channels of redress for small or low-value disputes that arise during business-to-consumer (B2C) transactions. They expand on the ASEAN High-Level Principles on Consumer Protection (AHLPCP), in particular, on Principles 8 (consumer protection in e-commerce)<sup>197</sup> and 4 (consumer access to redress).<sup>198</sup> Furthermore, they act as a foundation for the ASEAN ODR Network, which will be established after 2025 and integrate national systems from all around the region to handle cross-border consumer grievances. The guidelines aim to expedite, reduce costs, and increase accessibility of dispute resolution - especially for consumers who are involved in digital transactions - through these activities.

It is crucial to remember that while the guidelines are not legally binding, they provide practical recommendations for AMS to build or strengthen their national ODR systems.<sup>199</sup> They underline the need to align these systems with national goals and regulatory frameworks, as well as debunking the long-term goal of incorporating them into a regional ODR network.<sup>200</sup> The guidelines hope to boost consumer trust in the digital economy, promote openness, and provide access to justice for everyone.<sup>201</sup>

These guidelines outline national ODR system design parameters that AMS can modify to fit their own national circumstances.<sup>202</sup> These programs are intended to be run by the government and are usually supervised by consumer protection authorities.<sup>203</sup> Creating a centralised ODR platform with a "no wrong door" policy for customers is one of the fundamental architectural tenets.<sup>204</sup> Customers would be less confused about where to seek redress if they could efficiently file complaints and resolve disputes through this unified system. Government agencies are involved because they provide credibility and openness, both of which are essential for building public confidence in the system.

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<sup>197</sup> ASEAN High-Level Principles on Consumer Protection: Principle 8.

<sup>198</sup> ASEAN High-Level Principles on Consumer Protection: Principle 4.

<sup>199</sup> ASEAN Guidelines on Online Dispute Resolution (ODR) - Options and Orientation for the Design of National ODR Systems for Consumer Protection:para. 8.

<sup>200</sup> Zuo, Dahlan & Ahamat 2024:6102-6103.

<sup>201</sup> Zuo, Dahlan & Ahamat 2024:6102-6103.

<sup>202</sup> ASEAN Guidelines on Online Dispute Resolution (ODR) - Options and Orientation for the Design of National ODR Systems for Consumer Protection:para. 27.

<sup>203</sup> ASEAN Guidelines on Online Dispute Resolution (ODR) - Options and Orientation for the Design of National ODR Systems for Consumer Protection:para. 10.

<sup>204</sup> ASEAN Guidelines on Online Dispute Resolution (ODR) - Options and Orientation for the Design of National ODR Systems for Consumer Protection:para. 35.

Furthermore, impartial third parties are essential in promoting the settlement of disputes while maintaining the process's fairness and impartiality. The robustness of the system is increased when a variety of stakeholders, such as businesses, customers, and mediators, participate.

The ASEAN ODR guidelines are built on a set of guiding principles which ensure that the developed systems are accessible, transparent, and equitable. Accessibility is a major challenge, particularly given the disparities in internet access and digital literacy among ASEAN countries. The guidelines recommend that ODR platforms be mobile-friendly and available in several languages to guarantee that all consumers, regardless of technological proficiency or location, have access to these services.<sup>205</sup> Furthermore, user costs should be kept to a minimal to avoid financial hurdles that discourage them from using the system.<sup>206</sup> The principles of transparency and due process are equally important, as consumers must receive clear information regarding the procedures, expenses, and potential outcomes of their disputes. The rules regulating the ODR process should be made public and simply understood, and measures should be in place to ensure that all parties involved in a dispute are heard fairly.

Another important focus of the guidelines is regional and international cooperation. In a world of digital transformation, several consumer transactions span countries, necessitating collaboration among AMS to settle disputes. The guidelines include integrating national ODR systems alongside the ASEAN Committee on Consumer Protection (ACCP) website, which might act as a central hub for handling cross-border complaints.<sup>207</sup> This plan will allow consumers to file complaints in their own nation even when they deal with business entities located in another ASEAN member state.

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<sup>205</sup> ASEAN Guidelines on Online Dispute Resolution (ODR) - Options and Orientation for the Design of National ODR Systems for Consumer Protection:para. 53-57.

<sup>206</sup> ASEAN Guidelines on Online Dispute Resolution (ODR) - Options and Orientation for the Design of National ODR Systems for Consumer Protection:para. 56.

<sup>207</sup> ASEAN Guidelines on Online Dispute Resolution (ODR) - Options and Orientation for the Design of National ODR Systems for Consumer Protection:para. 85.

### **3.6 Comparative Analysis: EU Regulation v ASEAN Guidelines**

The growing globalization of trade, particularly with the growth of the digital economy, has made strong consumer rights protection mechanisms necessary, especially for online transactions. Two regions that have addressed these issues are the ASEAN and the EU, both of which have put in place systems to regulate online dispute resolution ODR. The significance of comparing these two frameworks stems from the differing legal, economic, and institutional circumstances of each of these two regions. The approach that the EU took demonstrates its cohesive legislative framework and dedication to uniform consumer protection laws among its member states to ensure that in so far as cross border disputes are concerned, trust and consistency are maintained in its single market. ASEAN's approach on the other hand has a more diversified and less cohesive bloc and depends on voluntary collaboration and guidelines, which may restrict the enforceability and consistency of consumer protection laws while providing flexibility for member states with differing degrees of economic growth and digital infrastructure.

#### **3.6.1 Similarities and Differences**

The EU ODR Regulation establishes a consolidated mechanism for settling disputes in online sales and services, ensuring consumer protection across the EU.<sup>208</sup> The platform acts as a single point of contact for resolving disputes stemming from domestic and international online transactions. This regulation mandates all online traders in the EU to include a link to the ODR platform on their websites, ensuring broad awareness and accessibility. The ASEAN ODR Guidelines, a soft law instrument, offer non-binding guidelines for all member nations to develop national ODR systems. As much as this method allows for better flexibility to local contexts and variable levels of technical preparedness, it also leads to less consistent implementation across the region. The guidelines urge member states to develop ODR platforms but do not require a centralised system like the EU's model. While both frameworks strive to make it easier to resolve

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<sup>208</sup> Department of Business Innovation & Skills "Alternative Dispute Resolution for Consumers: Implementing the Alternative Dispute Resolution Directive and Online Dispute Resolution Regulation – Impact Assessment"  
<https://assets.publishing.service.gov.uk/media/5a7b7cd940f0b645ba3c4a78/bis-14-594-implementing-alternative-dispute-resolution-directive-and-online-dispute-resolution-regulation-impact.pdf> (Accessed on 24 September 2024).

consumer complaints online, the EU's approach is more centralised and structured due to its single market structure, whilst ASEAN's approach mirrors its diverse legal systems and economic maturity.

A high level of integration and uniformity marks the EU's approach to ADR and ODR. The ODR Regulation, in conjunction with the ADR Directive, ensures that all consumer disputes may be presented to an ADR company, with ODR acting as the online access point.<sup>209</sup> This broad framework has resulted in widespread implementation of ADR and ODR methods across EU member states, with corporations increasingly integrating these techniques into their customer service strategy. On the other hand, ASEAN's adoption of ADR and ODR creates a more diverse landscape. While some member nations, like Singapore and Malaysia, have made substantial progress in adopting advanced ODR systems, others are still in the early phases of development. The guidelines encourage incorporating existing ADR systems with new ODR technologies while acknowledging the variations in readiness amongst member states. This results in a more fragmented adoption landscape than the EU, with varied ODR deployment and usage levels within the region.

### **3.6.2 Legal Harmonisation in the Two Regions**

Legal harmonisation is critical for creating ODR frameworks in both regions. The EU's harmonised legal framework originates from its overarching goal of establishing a single digital marketplace. By implementing consistent laws such as Regulation No. 524/2013 and Directive 2013/11/EU, the EU has created a fair playing field for consumers and traders across national boundaries. The harmonised approach ensures that consumers in every member nation of the EU have consistent legal protection and easy access to redress mechanisms. The ODR platform facilitates cooperation among ADR bodies within the EU, boosting customer confidence across borders.

In contrast, the ASEAN ODR Guidelines represent the region's continued efforts to integrate consumer protection laws, but at a significantly slower pace because to the different legal systems and economic realities across the AMS. The guidelines are based

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<sup>209</sup> Linklaters “Alternative dispute resolution for consumer disputes” <https://www.linklaters.com/-/media/files/linklaters/pdf/> (Accessed on 24 September 2024).

on the ASEAN High-Level Principles on Consumer Protection and the ASEAN Strategic Action Plan on Consumer Protection (ASAPCP) 2016-2025, providing a framework for harmonisation efforts. ASEAN's harmonisation approach is still in its early stages due to infrastructure and legal maturity variances, with guidelines focused on national-level activities rather than a fully integrated regional system.

### **3.7 The SADC Framework for Consumer Protection**

As a point of departure, the Southern African Development Community (SADC) comprises 16 member states. The objectives of this community are based on achieving economic growth, peace and security among the member states.<sup>210</sup> In this community, various instruments have been established to strengthen consumer protection amongst the member states. However, little to no interest has been shown by the SADC in integrating ODR mechanisms into the instruments that regulate consumer protection. Thus, a structured ODR system is becoming increasingly needed with the rise in e-commerce and cross-border transactions to handle consumer conflicts throughout the SADC region effectively. The current instruments within the SADC region do not comprehensively address consumer redress mechanisms, especially in the age of digital transformation.

#### **3.7.1 SADC Commercial Instruments**

##### *a. SADC Protocol on Trade<sup>211</sup>*

The SADC Protocol on Trade highlights trade policy harmonisation and regional trade integration among SADC member countries. While this instrument incorporates generic consumer protection principles, its primary focus is trade facilitation rather than providing clear consumer rights or accessible dispute resolution systems, particularly in e-commerce. According to Chimeri, the protocol needs a specific approach to resolving consumer issues arising from online transactions, which is crucial in an increasingly digital economy.<sup>212</sup>

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<sup>210</sup> Declaration and Treaty of the Southern African Development Community:art. 5.

<sup>211</sup> Southern African Development Community Protocol on Trade.

<sup>212</sup> Chimeri 2023:10.

*b. Declaration on Cooperation in Competition and Consumer Policies*<sup>213</sup>

The Declaration on Cooperation in Competition and Consumer Policies was adopted to harmonize competition and consumer protection laws within the region.<sup>214</sup> This declaration mandates all the member states to adopt, strengthen and implement the necessary consumer laws.<sup>215</sup> Furthermore, the declaration works towards fostering cooperation and dialogue in consumer policy and facilitating further convergence in this area.<sup>216</sup>

### **3.7.2 SADC Commercial Instruments and Lack of focus on ODR**

Despite the growth of e-commerce in the region, SADC policies do not prioritize the development of ODR procedures. ODR enables the settlement of consumer disputes using online platforms, which is particularly important for cross-border disputes. Unlike regions like the EU with its ODR Regulation and ASEAN with its Guidelines on Online Dispute Resolution, SADC has not shown any interest in the development of an ODR framework. The absence of an ODR framework or guidelines as an avenue to laying a level ground for resolving consumer dispute emanating from e-commerce in the SADC region represent an approach that is outdated more especially in the era of digital transformation. As a result, this often makes it difficult for consumers to seek redress for their disputes.

### **3.8 The Need to a Harmonised framework for SADC**

A harmonized ODR framework for SADC is essential to address consumer disputes arising from digital transactions across member states. Unlike the EU, which has established a centralised ODR platform under Regulation No. 524/2013, SADC lacks a uniform approach to resolving consumer disputes. Given the region's growing e-commerce market, fragmented national policies may hinder consumer confidence and limit access to effective redress.

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<sup>213</sup> Declaration on Cooperation in Competition and Consumer Policies.

<sup>214</sup> Armoogum "Assessing the effectiveness of a regional competition regime in the Southern African region" This is a paper that was presented at 4<sup>th</sup> Annual Competition and Economic Development (ACER) Conference in 2018 accessed through <https://static1.squarespace.com/static/> (accessed 28 November 2024).

<sup>215</sup> Declaration on Cooperation in Competition and Consumer Policies: provision 1(b).

<sup>216</sup> Declaration on Cooperation in Competition and Consumer Policies: provision 2(b)(ii).

One of the key challenges in SADC is the absence of consistent consumer protection standards across its member states.<sup>217</sup> A report from the Finmark Trust indicate that some SADC countries, such as South Africa and Mauritius, have more developed consumer protection frameworks, whereas others, like Malawi and Lesotho, still lack comprehensive legislation.<sup>218</sup> The disparity in regulatory frameworks creates difficulties in resolving cross-border disputes, highlighting the need for a regionally coordinated approach to ODR.

Moreover, studies from the NCC and the CGSO reveal that online shopping complaints have been steadily increasing in South Africa. According to the CGSO's 2023 annual report, the most common e-commerce disputes involve non-delivery of goods, defective products, and misleading advertisements.<sup>219</sup> While South Africa has regulatory bodies that handle consumer complaints, many SADC countries lack specialized institutions for digital consumer redress. A harmonized ODR framework could therefore bridge this gap by providing a structured and accessible resolution mechanism for consumers across the region.

Thus, this study suggests that a harmonized ODR framework in SADC would address these challenges by:

- a. providing a centralised platform where consumers and businesses can resolve disputes efficiently;
- b. ensuring legal certainty through uniform regulations that apply across the region;
- c. facilitating consumer trust in cross-border e-commerce by offering a fair, transparent, and accessible dispute resolution system; and
- d. encouraging regional economic integration by aligning SADC's consumer protection laws with global best practices.

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<sup>217</sup> Armoogum "Assessing the effectiveness of a regional competition regime in the Southern African region" This is a paper that was presented at 4<sup>th</sup> Annual Competition and Economic Development (ACER) Conference in 2018 accessed through <https://static1.squarespace.com/static/> (accessed 28 November 2024).

<sup>218</sup> Finmark Trust 2017:24.

<sup>219</sup> Consumer Goods and Services Ombud 2024:10.

### **3.9 Data Privacy and Security in SADC**

The issue of data privacy and security is particularly significant in the digital economy, as consumers engaging in online transactions are required to share sensitive personal and financial information. However, many SADC nations lack adequate data protection frameworks, exposing consumers to cyber threats and fraud. In South Africa, POPIA provides a strong legal foundation for data privacy, but other SADC countries have varying degrees of data protection regulations. For instance, while Mauritius has enacted a Data Protection Act<sup>220</sup> in line with the EU's GDPR, countries such as Malawi, Mozambique, Cameroon, Comoros and Namibia still lack comprehensive data protection legislation.<sup>221</sup>

A harmonized regional framework on data privacy and security standards would ensure uniformity in consumer protection, particularly for cross-border e-commerce transactions. By establishing clear data governance guidelines, SADC can mitigate risks associated with data breaches, unauthorized access, and fraudulent activities. Additionally, lessons from the EU's ODR platform demonstrate that integrating secure authentication measures, such as encryption and multi-factor authentication, can enhance trust in ODR mechanisms. Thus, a regional approach to data security is crucial in building consumer confidence in online dispute resolution systems.

### **3.10 Lessons for South Africa**

It is this paper's submission that South Africa, as a member of SADC, can draw valuable lessons from the EU Regulation and ASEAN guidelines in enhancing its consumer protection framework to conform to international standards in an evolving digital economy. Both these regions provide significant insights for developing a robust framework that incorporates ODR mechanisms to meet the constantly evolving demands of a digital economy.

#### **3.10.1 Centralisation and Accessibility**

The EU's integrated and centralised ODR platform stands out as a significant advancement in the resolution consumer dispute because as a single point of access, it

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<sup>220</sup> Data Protection Act 2017.

<sup>221</sup> Cybersecurity Capacity Centre for Southern Africa 2021:49.

makes it easier for consumers and businesses to file complaints and resolve issues.<sup>222</sup> The compulsory provision of an ODR link on traders' websites, as mandated by Article 14 of the Regulation, promotes wider awareness and accessibility. This centralised method reduces consumer confusion in consumer accessibility while increasing trust in the system. For South Africa, the EU model provides an instructional path that could help the country could establish a consolidated and central national ODR platform that works smoothly with current consumer protection institutions like the NCC. In addition, South Africa can address the issues of digital literacy and internet access, particularly in remote areas, by making this platform user-friendly, multilingual, and mobile-compatible in accordance with the ASEAN guidelines.

### **3.10.2 Leveraging Technology for Consumer Accessibility to redress**

Both the EU and ASEAN frameworks highlight the importance of technology in improving consumer access to justice. The EU ODR platform, with its user-friendly design, multilingual capabilities, and electronic case management tools, demonstrates how technology may make dispute resolution more accessible to a wide range of people.<sup>223</sup> Features like online complaint submission, automated alerts, and real-time translation lower obstacles for consumers, particularly those who do cross-border disputes.

Similarly, the ASEAN guidelines encourage mobile-friendly platforms and multilingual support to fit the different linguistic and technological circumstances of its member states. While ASEAN's suggestions are not legally binding, they do provide a practical framework for designing ODR systems that are adapted to different levels of digital literacy and infrastructure.<sup>224</sup> South Africa may benefit from such efforts by investing in the creation of a strong robust ODR platform that serves its multilingual and socioeconomically diverse population.

### **3.10.3 Promoting Consumer Awareness and Stakeholder Collaboration**

Both the EU and ASEAN acknowledge the significance of consumer education in the effectiveness of ODR systems. The EU encourages consumer protection institutions to

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<sup>222</sup> Loutocký 2016:118.  
<sup>223</sup> Goyal & Goyal 2023:10  
<sup>224</sup> Sengpunya 2020:69-71.

take active steps in promoting the utilization of ODR platforms, whereas ASEAN's guidelines prioritize transparency and customer participation. Thus, South Africa needs to prioritize consumer awareness programs to ensure that the general public is aware and understands their rights as consumers and the availability of ODR redress mechanisms. Furthermore, partnerships with consumer advocacy groups, media outlets, and educational institutions could help disseminate this information so as to ensure that no one is left behind and that consumers can make informed choices in their options of seeking redress in consumer disputes.

### **3.11 Conclusion**

In conclusion, while both the EU and ASEAN have made substantial progress in building ODR frameworks, their approaches mirror the broader legal and economic conditions in which they operate. The EU's ODR regulations provides a mature, harmonised system, backed up by strong enforcement measures and legal consistency across member states. The ASEAN ODR Guidelines, on the other hand, represent the start of a more decentralised and flexible strategy aimed at increasing capacity and encouraging cooperation among varied legal systems. Ultimately, both of these structures represent their respective regions' priorities: legal certainty and cross-border efficiency in the EU, versus incremental advancement and national autonomy in ASEAN. As these frameworks develop, the interaction of legislative harmonisation and consumer protection will continue to define their unique ODR landscapes.

## **CHAPTER FOUR: EXISTING DISPUTE RESOLUTION MECHANISMS IN THE CONTEXT OF THE CPA**

### **4.1 Introduction**

The CPA is crucial legislation that protects consumer rights and facilitates effective dispute resolution in South Africa's ever-evolving consumer protection landscape. With the rapid growth of e-commerce, consumer complaints emanating from online transactions are becoming more common. These disputes frequently center around problems with the quality of the products, faulty deliveries, deception, and inaccurate invoicing.<sup>225</sup> Traditionally, the CPA offers consumers a range of avenues for resolving these conflicts, including ADR. However, digital transactions' emergence and rapid rise have highlighted notable limitations within the current dispute resolution processes. As a result, these processes may often fall short of addressing unique challenges introduced by the digital marketplace. This is because the current dispute resolution mechanisms are designed to accommodate face-to-face interactions when resolving disputes. Thus, it is pivotal to explore other avenues of dispute resolution that consumers can channel to resolve their disputes.

To this end, this chapter explores the effectiveness of the CPA's dispute resolution systems, particularly in light of consumer disputes emanating from online transactions. In addition, it will assess the effectiveness of current procedures and examine the possibility of ODR as an innovative alternative for dealing with customer disputes more efficiently in the era of digital transformation. Furthermore, this chapter aims to highlight the strengths and limitations of the CPA's existing dispute resolution procedures and identify areas where ODR could improve consumer access to redress in South Africa. This will be done by examining the current legal framework and the institutions that regulate consumer protection.

### **4.2 Overview of Dispute Resolution Mechanisms under the CPA**

Reddy submits that hundreds, if not thousands, of complaints from consumers occur on a daily basis.<sup>226</sup> With this in mind, one has to assess if the redress mechanisms already

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<sup>225</sup> Masumbe & Obioha 2023:1474.

<sup>226</sup> Reddy 2020:373.

in place under the CPA are adequate to resolve consumer disputes of that volume. Among all these disputes, there are claims that are small in monetary value that outweigh the relief sought. This has resulted in scholars referring to this discrepancy as “a frivolous waste of the courts’ time and scarce resources”.<sup>227</sup> The CPA introduced various mechanisms for consumers to seek redress outside court. As stated earlier in this study, these mechanisms can be classified as alternative dispute resolution mechanisms, encompassing various mechanisms for resolving disputes other than going to court.

Chapter 3 of the CPA makes provisions for consumers to have their rights protected and their voices heard. It does so by providing them with various avenues they may pursue to enforce their consumer rights.<sup>228</sup> Furthermore, the Act allows consumers to enforce their rights with the dispute resolution mechanisms set out in section 69 of the Act, which states that a consumer cannot bring a dispute directly to the Tribunal unless the Act permits such a dispute to be referred directly to the Tribunal.<sup>229</sup> According to Van Heerden, the circumstances under which a dispute can be brought directly to the Tribunal are stated in sections 73, 74, 75, 114, and 116 of the Act. She adds that just because the Act mentions the Tribunal first in section 69 does not automatically infer that it is the “point of first entry”. This is because it is seen as an *ad hoc* body due to its limited capacity.<sup>230</sup> Without such circumstances, the consumer must first refer the dispute to the appropriate industry ombudsman.<sup>231</sup> If the matter remains unresolved after receiving a recommendation from the *applicable* ombudsman, the consumer may refer it to the Commission.<sup>232</sup> The Commission may opt to take up the consumer's case or dispute on a notice of non-referral. After the Commission issues a notice of non-referral, the consumer may petition the Tribunal for permission to approach it directly.<sup>233</sup>

The CPA makes provision for consumers to opt for ADR in terms of section 70. This section provides for consumers to seek to resolve a dispute by referring the matter to an

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<sup>227</sup> Reddy 2020:373.

<sup>228</sup> Ngcobo 2024:4.

<sup>229</sup> Van Heerden & Barnard 2011:132.

<sup>230</sup> Van Heerden “Section 69” in Naudé & Eiselen, Commentary on the Consumer Protection Act (2014) 69-2:para. 33.

<sup>231</sup> *Consumer Protection Act* 68 of 2008:sec. 69(b).

<sup>232</sup> *Consumer Protection Act* 68 of 2008:sec. 69(c)(iv).

<sup>233</sup> Van Heerden & Barnard 2011:133. Also see *Consumer Protection Act* 68 of 2008:sec.69(a).

ADR agent who may be either an ombud with jurisdiction, an accredited industry ombud, or a person or entity providing mediation, conciliation, or arbitration services.<sup>234</sup> Worker have contended that the rationale behind ADR is to provide redress mechanisms to consumers that are less expensive and less complicated for their consumer disputes.<sup>235</sup> In addition, Chendip adds that the ideal route is working with an alternative resolution agent because, in this scenario, the dispute is kept out of court, settled in a timely manner, and assures that both parties walk away satisfied with the conclusion.<sup>236</sup>

#### 4.2.1 “Out-of-Court” Redress Options Available for Consumers

##### 1. Referral to an Ombud with Jurisdiction

Consumers can file complaints with an industry ombudsman with jurisdiction over the supplier.<sup>237</sup> Ombuds serve as unbiased intermediates, attempting to negotiate and resolve issues without formal legal action. They are especially effective in industries with specific consumer protection requirements, such as financial services, telecommunications, and consumer products. For example, the Consumer Goods and Services Ombud (CGSO) resolves complaints in the retail sector, including defective products, bad service, and deceptive advertising.<sup>238</sup> Moreover, the finance sector has the Ombud for Financial Services Providers (FIAS Ombud) established under the *Financial Advisory and Intermediary Services Act* (FIAS Act)<sup>239</sup> to deal with the adjudication of financial matters between clients and financial service providers with the objective of providing measures that are effective and speedy without having to resort to the courts to resolve financial disputes.<sup>240</sup> In *Miya v MiWay Insurance Company Limited*, the Tribunal confirmed that a consumer must approach an ombud with jurisdiction for their particular dispute if such an ombud exists.<sup>241</sup>

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<sup>234</sup> *Consumer Protection Act* 68 of 2008:sec. 70(1)(c).

<sup>235</sup> Woker 2014:21-48.

<sup>236</sup> Chendip 2018:65-66.

<sup>237</sup> Confirmed in *Clientele General Insurance v National Consumer Commission* (NCT/4671/2012/60(3) & 101(1) (P)) 2013 ZANCT 7 (15 April 2013).

<sup>238</sup> Consumer Goods and Services Ombud “About us: Where we fit in” <https://www.cgso.org.za/cgso/about-us/> (accessed 19 November 2024).

<sup>239</sup> *Financial Advisory and Intermediary Services Act* 37 of 2002.

<sup>240</sup> Millard 2011:233. Also see *Financial Advisory and Intermediary Services Act*:sec.20(3).

<sup>241</sup> *Miya v MiWay Insurance Company Limited* (NCT/43934/2016/75(1)(b)) [2017] ZANCT 93 (4 August 2017):para. 31.

## 2. Accredited Industry Ombud

If an ombud has not been designated for a certain industry, the CPA permits the appointment of an accredited industry ombud. These ombuds can resolve industry disputes and issue enforceable resolutions in some instances if both sides agree on the conclusion.<sup>242</sup> South Africa has two industry ombudsmen accredited in terms of the CPA, including the Motor Industry Ombudsman of South Africa (MIOSA) and the Consumer Goods and Services Ombud (CGSO).<sup>243</sup> Magau and Chitimira contends that the CGSO has an expansive mandate and jurisdiction across all stakeholders in the market unless regulated by another institution or legislative framework. In contrast, the MIOSA solely has jurisdiction over concerns concerning the automotive industry.<sup>244</sup>

## 3. Referral to a Provincial Consumer Court

Section 1 of the CPA defines a consumer court as:

*“a body of that name, or a consumer tribunal, that has been established in terms of applicable provincial consumer legislation”<sup>245</sup>*

In the event that ADR fails or is unavailable, the CPA allows consumers to resort to taking their disputes to a consumer court. Du Plessis submits that provincial legislation regulates these consumer courts.<sup>246</sup> He further submits that it is only in the Free State, Gauteng, the Western Cape, North-West Province, Eastern Cape, Mpumalanga, Northern Cape, and Limpopo provinces where provincial legislation has been enacted to regulate provincial consumer courts.<sup>247</sup> According to Schedule 4 of the Constitution, the national and provincial governments have simultaneous legislative competence over consumer protection,<sup>248</sup> allowing each province to pass separate consumer protection legislation.<sup>249</sup> Its founding provincial legislation limits the powers of each provincial consumer court, and

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<sup>242</sup> Scott & Van Dyk 2022:260.

<sup>243</sup> Scott & Van Dyk 2022:260.

<sup>244</sup> Chitimira & Magau 2024:53.

<sup>245</sup> *Consumer Protection Act* 68 of 2008:sec. 1.

<sup>246</sup> Du Plessis 2010:518.

<sup>247</sup> Du Plessis 2010:518.

<sup>248</sup> Newman & Tait 2018: 685.

<sup>249</sup> Van Heerden “Section 69” in Naudé & Eiselen, *Commentary on the Consumer Protection Act* (2014) 69-12A:para. 17.

they differ from those of normal courts.<sup>250</sup> Moreover, these courts are less formal than ordinary courts and are intended to handle consumer disputes more swiftly. They aim to provide faster and more affordable resolutions than those accessible through the traditional court system. Consumer courts are not easily accessible to all consumers in South Africa, as availability varies among provinces indicated above.

#### *4. Other ADR Agents*

In addition to ombudsmen and consumer courts, the CPA permits the appointment of other ADR agents, which include mediators or arbitrators, who specialize in settling consumer disputes. These intermediaries help by facilitating engagements between the consumer and the supplier, allowing the parties to achieve a mutually beneficial resolution.<sup>251</sup> Mediation is popular due to its non-binding, voluntary nature and collaborative problem-solving method. In addition, a resolution decided by an ADR agent may be recorded and submitted to the NCT or High Court for a consent order to be made with the parties' consent.<sup>252</sup> Upon the ADR agent's determination that there are no reasonable prospects of settling the dispute at hand, the procedure may be terminated, and the consumer may refer the dispute to the NCC.<sup>253</sup>

### **4.3 Effectiveness of Existing Dispute Resolution Mechanisms**

The current dispute resolution mechanisms are intended to provide consumers with accessible, affordable, and efficient options for resolving disputes without having to resort to traditional litigation.<sup>254</sup> These mechanisms, which include ADR, consumer courts, and ombuds services, have played critical roles in strengthening consumer rights in South Africa. However, with the growth of consumer disputes, there is a need to assess how effective these mechanisms are, notably in terms of time efficiency, accessibility, cost, and ability to handle these disputes.

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<sup>250</sup> Du Plessis 2010:517. Also see Woker 2016: 43.

<sup>251</sup> Mupangavanhu 2012:329.

<sup>252</sup> Melville 2010:55.

<sup>253</sup> Melville 2010:52.

<sup>254</sup> Chausse 2012:17.

Lesihla argues that managing online and offline disputes may be too overwhelming for these ADR mechanisms to handle.<sup>255</sup> Barnard and Mišćenić support this argument that the NCC, for example, seems to face a struggle of being overloaded with consumer complaints and appears to be short-staffed to handle and conduct investigations regarding them.<sup>256</sup> To date, there are currently 7 consumer courts operating in Kwa-Zulu Natal, Eastern Cape, Limpopo, Gauteng, North West, Mpumalanga, and Northern Cape, and they are said to be in session on a monthly basis.<sup>257</sup> This, in turn, raises a concern of accessibility for provinces that do not have consumer courts. In addition, even beyond provinces that have access to these consumer courts, geographical disparities may pose a major challenge.<sup>258</sup> Although consumers in urban areas may easily obtain these services, individuals in rural areas frequently face difficulties because of a lack of infrastructure or access to legal institutions (*own emphasis*).

When disputes progress beyond the ombudsman or consumer courts, the cost implications that were alleviated by ADR mechanisms cease to exist. For example, suppose a dispute cannot be settled through ADR and must be brought to the National Consumer Tribunal or higher courts. In that case, the related legal expenses can quickly surpass the dispute's value. According to Ngcobo, consumers often opt to drop small claim disputes due to the high cost of pursuing the case compared to the potential relief sought.<sup>259</sup> This becomes a challenge specifically in the context of e-commerce because disputes typically involve small claims. Ngcobo further makes an example of a consumer who purchases goods from a supplier who then supplies the consumer with damaged goods at the value of R200 and further poses a question to ask if it would be wise to pursue the claim of R200 against the supplier in accordance with the redress mechanisms provided for in the CPA.<sup>260</sup> He answers this by submitting that consumers in that position would most likely abandon the claim.<sup>261</sup>

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<sup>255</sup> Lesihla 2020:26.

<sup>256</sup> Barnard & Miscenic 2019:111-138.

<sup>257</sup> Southern African Legal Information Institute “South Africa: Consumer Affairs Court” <https://www.saflii.org/za/cases/ZACONAF/> (accessed 02 October 2024).

<sup>258</sup> Woker 2011:16.

<sup>259</sup> Ngcobo 2024:6.

<sup>260</sup> Ngcobo 2024:6.

<sup>261</sup> Ngcobo 2024:6.

The CPA itself reveals some of the shortcomings of the NCC.<sup>262</sup> These shortcomings include the NCC being inaccessible to consumers, having a large workload that results in low work output, lacking clear processes, and having a poor reputation due to negative publicity.<sup>263</sup> Additionally, several erroneous decisions have been identified as a result of the NCC's failure to understand the Act, and this, in turn, has had significant effects on the successful implementation of the Act.<sup>264</sup> As a result, this would make consumers lose confidence that they would have their disputes resolved because the same institutions meant to protect consumers and their consumer rights do not adequately apply the redress provisions provided for in terms of the Act.<sup>265</sup>

As a result of all of this, there is an increasing need to modernize and strengthen the current consumer dispute resolution framework to better meet the digital age's needs. The change to purchasing goods online provides a great opportunity to reconsider how consumer disputes are addressed, notably by including ODR systems. Moreover, by leveraging digital platforms, ODR could possibly provide a simplified, cost-effective, and accessible option for customers to resolve disputes swiftly. This will minimize the strain on the NCC and consumer courts while ensuring a more equal resolution procedure for consumers.

#### **4.4 Exploring the benefits of implementing ODR**

The Internet has grown to be an acceptable commercial trade platform, leading to the expansion of consumer disputes and the necessity for an online dispute resolution mechanism.<sup>266</sup> ODR utilizes platforms that enable the facilitation of dispute resolution on the Internet, thus making the procedures more accessible and offering convenience to consumers, particularly those involved in e-commerce.<sup>267</sup> Schmitz explains why an ODR system is the best option by contending that consumers are reluctant to spend time and money on phone calls, traveling,<sup>268</sup> or similar activities when a fair remedy is offered

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<sup>262</sup> Reddy 2020:375.

<sup>263</sup> Magaqa 2015:32-57.

<sup>264</sup> Swanepoel & Maimela 2015:128-144.

<sup>265</sup> Reddy 2020:376.

<sup>266</sup> Duca, Rule & Loebel 2012:61.

<sup>267</sup> Hurter 2004:779-791.

<sup>268</sup> Larson 2010: 541.

through ODR. This solution should include a user-friendly interface that is free for consumers to access and understand.<sup>269</sup>

In 2017, Austin wrote a comprehensive report about the benefits and challenges on the introduction of ODR. In the report, she submits that the ability of ODR to save costs is a widely discussed benefit for both the disputing parties and the dispute resolver.<sup>270</sup> This is because cost implications associated with utilizing ODR platforms are generally lower than traditional dispute resolution mechanisms.<sup>271</sup> In addition, Conley Tyler & McPherson argue that ODR is “the only financially feasible settlement option” where small valued claims are concerned and the parties are dispersed geographically.<sup>272</sup> The ability to resolve disputes remotely and decreased cost barriers make ODR an accessible option for individuals and small enterprises with limited resources, allowing them to seek redress without incurring the expensive expenses commonly associated with traditional legal procedures and ADR mechanisms.

Moreover, ODR can help to reduce delays by providing a faster and more convenient dispute settlement process.<sup>273</sup> It adopts streamlined protocols and a set timeframe for processes that result in the speedy resolution of disputes.<sup>274</sup> In addition to these benefits, ODR eliminates the requirement for travel and schedule synchronisation.<sup>275</sup> This elimination is beneficial to consumers because they will not need to travel (reducing costs) as all the disputes will be addressed online.<sup>276</sup> In addition, Goodman contends that with ODR, parties do not have to worry about the court that has the competency to entertain

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<sup>269</sup> Shmitz 2018:3-21.

<sup>270</sup> Austin 2017:10.

<sup>271</sup> Austin 2017:10.

<sup>272</sup> Conley Tyler & McPherson 2006:169.

<sup>273</sup> Niti Aayog “Designing the Future of Dispute Resolution the ODR Policy Plan for India” <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf> (accessed on 15 October 2024).

<sup>274</sup> Niti Aayog “Designing the Future of Dispute Resolution the ODR Policy Plan for India” <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf> (accessed on 15 October 2024).

<sup>275</sup> Niti Aayog “Designing the Future of Dispute Resolution the ODR Policy Plan for India” <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf> (accessed on 15 October 2024).

<sup>276</sup> Niti Aayog “Designing the Future of Dispute Resolution the ODR Policy Plan for India” <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf> (accessed on 15 October 2024).

their dispute if they willingly agree to bind themselves to what is referred to as determination by agreement.<sup>277</sup> With this in mind, it is important to highlight that the development of ODR presents an opportunity for consumers to have access to redress mechanisms that are convenient for them and can help resolve disputes at much lower costs, ensuring that these disputes are adequately resolved.

## **4.5 Key Principles for ODR Development**

ODR systems are built on several fundamental principles designed to guide and ensure that these systems are implemented ethically. The said principles are critical for ensuring the success of ODR platforms as alternative mechanisms to traditional litigation. According to Vilalta, the following principles (*own emphasis on the elaboration*) are proposed to drive ODR systems:<sup>278</sup>

### **4.5.1 Legality**

This principle ensures that the procedures and results comply with applicable laws, ensuring that the resolutions derived from these platforms are accepted and enforced in the relevant jurisdictions. Furthermore, this principle ensures that processes and outcomes adhere to relevant legal frameworks, ensuring that decisions reached using these platforms are deemed valid and enforceable within their respective jurisdictions. Legality is also fundamental to the credibility and validity of ODR systems since adherence to the law permits settlements to be effectively enforced.<sup>279</sup>

### **4.5.2 Transparency**

Transparency is critical for developing trust in ODR platforms because it allows parties to understand the procedures, criteria, and methodology used to resolve their cases.<sup>280</sup> Transparent processes ensure that consumers understand how their cases are dealt with and what they may expect as outcomes from the process, which is critical for building credibility. This concept requires ODR providers to disclose all pivotal information with regard to the dispute resolution process, including fees associated, how long the

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<sup>277</sup> Goodman 2003:1-15.

<sup>278</sup> Vilalta 2012:126-127.

<sup>279</sup> Recommendations on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes” (98/257/EC):art. V.

<sup>280</sup> Mania 2015:83.

resolution process will take, potential results, and the specific duties of the mediators or arbitrators engaged.<sup>281</sup> In providing these details to the parties, ODR platforms can lessen the proliferation of bias.<sup>282</sup>

#### **4.5.3 Confidentiality**

This principle aims to protect the privacy of every party in the dispute by ensuring that confidential data provided in the ODR resolution process is not revealed to unauthorized individuals or entities.<sup>283</sup> This protection is critical for retaining user confidence, especially when dealing with sensitive data. Confidentiality also facilitates free communication amongst parties, as people are more likely to disclose information if they are assured it will be kept private.

#### **4.5.4 Fairness**

This principle in ODR helps ensure that these platforms maintain the same standard of treatment across all parties in a dispute. Fairness also indicates that the procedures and regulations used are consistent across, fostering an environment of equality.<sup>284</sup>

#### **4.5.5 Impartiality**

This principle requires the ODR systems to operate without bias. This is done by requiring the system to treat the parties to the dispute equally and give outcomes based on the merits of the case.<sup>285</sup>

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<sup>281</sup> Condlin 2016:745.

<sup>282</sup> Recommendations on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes” (98/257/EC):Article II.

<sup>283</sup> APEC Economic Committee on Study on Best Practices in Using ODR 2023:22-23. Available on [https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223\\_ec\\_study-on-best-practices-in-using-odr.pdf?sfvrsn=1bb06f15\\_2](https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf?sfvrsn=1bb06f15_2) (accessed 22 November 2024).

<sup>284</sup> APEC Economic Committee on Study on Best Practices in Using ODR 2023:24-25. Available on [https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223\\_ec\\_study-on-best-practices-in-using-odr.pdf?sfvrsn=1bb06f15\\_2](https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf?sfvrsn=1bb06f15_2) (accessed 22 November 2024).

<sup>285</sup> Mania 2015:84.

#### 4.5.6 Efficiency

At the heart of this principle is the emphasis on ODR systems to provide streamlined processes aimed at ensuring that disputes are resolved timely as compared to traditional litigation.<sup>286</sup>

#### 4.5.7 Freedom or private autonomy

This principle permits the parties to dispute a level of autonomy to have control over their participation and also allows them to withdraw from the proceeding with the matter if they wish to.<sup>287</sup>

### 4.6 Online Dispute Resolution Methods

#### 4.6.1 Online Mediation

Mediation as a mechanism for dispute resolution is the most widespread mechanism, as both parties to the dispute would benefit from the “win-win” resolution that it provides.<sup>288</sup> This is because the mediating neutral third party in the dispute does not have the authority to make decisions.<sup>289</sup> Simply put, the right to make decisions is vested in the parties to the dispute. Moreover, this type of dispute-resolution mechanism is flexible in the sense that it does not require the disputants to meet face-to-face.

#### 4.6.2 Online Negotiation

Hornle submits that online mediation is seemingly the primary ODR method in disputes concerned with small-value claims.<sup>290</sup> She further submits that the primacy of online mediation is based on four reasons being the flexibility of the process, its voluntary participation, redress not being limited to only monetary awards, and the nature of the dispute. Online mediation allows the mediator in a dispute to utilize his skills in helping the parties reach an agreement or settlement they are comfortable with.<sup>291</sup> Furthermore,

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<sup>286</sup> Recommendations on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes” (98/257/EC):Article IV.

<sup>287</sup> E-Arbitrator “Determining the Seat of Arbitration in ODR Respecting Party Autonomy for Effective Dispute Resolution” <https://www.e-arbitrator.com/seat-and-venue-of-arbitration-in-odr> (accessed 22 November 2024).

<sup>288</sup> Beka “Online Dispute Resolution in Europe” <https://repository.ihu.edu.gr/xmlui/bitstream/handle/11544/29340/BEKA%20ELISAVET%20DISSE> RTATION.pdf?sequence=1 (accessed on 19 October 2024)

<sup>289</sup> Sulistianingsih *et al*/2023:3.

<sup>290</sup> Hornle 2002:1-15.

<sup>291</sup> Hornle 2002:1-15.

the voluntary nature of the process means that the parties do not compromise their position, as they will be more than willing to participate in resolving the dispute. This process allows the disputants to find creative solutions to their disputes.

#### **4.6.3 Online Arbitration**

According to Hang, the most prominent disadvantage that online arbitration has is that parties are not required to travel long distances to get their disputes resolved.<sup>292</sup> This means that the parties can participate in the dispute resolution process in real-time anywhere in the world at a time convenient for them. Kritzinger argues online mediation to be an effective mechanism for redress as it allows the parties to the dispute to have a resolution in a timely manner as compared to traditional arbitration and thus saving costs.<sup>293</sup>

#### **4.7 Challenges and Concerns with Online Dispute Resolution**

Although ODR presents a promising mechanism for dispute resolution by utilizing technology to provide consumers with faster and more accessible means of resolving disputes, it is not without challenges. Clark, Cho & Hoyle argue that ODR is not people-orientated and lacks human interaction and communication.<sup>294</sup> What they mean by this is that ODR users miss clues that are not verbal, for instance, clues conveyed by smell, touch, and body language.<sup>295</sup> In addition, Van Arsdale argues that affordability plays a huge role in developing ODR platforms.<sup>296</sup> She adds that several factors play a role in determining how much an ODR provider will charge, which include the operating cost of the ODR service and external funding.<sup>297</sup>

Goodman argues that accessibility to ODR is a significant challenge. The nature of ODR being internet-based means that parties in a dispute must have access to electronic devices and stable access to the internet. The need to have access to the internet may

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<sup>292</sup> Hang 2000:854.

<sup>293</sup> Kritzinger 2017:20.

<sup>294</sup> Clark, Cho & Hoyle 2003:10. *Also see* Khan "Online Dispute Resolution- Opportunities Issues & Challenges" [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3656921](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3656921) (accessed on 20 October 2024).

<sup>295</sup> Clark, Cho & Hoyle 2003:10.

<sup>296</sup> Van Arsdale 2015:124.

<sup>297</sup> Van Arsdale 2015:124.

be a challenge to parties that are from rural or remote areas.<sup>298</sup> Moreover, parties unfamiliar with electronic devices and those who cannot effectively communicate by way of written communication may often find it difficult to use ODR platforms because of the different technological levels and skills.<sup>299</sup>

According to Abedi *et al.*, the risk of personal information being leaked is common, especially in the digital age, which raises concerns about how institutions users trust protects personal data from various cybercrime issues.<sup>300</sup> In addition, ODR websites are also susceptible to malware infestations, intrusions, and other computer or network failures. Firewalls, backup policies, and antivirus systems are commonly used to mitigate these hazards. Larson found that fighting with computer viruses and worms can make us question the worth and reliability of the online world.<sup>301</sup> Moreover, Hörnle observed that no communication channel is completely safe, as even paper papers might be intercepted, copied, or compromised.<sup>302</sup>

To date, most of the ODR services have only English as the medium language, which Cortes argues is difficult, especially in conveying accurate information and avoiding miscommunication during the dispute resolution process.<sup>303</sup> He further argues that this barrier is not just for parties who cannot speak the language but also for those with English as their second or third language.<sup>304</sup> In addition, parties to an ODR proceeding would most likely wish to maintain privacy regarding their proceedings. Now, with the internet being an open network accessible by anyone with internet connectivity, there is a risk of hackers' unauthorized access to the confidential information or documents of said proceedings, posing a security issue.<sup>305</sup> Victorio refers to the electronic record created by ODR proceedings as a double-edged sword susceptible to risks associated with the Internet.<sup>306</sup>

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298 Goodman 2003:1-15.

299 Goodman 2003:1-15.

300 Abedi, Zeleznikow & Brien 2019:30.

301 Larson 2004:131.

302 Hörnle 2003:31.

303 Cortes 2010:58.

304 Cortes 2010:58.

305 Hornle 2003:31.

306 Victorio 2001:296.

#### 4.8 eBay ODR model as an Example

eBay is an e-commerce company founded in 1995. It is an online marketplace that facilitates buying and selling between buyers and sellers online.<sup>307</sup> In terms of its ODR model, it is carefully crafted to handle large volumes of repetitive disputes emanating from a pattern of disputes studied prior to the introduction at a low cost. The reason behind the introduction of such a model was because of the unique needs that e-commerce presented, where it was legally and geographically not feasible for them to be addressed through court procedures.<sup>308</sup> Additionally, eBay was a platform available worldwide with varying time zones and languages spoken, hence its introduction.<sup>309</sup> According to Reddy, consumers are encouraged to first initiate contact with the supplier using the Resolution Centre so as to try to find an amicable solution to the situation at hand.<sup>310</sup> eBay is said to handle over 60 million disputes annually.<sup>311</sup>

The model offers a variety of options depending on the consumer's type of dispute. To make consumers understand how the dispute resolution process operates, there are various links on the webpage for consumers to access. This includes cancellation of transactions, steps to follow in case of non-delivery of goods purchased, how to resolve buying and selling problems, and how to report a buyer when there is a problem. In a case where there the consumer's issue is not listed, there is an additional link that the consumer can click on which will direct them to the help page where they can be able to type what their issue is.

##### 4.8.1 How the eBay's Dispute Resolution Process Work

According to Brogan, eBay's mode consists of three stages.<sup>312</sup> The first stage of the dispute resolution process starts with the consumer filing the claim on the system. The system will then ask the consumer to suggest a preferred solution to the claim. The design

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<sup>307</sup> Katsh & Rule 2015:333-335.

<sup>308</sup> Martinez 2020:135.

<sup>309</sup> Ngcobo 2024:10.

<sup>310</sup> Reddy 2020:385.

<sup>311</sup> Hobbs "Online Dispute Resolution: Companies Implementing ODR"  
<https://libraryguides.missouri.edu/c.php?g=557240&p=3832247#:~:text=eBay%20handles%20over%2060%20million,Business%20Equipment%20Purchase%20protection%20plans>. (Accessed on 20 October 2024).

<sup>312</sup> Brogan 2020:161.

of this system will guide the consumer in pinpointing what the actual claim is through the questions that are asked so as to ensure that the claim that the consumer has is covered within the policy. In the second stage, the model encourages communication between the buyers and sellers through the messaging platforms that it has.<sup>313</sup> In instances where the dispute has not yet been able to be resolved through negotiation, then the dispute can be referred to eBay's Resolution Services team who will then decide based on the evaluation they will make.<sup>314</sup>

Many scholars have advocated for this model's success rate in resolving consumer disputes. Ahmad and Ali submit that the success of eBay derives from recognizing the need for ODR and having a feedback platform where buyers can have more information about a seller.<sup>315</sup> In this way, consumers can ascertain whether transactions from other users were successful, which in turn plays a role in enhancing trust and risk reduction.<sup>316</sup> Furthermore, the system is reported to have successfully resolved 90 percent of the 60 million disputes it receives per year without human involvement.<sup>317</sup>

#### **4.9 Conclusion**

In conclusion, the existing mechanisms for resolving disputes as per the CPA are generally helpful in protecting consumer rights in South Africa. However, they struggle to keep up with the changing needs of e-commerce. Although the CPA offers consumers ways to resolve disputes through alternative dispute resolution methods, these options are restricted by factors like availability, expenses, and limited resources. These limitations can often make these methods less effective, especially when dealing with e-commerce disputes. Moreover, the increasing number of transactions has highlighted the importance of having an affordable and accessible solution that is easily accessible – characteristics that ODR uniquely represents.

Thus, this emphasises the necessity to incorporate ODR into the existing dispute resolution framework, as it encompasses the characteristics required to meet the

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<sup>313</sup> Del Duca *et al* 2014:206.

<sup>314</sup> Ngcobo 2024:10.

<sup>315</sup> Ahmad & Ali 2019:40.

<sup>316</sup> Ahmad & Ali 2019:40.

<sup>317</sup> Sela 2018:103.

expectations of a digital economy. ODR takes a distinctive approach to dispute resolution by harnessing technology and offering consumers a cheap, accessible, and timely means of addressing disputes. As a result, this would establish a connection between the current framework and the distinctive requirements of the digital era, thereby enhancing consumer confidence and fostering a fair, efficient, and inclusive marketplace.

## **CHAPTER 5: SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION**

### **5.1 Introduction**

The increase in the number of digital transactions has heightened the necessity for effective ways to resolve consumer disputes to foster a dependable and trustworthy e-commerce landscape. In this context, it becomes imperative to establish a robust ODR framework which will ensure efficient redress mechanisms for consumers and improve the overall integrity of digital marketplaces in the SADC region and subsequently in South Africa as a member state. This chapter will provide a summary of key findings of the study as well as to provide a forward direction for SADC by drawing insights from international best practices on ODR, including the EU's ODR Regulation and the ASEAN Guidelines on ODR to inform the design of an ODR framework. Furthermore, this chapter aims to provide detailed recommendations for SADC in developing a regional ODR framework. In addition, SADC member states like South Africa will be presented with an opportunity to develop a national ODR platform that will help in resolving consumer disputes, thereby maintaining a high level of consumer protection while fostering consumer trust.

### **5.2 Summary of Findings**

#### **5.2.1 Chapter Two**

The chapter provided a thorough historical examination of consumer protection in South Africa, highlighting the critical role of sociopolitical transformation in establishing the country's legislative framework. It began by examining the apartheid-era consumer protection landscape, which was fragmented and inequitable. It further highlighted that regulatory frameworks, such as the *Alienation of Land Act* and the *Consumer Affairs (Unfair Business Practices) Act*, provided minimal protections, mostly favoring the privileged minority while leaving the economically disadvantaged majority vulnerable. The chapter discussed how inadequate enforcement mechanisms exacerbated disparities in access to consumer redress.

In addition, this chapter highlighted that following South Africa's democratic transition in 1994, consumer protection evolved drastically, empowered by constitutional demands for social justice and equality. The chapter emphasised the revolutionary impact of the 1996

Constitution, notably its provisions guaranteeing access to justice and equality, which laid the framework for the passing of the CPA. The CPA is regarded as a cornerstone of South African consumer law, intended to enhance fairness, access to remedy and transparency.

### **5.2.2 Chapter Three**

This chapter provided a comparative analysis of international e-commerce dispute resolution mechanisms, with an emphasis on the EU and ASEAN. Furthermore, the chapter emphasised the growing importance of ODR mechanisms in reducing risk factors such as fraud and unfair behaviors in the digital economy. In the EU, the incorporation of ODR into a harmonised and centralised legislative framework – anchored by the ODR Regulation 524/2013 and the ADR Directive – has resulted in a centralised platform that strengthened consumer protection by way of accessibility and transparency. ASEAN, on the other hand, follows a decentralised model anchored by the ASEAN Guidelines on ODR, emphasising flexible standards tailored to its member states' diverse economic and legal landscapes.

Furthermore, the chapter discussed lessons for South Africa and the larger SADC region, arguing for the implementation of a centralised, user-friendly ODR system that incorporates technology solutions to resolve consumer disputes. The chapter argued that by utilizing international best practices, SADC may create a strong consumer protection system that meets global standards while effectively supporting its diversified consumer base in the changing digital economy.

### **5.2.3 Chapter Four**

This chapter examined the current dispute resolution systems under South Africa's CPA, highlighting its importance and constraints within the contemporary digital economy. The chapter commenced by establishing the CPA's function in protecting consumer rights in the light of the expansion of e-commerce and noted that the rise in online transactions has led to a surge in challenges such as erroneous delivery and misleading invoicing, underscoring the inadequacies in conventional in-person dispute resolution systems and proposed ODR as a promising form of dispute resolution mechanism in resolving consumer disputes.

## **5.3 Recommendations: SADC**

### **5.3.1 Establishment of an ODR platform that is regionally centralised with local access points**

The idea behind the centralisation of the ODR platform is to provide consumers and businesses in the region with a unified platform so as to ensure ease of access as well as make it easy for consumers to engage with the system and utilize its resources.<sup>318</sup> ODR platform like the one in the EU serves as an example of the simplification that centralising the ODR platform brings in terms of accessing redress mechanisms and, therefore, facilitating consistency and efficiency across various countries. To bring it to the perspective of SADC, it would be essential for the development guidelines to advocate for the incorporation of localized access points that would enable the countries within the region to engage effectively based on their digital readiness.

### **5.3.2 Creation of Harmonised Legal Standards**

To ensure that consumer rights and their enforcement thereof are consistent with the region, SADC should establish harmonised legal standards. As a result, this would enhance trust and confidence across the region in regard to the facilitation of cross border e-commerce, as consumers will have a standardized level of protection. This harmonisation for regions like the EU and ASEAN has proven to benefit consumers because they enjoy the same level of protection of their consumer rights irrespective of location. Moreover, ASEAN guidelines on ODR even extend to provide a level of flexibility so as to accommodate different national contexts in the region. SADC can follow the same.

### **5.3.3 Multi-Channel Approach for Accessibility**

At the heart of any successful implementation of a redress mechanism is its accessibility to consumers.<sup>319</sup> The ASEAN's ODR Guidelines suggests the adoption of a multi-channel model, providing users with multiple options to interact with the ODR system. This

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<sup>318</sup> van Gelder 2022:31.

<sup>319</sup> OECD, Recommendation of the Council on Consumer Dispute Resolution and Redress, OECD/LEGAL/0356:7.

approach recognizes that certain consumers might encounter challenges with exclusively online systems, whether because of technological limitations, insufficient internet connectivity, or other accessibility concerns. In the context of SADC, a multi-channel strategy might encompass mobile-friendly platforms, phone assistance for offline support, and community access points. Mobile access is especially significant in SADC, where mobile phone usage often surpasses internet access. Designing mobile-responsive websites and implementing SMS-based services can enhance accessibility, enabling users in remote areas to submit disputes and monitor case statuses. Options for offline support, such as toll-free numbers and help desks located in community centres, can further improve accessibility for consumers who may be less experienced with the use of digital tools or do not have consistent internet access.

#### **5.3.4 Data Privacy and Security Standards**

Data protection and privacy are essential for the effectiveness of any Online Dispute Resolution (ODR) platform. The EU ODR platform adheres to strict data protection protocols following the General Data Protection Regulation (GDPR)<sup>320</sup>, guaranteeing that individuals' personal information is managed securely and transparently. The ASEAN Guidelines also highlight the importance of secure data management as a critical element in building consumer trust.<sup>321</sup>

In SADC, developing a framework that regulates data privacy will assist in the protection of confidential consumer information, which would, in turn, enhance trust in the ODR platform as well as mitigate risks related to data breaches. This framework, at minimum, must incorporate user authentication procedures that are secure, communication channels that are encrypted as well as clear privacy policies. In addition, SADC could introduce regional guidelines that are similar to the GDPR, being cognisant that not all the countries in the region have strong data protection regulations. In doing so, there will be a standardized approach to data protection in using the ODR platform.

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<sup>320</sup> Regulation (EU) 2016/679 (General Data Protection Regulation).

<sup>321</sup> ASEAN Guidelines on Online Dispute Resolution (ODR):para 70-72.

### **5.3.5 Incorporation of Multi-Lingual Support and a User-Friendly Interface**

In developing an ODR framework, SADC could incorporate a multi-lingual interface, considering that it is a diverse region in languages spoken. This incorporation would mandate the ODR platform to support key languages that are spoken in the region. Furthermore, the platform could provide translating tools to the language convenient to the user so as to ensure that there are no misunderstandings, which would, in turn, enhance accessibility. Lastly, the platform could also feature a user-friendly interface designed to accommodate users with varying levels of digital literacy in the region.

### **5.3.6 Initiatives for Consumer Awareness and Digital Literacy**

The EU and ASEAN acknowledge that digital literacy and consumer education are essential elements of successful ODR systems. In order to inform consumers on their rights, the dispute resolution process, and how to obtain ODR services, ASEAN's ODR standards emphasise the necessity of consumer awareness initiatives, such as workshops and online resources. Similarly, the EU highlights transparency and consumer awareness by mandating that links to the ODR platform be clearly displayed on all e-commerce platforms.

SADC should make similar investments in capacity development and consumer awareness initiatives. This can be accomplished by partnering with different stakeholders and regional consumer institutions to provide ODR platform training.<sup>322</sup> By providing awareness to consumers, SADC may encourage active participation in dispute resolution and guarantee that consumers comprehend how you can protect their rights in e-commerce. In areas with low digital literacy, integrating multimedia materials, for instance, infographics, video tutorials, and multilingual support, can help to make the platform more accessible and easier to use.

## **5.4 Recommendations: South African Perspective**

With South Africa being a member nation of SADC, it can follow suit upon the successful adoption of the ODR framework at the regional level. The framework would be used as a level ground for establishing and implementing an ODR system in South Africa to resolve

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<sup>322</sup> Albornoz & Martín 2012:36-91.

disputes emanating from e-commerce activities. With this in mind, the following recommendations look at how ODR can be integrated into the existing consumer protection framework as a complementing mechanism for consumer redress. It is also important to note that the ODR framework that SADC would establish will inform the establishment of an ODR platform in South Africa as a member nation to the community.

#### **5.4.1 South African Perspective**

South Africa has been identified as a “significant e-commerce force in the region” because of the country's rise in e-commerce.<sup>323</sup> Based on this contention, there is a clear need for ODR in South Africa to help resolve consumer disputes emanating from e-commerce. In accordance with section 69(c)(iii) of the CPA, the referral of disputes to an ODR system could be interpreted as referring said disputes to an ADR agent and as a result of the system providing arbitration, conciliation and mediation services, it is fair to say that section 70(c) covers an ODR system as an ADR agent.<sup>324</sup> In light of this, the CPA can be considered to lay a foundation that could support the development and implementation of ODR as a redress mechanism.

Moreover, the CPA provides for establishing the NCC in section 85. The existence of the Commission makes room for ODR to be incorporated within the scope of the Commission's duties. For this to be possible, the ODR system can be available through the Commission's website.<sup>325</sup> Similarly to eBay’s dispute resolution Model, a consumer can create a profile on the system should they wish to file a dispute. Thereafter, consumers could log onto their profiles, upload relevant particulars of the claim to the ODR systems, and answer relevant questions for the ODR systems to determine the nature of their disputes. To provide accessibility for illiterate and technologically illiterate consumers, the system could include user-friendly functions such as guided help using audio prompts, visual aids, and streamlined interfaces. Furthermore, third-party support or automated voice-based services could assist consumers with uploading important

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<sup>323</sup> IT News “Study reveals that E-commerce is on the rise in South Africa” <https://www.itnewsafrika.com/2015/03/study-reveals-that-e-commerce-is-on-the-rise-in-south-africa/> (accessed on 29 October 2024).

<sup>324</sup> Reddy 2020:387.

<sup>325</sup> Ngcobo 2024:18.

claim information and answering necessary questions, to make sure the system can still assess the nature of their disputes effectively and inclusively.

Putting forth an ODR system may seem simple in theory; however, various obstacles can crop up along the way when it comes to putting it into practice. Besides the financial and practical hurdles that may surface during the implementation phases of such a system, legal challenges often exist, especially in cases involving cross-border or online transactions, where determining the court's jurisdiction and applicable laws can be complex. It is important to note that when customers purchase items online, they prefer using a platform to address any issues rather than going through legal proceedings with a seller in a different country. Some scholars argue that by embedding the solutions onto the websites rather than relying on judicial authorities to impose them, ODR can be seen as an efficient way to handle e-commerce disputes within South Africa and across borders.<sup>326</sup>

From a funding perspective, the government of South Africa can play a vital role in providing the essential funding required to create an ODR system. Since consumer protection and access to justice are considered public goods, budget allocations from the government through the NCC could supply the necessary starting capital for the development and implementation of the platform. Specifically, the Department of Trade, Industry, and Competition, responsible for ensuring consumer protection, could allocate a part of the budget to support ODR infrastructure and technology. Furthermore, government funding would guarantee that the platform complies with national standards and addresses the public's needs.

In this context, South Africa's continuing digital transformation of the judiciary sets a strong precedence of how online systems can enhance access to redress and offer convenient solutions. Various divisional courts, directed by online litigation guidelines,<sup>327</sup> have proved the efficacy of such systems, most notably through the implementation of

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<sup>326</sup> Del Duca, Rule & Loebl 2012:63.

<sup>327</sup> Consolidated Practice Directive 1 Of 2023 Court Operations in the Gauteng Division. Available from <https://www.judiciary.org.za/images/Directives/Directive>.

Court Online. The 2023/24 Annual Report of the Office of the Chief Justice (OCJ)<sup>328</sup> outlines substantial strides done to improve court operations and expand access to justice through technological advancements. All of these developments support the notion that government investment in ODR would complement current initiatives to improve judicial efficiency and accessibility.

In addition, government grants could play a crucial role in fostering specific aspects of ODR development. For instance, additional funding could be directed towards establishing access points in remote areas, especially in those with limited internet access. By obtaining government support for these inclusivity initiatives, the platform can help tackle South Africa's pressing issues like the digital divide, guaranteeing fair access for all individuals, irrespective of their location or economic status. However, relying solely on government funding may not be enough to sustain long-term operations, so combining it with other funding sources is essential to ensure sustainability.

To bridge the gap of digital literacy, institutions like the NCC can partner up with the government and roll out consumer awareness campaigns.<sup>329</sup> These campaigns will be aimed at educating consumers about how the ODR platforms work and the benefits of using such platforms, thereby empowering consumers. Moreover, these ODR system must be designed in a way that provide intuitive, user-centric interfaces incorporating elements such as visual aids, auditory prompts, and multilingual capabilities so as to ensure that people with varying degrees of digital competencies can be accommodated.

Given the nature of ODR platforms, cybersecurity is essential in the design of an ODR system. It is imperative that the system complies with rigorous data protection standards

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<sup>328</sup> An Annual Report from the Office of the Chief Justice 2023/24 available on: <https://www.judiciary.org.za/index.php/documents/annual-reports>.

<sup>329</sup> *Consumer Protection Act* 68 of 2008:sec. 96. This empowering provision can function as a strategic framework for the NCC to collaborate with the government in enhancing public awareness of ODR mechanisms. Using this section, the NCC can initiate collaborative campaigns, workshops, and digital literacy initiatives aimed at improving consumers' understanding of ODR's accessibility, efficiency, and cost-effectiveness. These collaborations not only relate with the CPA's overarching purpose of guaranteeing equitable and informed consumer engagement but also foster the creation of a more resilient, technologically proficient consumer base capable of resolving conflicts in an increasingly digital marketplace.

as stipulated by the *Protection of Personal Information Act (POPIA)*.<sup>330</sup> Advanced methods of encryption must be adopted to preserve data integrity and confidentiality to avoid the risk of unauthorized access to consumer's confidential information.<sup>331</sup> These methods can include robust user authentication methods, such as two-factor authentication.<sup>332</sup> In addition, the *Cybercrimes Act* criminalizes unlawful securing and acquiring of access in sections 2 and 3.<sup>333</sup> These pieces of legislation, used and read together, can be foundations of trying to prevent cybercrime in the use of ODR .

To strengthen the funding sources for ODR in South Africa further, public-private partnerships (PPPs) present a viable solution. These collaborations enable private organisations, including telecom firms, banks, and online retail platforms, to jointly finance the initiative in return for enhanced brand recognition and favourable public image. In exchange, the government could encourage participation by providing tax incentives or subsidies to the partnering companies, creating a mutually beneficial scenario for both parties. Furthermore, collaborations with telecommunications providers could facilitate zero-rated data access to the ODR platform, enabling consumers to submit and resolve disputes without incurring additional data expenses.

## 5.5 Conclusion

Thus, it is this study's submission that the post-1994 advancements in consumer protection in South Africa, particularly with the implementation of the CPA, marked a significant step forward in protecting consumer rights. These reforms, heavily influenced by the ideals entrenched in the Constitution, have created a comprehensive framework that strikes a balance between consumer protection and economic interests. Moreover, both the EU and ASEAN have made substantial progress in building ODR frameworks, and their approaches mirror the broader legal and economic conditions in which they operate. The EU's ODR regulations provides a mature, harmonised system, backed up by strong enforcement measures and legal consistency across member states. The ASEAN ODR Guidelines, on the other hand, represent the start of a more decentralised

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<sup>330</sup> *Protection of Personal Information Act* 4 of 2013.

<sup>331</sup> Papadopoulos & Snail 2012:344-346.

<sup>332</sup> Papadopoulos & Snail 2012:344-346.

<sup>333</sup> *Cybercrimes Act* 19 of 2020:sec. 2 and 3.

and flexible strategy aimed at increasing capacity and encouraging cooperation among varied legal systems. Ultimately, both of these structures represent their respective regions' priorities: legal certainty and cross-border efficiency in the EU, versus incremental advancement and national autonomy in ASEAN. As these frameworks develop, the interaction of legislative harmonisation and consumer protection will continue to define their unique ODR landscapes.

The existing mechanisms for resolving disputes as per the CPA are generally helpful in protecting consumer rights in South Africa. However, they struggle to keep up with the changing needs of e-commerce. Although the CPA offers consumers ways to resolve disputes through alternative dispute resolution methods, these options are restricted by factors like availability, expenses, and limited resources. These limitations can often make these methods less effective, especially when dealing with e-commerce disputes.

Lastly, e-commerce has proven to be a convenient way for consumers to access a wide range of goods and services online. This convenience comes with its own challenges, more especially regarding the redress mechanisms available to consumers to resolve their disputes adequately. In response, ODR presents a promising option by utilizing technology to provide consumers with faster and more accessible means of resolving disputes. Based on the findings of chapters two to four, it can be concluded that there is a pressing need for the establishment of an ODR framework in the SADC region due to the growth of e-commerce and the challenges that emanate from it. The successful establishment of the framework in the region would help inform the development of an ODR system in South Africa.

This study has achieved its objective of evaluating the current instruments in the SADC region and mechanisms of the CPA and contrasting them with international instruments, particularly those of the EU and ASEAN, where ODR has demonstrated tangible success. These evaluations gained significant insights regarding South Africa's challenges in adjusting to the swift increase in online transactions and the resulting consumer conflicts. Although there is still a long way to go with the identified problem, the recommendations of this study, if implemented, would help in reaching somewhere in so far as consumer

redress mechanisms for online transactions are concerned and possibly help solve some of the issues.

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