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DEPARTMENT OF POLITICS AND PUBLIC MANAGEMENT**

An analysis on the effectiveness of conciliation and arbitration as labour dispute resolution mechanisms Zimbabwe.

By

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**Submitted in the partial fulfillment of the requirements of the Bachelor of Science Honors
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An analysis on the effectiveness of conciliation and arbitration as labour dispute resolution mechanisms in Zimbabwe.

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This dissertation is suitable for submission to the faculty. It has been checked for conformity with the faculty guidelines.

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I certify to the best of my knowledge that the required procedures have been followed and the preparation criteria has been followed and met for this dissertation

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Declarations.

I, Tapiwa Vincent Mudoni declare that this is my original research project and has not been presented anywhere in this exact manner. Other related studies and sources in line with the project have been acknowledged. The research project has been submitted as a requirement for level 4.2 in completion of BSc Honours Degree in Politics and Public Management, in the faculty of Social Sciences at Midlands State University.

Signed by

.....

Date

.....

Dedication.

Genuinely, I dedicate this piece of work to my late mother who always wanted the best in me as she raised be up to be the responsible man I am today through her love, guidance and support. This project is also dedicated to the entire nation of Zimbabwe as it serves sensational meant to add on to the available literature available literature.

Abstract.

A bone of contention always arises in labour relations and ADR systems have been established so as to rectify labour disputes. Zimbabwe has a dual juncture labour system whereby the labour laws are not harmonized as both private and public sector are governed by different labour statutes. The Public Service Regulations Act governs the Public service employees excluding the security forces whereas the Labour Act governs private sector employees, metropolitan councils and parastatals. The study addressed how labour disputes are resolved through conciliation and arbitration procedures in Zimbabwe. The underlying principles of conciliation and arbitration practice in the country which involves a number of factors namely accessibility, speed, privacy and costs which provides for parties concerned to seek justice. It can be noted that there are major drawbacks to conciliation and arbitration practice in Zimbabwe due to a number of challenges that are encountered which include the lack of competence amongst conciliators and arbitrators as there are no clear specific guidelines on how conciliation proceedings are conducted with each conciliator conducts proceedings in his or her own way deemed necessary as there are no training services offered by the Ministry of Labour on how disputes should be rectified. The study found out that the ADR conciliation and arbitration practice in Zimbabwe is ineffective as it lacks enforceable mechanisms for its determinations and awards and as a result disputes take a longer period to be finalized as they spill into local courts for registration and enforcement. The regulatory environment on labour relations is shallow in the sense that it lacks clear indications on the resolution of industrial conflicts in the provision of the time frame labour disputes are to be administered and finalized. The conflicting legislation which is often confusing thereby limiting effective operations in the resolution of disputes. The Labour Amendment Act distinguished disputes of rights and of interests whereby disputes of right upon failure of conciliation, the labour officer may issue a ruling or refer the dispute to compulsory arbitration. The legislation has no proper indications on the classifications of the distinguished disputes affecting the resolution of disputes in ADR. Various reforms of the labour legislation needs to be put forward so that ADR can be effective.

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ABBREVIATION

ADR - Alternative Dispute Resolution

CBA – Collective Bargaining Agreement

CCMA – Commission on Conciliation, Mediation and Arbitration (South Africa)

CMAC – Conciliation and Mediation Commission (Swaziland)

CPD – Continuous Professional Development

DDPR – Directorate of Dispute Prevention and Resolution (Lesotho)

EAT – Employment Appeal Tribunal

ILO – International Labour Organization

JSC – Judicial Services Commission

MPLSW – Ministry of Public Service, Labour and Social Welfare

MSU – Midlands State University

NEC – National Employment Council

ZFTU – Zimbabwe Federation of Trade Unions

ZCTU- Zimbabwe Confederation of Trade Unions

DEFINATION OF KEY TERMS

Alternative Dispute Resolution: It involves various forms of resolving labour disputes without reference to the formal courts of litigation.

Appeal: This is brought forward to a higher level court when a party is not satisfied with the outcome of a case he/she is part of.

Arbitrator: A person registered with the Ministry of Public Service, Labour and Social Welfare to hear cases between conflicting parties and make an award based on the parties' arguments. The person may be an employee of the government, National Employment Council or independent/private.

Arbitration: A procedure whereby a third party, not acting as a court of law, hears a arguments of parties in a dispute and makes a decision that disposes of the dispute.

Conciliator: A person who try to resolve a dispute between two conflicting parties without having to make a decision. A Conciliator may be a Labour Officer employed by the Ministry of Public Service, Labour and Social Welfare or a Designated Agent employed by a National Employment Council.

Conciliation: Assisting parties in a dispute to reach a settlement through offering advice and proposing solutions but without having to make a binding decision.

Designated Agent: An individual employed by a National Employment Council to play the role of conciliation.

Dispute: A disagreement or conflict between an employer and an employee (or employees)

Dispute of Interest: A dispute that results in a new right.

Dispute of Right: A dispute over existing rights as enshrined in a binding contract or legislation

Judicial Review: This is a process where a court reviews a decision made by a lower level body.

Litigation: Hearing of a dispute in the formal courts of law

CHAPTER 1

1.0 INTRODUCTION

This section introduces the study in investigating and drawing an analysis on the current labour disputes resolution systems in Zimbabwe using the Ministry of Labour as the main case study. A dispute according to the Labour Act relates to a matter concerning employment. The focus of the research is on conciliation and arbitration, which are well defined as alternative labour dispute resolution mechanisms. This chapter brought to light the background to the study, which traced the historical foundation of the legal framework on the alternative disputes resolution systems that were set and the applicability in practice. Subsequently the study also focused on the statement of the problem that the researcher studied, in order to come up with the correlation value. Research objectives were also examined in this chapter, so as to enhance the trajectory and scope of the study in answering the research questions that the study seeks to explore. The chapter also managed to lay out the justification of the study, where it presented what it seeks to offer in filling the existing gap in literature in addition to other written publications. More so, the chapter clearly outlined the delimitations of the study and lastly presented limitations that the researcher experienced when conducting the study.

1.1 BACKGROUND OF THE STUDY

During the period of 1980-1985 in Zimbabwe, the Industrial Conciliation Act provided legal framework for administration of the labour disputes in which it was legislation inherited from the colonial period. The Industrial court was responsible for resolving labour disputes as governed by the Act. The Act however was weak in the regard to reference on the Alternative Dispute Resolution systems as it was not clearly defined. The Zimbabwean Government had immediately enacted the Minimum Wages Act and the Employment Act which were in force but it seemed that these two pieces of legislation could not actually provide for the adequate rectification of disputes. In 1985 -1992 came into force a new form of legislation in trying to redress imbalances in the previously adopted colonial legislations by implementation of the Labour Relations Act of 1985. According to this Act, it can be noted that Conciliation was guided by the Act as an ADR mechanism but however it can be argued that conciliation was only optional and it was not

mandatory as it depended much on the labour officer and the labour relations office. Madhuku (2013) highlighted that, the labour relations officer was empowered by the act to resolve matters through conciliation in a period that was reasonable and if he fails to resolve the dispute, the labour relations officers bound to refer the dispute for verdict under the Labour Relations Tribunal or any other institutes labelled by the Act. The Act did not provide a framework for voluntary arbitration or mediation although compulsory arbitration was provided which eventually headed to job action. The Act had a very long dispute resolution structure which involved various levels leading to a high number of backlogs of cases that were not resolved and finalized on time.

The expedient increase in the unionization of the labour force from the early 1990s resulted in the robust change of the partisan scenery in the vicinity and worldwide as intense confrontations on the Zimbabwe government in restructuring the labour regulations so that there is adherence with International labour legislation. The Government in 1992 amended the labour Relations Act in which conciliation, mediation, adjudication and arbitration were methods of labour disputes resolution. The act empowered the labour officer with up to twelve months in trying to resolve any form of labour dispute as it clearly meant that in practice a labour officer would engage in conciliation or mediation for a longer period of time. Madhuku (2013) noted that the Zimbabwean Labour law did not distinguish conciliation and mediation as it appeared to refer the same method as it provided for the labour officer to either resort to conciliation or mediation. The Act did not provide for the labour officer to finalize disputes at arbitration level but for him / her to refer the matter to the tribunal for arbitration.

The Act provided for compulsory and voluntary arbitration whereby in voluntary arbitration the parties would agree in appointing an arbitrator whereas in compulsory arbitration the Labour Relations Tribunal was responsible or a person appointed by the Minister of Labour to administer the dispute. According to the labour act amendment of 2006 on section 93 of the powers of the labour officer, the conciliation proceedings are mandatory as each labour dispute is subjected to conciliation procedures with the exception of cases where parties may agree to allude the dispute to voluntary arbitration. The procedure of conciliation is provided for a time duration of 30 days from the day a labour officer starts the procedure. The Labour Act of 2006 (Chapter 28.01) provides for settlement of disputes through arbitration.

Furthermore, the labour Amendment Act of 2015 introduced a new method of dispute resolution, which is ruling. According to amendment 5 (c) it extends the powers of labour officers whereby when resolving a dispute of interest and both parties fail to settle the matter, the labour officer is empowered to make a ruling without reference to arbitration.

1.3 STATEMENT OF THE PROBLEM

The labour legislation in Zimbabwe has some loopholes which make it difficult to resolve labour disputes which seem to be inevitable in industrial relations as unfair labour practices are becoming rampant following the July 2015 Supreme court ruling of *Don Nyamande and Anor vs Zuva Petroleum*. There have been rampant cases of unfair labour practices which were brought to the Ministry of Labour for disputes rectification following the Supreme Court ruling of July 2015 in which most contracts of employment were terminated. The Labour Amendment Act of 2015 has an existing gap within law as it is not clear on dispute resolution procedures. The Labour Act Chapter 28.01 is silent in the time frame provisions for conciliation and arbitration proceedings to be determined. Gwisai (2008) highlighted that labour cases may take a period of more than a year before an Arbitrator issues an award thereby interrupting justice to be delivered on time. It is against this back drop which motivated the research to be conducted so as to explore the effectiveness of conciliation, arbitration in resolving labour disputes in Zimbabwe.

1.4 RESEARCH OBJECTIVES

The study seeks to fulfill the following objectives:

- 1) To identify challenges relating to conciliation and arbitration as dispute resolution mechanisms.
- 2) Examine the labour laws in Zimbabwe on employment relations and dispute resolution procedures.
- 3) To proffer recommendations on how dispute resolution mechanisms could be enhanced.

1.5 RESEARCH QUESTIONS.

To achieve the objectives mentioned above, main research questions of the study are as follows:

- 1) What are the challenges faced in resolving disputes through conciliation and arbitration?
- 2) How effective are labour laws in enhancing sound employment relations in Zimbabwe?
- 3) Which legal systems are used in providing framework for the resolution of labour disputes?
- 4) What should be done to reform conciliation and arbitration practice so as to resolve and finalise disputes effectively?

1.6 JUSTIFICATION OF THE STUDY

This study is justified in the sense that, the knowledge of understanding the process of conciliation, arbitration and ruling as dispute resolution procedures in Zimbabwe is essential for the study as it fills the existing gap in literature so as to help various stakeholders in decision making. It is of great significance to have citizens of a country understanding the labour law as well as to understand the alternative dispute resolution procedures that are effective in promoting justice.

1.7 DELIMITATIONS

Delimitations in research alludes to decisions that the researcher makes for the assessment of the study that are under the control of the researcher. In this regard the study will focus on the Ministry of Public Service, Labour and Social Welfare, Labour Law Firms, Trade Unions and NECs. Delimitation of the research was encountered through three variables namely time frame which was from 2012 -2016 whereby the data was extracted and the research was limited. Due to resource constrains the research was mainly focused in Harare at the head offices of organizations mentioned above.

1.8 LIMITATIONS

Limitations are effects that cannot be controlled by the researcher. They are the influences or circumstances, which are beyond the control of the academic that may pose constraints on the practice and decisions. In this regard, the research anticipates a number of challenges which are the respondents might be unwilling to share information hence it will disadvantage the research, reluctance from the respondents in committing themselves to the research but however the researcher reduced this challenge through making appointments which were flexible to the respondents. Some documents were accessed by the researcher under circumstances that they can be accessed within the offices concerned and not to be relayed around as it is against the principles of the organization. This is very common especially considering the cautious nature of public institutions. Some officials refused to share or disclose information especially statistical reports.

1.9 STRUCTURE OF THE STUDY

The study had been structured and comprised of five Chapters. The first chapter being the introduction of the topic and has highlighted all the details enclosed in the study. The chapter one consisted of the background, problem statement, justification of the research under study, literature review, methodology, research objectives and research questions and sub topics. Chapter two had the literature review, in which the researcher studied and scrutinized other texts and publications by different scholars in light with the study under research. In this chapter the researcher expanded on the already acquired information filling an existing in literature. The third chapter focused on the research and design tools, data collection methods, sampling techniques, data analyses strategies and ethical considerations that the researcher applied in coming up with information that is reflective of what was acquired on the ground, hence helped in clarifying the theoretical correlation of the different variables.

Chapter four covered the presentation of the acquired data, also referred to as the research findings and in-depth analyses of the presented data. In this chapter the researcher used an extensive wide range of visual presentation tools such as bar graphs, histograms, graphs and pie charts that communicate information in statistical equations. Chapter five, provided the

conclusion part as well as the recommendations, as the researcher summed up the study, thus acknowledged all those special individuals who would have participated in the research, either emotionally, financially and academically.

CHAPTER TWO: LITERATURE REVIEW

2.1 INTRODUCTION

This chapter has reviewed literature based on theoretical studies in conjunction with the ADR systems in Zimbabwe. Recent literature revealed that the present legal structures are not supporting in guiding the atmosphere in safeguarding active dispute resolution machinery. There is an agreement amongst the authors in Zimbabwe on Labour law in that the ADR mechanisms needs to be reformed so as to provide a clear legal framework so that it can be effective. However, it remains unclear as to the extent of this lack of effectiveness as there has been a recent amendment of the Labour Act in which a number of authors have not really dealt on a number of issues whereby the research study pursues to fill the gap in literature.

2.2 THEORITICAL FRAMEWORK

The conflict theory which was propounded by Karl Max is very significant in the study as there is always a bone of contention between parties in employment relations. It can be noted that conflicts are inevitable in industrial relations. Mucheche (2014) stipulated that each moment when there are two or more people, disputes are more likely to be encountered. Karl Max (conflict theory) proposed that an individual, collections or groups differ much in the quantities of substantial incomes or resources which generates the division of interests. The dichotomy of interests triggers administrative distinctiveness conflict, which consequently impulses the disgruntled party to procure the services of a third party to resolve such industrial conflicts serving a good purpose especially in maintaining confidentiality and also that justice have been served. ADR is important in industrial relations so as to monitor and enforce the adherence of labour laws by organisations in order to have fair labour practices. ADR was introduced as a way of reviewing the labour court cases which had backlogs through litigation as courts would take years to resolve labour disputes so there was adequate need for the establishment of a special court which is the labour court for review of cases which were rectified by the labour officers under the Ministry of Labour. This is in line with the rules of natural justice which promotes justice for all and is further supported by Mucheche (2013) as he noted that justice delayed is

justice denied. The Zimbabwe Constitution of 2013 Section 65 (1) denotes that every person has the right to fair and safe labour practices and standards.

2.2.1. Radical theory

The radical theory was developed from the Marxist theory. This is supported by Fox (1966), who links the radical theory with the Marxist conflict philosophy. He further propounded that Industrial relations conflicts can not only be regarded as a result of workplace dichotomy but as a manifestation of economic and social division that define the struggle between capital and labour. Rose (2008), highlighted that, this perception is based on the fact that conflict is inherent and unavoidable in capitalist society. Workers are viewed as being on the mercy of the employers as they own the means of production regulating the conduct and compensation of the employees. The role of trade unions is to redress the imbalances between capital and labour. Trade unions stand for the interests and rights of employees at the workplace in terms of bargaining promoting fair labour practice and standards. There are always at loggerheads with the employers and employer organizations depriving rights of the employees specified in their condition of service and participate in the establishments of Collective Bargaining Agreements. Litigation and ADR systems offer the appropriate remedies in regards to industrial disputes ensuring that the rules of natural justice are maintained and respected. This theory is highly relevant to the study as it promotes equality in the workplace with justice being served through the adjudicators or superior authority.

2.2.2. Pluralistic theory in relation to the study

Fox (1966) highlighted that the pluralist theory is based on the recognition that any organization is made up of diverse groups with dissimilar interest which they bring to the workplace. The theory is of the understanding that the diverse groups have different opinions and different in organizations creating an unbearable situation resulting in industrial conflicts. It can be also noted that according to this theory, industrial conflicts are inevitable as there are always on the rise. The reception of the existence of workplace conflicts have made it vibrant for robust techniques to avert and manage conflicts to be put to practice. Labour inspections are conducted by labour officers, designated agents and trade union officers in organizations in order to promote fair labour practice offering advice and ways in ensuring that there is complete

adherence to labour regulations and standards. Budd et al (2004) noted that, the pluralist model is grounded on the prerequisite to balance the contending interests of employers and employees.

Fox (1966) noted that, the pluralist style is of the view that the state to plays an essential role in regulating industrial relations through providing framework for workplace conduct. The Zimbabwe constitution (Amendment No 20) and the Labour Acts provides legal framework on industrial relations. The theory is relevant to the study as the legislation in Zimbabwe provides for resolution of industrial conflict through conciliation, arbitration and ruling which are part of the legal environment in promoting sound employment relations. The involvement of neutral third parties in the resolution of labour disputes is of great significance in managing conflict amongst parties in dispute.

2.3 LITERATURE REVIEW

Globally, various works have been carried out on the issue of ADR in Zimbabwe in enhancing sound employment relations. Previously and recent researched works have managed to bring out the applicability of dispute resolution in Zimbabwe which involved litigation with a critical aspect whereby it led to the establishment of special courts by the government so as to try and curb the problem of backlog of cases through the Ministry of Labour and the Labour Court. Madhuku (2011) noted that judges at the Labour Court have limited jurisdiction in matters work related, as either party can appeal against an arbitral award by way of a manoeuvre delaying delivery of justice to the other party. The Labour legislation in Zimbabwe Act does not clearly stipulate the period disputes are to be finalised resulting in some cases taking over 5 years to be completed. Watadza et al (2016) highlighted the gaps in limits in the period taken, the lack of unequivocal procedures on resolving disputes through conciliation, absence of conclusiveness of arbitral awards for instance shortcomings of the existing lawful arrangement and speed in the process of settling and resolving dispute which is of vital importance in labour relations as justice delayed is equal to justice denied. Duve (2013) noted that the pace at which the arrangement manoeuvres in providing fairness is a principal feature of fairness conveyance and a crucial feature of its strength and effectiveness.

Furthermore, Mahapa (2015) states that the government have through the Arbitration Act (Chapter 7:15), gazetted Arbitral fees with US\$300 as a minimum which normally involves two disputant parties. As alluded above the Conciliator will determine the share of arbitral costs

amongst both parties concerned. However, Mariwo (2008) observed that in cases which involves 'unfair dismissal', the arbitral costs are usually excessive to the appellant who is actually out of employment and seeking reinstatement through this mechanism. He added that the majority end up giving up on the process or opting for the Government Arbitrator where cases takes more than 36 months to be settled. Maitireyi and Duve (2013) noted that the pricing of arbitral costs unfairly favours parties with better financial capacity at the expense of the less economically advantaged. It makes undesirable conditions in which unprincipled party may misuse their monetary gain in intimidating the other party delaying justice in order to squeeze employees financially.

Ferreira (2004) argued the Alternative Dispute Resolution methods tends to arrange for effectiveness in costs, enduring and less hostility tactics to clash administration. It can be noted that it encourages a practical and pleasant employment relations thereby preventing circumstances of labour action and the labour relationship can be encouraged, preserved throughout the ADR procedure as compared to litigation proceedings. Muccheche (2014) argued that, the ADR methods lacks formality procedures as compared to the litigation process making the methods more efficient and pleasing growing accessibility to the resolution of disputes in ADR with protection of privacy to parties.

Kasuso (2015) noted that, the circumstances in which the legislative branch's establishment of specific ADR mechanisms which involve conciliation, arbitration and an autonomous Labour Court, it underprivileged the Labour Court and arbitrator's authorities to administer their awards, determinations and judgements on their own. In practice a party which fruitfully gains an arbitral in its favour is required by the law to approach the Magistrate or High Court to register the award so that it can be effective as a command of a legitimate court. ADR is believed to be time effective in the resolution of disputes but with the framework provided for by the Labour Act cases may take longer periods to be completed or finalised as most courts are piled with high number of cases relating to civil and criminal matters.

Muccheche (2014) highlighted that, the ADR structures endure unjustified mechanisms designed for the bid of fairness rather than the rule of law. The cases are negotiated or decided by means of third parties or conveyed by the conflicting parties themselves centred on doctrines and standings which give the impression of impartiality in the case rather than in consistently

practical legitimate principles. Madhuku (2012) indicated that the figure of Labour Officers in the Ministry of Labour is lesser, and not adequate to cater for all the labour disputes to be rectified through conciliation. This situation has possibilities of hovering misery and lingers to broaden the gap amongst disagreeing parties henceforth limiting the probability of settlement of industrial conflicts under the ADR mechanisms.

Brown et al (1998) indicated that, the way that ADR can't be viewed as a compelling method for characterizing, refining, building up and advancing a legitimate structure as it doesn't set a lawful point of reference. Findings on the method of reasoning of ADR in Zimbabwe is restricted and is basically in view of the hypothetical standards. Be that as it may, explores directed in South Africa are utilized to supplement the Zimbabwean examines. Most authors correspond that ADR is credited for its familiarity, adaptability, speed, classification as they scrutinised the way that ADR projects are intended to supplement the legal framework and can't be a substitute for a formal legal framework. Mucheche (2014) contended that, the ADR process can expand access to equity for social gatherings that are not enough or reasonably served by the legal framework, they can likewise reduce cost and time to determine question and increment disputants' fulfilment with results." While the creators properly contend for ADR programs, Mawire (2009) raised a critical concern. He stated, "What is stressing however is that discretion is ending up noticeably more specialized than at first planned. It is along these lines occupant upon mediators to debilitate this terrible advancement which undermines to crash correspondence in labour matters as well as the truly necessary access to equity." This issue has the likelihood of debilitating the previously mentioned points of interest of discretion as well as placation also. Mucheche (2014) and Madhuku (2012) noticed that contention management systems have ended up being kangaroo courts. The effortlessness and adaptability angle has since vanished with the end goal that ADR in Zimbabwe is presently an extra cost since the cases are as yet separating through to the formal courts.

Azan et al (2005) indicated parallel perspectives as they stipulated that the labour relations offices on conciliation facilities have commonly grown into lacking usually as a result of the lessening of material and non-material resources of labour administration and a deficiency of classification of the processes aimed at resolving labour disputes. The situation leads to the

relevant Labour Courts having final authority in the hierarchy of dispute resolution organisation, being overstrained a number untimely references.

The gap in literature yet to be explored is of the amendment of labour laws to have consistency with the Worldwide Labour Establishments requirements relating to resolution of industrial conflict through conciliation and arbitration in ensuring sound settlement of disputes.

2.4. ALTERNATIVE DISPUTE RESOLUTION (ADR)

The meaning of ADR is the most critical area that authors have agreed upon with the main detectable contrasts being regarding extension however the standards are the same. Various authors recognize that ADR covers both labour and commercial disputes. Armstrong (2009), stipulated that the ADR procedures covers both business and work matters. Madhuku (2012) characterizes ADR as question determination instruments that fill in as other options to the utilization of settling by the standard courts. Different devices of ADR exist in Zimbabwe yet enactment has put emphasis on conciliation and arbitration, in this manner this examination concentrates on the viability of these two types of ADR. Debate determination outside the formal courts is favored for its availability, cost viability, classification, equity and upkeep of heartfelt work relations.

A new Labour legislation was introduced in July 2015 so as to improve the labour relations framework in resolutions of disputes through the new ADR method introduced as Ruling. The Labour Amendment Act of 2015 established a new dispute resolution method by extending the powers of the labour officer and classifying disputes of rights and interests in how they were going to be resolved after conciliation fails. The Labour officer under the Labour Amendment Act is empowered to conciliate disputes of rights he/ she would have attempted to settle through conciliation process. The Act further provides for the Labour Officer to make an affidavit together with a graft order attached and approach the labour Court on behalf of the party the determination is in favor of. The Act is not clear on the review proceedings before the Labour Court judge relating to raising arguments in support of the affidavit wrote by the labour officer concerned. The aim of the study seeks to draw an analysis on the applicability and practice of this amendment sections as not much literature has been put forward. It can therefore be argued that the Zimbabwean Legislation on labour disputes resolution is still shallow as it does not

clearly outline the ultimate procedures and the appropriate time to resolve disputes in a manner that allows for natural justice to be exercised with a neutral third party.

2.6 LABOUR DISPUTE RESOLUTION MECHANISMS IN OTHER COUNTRIES

ADR mechanisms worldwide have picked up affirmation when contrasted with the Ministry of Labour's approach and different authors have given fluctuating ratification to legitimize the autonomous structures. The structures have won the certainty of their clients in view of their freedom, openness and expedient determination of labour query. Different nations have moved toward ADR structures in an unexpected way. Lesotho set up the Directorate of Dispute Prevention and Resolution (DDPR), whilst Swaziland set up the Conciliation and Mediation Commission (CMAC), South Africa set up the Commission on Conciliation, Mediation and Arbitration (CCMA) while in Botswana, Namibia and Zimbabwe the part of mollification and discretion rests with the administration service in charge of labour. Zimbabwe unlike these other countries has not established a commission responsible for ADR.

South Africa

Under the South African labour structures, mediation is classified as an independent procedure from conciliation. ADR in South Africa has not been completely fledged in that there is no mandatory compelling all labour disputes to be administered through the CCMA before being heard at the Labour Court as only a few selected cases go through the CCMA. Bendeman (2015) noticed that South Africa's CCMA body is experiencing backlogs of cases. Furthermore, the refined guidelines are not doing any great to parties as they are regularly punished on procedural issues since when a case reaches the CCMA a ton of irreversible harm would have been finished. From this understanding ADR turns out to be nothing better than the formal court framework. In Zimbabwe, the courts are tormented by uncertain cases and if the Bendeman's perception can be connected to Zimbabwe then the procedure is not compelling or method of reasoning. Similar to the ADR procedure in Zimbabwe, ADR in South Africa has lost its accentuation on minimal effort and in formalisation as advocates can now speak to parties before the CCMA, which acquires high expenses and details. However , the CCMA to some extent is competent and

immediate in resolving labour disputes through the Electronic Case Management System as it tracks every case from date of appointment to date of conclusion providing an completion for each stage. Shumba (2015) indicated that, the institution of the Training and Development Unit (TDU) which is in charge of regular training of CCMA Commissioners has also been acknowledged on the effectiveness of the Commission. Commissioners have been able to administer industrial disputes independently as disputes are dealt with without delays at limited costs.

Different approaches by various authors have given varying evidence to justify the independent structures. The structures have won the confidence of their operators because of their independence, accessibility and speedy resolution of labour disputes. Various countries have approached ADR structures differently. Lesotho established the Directorate of Dispute Prevention and Resolution 16 (DDPR); Swaziland established the Conciliation and Mediation Commission (CMAC); South Africa established the Commission on Conciliation, Mediation and Arbitration (CCMA) while in Botswana, Namibia and Zimbabwe the role of conciliation and arbitration rests with the government ministry responsible for labour.

Swaziland

The Industrial Relations Act provides a legal framework of the resolution of Labour Conflict through processes of conciliation, mediation and arbitration. The dispute resolution model came up with a cost free system under Conciliation, Mediation and Arbitration Commission (CIMAC) which was established under Chapter eight of the Act. Dlamini (2004) noted that the Labour Commissioner's powers were limited to assessing the merits of the dispute and the determination of compliance with the time limits of reporting of a dispute in terms of the Act. The Act provides a framework for the Commission to appoint a commissioner whom shall attempt to resolve the dispute within a period of 21 days with conciliation and mediation. Arbitration under the IRA is not mandatory as it is optional to either party. Dlamini (2004) asserts that there are a high number of cases that remain unresolved after conciliation which has resulted in high volumes of cases awaiting trial at the Industrial Court. The Industrial Court experience a number of backlogs as the court is understaffed by a few judges.

2.7 SUMMARY

The chapter two has taken a gander at the accessible literature connection to conciliation and arbitration practice in Zimbabwe. Authors trace back ADR processes to time of immemorial. The significance of ADR was likewise broke down in connection to the different authors'' remarks and this was trailed by a blueprint of the attributes of ADR which ought to be required to be the measures for its adequacy. Just a couple authors perceive the pitfalls of ADR. Such pitfalls were additionally recognized in Chapter 2. This was trailed by a concise remark on the present condition of ADR as far as its practicality. From the above audit, it can be noticed there is not much literature on the Labour Amendment Act of 2015 with new concepts in ADR and the research seeks to address the new labour legislation in particular reference to ADR mechanisms in the resolution of Industrial conflicts.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

This section comprises of the research methods used in conducting the research study which provides framework in which a research is undertaken. Its main objectives are to identify the methods used in conducting a research. Howell (2013) noted that methods presented in the methodology, characterize the means of information gathering or how a particular result is to be calculated. This chapter focused on a theoretical analysis of all the methods which were applied to the field of study. It also clarified the research design, the selection practice, techniques of information collection and examination, all research mechanisms used as well as ethical considerations which were significant to this study that were to be uphold the in the research. The chapter seeks to explain and make clear to each and every section of the research used in this study.

3.2 Research design

Bhattacharjee (2012) noted that research design is the creation of a plan of the undertakings to take into practice adequately so as to answer the research queries acknowledged in the examination of the study. The research study involves the combination of both qualitative and quantitative data collection as forms of its research design. The use of a qualitative research design will help in answering all the research questions and also to explore reasons, opinions and motivations of the study. Qualitative research design enables development of ideas as well as to unearth people's thoughts which will produce a sound research. Dawson (2002) noted that, the qualitative study discovers approaches, manners and practices with the use of methods such as discussions or interviews. The use of a qualitative research design serves quantifies problems with the use of numerical data.

3.3 Selection of Sample population target

According to (Goehring, C. Perrier, A. Morabia, 2004) sample selection is characterized as the process toward deciding the proper data type and source, and reasonable instruments to collect information. The participants were selected from Ministry of Public Service and Labour Social welfare in the Labour Administration department which is responsible for labour relations, labour law firms, Trade Unions and NECS. Purposive sampling was used in the research because there is need to target a specific segment of staff organisation which are the Labour Officers and Arbitrators in the ministry at Makombe Labour Office and Head office, labour law experts and trade unionists. Purposive sampling is a type of a non-probability sampling and is judgmental. Babbie (1990) noted that, non-probability sample offers an expedient technique for researchers to collect a sample with minimum cost. The sampling methods used saves time and were cost effective hence the reason why one has to put it to practice. 40 respondents participated in the study.

3.4 Methods of data collection

According to Sekaran (2004), data collection methods include interviews, questionnaires and observation methods. Data Collection involves acquiring and measuring of information obtained from a targeted set of variables. Knatterud and Rockhold (1998) highlighted that information assembly is a technique of collecting as well as quantifying data on engrossed variables in a constructed systematic strategy, which at that juncture enables one to respond significant investigations and evaluate results. Various methods were applied during the conduct of the research study so as to come up with a good hypothesis. Bhattacharjee (2012) highlighted that, qualitative scrutiny is the examination of qualitative information for instance writings and information from dialogue records whereas, quantitative information investigation is measurements focused and mostly self-determining of the investigator. Qualitative investigation is comprehensively reliant on the investigator's diagnostic and assimilation expertise and personal understanding of the social setting where information is composed. However, the researcher used a quantifiable research mechanism questionnaire during the research which had closed ended questions which contained all the demographic material combined with open ended questions which enabled the participants to spontaneously respond their opinions.

3.4.1 Questionnaires

Cooper and Emory (1995) characterize questionnaires as a list of questions intended to gather information on a topic from chosen respondents. Gillham (2008) characterized a questionnaire as an exploration instrument comprising of a progression of inquiries and different prompts with the end goal of social occasion data from respondents. A survey consists of thoroughly structured questions intended to attain answers from the respondents. The researcher administered open ended and closed ended questionnaires at the respondents' workstations especially at tea break and lunch which were convenient for the respondents as they would be occupied with rectifying labour disputes. The technique used of involving questionnaires was favoured in the study for the reason that it is cost effective and the respondents had enough time to give their views without disturbances. Questionnaires were dropped at the respondents' offices and collected after two days.

The best advantage of using questionnaires is that they can be directed to an immeasurable number of personalities in that they are cost effective and they don't require much effort as they have consistent answers which are easier to compile data. It can also be highly noted that most respondents are more truthful while answering to the questionnaires with respect to sensitive issues as confidentiality is maintained and anonymous.

3.4.2 Interviews

An interview is conducted by the researcher in acquiring information through direct enquiring with the participants. Crano and Brewer (2008) indicated that, meetings include some type of cooperation between the researcher and the affiliate and this is an essential trademark since it gives the researcher the odds to watch the affiliate's gestures and look for illuminations and more data. Saunders et al (2009) noted that interviews are subjective techniques for information accumulation, as they provide a supplementary understanding of social sensation than would be developed from completely quantitative means such as questionnaires. Conducting interviews was most suitable in the study as it involved direct interaction with the participants which gives room for clarity. Additionally, the respondent's emotional attachment with the theme can likewise be noticed by the researcher henceforth it benefits in the reliability of the data in light of a fact that an investigator can figure out on the biasness of the data accumulated.

The span of interviews on average was 15-20 minutes and were performed on a one-off session. Yin (2009) indicated that there are three noteworthy sorts of research interviews namely unstructured, semi-organized and organized. Organized meetings are, fundamentally, verbally controlled reviews, in which a rundown of foreordained inquiries are asked, with essentially no variety and with no degree for follow-up request to reactions that warrant help elaboration. Britten (1999) highlighted that unstructured meetings are much of the time persevering through a couple of hours and can be difficult to oversee, and to participate in. Semi-organized meetings include a couple key request that describe the territories to be investigated, also allows the examiner or interviewee to veer with a particular ultimate objective to seek after a thought or response in more detail

The researcher utilized semi structured interviews which is a most favoured strategy by numerous professionals since inquiries can be set up early and enables the interviewer to be arranged and seem skilful within the meeting. It additionally allows participants the freedom to express their perspectives in their own terms

3.4.3. GROUP DISCUSSIONS

Group discussions were focused by the researcher and conducted at the Ministry of Labour administration offices. Group discussions are also acknowledged as group interviews; they were conducted to capture data from different respondents at the same time during lunch time hours as some respondents had a busy schedule. Data was collected from Labour law experts, and trade unionists at the same time each giving their views of the administration of labour disputes in government.

3.5 Data analyses

It can be characterized as a procedure of making undertone out of extensive volumes of information and it is displayed or investigated in two structures which are subjective and quantitative. Cresswell et al (2007) noted that, analysis of data is the practice of decreasing bulky volumes of composed information so as to understand them. The study focused on both

qualitative and quantitative data collections. Qualitative data was analyzed by quality checks and manual data processing through putting data into categories. Findings from qualitative data were compared with findings from quantitative data. Since quantitative data is numerical, it will be presented in tables, graphs and charts as the qualitative provide an essay explaining the diagrams.

3.5.1 Content Analysis

Qualitatively, the study used thematic analyses to analyse data, thematic analyses is usually employed as a method of data analyses in qualitative research and it is mainly used in analysing secondary data, for emphasizing the main subjects that transpired in the study. The study incorporated secondary textual data through the interview transcripts, thematic analyses was the prime technique of analysing and deciphering the information. This was accomplished through consistent similar examination procedures which just included taking one bit of information from the respondents and making correlations between them with a specific end goal to create conceptualizations of the possible connection between different extracts of information. The method used enabled invention of information about common forms and subjects in information produced then paralleled each answer using all supplementary diverse answers. This technique aided the investigator to comprehend subjects commencing a different opinion and in other circumstances congruity of participants' responses shaped compromise consequently reaching mutual ends and this vindicated definite simplification.

Quantitatively the researcher used descriptive statistics. Gubba et al (1994) noted that descriptive statistics are statistics that quantitatively portray or outlines components of a collection of data. Descriptive statistics provide basic summaries about the sample and about the observations that have been made. The researcher reduced quantitative information into an account and its understanding, accordingly constructing logic of the information. Vivid statistics provides a vivid calculation of the respondent's perspectives to the research under study. Such synopses, i.e. summary statistics incorporates the three measures of central tendency that the researcher used. Measures of central tendency also called measures of central location, managed to describe the central point of distribution of the respondents. The researcher also managed to use straightforward numbering, diagramming and visual assessment of recurrence or rates of

conduct, occasions, and so on. Utilizing visual investigation of examples after some time to distinguish discontinuities, checked increments and declines in qualities

3.6 Observational Study

Observational study was conducted by the researcher as part of his daily work experience during his industrial attachment within the Ministry of Labour as he would assist in the administration of labour disputes at Marondera Provincial Office. Data was captured first hand by the researcher as it was part of his daily activities at the ministry.

3.7 Ethical considerations

Ethics are principles of lead that show how one ought to act in light of good obligations and ideals. Morals can likewise be characterized as a territory of study managing thoughts regarding what is great and awful in conduct or a conviction of something that is essential. Bryman and Bell (2007) highlighted that, the customary definition of ethics have generally encompassed such jargons as the study of the perfect social charisma or the study of upright responsibility. The researcher completed the examination on the establishment of trust, trusting that the outcomes reported by others are sound, and would be dealt with no bias and ill content, keeping in mind the end goal to safeguard the data gained. The researcher figured out how to secure the genuine consent and interests of every one of the individuals who were included in the study. This was done through showing the morals leeway testament conceded to the analyst by the guarantor University and the information data sheet that contains all the data and contact details of the researcher, in the event that the respondents requires further clarification and illumination. The researcher ensured the respondents that their data would be dealt with as private and classified, by keeping the respondent's obscurity and protection secure, rather than utilizing the member's genuine names the researcher utilized nom de plumes. Respondents were given the privilege to change their recognizable proof numbers to supplant any data that distinguished their names, area and points of interest.

Informed consent

The researcher sought permission to conduct the research from the Ministry of Labour Human Resources director's office in form of an application letter which was processed and approved before the study was carried out. The researcher was given a consent form by the University

which indicated the topic under study and was approved by the department chair person. He always flashed the consent form out before obtaining his data from individuals as well as institutions.

3.7 Chapter summary

This chapter managed to clearly bring to light the investigation pattern, technique, mechanisms and information collection practices applied in this study. It managed to detail the research strategy meant for the study with a diversified methodology of both quantitative and qualitative examination paradigms. It also articulated the reasoning behind the select of paradigm taken. This chapter brought out the research tools that were used to collect data, as well as the ones that were used to analyse the collected data. In collecting data interviews and surveys which incorporate questionnaires were brought into play and the motive behind their use was underlined. Sampling methods and the target population were defined. Analyses were done through close content and context analyses.

CHAPTER 4: PRESENTATION AND ANALYSIS OF DATA

4.1. INTRODUCTION

The section designates an examination of information obtained and trailed by considerations of the research discoveries. The research discoveries are in conjunction with the research questions that directed the study. The chapter entails all the information acquired and compiled during the research from the research question and all the methods that were applied as it gives the presentation and analysis of data. The material presented in this chapter were generally collected from various labour institutions responsible for the administration of labour disputes which involved the Ministry of Public, Service, Labour and Social Welfare, Trade Unions and Labour Law Firms responded to the questionnaires and participated in interviews. Graphs, pie charts and tables were used as part of presenting information collected.

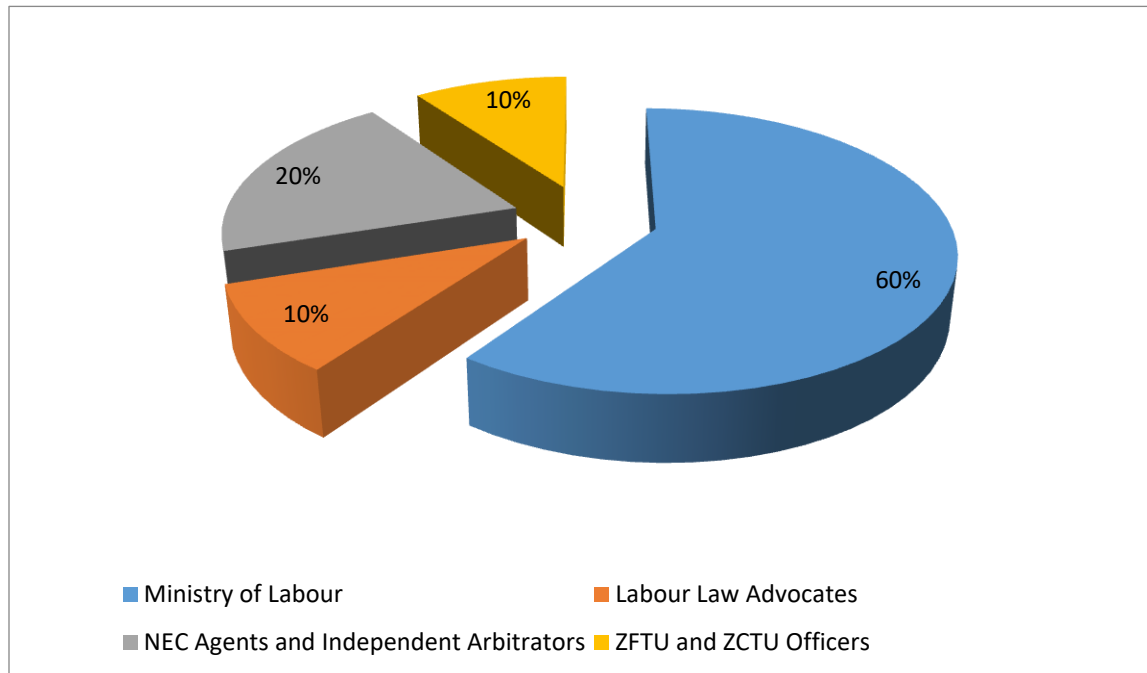
4.2. RESEARCH DISCOVERIES

Overall Characteristics of the Respondents

The sample selected in the survey were those who are directly involved in labour matters in the administration of labour disputes. A sample of 40 participants were selected for the study in which 28 respondents participated with an overview of 60% comprised of Labour Officers and Arbitrators from the Ministry of Labour, whilst 10% were Labour law advocates, from several Labor law firms, 20% comprised of NEC designated agents, arbitrators and independent arbitrators whilst 10 % involved trade union officers from ZFTU and ZCTU. 30 questionnaires were issued and 28 of them were addressed acceptably. 16 surveys were issued to Labour Officers, Arbitrators in the Ministry of Labour, 3 surveys to Labour Law offices, 6 were distributed to NEC Commerce Designated Agents, Arbitrators and Independent Arbitrators. 3 were distributed to Trade Unions.

The information above is displayed in the table beneath, fig 4.0 and table 4.1.

Table 4.0 SAMPLE POPULATION DISTRIBUTION



Source: Field work 2017

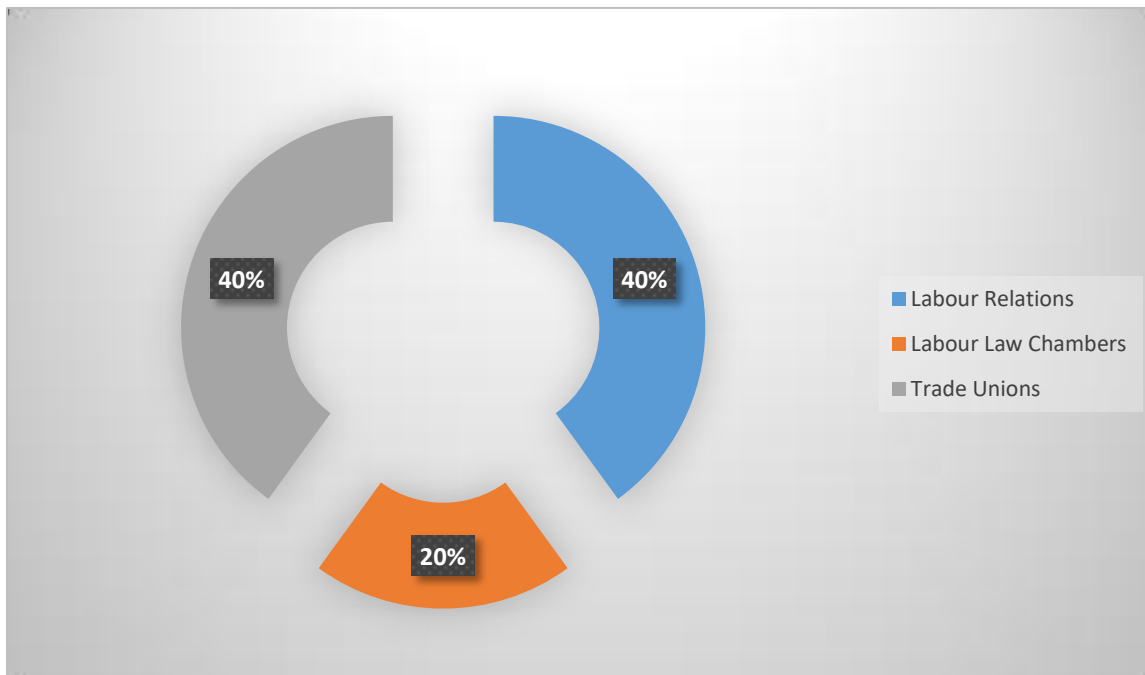
Table. 4.1 QUESTIONNAIRE RESPONSE RATE

Participants	Accessible population	Fully answered	Spoiled	Response rate %
Labour Officers and Arbitrators	16	15	1	93,3%
Labour law Advocates	3	3	0	100%
NEC Designated Agents and Arbitrators	6	5	0	100%
ZFTU, ZCTU Officers	3	2	1	66,7%
Total	30	28	0	93%

10 Interviews sessions were arranged consequently in order to acquire direct information in which 4 interviews were arranged at the Ministry of Labour Head Offices in Harare and Makombe Labour office in the labour relations department. 2 interviews were scheduled for labour law chambers whist 4 other interviews were arranged at Trade Unions head offices. All 4 interviews were conducted at the Labour relations a department respectively giving 100% response, 1 out of 2 interviews was conducted with Labour advocates having a 50% response and 3 out of 4 interviews were conducted with the trade union officers giving 75% response.

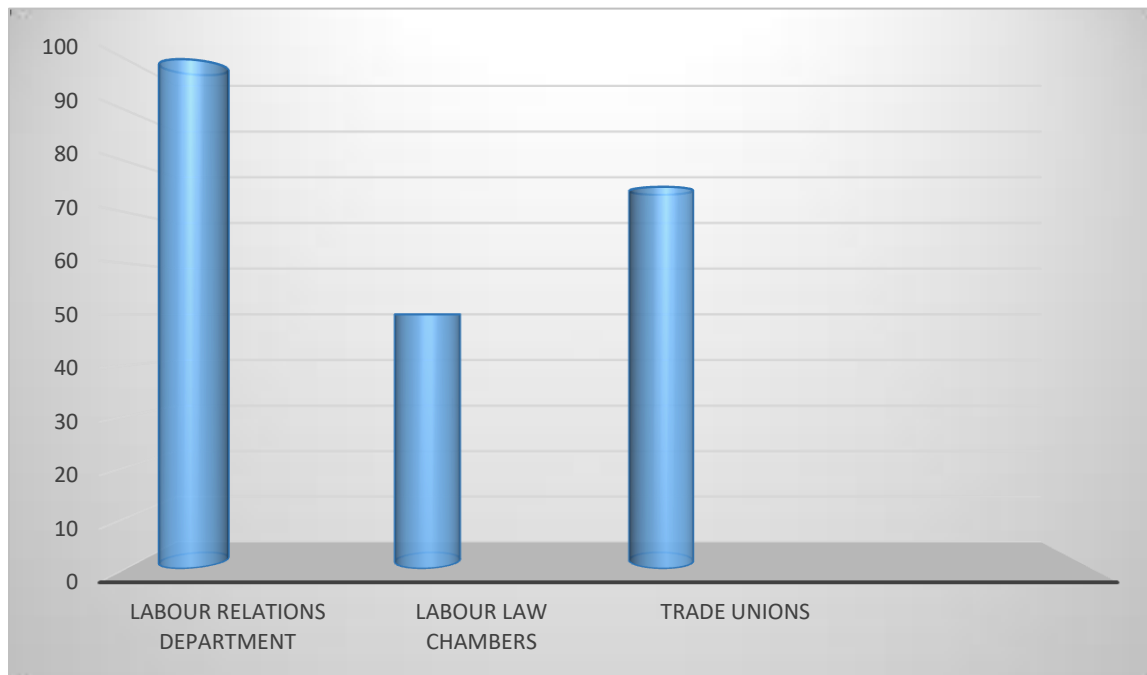
Fig 4.3 below shows the interview schedule distribution and fig 4.4 shows the interviews response rate.

Fig 4.3 Schedules distribution



Source: Fieldwork 2017

Fig 4.4 Interviews respond rate



Source: Fieldwork 2017

Two focus group discussions sessions were arranged with the first one being held at the Matsikidze and Mucheche law chambers and the other one was held at SNV labour consultancy offices. These focus group discussions had a success rate of 100% as they were conducted on time scheduled and respondents were giving positive feedback. The focus group response rate was successful

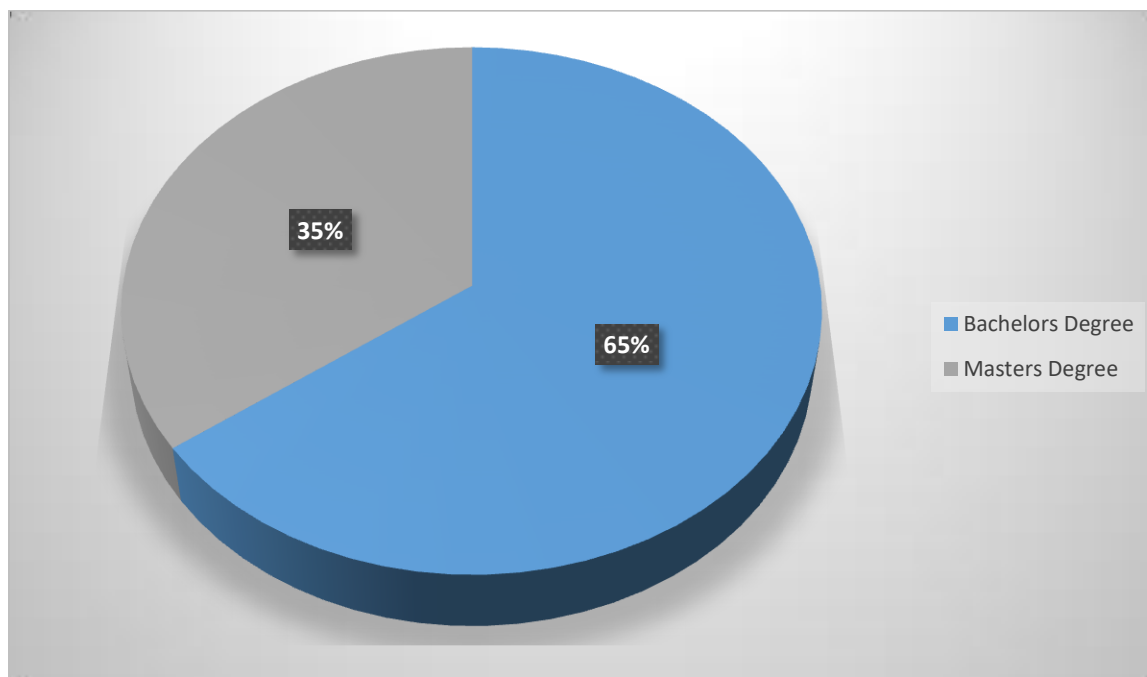
4.5 Demographic composition

The demographic factors that were considered during the research composed of highest qualifications in education and the number of years of experience in handling labour matters in Zimbabwe were critical factors to be considered during the study.

Analysis of the highest qualification Distribution

It was a most critical factor as according to the Arbitration Act it denotes that a minimum qualification of a labour officer, arbitrator or designated agent is a social science degree. Qualifications of education are important as knowledge of the labour laws and dispute resolutions procedures is relevant so as to be able to rectify labour disputes. 65% of the respondents possessed a bachelor's degree from well recognized tertiary institutions whilst 35% had highest qualifications of a masters' degree, with some in a process of attaining masters' degrees.

Fig 4.5.1 below shows the highest educational qualification distribution.



Source: Fieldwork 2017

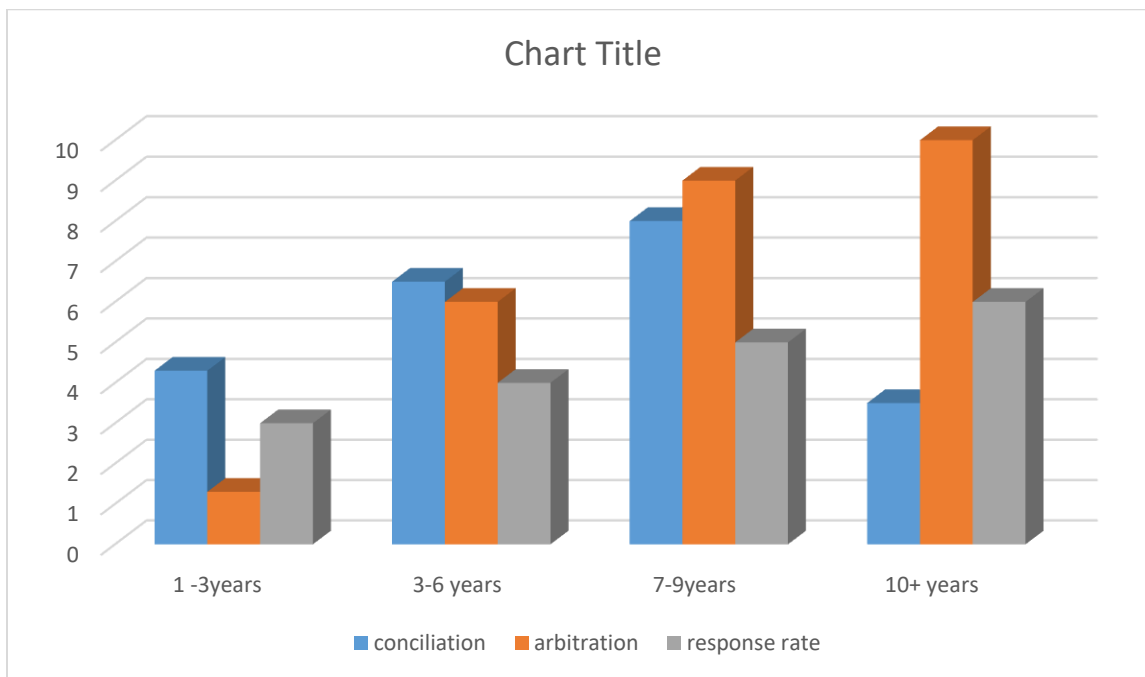
AN EXAMINATION ON THE LEVEL OF EXPERIENCE IN DEALING WITH LABOUR ISSUES

The level of experience in handling labour disputes is very important because for one to be engaged in the administering of labour disputes ought to have experience and exposure in labour matters. Overall, the number of respondents at most did possess a number of relevant years of

experience in dealing with the labour issues, handling conciliation and a lower number of the respondents had minimum experience in arbitration cases.

Fig 4.5.2 below shows the responses of the years of experience in handling conciliation and arbitration cases.

Fig 4.5.2 Level of experience in resolving disputes through conciliation and arbitration



Source: Fieldwork 2017

From the illustration above it can be noted that most labour officers when they assume office have a minimum experience of handling labour disputes through conciliation. According to the Arbitration Act, it stipulates that for someone to be appointed as an arbitrator they out to have served at least two years of industrial relations experience. This entails that by law a labour officer or designated agent can apply or be appointed as an arbitrator after serving two years in the relevant field. From 3years onwards it can be observed that the number of conciliation and arbitration experience tends to increase due to the exposure of handling labour matters.

4.6 QUALITATIVE PRESENTATIONS AND THE ANALYSIS OF DATA

The quantitative files were collected so as to answer the research questions through analyzing, interpreting and presenting data. Survey questions were used so as to answer research questions. Qualitative data was obtained after exploring a number of factors to be considered in the research study which were observed and analyzed. There are going to be discussed below.

4.7. Underlying principles of Conciliation and arbitration practice in Zimbabwe

Conciliation and arbitration proceedings as dispute resolution mechanism have various factors that influence the process mainly accessibility, costs, speed and privacy.

4.7.1. Accessibility

Respondents were asked a question **of how marketable is the labour relations department and its functions in Zimbabwe? Do people have an idea of how to locate your offices so that their grievances can be addressed?**

All responded highly agreed that the labour relations is well known and highly marketable in the country as the Labour Relations deputy director *indicated that labour relations and administration offices are located and accessible to every provinces and districts of the country.*

Discussion

The Ministry of Public Service, Labour and Social welfare is a public institution which is responsible for the administration of labour disputes in the country as the minister has the responsibility of presenting statutes or propose a bill to parliament that provides for effective resolution of disputes promoting sound employment relations. The NEC offices work in conjunction with the ministry as they register with the ministry and administer labour disputes in the private sector, they are found in all sectors of industries. The Ministry as a public institution is there to serve the public whereby services are for free as they offer labour consultations,

advise, rectify disputes and conduct labour inspections in organization monitoring the adherence of labour laws with the employers so as to promote fair labour practice.

The administration of Labour is a dual juncture system in which the Labour Act does not govern employees in the security services whereas the Public Service Regulations Act governs employees in the public service and the Labour Act governs the rest of the public in the private sector together with metropolitan councils, parastatals. Organizations are required by law to allow their employees to register membership to a trade union of their choice in regards to their particular sector whereby employees and employers subscribe union dues. The unions help in relation to representation of employee's rights, promoting fair labour practices and offer representation to their members before adjudicating authority in a particular dispute concerned. NEC offices have jurisdiction on matters involving labour disputes to members that fall under their type of industry who are registered to it. A collective Bargaining agreement (CBA) regulates employment relations for the sector in line with the labour Act.

4.7.2. Speed (Time Frame in resolving disputes)

The speed or reasonable time frame in which conciliation and arbitration process are conducted with matters being resolved and finalized was an important factor which was addressed and analyzed in examining the alternative dispute resolution mechanisms in Zimbabwe.

The respondents were asked, **from the date of the report, how long does it take to resolve a dispute through conciliation?**

Most responded to this highlighting that it takes 14days to 30 days depending on the nature of the dispute. A labour officer at Harare Province indicated that *conciliation sessions should be conducted within a week from the commencement of a report and a labour officer or designated agent attempts to resolve the matter by mediating between the two parties in dispute.*

However, it can be noted that the law does clearly specify the appropriate timeline disputes are to be finalized and as a result labour disputes can take up to 5years to be finalized as ADR relies with formal courts for enforcement of its determinations and awards.

4.7.3. Privacy

Most respondents agreed that the ADR system protects the privacy and confidentiality of parties as the dispute does not involve witnesses and only allowing parties in dispute with their representatives of their choice. A trade union officer at ZFTU indicated that, *ADR protects the privacy and the procedures are confidential as compared to formal court proceedings which allows for other interested parties to attend.* The study revealed that the dispute resolution procedures of conciliation and arbitration with 46% of the selected respondents were strongly agreeable to this while 51% were just agreeable. However, there are cases when parties, especially worker representatives rush to publish cases through the media as a way of making themselves heard and this defeats the whole purpose of privacy. However, it can be argued that although it protects the rights and privacy of parties' representatives like legal practitioners can conduct press conferences notifying the public on how the case is being handled.

4.7.4. Costs

The issue of costs in relation to conciliation and arbitration practice is very essential in the resolution of disputes in Zimbabwe. Most respondents agreed that ADR is cost effective with 80% whilst fewer respondents were of the view that ADR involves higher costs thus 20% of them. A senior Labour Officer at Makombe labour officer indicated that, *conciliation proceedings are cheaper when involving a labour officer as there are no charges same as NEC designated agents as members subscribe membership fees. A government arbitrator is cheaper as there are no costs involved and an independent arbitrator's gazette fees are \$300 which are shared amongst parties in dispute.*

Discussion

It can be agreed that costs of ADR are cheaper when using government officers or NEC arbitrators. It is cost effective but it can also be noted that a number of cases reported at the labour relations department does not match the minimum number of officers there and they are often delays involved which sometimes force parties to engage independent arbitrators.

However, the arbitral costs are higher and bear a burden on low income employees seeking justice and according to the Labour Amendment Act, the ruling procedure has negative impacts on the employee as he is the one who bears the costs at the labour court. It can also be noted that seeking justice is expensive as parties may pay for representatives and the legal costs are much higher.

4.7.5 Expertise of Labour Officers and Arbitrators

The expertise and competencies of labour officers (DA) and arbitrators is a crucial factor to be considered in the administration of labour disputes. Labour officers and arbitrators are holders of bachelor's degrees with most of them attaining masters' degrees. The Ministry of labour seems to be a training ground for NECs due to poor staff retention strategies as most NEC designated agents were former labour officers. The labour Act (chapter 28:01) denotes that for one to be appointed as a labour officer ought to have a minimum qualification of bachelor's degree in social science whereas an arbitrator ought to have the same qualification with at least 2 years of industrial relations experience.

4.8. Conciliation procedures in resolving labour disputes in Zimbabwe.

Section 93 (1) and Section 63 (3a) of the Labour Act empowers the labour officers and Designated Agents in attempting to settle labour disputes referred to them through conciliation within a period of 30 days. The Act also allows them to issue certificates of settlement of the agreement by both parties to settle the matter in good faith. Conciliation as the first stage of dispute resolution, parties are allowed to bring their representatives and present evidence in support of their viva voice facts. Majority of the respondents were in support of the conciliation process which they noted as according to a Chief labour officer he stipulated that, *conciliation is a faster, shorter, less costly method of resolving labour disputes. A number of cases have been successfully been resolved through conciliation hearings as compared to cases resolved through arbitration, which involves a longer process.*

Conciliation can be an effective way of rectifying labour disputes as all parties are given enough time to present their oral evidence through the labour officer / Designated Agent without any interference from the other party. The labour officer or designated agent assists by neutrally mediating offering resolutions or suggested which can be agreed by both parties, if an agreement has been reached a certificate of settlement is issued by the labour officer which is signed by both parties binding their consensus.

However, it is argued that conciliation hearing are not always effective as there are some limitations pertaining settlements of labour disputes. The challenges encountered can be the issue that conciliation process is heavily relied upon the agreement of parties therefore if one disagrees and refuses to settle the dispute, the whole conciliation process fails. It can also be noted that if either party is in default or fails to appear for a conciliation hearing, the matter can be postponed to a certain date whereby the hearing is conducted whilst both parties are present.

The nature of conciliation process in handling disputes upon the disputants can be deemed as not much effective as according to the Labour Act in section 93 indicates that, when the labour officer fails to settle a labour dispute within a period of 30 days he / she issues a no settlement certificated to both parties. The dispute is being referred for compulsory arbitration or parties could come to an understanding of extending the conciliation period through requesting a rehearing thereby delaying the process of resolving a dispute. Another issue to note is that Section 93 (1) also provides for voluntary arbitration as it stipulates that and if parties agree on arbitral costs, they can skip conciliation proceedings and instead go for arbitration whereby they just submit written heads of arguments.

Participation of legal representatives such as legal practitioners may affect the effectiveness of conciliation as the legal practitioners are experienced in debating on issues of law and often bring about technicalities that may hinder the process of conciliation as they would want to express their expertise rather than allowing parties to mutually agree in good faith. More so, to note is the legislative framework in Zimbabwe which is shallow as it does not specify any forcible mechanism for compliance if it so happens to be a breach on the settlement agreement other than reference to arbitration or ruling according to the Labour Amendment Act of 2015.

The labour Acts do not specify the reasonable time frame for conciliation to be finalized as it provides for request for extension by parties.

4.9 Arbitration process in resolving disputes in Zimbabwe

Section 98 empowers an arbitrator to resolve a dispute through compulsory arbitration. During the survey some respondents provided that arbitration is effective in a way as according to the Provincial Administrative officer at Harare Provincial office, he stipulated that *arbitration is a quicker, cheaper method of resolving labour disputes as it involves a third impartial party into the dispute as both parties are given enough time to provide their written submissions to the arbitrator who makes an award which is equal to a labour court order and is to be registered with the magistrates or high court for enforcement.* However, some respondents disagreed as they indicated that arbitration process in Zimbabwe is taking too long to resolve labour disputes as the labour Acts do not specify the reasonable time frame of a dispute to be resolved whereas the enforcement of the arbitral awards takes a litigation route as it is bound to be registered with the Magistrates court or High court.

Discussion

Section 93 (5) a and b of the Labour Act as amended denotes that after the labour officers has issued a certificate of no settlement and upon consultation with the senior labour officer shall refer the dispute to compulsory arbitration if it is a dispute of interest or may refer the matter to voluntary arbitration. Arbitration is effective in a way that if one party is in default and does not submit heads of arguments, the procedures are continued regardless of the default by the other party. Section 98 (7) of the Labour Act provides for the labour officer that after selecting an arbitrator for the dispute he/ she determines the share of arbitration costs amongst both parties. In the event where a labour dispute is resolved by a labour officer under the labour relations department and upon consultation of the senior labour officer will eventually decide on a government arbitrator as arbitration costs are cheaper for both parties.

Arbitration in government service is highly recommended as the services are for free and offices are accessible in all provinces. Voluntary arbitration is effective in a way as parties agree in choosing an arbitrator and share the costs. Section 98 (9) of the Labour Act stipulates the power of an arbitral award as it states that the arbitrator after hearing and determining a disputes he shall have the same powers as the labour court. This entails that the award becomes binding and is to be registered with the magistrate court or High court for enforcement.

However, it is argued that arbitration is not much effective in Zimbabwe, as it requires a long process, which involves registering the award with the Magistrate and High courts for enforcement. The law does not provide for the arbitrators and labour court to enforce their own awards, determinations and judgment. The labour court according to the Labour Act (Chapter 28. 1) is an appeals court and issues of review on the basis of law upon the awards or determinations. Its jurisdictional power is equal to the high court but the labour legal framework provides that the court relies with the High court on the enforcement of its decisions and judgments. This is grossly unreasonable as it delays the process of speedy resolution of disputes by following the litigation route.

The labour Amendment Act of 2015 on section 93 (5) c as amended, it distinguished disputes as it separated the dispute of right and of interest. The disputes of rights are rectified with labour officers invested with powers to make rulings whilst disputes of interests are referred for compulsory arbitration. The new labour legislation seemed to be trying to do away with arbitration as it created confusion on the classification and administration of disputes in the Ministry of Labour as some arbitrators had pending awards. The labour Court after the enactment of the act, rulings which were determined by the labour officers were at a standstill as the speedy legislation implemented had created a difficult situation in the administration of disputes at Labour and NEC offices.

It can be noted that the appeals against an arbitral award to the labour court on the grounds of law prevents an award to be registered with the high court and magistrates' courts. This form of technicality is often applied by employers who would want to frustrate the employee in which the award ruled in favor of by delaying the process of justice as justice which is often delayed is

equally as justice denied. In addition, arbitration lacks legal precedent that could be set as the procedures are less formalized.

The competency of arbitrators can also be considered as a factor hindering the effectiveness of arbitration whereby the Ministry of Labour's set up of provinces and districts in which arbitrators and labour officers share offices as the Ministry is resource constrained. This scenario creates a tense situation for disputes to be resolved effectively. The labour officer may upon consultation with the senior labour officer appoints an arbitrator whom he/ she shares the office with in regards to districts whereby there can be two or one officer at the labour relations office. He/ she becomes an interested part in the disputes as the arbitrator is no longer neutral as he was present when his other officer was conducting conciliation hearing. In cases where there is one officer at the station and is performing both functions, they can be an element of bias in the discharge of his duties. The Ministry has poor staff retention strategies as Labour officers and Arbitrators are lowly paid, they can be tempted to accept bribes which may affect the real outcome of their awards in favor of the other party. Independent arbitrators may be approached by party who have chosen voluntary arbitration to resolve their dispute or may be appointed by either labour officer or Designated agent. They can be tempted to accept bribes as they operate on their own award in favor of the party that has financial advantage at the expense of the other party. This is against the rules of natural justice as they stipulate that every person has a right fair labour practices and standards.

Arbitration in NECs had proven not to be much effective as employees are always at the losing their cases to employers and often complain about the mishandling of their cases at NEC offices. It seems employers pay more subscriptions to the NECs and as private sector they are profit making, so they tend to be bias in their operations of administration of disputes as they show more allegiance to the employers. Most respondents especially trade union officers were raising complaints against the operation of NECs in the failure to resolve disputes on time and often have a lot of abeyance cases as some applicants seeking justice report their cases to the Labour offices when the NECs fail to resolve the disputes within 3 months. A senior labour officer complained as he noted that the NEC Designated Agents were not performing their duties

satisfactorily, we refer cases that are beyond our jurisdiction to them but we end up resolving disputes that they would have not attempted to resolve within three months.

4.10 Ruling proceedings according to the Labour Amendment Act.

The respondents were asked on whether the labour amendment number 5 on the Powers of the labour officers Section 93 (5) c create speedy resolutions of disputes through ruling.

A former labour officer and a Labour consultant at SNV Labour Consultants indicated that the amended powers are contradictory with section 3 as one was supposed to be repelled, the labour officer is empowered to make rulings and attach an affidavit to it and go to the labour court before the judge with it. By so doing makes the labour officer an interested part in the case in dispute as it will be an adjudicator versus respondent as the officer is now the applicant before the judge. It is the duty of advocates to follow cases to court and not labour officers, it is beyond their jurisdictions

Discussion

Section 93 (5) c as amended stipulates that the when a labour officer issues a no settlement certificate and after consultation with a senior officer may make a ruling on the balance of probabilities in that any employer is guilty of unfair labour practice.

Ruling according to the act was introduced to enable speedy resolution of disputes through the powers of the labour officer extended in making determinations. It is argued that the labour legislation is not clear whether it is now abolishing arbitration by replacing it with rulings, which makes the operations of ADR more difficult as disputes have been divided in the way they are handled. A dispute of right is now resolved through ruling and a dispute of interest is resolved through arbitration. It can be noted that a number of disputes that come for rectification at the labour relations offices are disputes of right.

Labour officers do not have relevant experiences in making rulings and the law itself stipulated that they should make an affidavit and attach it to the ruling and come before the Labour court judge. It seems the legislation created an experiment situation to test whether labour officers or

designated agents are able to make rulings as they are bound to come before the judge together with the other party whom the ruling determination was not in favor of. It is also argued that the employee suffers the most in the ruling process as the he / she has bear all the costs of the labour officer for review of the ruling determination since the legislation is not clear on who will bear the costs of the labour officer. It is further argued that, some parties end up quitting the process due to financial constraints. This method is not a shorter route of dispute resolutions as it requires a long process which can take up from 3 months up to a year and justice delayed is equally denied therefore this new method is not effective in resolving disputes.

The ruling determination as according to the labour Advocate at Matsikidze and Mucheche legal chambers remarked that *a ruling if it is not approved by the labour court president judge on the basis of bias, malice or general gross irregularity on the grounds of law it is therefore dismissed or order for rehearing denovo.*

4.11 Challenges to conciliation and arbitration practice in Zimbabwe

There are a number of challenges encountered in regards to conciliation and arbitration processes which affect the effective speedy resolution of disputes in Zimbabwe so as to promote sound employment relations and fair labour practice. These include informality procedures, poor enforcement mechanisms, legislation which is not clear, competency of the authorities, legislative structure.

Informality

The ADR procedures are less formal as compared to court procedures. Lack of formality is a greater challenge for effective resolution of disputes. Informal procedures can have an effect of lack of compliance from the parties called for a hearing by the officer. The negative attitude towards the proceedings affects the procedures as most hearings are conducted in public offices. There is a lack of credibility in the procedures as they are no punishable measures for lack of compliance by the parties as they sometimes refuse to settle the matter in conciliation proceedings arguing that they could file heads of argument for arbitration. This makes the ADR

mechanism not much effective in promoting sound employment relations. Section 63 of the labour Act empowers designated agents and labour officers to conduct labour inspections in organisations so as to encourage fair labour practice but however it seems the inspections lack relevance as there are no enforceable mechanism for lack of compliance by employers to adherence to labour laws.

Poor enforcement mechanisms.

It is also a major challenge to the effectiveness of conciliation and arbitration practice in Zimbabwe. There are established Labour Courts which have equal jurisdictional power as the High Courts but there is too much reliance of magistrates and high courts for enforcement of awards, determinations and judgements. The labour court as the special court for resolution of disputes does not have jurisdiction to enforce its judgements. An arbitral award according to Section 98 (14) of the Labour Act it has to be registered with the appropriate courts such as high court or magistrate court so that when it is registered it can have effect of a civil judgement on the purposes of enforcements. This clearly indicates that the power of the labour officers, arbitrators and labour court is limited in as they need to follow the litigation route of registering with superior courts and it hinders the speedy resolutions of disputes through ADR as they lack jurisdiction to enforce their awards and judgements.

Legislation

The legislation is poor in providing framework for ADR in Zimbabwe as powers for adjudicators in the labour laws are delegated in a give and take situation as the legislation is not much clear on how grievances are to be resolved and finalised in a reasonable period of time. The legislation is not clear particularly the labour amendment act as it distinguished disputes of right and of interests as they are handled separately. It is not clear whether it is trying to abolish the practice of arbitration through the ruling procedure. The classification of disputes is not quite clear and it created a conflicting situation when the Act was implemented affecting the ADR procedures. The Act provided for lower dispute resolution mechanisms through extending the powers of labour officers and designated agents to make rulings without having much relevant experience. This has been experienced with a number of cases spilling into the Labour court for review and determination of the rule as it is mandatory that every ruling determination is subject to review

by the labour court with the labour officer appearing before the judge with an affidavit attached to his determination. The legislation failed to provide for speedy resolution of disputes thereby posing negative effects to the enabling environment for effective administration of disputes through ADR.

There are lack of specific guides in the Labour Acts on how conciliation procedures are supposed to be handled and as a result, all the labour officers administer conciliation procedures in different ways that they consider appropriate as the law did not provide for specific training or stages on how the process should be conducted. It is a major challenge to the effectiveness of conciliation proceedings as the law is not clear on who will serve the letters of notification of a hearing to parties and as a result, the complaint is assigned to serve the other party. Parties may default hearings arguing with technicalities that they were not served with notice as there are no messengers that serve parties with summons and sign upon receipt so that they will acknowledge the notice. The powers of conciliators are not highly specified and stipulated in the Labour Acts and the silence the of the law hinders the conciliation process to be effective.

Resource Constrains

The Zimbabwe economy is stagnant and most businesses are struggling especial the ministry of labour which negatively affects the operations of ADR procedures due to resource constrains. Lack of adequate material resources hinder the operations of resolution of labour disputes. A labour officer at Harare province complained that, *sometimes it is difficult to carry out our operations due to unavailability of material resources which delays our process of handling grievances as at times we would ask our clients to assist in the printing of their awards*. The ministry lacks a relative number of labour officers and arbitrators so as to enable speedy resolution of disputes as the number of them is lower to meet the number of cases piling up in their offices. Shortage of human resources hinders the operations of handling labour disputes as most of the staff in the ministry is moving to NECs due to poor staff retention strategies of the ministry. The NECs also experience a shortage of human resources to meet the demand of labour disputes in the private sector. This is a major drawback to the effective operations of conciliation, arbitration and ruling procedures in Zimbabwe.

The Ministry of labour has no materials resources like stationery, vehicles or money to perform its functions well on conciliation process as it heavily relies on the complainant to make copies

of the complaint form and notification letters when reporting a case. The department has no financial resources to send summons or even awards to parties by post. It is a major shortcoming to the effectiveness of the ADR process.

There is no specific indication on the service of summons/ notification for a hearing to parties

The Zimbabwean labour laws particularly the Labour Act does not stipulate clearly on how letters of notification of a hearing are to be served to parties. This has been a serious challenge towards the effectiveness of conciliation and arbitration practice in Zimbabwe. The Labour administration department does not have messengers who serve notifications to parties and depends deeply on the complainant to serve the other party to come for a hearing is a serious challenge in the administration of labour disputes. According to the information gathered during the study, if the complainant is inadequately resourced to serve the respondent the date of the hearing can be extended until the complainant can afford to serve the other party or the Labour officer may use the office telephones to contact the respondent notifying him/ her to come for a hearing. It is rather not effective as the party may be in default and there is not much that can be done for him to be forced to come for conciliation.

More so, if parties are not in good terms it is difficult for the complainant to serve the other party and is often given a letter by labour officers to seek assistance from the ZRP officials to accompany him/ her to serve the respondent. This usually takes time slowing down the process of resolving disputes as ZRP lacks jurisdiction of labour matters and cannot force the other party to come for a hearing. From the information gathered it had been noted that, in most instances respondents (employers) refuse to be served summons by the claimant (employee) whom they are in dispute with and there are harsh confrontations experienced resulting in physical violence.

Competence of Labour officers, designated agents and Arbitrators

The appointment of labour officers is not much related to expertise as some of them they lack knowledge and how to handle grievances. Appointment of arbitrators is also not linked to expertise as any official with two years in human resources or industrial relations experience can

be appointed by the Minister of Labour. Most respondents indicated that they do not undergo training programs when they assume office but only experience two weeks induction training. The ministry of labour does not offer in-house training for its labour officers when they assume office. Training programs helps to attain relevant skills on handling grievances and without it can be a challenge towards the effectiveness of Alternative Dispute Resolution mechanisms in Zimbabwe. There is no independent body, which registers arbitrators, conciliators and monitors the speedy resolution of disputes and as a result arbitrators end up making shocking awards and parties end up approaching formal courts for assistance. A number of cases end up intensifying at the Labour court due to incompetence of the arbitrators making irrational awards. Chidyausiku (2015) indicated that, the backlogs of cases at the Labour Court is not only the ineffectiveness of the ADR system but also accredited to the incompetence of the judges at the Labour Court as he believed that, better performance of the judges can curb the backlog problem.

Absence of Independent bodies or authority to administer conciliation and arbitration process.

There is no special body established which is independence to monitor conciliation and arbitration process in Zimbabwe. The Labour relations department has a lower number of labour officers and arbitrators in meeting up with the high number of cases reported. There is no independent board of conciliators or arbitrators that is operating freely from the Minister of labour's influence in promoting sound employment relations and speedy resolutions of disputes. This is a major drawback towards effective resolution of disputes.

4.12. DISPUTE SETTLEMENT HIERACHY IN ZIMBABWE

Supreme Court

- Highest court of land
- Appeals on point of law only
- Judgment



Labour Court

- (status of High Court)
- Appeals and Applications for review
- Judgment



Arbitrator

- third party intervention
- hears dispute
- Award



Conciliation

- Conciliates/mediates
- conciliation agreement
- no settlement CERTIFICATE
- refer to arbitrator
- . dispute of right and interest

Source: *Labour Act (Chapter 28.01)*

4.7. SUMMARY

The chapter managed to present and analyzed the research discoveries. Presentations of data had been conducted concerning the response rates of the respondents. The research objectives and questions have been answered and thoroughly administered in the above chapter. The effectiveness of ADR practice in Zimbabwe in relation to conciliation and arbitration practices has been highly examined and presented. The challenges to the effectiveness of conciliation and arbitration practice have been explored whilst labour laws that regulate the administration of Labour disputes had also been examined. The chapter brought to light the drawbacks to the effective resolution of disputes and the practice in Zimbabwe.

CHAPTER FIVE

SUMMARY OF THE RESEARCH DISCOVERIES, CONCLUSIONS AND RECOMMENDATIONS

5.1. INTRODUCTION

After presentation and analysis of the research findings, this section summarizes the key discoveries, conclusions and making recommendations. There are concisely drawn in relation factors to conciliation and arbitration practice in Zimbabwe, the ruling according to the labour amendment act, challenges encountered to the conciliation and arbitration practice. Recommendations centered on the research findings to reform the labour sector in promoting sound employment relations.

5.2. SUMMARY OF THE RESEARCH DISCOVERIES

The research discoveries in relation to conciliation and arbitration practice in Zimbabwe as ADR mechanisms were analyzed and presented. Interviews were conducted giving a 100% response rate whereas questionnaires gave a 93% response rate. Focus group discussions were conducted giving 75% response rate.

5.2.1. Underlying principles to conciliation and Arbitration practice in Zimbabwe

The practice to conciliation and arbitration were examined in relation to access, privacy, speed and costs.

Access to justice

The research study found out that dispute resolution procedures involving conciliation and arbitration practice in the Ministry of labour and NECs provides an enable environment parties as the labour relations offices are located in all the provinces of the country and districts whilst NEC offices are found in every sector of the industries countrywide. Most respondents provided

an affirmative feedback on the accessibility to justice. It allows parties to have representatives and provides an opportunity for consultancy in labour matters so that parties are aware of the procedures.

Privacy

Protection of privacy is upheld and respected in the ADR proceedings as parties in dispute are only allowed in hearings together with their representatives, the study revealed that the dispute resolution procedures of conciliation and arbitration protects the privacy of parties with 80% of the respondents were agreeable. However, it is argued that in some cases privacy may be violated as one party may choose to publish the issue in dispute.

Speed

The speedy resolution of disputes depends upon the nature of case as is speedy resolutions in situation where parties easily agree with one another rather than when there are in conflict. Most respondents agreed that conciliation cases are resolved faster rather cases referred for arbitration as it requires a long process of filing heads of arguments and waiting for an arbitral award to be registered. The speed of ADR is highly affected by its lack of effectiveness as it relies much on formal courts for enforcement of its decisions and determinations.

Costs

Most respondents agreed that ADR cost effective if a dispute is resolved through conciliation answer if it is referred to arbitration through government arbitrators as the service is free. However, it was argued that the independent arbitrators' costs are higher and bore a huge burden on low income employees. Seeking justice is expensive as according to the ruling procedure it seems the employee suffers the most as he/ she bears the costs of the labour officer at the Labour Court.

Examination of the challenges of conciliation and arbitration in resolving industrial disputes in Zimbabwe

Various factors were examined in the study that affect the conciliation and arbitration practice in Zimbabwe namely informality procedures, poor enforcement mechanisms, legislature, resource constrains, competence of labour officers and arbitrators and the involvement of legal practitioners.

Informality procedures can draw a major challenge to ADR as there are no major forceful mechanisms for lack of compliance from the parties and if one party is in default for example in conciliation hearings, the labour officer cannot proceed with the hearing and either sets another date or issues a certificate of settlement and either refer the matter to compulsory arbitration or make a ruling.

Poor enforcement mechanisms are major setback to the procedures of ADR as they rely on other courts for enforcement of their judgments and decisions.

Legislation is poor regarding the framework in relation to speedy resolutions of disputes as the timeframe is shallow and does not specify the reasonable time limit for disputes to be resolved and finalized

Competence of labour officers, designated agents is a very serious issue affecting the effective resolution of disputes through conciliation, arbitration and ruling as they lack adequate training and skills so as to handle grievances efficiently and more effectively.

Involvement of legal practitioners is also another major setback as they often bring about technicalities especially in conciliation and end up affecting the settlement of cases in good faith. The conciliation and arbitration practice in Zimbabwe is weaker with the fact that there are no specific guidelines in relation to the service of summons or notification letters for parties to come for a hearing as the Ministry of Labour or designated agents do not have messengers and often relies on the claimant to serve the other party. It is a major challenge to ADR practice in Zimbabwe and if the respondent is in default nothing can be done.

There are no specific guidelines to the practice of conciliation which is a major drawback as the labour laws do not indicate on how conciliation proceeding should be conducted and it is noted that from the study, labour officers and designated agents try to rectify labour disputes in their own unique way. This has significantly affected ADR procedures as

Training programs are not offered on conciliators and arbitrators when they assume office, they are no independent institutions that are responsible for ADR like for example the body established in Swaziland which is the CCMA

5.3. CONCLUSIONS

From the above remarks, it is concluded that ADR in trying to provide for an effective, speedy resolution of disputes it has managed to be accessible to the public as labour relations offices are located in every province and district of the country. NEC offices are found in every type of industry nationwide. Justice is accessible to all parties as using Government conciliators or the dispute resolution mechanisms are cost effective as parties and there are resolved faster unlike the litigation procedures as cases would take lots of time to be resolved. However, it is important to note that, in as much as ADR may seem to be delivering speedy resolution of disputes it can be argued that the dispute resolution mechanism in Zimbabwe are not effective. Various challenges noted above evidently indicates that the ADR system is weaker in trying to achieve its mandate as it relies on other courts and lacks jurisdiction to enforce its decisions. There are no bodies that regulate the proceedings of ADR. The legislation is poor as it fails to enable speedy resolution of disputes in an effective way as the time limits are not clearly specified and cases take longer than expected to be resolved and finalized. The ADR system needs to be reformed so that it can be effective.

5.4. RECOMMENDATIONS

The ADR system needs to be reformed so that it can be effective and a number of recommendations outlined below if they are upheld and well implemented, can provide an enabling environment for speedy resolution of disputes.

- **Formalize the ADR procedures**

There is need to reform the labour relations sector in regards to conciliation and arbitration so that it can be formalized like any other courts to promote sound employment relations.

- To provide framework for clearly stipulated reasonable time for disputes to be resolved and finalized
- The labour legislation provides for conciliation agreements to have effect equally as arbitral awards and if they happen to be a breach the settlement certificate should be registered be enforced.
- The legislation should provide for framework that empowers the labour relations department, NECs and Labour Court to enforce their judgments, determinations and awards.
- The legislation should abolish the involvement of legal practitioners at conciliation hearings and only allowed in arbitration processes and appeals only as they hinder speedy resolution of disputes through ADR with the use of technicalities
- The Legislation needs to be amended in providing framework service of notification of hearings by either messengers to be employed by Government responsible for that exercise.
- To provide framework for messengers to have power to attach property and execute rulings, awards and judgments.
- To provide framework for rulings to have the same effect as awards so that when they are determined they should be effective like any other judgments of courts and registered for enforced instead of taking a longer route to the Labour Court for Review.
- To provide framework for specified time limits for disputes to be resolved and finalized which is clear.
- To provide clear framework with specific guides on how conciliation proceedings should be conducted so that conciliators can conduct conciliation hearings in an effective and procedural manner.

- The Zimbabwean government should provide framework for arbitral fees to be cheaper or cost effective so as to enable low income workers.
- To provide legal framework which provides that, the Labour Court to be determined as the final court of appeal and only responsible for appeals only and operate independently without any influence from the other external courts.
- The government of Zimbabwe should provide an Independent institution conciliation and arbitration practice responsible for administration of disputes through ADR which registers arbitrators and recruit conciliators. It should have jurisdictional power to enforce its determinations or judgments. It should be responsible for offering training programs for conciliators and arbitrators through issuing certificates of practice. It should remain as a neutral body and be able to discipline conciliators or arbitrators if they abuse office and seize their practicing certificates.
- The institution established should comprise of Labour law experts, advocates with vast knowledge in labour matters.
- The selection criteria of conciliators and arbitrators should be based on merit after passing bar exams on conciliation and arbitration practice and operations should be under strict monitoring by the Institution of conciliation and arbitration.
- The selection criteria of Labour Court judges should be supported with a legal framework which provides for labour law advocates or experts with vast knowledge, experience that is advanced in labour related matters. The framework should also provide for the establishment of a commission thus a panel consisting of 3 superior judges that monitor the operations of the Labour Court judges.
- The legislation of Zimbabwe is to provide a legal framework which tightens screws on the operations of conciliators and arbitrators on their ethical conduct which consist of harsh penalties if one abuses office.

5.5 CONCLUSION

The research study was aimed at drawing an analysis of the effectiveness of conciliation and arbitration practice in Zimbabwe. Chapter one comprised of the historical study, statement of the problem and clearly stipulated the structure of the research with the research questions and objectives. The second chapter reviewed the available literature in relation to the study and managed to explore the existing gap in literature the research study fulfilled. The third chapter composed of various research methods applied in coming up with a robust hypothesis whereby purposive sampling techniques was used with specific targets of the Ministry of Public service, labour and social welfare in the labour relations department, NEC offices in Harare and Trade Unions. Interviews were conducted, questionnaires were administered in which most respondents participated positively and overall response rate was 85%. Chapter four had drew its focus on the analysis of the research findings which were presented as it was observed that, the ADR systems in Zimbabwe are not effective due to number of challenges discussed above which involved poor legislative framework in regards to specific guidelines on conciliation and arbitration practice. The procedures are not effective as they lack enforceable mechanisms and for its operations to be independent from superior courts and political interferences. The final chapter came up with the summary of the findings, conclusions and recommendations which were clearly stipulated so as to provide a guiding principle on how the labour legislations are supposed to be amended so as to enable an environment which promote sound employment relations and speedy resolution of disputes.

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APPENDIX A: QUESTIONNAIRE

MIDLANDS STATE UNIVERSITY



FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF SCIENCE IN POLITICS AND PUBLIC MANAGEMENT

My name is Tapiwa V. Mudoni currently studying BSc Honours in Politics and Public management at the Midlands State University .I am conducting a research titled: **An analysis of the effectiveness of conciliation and arbitration as labour dispute resolution mechanisms in Zimbabwe.**

May you kindly respond to the questions below, please note that information provided will be confidential and used only for academic purposes?

Kindly tick the column that corresponds

Section One

Personal Information

1. Gender?

a) Male

b) Female

2. What is your Highest Level of Education?

a) Diploma

b) 1st Degree

c) Master's Degree

3. Do you know the overall objective of the conciliation and Arbitration process?

Yes

No

Section B

Designation:

Years of Service

1) How long does it take to resolve a labour dispute?

2) From the date of report, how long does it take for conciliation to take place?

.....

3) How long does it take you to process and finalize an arbitral award?

.....

4) How long does it take for the ruling determination to be reviewed by the Labour Court?

.....

5) What happens to the ruling if it is not approved by the Labour Court?

.....

.....

6) How many awards have you finalized last year?

7) How many cases have you finalized in the last 6 months?

8) How many are still pending or incomplete?

9) Do you have any backlog cases?

10) And if so, how many do you have.....

11) Do you undergo training programs when you assume office?

12) How long are the training programs

13) How effective are labour inspections in avoiding labour disputes?

.....

14) Is there compliance with the employers?

15) Are there any enforceable measures you can take for noncompliance?

.....

16) In your own opinion, what do you think should be done to reform the ADR system in Zimbabwe?

.....

.....

Thank you for your support and cooperation.

APPENDIX B: INTERVIEW CHECKLIST

MIDLANDS STATE UNIVERSITY



FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF SCIENCE IN POLITICS AND PUBLIC MANAGEMENT

My name is Tapiwa V. Mudoni currently studying **BSc Honors in Politics and Public management** at the Midlands State University .I am conducting a research titled: **An analysis of the effectiveness of conciliation and arbitration as labour disputes resolution mechanisms in Zimbabwe**. May you kindly respond to the questions below, please note that information provided will be confidential and used only for academic purposes?

1. Do you think conciliation is an effective method of resolving industrial disputes?
2. In your own opinion, what is the cause of rampant pending cases in the Labour court?
3. Is the arbitration Procedure cost effective?
4. How accessible are Labour Relations offices or NECs to the majority of the citizens in Zimbabwe?
5. Does the current legal framework provide for speedy resolutions of disputes?
6. How effective is the Ruling procedure in resolving labour conflicts in Zimbabwe
7. Who pays the costs of the labour officer for the Review of the ruling determination at the Labour Court?
8. What changes would you want to see in the ADR process in Zimbabwe?

THANK YOU FOR YOUR TIME

APPENDIX C.TURNIT IN REPORT

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