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**Master's Thesis of International Studies
(International Commerce Studies)**

**An Assessment of (ADR) (Alternative
Dispute Resolution) and Litigation as a
tool for Promoting Private Sector
Development and Limiting
Unemployment
A case for Zimbabwe.**

August 2021

Development Cooperation Policy Program

Graduate School of International Studies

Seoul National University

Simon Willie

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A case for Zimbabwe.

A Thesis presented

By

Simon Willie

A dissertation submitted in partial fulfillment

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AN ASSESSMENT OF ADR (Alternative
Dispute Resolution) AND LITIGATION AS A
TOOL FOR PROMOTING PRIVATE
SECTOR DEVELOPMENT AND LIMITING
UNEMPLOYMENT.
A CASE FOR ZIMBABWE.

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ABSTRACT

An Assessment Of ADR (Alternative Dispute Resolution) and Litigation as a tool for Promoting Private Sector Development and Limiting Unemployment.

A case for Zimbabwe.

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International Commerce Studies
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Seoul National University

In today's business environment, conflict in the workplace is unavoidable. Disputes are part of the business, in consumers and retailers, producers and suppliers, managers and workers, or business and Government and at most at international relations where conflict get in the way of economies and production. To learn from our International relations, States are consistently involved in conflict and economies undergo a negative

growth. A mirror review of such conflicts also happens in industrial relations where players such as Government, Labour, and Business conflict. Conflict is inevitable when the interest of different parties collide. Different parties in industrial relations namely Government, Labour, and Business often engage to manage conflict for the sake of production and the economy. This study, while largely positioned within reforming the labor market policy deliberation, it is also specifically focused on one aspect of the labor regulatory management, “the Dispute Resolution System”.

In general, the debate and comparison of ADR and Litigation have been analyzed quite comprehensively, but we do not know much about whether these can be used as tools by Businesses and Government for competitive advantage and unemployment reduction. Therefore, this article sought to fill in that void. However, first, we advanced the understanding of the comparative assessment of what ADR and Litigation are all about. Secondly, we explored the linkages between dispute resolution and Business development and unemployment. Then finally analyzed the nature of their effectiveness and efficiency as well as their effectiveness and efficiency as a tool for business development and reducing unemployment with a specific focus on Zimbabwe.

The specific focus was on Zimbabwe because there has been a paradigm shift from ADR to litigation and currently, there is a bill to revert to ADR. There are muddles and debates as to which approach to take whether ADR or Litigation as the best policy for business. Hence this study sought to analyze Litigation and ADR, and seek to understand the effectiveness and efficiency of the two. After that, a recommendation on the best

approach to the Government for policy adoption was provided for the benefits of the development of the private sector and to alleviate unemployment. Above all, the study empirically verified the correlation between dispute resolution with business development and unemployment. In this regard, ADR and Litigation were used as null and alternative independent variables respectively to assess whether they can be a competitive tool for private sector development and reduce unemployment. To carry out this analysis, the mixed method of research was used to gather information from experts within the Government and private sector. The qualitative analysis was used to review ADR and litigation. Descriptive statistics, followed by, Chi-square, Correlational, and T-tests were used to analyze our data and test for statistical significance. It was expected that the ADR approach is better than litigation in resolving disputes and as a competitive tool for private sector development and a way of reducing unemployment.

This study is for Managers, Employees, Government, Labor bodies who look for better ways of handling conflict for the benefits of the business.

Keywords:

- Litigation: is the process of settling a dispute in a court of law.
- **ADR-** Alternative Dispute Resolution
 - Is a process of settling disputes without using litigation, the process includes arbitration, mediation, conciliation, or negotiation.
- Arbitration – this is a process similar to a formal hearing but has flexibility and includes some informal aspects, an impartial third party hears each side of a dispute

and gives a determination; it's up to the parties to make that determination legally enforceable or not.

- Arbitrator - An impartial person officially appointed to settle a dispute by according each part a right to be heard.
- Hearing - A proceeding before a third party who affords each disputant to make their arguments and evidence before a settlement is reached.

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국문 초록

현재 비즈니스계에는 직장에서 갈등을 피할 수 없다는 것이 사실이다. 분쟁은 비즈니스, 소비자 및 소매 업체, 생산자 및 공급 업체, 관리자 및 근로자, 비즈니스 및 정부의 일부이며, 그리고 그 중에 갈등이 경제와 생산을 방해하는 국제 관계에는 많다. 우리의 국제 관계에서 배우기 위해 국가는 지속적으로 분쟁에 관여하고 있으며, 경제는 마이너스 성장을 겪는 상황이다. 이러한 갈등에 대한 검토는 정부, 노동 및 기업과 같은 주체가 충돌하는 노사 관계에서도 자주 발생한다. 서로 다른 당사자의 이해가 충돌할 때 갈등은 불가피하다. 노사 관계의 다른 당사자, 즉 정부, 노동, 대기업은 종종 생산과 경제를 위해 갈등을 관리하기 위해 참여한다. 본 연구는 주로 노동 시장 정책 심의 개혁에 자리를 잡았지만, 노동 규제 관리의 한 측면인 “분쟁 해결 제도”에도 초점을 맞추고 있다.

일반적으로 살펴봤을 때 “ADR” (영어: Alternative Dispute Resolution, 한국어: 대체적 분쟁 해결)과 소송에 대한 논쟁과 비교는 상당히 포괄적으로 분석되었지만, 기업과 정부가 경쟁 우위와 실업 감소를 위한 도구로 사용할 수 있는지에

대해서는 충분히 알지 못한다. 따라서 이 연구는 그 공허함을 채우기 위해 진행되었다. 그러나, 먼저 “ADR” 및 소송이 무엇인지에 대한 비교 평가에 대한 이해를 높였다. 그다음, 우리는 분쟁 해결과 사업 개발 및 실업 간의 연관성을 조사했다. 마지막으로 짐바브웨에 초점을 맞춰 사업 개발 및 실업 감소를 위한 도구로서의 결과와 효율성뿐만 아니라 결과와 효율성의 본질을 분석했다.

“ADR”에서 소송으로의 패러다임 전환이 있었고, 현재 “ADR”로 되돌리는 법안이 존재하기 때문에 구체적인 초점은 짐바브웨였다. “ADR” 또는 소송을 비즈니스를 위한 최선의 정책으로 취하는 접근 방식에 대해 혼란과 논쟁이 있다. 따라서 이 연구는 소송과 “ADR”을 분석하고 둘의 효과와 효율성을 이해하고자 했다. 그 후 민간 부문 발전의 이익과 실업 완화를 위해 정책 채택을 위한 정부에 대한 최선의 접근 방식에 대한 권고가 제공되었다. 무엇보다 이 연구는 분쟁 해결과 사업 개발, 실업과의 상관관계를 실증적으로 검증했다. 이와 관련하여 “ADR”과 소송은 민간 부문 개발을 위한 경쟁력이 있는 도구가 될 수 있고 실업률을 감소시킬 수 있는지를 평가하기 위해 각각 영 및 대안 독립 변수로 사용되었다. 이 분석을 수행하기 위해 혼합된 연구 방법을 사용하여 정부 및 민간

부문의 전문가로부터 정보를 수집했다. 질적 분석은 “ADR” 및 소송을 검토하는 데 활용되었다. 기술 통계에 이어 카이 제곱, 상관관계 및 T-테스트가 데이터를 분석하고 통계적 유의성을 확인하는 데 활용되었다. “ADR” 접근법은 분쟁 해결에 있어서 소송보다 낮고 민간 부문 개발을 위한 경쟁 도구이자, 실업률을 줄이는 방법으로 기대되었다.

이 연구는 비즈니스의 이익을 위해 갈등을 해결하는 더 나은 방법을 찾는 운영자, 직원, 정부, 노동 기관을 대상으로 진행되었다.

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CHAPTER ONE:

1.1 Introduction

In today's business environment, conflict in the workplace is unavoidable. Disputes are part of the business, in consumers and retailers, producers and suppliers, managers and workers, or business and Government. Conflict is inescapable whenever the interest of different parties collide. To resolve the conflict there is a need to recognize that it exists and therefore institutionalize it to make conflict an integral part of organizational life. If not handled well, disputes in the workplace can become a difficult matter entrenched in the organizations, having damaging effects on the employee's physical, mental, and emotional welfare growing big, thus harming the mission and goals of an organization. However, Organizations can take advantage of conflict, as it yields innovation, motivation, productivity, and creativity. Reducing the number of disputes increases productivity therefore the business is less likely to have unfair dismissal claims, violations of rights, or other grievances. Any received grievances can be resolved swiftly and more effectively but the dispute-related absenteeism rate increases when these disputes are not handled well. This can harm the business competitiveness and efficiency as well as negatively affect the country's unemployment levels.

If we have recognized and institutionalized conflict, where does challenge lie? The challenge lies in managing these disputes so that they don't hinder development, or worse, destroy the capacity to achieve business and Government goals. The private

sector and the Government need to proactively engage disputes before they worsen if the organizations are to stay strong and on track and deliver their objectives.

While this study is mainly positioned within improving the Labor Market Policy discussion, this study is mainly focused on the Labor Regulatory Management, “the Dispute Resolution System”.

In general, the debate and comparison of ADR and Litigation have been analyzed quite comprehensively, but we do not know much about whether these can be used as tools by businesses and government for competitive advantage and unemployment reduction. Therefore, in this article, we seek to fill in that void and analyze that precisely. However, first, we will advance the understanding of the comparative assessment of ADR and Litigation. Second, explore the linkages between dispute resolution and Business development and unemployment. Then finally analyze the nature of their effectiveness and efficiency as well as their effectiveness and efficiency as a tool in business development and for reducing unemployment with a specific focus on Zimbabwe.

1.2 HOW HAS ZIMBABWE’S INDUSTRIAL RELATIONS DISPUTE RESOLUTION SYSTEM BEEN MANAGED?

There is no doubt that Labour Policy is one of the pillars that influence investors to invest in any country and shapes the business climate. The Government of Zimbabwe saw that the labor policy was restrictive to the business environment. Hence the need to reform the labor policy. As part of the labor reform policy in Zimbabwe, the Government tried

to create an enabling environment for private businesses to thrive and saw it fit to move from ADR to Litigation in all efforts to stimulate economic growth and reduce poverty.

There was a paradigm shift from ADR to Litigation and currently, there is a bill to revert to ADR. There are muddles and debates as to which approach to adopt whether ADR or Litigation as the best policy for business. Hence this study seeks to analyze Litigation and ADR and seek to understand the effectiveness and efficiency of the two. After that, recommend the best approach to the Government for policy adoption which will lead to the development of the private sector to alleviate unemployment. Above all, the study intends to empirically verify the correlation between dispute resolution with business development and unemployment.

What is the correlation between Dispute Resolution and Private sector development and unemployment? There are so many leading theories outlining the relationship between Dispute resolution and Business development and unemployment. More on these theories are discussed in the later section on the theoretical framework.

However, generally, it is known that Collective Job Action does happen in any industry. Whether lawful or unlawful, mostly it's unlawful. When there is unlawful collective job action, Disciplinary procedures commence, and likely employees are dismissed from employment in groups and this drastically adds to unemployment figures, therefore signaling a strong correlation between Industrial relations disputes and unemployment. This brings us back to the point of managing conflict before it escalates to that level of

dismissal. It is, therefore, vital that Government, Business, and Labour come up with an effective dispute resolution mechanism, and by so doing they demonstrate a commitment to employees and investors thereby foster their trust and loyalty. Employees, on the other hand, become accountable for their actions.

The strategy a country/business employs in Dispute resolution has a bearing in achieving a competitive advantage for development. This correlation can be diagnosed from examples from large corporations, financial institutions, and smaller business entities through industrial harmony and the type of qualified skill/experience an organization retain and attracts.

If the private sector is to implement dispute resolution on their own, at their initiative, and try to present it as a competitive edge to retain skilled and experienced personnel, this will motivate the employees and further attract skilled and educated labor. This industrial harmony as a result of institutionalized conflict resolution will be noticed by the labor market and therefore it is possible to obtain a specific range of competitive advantage.

Dispute resolution can be attained through the use of ADR or Litigation. This will form part of this study as to which one is best for business and Government, in business development, and reducing unemployment. This paper will begin with a broad overview of the dispute resolution system in Zimbabwe. Chapter two will outline the literature review and explain the gap found. Then later introduces the comparative analysis from the previous authors' and researchers' findings on the best and efficient dispute resolution system between ADR and Litigation. Chapter three outlines the methodology

of the study which is based on the mixed approach. Chapter four introduces the data and discusses the findings from the data to understand how each system is driven to perform efficiently and overall outlining its drivers to efficiency. Then compare which one amongst the two is suitable and efficient for policy adoption in Zimbabwe. Chapter five discusses the findings and finally, chapter six draws conclusions and policy recommendations.

This study is for Government, Business, Labour Unions, managers, employees, who look for better ways of handling conflict for the benefits of the business and Government. Hope that others will also find it useful.

1.3 PURPOSE OF THE RESEARCH.

This paper analyzes ADR and Litigation and further assess which tool is competitive for private sector development to reduce unemployment. Thereafter, recommend a policy to the Government for adoption on the resolution of disputes for the labor market.

1.4 WHY FOCUS ON PRIVATE SECTOR DEVELOPMENT?

The private sector is the backbone that drives economic growth and prosperity- it creates employment, increases trade, also provides access to goods and services to the wider population, and creating tax revenue for the state to fund basic public services such as health and education amongst other critical needs.

Zimbabwe has a dualistic labor law system. One which governs the Public sector employees and the other the private sector. The Provisions of the alternative dispute resolution system are available to the Private sector employees only. Thus the public sector employees do not get to enjoy the privileges which come with ADR. Thus the

focus of this study when analyzing the effectiveness and efficiency of the dispute resolution system has to focus on the private sector.

1.4 BACKGROUND/ MOTIVATION

A brief synopsis of Zimbabwe's labor Dispute Resolution System indicates that from 1980 to 1985 Zimbabwe administered the Industrial Conciliation Act which was a piece of legislation inherited from the colonial period. The Industrial Court was responsible for resolving labor disputes as governed by the Act. It was entirely focused on "Litigation" as the Act was silent on the Alternative Dispute Resolution systems. The Zimbabwean Government then enacted the Minimum Wages Act and the Employment Act but it seemed that these two pieces of legislation could not adequately deal with rising disputes and at the same time provide for Private Sector Development. These new pieces of legislation were heavily reliant on Litigation. In 1985 -1992 came into force a new form of legislation that tried to redress imbalances of the previously adopted colonial legislation by enacting the Labour Relations Act of 1985.

The Labour Relations Act of 1985, introduced a new form of settling dispute i.e. the Alternative Dispute Resolution (ADR) but was mainly focused on conciliation. The new legislation was amended throughout the years as it sought to align its Labour Dispute Resolution methods to the ILO (International Labour Organisation) conventions which Zimbabwe had ratified. The Government in 1992 amended the labor Relations Act in which Conciliation, Mediation, Adjudication, and Arbitration were methods of Labour

Disputes Resolution. This was a paradigm shift from Litigation focused system of settling labor disputes to ADR.

A quick turn of events happened in 2015 when the Government introduced the Labour Amendment Act of 2015 which stipulated a new method of dispute resolution, i.e. Ruling. The Amendment stripped the powers of labor officers. it suggested that where parties fail to settle the matter, the labor officer is empowered to make a ruling, and that ruling immediately proceeds to Labour court where it will be confirmed with or without amendments, without reference to Arbitration.

1.5.WHY RESEARCHER HAS CHOSEN ZIMBABWE AS COUNTRY OF ANALYSIS

One of the reasons why the researcher chose Zimbabwe as the unit of analysis has been explained in the introduction and motivation background. To add to that reason, it has to do with the fact that ADR and Litigation are domestic rather than an international method of dispute resolution which makes them work effectively on enforcement. The two systems of dispute resolution are affected by issues to do with Jurisdiction, service process, evidence, recognition, and enforcement on the international stage.

Disputants who seek a method of resolving disputes through third-party have the option between Litigation and ADR. In the International framework, such an option is not there because there are no international public courts compared to the national level that handles industrial Relations Disputes. Therefore, the choice for international employees who are contracted to work for foreign firms or foreign employees is between recourse to national court (national court i.e. Litigation) and resource to ADR techniques.

1.6. THE STRUCTURE OF DISPUTE RESOLUTION IN ZIMBABWE

To understand better the structure, the researcher will look briefly at pre-and post-independence Zimbabwe. The pre-independence period had a piece of legislation called the Master-and –Servant Act (MSA) of 1901. According to (Cheater, 1991) this legislation did not provide for the parties industrial settlement of disputes- its sole purpose was to thwart any freedoms and independence of the working class.

The industrial conciliation Act of 1934 introduced Arbitration to deal with labor disputes but it was never applied throughout the colonial period, as (Gwisai, 2006) noted. Further reforms in the industry were done, the Industrial Conciliation Act of 1945, was aimed more at controlling employment matters. (Cheater, 1991) notes that the state's view of Industrial conflict required a system of bureaucratized adjudication- and maintained that negotiations and outcomes were in the hands of the disputants' parties- although it was the state's responsibility to make sure that the environment was stable and conducive for business.

According to (Pharaoh Maitireyi 2011/3) The Industrial Conciliation Act structure of industrial conflict resolutions had bureaucratized procedures in the form of industrial Tribunals, Industrial Councils, and council Boards. The representation of these bodies embraced both Labour and Capital. But the arbitration and conciliation outcomes favored employers mostly.

POST-INDEPENDENCE ZIMBABWE- the labor relations system was politicized to correct the imbalance and unequal power in the dispute resolution process. In the labor relations act of 1985, collective job actions were mainly settled through arbitration. Dispute resolution was designated to the state only- labor officers and industrial boards were empowered to settle disputes through conciliation and Arbitration. Their decisions reflected the economic and political interests of the state. Later on, the labor officers' powers were limited by the promulgation of the LRA amendments of 2003 and 2005 which emphasized arbitration and conciliation. State control was now limited and gave the power to the industry players to settle the disputes as labor officers were reduced to only conciliators without the final decision on a matter.

The Labour Act of 1995 shaped and saw the growth of institutions and procedures for dispute resolution, these institutions comprise the Ministry of Labour which has the power to license National Employment Councils, this institution has the power to perform dispute resolutions through its Designated Agents (who have been given the same power as the Labour Officer) and also registers code of conduct which empowers shop floor dispute resolution, Trade Unions, Workers committees and works councils. The Labour Act of 1995 also created the Retrenchment Boards to be the process arbiter on retrenchment disputes and finally the Labour Court the specialized court to handle labor disputes.

The National Employment Councils are specialized based on the industry of trade and where there isn't a National Employment Council the Ministry of Labour has jurisdiction. Figure 1. Illustrates the structure of dispute resolution in Zimbabwe. If there is a

deadlock at the organizational level, the matter is then referred to a respective institution with jurisdiction, either the National Employment council or the Ministry of Labour for conciliation. The process of settling disputes takes into account the type of dispute at hand, either the dispute of Right or the Dispute of Interest. The classification is important because it takes into account whether the matter goes through Arbitration or adjudication which has predominantly taken the litigious route. Disputes of right go through adjudication while disputes of interest go through Arbitration. Determination of disputes of rights through adjudication is done by the Labour Officer/DA and the Labour Court. While disputes of interest have to go for Arbitration. In all cases, the disputes have to pass through conciliation before they can be processed for either arbitration or Litigation.

If disputes of rights are not resolved through conciliation the Labour officer/DA rules on the matter which the labor court will confirm with or without amendments after appearing before the Judge. If disputes of interest are not resolved at the conciliation level then the matter is referred for arbitration for resolution.

Retrenchment disputes normally are processed by the Retrenchment Board and Labour Court then normally takes the form of litigation once they reach the labor court.

Arbitration involves settling disputes through a third party who is also impartial, however unlike conciliation where the neutral party assists in finding a settlement but has no powers to determine, the arbitrator has the authority to make a final binding resolution to settle the dispute. The matter can only be appealed on a question of law.

Adjudication, on the other hand, involves the legal process of settling disputes through litigation.

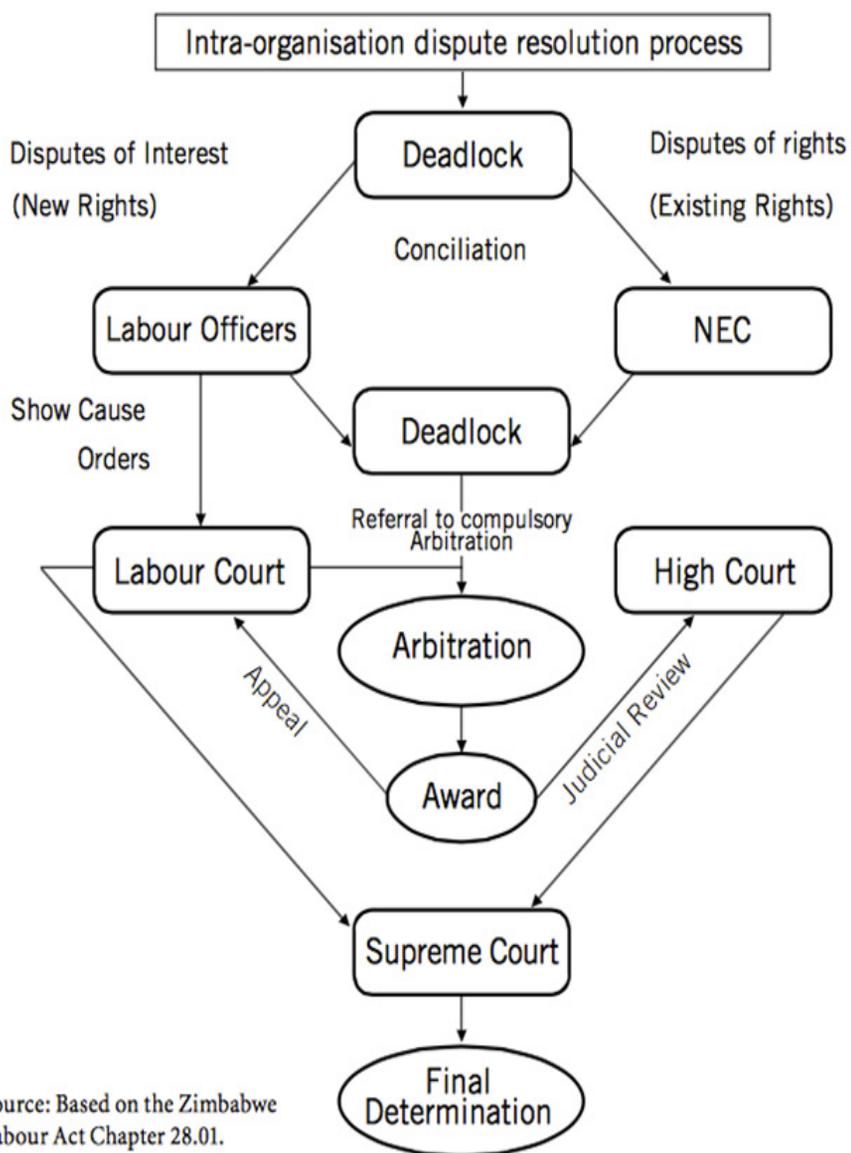
1.7 PROBLEMS WITH THIS SYSTEM

The law does not make a clear division between "conciliation", "mediation" and "negotiation" and uses the expressions similarly. It gives a labor officer the option of whether to conciliate, mediate, or negotiate. A labor officer could view these three processes as one process.

Disputants often abused and manipulated the arbitration system under the previous regulation. (Gwisai, 2006) noted that the LRA created conditions for disputants to appeal any award on frivolous grounds thus failing to settle at ADR levels but the Litigation stage. This appeal was meant to buy time and avoid culpability.

The structure made ADR weak as a dispute resolution mechanism, as most cases were appealed and ended up at courts for litigation. As a result, the labor court was congested defeating the idea of why ADR was created, to begin with. The ADR system's objective was to bring finality and binding resolution to labor disputes without litigation.

Figure 1: The structure of dispute resolution in Zimbabwe



1.8 A BRIEF SYNOPSIS OF LABOUR DISPUTE RESOLUTION INSTITUTIONS

1. Ministry of Labour Administration

This institution is the arm of the Government, wholly funded by the State. Its primary function in the dispute resolution system is to Conciliate and Arbitrate labor disputes.

2. National Employment Councils

Not all disputes go to the Ministry of Labour, sector-specific NECs are registered with the Ministry of Labour to carry out primary roles of Bargaining for wages and working conditions. They also conciliate and arbitrate, although of late Arbitration is now limited to disputes of interest and therefore Arbitrators are appointed from the Ministry of Labour pool and a few independent appointed arbitrators.

They are voluntarily set up by Employer associations and Trade union organizations and through collective bargaining, they resolve industry disputes on wages and working conditions.

3. Retrenchments Board

The retrenchment board was set up to be an arbiter on retrenchment packages disputes. With the 2015 amendment, the board has its role reduced as the minimum package was set up for retrenchment package and most retrenchments end up at the works council level.

4. Labour Court

The labor court was set up as a specialized court to resolve labor disputes to reduce caseloads at High Court. It is a court of law and equity with the same powers as the High Court. The labor court cannot enforce its judgments they have to be registered with the High Court or magistrate court.

5. Supreme Court

This is the final court of appeal on labor matters from the labor court.

1.9 PROBLEM STATEMENT

The dispute resolution system in Zimbabwe has become vague and chaotic as it has mixed both ADR and Litigation and this has not given confidence to both business and labor. Before even fully exploring the ADR system and its advantages that it brings to dispute resolution, Zimbabwe introduced the new system which has rendered ADR useless as most parties opt for Litigation. Going through conciliation has become a formality and not giving it due consideration. The current system has not helped as it has contributed to inordinate delays in the finalization of cases, Repetition of cases, case backlogs, difficult labor court rules and narrow chance or inducements for mutual settlements, inflexible and high-cost system resulting in business not hiring anymore.

On the other note, the former dispute resolution system had its shortfalls as well, which prompted the later system to be adopted e.g. to mention a few examples, it was silent on the time given for conciliation and arbitration proceedings to be finalized. The labor cases would invariably take more than 6 months before an Arbitrator makes his

determination thereby interfering with justice conveyed timeously. This prompted people to question the widely held view that arbitral cases are disposed of more quickly than litigated cases in court.

Several outcries from both Business and Labour have moved the Government to act and have a bill in place which awaits debate in parliament. This Bill seeks to restore ADR as a policy of resolving disputed grievances in the Private sector Industries. This research, therefore, seeks to help Government, Business, and Labour on which system to adopt for Industrial relations dispute resolution and also which is best for Private sector development and reduces unemployment levels.

1.10 Research question/s

1. How efficient and suitable is ADR (Alternative Dispute Resolution) and or LITIGATION as a method of Resolving Industrial Relations Disputes?
2. How efficient and suitable is ADR (Alternative Dispute Resolution) and or LITIGATION as a tool to promote Private sector Development and reduce unemployment?

1.11 Hypothesis

Disputes get in the way of business and increase unemployment, therefore the efficient and swift resolution of disputes benefits business development and decreases unemployment rates.

- 1) Null Hypothesis: - ADR (Alternative Dispute Resolution) approach is efficient and suitable as a method of Resolving Industrial Relations Disputes, as well as

efficient and suitable as a tool to promote Private sector Development and reduce unemployment?

- 2) Alternative hypothesis: - Litigation approach is efficient and suitable as a method of Resolving Industrial Relations Disputes, as well as efficient and suitable as a tool to promote Private sector Development and reduce unemployment?

When running the Hypothesis test, it is anticipated that the ADR approach is better than litigation in resolving disputes and as a competitive tool for private sector development and a way of reducing unemployment.

1.12 BRIEF SYNOPSIS OF THE CHAPTER

The chapter emphasized the background of the study and what motivated the research. The chapter presented main and secondary research questions focusing on the effectiveness and efficiency of ADR/Litigation as well as a tool for private sector development and unemployment.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter presents the literature concerning this research. The chapter is split into three sections. The first section presents general ideas about Dispute resolution, i.e. ADR and Litigation, the comparison between the two strategies, focusing on their pros and cons.

The second section looks at other researches on the subject and what they addressed, their main focus and conclusions, and the gap which literature does not address

The last section highlights the case study from precedent cases on ADR and Litigation and links them to theories presented in the previous section, focusing on how they affect private sector development and unemployment. A summary of what was highlighted concludes the chapter.

2.2 WHAT IS (ADR)?

ADR is a process that involves Arbitration, Mediation/conciliation, and negotiation to resolve disputes without resorting to the courts for litigation.

i. Arbitration

“Arbitration is the most formal type of Alternative Dispute Resolution” Law Shelf Educational media, (2020).

“In arbitration, the disputing sides bring their disagreement before a neutral third-party” Malinowski (1981).

DISADVANTAGES OF ARBITRATION

- “The lack of formal evidence process, this means one is relying on the skill and experience of the arbitrator to sort out the evidence, rather than a judge or jury”.
The balance of small business, (2019).
- Arbitration hearings are not public, this disadvantages a weaker disputant in that some parties may abuse their economic or political status on the weaker party.

ii. CONCILIATION

Conciliation is a method of dispute resolution where parties settle their dispute with the facilitation of a third party. Side meetings can take place to resolve the matter amicably. Various forms can take place to reduce tensions and improve communication. According to (firm, 2019), Conciliation is flexible and the parties are free to choose which area best resolved their conflict to bring it to a settlement.

Advantages of conciliation

The process is cheap, private, flexible, and has simple procedures.

Disadvantages of conciliation

There is a high possibility of delivering injustice. And the decision reached is not legally enforceable.

iii. MEDIATION

Mediation is an ADR process in which a neutral third party, settles a dispute. It takes the form of facilitated negotiation. The mediator will normally seek to reduce the tensions

caused by the conflict. Mediation is facilitated negotiation by a third party and mostly aims at reducing tensions.

ADVANTAGES OF MEDIATION

Side meetings are allowed to reduce tensions and suggest viable solutions to settle.

DISADVANTAGES OF MEDIATION

A lot of factors contribute to the settlement of cases and at times parties fail to agree and decide to go for litigation which is bad after having spent money and time during the mediation. Going for mediation, at times presents a risk and if it fails, one party would have pre-empted armed the other with facts and ammunition for a court trial.

Legal precedent cannot be set in mediation.

iv. Negotiation

Negotiation involves discussions with the aim of an agreement. Various informal ways are used to reach this agreement.

Advantages of negotiation

- One of the most advantages of negotiation is that it is flexible and effective as it involves those who are directly interested in the matter and their representatives.
- The chances of settling are high as there are set parameters as to how the negotiation should go and the parties involved are consulted frequently on their interests.

- Negotiations often involve an interest-based approach rather than a position-based approach which increases its likelihood of success and reaches what is called a “win-win” approach.
- The other advantage of negotiation is that it is a voluntary process and whoever is participating in the process looks forward to a settlement and compromise. Which makes the likelihood of success high.
- Negotiation can take place without the need for a third party especially advantageous when the dispute involved may be sensitive.

Disadvantages of negotiation

- Obviously, in any negotiation, there is a weaker party and a stronger one, the weaker party is disadvantaged in this process. The weaker party may lack representation for instance than can bolster its side.
- If there is uncertainty about what is being negotiated and the limits of the negotiation, the negotiation might be futile. And also whoever is given authority to negotiate on a party’s behalf must be given the authority and mandate otherwise the process can be futile and time-wasting.
- At times the absence of a third party can set the course offside and the parties may lack direction or point of discussion.
- The major disadvantage in a negotiation is that any party can walk away during any stage of the negotiation despite the investment in time and money as well as effort.

- Some issues are driven by culture or ideology that can derail a negotiation making concessions and settlement difficult.
- Any party can use negotiation to delay the party from asserting its rights either through litigation or arbitration.

2.2 Litigation

Litigation is the resolution of disputes using the public courts. Litigation is a formal process it often includes trained judges, prosecutors, lawyers, and advocates.

The courts in Zimbabwe are listed below as follows:

i. Magistrate court

This is the lowest court in Zimbabwe. The magistrate court has no jurisdiction on labor disputes and serves only to enforce the Labour judgments.

ii. High Court

The High court enjoys inherent jurisdiction to hear matters placed before it. Although the labor court has the same power as the high court, the high court is always reluctant to give up its right to hear matters which it is not prohibited by law.

iii. Labour Court

The Labour Court The labor court was created with specific jurisdiction to hear labor matters only.

iv. The Supreme Court

This is the uppermost court in the land and the Chief Justice presides over it. It has jurisdiction to hear any appeals. If a party is unhappy with the decision of the labor court,

the party can appeal to the Supreme Court. Also one requires permission from the labor court to appeal to the Supreme Court.

v. **Constitutional court.**

The Constitutional Court has authority over any contraventions of fundamental rights assured in the Constitution.

ADVANTAGES OF LITIGATION

- Litigated cases can be enforced.
- State Court proceedings can be relatively cheap. The cost of the proceedings is defined by fixed regulatory schedules.
- Litigations offer quick relief by granting fast interim orders (for example orders against the sale of the property, competitors in intellectual property rights).

Disadvantages of Litigation

- Court proceedings face delays due to appeal and review proceedings. These appeal and review proceedings multiply the time and costs which a party has to bear.
- It is known that during Litigation it is difficult to control costs, the expenses to litigate usually go beyond the cost of the dispute and this results in a worse off position financially than before for both parties to the dispute.

2.4 LITERATURE REVIEW RELATED TO THIS RESEARCH.

Several studies on this subject have been studied that relate to the comparison of ADR and Litigation. In this section, the major references and sources of thought are to be presented as a basis for comparison.

The focus of this section will look at what other researchers have come up with in terms of examining ADR and Litigation, the pros and cons of each the conclusions reached by other Researchers and Authors on comparative analysis. The researcher also outlines the theoretical literature review on the interrelationship between Dispute Resolution and Unemployment as well as Business competitiveness.

In outlining the relationship of this study with other scholars, the researcher will also outline what is unique about this study.

2.5 RELATIONSHIP WITH OTHER SCHOLARS AND GAPS IN THE RESEARCH.

- i. Carver, (2004) recommends that American business has to adopt a dispute-avoidance-and-resolution philosophy (DARP) and ADR processes to remain competitive and keep the focus on business. The author also proposes ways to implement and optimize the benefits of ADR. Practical tips given include 1. Make someone responsible for the DARP. 2. Define the process with particularity. The article ran on the conclusion that ADR is good as a competitive tool for business. The article's main focus was on ways to implement ADR effectively with a view for business to remain competitive. The gap in this research is how the researcher concluded that ADR is effective and efficient.

- ii. Lande, John.(2000) (Lande) advocated for mediation as the rising star of the ADR era. The scholar focused on why some people believe in mediation and others do not. And the belief that mediation has more value than litigation. The researcher's main focus was likening the belief in mediation to the belief in the market economy. The researcher stresses that there is so much complexity on the variables affecting mediation and economic systems that no amount of empirical research would ever settle the debates, therefore the researcher concludes that it's a matter of faith i.e. deeply held convictions that are largely invulnerable to a careful analysis of evidence. It is widely agreed that for any system to work it has to be believed in by the recipients, but this scholar seems to take mediation much more like a moral persuasion like it is the right thing to do. Whereas, this research the scholar tends to embark on will be focused on empirical study and analysis of the evidence as to whether mediation amongst other ADR practices is effective and efficient than litigation for business and for reducing unemployment.
- iii. Stipanowich, T. J.(2004) (Stipanowich) the study looks at the association between ADR and litigation but also highlights the far-reaching uses of mediation and other ADR methods. The study also looks at the evolution and effect of ADR in courts, in business, and in employment as well as consumer surroundings. The study focuses on how the court is relying more and more on ADR in the resolution of disputes rather than litigating. Whereas this researcher focuses on why this is so, what makes the courts rely on ADR more than litigation and whether this is the best approach.

The conclusion reached was that “there is significant evidence that mediation and other ADR approaches can cause satisfaction, reduced costs”. While this research has made a comparison of ADR and Litigation, there is still a gap as to establishing the correlation between dispute resolution and business development as well as unemployment. This research seeks to establish and also which method would be ideal to use as a competitive advantage.

- iv. *Weinstein, J. B.(1996) (Weinstein)* this article mainly focuses on ADR in its extract sense. It looks at the importance of litigation courts, threats posed by ADR as private justice questions the rationale for supporting ADR than litigation, and suggests ways to better litigation. The journal brings to light the argument that although ADR has proved to be the rising star in dispute resolution, litigation, however, remains the preferred dispute resolution mechanism as it is capable of meeting society’s dispute resolution demands. This is so, because everyone is equal before the courts, and rules exist to redress the imbalances and protect against apparent injustices. The researcher argues that such a commitment is absent in other dispute resolution mechanisms which can be biased towards those with resources and designed to exploit information. The article makes a comparative analysis but also like many other articles in this field fails to bring to light the empirical study on which one would be best applicable as a model for business competitive advantage.

- v. Effron, J.(1989) (Effron) The main argument in the paper was that it's time the world moves away from the monopoly of influence which litigation has and starts to recognize the alternatives to Litigation which many lawyers have been using over the years. The scholar further argued that the law the students have been trained in and what they practice is merely a portion of what happens in the general public. The scholar advocated that instead of regulating ADR as alternatives “OF” litigation the courts and parties involved should start viewing ADR as alternatives “TO” litigation. Why? Because Litigation, as used in many customary areas of Law, is too expensive, conflict-ridden, difficult to get to, or ineffective in part because it is used in cases where ADR is not suitable for the dispute parties involved. The scholar’s focus was based on whether we can use the two simultaneously rather than choosing between the two. In making this assessment the scholar focused on the role the third neutral party makes in resolving the dispute. They resolved that it is possible to combine Litigation and its alternative forms of dispute resolution into a regular system. Each system of dispute resolution has advantages and disadvantages for a different type of dispute. Whereas, this research will not only make a comparison looking at the role the third neutral party plays but will look at process and access to the third neutral party.

2.6 LITERATURE ON COMPARATIVE ANALYSIS OF ADR AND LITIGATION.

1. Chan (2012) established in his research that on the study that the process of litigation, though peaceful, did provide not a speedy and mutually agreeable solution. The researcher concluded that the dispute resolution mechanism has now reached a stage where it needs to use other alternatives other than the court. He bemoaned the expenses associated with litigation and at the same time retain one's sanity after going through the ordeal of litigation. Litigation excels as a modern-day torture practice, it is exceedingly expensive, unbearably slow, and superbly designed to avoid any likeness to fairness or justice. Yet, in strange and scheming ways, it does settle disputes to everyone's discontent. The author out of all the ADR methods he preferred the use of mediation as the most rational, expedient, and cost-effective.
2. Bingham, L.B., et al, (2008) (Bingham, Nabatchi, Senger, & Jackman) In research established that it takes less time to finalize a case using ADR than litigation. The author further established that 65% of the cases in his sample settled when ADR was used, compared to 29% of cases when it was not used. The difference or gap supports claims that ADR is a better process than litigation for resolving disputes among disputing parties. He added to his research that government use of ADR is far more effective than in house use of ADR in most cases.

3. Gill, et al (2015). The researcher concluded that Litigation is more expensive and takes a lot of time to resolve a dispute than ADR methods. The researcher further concluded that the relationship between the disputant parties is affected by the dispute strategy taken so, therefore, it is important to choose one that does not significantly affect the relationship.

4. Stipanowich, T.J. (2004) highlighted that ADR is not a replacement for Litigation, but an approach to encourage what litigation was not projected to accomplish i.e. fast and less expensive settlement. Adapting innovative solutions, meeting business goals, cultivating industrial relationships, improving the quality of human collaboration, and inviting the broader community to participate in the process.

Generally what is coming out from the authors is that ADR offers a better, far more efficient, and effective way of resolving disputes as its advantages over litigation involve flexibility and control, where parties can offer set terms on how the process should work in resolving the dispute. This also includes the advantage of time and speed of resolving the dispute. The authors above have concluded that it takes much longer to resolve a dispute using litigation than using ADR methods.

The other conclusion reached by the authors, who have researched in the field, is that with less time spent to resolve the dispute it also means lower costs for the legal practitioners' fees, and also the appeals are limited in ADR, therefore, it means low costs.

Simplified rules of evidence in the ADR are another advantage for using ADR where some issues are resolved through phone calls rather than multiple hearings, subpoenas, interrogations.

What is also clearly coming out from the authors is that in contrast to litigation, ADR is private and confidential with only concerned parties in the dispute attend and the proceedings are strictly confidential.

2.7 LITERATURE REVIEW ON THEORIES RELATING TO INTERRELATIONSHIP BETWEEN DISPUTE RESOLUTION, UNEMPLOYMENT, AND BUSINESS COMPETITIVENESS.

The purpose of this section is to review theoretical perspectives on dispute resolution and its interrelationship with unemployment and business competitive advantage, which characterize the literature on this study.

Furthermore, in the next chapter, the researcher uses a set of data collected from experts in the field and literature available to evaluate the various theories explaining the behavior and correlation between Dispute resolution and Business development as well as unemployment.

The 6 theories from *Lewin, David, (1999) (Lewin)* explaining the relationship between dispute resolution and business development & unemployment. Each of these theories has a prediction about what might be necessary to observe how dispute resolution is handled which may affect business development and unemployment rates. From these theories outlined the researcher hopes to test and validate these theories.

1. Systems Theory: by Lewin & Peterson (1988, 1999) and others. The Core Prediction/ Relationship of this theory is based on the characteristics of the Grievance Procedure system that affect grievance processing, dynamics, outcomes, and feedback learning by labor and management. In the sense that the characteristics of the Grievance Procedure system affect grievance filing, pro-processing, settlement, and post-settlement outcomes; and also parties learn from prior grievance cases which becomes a precedent.

What came out from this study was that Management, union, legal practitioners, and labor relations characteristics are systematically related to grievance filing, processing, settlement, and post-settlement outcomes; precedent cases are positively related to subsequent grievance settlement behavior.

These systems of the grievance procedure have been criticized for not taking into account many individuals involved in grievance processing and how these individuals affect the settlement of the dispute. Thus it is important to look at all the parties involved in the dispute resolution process in analyzing whether ADR or Litigation is efficient for private sector development and reducing unemployment.

An analysis of the systems theory quickly expresses a need to be reactive and preventative by setting up structures that resolve these disputes for the benefit of business, labor, and Government.

ADR processes which include conciliation and mediation give room for parties to forgo the precedent cases and compromise to reach a win-win settlement. The system put in place gives confidence to the parties in the employment relationship that in case of a dispute there is a fairer system in place to handle the dispute which may result in higher productivity and job turnover.

2. Hirschman's (1970) Exit-Voice-Theory. Which looks at the relationship between the dispute resolution process and employee turnover (unemployment). As noted by Boroff & Lewin et al (1997) the Relationship in this theory relates to the absent union in the employee affairs which mostly equals no employee voice at the workplace and therefore loyalty to firms is negatively affected as there will be high turnover.

The Key Hypotheses is the way the Grievance filling is structured can always affect employee loyalty and negatively related to voluntary employee turnover. The Main Findings were that when an employee files a grievance it is likely the case that they are leaving the organization and they want justice before they leave. Hence loyalty is negatively related to grievance filling and intention to exit. The Employee grievance filing is positively related to intention to exit; the sense is that employees fear punishment for filing grievances therefore there would never file a grievance if they hope to stay at the organization. The conclusion reached is that “lacking unionism at the workplace, is likely to cause the workers to exit the firm than to exercise voice in the firm”. [Bemmels (1997); Freeman et al (1984)].

In most cases, if employees have not proper dispute resolution process and representation their loyalty to the firm is low and their intention in filing a grievance is to let management know why they are leaving only, they have no intention of having their dispute resolved. Hence it is important to have a dispute resolution system that is effective and one which lowers unemployment.

This puts us back to the kind of policy the Government adopts in its dispute resolution system, whether the country will experience high turnover or low morale in its workforce.

3. Procedural-Distributive Justice Theory: Olson-Buchanan (1996), the Core Prediction in this theory is attached to the Perceptions of procedural fairness which influences employee attitudes toward the Grievance Procedure. The Key Hypotheses is that the fairness of the procedure of the dispute strategy taken impacts job performance and turnover.

The important element in this theory is the fairness and handling of the dispute resolution process and access to the grievance procedure, if these tenets are not available then there is little satisfaction with the whole procedure and this will affect the employee's job performance and lead to high turnover.

4. Organizational Punishment- Industrial Discipline Theory:(Lewin, 1999) The Core Prediction of this theory is that Grievance Procedure involvement leads to negative post-grievance settlement outcomes. The Key Hypotheses were that whoever is involved in the Grievance Procedure can negatively affect post-settlement issues like job performance and quality of goods produced. Post settlement outcomes like promotions of those who were involved in the system will lead to absenteeism and turnover. Furthermore, the Main Findings were the Grievance Procedure system as to who was involved in the system and who presides over the Grievance procedure is adversely associated with the post-grievance settlement “job performance” and this customarily affects business productivity and quality and its competitiveness.

5. Displacement Theory: by Kleiner, et al. (1995) The Main Prediction and Relationship is that Dispute resolution activity takes away productive work time. The Key Hypothesis of this theory is that Grievance activity is negatively related to plant productivity, and also product quality is positively related to labor costs. The more time it takes for any system of dispute resolution to resolve the dispute, the more costs it is to the companies and also invariably affects the productivity and quality of the products.

6. The Human Resource Management Theory by Ichniowsld, Shaw & Prenchushi et al (1997), The Core Prediction of this theory is a high-involvement of human resource practices including a Grievance Procedure, how they have positive effects on

organizational performance. The more an organization involves employees in the dispute strategy taken, the more it has a positive impact on job performance, product quality, and return on capital.

With the Theories outlined, the researcher tries to outline how dispute resolution can be used as a competitive tool for private sector development and a way of reducing unemployment. Most scholars have not included a dispute resolution strategy as a sustained competitive advantage to the firm yet forget that its part of employee participation in decision making. If you consider collective bargaining, unionization, and of interest in this research grievance procedure, this helps shed more light on how an effective and efficient dispute resolution method can help the private sector to develop and reduce unemployment.

One should quickly point out how these various theories are mutually exclusive. It is perfectly possible and likely that the function of explaining business development would include unemployment. Nevertheless, the theories point out to empirical implications of how dispute resolution affects either business development or unemployment. This provides the researcher with an opportunity to use the latest data to sort out the various explanatory aspects of this study validating or invalidating the given theories.

2.10 SUMMARY OF CHAPTER TWO

The chapter emphasized that the concept and different strategies of Labour Dispute Resolution i.e. ADR and Litigation. Have different effects on private sector development

and unemployment. It has also underlined that ADR has more advantages than litigation in labor dispute resolution.

The review of existing studies in the area outlined important aspects of ADR and Litigation as dispute resolution strategies. In general, studies concluded that ADR is better than litigation as a labor dispute resolution strategy but cannot be used independently as at times when ADR fails people often resort to litigation.

Finally, the case laws of this research were introduced identifying the approach followed. Aspects of the background of the case laws how they link with the theories outlined were presented.

CHAPTER THREE METHODOLOGY

3.1 Introduction

This chapter covers the methodology of the research and this includes, primary data and secondary data sources, the reason why the population was chosen, methods of primary data collection through a questionnaire. The methods of data analysis will be explained, data analysis software such as SPSS will be included. The study used these mixed strategies because the data were obtained from all areas of the data source.

3.2 QUALITATIVE AND QUANTITATIVE RESEARCH STUDY APPROACH

Rationale and approach

This research proceeds on the point that the Industrial Relations realm can only be understood from the position of the individuals who are part of the system being investigated, this is why this research uses expert opinion. This is why the research implements a mixed approach with a range of case studies to get a true reflection on the impact assessment. As said earlier on the qualitative and quantitative research approach is mainly targeted at experts in the field of industrial relations-this is appropriate because the research is asking how and why which makes the mixed approach and population consideration more reliable and also particularly because the researcher has little control over the occurring events in the field of industrial relations.

The previous chapter outlined the various theories that explain dispute resolution and its relationship with unemployment and business competitiveness. The research is particularly drawn to two theories that will help explain this study in its analysis, i.e. the *Procedural-Distributive Justice Theory and the Displacement Theory*.

The Procedural-Distributive Justice Theory by Olson-Buchanan et al (1996) highlights the interrelationships between dispute resolution and the impact it has on unemployment and productivity. This theory will help us analyze and explain employee turnover post-settlement.

Displacement Theory: by Kleiner, Nickelsburg & Pilarski et al. (1995) as explained in the previous chapter this theory's hypothesis is anchored on the prediction that Grievance activity is negatively related to plant productivity, and product quality is also positively related to labor costs. The more time it takes for any system of dispute resolution to resolve the dispute, the more costs it is to the companies and also invariably affects the productivity and quality of the products. This theory will help us analyze and compare the effects of time on productivity and competitiveness.

3.3 RATIONALE FOR APPLYING THESE TWO THEORIES TO THIS STUDY

The theories are much more predictive than straightforward in that they readily lead to testable hypotheses as highlighted in the previous chapter. The theories also take into account all the parties or individuals involved in the dispute resolution and also key research issues involved like unemployment and private sector development vary across multiple steps of the dispute resolution process.

The theories look at both the fairness of the dispute resolution system, access to it, the promotion of overseers of the dispute resolution process, their qualifications, and capability in handling the disputes. Their capability and delivery lead to satisfaction. This satisfaction is closely related to job performance which affects business competitiveness and intent to exit which affects unemployment.

3.4 METHODOLOGY

The researcher used both Qualitative and Quantitative methods of data collection. The qualitative data was used to support the quantitative data analysis and results.

I. Qualitative analysis is used to evaluate ADR and Litigation and assess which one is a better approach in resolving disputed grievances.

II. The researcher used the questionnaire to gather data from a panel of experts to arrive at the answer as to whether ADR or litigation is good for business development and reducing employment.

3.5 Methodology Design

This study used a mixed type of method as highlighted before. The first part of the study used a well-structured questionnaire for experts in the field of Industrial Relations.

A two-phase research design is implemented to answer the research questions:

Phase 1

Qualitative analysis was used to evaluate ADR and Litigation and assess which one is a better approach in resolving disputed grievances.

Phase 2

Involves the quantitative data collection which involves Questionnaires that were sent using a Google link to a group of practitioners involved in labor disputes involving ADR & litigation, and also Business managers. A minimum of 50 participants was targeted to get a broad opinion on the matter and the link was closed when we reached 70 respondents.

Hence, this study used a descriptive research design to agree on the effects of ADR/Litigation as dispute strategies on Private sector Development and Unemployment.

3.6 STUDY AREA

The population of the study was determined based on a random sampling system from a pool of experienced practitioners in the labor system. The population has common characteristics in which the researcher is interested. The selected participants in the survey were chosen mainly because they are well-positioned in the system and deal with the matters as their line of work. The researcher also questioned unbiased but well-positioned witnesses and some with reasons to be aggrieved about the two systems. This puts the researcher in a position to triangulate information from different and potentially conflicting formal and informal sources and make judgments on the balance of evidence. In this way, the researcher was able to investigate and validate or invalidate many of the claims made about ADR and Litigation operations or shortfalls.

This data collection was conducted from March 2020 to August 2020.

3.7 Data sources

3.7.1 Primary data sources

The primary data sources are industries' consultants, industry employees this includes management and lower-level employees, trade unions, and legal practitioners.

3.7.2 Secondary data

Secondary data sources have been obtained from pieces of literature regarding the comparison of ADR and Litigation. Literature from journals, books, different articles, websites, and other sources was used for comparison and assessment of dispute resolution strategies.

3.8 Population

The study population consisted of 70 survey participants from a minimum of 50 which was targeted mainly based on the 10 provinces in Zimbabwe, and in each province, there are at least an average of 5 Professionals who practice Labour Disputes Resolution related conflicts The population of data was from legal practitioners, Labour officers, NEC Designated agents, trade unions, Human resource Managers and consultancy, Government and independent arbitrators and Small business owners (Informal traders). A total of 70 experts from across the country, and were used for the analysis after more practitioners showed interest in the study. Hence, the actual data collection resulted in a more than 100% response rate. The 70 populations were satisfactory and representative of the data analysis.

3.9. Questionnaire survey

3.9.1 Design and data collection

The Labour dispute resolution area is a specialist area of practice and therefore few people are found practicing in the area. Specialist knowledge and experience are required to practice this is what makes the reliability of the data gathered and the respected responses the researcher got. A survey using a questionnaire was used to gather data of regional practitioners involved in Labour Disputes. The pool of experts was interviewed using a standardized questionnaire. Two types of data were collected:

1. Comparison of data
2. Relational data (with business competitiveness and unemployment)

The questionnaire design was coded and as a result, it produced valuable data that was required to achieve the study objectives. The questionnaire also included a measure of comparison between ADR and Litigation, the pool of experts were also asked questions related to suitability and efficiency on a Likert five-point scale from 1 (strongly disagree) to 5 (strongly agree). Background questions concerned the respondent's type of occupation, the highest level of education attained, and the length of professional experience.

3.10 METHODS OF DATA ANALYSIS

The data analysis section was responding to the research questions raised in Chapter one. The detailed analysis of the effectiveness and efficiency of ADR and Litigation as a dispute resolution strategy and as a tool for private sector development and for reducing unemployment was analyzed, discussed, compared, and contrasted.

3.10.1 Quantitative data analysis

Quantitative data was obtained from the primary data as discussed earlier on. The data were pre-coded on the questionnaire and thereafter coded to SPSS 21.0 software. The process involved identifying, classifying, and assigning a numeric symbol to data. A number corresponding to a particular choice on the questionnaire. After that, the data were entered into SPSS 21.0 for the necessary tests chosen. The data analysis part was done using descriptive statistics and table/graphical analysis. This explored the relationship between relevant variables for study and comparing groups how they affect each other. This was done using Chi-Square, Correlation, and T-Test.

3.10.2 Qualitative data analysis

Qualitative data analysis was used to validate the quantitative data analysis. The analysis was incorporated with the quantitative discussion results in the data analysis parts to analyze the consistency and understanding.

3.10.3 Data analysis software

SPSS 21.0 was used on Windows 10 for analysis. The software analyzed and compared the results of different variables used in the research questionnaires.

3.11 Ethical considerations

The purpose of the study was explained to the respondents. The respondents were told that the information and identities they provided would be kept confidential and their information would not be revealed tied to their identities. Informed consent was secured from each participant. The respondents' privacy and their responses were not individually analyzed.

3.12. Dissemination and utilization of the result

The result of this study will be presented to Seoul National University (GSIS). It will also be communicated to the Zimbabwean, Ministry of Public Service, Labor, and Social Welfare (Labour Administration Department).

3.13 AIM OF QUESTIONS

Questions 1 to 4 aims

Question 1-4 aims to establish the background knowledge and professional experience in the resolution of disputes using either ADR or Litigation

Questions 5-9 to aims

To establish the effectiveness of ADR and Litigation by comparison in the resolution of disputes.

Questions 10-20 to aims

To establish the competitiveness of the two dispute resolution systems in the business sector. Further questions were added for detail and specify to address the issues in more depth.

Questions 20-25 to aims

To establish the relationship between dispute resolution and unemployment.

Additional information

A final open question was provided for further comments on the value or appropriateness of ADR and Litigation dispute resolution processes and views on the optimum relationship between Litigation and ADR dispute resolution processes' effectiveness in reducing unemployment and private sector development.

CHAPTER FOUR ANALYSIS AND PRESENTATION

4.1 INTRODUCTION

This chapter presents the findings and analysis resulting from the survey. A total of 70 responses were received from the targeted 50 potential respondents, which constitutes a 140% response rate for the survey. Out of 70 respondents, 100% have completed all of the questions that were required to be answered and 2% have not attempted to answer some of the questions. An investigational design was assessed using descriptive statistics. It was found that the targets who managed to fill out the questionnaire were as follows: The majority of which are from labor consulting role and small business owners from the informal trade 21 (30%), followed by legal professionals 11 (15.7%), Labour officers 7 (10%), NEC Designated agents 7 (10%), Labour consultant 9 (12.9%), others who comprise of Trade unionist 4 (5.7%) and independent arbitrator 4 (5.7%), Government Arbitrator 3 (4.3%) Human Resource Managers 4(5.7%). This is so because the majority of respondents who work in Labour disputes resulting in litigation involve legal professionals, unionists, and other consultants.

This chapter exclusively emphasizes presenting the gathered data in a meaningful way to facilitate the discussion, which will be presented in Chapter 5.

To start, a background detail of the respondents is analyzed. Followed by findings and analysis of data and the summary. The findings and analysis have combined general and cross-tabulation analysis primarily on three broad themes that include assessment of the effectiveness and efficiency of ADR and Litigation as a dispute resolution strategy, assessment of the effectiveness and efficiency of dispute resolution strategy on Private sector development, and effectiveness and efficiency of dispute resolution on

unemployment. Tables and diagrams have been used to facilitate simplistic reader-friendly writing. A summary of this chapter is provided in the end.

4.2 EXAMINATION OF QUESTIONNAIRES AND ANALYSIS

The questionnaire has 25 items where 70 respondents selected their agreement to the topic (1) strongly agree-to-(5) strongly disagree. The 25 questions are categorized as follows into variables.

- Question 1-4 Professional Background of the Respondent
- Question 5-9 Respondent's views on dispute Resolution (as we compare ADR & Litigation)
- Question 10-20 Assessment of ADR & LITIGATION as a competitive advantage
- Question 21-25 Relationship between Dispute Resolution & Unemployment

QUESTION 1-4

Aims to establish the background of the respondents, and explain their relevance to the study.

QUESTION 5-10

Aims to establish the respondents' views on dispute resolution as the researcher makes a comparative analysis of the effectiveness of ADR and Litigation in Labour dispute resolution.

QUESTION 11-20

Aims to establish the respondents' views on the effectiveness and association of Dispute resolution and Private sector Development. Whether the dispute resolution can be used as a competitive strategy.

QUESTION 21-25

Aims to establish the respondents' views on the effectiveness and association of Dispute resolution and Unemployment. Whether the dispute resolution can be used as a tool to reduce unemployment.

4.3 HYPOTHESIS

✚ **Null Hypothesis:** - ADR (Alternative Dispute Resolution) approach is efficient and suitable as a method of Resolving Industrial Relations Disputes, as well as efficient and suitable as a tool to promote Private sector Development and reduce unemployment?

✚ **Alternative hypothesis:-** Litigation approach is efficient and suitable as a method of Resolving Industrial Relations Disputes, as well as efficient and suitable as a tool to promote Private sector Development and reduce unemployment?

Our Hypothesis has 3 parts:

1st whether ADR or Litigation approach is efficient and suitable as a method of Resolving Industrial Relations Disputes.

2nd whether ADR or Litigation approach is efficient and suitable as a tool to promote Private sector Development.

3rd whether ADR or Litigation approach is efficient and suitable as a tool to reduce unemployment?

It was expected that (ADR) approach is efficient and suitable as a method of Resolving Industrial Relations Disputes, as well as efficient and suitable as a tool to promote Private sector Development and reduce unemployment.

4.4 WHAT QUESTION TYPE THE RESEARCHER WANTS TO BE ANSWERED?

- Descriptive – will have an answer which one between the ADR and Litigation is more effective and efficient as a dispute resolution strategy
- Correlational/predictive- will help answer if there is a relationship between Dispute resolution strategy and Private sector development as well as unemployment
- Group differences/ cause and effect -. And if so which one is more effective between ADR and Litigation.

4.5 SURVEY RESULTS: DESCRIPTIVE ANALYSIS

4.5.1 Dispersion and Background of the Respondents

1. What is your professional designation?

Table 1. WHAT IS YOUR PROFESSIONAL DESIGNATION

What is your professional designation?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid legal practitioner	11	15.7	15.7	15.7
Government arbitrator	3	4.3	4.3	20.0
Independent arbitrator	4	5.7	5.7	25.7
Labour officer	7	10.0	10.0	35.7
NEC Designated Agent	7	10.0	10.0	45.7
Informal Trader	21	30.0	30.0	75.7
labour consultant	9	12.9	12.9	88.6
Human Resource Manager	4	5.7	5.7	94.3
other (Please specify)	4	5.7	5.7	100.0
Total	70	100.0	100.0	

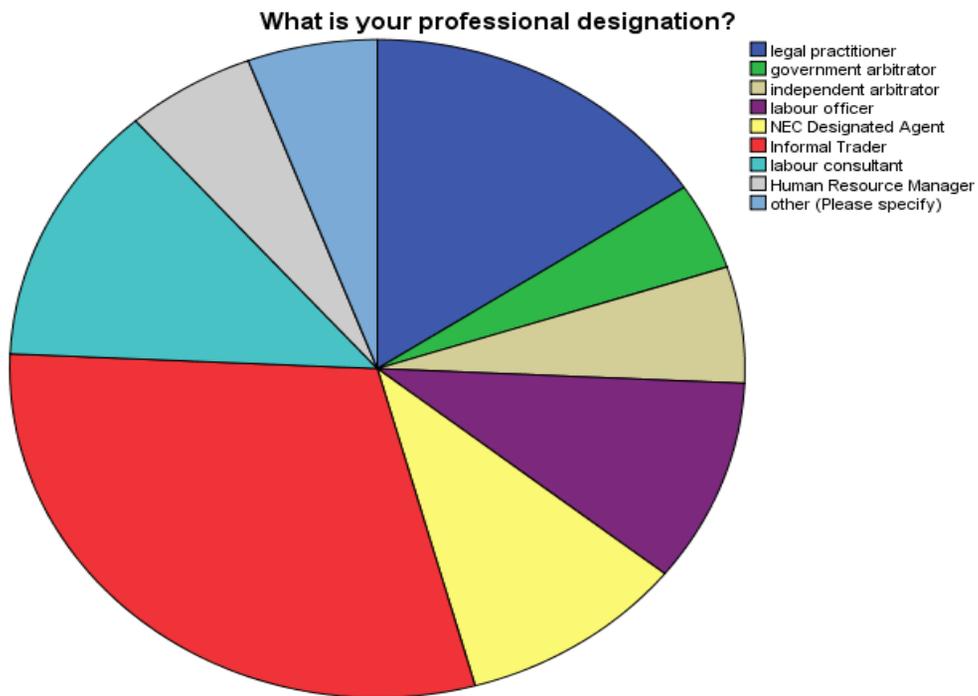


Figure 2 WHAT IS YOUR PROFESSIONAL DESIGNATION

4.5.2 WHAT IS YOUR HIGHEST LEVEL OF EDUCATION?

Table 2. HIGHEST LEVEL OF EDUCATION

Highest level of education					
	Frequency	Percent	Valid Percent	Cumulative Percent	
Valid	vocational training	4	5.7	5.7	5.7
	ordinary level	1	1.4	1.4	7.1
	college certificate	5	7.1	7.1	14.3
	diploma	7	10.0	10.0	24.3
	university degree	53	75.7	75.7	100.0
	Total	70	100.0	100.0	

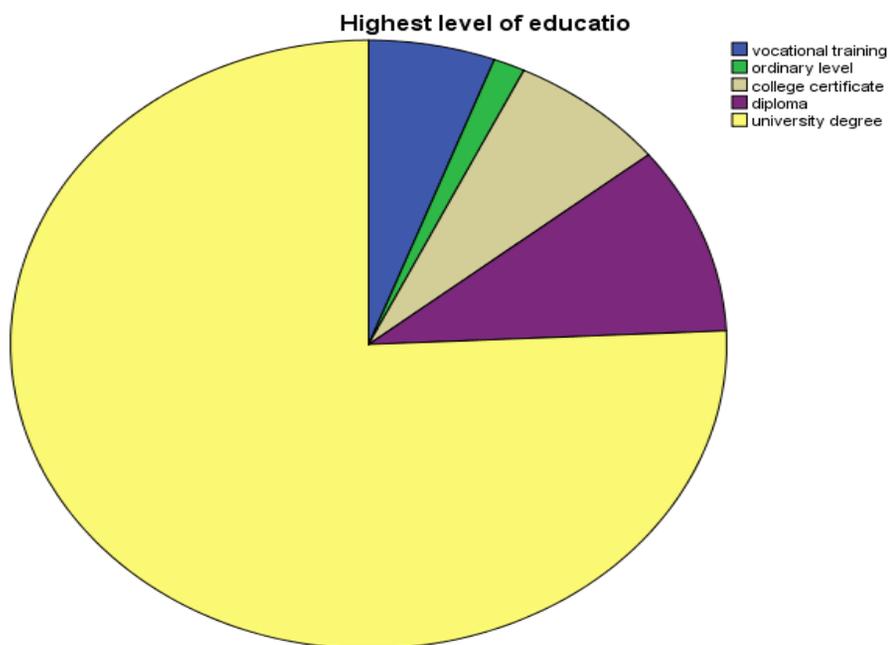


FIGURE 3. HIGHEST LEVEL OF EDUCATION

The majority of respondents have a university degree of 75.7%. Followed by those with a Diploma 10.0%, college certificate 7.1%, vocational training with 5.7%, and those with Ordinary level certificate 1.4%.

4.5.3 WORK INVOLVEMENT IN LABOUR DISPUTE?

Table 3. *what percentage of your work in the last year involved acting for a party in a labor dispute?*

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid nil %	11	15.7	15.7	15.7
less than 25%	14	20.0	20.0	35.7
between 25% and 50%	14	20.0	20.0	55.7
between 50% and 75%	16	22.9	22.9	78.6
over 75%	15	21.4	21.4	100.0
Total	70	100.0	100.0	

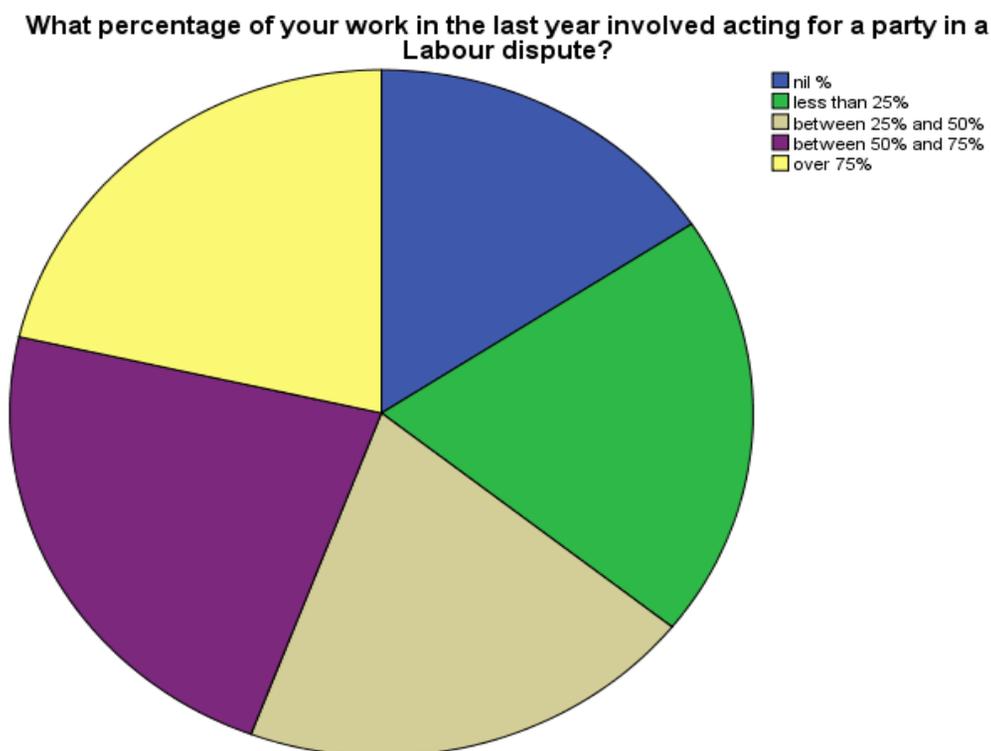


Figure 4: *what percentage of your work in the last year involved acting for a party in a labor dispute?*

From the survey conducted 22.9% of the respondents spent their time in the last year involved in dispute resolution, followed by those who spent over 75% of their time dedicated to dispute resolution. Those who spent between 25% to 50% and some with less than 25% of their time were 20.0% of the respondents in the survey. Only about 15.7% of the respondents were not involved in any dispute resolution.

4.5.4. PROFESSIONAL REPRESENTATION

Level of involvement in the dispute resolution. Most of the respondents have acted in the conciliation and Arbitration at 14.3% and 20% involvement, followed by 17.1% at the courts in Litigation cases, some 14.3%, and 15.7% mediation and workplace disciplinary hearings.

Table 4. in which of the following dispute resolution processes have you acted in a professional capacity for a party within the last year?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Litigation	12	17.1	17.1	17.1
arbitration	14	20.0	20.0	37.1
Mediation	10	14.3	14.3	51.4
conciliation	14	20.0	20.0	71.4
workplace disciplinary hearing	11	15.7	15.7	87.1
not applicable	9	12.9	12.9	100.0
Total	70	100.0	100.0	

In which of the following dispute resolution processes have you acted in a professional capacity for a party within the last year?

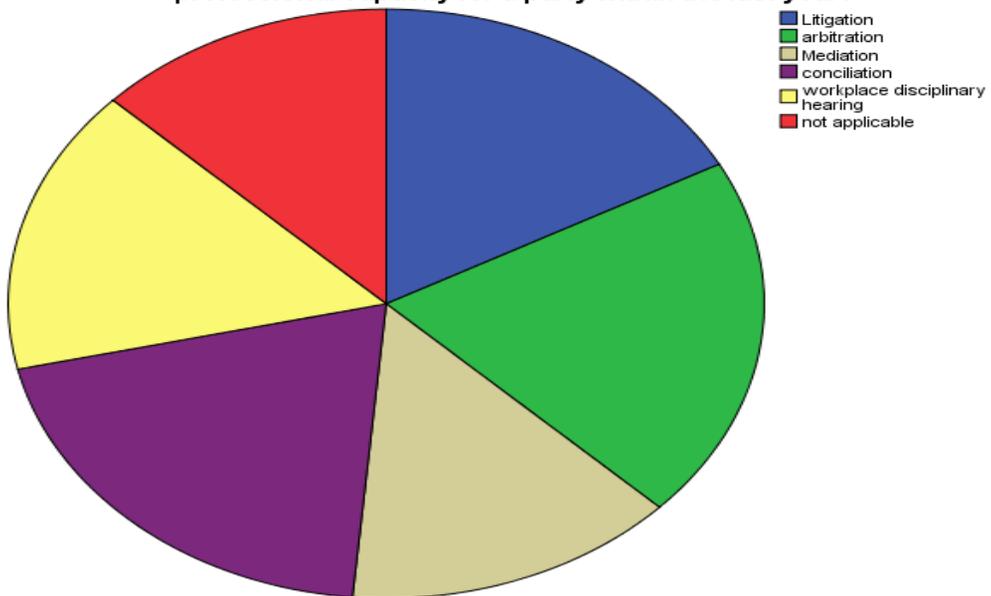


Figure 5: in which of the following dispute resolution processes have you acted in a professional capacity for a party within the last year?

4.6 COMPARATIVE ASSESSMENT OF ADR AND LITIGATION

Introduction. Summary statistics were calculated for each variable. Frequencies and percentages were calculated for variable also. This section, the first was a variable to compare ADR and Litigation. The results are presented in the table below.

Question 15 looked at Frequencies and percentages of how respondents view ADR and Litigation in resolving labor disputes and the most frequently observed category of dispute resolution was strongly agree that ADR is better than litigation at labor dispute resolution.

Frequencies are presented in Table 5 below

Table 5. *ADR is more effective than Litigation in resolving Labour Disputes?*

Statistics

Valid	70
Missing	0

ADR is more effective than Litigation in resolving Labour Disputes?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid strongly agree	38	54.3	54.3	54.3
somewhat agree	10	14.3	14.3	68.6
neutral	7	10.0	10.0	78.6
somewhat disagree	9	12.9	12.9	91.4
strongly disagree	6	8.6	8.6	100.0
Total	70	100.0	100.0	

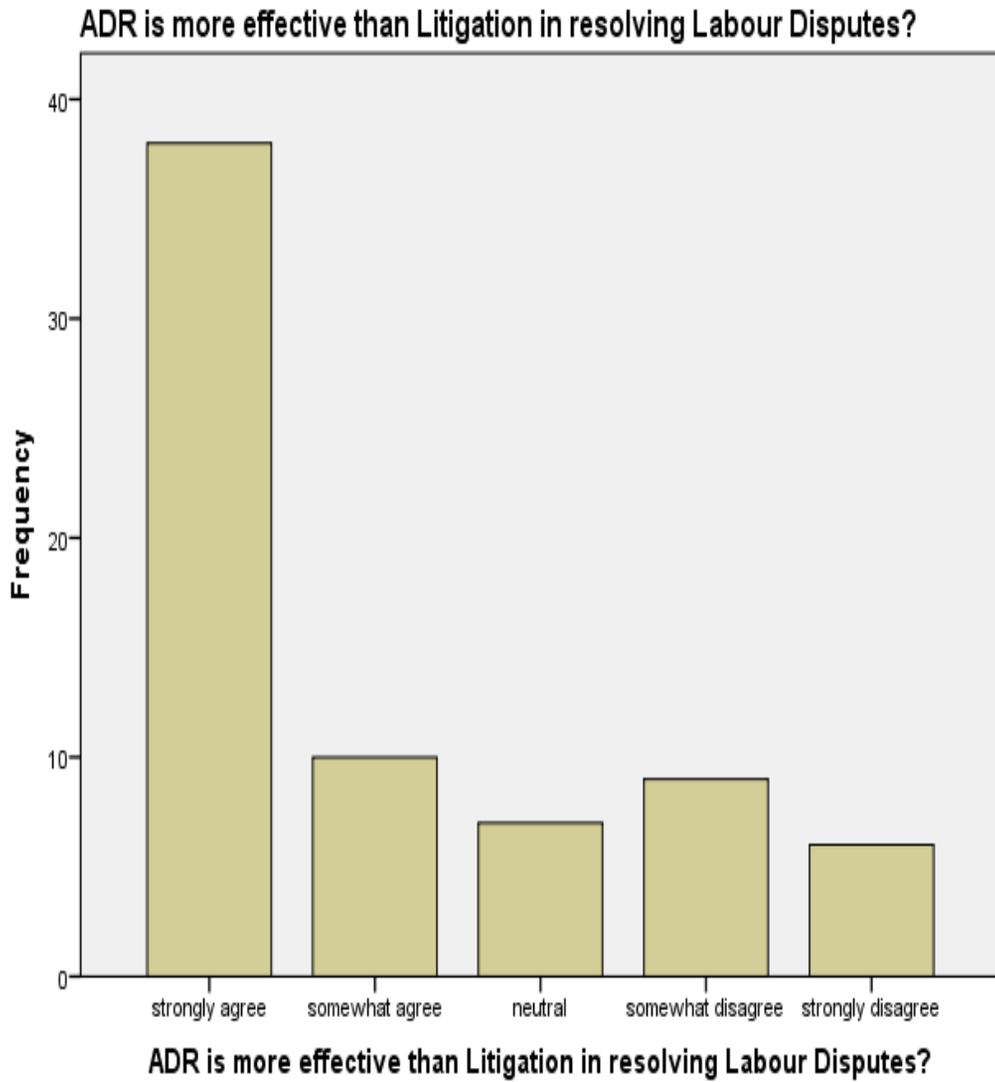


Table 5. ADR is more effective than Litigation in resolving Labour Disputes?

4.7. SUMMARY STATISTICS

For this section, an index of comparison was constructed using the mean, Standard deviation, and statistical significance values of variables.

The observation for question 1-4 had an average of 5.99(SD=2.356), 4.149(SD=1.087), 3.14 (SD=1.386), 3.49 (SD=1.894)

The observation for question 5 to 9 had an average of 1.16 (SD=0.367), 1.67 (SD=1.196), 3.21 (SD=1.473), 2.13 (1.284), 1.77 (SD=1.206), 1.74 (SD=1.188), 1.69 (SD=1.198), 1.83 (SD=1.227), 2.11 (1.420), 2.26 (SD=1.411)

The observation for question 10 to 20 had an average of 2.29(SD=1.643),3.81(SD=1.506),1.80(SD=1.235),3.26(SD=1.576),1.57(SD=1.044),2.07(SD=1.397),1.74(SD=1.212),1.86(SD=1.289),1.77(SD=.423),1.81(SD=.392),1.70(SD =1.108)

The observation for question 21 to 25 had an average of 2.06 (SD=1.328), 1.82 (SD=.386), 2.36(SD=1.403), 2.68 (SD=1.490), 1.80 (SD=.403)

The data distribution is considered to be symmetrical about its mean. The variables are markedly similar and there is a normal distribution. There are no variables with a tendency to produce outliers.

Table 6. means and standard deviation data presentation

Descriptive Statistics

	N	Minimum	Maximum	Mean	Std. Deviation
1. What is your professional designation?	70	2	10	5.99	2.356
2. Highest level of education	70	1	5	4.49	1.087
3. What percentage of your work in the last year involved acting for a party in a Labour dispute?	70	1	5	3.14	1.386
4. In which of the following dispute resolution processes have you acted in a professional capacity for a party within the last year?	70	1	7	3.49	1.894
5. In your opinion should any disputes go through dispute resolution processes that do not involve a judge's binding decision (i.e. ADR)?	70	1	2	1.16	.367
6. Legal practitioners should routinely encourage clients to choose the dispute resolution process the client feels is most appropriate for their dispute.	69	1	5	1.67	1.196
7. There is too much emphasis on compromise and settlement in (ADR) non-judicial dispute resolution processes at the expense of the application of the law.	70	1	5	3.21	1.473
8. Does ADR increase lawyers' views of fairness or satisfaction with case management	70	1	5	2.13	1.284
9. SOME Disputes may be more appropriate than others for the ADR Dispute resolution process. How important in your view are the following factors as indicators that ADR is more appropriate than Litigation.	70	1	5	1.77	1.206
(A) STATUTORY RIGHTS OR DUTIES IN ISSUE (DISPUTES OF RIGHTS)					
b. COMPLEX OR TECHNICAL SPECIALIZED INDUSTRIES' DISPUTES	70	1	5	1.74	1.188
c. SMALL DOLLAR VALUE IN QUESTION (SMALL CLAIMS DISPUTES)	70	1	5	1.69	1.198
d. PARTIES' DESIRE FOR PRIVACY	70	1	5	1.83	1.227

e.INDUSTRIAL ACTION (COLLECTIVE JOB ACTION) DISPUTES	70	1	5	2.11	1.420
f.TRADE UNION AND EMPLOYER DISPUTE	70	1	5	2.26	1.411
10. Litigation involving a business diverts economic resources from more productive activities.	70	1	5	2.29	1.643
11. Dispute resolution processes that don't involve a judge's binding decision (i.e ADR) are detrimental to the development of the private sector.	70	1	5	3.81	1.506
12. Employer-Employee relationships involved in labor disputes are preserved better by (ADR) non-judicial dispute resolution processes than by (LITIGATION) judicial processes.	70	1	5	1.80	1.235
13. Dispute resolution processes of ADR permit unjust results to be reached without public scrutiny.	70	1	5	3.26	1.576
14. ADR is not as a replacement for public adjudication, but as an intervention strategy to promote what Litigation was not designed to accomplish in serving business goals and enhancing human interaction?	70	1	5	1.57	1.044
15. ADR is more effective than Litigation in resolving Labour Disputes?	70	1	5	2.07	1.397
16. Does ADR reduce costs as compared to litigation?	70	1	5	1.74	1.212
17. ADR significantly affects the time of the conclusion of cases?	70	1	5	1.86	1.289
18. Which one is more effective and relevant as a firm strategy and rivalry?	70	1	2	1.77	.423
19. Which one fosters continuous sustainable improvements in Industrial relations?	70	1	2	1.81	.392
20. There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation?	70	1	5	1.70	1.108
20a.If you agree which strategy is best?	67	1	2	1.81	.398
21. There is a relationship between the achievement of low unemployment levels with the use of ADR or Litigation?	70	1	5	2.06	1.328

22. If you agree which strategy is best?	67	1	2	1.82	.386
23. Unresolved disputes are a major cause of resignations	69	1	5	2.36	1.403
24. Most terminations are a result of deliberate actions by an employer to make working conditions intolerable for an employee not to see it fit to continue with the employment.	69	1	5	2.68	1.490
25. Which one amongst the 2 Orders of Reinstatement would an employee likely to go back to work?	70	1	2	1.80	.403
Valid N (listwise)	64				

4.8. ASSOCIATION BETWEEN DISPUTE RESOLUTION AND PRIVATE SECTOR DEVELOPMENT: Using the Chi-square test

Introduction: Question 20 attempts to test the association between dispute resolution and Private sector development and question 20a to test by comparison which one is the best strategy for achieving competitive advantage. Cross Tabulation will present the results of the test of the association between the two categorical variables. The researcher calculated percentages in the direction of the independent variable and also used Chi-square to test if any association found is statistically significant. The lower the p-value the stronger the evidence that there is a relationship between the variables.

4.8.1 CHI-SQUARE TEST

Chi-square is a test for independence or a correlation coefficient test for an association. It just tells us if the association is significant but it doesn't tell us how strong. *That is why we used an effect size either Phi or Kramer's V, which gives us the expected counts like in table 7b.* We have our observed count and our expected count, now the expected count is what we would expect to observe if there was no association so if

ADR/Litigation had no association with Private sector development so it means Private sector development was independent of whether we used ADR or Litigation, we would expect to observe around 8.5 for Litigation and 35.5 for ADR strongly agreeing. Similarly, we would expect to observe around 2 for litigation and 8 for ADR strongly disagreeing. Now we see from the table that our observed counts are different from our expected and the Chi-square test helps determine if those observed counts are different enough for the test to be significant or for the association to be significant.

Table 7. ASSOCIATION BETWEEN DISPUTE RESOLUTION AND PRIVATE SECTOR DEVELOPMENT: Cross Tabulation

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation? * {If you agree which strategy is best}	67	95.7%	3	4.3%	70	100.0%

There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation? *) If you agree which strategy is best?

Cross tabulation

(% within)(If you agree which strategy is best?)

		(If you agree which strategy is best?)		Total
		Litigation	ADR	
There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation?	<i>strongly agree</i>	46.2%	70.4%	65.7%
	<i>somewhat agree</i>	7.7%	22.2%	19.4%
	<i>neutral</i>	7.7%	7.4%	7.5%
	<i>somewhat disagree</i>	30.8%		6.0%
	<i>strongly disagree</i>	7.7%		1.5%
Total		100.0%	100.0%	100.0%

Using the Chi-Square test, to test for statistical significance: the basic assumption which is our Null Hypothesis is that there is NO association between Dispute resolution methods (ADR and Litigation) and Private sector development. Our alpha value is 5% so when our p-value is more than 5% we accept our null hypothesis but if it's less than 5% we reject our null hypothesis and accept the alternative hypothesis.

If there is a strong association then the percentages in our cross-tabulation tell us which one, by comparison, is best to achieve that competitive advantage.

Table 7b. Chi-square test with expected counts

There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation? ^)If you agree which strategy is best? Crosstabulation

)If you agree which strategy is best?		Total
			Litigation	ADR	
There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation?	strongly agree	Count	6	38	44
		Expected Count	8.5	35.5	44.0
	somewhat agree	Count	1	12	13
		Expected Count	2.5	10.5	13.0
	neutral	Count	1	4	5
		Expected Count	1.0	4.0	5.0
	somewhat disagree	Count	4	0	4
		Expected Count	.8	3.2	4.0
	strongly disagree	Count	1	0	1
		Expected Count	.2	.8	1.0
	Total	Count	13	54	67
		Expected Count	13.0	54.0	67.0

Chi-square test

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	22.846 ^a	4	.000
Likelihood Ratio	18.824	4	.001
Linear-by-Linear Association	13.216	1	.000
N of Valid Cases	67		

a. 7 cells (70.0%) have an expected count less than 5. The minimum expected count is .19.

P-value **0.000** < 0.05 which reflects that it is significant.

4.8.2. Results.

Reading our Pearson Chi-square value statistic which is 22.846, we have 4 degrees of freedom and the asymptotic significance is our P-value or significance value and its

0.000 and we tested it on 5% level of significance and that's our alpha value and the value we have which is equivalent to 0% is less than the alpha value so that means our result would be statistically significant and we would accept our alternate hypothesis which says that there is a significant association between the achievement of competitive advantage of Private sector companies with the use of ADR and or Litigation, in other words, the achievement of competitive advantage of private sector companies is not independent of Dispute resolution strategy, it is dependent on dispute resolution strategy. 38(70.4%) respondents strongly agreeing that ADR is better than Litigation 6 (46.2%) as a means to achieve that competitive advantage that would lead to private sector development.

4.9. ASSOCIATION BETWEEN DISPUTE RESOLUTION AND UNEMPLOYMENT

Question 22 attempts to test the association between dispute resolution and unemployment and question 21 to test by comparison which one is the best strategy for achieving low unemployment. Cross Tabulation presents the results of the test on the association between the two categorical variables. The researcher calculated percentages in the direction of the independent variable and also used Chi-square to test if any association found is statistically significant.

Table 8. ASSOCIATION BETWEEN DISPUTE RESOLUTION AND UNEMPLOYMENT

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
There is a relationship between the achievement of low unemployment levels with the use of ADR or Litigation? *.If you agree which strategy is best?	67	95.7%	3	4.3%	70	100.0%

(% within.) If you agree which strategy is best?

		If you agree which strategy is best?		Total
		Litigation	ADR	
There is a relationship between the achievement of low unemployment levels with the use of ADR or Litigation?	<i>strongly agree</i>	33.3%	56.4%	52.2%
	<i>somewhat agree</i>		25.5%	20.9%
	<i>neutral</i>	25.0%	10.9%	13.4%
	<i>somewhat disagree</i>	33.3%	3.6%	9.0%
	<i>strongly disagree</i>	8.3%	3.6%	4.5%
Total		100.0%	100.0%	100.0%

Chi-square Test

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	15.697 ^a	4	.003
Likelihood Ratio	15.193	4	.004
Linear-by-Linear Association	8.405	1	.004
N of Valid Cases	67		

a. 6 cells (60.0%) have an expected count less than 5. The minimum expected count is .54.

Results: **P is 0.003** < 0.05 which reflects that there is a strong relationship between dispute resolution strategy and unemployment (chi-square =15.697, DF=4, p<0.003),

their rejection of our null hypothesis that there is no relationship accepting our alternative that there is an association between dispute resolution and unemployment. With 56.4% strongly agreeing that ADR is better than litigation with 33.3%.

4.10 TESTING THE ASSOCIATION AND STATISTICAL SIGNIFICANT FOR DISPUTE RESOLUTION AND PSD & UNEMPLOYMENT WHERE THE CHI-SQUARE TEST HAS BEEN VIOLATED- LOOK AT FISHER’S EXACT TEST.

if we look at the bottom of our Chi-square test table, we need to read the first stop, the first item which tells us what percentage of the cells have expected count less than 5, this is important because it’s an assumption of the Chi-squared test, if the percentage is greater than 20% then the assumption has been violated with a two by two table and we need to take a different course of action which in this case is to look at the Fisher’s exact test.

In assessing our variables we noticed that this is the case, therefore we took an alternative course and used Fisher’s test to test for the statistical significance.

4.10.1. Table 9a: Private sector development test: Fisher’s exact test

Question 18: Which one is more effective and relevant as a firm strategy and rivalry?

**.If you agree which strategy is best? Cross tabulation*

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Which one is more effective and relevant as a firm strategy and rivalry? *.If you agree which strategy is best?	67	95.7%	3	4.3%	70	100.0%

{% within.}If you agree which strategy is best?

		.If you agree which strategy is best?		Total
		Litigation	ADR	
Which one is more effective and relevant as a firm strategy and rivalry?	<i>Litigation</i>	66.7%	9.1%	19.4%
	<i>ADR</i>	33.3%	90.9%	80.6%
Total		100.0%	100.0%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	20.881 ^a	1	.000		
Continuity Correction ^b	17.362	1	.000		
Likelihood Ratio	17.144	1	.000		
Fisher's Exact Test				.000	.000
Linear-by-Linear Association	20.570	1	.000		
N of Valid Cases	67				

a. 1 cells (25.0%) have an expected count less than 5. The minimum expected count is 2.33.

b. Computed only for a 2x2 table

Results:

The Sig. value is reported to be **0.000**. This indicates that it is less than 0.05 (but not exactly 0), which, in turn, means that it is less than our chosen significance level of 0.05.

It is observed, however, that ADR 80.6% is higher than Litigation 19.4% as a firm strategy and rivalry. Even if the chi-square has been violated the better test will be to

look at Fisher's Exact Test, this test also, it has proved that there is an association between the Dispute resolution and Business competitiveness.

4.10.2. Table 9b fisher's test for an association between dispute resolution and unemployment.

*Question 19: Which one fosters continuous sustainable improvements in Industrial relations? *.If you agree which strategy is best? Cross tabulation*

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Which one fosters continuous sustainable improvements in Industrial relations? *. If you agree which strategy is best?	67	95.7%	3	4.3%	70	100.0%

*Which one fosters continuous sustainable improvements in Industrial relations? *.If you agree which strategy is best? Cross tabulation*
% within. *If you agree which strategy is best?*

	If you agree which strategy is best?		Total
	Litigation	ADR	
Which one fosters continuous sustainable improvements in Industrial relations?	<i>Litigation</i> 66.7%	3.6%	14.9%
	<i>ADR</i> 33.3%	96.4%	85.1%
Total	100.0%	100.0%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	30.821 ^a	1	.000		
Continuity Correction ^b	26.057	1	.000		
Likelihood Ratio	24.010	1	.000		
Fisher's Exact Test				.000	.000
Linear-by-Linear Association	30.361	1	.000		
N of Valid Cases	67				

a. 1 cells (25.0%) have an expected count less than 5. The minimum expected count is 1.79.

b. Computed only for a 2x2 table

Results analysis

As observed at the bottom of our Chi-square test table we have, the percentage is greater than 20% then the assumption has been violated with a two by two table, meaning we need to take a different course of action which in this case is to look at the Fisher's exact test. The likelihood is also an option but with a two by two table Fisher's Exact Test is common to use. Using the 2 sided figure, i.e. when our alternate Hypothesis is two-tailed in other words do not specify the direction of the difference e.g. there are more who agree with Litigation than ADR, we just say there is an association between dispute resolution strategy and Private sector Development /unemployment. Therefore, in this case, we will use Fisher's exact test to determine which significance value is best to use according to our alternative hypothesis, and we want to compare it to our alpha. Now our alpha is our level of significance which is 0.05. We can see that the value is 0.000 which means we do not accept the null hypothesis. Our alternative Hypothesis has again been proved that there is an association between Dispute Resolution and Unemployment.

4.11. CORRELATIONAL ANALYSIS

Correlation analysis is used to study the strength of a relationship between two, quantitative variables. This type of analysis is important as we try to establish the possible connections between the two variables.

What we have done is we have looked for a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation? And if they agree which one would be the best. The researcher will use the Pearson correlation because our data is normally distributed and that they had a linear relationship. We can see from the table below that across the diagonal there is 1 this is because if we correlate a variable with itself it would be perfectly positively correlated.

4.11.1 CORRELATION BETWEEN DISPUTE RESOLUTION AND PRIVATE SECTOR DEVELOPMENT.

The value **-.525** is our actual correlation coefficient and this tells us the strength of our linear relationship between our variables chosen. Results on our table below reflects a small and moderate strength negative correlation of **-.525**. The second thing to look at it our sig value of **0.000** that is our P-Value which we use to compare to the level of significance 0.05 our alpha value, it shows that our correlation is less than our alpha value, this means the relationship is statistically significant and it did not happen by chance. In our sample, we observe a small negative correlation and there is enough evidence to say that this correlation exists in the population.

4.11.1 PSD (Private Sector Development)

Table 10 correlation between dispute resolution and Private sector development

Correlations

	There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation?	If you agree which strategy is best?
There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation?	<p>Pearson Correlation</p> <p>Sig. (2-tailed)</p> <p>N</p>	<p>-.525**</p> <p>.000</p> <p>67</p>
If you agree which strategy is best?	<p>Pearson Correlation</p> <p>Sig. (2-tailed)</p> <p>N</p>	<p>.525**</p> <p>.000</p> <p>67</p>

** . Correlation is significant at the 0.01 level (2-tailed).
Weak negative correlation (correlation coefficient -.5)

4.11.2 CORRELATION BETWEEN DISPUTE RESOLUTION STRATEGY AND UNEMPLOYMENT

Table 11 correlation between dispute resolution and unemployment

Correlations

		There is a relationship between the achievement of low unemployment levels with the use of ADR or Litigation?	If you agree which strategy is best?
There is a relationship between the achievement of low unemployment levels with the use of ADR or Litigation?	Pearson Correlation Sig. (2-tailed) N	1 70	-.357** .003 67
If you agree which strategy is best?	Pearson Correlation Sig. (2-tailed) N	-.357** .003 67	1 67

** . Correlation is significant at the 0.01 level (2-tailed).

Weak negative correlation (correlation coefficient -3)

Our results show the correlation coefficient value of -0.357, which is the strength of our linear relationship between our chosen variables. The value on our table 11 show that it's small and moderate strength negative correlation of -.357. Our correlation is less than 1 it means it is statistically significant and it did not happen by chance. The second thing to look at is our sig. value of 0.003 in our sample, we observe a small negative correlation and there is enough evidence to say that this correlation exists in the population. Our P-value is less than 0.05 which is the alpha level we have chosen, therefore, there is enough evidence to suggest that the correlation we observed does exist in the population.

4.12 ANALYSING DIFFERENCES BETWEEN LITIGATION AND ADR

4.12.1. COMPARISON OF TWO MEANS: USING AN INDEPENDENT SAMPLES T-TEST:

The researcher examined the two independent groups, i.e. advocates for the ADR group and Litigation group, to determine whether there is statistical evidence that the associated population means are significantly different.

The researcher compared the two means of two matrix variables to see if the differences found are statistically significant using the t-test two-tailed independent samples t-test was conducted to examine (1) whether the mean of Private Business Development (business competitiveness) was significantly different between ADR and Litigation categories of Dispute Resolution. (2) Whether the mean unemployment was significantly different between ADR and Litigation categories of Dispute Resolution.

4.12.2 (PSD) PRIVATE SECTOR DEVELOPMENT T-TEST

Table 52. COMPARISON OF TWO MEANS USING AN INDEPENDENT SAMPLES T-TEST: INDEPENDENT SAMPLES T-TEST

Group Statistics

	If you agree which strategy is best?	N	Mean	Std. Deviation	Std. Error Mean
There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation?	<i>Litigation</i>	13	2.46	1.561	.433
	<i>ADR</i>	54	1.37	.623	.085

	Levene's Test for Equality of Variances		t-test for Equality of Means							
	F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		
								Lower	Upper	
There is a relationship between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation?	61.595	.000	4.034	65	.000	1.091	.270	.551	1.631	
Equal variance assumed			2.474	12.935	.028	1.091	.441	.138	2.045	
Equal variance is not assumed										

4.12.3 Results analysis.

The Sig. value is reported to be **0.000**. This indicates that it is less than 0.05 (but not exactly 0), which, in turn, means that it is less than our chosen significance level of 0.05. Thus, we can regard the null hypothesis as refuted and start believing that there is an association between the achievement of competitive advantage of Private sector companies with the use of ADR or Litigation? However, the mean of Litigation is higher than of ADR but the standard deviation for ADR is lower than that of litigation therefore overall this means that ADR performs better than Litigation as a tool for private sector development. The results suggest it is likely that the variance of PSD is equal for each

category of dispute resolution, indicating the assumption of the null hypothesis is rejected.

Furthermore, in the first run on PSD, the results of the t-test were significant based on the value of 0.05, $p=0.05$. This result suggests PSD is likely to be attained by a normal distribution, indicating a normality assumption is notable.

4.13 T-TEST FOR UNEMPLOYMENT

Secondly, independent samples T-Test was conducted to examine whether the mean of Unemployment was significantly different between ADR and Litigation categories of Dispute Resolution

Table 63: comparison of two means using and independent samples t-test for unemployment and dispute resolution

Group Statistics

	If you agree which strategy is best?	N	Mean	Std. Deviation	Std. Error Mean
There is a relationship between the achievement of low unemployment levels with the use of ADR or Litigation?	<i>Litigation</i>	12	2.83	1.467	.423
	<i>ADR</i>	55	1.73	1.044	.141

Table 13

Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
There is a relationship between the achievement of low unemployment levels with the use of ADR or Litigation?	Equal variances assumed	3.745	.057	3.080	65	.003	1.106	.359	.389	1.823
	Equal variances not assumed			2.479	13.535	.027	1.106	.446	.146	2.066

RESULTS ANALYSIS

The Sig. value is reported to be **0.003**. This indicates that it is less than 0.05, which, in turn, means that it is less than our chosen significance level of 0.05. Thus, we can regard the null hypothesis as refuted and start believing that there is an association between the achievement of low unemployment levels with the use of ADR or Litigation. However, the mean of Litigation is higher than of ADR but the standard deviation for ADR is lower than that of litigation therefore overall this means that ADR performs better than Litigation as a tool for reducing unemployment.

If the p-value is less than or equal to 0.05, we reject the null hypothesis that there's no difference between the means and conclude that a significant difference does exist.

Generally, the findings suggests the mean of PSD/unemployment significantly different between ADR and Litigation Categories of Dispute Resolution. The mean of PSD and Unemployment in the category of ADR was significantly higher than the Litigation category. This means ADR is better than Litigation as a labor dispute resolution strategy and means for private sector development and unemployment.

As shown in the tables, the tests on the differences in statistical significance between Litigation and ADR influence on private sector development and unemployment.

4.14. SUMMARY (STATISTICAL SIGNIFICANCE)

Our results show that the null hypothesis, which assumes that there is no relationship is refuted and we accept the alternative hypothesis that there is a relationship between Dispute resolution and Private sector development as well as unemployment. ADR has proved to be more effective than litigation by comparison.

4.16 SYNOPSIS OF CHAPTER FOUR

In summary, the chapter has reported several statistics and related analysis. Descriptive answered ADR is more effective and efficient than Litigation as a dispute resolution strategy. Correlational/predictive- answered that there is a relationship between Dispute resolution strategy and Private sector development as well as unemployment.

The T-Test is testing a null hypothesis just like in our Chi-square test. We started with an assumption that assumes our null hypothesis to say that there is no statistical difference between the groups and our results rejected that null hypothesis and accepted

the alternative that there is an association between the variables. Correlation test indicated strong correlations and statistical significance; also the correlation between Dispute resolution and Private sector development and Unemployment was reported to have stronger correlation and statistical significance too.

CHAPTER FIVE: INTERPRETATION AND DISCUSSION

5.1 Introduction

The following chapter presents a summary of the research, and findings of the study which are discussed and interpreted.

5.2 Summary of Research

This study observed the effectiveness and efficiency of ADR (alternative dispute resolution) and Litigation as a tool for promoting private sector development and limiting unemployment in Zimbabwe. The literature review was concentrated on the comparison of ADR and Litigation as a dispute resolution strategy and further on the Theories that can help predict the association between dispute resolution and Private sector development and a tool for reducing unemployment. Case laws were also used to explain the effectiveness of the 2 dispute resolution strategies as well as their effectiveness and efficiency as a tool for private sector development and as a form of reducing unemployment.

The research was undertaken on 70 respondents who are practitioners in the field of labor relations disputes in Zimbabwe. The intention was to observe which one between the two dispute resolution strategies is better at resolving labor disputes to ensure industrial harmony and also good for productivity to ensure private sector development and reduce unemployment in Zimbabwe. The study showed that ADR is more effective and efficient than litigation. It was found that ADR is more efficient and more effective as a dispute resolution strategy as compared to Litigation.

5.3 Discussion and Interpretation of Findings.

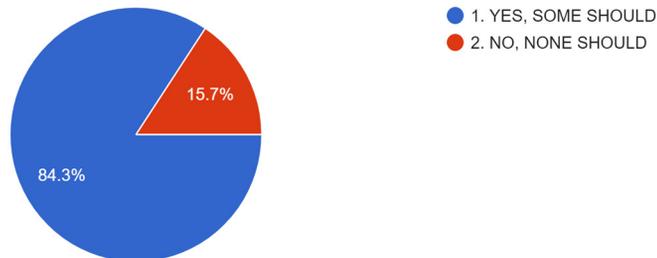
In this section, we will start with the first part of our comparison of the effectiveness and efficiency between ADR and Litigation. Then, later on, look at their impact on private sector development as well as unemployment. The first concerns:

5.3.1. Characteristics of effectiveness.

Questions 5 to 9 aims to compare and establish the efficiency of litigation and ADR in resolving labor disputes. In fig. 6 below, there was 84.3% agreement from the respondents that most labor disputes should go through ADR first for resolution, indicating the importance and value of ADR than litigation. Furthermore, legal practitioners fell within the bracket of (none should) 15.7% who did not agree when comparing the average responses between the legal professionals and ADR Practitioners, the legal Professionals view Litigation as the most ideal method of settling disputes with a slice cut of (15.7%) meaning they consider litigation to be far more effective than the ADR Practitioners (84.3%). The reason for this difference in results between respondents is the difference in backgrounds and also that litigation is the regular means of resolving disputes for legal professionals. This finding relates well with the literature by (Midodzi & Jaha, 2011), the research revealed that the method of alternative disputes resolution was preferred by the people compared to litigation owing to the delays and judgmental posture of these traditional methods.

Fig 6 In your opinion should any disputes go through dispute resolution processes that do not involve a judge's binding decision (i.e. ADR)?

PART II: YOUR VIEWS ON LABOUR DISPUTE RESOLUTION (COMPARISON OF ADR AND LITIGATION) 5. In your opinion should any disputes ... not involve a judge's binding decision (i.e. ADR)?
70 responses



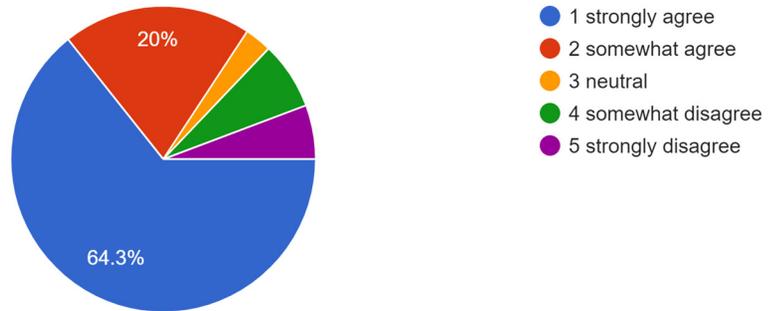
5.3.1.2 The Q16 weighted average responses: "cost"

The Q16 weighted average responses below indicate a response rate of 64.3% for the strongly agree and 20% for somewhat agree, that litigation is not cost-effective. As highlighted in literature and practice of losing a dispute in court is a very expensive process and often likely both parties end up losing money in the long run. These findings are closely related to what (Peckham, 1984) stated in their research that the cost of litigation has become a cause for concern in all segments of the legal community. The cost problems troubles judges, court administrators, litigants, and members of the public who fear the expense they will face if ever they go to court.

Figure 7. Question 16. Does ADR reduce costs as compared to litigation?

16. Does ADR reduce costs as compared to litigation?

70 responses



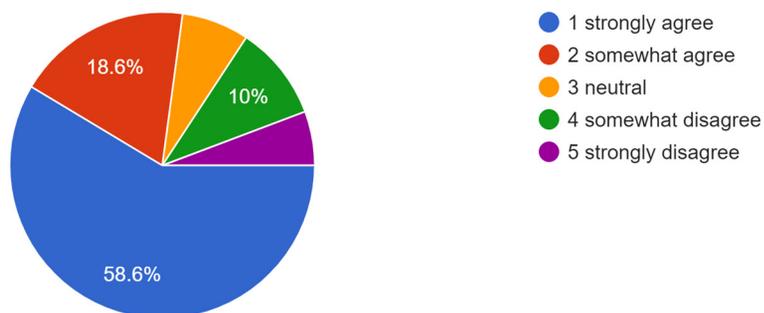
5.3.1.3 The weighted averages for Q17: “time”

The weighted averages for Q17 below are 58.6% and 18.6% for strongly agree and somewhat agree with only 5.7% and 10% strongly disagreeing and somewhat disagree respectively that litigation causes longer delays than with ADR methods. The weighted average response from the legal professionals was more to disagree than to agree from the ADR Practitioners again reflecting the legal professional’s rather more favorable view of litigation. This finding supports literature claim by, (Gowak, 2008) who rightly put we need to look at existing realities on the ground and in practice that show the need to resort to other means of dispute resolution to lessen the burden on courts and speed up the justice delivery.

Figure 8: Question 17. Does ADR significantly affect the time of the conclusion of cases?

17. ADR significantly affects the time of the conclusion of cases?

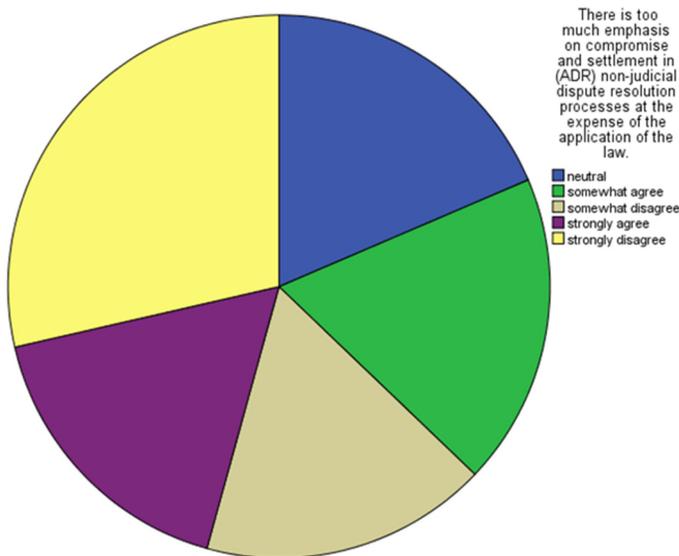
70 responses



The general findings are in line with the literature, well-articulated by (Stipanowich, 2004) who established that “there is clear positive evidence of cost and time savings and numerous other benefits of some court-annexed ADR programs, this finding is exactly what the researcher concluded in this research as well.

5.3.1.4 The Q7 weighted average: “compromise”

Figure 9: Question 7. There is too much emphasis on compromise and settlement in (ADR) non-judicial dispute resolution processes at the expense of the application of the law.



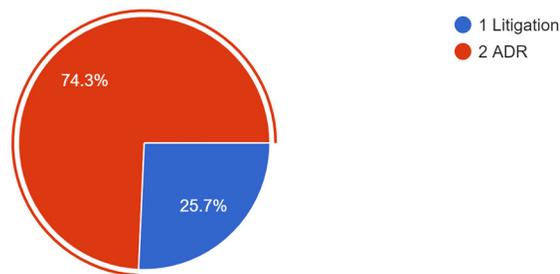
Q7 response rate of 30% and 17.1% for strongly disagree and somewhat disagree indicates that all marginally disagree that overemphasis on compromise impacts the effectiveness of ADR than Litigation. While 18.6% remained neutral on the idea with 17.1% strongly agreeing and 17.1% somewhat agreeing that there is too much emphasis on compromise and settlements in ADR at the expense of the law. (Menkel-Meadow, 1991) reinforced this view when he articulated that, “courts try to use various forms of ADR to reduce caseloads and increase court efficiency at the possible cost of realizing better justice and also that there is higher chances of delivering justice that is accepted and satisfying to both parties with the use of ADR than Litigation”.

5.4. Q10-20 ASSESSMENT OF COMPETITIVE ADVANTAGE

The responses to questions 10-25 indicate the importance of the existing relationship between ADR and unemployment and business competitiveness. Regarding the figure 10 below, the extent of comparison between ADR and Litigation as a competitive advantage in business, shows that, there is a widely held negative view to the use of litigation for resolving disputes, as a business strategy, with roughly equal-weighted averages (74.3% and 25.7%) for ADR and Litigation respectively. Business captains and small business owners experienced in dispute resolution respondents indicate some agreement with the statement that the use of ADR than Litigation is better for business competitiveness.

Figure 10: Question 18. Which one is more effective and relevant as a firm strategy and rivalry?

18. Which one is more effective and relevant as a firm strategy and rivalry?
70 responses

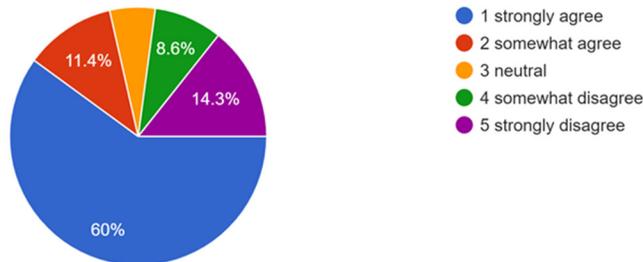


5.4.2 Question 10, "firm strategy and rivalry"

For question 10, the weighted average of 60% and 11.4% for strongly agree and somewhat agree respectively, to point out that all agree that the relationship affects Business development and unemployment. This is in line with the correlation tests and chi-square tests carried out in the previous chapter that reflect a strong relationship between dispute resolution and Business competitiveness and unemployment.

Figure 11: Question 10. Litigation involving a business diverts economic resources from more productive activities.

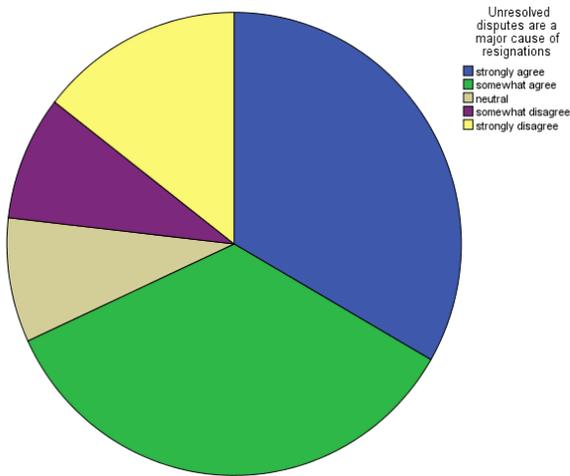
PART III: ASSESSMENT OF COMPETITIVE ADVANTAGE. 10. Litigation involving a business diverts economic resources from more productive activities.
70 responses



(Epp, 1992) in his research explored whether a large legal profession hurts economic growth, which was supported by several studies that this claim is true. Litigation as compared to ADR hurts Business development and economic growth

5.4.3 Question 23 “unresolved conflict”

Figure 12: Question 23. Unresolved disputes are a major cause of resignations



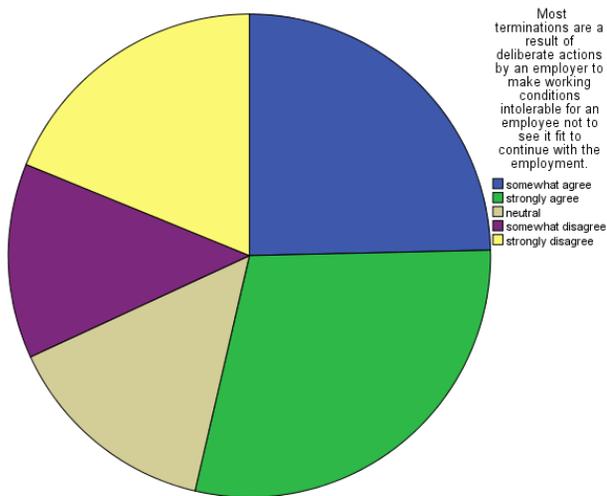
(Whitaker & DeHoog, 1991) found that unresolved conflict to be a frequent cause of turnover. This finding validates the results of this study and in alignment. Q23, the weighted average of 68.1% and 7.2% for strongly agree and somewhat agree respectively indicates that all agree that unresolved disputes are a major cause of resignations.

5.5 Unemployment

The remaining four questions are related to whether Litigation or ADR is successful in reducing unemployment.

5.5.1 Question 24: most terminations are employers' fault

Figure 13: Question 24. Most terminations are a result of deliberate actions by an employer to make working conditions intolerable for an employee not to see it fit to continue with the employment.



For Q24, the weighted average of 36.2% and 33.3% for strongly agree and somewhat agree respectively indicates that all agree that most terminations are employers' fault. (Leonard, 1987) expressed similar findings that the employer holds the power to terminate at will and resultantly all terminations are at the whims of the employer than the employee.

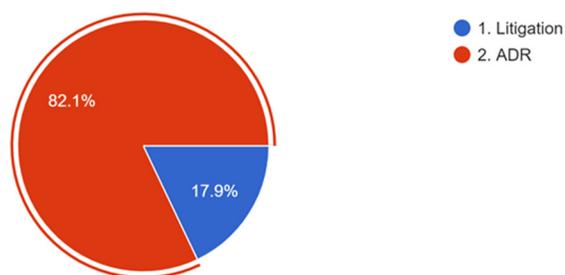
5.5.2 Question 22 “relationship between the achievements of low unemployment-best strategy”

Q22, had a response rate of 82.1% and 17.9% for ADR and Litigation respectively.

Trade Unions and informal traders and ADR Practitioners cited ADR mostly that the use of ADR reduces unemployment to some extent, but with the experienced legal professionals a little less convinced of this. This finding is consistent with correlation tests and T-Test carried out in the previous chapter that there strong evidence of a relationship between dispute resolution and unemployment and that to achieve low unemployment levels ADR would work better than litigation.

Figure 14: Question 22. “There is a relationship between the achievement of low unemployment levels with the use of ADR or Litigation? “If you agree which strategy is best?”

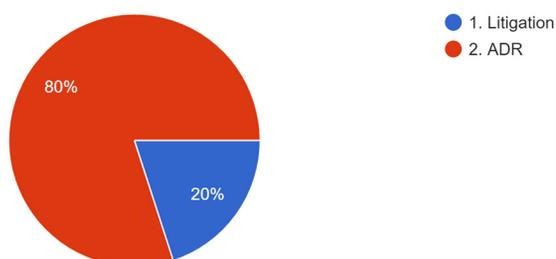
22. If you agree which strategy is best?
67 responses



5.5.2.3 Question 25 “reinstatement order”_Figure 15: Question 25. Which one amongst the 2 Orders of Reinstatement would an employee likely to go back to work?

25. Which one amongst the 2 Orders of Reinstatement would an employee likely to go back to work?

70 responses



Q25 response rate was 80% and 20% for ADR and Litigation, this indicates a weak disagreement that an employee is likely to go back to work after an ADR order than Litigation. This finding is more consistent with (Malinowski, 1981) who stated that after an arbitration order of reinstatement,” employers find that employees returning to work are satisfactory and make normal progress, with good attitudes and few, if any, disciplinary problems, they are dissatisfied with the arbitrator's order of reinstatement”. Whereas a court order (West, 1988) found that few employees accept reinstatement, and reinstated employees often resign or they seek monetary compensation instead of reinstatement. The researcher's findings are consistent with the literature out there.

5.6 Discussion on Findings

Most respondents agree that litigation is an expensive way of resolving Labour disputes, though there has been a concern in Zimbabwe in the past that arbitrators have been awarding huge amounts that end up crippling the business and putting most employees out of work. There has been concern about placing labor disputes entirely into an ADR process, preferring to mix the two and have the labor disputes finalized at the court (except for arbitration). Litigation is considered to be a preferred option when the issue in dispute largely involves the question of law, and whether the issues in dispute involve significant matters affecting public policy as highlighted in Question 9 responses in the research, then litigation would be a better option than ADR.

As highlighted above that litigation is an expensive process it needs to be emphasized that it has no winners as both parties end up losing a substantial amount during the process. Usually, the matter is long-drawn-out and involves challenges and appeals this makes both parties lose heavily.

It has been established through findings and literature that Litigation takes longer to resolve a dispute than other methods but ADR can be lengthened too depending on the availability of witnesses and arbitrators as much as judges in litigation. Arbitration like litigation also involves a statement of claims and defense, the direction in which the hearing will take place, this plays into delaying the Arbitration process, but at the same time, it makes the arbitration more attractive.

Some respondents experience highlight that certain companies use litigation more and once this is the case then it's almost certain that it will choose litigation as its most

preferred process than ADR. Particularly in Zimbabwe, where the market is small and businesses cannot afford to collapse too often. Another point of concern is that Litigation often does not point out hidden costs such as impact and stress associated with court appearances and cross-examination, as well as dragging key personnel in disputes when they could be better involved in company productivity, this was noted in the theory that dispute resolution takes out productive time. What's note pointing again is that if they lose there is a negative impact on reputation, and cost to shareholders.

Question 8: *Does ADR increase lawyers' views of fairness or satisfaction with case management* the researcher agrees with the findings of this question, in ADR than Litigation there is more time and quality of the briefing and getting more facts from both parties before the matter can be resolved, the lawyers work much faster if they were informed properly and given correct documents by their clients. Thus case satisfaction is much higher in ADR than in Litigation.

In Litigation time frames, there are mostly delayed by the lawyers and in most complex cases that need experts eg medical cases or IT, It often takes them a long time to get familiar with the issues and to prepare heads of arguments, and statements of claim.

The researcher agrees with additional comments: 'The respondents' comments were very good and useful, and agree with most of them and believe some further work could be done based on these comments and the issues they raise.

5.7. Additional information discussion

Additional ad hoc comments made are:

- Problems with ADR is that shortage of information on facts in dispute; as well coming up with information and ascertaining the facts, finding and interrogating witnesses may take a long time; usually, persons responsible or necessary may not be working at the same company or stay out of the area, or be unwilling to help, etc.
- Litigation should be avoided at every opportunity. The successes are often hollow and the parties to frequent litigation are often labeled litigious regardless of which party started the case. It is becoming increasingly common to research the litigation history of a potential employee or business before engaging with them. History of litigation can be a potential hindrance to the prospect of being awarded a contract as one of the main reasons for a decline in litigation of Labour disputes.
- One of the respondents comments on Litigation was that it is dependent on proper, correct documents, reliable evidence, and records or proof. Without these one is prone to lose the case. However, with ADR, which often includes mediation and conciliation, is meant to be a quick process and as such is less dependent on numerous documents. Therefore, litigation is frequently not effective if the claimant has poor records and cannot report the burden of proof upon it.

- Mediation advantages can persuade parties to accept a more realistic option for success and settlement. However, there are limitations e.g., mediation is often unsuccessful unless there is hope of compromise and reaching a middle ground. Another crucial issue is that arbitration has become so similar to litigation through the courts that the only meaningful advantage is confidentiality.
- The biggest change and limited use of ADR was the introduction of amendment number 5 of 2015, it dramatically reduced the number of parties in a dispute going for ADR. The fast adjudication process means that parties go through the ADR process as a general rule and procedure to litigation.
- In many practitioners' experiences, ADR is only effective when parties to the dispute are willing to participate, otherwise, ADR only results in increased costs and delays in obtaining a resolution.

The majority of respondents comment on the use of ADR as the best strategy in the resolution of disputes and also as a business strategy for efficiency and reduction of unemployment. The consensus seems to be that, although ADR has been effective in reducing the number of labor disputes that go to litigation, the process is still not considered to be as effective as it could be.

5.8. DISCUSSION ON THEORIES

The task of this section is to bring together the theories of chapter 2. The theories presented earlier are predictive and reflect the relationship between dispute resolution and Private sector development and Unemployment.

Procedural-Distributive Justice Theory by (Olson-Buchanan, 1996) focuses on the interrelationships after the settlement of a dispute, on how it affects his job performance, and turnover. The theoretical model was supported by the findings in chapter 4 that there is a correlation between dispute resolution and business development as well as unemployment. Business development hinges upon the way the dispute resolution is structured and the same can be said about unemployment.

These results allowed us to reflect on the theoretical debate on the association of dispute resolution strategy and private sector development as well as unemployment in Zimbabwe. To recap, both theories (Procedural-distributive theory and the displacement theory) help explain and analyze the association between dispute resolution chosen and private sector development and unemployment.

Procedural-distributive theory points that the intentions of the parties and the fairness of the system are important in how the disputes are resolved as well as the perception it gives to employees of how well their voice is heard in the reorganization this then impacts on their attitude towards work performance and the product quality. Displacement theory looks at the time taken by the dispute resolution strategy and the time taken away from productive work while either the employee or employer devotes his time and resources to dispute resolution, how all this affects production and labour costs which resultantly affects business competitiveness.

These theories have been validated by the quantitative findings in the research with the highest agreement in the survey, Q5 the importance of all disputes should go through (ADR) dispute resolution processes, and Q12 employer-employee relationship is preserved better by ADR more than Litigation. Time taken by litigation (Q17), with unending appeals is also a factor affecting the effectiveness of litigation, a high number of respondents strongly agree that ADR significantly reduces the time of conclusion of cases. With litigation, overreliance on experts during the court process also undermines the effectiveness of litigated cases as it is costly to engage legal professionals.

Furthermore, as the literature suggests in the Procedural-Distributive Justice Theory, the intentions of the parties and the fairness of the system are important in how the disputes are resolved. The theory suggests that the way the dispute resolution is structured influences perception of fair procedures and better settlement outcomes which leads to low employee turnover and quality of products produced.

5.9.1 Discussion on Significance of the Study

While this study acknowledges again the effectiveness of ADR as a dispute resolution strategy and as a tool for private sector development and reduces unemployment it shows however that ADR has its shortcomings and when it fails litigation would be the option. This study showed how dispute resolution is associated with Private sector development and unemployment.

The findings on the association of dispute resolution and private sector development and unemployment add modestly to the body of knowledge of the literature on industrial relations particularly dispute resolution.

Simple facts such as knowing the characteristics of the stresses dispute resolution and who is involved in dispute resolution in litigation can be the basis for more assertive actions supporting or enforcing ADR.

Understanding the process of Dispute Resolution and its effects on Private sector development would be an effective way to help the process that would help the government regulate. Perhaps the most important learning of this study is that whatever labor dispute resolution strategy or policy the government adopts, it has a bearing on the private sector development and unemployment.

5.9.2 Summary of Chapter Five.

What comes out of the study is that Employees may, therefore, prefer alternatives that are less formal, expensive, and adversarial, and more flexible, private, and expeditious. Reinstatement may be a more realistic remedy for the employee after a swift arbitral proceeding, and back pay liability will not continue to mount as opposed to long delays in the litigation cases. Employees benefit from access to a more efficient, Expeditious, and inexpensive form of justice; employers save litigation costs and avoid the disruptive effects on the management of protracted legal proceedings open to the public.

The advantages of arbitration may be its disadvantages too as highlighted in chapter 2, Arbitration is a court-like process, and therefore arbitration may aggravate the confrontational aspects of the parties' relationship, where Lawyers are involved. The generally private nature of arbitral proceedings and the lack of publicized decisions have

made complainants skeptical of the appropriateness of arbitration for public law claims such as discrimination. Parties became more interested in arbitrating their discrimination claims to avoid the expense and delay of ever-more crowded courts.

CHAPTER SIX CONCLUSION AND RECOMMENDATION

6.1. Conclusions

This chapter concludes this report with recommendations that are given and further research end the chapter. The objective of this research was to discover first which one between the two dispute resolution mechanisms is better and efficient in resolving disputes. Then secondly, to assess whether the ADR or Litigation approach is efficient and suitable as a tool to promote Private sector Development. Then thirdly whether ADR or Litigation approach is efficient and suitable as a tool to reduce unemployment? This paper provided the results of a survey of experts and practitioners with moderate to extensive experience in dispute resolution in the Zimbabwe Labour industry. From this examination, it was uncovered that Alternative dispute resolution methods, such as arbitration, are a better alternative than litigation. The reason for this was in line with literature that litigation is expensive, slow, and stressful.

What comes out of the study which is of concern besides Litigation being expensive and slow is the relationship between the disputants if the relationship is hostile, ADR will not work and any attempt to resolve the dispute will lead to litigation.

Although this study is concentrated in Zimbabwe, the results of this study are unlikely to be different from the rest of Africa or most developed western countries. The results of the research are correct and in line with the literature on comparative analysis and it also substantiates the theories highlighted in chapter three and four.

The respondents who participated in the survey represent the majority of experts found in the country on labor issues and therefore a lot of reliance has been placed on their input. However, with the introduction of amendment number 5 of 2015 which introduced the confirmation of rulings by labor officers and designated agents, it rendered other dispute resolution mechanisms and systems generally more complicated. As a result, they have limited power and knowledge in resolving major disputes. The officers are now required to acquaint themselves with rules of procedure at labor court and knowledge about precedent cases that help justify their rulings, this compromises the ADR process as it takes the form of litigation. Similarly, most lawyers, while understanding litigation generally, have a limited understanding of Labour issues or the law relating to Labour matters and there are few expert Labour lawyers in Zimbabwe.

Occupational bias in the survey and that cannot be ruled out which compromises our assessment. Future research is needed from more contributions from a wide pool of specialist lawyers in the labor cases as well as more industry players affected by the system.

As highlighted in our literature cited, litigation is inappropriate for all but the largest of disputes, this has been confirmed by empirical findings as provided by Question 9.

The most important drawback of this study is that the sample size is quite small; although this is because the population size is quite small too because of the degree of specialism in the field of Industrial Relations. Future work would benefit from covering a larger

area than Zimbabwe alone, perhaps sub-Saharan Africa as a whole or even the continent.

Of course, international comparisons are also possible in developed countries.

In the context of the use of ADR, the process needs to be fully utilized and explored to realize its effect on the development of the private sector and reducing unemployment. In Zimbabwe, the exact opportunity of the ADR strategy has not been fully explored. The institutional and administrative framework for ADR needs reform and experiences perhaps experiences and lessons can be borrowed from South Africa.

6.2. THE FUNCTIONS OF GOVERNMENT

The government's role in the Labour Dispute Resolution Process is to provide ways for people to raise their issues and have them addressed, it sets the rules of conduct, collects information about dispute resolution approaches and outcomes. It also provides complaints and dispute resolution services and licenses institutions to carry the functions on its behalf. Many of these services are administered privately within private sector industries and communities. Thus a policy in line with business development and one which sets lower unemployment rates is advised.

6.3 POLICY RECOMMENDATION

SEPARATE AND REFINE ADR PROCESS

The objective is to design a process that will stop cases from going for litigation and clogging the courts. That is why the ADR was established, to begin with. The courts also can help streamline processes that are underused by referring matters back for resolution through ADR. So overall, It is best to structure the dispute resolution without mixing ADR and Litigation. That way ADR will not be viewed as a stepping stone or process procedure to litigation, as it is the case right now where most people treat ADR as a

mandatory procedure that one has to go through designed by law. What is important for ADR to work and fully exploited is to let the parties freely participate in the process.

The disputants should be allowed to choose either Litigation or ADR process before registering their Dispute- this is a way in keeping with the spirit of voluntary access to ADR. If the parties choose on their own, they are likely to pay more attention to the process and even the representatives (lawyers and consultants) will also pay more attention so that it becomes more effective. Most lawyers currently do not pay attention to the ADR process except for Arbitration unless it has been directed by the court.

The process we propose does not require that ADR be used for every case, any party who explains why ADR is inappropriate in their case will be excused from opting for it. Requiring disputants to select the appropriate process for their case would also eliminate some of the most frequently heard complaints about the process. Everyone involved would invest in the process and make it more effective because they would have freely chosen the process.

6.4. Recommendations for Further Research

More valid and credible assessments are particularly restricted by the availability and reliability of recorded data. This research was mainly based on perception from those experts in the field of labor dispute resolution. There is no recorded data on the impact assessments of the type of dispute resolution on private sector development and unemployment. If there is recorded data, it makes it important to measure the variables with Private sector development indicators using the Porter's Diamond Model. This, however, allows future researchers from IT experts to come up with an IT program that

can track the after settlements outcomes of dispute resolution. Future researchers can then use quantitative recorded data to assess the effects of different types of dispute resolution on private sector development and unemployment.

The frequency, and often the methodology, in which information gathering and investigations are made do not always suit the purposes of this kind of research. Documentation, if available, represents one of the most reliable sources to observe physical changes and effects of strategies adopted in labor dispute resolution. For similar studies, the first phase in which the respondents' who are affected by the Industrial relations system is identified and the primary and secondary data according to the selected criteria is selected, would allow increasing the number of detailed survey samples needed, thus considerably the effectiveness of data collection.

The study leaves wide room for positive participation for the many other actors in the dispute resolution association with private sector development and unemployment.

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