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EVALUATING THE EFFECTIVENESS OF LABOUR DISPUTE RESOLUTION MECHANISMS IN ZIMBABWE'S NATIONAL EMPLOYMENT COUNCILS POST THE LABOUR AMENDMENT ACT NO. 5 OF 2015

BY

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Abstract

This study evaluated the effectiveness of dispute resolution mechanisms in Zimbabwe's National Employment Councils (NECs) following the promulgation of the Labour Amendment Act Number 5 of 2015. Effectiveness was assessed using the timeliness of dispute resolution, the fairness of outcomes, the accessibility of the mechanisms, the enforceability of decisions, and stakeholder satisfaction. The amendment had aimed to harmonise national labour laws with the Constitution of Zimbabwe and promote fair labour practices. Nonetheless, its implementation led to procedural complexities, delays, and concerns about impartiality in the justice delivery system, particularly regarding the neutrality of Designated Agents (DAs). The study aimed to achieve the following: (i) to evaluate the effectiveness and fairness of NEC dispute resolution processes under the amended legal framework; (ii) to examine stakeholder perceptions of neutrality, accessibility, and enforcement within the NEC system; and (iii) to develop a practical, justice-oriented model for improving labour dispute resolution in Zimbabwe. It adopted a qualitative approach grounded in a dual case study design focusing on the NECs for the Welfare and Educational Institutions and the Energy Sector. A purposive sample of 39 respondents, drawn from employers' associations, the Employers' Confederation of Zimbabwe (EMCOZ), trade unions, the Ministry of Public Service, Labour and Social Welfare (MPSL&SW), Designated Agents, the Labour Court, the Zimbabwe Federation of Trade Unions (ZFTU), the Zimbabwe Congress of Trade Unions (ZCTU) and legal practitioners, participated in face-to-face interviews, alongside an extensive review of relevant literature and secondary data. Rawls' theory of justice and the pluralist labour theory provided the theoretical framework, offering a lens through which the principles of fairness, impartiality, and equity in dispute resolution amid competing interests were evaluated. Data were thematically analysed using NVivo 13 software. The findings revealed systemic challenges in the aftermath of the amendment, including procedural inefficiency, high litigation costs, weak enforcement mechanisms, and limited stakeholder collaboration. These weaknesses notably undermined stakeholder confidence and the attainment of social justice within industrial relations. The study developed a conceptual model in response, advocating for a fair, transparent, and collaborative dispute resolution system that integrates technology, strengthens institutional capacity, and improves accountability among NEC actors. It contributes to the body of knowledge by empirically operationalising Rawlsian justice and the pluralist labour theory within Zimbabwe's labour dispute resolution framework, demonstrating how principles of fairness and equity can be translated into measurable indicators of effectiveness, and by proposing a pragmatic, evidence-based model for reforming dispute resolution processes in NECs. The model integrates theoretical insights with practical reforms, providing policymakers and practitioners with a framework to enhance fairness, efficiency, and social justice in Zimbabwe's industrial relations landscape and beyond.

Keywords: Labour dispute resolution, National Employment Councils, Labour Amendment Act, Rawls' Theory of Justice, Industrial relations, Zimbabwe

Declaration

I, Rose Mambo, declare that this thesis is my original work except where sources have been cited and acknowledged. The work has never been submitted, nor will it ever be submitted to another university for the award of a degree.

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Dedication

This thesis is dedicated to myself for my perseverance and dedication; to my beloved husband, whose unwavering support and encouragement have been my strength; and to my wonderful children, whose love and patience have inspired me every step of the way.

List of Acronyms and Abbreviations

ACAS	Advisory, Conciliation and Arbitration Service
ADR	Alternative Dispute Resolution
BRICS	Brazil, Russia, India, China & South Africa
Covid 19	Corona Virus 19
CSO	Civil Society Organisation
DA	Designated Agent
EMCOZ	Employers Confederation of Zimbabwe
EPA	Employment Protection Act
ESAP	Economic Structural Adjustment Programme
ET	Employment Tribunal
HC	High Court
IECMS	Integrated Electronic Case Management System
ILO	International Labour Organisation
JSC	Judiciary Service Commission

LC	Labour Court
LO	Labour Officer
MPSL&SW	Ministry of Public Service, Labour and Social Welfare
NEC	National Employment Council
NECWEI	National Employment Council for Welfare and Educational Institutions
NGO	Non-Governmental Organisation
ODR	Online Dispute Resolution
SC	Supreme Court
The Act	Labour Act [Chapter 28:01]
TNF	Tripartite Negotiating Forum
ZCTU	Zimbabwe Congress of Trade Unions
ZFTU	Zimbabwe Federation of Trade Unions

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CHAPTER 1: INTRODUCTION

1.0 Introduction

Labour relations play a crucial role in promoting industrial harmony, productivity, and socio-economic development of a country. Disputes and conflicts are inevitable in any employment relationship worldwide; thus, appropriate responses are needed in the best interests of all parties involved (Mahapa & Watadza, 2015). Across the globe, countries and organisations use different forms of dispute resolution mechanisms to effectively manage employment relationships. The absence of efficient, effective, fair and transparent alternative dispute resolution (ADR)[1] mechanisms to manage work-related disputes has negative consequences to both the organisation and the employee. Labour disputes nonetheless need to be managed in accordance with the relevant statutes. According to Trebilcock (2019), disputes reflect the inherent different interests of labour and capital.

Several countries around the world use different labour dispute resolution mechanisms that are consistent with their constitutions and the International Labour Organisation (ILO) general guidelines. The Global North utilises alternative dispute resolution mechanisms such as mediation, conciliation, and arbitration; litigation is usually used as a last resort (Bonda & Tsvangirai, 2021). England handles labour disputes through the Advisory, Conciliation and Arbitration Service (ACAS) for conciliation and arbitration, and adjudication by the Employment Tribunal (ET) (Employment Protection Act (EPA),

[1] Alternative Dispute Resolution - It is the use of methods such as mediation, conciliation or arbitration to resolve disputes outside of traditional court litigation (Matsikidze, 2023).

1975). Industrial relations between employers and employees in England are improved by ACAS, an independent and impartial government agency (Deakin & Morris, 2009). The country's twofold employment system for disputes and unfair dismissals relies heavily on ACAS. According to Sanders (2009), the institution offers conciliation, mediation and arbitration, and ACAS remains under a statutory obligation to promote voluntary settlements of employment matters.

In Zimbabwe, labour disputes have historically posed significant challenges to both employers and employees, often disrupting economic activities and undermining workplace stability. In response to growing concerns around inefficiencies and injustices in the dispute resolution framework, the government enacted the Labour Amendment Act Number 5 of 2015, which sought to align national labour laws with international labour standards, particularly those outlined by the International Labour Organisation (ILO). The Act introduced a number of changes, including reforms to retrenchment procedures, dispute handling mechanisms, and employee rights. Despite these legal reforms, concerns persist regarding the practical effectiveness of dispute resolution processes, particularly in different sectors of the economy. The National Employment Councils (NECs)[2], which serve as quasi-judicial bodies responsible for handling collective bargaining and resolving

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[2] National Employment Council - It is an institution established by a registered employers' association(s) and a registered trade unions(s) to provide the collective bargaining process and dispute resolution for a specific industry. It is established in terms of Section 59 - 62 of the Labour Act (Labour Act, Chapter 28:01).

disputes at the sectoral level, have been central to this discourse. However, their capacity, consistency, and impartiality in resolving disputes remain under scrutiny.

Given Zimbabwe’s socio-economic challenges, high unemployment rates, and recurring industrial actions (Mhlanga & Ndlovu, 2021), understanding the performance of NECs under the amended legal regime is both timely and essential. The study thus critically assessed whether the Labour Amendment Act Number 5 of 2015 has resulted in more equitable, efficient, and sustainable dispute-resolution processes in the NECs, thereby contributing to informed policy and institutional development.

Industrial relations comprise a complex network of rules and institutions. These institutions and networks, together with political, economic, labour and social inputs, interact with practice to generate different outcomes that affect stakeholders in different ways (Sisson, 2009). According to research by Welz, Fromm, Contreras, and Boehmer (2016), these outcomes can include salary agreements, employment relationships, and employment laws and regulations. As in many other countries, Zimbabwe’s industrial relations system has undergone an important transformation since independence in 1980. The two most significant developments related to this study are *Don Nyamande & Another v Zuva Petroleum (Pvt) Ltd SC 43/15* (Mutasa, 2015) and the Labour Amendment Act Number 5 of 2015. In the Zuva judgment, the Supreme Court held that the Labour Act, Chapter 28:01, did not take away the employer`s right to terminate employment on notice. After the Zuva judgment, coupled with prevailing economic conditions that have drastically affected employers’ operations and the public, a massive loss of jobs followed.

Within a month following the Zuva judgment, approximately 18,000 to 20,000 jobs were lost nationwide as employers took advantage of the ruling (Mail & Guardian, 2015; NewsDay, 2015). In a bid to protect employees from further job losses arising from the Zuva Judgement, the government promulgated Amendment Number 5 of 2015, which introduced a hybrid system of rulings and determinations. This, however, brought its fair share of trouble, prompting the government to revert to conciliation and arbitration by promulgating Amendment 11 of 2023.

1.1 Background to the Study

1.1.1 The *Don Nyamande and Another v Zuva Petroleum (Pvt) Ltd SC 43/*15 Supreme Court ruling and its effects on employment relations

The Don Nyamande and Another v Zuva Petroleum (Pvt) Ltd SC 43/15 ruling, handed down on 17 July 2015, triggered a wave of terminations without benefits that had never been experienced in post-independent Zimbabwe (Supreme Court, SC 43/15). In its simplest form, the import of the Zuva judgment was that, at common law, an employer had the right to terminate an employee's contract of employment on notice, even if the employee had not done anything wrong to the employer (Mucheche, 2023). The Supreme Court held that an employer had the right to terminate a contract of employment by giving the employee notice, just as an employee had the right to terminate a contract of employment at any time by giving notice of resignation. Mucheche (2023) further stated that the Supreme Court’s ruling was based on a startling reasoning that employers and employees are equal in the employment contract.

This ruling set a precedent for lawful termination on notice across the country as firms immediately responded by firing employees *en masse* with or without benefits. In fact, most organisations used it as an opportunity to reduce their headcount cheaply. Mucheche (2023) described the aftermath of the judgment as an unprecedented labour loss, characterised by the mass, arbitrary sacking of employees based on the employer's common-law right to terminate a contract of employment. The loss of employment affected the livelihoods of those dismissed and their families and at the same time created uncertainty for the future of those who were lucky to remain in employment (Kwaramba & Uzhenyu, 2017; Mutasa, 2015; Madzingira, 2015). As a direct result of this judgment, the Zimbabwe National Water Authority (ZINWA) terminated employment contracts of 500 workers, while the City of Harare terminated contracts of 3,000 employees (NewsDay, 2015). The banking sector terminated 2000 employees, whilst the National Railways of Zimbabwe terminated the contracts of more than 1500 employees under the Zuva judgment (ZCTU Publications, 2020). Close to 6000 employees lost their jobs in the first week after the ruling (My Zimbabwe, 23 July 2016). It was a victory for employers who had argued that the existing labour laws were very rigid, protracted, arduous, and expensive, and that they did not allow them to lay off workers when economic conditions were unfavourable. While Kwaramba and Uzhenyu (2017) note that the employers' victory following the Zuva judgment was short-lived due to the government's fast-tracking of the Labour Amendment Act Number 5 of 2015, this study contends that the swift legislative response reflects a deliberate effort to restore balance in the labour dispute system. It further argues that the amendment not only curtailed the immediate advantages employers gained but also reshaped the operational dynamics of NECs.

This ruling had doctrinal significance by reactivating the employer's common-law prerogative within a statutory framework that had displaced it. By treating termination on notice as legally equivalent to voluntary resignation, the Supreme Court removed the arbitrary dismissal protection embedded in the Labour Act (Mutasa, 2015).

The institutional consequences of dispute resolution processes in NECs included mass terminations that overwhelmed the NEC dispute-resolution machinery. This exposed critical weaknesses in the institutions' capacity to process high volumes of cases and deliver on time (Mucheche, 2023). These institutional weaknesses are relevant to the study's evaluation of the effectiveness of dispute resolution in NECs. The first objective of the study is to evaluate dispute resolution mechanisms in NECs to achieve fair, accessible, and timely outcomes. The post-Zuva period, therefore, provides the foundational context for this evaluation. The Labour Amendment Act Number 5 of 2015, which is the legislative response to the Zuva ruling, is therefore examined in the next section.

1.1.2 The promulgation of the Labour Amendment Act Number 5 of 2015

The labour dispute resolution system in Zimbabwe has undergone several reforms since independence in 1980. Facing mounting pressure from the public, trade unions, and employees, the government fast-tracked the enactment of the Labour Amendment Act Number 5 of 2015 to mitigate the adverse effects caused by the Zuva judgment. There was in fact, a pronouncement by the government through the then Head of state barely a fortnight after the passing of the Zuva judgment and the pronouncement in the Herald of 30th July 2015 where the then President said *"If the law is going to create problems for our people, then that law must be amended. We cannot allow it to cause such suffering"* (Mataire, 2015). This assurance came as a result of the imbalance resulting from the Zuva judgment.

As spelt out in the explanatory memorandum to the Labour Amendment Act Number 5 of 2015, the amendment sought not only to align the labour laws with the Constitution but also to promote productivity and competitiveness of the local industry and commerce. The Amendment was thus designed to halt the massive terminations on notice without benefits. It introduced rulings as a dispute-resolution mechanism and abandoned arbitration as the mainstream one. It also introduced a minimum retrenchment package, among other changes to the Labour Act. Prior to its promulgation, labour disputes could be easily finalised through arbitration, which had a binding effect on the disputing parties, save for applications for review or appeals to the Labour Court.

The enactment of the Labour Amendment Act Number 5 of 2015 was received with mixed feelings by different stakeholders as it brought uncertainty in some quarters and, at the same time, brought relief to others due to its lack of clarity and failure to interpret its provisions on termination of employment (Uzhenyu, 2017). Both the process and the outcome have been heavily criticised across the board, with the government accused of rushing the amendment's drafting without consulting key stakeholders (Mucheche, 2017).

The Amendment has also not become the panacea to dispute resolution as it was intended to be. This study further argues that it provided no relief to thousands of employees who lost their jobs as a result of the July 17, 2015, Zuva judgment, because the law does not apply retrospectively. Worse still, it offered little comfort or relief to employees at work and failed to provide adequate guidance on Zimbabwe's current dispute-resolution system.

The Constitution of Zimbabwe was adopted in 2013 to align with the labour laws and issues arising in the labour fraternity. Section 65 of the Constitution deals at length with labour rights. The year 2015 saw the promulgation of the Labour Amendment Act Number 5 of 2015, intended to address matters arising from the Zuva Judgement (Uzhenyu, 2017). Kwaramba and Uzhenyu (2017) also add that the Amendment was promulgated to address shortcomings in section 65 of the Constitution and to improve the country's dispute resolution system. The hybrid system it introduced meant that the dispute resolution process was incomplete without litigation, where conciliation had failed. The significant difference introduced by this system was that all unresolved labour disputes were referred to the Labour Court through the process of confirming draft rulings by DAs, rather than only appeals under Section 92E of the Act, as had been the case prior to the amendment. Disputes of interest were still referred to compulsory arbitration for non-essential service sectors. This new system led to many delays in the finalisation of labour disputes. The Ministry of Public Service, Labour and Social Welfare (MPSL&SW) reported that from 2015 to 2020, a total of 53,750 labour disputes were received by 43 NECs and less than 30,000 were successfully concluded within thirty days (Ministry of Labour, 2020). The delays in finalising the labour disputes were largely attributed to the failure of the conciliation process at the NEC level and the delays at the Labour Court in confirming these cases. Consequently, social justice was being severely affected, as an interested party in a dispute had to wait months or years for it to be resolved. This system directly contradicts section 2A of the Labour Act, which is intended to advance social justice by expediting the delivery of justice.

According to Maiese and Burgess (2020), justice is action in accordance with the requirements of some law. Whether these laws are grounded in societal norms or human consensus, they must ensure that all members of their society receive fair and equal treatment. Institutions should therefore play a significant role in addressing conflict by instilling a sense of stability, well-being, and satisfaction among members of society. The promulgation of the Labour Amendment Act Number 5 of 2015 also significantly affected the roles of Labour Officers (LOs)[3] and DAs. It gave them additional functions to make rulings on disputes of right against parties who no longer have the right to appeal the same. Where a Labour Officer (LO) or Designated (DA) was unable to resolve a dispute of right and through conciliation and issues a certificate of no settlement, he or she was required to draft a ruling which was subject to confirmation by the Labour Court. Sections 93(5a) and 93(5b) of the Labour Amendment Act Number 5 of 2015 also created a situation in which the DA, who was expected to be impartial, ended up descending into the dispute-resolution arena and taking sides with one of the parties (Mucheche, 2021). Section 93 (5)

[3] Labour Officer - is an official appointed by the Ministry of Public Services, Labour and Social Welfare for the administration and enforcement of the Labour Act (Labour Act, Chapter 28:01).

(5a) (5b) of the Labour Act [Chapter 28:01] stipulates that the DA is supposed to be cited in the ruling as a party to the dispute. These confirmation proceedings would pit a DA or LO against the losing party, who must defend the ruling.

1.1.3 Isoquant Investments (Pvt) Ltd t/a ZIMOCO v Memory Darikwa CCZ 6/20: Conciliation and the Impartiality Principle

The impartiality of the DA was questioned in 2020 in the case of Isoquant Investments (Private) Limited t/a ZIMOCO versus Memory Darikwa (Designated Agent for the Motor Industry National Employment Council) CCZ6/2020 (Constitutional Court of Zimbabwe, 2020). The Constitutional Court had to intervene to address the constitutional challenge to sections 93(5), (5a), and (5b) of the Labour Amendment Act Number 5 of 2015. The Constitutional Court judgment provided background information that between the 17th of July 2015 and the 14th of August 2015, 17 ZIMOCO employees' contracts were terminated on notice. As a result, the employees demanded retrenchment packages in terms of section 12C of the Labour Amendment Act Number 5 of 2015. The matter was referred to a DA for the NEC for the Motoring Industry, who then conciliated before issuing a draft ruling. In the draft ruling, ZIMOCO was required to pay the minimum retrenchment packages in line with section 12C(2) of the Labour Amendment Act Number 5 of 2015. The DA took the matter to the Labour Court to have the draft ruling confirmed in terms of section 93 of the Act. The constitutionality of the confirmation proceedings was challenged by ZIMOCO on the basis that the process violated its constitutional rights to equal protection of the law under section 56 of the Constitution and to administrative justice under section 68 of the Constitution. For this reason, ZIMOCO requested that the matter be brought before the Constitutional Court to determine the constitutional questions raised.

In this judgment, the court distinguished between conciliation and arbitration, noting that in arbitration, a binding decision is made by a third party on behalf of the disputing parties (Munyuru, 2024). The Constitutional Court confirmed that conciliation was a compulsory method of resolving disputes referred to a Labour Officer. The Court further emphasised the importance of conciliation as a dispute-resolution process that avoids the use of power by a third party (Matsikidze, 2023). In the Constitutional Court's analysis, section 93 of the Labour Act did not create an avenue for the finalisation of a determination made by a DA in terms of section 63 (3a) of the Act. It created an avenue only for a DA to attempt to redress a matter through conciliation. The Constitutional Court therefore held that the DA had made a final decision; hence, section 93 of the Labour Act [Chapter 28:01] could not apply, stressing that the DA was not supposed to be involved in the disputes. The role of the DA was simply to confirm before the Labour Court that they made the ruling. It was not for the DA to defend his/ her ruling. Mucheche (2023) notes that the need to have the DA defending their rulings was now causing challenges of bias and impartiality, as it drew in the DA, who was not directly interested in the dispute, as was the case in the *Isoquant investments t/a ZIMOCO v Memory Darikwa*. The DAs' lack of neutrality eroded stakeholder confidence in the dispute resolution process, which affected the justice delivery system (Mucheche, 2023). The foregoing demonstrates the complexities and challenges inherent in the dispute resolution system administered by Designated Agents.

In the Isoquant Investments (Pvt) Ltd t/a ZIMOCO v Memory Darikwa CCZ 6/20, a fundamental ambiguity arising from the post-2015 dispute resolution framework, which allowed a DA to apply a dual-track jurisdiction, either attempting to redress a dispute through conciliation or issuing determinations, was clarified. DAs were not supposed to apply both jurisdictions in the same matter (Mrehwa, 2020; Mucheche, 2023; Munyuru, 2024).

The constitutional significance of this ruling lies in its engagement with the impartiality requirement enshrined in section 68 of the Constitution of Zimbabwe regarding administrative justice. The confirmation model had put DAs in an untenable position of initially acting as neutrals in a dispute before switching to defending their rulings as parties before the Labour Court Judges. Mucheche (2023) argues that this was a procedural arrangement that the Constitutional Court found incompatible with the constitutional provision on impartial adjudication. In this study, the ZIMOCO judgement identifies impartiality as a constitutionally enforceable aspect of effectiveness in the NEC dispute resolution system. This informs the evaluative framework applied in chapters 4 and 5. Matsikidze (2023) and Mucheche (2023) also argue that the ZIMOCO judgment illustrates legal ambiguities arising from the 2015 amendments, which created institutional dysfunctions in NECs with lasting consequences for stakeholder trust and confidence in the dispute resolution system.

The ZIMOCO judgment, however, created a residual problem due to the absence of an enforcement mechanism for determinations issued by DAs under section 63(3a) of the

Act. This was confirmed in the *High Court in Zimbabwe Rural District Council Workers Union v Nyanga District Council, HH-118-22,* wherein Chilimbe J held that determinations issued by DAs lacked a statutory enforcement mechanism, thereby reducing them to mere documents. Myambo and Mnyanyi (2017) therefore argued that the practical effectiveness of the mechanism for determinations was flawed from the outset. This enforcement shortcoming in determination is therefore a major concern in this study and is empirically examined and discussed in Chapter 4.

1.1.4 The promulgation of the National Employment Council for Welfare and Educational Institutions Statutory Instrument 77 of 2021

Following the ZIMOCO Constitutional Court ruling, the NECWEI issued Statutory Instrument 77 of 2021, which, in terms of section 2(a), stipulated that disputes or unfair labour practices that constitute a dispute of right shall be determined by the DA after hearing the parties concerned. The NECWEI opted to pursue the determination route, whose steps are outlined in the Statutory Instrument 77 of 2021. Appeals against determinations of a DA are appealed at the Labour Court in terms of section 92D of the Labour Act [Chapter 28:01], and adherence to the timelines stipulated in the Labour Court Rules, Statutory Instrument 150 of 2017, is a requirement.

Since the promulgation of Statutory Instrument number 77 of 2021, the NECWEI received a total of 473 cases, out of which 276 were resolved by the end of October 2023. During the MPSL&SW and NECs symposium held at Cresta Oasis in Harare from the 13th to the 15th of December 2022, DAs raised concerns about the challenges encountered in enforcing the determinations. Chief among the challenges was the difficulty of enforcing the determinations made under section 63 of the Labour Act [Chapter 28:01]. DAs raised the concern that there was no mechanism in the Labour Act [Chapter 28:01] to have the determinations registered and enforced. The determination remained a document without an enforceable legal status. The NECs Coordinating Committee report (2023) also indicated that since the promulgation of the Labour Amendment Act Number 5 of 2015, there had been no continuous training on dispute resolution for NECs and their stakeholders, despite the challenges encountered. This resulted in a lack of deeper understanding and in different interpretations of the statutes, posing a threat to the delivery of dispute resolution.

1.1.5 The Labour Amendment Act Number 11 of 2023

During the study, the Labour Amendment Act Number 11 of 2023 was introduced on the 14th of July 2023. Matsikidze (2023) notes that in an effort to address the dispute resolution challenges arising from the Labour Amendment Act Number 5 of 2015, the enactment of Labour Amendment Act Number 11 of 2023 had the effect of reverting to the dispute resolution process which existed before the Labour Amendment Act Number 5 of 2015. The only significant modification was the enforceability of a certificate of settlement. Section 93 of the Labour Amendment Act Number 11 of 2023 stipulates the powers of the Labour Officer, which also apply to the DA. The LO can conciliate a dispute or an unfair labour practice, and where parties do not settle, the matter may be referred to arbitration. Section 93(5) of the Act, as amended, distinguishes between voluntary and compulsory arbitration, wherein the former requires the agreement of the parties and the latter does not. A Senior Labour Officer may refer a dispute for compulsory arbitration in terms of section 93(5)(a) of the Act, where such a dispute involves essential services. Where the dispute is a dispute of right, it is referred in terms of section 93(5)(c). According to Mucheche (2023), if the dispute is settled through conciliation, the LO must record the settlement. Section 93 (2) of the Labour Amendment Act Number 11 of 2023 now provides for the registration of a certificate of settlement for enforcement as a civil judgment. However, if parties do not settle within thirty days after the LO has begun to attempt to settle the dispute of an unfair labour practice, he/ she is required to issue a certificate of no settlement.

After a certificate of no settlement is issued, a LO has to consult a Senior Labour Officer, who, in terms of section 93 (5) of the Act, may refer a dispute of right or a dispute of interest in essential services for compulsory arbitration, while a dispute of interest is referred for voluntary arbitration. The arbitration procedure set under section 98 of the Labour Act applies to compulsory arbitration, while the Arbitration Act applies to voluntary arbitration.

With the introduction of the Labour Amendment Act Number 11 of 2023, a LO’s jurisdiction is extended to matters in which a DA fails to commence proceedings within 30 days of the dispute arising. This development, according to Mucheche (2022), presents challenges, as LOs allocated to such cases may lack the requisite sector-specific knowledge to resolve disputes in the relevant sectors. DAs, on the other hand, are better placed to handle disputes in their respective sectors as they understand the collective bargaining agreements and the nature of the disputes involved.

According to Matsikidze (2023), amendments and changes to the labour reforms within a short space of time erode investor confidence in Zimbabwe. Labour costs are a significant aspect of organisational planning, and changes in the labour laws alter the direction of strategic planning. Under the Labour Amendment Act Number 11 of 2023 era, some disputes have been caught up in the transition from the 2015 to 2023 regime, posing a potential risk of delays in case finalisation, increased costs, and delays in justice delivery.

1.1.6 DGL Investments versus Martin Ndlovu & 14 others LC/MT/70/23: The Jurisdictional Crisis

Following the promulgation of the Labour Amendment Act Number 11 of 2023, the Labour Court was asked to address the effect of section 23 of the Labour Amendment Act Number 11 of 2023, which repealed and re-enacted section 56 of the Labour Act [Chapter 28:01] on the existence of voluntary NECs and the jurisdiction of DAs. This was after a Mining Company terminated employees' contracts due to viability challenges, and the employer subsequently replaced them. The former employees approached the DA for the NEC for the Mining Industry and challenged their termination. In the process, they also claimed terminal benefits. The DA made a decision that favoured the employees and ordered reinstatement, with an alternative of damages amounting to USD 57 303.42 to be paid on a pro rata basis. The employer was aggrieved by the decision and appealed to the Labour Court. Five grounds of appeal were noted, but the court focused on the second ground, in which the employer argued that the DA had lost jurisdiction to render a decision in the matter.

The registration of the DA in terms of section 63(1) of the Labour Act [Chapter 28:01] ceased to exist with the consequence that he had lost his status as such. The court ruled that the Labour Officers were the ones to deal with all the labour matters at the first instance. Consequently, all matters decided on by DAs on or after the 14th of July 2023 (the day the Labour Amendment Act Number 11 of 2023 came into effect) were considered a nullity. Matsikidze (2023) described the development as having the net effect of paralysing the dispute-resolution process of voluntary NECs, as they had been found to be operating illegally.

The matter had caused significant chaos and confusion across sectors and industries, such that even after the judgment was set aside, employer parties in disputes would challenge the jurisdiction of a DA. In an effort to clear the confusion, on the 12th of February 2024, the then Minister of Public Service, Labour and Social Services wrote to all the NECs and stakeholders clarifying that the DGL Investment judgement could not be implemented pending the Supreme Court ruling. The Minister also cited Reid & Another v Gordard & Another 1938 A.D 511, in which the execution of judgments pending an appeal under the common law was permitted, elaborating on the judgment's lack of legal effect.

In the DGL Investments v Martin Ndlovu & 14 Others LC/MT/70/23, the Labour Court held that the repeal and the enactment of a new section 56 under the Labour Amendment Number 11 of 2023 had the effect of dissolving voluntary NECs established under the repealed section 56. The consequence was that DAs from NECs who did not hold valid registration under section 63(1) of the Act lost the jurisdiction to determine disputes from the 14th of July 2023. This also had the effect of declaring all determinations made by the DA prior to that date a legal nullity.

Pursuant to the common law principle affirmed in Cossam Chiyangwa v Apostolic Faith Mission in Zimbabwe CCZ 06/23, the noting of an appeal automatically suspended the Labour Court's ruling, obscuring its execution (Magogo, 2024). The period of institutional uncertainty before the suspension was effected caused significant disruption within the NEC parties. Parties with pending disputes refused to appear before DAs, prompting the MPSL&SW to intervene through ministerial communication to clarify the legal position (Matsikidze, 2023)

In this study, the DGL investment ruling is significant in that it shows that dispute resolution in NECs remains constitutionally and legislatively fragile. This directly informs the study's evaluation of NECs' effectiveness as dispute resolution institutions. This ruling also demonstrates the systemic risk that unplanned and poorly sequenced legislative reform creates for the predictability of dispute resolution in NECs. The repeal of section 56 of the Act without transitional provisions for existing voluntary NECs and registered DAs exposes a recurring legislative drafting failure. This crisis in legislative response is a central concern in this study and is examined extensively in chapters 4 and 5.

1.1.7 National Employment Councils and their role post the Labour Amendment Act Number 5 of 2015.

Industrial Councils, now known as NECs, were founded in 1934 and are also referred to as Bargaining Councils (Chigudu, 2021). Employment Boards under the MPSL&SW

were established in Zimbabwe in the 1980s. The Minister would publish minimum wage notices for different kinds of workers across different industries through legislative instruments to ensure that no worker received wages below the minimum (Matsvai & Chikomba, 2022). Sibanda (1985) further notes that the MPSL&SW would also prohibit paying wages below the specified minimum wages and benefits to such a class of employees.

In the 1990s, Employment Boards were replaced by Employment Councils, as the MPSL&SW deemed it expedient to devolve powers over collective bargaining and dispute resolution to specific constituencies (Necbrick, 2018). The main aim was to empower employers' associations and registered trade unions to facilitate for minimum conditions of employment within their respective sectors. This brought about uniformity between the Labour Act and the ILO International Labour Conventions that Zimbabwe ratified, thereby addressing labour-related issues within specific sectors or industries. NECs are established under Section 59 of the Labour Act [Chapter 28:01], with Section 62 providing for their functions, specifically the facilitation of the collective bargaining process and the resolution of labour disputes.

DAs, designated by the Registrar of Labour under Section 63 of the Labour Act [Chapter 28:01], resolve disputes and unfair labour practices across sectors. The statutory function of NECs in handling and resolving workplace disputes in Zimbabwe's labour market has been significantly influenced by the Labour Amendment Act Number 5 of 2015. Dispute resolution is therefore a vital aspect of the operations of NECs, and these are mostly dealt with by DAs in terms of Sections 63 and 93 of the Labour Act [Chapter 28:01]. NECs in Zimbabwe are directly affected by developments in labour legislation following the Labour Amendment Act Number 5 of 2015, given their statutory function to handle and resolve disputes within their respective sectors.

The three cases reviewed above, the Zuva SC43/15, ZIMOCO CCZ 6/20 and the DGL Investments LC/MT/70/23, all have a single connected doctrinal trajectory. Each illustrates the need for judicial intervention to resolve an institutional dysfunction stemming from gaps or inadequate regulation in the prevailing legislative framework. With respect to the Zuva ruling, the absence of statutory protection against common-law termination rights was exposed, triggering a legislative response that produced new institutional challenges. In a bid to address this legislative response through the ZIMOCO ruling, the constitutional crisis in the confirmation model was exposed. Impartiality was exposed as a constitutional standard for dispute resolution in NECs. The next round of legislative reform, established under the Labour Amendment Act Number 11 of 2023, exposed the jurisdictional fragility of the NEC framework, following the DGL ruling. Each ruling's attempt to resolve a single institutional crisis resulted in deeper structural vulnerabilities within the NECs' dispute-resolution framework. This study, therefore, evaluated the patterns of legislative responses and renewed crises, as well as their effects on impartiality, accessibility, and the institutional legitimacy of dispute resolution processes in NECs. No prior empirical study has subjected this dispute-resolution trajectory to a systematic evaluation using a comprehensive effectiveness framework.

1.1.8 Conceptualising effectiveness in dispute resolution

The main motivation for the research also follows existing debates regarding the effectiveness of the dispute resolution process in Zimbabwe. Effectiveness is defined by the Oxford dictionary as "the degree to which something is successful in producing the desired result." Fraser (2004, p.104) defines effectiveness as *"the measure of the match between stated goals and their achievement."* In the same light, this study conceptualises effectiveness in dispute resolution as encompassing impartiality, expertise, speed, fairness, accessibility, and affordability. This is also supported by the Alternative Dispute Resolution Advisory Council (2019), which states that effectiveness in dispute resolution can also entail the perceived fairness of the process and the perceived improvement in the relationship between the disputants.

Trudeau (2002), who pioneered the framework for assessing ADR effectiveness in terms of speed, accessibility, and knowledge, also notes that the dispute resolution system should not be cumbersome and should facilitate expeditious dispute resolution. This was supported by Sithole and Munyai (2017), who noted that a dispute resolution method is only useful if both sides can easily use the available tools. Gathongo (2018) further noted that dispute resolution success isn't just based on law enforcement, but also on how easy it is to use, how predictable the results are, and how far the outcomes are. Kinyanjui (2010) also emphasised the simplicity of the process and noted that effective conflict resolution should facilitate the quick settlement of disagreements while reducing red tape.

1.1.8.1 Distinguishing Effectiveness, Efficacy and Efficiency: Conceptual Clarification

The terms “effectiveness”, “efficacy” and “efficiency” are analytically distinct constructs that are usually conflated in policy discourse and dispute resolution literature. A conceptual clarification of these distinctions is therefore essential to determine the rigour with which empirical findings can be interpreted and assessed (Colquitt, 2001; Ury, Brett & Goldberg, 1988). A dispute resolution process is efficient when it achieves outcomes with fewer institutional resources and time. Efficiency, therefore, refers to the relationship between inputs and outputs, and with respect to this study, an efficient process that produces unenforceable or unjust outcomes is not an effective one. Efficacy, on the other hand, refers to the capacity of a process to achieve its desired results under controlled conditions. It is therefore a more restricted concept than effectiveness, as it ignores the political, institutional, and resource constraints that characterise the real-world dispute-resolution set-up.

In this study, effectiveness is conceptualised as the extent to which NEC dispute resolution processes achieve their desired outcomes, namely fair, accessible, enforceable, timely, and impartial dispute resolution. This definition is stakeholder-sensitive, contextually grounded, and multidimensional, as it concerns not only whether disputes were resolved but also whether they were resolved fairly across the power asymmetries and institutional constraints that characterise dispute resolution in Zimbabwe.

In this study, effectiveness is therefore operationalised through six indicators drawn primarily from Rawlsian principles, pluralist labour theory, comparative scholarship, and ILO conventions and standards. The effectiveness indicators are therefore defined as follows;

1. Procedural fairness - whether the process treats all parties fairly and equitably without bias.
2. Accessibility - whether the dispute resolution process is available to all parties regardless of the geographical location or costs.
3. Enforceability - whether dispute resolution outcomes are in practice enforced and also legally enforceable.
4. Timeliness - whether disputes are resolved within reasonable and legally prescribed timeframes.
5. Stakeholder Confidence- whether parties perceive the dispute resolution process as impartial, fair and legitimate.
6. Compliance with the ILO standards - whether the ILO Conventions on dispute resolution and fair labour standards and benchmarks are complied with.

These indicators, therefore, constitute a framework for evaluating dispute resolution throughout the study and across its empirical chapters. The study also adopts a stakeholder-differentiated dimension, acknowledging, in terms of the pluralist labour theory, that effectiveness is interpreted differently across the various institutional actors. For employers’ associations and employers, effectiveness may practically mean cost containment, predictability and finality, while for the trade unions and workers, it might mean timely resolution, accessibility, fairness and enforceable outcomes. For the Labour Court, effectiveness will concern procedurally sound referrals and the creation of appropriate jurisdictional boundaries, whilst for the state, it may mean constitutional compliance, institutional legitimacy and the maintenance of industrial harmony. The study takes into consideration all four perspectives while remaining consistent with its Rawlsian theoretical anchor and a presumptive concern for the interests of vulnerable employees.

1.1.9 Challenges in the effectiveness of Zimbabwe's dispute resolution process

To demonstrate the lack of effectiveness in the dispute resolution process in Zimbabwe, Mucheche (2017) argued that there is no timeline within which the application for confirmation of the ruling must be heard and determined by the Labour Court. This is also supported by Mahapa and Christopher (2015) who argue that "the new amendment Act did not address the issue of time limits despite the push mainly from labour representative bodies to incorporate the issue of time limits in order to enhance the effectiveness of the dispute resolution mechanism." Further, Sibanda (2016) notes that "*the whole process has a potential of reducing the Labour Court processes to arbitration"* as judges have to deal with applications for confirmation by the LOs and DAs. This is also supported by Drury (2020), who notes that LOs and DAs, having made a ruling, must incur additional costs and time by applying to the Labour Court for confirmation of the ruling for it to take effect. In addition, Sibanda (2016) notes that the provisions of section 93(5) deprive LOs and DAs of the power to arbitrate and dispose of most disputes, thereby preventing the dispute resolution process from being completed. This observation is also supported by

Matsikidze (2023), who notes that the current dispute resolution regime blurs the distinction between ADR and adjudication through conciliation, mediation, and arbitration.

Against this background, this study sought to evaluate the dispute resolution processes in NECs in Zimbabwe following the Labour Amendment Act Number 5 of 2015. Understanding these processes and proffering remedies to the challenges may be of great importance to the policymakers in Zimbabwe, as well as to other stakeholders such as employees, firms and the Government of Zimbabwe. The study specifically targeted the NEC for the Welfare and Educational Institutions and the Energy Sector. The dispute resolution processes are expected to be transparent, impartial, and flexible in cost, accessibility, speed, and procedures, so they can serve a useful purpose in resolving labour disputes and ensuring the delivery of justice.

1.2 Theoretical Framework

The study's primary evaluative standard is Rawls theory of justice (1971). Rawls' fair equality of opportunity and equal basic liberties principles, qualified by the difference principle, require that the least advantaged employees benefit from the institutional arrangements, such as NECs. These institutions also have to be designed so that rational people, in an original position, would make choices behind a "veil of ignorance," without knowing their position in society. In the labour dispute resolution context, these Rawlsian principles require that NEC processes be fair, accessible, impartial, and procedurally equitable, with a presumptive concern for disadvantaged employees.

The study is also informed by the pluralist labour theory (Fox, 1974; Kahn-Freund, 1983), which is utilised in a supplementary, contextual capacity. Pluralism recognises the competing interests amongst the State, Employers and Employees in an employment relationship. It therefore calls for the structured mediation of these interests through effective institutional mechanisms. This study engages pluralism because it provides the foundational jurisprudential basis of the labour laws that establish the NECs as bipartite institutions regulated by the State. Pluralism, therefore, situates the Rawlsian evaluation within the institutional reasoning of the Zimbabwean labour relation framework. A full exposition of the Rawlsian and the pluralist labour theories is provided in Chapter 2.

1.3 Research Positioning and Justification of Scope

The study is positioned within an identifiable gap in the existing scholarship on Zimbabwean labour dispute resolution. Several scholars, such as Uzhenyu (2017), Kwaramba and Uzhenyu (2017), Matsikidze (2023), and Mucheche (2023), have examined the procedural and doctrinal consequences of the Labour Amendment Number 5 of 2015. There is, however, no empirical study that has evaluated the effectiveness of NEC level dispute resolution processes against a theoretically grounded multi-indicator evaluative framework, post the Labour Amendment Number 5 of 2015. The present study generates qualitative primary data from key stakeholders in dispute resolution institutions, which is subjected to a structured evaluation primarily anchored in Rawlsian principles and pluralist labour theory.

NECs were selected as the unit of analysis because they are the primary institutional locus within Zimbabwe's sectoral dispute resolution framework. The specific selection of NECWEI and the NEC for the Energy Sector as the dual case units is justified because the two NECs represent contrasting structural and institutional profiles. NECWEI encompasses welfare and educational institutions and is highly decentralised, with dispute-resolution facilities in the major towns. The NEC for the Energy sector is largely a parastatal workforce which is also technically skilled. This sectoral diversity enhances the richness and transferability of the findings. Both NECs have been directly affected by the post-2015 legislative changes and have stakeholder experiences and dispute-resolution records adequate to support a rigorous qualitative study. NECWEI's Statutory Instrument 77 of 2021 is a direct response to the significant post-2015 changes; hence, the NEC serves as an instructive case study for evaluating institutional adaptation.

1.4 Statement of the problem

The Labour Amendment Act Number 5 of 2015 sought to align labour laws with the Constitution and to promote the productivity and competitiveness of local industry and commerce by addressing some contentious labour-related issues (Uzhenyu, 2017). Section 65(1) of the Constitution provides for the right to fair and safe labour practices and to a fair and reasonable wage. Nonetheless, scholarly commentary and stakeholder reports following the Amendment raised persistent concerns that its benefits were not being fully realised. Furthermore, industrial relations among the State, Business and Labour remained strained following the amendment (Mucheche, 2023; Matsikidze, 2023). Scholars such as Mucheche (2023) have documented institutional challenges that reportedly affect dispute resolution in NECs. These included the perceived neutrality of the DAs and stakeholder confidence in the NEC dispute resolution process. The *Isoquant Investments t/a ZIMOCO versus Memory Darikwa* case is one example in which the impartiality of the DA was questioned, as the DA, upon making a ruling in favour of one party to the dispute, was still required to submit and defend that ruling before the Labour Court for confirmation (Uzhenyu, 2017). In so doing, the DA was supporting the party favoured by her ruling, resulting in the losing party questioning the constitutionality of the confirmation process stipulated in section 93(5) of the Labour Act [Chapter 28:01], as amended by the 2015 Amendment.

Scholars have also highlighted the complexity and length of dispute-resolution processes in the post-amendment period (Mucheche, 2023). For example, in the past five years, a total of 53,750 labour disputes were received by 43 NECs, and less than 30,000 were successfully concluded within thirty days (MPSL&SW, 2020). Reported delays and high costs associated with dispute resolution in NECs have been attributed to parties' challenges in pursuing their cases to a final resolution. This has raised questions regarding the alignment with section 2A of the Labour Act [Chapter 28: 01], which seeks to promote justice delivery. Bonda and Tsvangirai (2021) also noted that a lack of coordination among stakeholders and ineffective communication hindered effective dispute resolution.

Despite these documented concerns, no empirical study has evaluated the effectiveness of post-2015 NEC dispute-resolution systems against a justice-grounded, multi-indicator framework, nor has a context-specific conceptual model been developed to improve them.

This qualitative study, therefore, addresses that gap by evaluating the effectiveness of the labour dispute resolution processes in Zimbabwean NECs post-Amendment period, generating empirically grounded findings, and developing a conceptual dispute-resolution model responsive to the Zimbabwean institutional context. In so doing, it makes a significant contribution to both scholarship and policy reformulation.

1.5 Research Objectives

The objectives of the study were to:

i. Critically evaluate the effectiveness of the NEC dispute resolution systems post the Labour Amendment Act Number 5 of 2015.

ii. Examine stakeholder perceptions, dynamics and institutional relationships within the NEC system post the Labour Amendment Act Number 5 of 2015.

iii. Develop a justice-oriented, empirically grounded model for effective dispute resolution in NECs.

iv. Formulate differentiated recommendations and strategies for reform.

1.6 Research Questions

a) How effective are the labour dispute resolution mechanisms used by NECs in Zimbabwe, following the Labour Amendment Act Number 5 of 2015?

b) How do stakeholder perspectives, dynamics and institutional relationships within the NEC system shape the labour dispute resolution processes, post the Labour Amendment Act of 2015?

c) What justice-oriented, empirically grounded model can deliver effective dispute resolution in NECs in Zimbabwe?

d) What differentiated recommendations and strategies can be drawn from the research findings to enhance the effectiveness of labour dispute resolution in NECs in Zimbabwe?

1.7 Assumptions of the Study

The study assumed that a qualitative research design would provide multifaceted insights into the labour dispute processes in NECs in Zimbabwe. According to Busetto, Wick and Gumbinger (2020), qualitative methods are essential for understanding complex phenomena. The research posited that in-depth, contextually rich inquiry was needed to understand participant perspectives, institutional practices and systemic challenges. Qualitative methods allow researchers to examine stakeholders' lives in depth and to interrogate legislative consequences and policy rhetoric (Ndhlovu & Ndhlovu, 2022).

The study further assumed that the researcher would not threaten validity because the researcher did not focus on data that supported preconceived beliefs and expectations; instead, the researcher sought information from the data gathered. The methodology was not fundamentally affected by the data collected. The researcher assumed she would face challenges during the data collection phase because DAs are busy and may not be readily available for interviews, and may refuse to answer particular questions, fearing perceived victimisation by their superiors.

Another notion was that the researcher could be biased and undermine legitimacy. The study embraced the view that qualitative research requires reflexivity and transparency to mitigate researcher bias (Dukes & Streeck, 2020). The researcher made a significant effort to bracket personal biases and ensure that data collection, coding and interpretation were driven by participant material. Thus, rigorous reflexive practice, methodological triangulation and continual peer debriefing were assumed to protect the validity and credibility of the research.

1.8 Significance of the Study

The significance of this study stems from its objectives, the main among them being to evaluate the effectiveness of labour dispute resolution mechanisms in Zimbabwe, post the Labour Amendment Act Number 5 of 2015, in cases involving the NECWEI and the Energy Sector. Employers in Zimbabwe will benefit from the study as it provides insights into the most effective ways to resolve labour disputes and maintain a productive workforce. The study can provide employers with insights and offer guidance on current labour laws and the requirements for dispute resolution processes, enabling them to align their policies and practices with legal standards. This understanding can help them implement internal dispute resolution mechanisms to address conflicts early, preventing escalation to costly legal proceedings.

A harmonious industrial relations system that increases employee engagement and motivation, leading to higher job satisfaction and productivity, is the intended outcome. Trade Unions and employees will benefit from the study, as it will help them understand their legal rights and the processes in place to protect them. This can empower employees to take action when they believe their rights have been violated and help them negotiate better working conditions.

Since this study is aligned with Rawls' Theory of Justice and guided by principles of fairness, justice, and equality, the government can, if adopted, demonstrate a commitment to impartial and just labour relations. This strengthens trust in public institutions and reduces accusations of bias or political interference. Evidence-based recommendations can also help provide empirical data on the challenges and strengths of existing dispute resolution processes. The MPSL&SW can use the model to review and refine dispute-resolution legislation to make it more responsive, efficient, and just.

Given the different reactions of stakeholders to the current confusion in dispute resolution following the passing of the Labour Amendment Act Number 5 of 2015, this study can potentially help the government, courts, employers, NECs, trade unions and employees to resolve labour disputes in a manner which recognises the rights and privileges of all those involved. At the same time, it makes a significant scholarly contribution, provokes debate on the subject, and inspires other academics to research the area, thereby gathering broad, valuable, and empirical data on dispute resolution.

1.9 Delimitation of the Study

Delimitation in any study is crucial for drawing research parameters. It is where the scope of the study is crafted, and the boundary limits within which the researcher works are specified. (Simon & Goes, 2013). This study was restricted to the period from the Labour Amendment Act Number 5 of 2015 through to 2025 (10 years). In this study, the discourse is around the NEC for the Energy Sector and the NECWEI. This study solicited data from the MPSL&SW, Labour Court officials, EMCOZ officials, ZCTU officials, DAs, Employers' Association officials, Trade Union officials, and labour lawyers associated with the two NECs. These respondents were aged 18- 65 years, both male and female, with expertise in the dispute resolution process in Zimbabwe. The study used a dual-case approach to evaluate the dispute resolution processes in NECWEI and NEC for the Energy sector. This captured both multi-sector and parastatal dispute dynamics within Zimbabwe's NEC system, increasing the potential for transferability to other NECs. The NEC for the Energy industry is primarily based in Harare, with a technological footprint across all 10 provinces of Zimbabwe. The NECWEI also has its head office in Harare, with regional offices in Marondera, Mutare, Bulawayo, Masvingo, and Gweru, where DAs also execute the dispute-resolution mandate.

1.10 Limitations of the Study

This study focused on two NECs: the Energy industry NEC and NECWEI. While this choice allowed a more in-depth, situation-specific analysis of how disputes are settled, it also meant that the results could not be generalised across all of Zimbabwe's workplace relations. The researcher was cognisant that focusing only on two NECs posed the risk of restricting the perspective to the more general Zimbabwean workforce. Other sectors could have different experiences regarding dispute patterns and stakeholder dynamics, with the mining, agriculture, and manufacturing NECs in Zimbabwe as a case in point. Brandl and Braakmann (2021) noted that sectoral case studies might overlook the distinct types of workplace cultures, disputes, and legal differences found in other industries. Araújo, Safradin, and Brito (2020) also argued that selecting too few study sites might not capture the complexity of the relationship between how people deal in different industries and how well ADR systems work. This study contended that maintaining a focused approach enabled a deeper analysis of dispute resolution mechanisms in two important sectors.

The researcher also acknowledged limitations in the utilisation of purposive and snowball sampling methods, with concerns pertaining to the inadvertent exclusion of minor views within each NEC. Busetto, Wick, and Gumbinger (2020) note that purposive sampling can be effective for capturing a range of viewpoints, but it can also overrepresent the views of powerful people, such as senior officials and union leaders, while excluding those of regular employees or contract workers. The researcher took cognisance of this fact and at least ensured that study respondents, especially from the unions, were also employees in their workplaces, so as to ensure that shop-floor views were represented. The use of document review as one of the data collection methods also ensured that secondary data capturing narratives from an even broader array of views were captured.

The researcher was also aware that using a case study research design would limit the statistical generalisability of the results. Dukes and Streeck (2020) note that qualitative case studies are valuable for illustrating how processes work and what they mean, but they are often criticised for failing to support claims about larger populations. The use of a detailed plan that included clear methods for data collection, standard interview guides, and organised methods for coding the data was intended to produce a comprehensive, case-specific analysis of the two NECs, which could then be replicated with necessary adjustments. Furthermore, the researcher was concerned that evaluating dispute resolution could be subjective, as defining and measuring "effectiveness" is. To overcome this limitation, the researcher used several success indicators in this study, including accessibility, dispute resolution speed, stakeholder satisfaction, impartiality, legal compliance, and dispute recurrence, drawn from both the literature and stakeholder consultations.

1.11 Organisation of the Study

This thesis is composed of six chapters outlined as follows:

- Chapter 1 highlights the background to the study, the problem, the research objectives, and a synopsis of the theoretical framework.
- Chapter 2 focuses on the review of literature that underpins and grounds the issues explored in this study.
- Chapter 3 covers the methodological, analytical and ethical procedures and issues that guided the researcher's conduct, data collection and analysis.
- Chapter 4 dwells on presentation and discussion of the study's findings.

- Chapter 5 presents the model of Labour Dispute Resolution for Zimbabwe's National Employment Councils
- Chapter 6 covers the conclusions and recommendations for the key stakeholders. Areas for further research are also highlighted.

CHAPTER 2: REVIEW OF RELATED LITERATURE

2.0 Introduction

This chapter reviews the comparative and scholarly literature on labour dispute resolution. This is intended to establish the analytical foundation for evaluating NECs in Zimbabwe following the Labour Amendment Act Number 5 of 2015. The review is organised around four categories of literature:(i) comparative literature on labour dispute resolution in jurisdictions such as East Asia, Global North, BRICS and sub-Saharan Africa. These provide the procedural and institutional benchmarks (ii) the theoretical framework on justice as fairness anchored in Rawls' theory of justice and supported by the pluralist labour theory. (iii) the Zimbabwean institutional and legislative literature, which includes the Labour Act (Chapter: 28;01) as amended, landmark Court rulings and the roles of the MPSL&SW, the Labour Court and the NECs and their social partners: and (iv) the conceptual framework on dispute resolution processes and the evaluative effectiveness indicators.

Comparative jurisdictions are engaged to generate transferable benchmarks for accessibility, timeliness, impartiality, enforceability, procedural fairness, and compliance with ILO standards. These benchmarks are then used to test Zimbabwe's post-2015 dispute resolution framework in Chapter 4, demonstrating where Zimbabwe's post-2015 trajectory confirms or diverges from international findings. Canada and the United States are included because they bring out contrasting models of the tension between access to statutory platforms and mandatory arbitration. This tension is directly relevant to the

NECs' dual track jurisdiction under sections 63 and 93 of the Labour Act. The United Kingdom (ACAS model), the French (specialised Labour Courts), and the German (sectoral collective bargaining and works councils) were selected because their institutional features more closely parallel the sector-based NEC architecture. China and Japan's East Asian models were also reviewed because the Chinese investments in NEC-regulated sectors are a practical reality following Zimbabwe's Look East Policy. This requires an understanding of how Chinese companies approach dispute resolution. BRICS countries, specifically South Africa, were reviewed for structural parallels between the CCMA and Zimbabwe's NEC dispute-resolution framework. Sub-Saharan African countries also share a common post-colonial context, while records of ILO ratification and comparable resource constraints make regional experiences more relatable and directly transferable.

2.1 Global overview of labour dispute resolution processes

In today's world, alternative means of dispute settlement are necessary, and this would be true for both the developing and developed worlds. Dispute prevention and resolution are attracting increasing attention today as the work environment has become more complex amid advancing technology. As a result, the effective prevention and resolution of labour disputes is essential to fostering stable and productive employment relations globally (ILO, 2021).

2.1.1 North America: United States and Canada

Countries in the Global North have put in place dispute prevention and resolution systems, both within and outside their ministries responsible for labour, with clearly stated organisational structures and roles (ILO, 2021). According to Forsyth (2014), the United States of America (USA) has extensive experience with the dispute resolution system, having adopted it in the 1970s (Ntuli, 2018). The USA employs a multi-layered system of dispute resolution that combines ADR mechanisms, administrative agencies and judicial processes. According to Colvin (2021), the USA has significantly shifted towards private dispute resolution systems, with employers increasingly implementing mandatory arbitration procedures. In a research by Colvin (2021), approximately 56% of non-union private-sector employees are now subject to mandatory arbitration agreements. This raises concerns about procedural fairness, justice and substantive outcomes.

However, employment disputes in the USA are governed by local, state, or federal statutes, which have proven effective (Kochan, 2019). The National Labour Relations Board (NLRB) is the primary administrative agency for resolving labour disputes. Its effectiveness, however, continues to be hampered due to changes in the political administration (Lipsky, Seeber, & Fincher, 2020). Mediation services provided by the Federal Mediation and Conciliation Service (FMCS) have achieved settlement rates exceeding 85% (Wheeler, 2019).

Canada’s system places greater emphasis on public policy systems and less reliance on litigation. Each province maintains its own industrial relations board, and the dispute resolution framework places greater emphasis on conciliation services provided by the Government (Doorey, 2020; Thornicroft, 2019). Brandl and Braakmann (2021) also note that Canada's robust support for collective bargaining has contributed to fair dispute-resolution outcomes, though neo-liberal policies risk eroding these gains.

The North American framework offers analytical lessons for Zimbabwe's dispute-resolution processes. The United States demonstrates the risks associated with the privatisation of dispute resolution, in which a mandatory employer-designed arbitration framework erodes fairness and the delivery of justice for disadvantaged employees. This is an outcome that the Rawlsian principles adopted in this study require Zimbabwe to avoid. The FMCS 85% dispute settlement rate is a useful benchmark for evaluating conciliation performance. Canada maintains strong public conciliation institutions, supported by high union density; this demonstrates that a state-supported tripartite institutional design yields more equitable dispute-resolution outcomes. This lesson is relevant to the Zimbabwean NEC system, which depends on the state to establish and regulate its institutional framework. From this review, government-supported, institutionally independent conciliation achieves higher settlement rates and greater procedural fairness than employer-dominated processes.

2.1.2 Western Europe: United Kingdom, Germany and France

Western European countries generally demonstrate stronger institutional frameworks for dispute resolution. In providing dispute resolution mechanisms, greater emphasis is on collective representation, social dialogue and state involvement. The UK's Advisory

Conciliation and Arbitration Service (ACAS) plays a significant role in providing mediation, conciliation, and arbitration services for various employment disputes (Saundry, Bennet, and Wibberley, 2018). ACAS (2023) reported that over 117,000 conciliation matters were handled in 2021/22, with 28% concluded without proceeding to tribunal. However, dispute resolution outcomes remain unfavourable for female and ethnic minority claimants, who are less likely to receive favourable settlements (Cookson, Bennet & Wibberley, 2023).

Germany exemplifies the corporatist model with its well-established works councils, which work alongside sectoral collective bargaining (Behrens & Dribbusch, 2018). Haipeter and Rosenbohm (2023) established 63% of recent collective bargaining agreements include tiered procedures with mediation steps before any formal arbitration can be initiated. The Labour Courts form a specialised three-tier judicial system in which professional judges sit along lay judges who represent employers and employees, with approximately 30-40% of cases resolved through judicial conciliation during preliminary hearings (Burgess et al., 2017).

France presents a distinct model of state-led regulation, with approximately 150,000 handled annually by specialised labour courts, with compulsory conciliation preceding adjudication (Sachs, 2018).

Western European models provide the most comparable reference points for Zimbabwe's dispute resolution system. The ACAS model, which is a statutorily independent conciliation body, operates separately from the Labour Court. It is therefore directly relevant in evaluating whether Zimbabwe's NEC arrangement of housing DAs within the NEC structures, which are also collective bargaining bodies, ensures the institutional independence that the dispute resolution framework requires. The ACAS settlement rate of 70% provides a benchmark: if NECs such as NECWEI and the NEC for the Energy Sector achieve comparable rates, their conciliation framework would have attained international standards. The German model's reliance on sectoral works council structures, in which 63% of agreements are reached at that level, provides a strong basis for this study's model in Chapter 5, which emphasises the utilisation of works council platforms before disputes are referred to the NEC.

2.1.3 East Asia: China and Japan

Labour dispute resolution in East Asia is characterised by the region's rapid industrialisation, entrenched cultural traditions, and state-directed institutional frameworks. In China, mediation has been institutionalised as the principal mechanism for resolving employment disputes, with workplace-based mediation committees valued for their speed, low costs and accessibility (Feng & Xie, 2020). Despite the strengths of mediation, concerns remain about the impartiality of adjudicators and the influence of local government officials, with these challenges particularly acute for rural migrant workers (Dukes & Streeck, 2020).

Japan mostly uses informal, consensus-based approaches to dispute resolution, grounded in cultural and societal values that emphasise harmony and avoid adversarial confrontation. While this model reduces litigation, critics argue that its informality risks marginalising temporary and minority workers whose grievances may not receive adequate attention within consensus-driven frameworks (Dukes & Streeck, 2020).

Zimbabwe's Look East Policy has led to increased Chinese investment across sectors, with most of these sectors regulated by the NECs. As a result, Chinese-owned companies operate within the NEC dispute resolution framework, and, based on the evidence reviewed, their institutional culture appears more imposed than consensual. According to Munyuru (2024), this undermines the ADR spirit and impedes the effectiveness of dispute resolution in NECs. The Chinese model demonstrates that speed and accessibility in dispute resolution can coexist with gross violations of impartiality. This provides a cautionary parallel to the impartiality concerns identified in Zimbabwe's dispute resolution system following the ZIMOCO judgment. Japan's consensus-based informality shows that cultural norms can undermine institutional effectiveness. Institutional mechanisms for achieving impartiality must be embedded structurally rather than culturally assumed.

2.1.4 BRICS: Brazil, Russia, India, China, and South Africa

Gerber (2019) analysed ADR processes in the BRICS nations and found that all have established systems and frameworks for labour disputes, though with varying levels of effectiveness. China's dispute resolution framework is governed by multiple instruments, including the Labour Dispute Mediation and Arbitration Law of 2008 (Bushe, 2019; Boquen, 2021). Russia adopted ADR in 2011; however, recentralisation has reduced dispute resolution practitioners' autonomy, creating concerns about efficacy and independence (Dukes & Streeck, 2020). In a bid to ease court overburden and to make dispute resolution processes more accessible, Brazil has moved from litigation to ADR (Araujo et al., 2020).

India's Industrial Disputes Act of 1947 remains the primary framework, characterised by resource constraints and bureaucratic delays, thereby hampering its effectiveness (ILO, 2013). Gerber (2019) found that the BRICS countries have established ADR mechanisms for labour disputes, with varying levels of effectiveness across the bloc. South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA), established under the Labour Relations Act 66 of 1995, provides the most relevant comparison for Zimbabwe's NECs' dispute resolution system. Rapatsa (2018) describes the CCMA as an independent dispute-resolution commission funded by the state and characterised by accessible, informal procedures. CCMA applies the con-arb process, which combines conciliation and arbitration in a single hearing, enabling the process to move from a failed conciliation into a binding arbitration, hence improving effectiveness. Ndhlovu. Mukuze and Ndhlovu (2023), however, argue that resource limitations and case backlogs remain persistent challenges. Zimbabwe has the same post-colonial industrial relations history, a similar tripartite institutional design and the same ILO ratification commitments. This makes the CCMA experience directly relevant.

The BRICS framework presents dispute resolution systems that have reformed effectively, demonstrating institutional independence from both social partners and the government, and structured access to binding resolution without litigation. The comparative analysis, therefore, shows a global pattern that differs from Zimbabwe's post-2015 dispute resolution experience, the lesson for Zimbabwe being that a state-funded, independent body, separate from collective bargaining structures and ministerial intervention, can achieve impartial and accessible dispute resolution, enhancing stakeholder confidence.

2.1.5 Sub-Saharan Africa: Regional Experiences and Zimbabwe's Context

In Sub-Saharan Africa, labour dispute resolution reflects the complex interplay of colonial legal legacies, international norms, and domestic reforms. Ampeire (2017) observes that one of the major challenges across the region has been the historic overreliance on litigation through the courts, which often resulted in delays, high costs, and limited accessibility for ordinary workers. International and regional bodies, notably the ILO and the Southern African Development Community (SADC), have promoted ADR as a mechanism to strengthen social partnerships and foster dialogue (Ghellab et al., 2022). Sustainability has, however, proven difficult, as dispute resolution effectiveness and ADR initiatives have been constrained by structural weaknesses, power imbalances between employers and employees, and limited financial resources (Araujo, Safradin & Brito, 2020).

In Kenya, the Employment Act of 2007 and the Labour Relations Act of 2007 established a dual dispute resolution system. Gathongo and Van der Walt (2018) established that, despite some legislative reforms, Kenya's system is marred by protracted referral timeframes, the absence of an independent statutory dispute resolution institution, and the absence of statutory timeframes for appointing conciliators. These factors have led to perceptions of a lack of impartiality and an increase in industrial action. The Kenyan experience is significant for Zimbabwe because it demonstrates that the absence of independent institutional design leads to weak legislative reforms and a dysfunctional dispute-resolution system. Tanzania's Labour Institutions Act of 2004 established the Commission for Mediation and Arbitration (CMA), which operates as an independent commission similar to South Africa's CCMA. Rwodzi (2018) notes that whilst the CMA achieves notable settlement rates in mediation, it still encounters enforceability challenges on its dispute resolution outcomes. Price (2018) describes Angola's system as underdeveloped owing to its resource base. Its mediation function is significantly dependent on the Ministry of Labour, and that compromises the institutional independence that ensures stakeholder confidence.

The sub-Saharan experience is characterised by inadequate resourcing of dispute resolution systems, a lack of enforcement mechanisms, and the failure to separate dispute resolution institutions from political and collective bargaining processes. All these failures are present in Zimbabwe's post 2015 dispute resolution framework and are central concerns of this study. The benchmark derived is therefore that for the attainment of an effective dispute resolution system, there is a need for adequate resourcing, geographic accessibility and institutional independence from collective bargaining and political structures.

2.2 Theoretical Framework

This work is grounded in two complementary theoretical approaches: the theory of justice proposed by John Rawls and the pluralist labour theory. The theory of justice by Rawls (especially the theory of justice as fairness) can serve as a normative framework for assessing whether the NEC dispute-resolution processes achieve equitable outcomes, procedural fairness, and fair equality of opportunity for all stakeholders. The pluralist labour theory on which labour law in Zimbabwe is based is grounded in the joint regulation of employment relations within a state-mediated framework and is set against the necessity for the state to strike a balance between the competing interests of employees and employers by institutional means. These theories collectively offer a normative and institutional basis for discussing the effectiveness of NEC dispute-resolution mechanisms, which informs the assessment of their accessibility, impartiality, and ability to align stakeholders' interests.

2.2.1 Theory of Justice

This study is grounded in John Rawls' (1971) theory of justice. Abend (2008) defines a theoretical framework as the structure that holds or supports a theory of a research study. The theoretical framework introduces and defines the theory and explains why the research problem under investigation exists. Abend (2008) further notes that the theoretical framework consists of "concepts and together with their definitions and reference to relevant scholarly literature, existing theory that is used for the particular study."

The study evaluates the labour dispute resolution system in Zimbabwe, current developments and the role of stakeholders in the process. The roles and relationships of actors in the industrial relations system, and the context in which they operate, are discussed to fulfil the objectives. This study was therefore guided by Rawls' theory of justice. This theory posits that justice is a fundamental value in society and that the justice system should be designed to ensure that individuals are treated fairly and equitably, and the dispute resolution outcomes enhance justice delivery (Mwenda, 2006). In the context of labour dispute resolution, the theory of justice would require that the dispute resolution process be fair and impartial, with both employers and employees given an equal opportunity to present their cases and have their grievances addressed. It would also require that the dispute resolution process be efficient and effective, with disputes resolved in a timely manner using minimal resources affordable to the disputing parties, and with outcomes that are enforceable.

The theory of justice is a multifaceted and complex concept that has been explored by many scholars throughout history. It posits that a just society is one that ensures fairness in the distribution of duties and rights. At its core, the theory of justice is concerned with the notion that individuals ought to be treated fairly and equitably, and that the justice process should be modelled and designed to warrant fair outcomes. John Rawls' thesis and idea of justice is founded on what he terms 'the original position' and the "veil of ignorance", which suggests that principles of justice should be determined without knowing one's personal circumstances or social status. Gumbo (2022) notes that "the original position" is the hypothetical scenario where individuals come together to agree on principles of justice that govern their society. In this position, individuals get stripped of any knowledge of their personal circumstances. These include social status, wealth, preferences and abilities. This is where the "veil of ignorance" comes into play, as individuals do not know where they will end up in the social hierarchy; hence, it ensures that decisions are made without bias. Rawls proposes the "veil of ignorance" thought experiment, which asks individuals to imagine themselves behind a veil that prevents them from knowing their social position, wealth, or abilities (Gumbo, 2022).

Under the mask of ignorance, the fictional persons would not know their own age, race, sex, religion, abilities, social class, life goals or anything relating to them. Instead, they would have general knowledge of how institutions such as governments and economic systems worked.

Rawls argues that this framework leads to the selection of principles that are fair and just, as individuals would choose rules that protect their interests, regardless of their eventual position in society. It is only under the veil of ignorance that human beings reach a fair and impartial agreement or contract as equals, free from bias based on their social standing. It is the human power of reason that will help them choose principles of social justice for their society (The Constitutional Rights Foundation, Bill of Rights in Action, 2007). John Rawls (1971), in his seminal work "A Theory of Justice," argues that justice is the first virtue of social institutions, and that a just society is one in which there is a fair distribution of social and economic goods. According to this theory, the primary subject of justice is the basic structure of society, wherein major social institutions allocate fundamental rights and duties, thereby determining the distribution of advantages from social co-operation. The basic structure is arranged so that when everyone follows the publicly recognised rules of cooperation and honours the claims the rules specify, the resulting distribution of goods is acceptable as just.

From this position of ignorance, Rawls argues that individuals would choose a system of justice that guarantees equal basic rights, fair equality of opportunities, and a just dispersal of social and economic goods. In other words, people establish institutions and determine the principles that assign rights and duties and distribute benefits. These would be arranged so that they benefit everyone, particularly the marginalised, and be attached to positions and offices open to all. Rawls defines justice as the creation of an equilibrium between competing claims. Justice is seen as impartiality and fairness because the principles that govern it are agreed upon in an initial situation that is fair. The justice of fairness is therefore a theory that generalises and raises the traditional conception of the social contract to a higher level of abstraction. Welsh (2004) also asserts that if citizens are secure in their basic liberties, such as liberty of conscience, freedom of association and freedom of thought, determining the correct and appropriate form of social and economic justice can, to some extent, be adjudicated within the existing political framework.

Sen's (2019) capability approach to justice emphasises the importance of individual agency and choice in the pursuit of justice. Sen argues that justice should be concerned with expanding people's capabilities to live the kind of lives they value, rather than simply ensuring that goods are distributed fairly. This approach highlights the importance of individual freedom and autonomy in achieving justice. Nussbaum's capabilities approach to justice builds on Sen's work by emphasising the importance of human dignity and the need to promote human flourishing. Nussbaum (2019) argues that justice should be concerned with promoting a set of universal capabilities that enable individuals to live flourishing lives, such as the capabilities for education, health care, and freedom of expression. Nozick's theory of justice is based on the principle of entitlement, which argues that individuals have a right to the fruits of their labour and that any interference with these rights is unjust. Nozick's theory emphasises the importance of individual property rights and freedom and is often seen as a critique of Rawls' theory of justice. The different approaches to justice highlight the importance of fairness, individual agency, human dignity, and property rights in the pursuit of justice.

2.2.1.1 Relevance of Rawls' Theory of Justice to the Study

Rawls' theory of justice provides a valuable framework for evaluating dispute resolution processes in NECs in Zimbabwe. NECs in Zimbabwe serve as platforms for resolving disputes, and applying the principle of fairness provides a robust framework for evaluating their effectiveness. When the principles of justice are upheld, NECs can promote equitable outcomes for all stakeholders. The principle of fairness emphasises the importance of ensuring that dispute resolution processes are transparent, impartial and free from bias. Under the principle of equal basic liberties, parties involved in labour dispute resolution need equal access to dispute-resolution institutions, information, representation, and participation in the dispute-resolution process. Rawls' theory of justice also emphasises the protection of vulnerable employees, where, through its difference principle, dispute resolution processes should aim to benefit the least advantaged members of society.

For dispute resolution mechanisms in NECs to align with Rawls' vision of justice, they must be readily available to all employees, particularly those in vulnerable positions. According to Mucheche (2023), this also entails that employees are aware of their rights and the processes available to them. This also includes providing support to those who may face barriers in accessing those mechanisms. Through the veil of ignorance, adjudicators such as DAs are expected to be unaware of their personal interests, thereby enabling unbiased, impartial, and fair outcomes.

2.2.1.2 Rawls' Theory of Justice as Fairness and its contribution to the critique of the field of dispute resolution

According to Welsh (2004), Rawls' theory of justice as fairness helps in understanding and grasping the social justice promise and critique of the field of dispute resolution. The primary social justice critics of alternative dispute resolution argue that conciliation, mediation and arbitration do not ensure free, equal and public participation in dispute resolution. As a result, these processes cannot be expected to deliver socially just results as they do not effectively protect disputants from pre-existing political, economic and social inequalities. These existing inequalities mean that disadvantaged disputants cannot truly and meaningfully engage as equals in the deliberations and resolutions reached in the dispute resolution process (Rawls, 2004). Further, since the equality and freedom of the disputants are not guaranteed, critics argue that there is no assurance that the expected outcome in the distribution of goods will be justified. On the other hand, dispute resolution processes like mediation and conciliation entail that the parameters or terms of reference are agreed upon by the disputing parties, hence overcoming the distrust or lack of faith in the process.

NECs are creatures of statute, with a function to facilitate the dispute resolution process through conciliation and arbitration, and to redress matters by issuing determinations. Mediation and conciliation, therefore, allow the neutral person, for instance, a DA housed within an NEC, to build on the parties' trust to help them come up with a mutually accepted settlement (Lieberman & Henry, 1986). Where parties trade on mutually agreed terms, the dispute resolution process tends to be less time-consuming, less costly, and perceived as fair, resulting in more effective and just delivery. This is contrary to litigation, which is based on the principle of fundamental distrust and also characterised by a "winner takes all" outcome.

In light of the above scenarios, Rawls' theory of justice therefore helps to articulate some critics' quest and advocacy for a re-examination of the alternative dispute resolution process and a renewed zeal in ensuring that democratically selected judges are "more accessible on a timely basis and at a reasonable cost" (Welsh, 2004, p. 58). The theory of justice in labour dispute resolution considers power dynamics, social norms and human rights, thereby guiding mediators, conciliators, arbitrators and other dispute resolution practitioners to create fair and just outcomes for all parties concerned.

In the context of labour dispute resolution, the theory of justice would require that the process be fair and impartial, with both employers and employees given an equal opportunity to present their cases and have their grievances addressed (Young, 2019). It would also require that the dispute resolution process be efficient and effective, with disputes resolved in a timely, fair, and cost-effective manner, and the outcomes enforceable. The theory of justice is highly relevant to the current study because it provides a useful framework for evaluating the fairness and equity of the dispute-resolution process, a key aspect of labour justice. For example, using Rawls' theory of justice, the study would evaluate whether the dispute-resolution process guarantees equal basic liberties, fair equality of opportunity, and a just distribution of social and economic goods. Using Sen's capability approach, the study would evaluate whether the dispute resolution process expands people's capabilities to live the kind of lives they value. Using Nussbaum's (2019) capabilities approach, the study would evaluate whether the dispute resolution process promotes a set of universal capabilities that enable individuals to live a flourishing life. Thus, the theory of justice provides a useful framework for evaluating the effectiveness of the labour dispute resolution process in Zimbabwe, post the Labour Amendment Act Number 5 of 2015, and can help identify areas for improvement to promote labour justice.

2.2.1.3 Contribution of Rawls' Theory of Justice to the study

The theory of justice can be valuable for understanding studies of labour dispute resolution processes in NECs in Zimbabwe, post the Labour Amendment Act Number 5 of 2015, such as this particular one. The theory of justice provides a framework for analysing the fairness and equity of the labour dispute resolution processes, which are central to the effectiveness of the Labour Act [Chapter 28:01]. It posits that people have a natural sense of justice and fairness and will act in accordance with these values when given the opportunity. The theory of justice in labour dispute resolution encompasses concepts and principles that aim to ensure equality, fairness and impartiality in resolving disputes between employers and employees. The theory also identifies three main principles of justice: distributive justice, procedural justice, and corrective justice. Aristotle says justice consists in what is fair and lawful. Fairness involves equitable distribution and the correction of inequities (Singh, 2022).

According to Singh (2022), distributive justice, also referred to as economic justice, concerns fairness in what people receive, ranging from goods to attention. It concerns the fair distribution of resources and benefits in society. In the context of labour dispute resolution, this principle would require that the outcomes of the resolution process be distributed fairly among the parties involved and also entails fair distribution of resources and burdens. In other words, the process should ensure that the rights and interests of both employers and employees are protected and respected. Procedural justice, on the other hand, concerns the fairness of the procedures used to resolve disputes.

Mwenda (2006) views procedural justice as the shaping of procedures to achieve the most just distribution possible. This principle would require that the procedures used in labour dispute resolution are transparent, unbiased, and accessible to all parties involved.

Procedural justice guarantees fair processes and procedures for dispute resolution. Corrective justice concerns the correction of injustices that have already occurred. It entails addressing wrongdoing and provides remedies for harm and injustices. In the context of labour dispute resolution, this would require the process to effectively address and rectify any injustices that have occurred between the parties. As a way of restoring justice, it also focuses on repairing relationships and promoting healing.

By applying the principles of distributive, procedural, and corrective justice to the study area on the effectiveness of labour dispute resolution processes in Zimbabwe post the Labour Amendment Act Number 5 of 2015, researchers would be able to analyse the fairness and equity of the Labour Act [Chapter 28:01] and its implementation. This analysis could help to identify areas where the Labour Act [Chapter 28:01] and its implementation may be improved to better align with principles of justice, and ultimately to enhance the effectiveness of labour dispute resolution processes in Zimbabwe.

2.2.1.4 Intentional utilisation of Rawls' Theory of Justice

While this study leans too heavily on John Rawls' theory of justice, the researcher contends that this approach is intentional rather than accidental. The researcher argues that normatively oriented work in legal scholarship often requires a single, coherent theoretical backbone so that concepts such as fairness, equality of opportunity, and legitimate redistributive measures are interpreted consistently across the entire study. To that effect, Rawls' framing in the theory of justice remains arguably one of the most influential and elaborated accounts of justice in contemporary political and legal theory. Further, its extensive secondary literature, in the researcher's view, makes it especially suitable as the main anchor utilised in this study (Rawls, 1999).

The researcher further argues that other scholars have also adopted a similar strategy of heavily leaning on a “single-framework anchoring” as they sought depth rather than eclecticism in their studies. The doctoral work of Rutsche (2019), for example, is notably built almost entirely around Rawls’ account of political liberalism and democratic stability. This, in the researcher's view, provides ample evidence that sustained engagement with one theorist can yield fine-grained, internally coherent analysis of complex institutional questions. Further cases in point of other studies with a similar approach include Pogge (2002) and Freeman (2007), in which Rawlsian ideas were the main normative lens through which distributive arrangements and social institutions were assessed. Against this backdrop, the researcher argues that this study is not idiosyncratic but rather situated within a well-established scholarly tradition in which Rawls is predominantly used as a disciplined organising framework to interrogate labour-law questions, while subjecting his assumptions to critical scrutiny and complementing them with contextual, empirical and doctrinal analysis. The researcher, therefore, through this approach substantially uses this rigorous and widely debated theory to generate clear, defensible standards against which the fairness of legal rules and policy choices could be evaluated, as was undertaken in this study.

2.3 Pluralist Labour Theory: Origins and Foundational Propositions

While Rawls' theory of justice provides the primary normative standard of evaluation in this study, it is complemented by the pluralist theory of labour relations (Fox, 1974; Kahn-Freund, 1983), which serves in a contextual supporting capacity. Where Rawls supplies the benchmark, what a just dispute resolution system ought to look like, pluralism provides the institutional logic through which that benchmark must be applied in Zimbabwe's industrial relations realm.

The pluralist tradition emerged in the mid- twentieth century as a deliberate alternative to the unitarist conception of the workplace (Fox, 1966; Dunlop, 1958). Unitarism treated the employment relationship as a harmonious, integrated system with minimal underlying conflict (Budd, 2004; Dunlop, 1993). Conflict could only be attributed to troublemakers, miscommunication or management shortcomings rather than to structural features of the relationship itself. Against this background, pluralists advance three connected propositions that together constitute the theoretical foundation for this study. (i) the employment relationship is based on a plurality of legitimate competing interests from the state as a regulator, employers and their associations and the employees and their trade unions (Fox, 1974; Clegg, 1975). Conflict between these interests is a structural feature of industrial relations that cannot be engineered away. (ii) Since these interests are legitimate, the appropriate institutional response is not to suppress them, but to apply mediation through rule-governed and representative mechanisms (Flanders, 1965; Kahn-Freund, 1983). (iii) Kahn- Freund (1983)'s foundational claim that labour law exists primarily to counteract the structural inequality of bargaining power between employers and employees positions institutionalised dispute resolution and collective bargaining as the primary instruments through which that counterweight is secured.

Within this tradition, Fox (1974) distinguishes pluralism from two competing perspectives: the unitary view and the radical Marxist view. The unitary perspective denies the existence and legitimacy of conflict altogether, whilst the radical Marxist perspective holds that pluralism downplays the depth of structural class conflict and exaggerates the capacity of institutional mediation to reconcile fundamentally opposed interests. This study adopts the pluralist position; however, following Ackers (2002) and Heery (2016), it treats pluralism as a descriptive-analytical framework rather than an ideological commitment. Pluralism's significance in this study lies in its diagnostic capacity to elucidate the structural conditions under which the NECs operate. It illuminates the institutional prerequisites of legitimate dispute mediation. It is not invoked as a claim that pluralist institutions are, by themselves, sufficient to secure justice in the labour relationship.

2.3.1 Relevance of Pluralist Labour Theory to the Study

The pluralist lens is analytically necessary to the present study for three connected reasons. First, pluralism is the jurisprudential basis of the Labour Act [Chapter 28:01] itself. The Act explicitly recognises the competing interests of employers and employees and establishes the NEC system as a sector-based, bipartite institution for mediating those interests through collective bargaining and dispute resolution. Evaluating the NECs without engaging pluralism would assess an institution against a standard external to its own design logic.

Second, pluralism provides the conceptual apparatus for operationalising effectiveness as this study defines it. A purely outcome-focused evaluation, which counts disputes resolved, repeat cases and measures closure rates, is inadequate to the institutional character of the NECs. Pluralism directs analytical attention additionally to (i) the structural balance of representation within NEC processes, (ii) the institutional legitimacy of dispute resolution forums in the eyes of the parties, (iii) procedural fairness and perceived impartiality of DAs, (iv) the accessibility of collective bargaining pathways to employees irrespective of economic position, and (v) the enforceability of negotiated outcomes (Edwards, 2003; Kochan, Katz & McKersie, 1986). These dimensions map directly onto the six effectiveness indicators set out in section one.

Third, pluralism offers the analytical framework for situating the Labour Amendment Act Number 5 of 2015 within a broader theory of institutional reform. The Amendment altered the statutory architecture within which pluralist mediation occurs, thereby reshaping the powers and functions of DAs, the Labour Court's confirmation role, and the referral and enforcement pathways available to aggrieved parties. Pluralism enables the study to ask whether those alterations strengthened or weakened the institutional capacity of NECs to mediate the structurally unequal contest between labour and capital in the Zimbabwean context, where enforcement constraints, resource asymmetries, and stakeholder fragmentation are well documented (Mucheche, 2023; Matsikidze, 2023; Ndhlovu & Ndhlovu, 2022).

The empirical literature reviewed in this study suggests that post-2015 developments have systematically undermined the pluralist balance in NEC dispute resolution. The mass terminations following the Zuva judgment demonstrated that common law employment rights structurally favour capital over labour when statutory protections are removed. The confirmation model introduced by the Labour Amendment Act Number 5 of 2015, by requiring DAs to defend their rulings as parties, corrupted the impartiality norm on which pluralist dispute resolution depends. The DGL Investments ruling, by questioning the jurisdictional basis of voluntary NECs, temporarily dismantled the bipartite institutional framework through which pluralist dispute resolution is delivered. These are not isolated incidents but rather a pattern of structural disruption to the pluralist institutional framework, one that this study documents and seeks to address through the reform model developed in Chapter 5.

2.3.2 Articulation with Rawlsian Justice and Limitations

Rawlsian justice and pluralist labour theory are deployed in this study in a complementary relationship. Rawls poses the normative question: what ought a fair dispute-resolution system look like from the perspective of a rational actor behind the veil of ignorance? Pluralism supplies the institutional answer to the prior question: within what structural conditions must such a system operate? The two frameworks, however, reveal points of productive tension. Rawls' emphasis on individual rights and procedural fairness can conflict with pluralism's attention to collective bargaining power and group-based interests. For instance, a process that is individually fair may result in unjust outcomes in the context of a structural power imbalance, and vice versa. This tension highlights one of the central dilemmas of NEC dispute resolution: whether individual procedural fairness, with impartial DAs and equal opportunity to present cases, is sufficient to produce just outcomes when the parties are structurally unequal. The proposed model in Chapter 5 engages this tension directly by proposing institutional reforms that address individual procedural fairness through defined timelines, neutral DAs and enforceability. It also proposes collective power balance through representative inclusion, stakeholder coordination and capacity building for trade unions.

The Rawlsian difference principle's presumptive concern for the least advantaged aligns, in the labour setting, with the pluralist recognition that the employee is the structurally vulnerable and disadvantaged party. Rawls, however, arrives at that conclusion through a universalist normative argument, whereas pluralism does so through an institutional-historical analysis of bargaining power (Kahn-Freund, 1983).

Although Rawls and Kahn-Freund begin from different theoretical premises, they converge on the same institutional conclusion. Both frameworks converge on the prescription that just and effective dispute resolution requires adequately resourced, constitutionally compliant and independently designed dispute resolution institutions. Through the veil of ignorance, Rawls contends that rational actors would choose institutions that protect the vulnerable or the least advantaged. This is against the backdrop of the fact that no one knows what position they will occupy in society. On the other hand, Kahn-Freund, through historical institutional analysis, also acknowledges that the employee is the structurally weaker party in the employment relationship and the labour laws are put in place to ensure institutional protection and to counterbalance unequal bargaining power. The synthesis of the two theoretical frameworks, therefore, produces mutually reinforcing institutional prescriptions that protect vulnerable parties and promote substantively fair outcomes. These institutional prescriptions are tested against the findings in Chapter 4 and shown in the reform model in Chapter 5.

The pluralist framework nevertheless has limitations that must be acknowledged. Radical and feminist industrial relations scholars have argued that pluralism underestimates the systemic character of class and gender-based inequality (Hyman, 1989; Wajcman, 2000). They further argue that the representational mechanisms it celebrates, which are the trade unions and employer associations, may themselves reproduce exclusions rather than remedy them. Ackers (2002) further argued that pluralism presupposes a mid-twentieth-century industrial context of stable employment, bipartite bargaining and high union density that no longer exists in many jurisdictions. In contemporary Zimbabwe, high levels of informalisation and declining union density have eroded the assumed conditions of pluralist mediation. These critiques are engaged directly in Chapter 4, where the empirical findings are discussed. This study, therefore, treats pluralism not as a timeless prescription but as a historically situated analytical framework whose propositions must be tested against Zimbabwe's contemporary conditions rather than assumed.

This dual-framework approach, with Rawlsian justice as the evaluative anchor and pluralism providing the institutional context, provides a theoretically coherent basis for the dispute-resolution evaluation undertaken in the empirical chapters. Rawlsian principles generate the criteria against which NEC effectiveness is assessed, whilst the pluralist analysis contextualises why particular institutional compromises have emerged and how they operate under Zimbabwean conditions.

2.4 Conceptual Framework: Mapping Institutions, Processes and Effectiveness

A conceptual framework serves the analytical function of translating theoretical frameworks and evaluative benchmarks derived from the comparative analysis into an operationalised model structured for the empirical investigation. The conceptual framework presented in Figure 2.1 brings out four analytical dimensions: the theoretical lens through which the study is viewed, the performance indicators against which performance is evaluated, and the theoretical lens through which performance is interpreted. It also highlights the institutional actors, the NECs' dispute-resolution processes, the legislative framework, and the landmark cases that have influenced dispute resolution. All these factors are structured to feed into the empirical findings, thereby influencing the model outcome, which is intended to enhance effectiveness in dispute resolution in NECs.

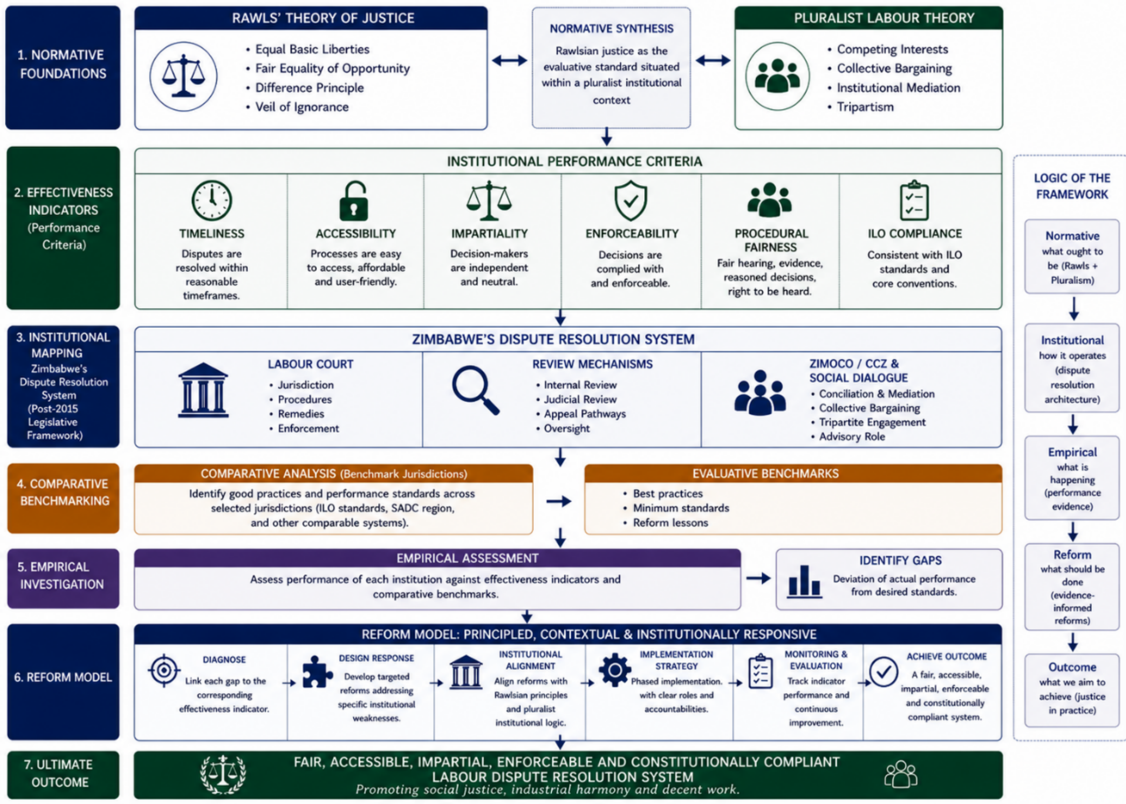

Figure 2.1: Conceptual Framework

Source: Researcher's own model

The conceptual framework described in Figure 2.1 translates the normative standards of the Rawlsian justice and the pluralist labour theory into measurable institutional performance criteria. It also maps the evaluative benchmarks from the comparative analysis onto Zimbabwe's dispute resolution system, thereby structuring the empirical investigation around a principled evaluative logic. Lastly, it provides the analytical architecture for the reform model in Chapter 5, where each component of the model responds to the specified gaps identified by each effectiveness indicator, and the empirical findings, and how the indicators are to be met in practice.

2.5 Dispute resolution mechanisms

In addition to conciliation and arbitration, other mechanisms have been put in place to facilitate dispute resolution. Table 2.1 below shows all possible dispute resolution systems parties can opt for. In Zimbabwe, prior to the Labour Amendment Act Number 5 of 2015, most parties would go through the dispute resolution processes discussed in the diagram below, with conciliation/mediation, med-arb, arbitration, and court proceedings being the most common methods. It may also be worth noting that med/arb, as a phenomenon, is not publicly documented. However, as an insider, the researcher is aware that in practice, med/arb often occurs, even if it is not officially intended. An arbitrator might assist the parties in reaching an agreement that is favourable to them; as a result, he will have no need to issue an arbitral award.

Conciliation or Mediation	A process in which an independent third party helps the parties to a dispute to try to reach a settlement.	Arb-Med	A process in which the parties to a dispute go to a single third party who first arbitrates but does not disclose his or her determination to the parties. With the determination sealed in an envelope and not subject to alteration, the third party then mediates the dispute. If settlement is not reached in mediation, the third party's determination is disclosed to the parties and becomes binding upon them.
Negotiation	An interactive process involving two or more parties contending for different outcomes but seeking agreement by sharing information and adjusting their views and positions while, as far as possible, preserving their interests.	Advisory Arbitration	A process by which an independent third party hears the respective cases of the parties and makes a non-binding determination.
		Rights-Based Processes	
Joint Problem Solving	An interactive process involving two or more parties who seek to reach an agreement over problems that exist between them by identifying the causes of their differences and jointly agreeing on viable solutions to their differences.	Court	A compulsory process in which a judge appointed by the state hears the parties' respective cases and then determines the dispute between them. This process is usually subject to review and appeal.
		Arbitration	A process in which an independent third party hears the parties' respective cases and then determines the dispute between them. The process is usually subject to review but not to appeal.
Relationships by objectives (RBO)	A 4-5-day consensus-building process designed to assist parties with a damaged relationship, review their relationship, and agree on objectives and action plans to restore the relationship. Experienced conciliators /mediators facilitate the RBO.	Fact Finding	A process in which the parties to a dispute jointly ask an independent third party to determine differences of fact between them without prescribing a solution to the overall dispute. The determination may be binding on the parties.
		Hybrid processes	
Facilitation	A process in which parties that are or expect to be in dispute over a complex issue or issues use an independent third party who assists them to design an agreed process and then guides that process in an attempt to reach consensus.	Med -Arb	A process in which the parties to a dispute go to a single third party who first mediates and, failing an agreed solution, determines the dispute by final and binding arbitration. (I.L.O 2004;47).

Table 2.1: Dispute resolution process, Consensus-based process

Source: ILO's Conciliation/ Mediation Workbook (2004; 47)

2.6 The Regional Perspective of Labour Dispute Resolution

Historically, labour dispute resolution systems in most African countries were developed based on international best practices and development standards in countries such as the USA, Germany, Australia and the UK (Ntuli, 2018). However, most countries, except for a few Anglophone and Francophone African countries, now have modern dispute resolution mechanisms that differ from those of Western European countries, as part of the globalisation process since the 1980s (Ntuli, 2018; Rwodzi, 2018). Thus, previous researchers such as Bushe (2019), Gathongo and Van der Walt (2018) and Price (2018) argue that the evolution of a generally favourable legal framework for employment relations is a fairly recent phenomenon in most African countries, such as Kenya, Botswana, Lesotho, Zambia and South Africa.

According to Rapatsa (2018), the policy framework for employment relations and dispute resolution in most African countries is derived from specific labour codes that outline the organisational rights and obligations of employers and workers, generally in both the private and public sectors. However, there is scholarly debate about the effectiveness of legal frameworks for labour dispute resolution in African countries. Some studies have found that existing labour dispute resolution systems are effective (Coetzee, 2021; Rapatsa, 2018), whilst most previous studies have found that labour dispute resolution systems in African countries are ineffective (Bushe, 2019; Kasonde & Chitengi, 2020; Uzhenyu, 2017).

Realising the need for effective industrial dispute resolution systems, several countries in the African region have undertaken labour systems reforms for the past few decades since 1990. Labour relations systems have undergone reforms in countries such as Kenya, Zimbabwe, South Africa and Botswana (Bushe, 2019). For instance, following the criticism of the UK's Trade Dispute Act, which governed labour relations in Kenya, the government introduced new legal systems, and currently, the Labour Relations Act of 2007 and the Employment Act of 2007 are the primary legislation regulating collective and individual labour dispute resolution in Kenya, respectively (Gathongo & Van der Walt, 2018). Analysis of the labour dispute resolution system in Kenya reveals that it is based on the dual system, which persists to date; however, despite reforms, the dispute resolution system remains ineffective (Gathongo & Van der Walt, 2018). South Africa has had a remarkable history of its labour laws and labour relations from the early 19th century to the present day, in a quest to regulate and level the playing field (Gathongo & Van der Walt, 2018).

In support, Rapatsa (2018) adds that in 1995, South Africa took a further significant step by releasing labour relations from state control through the Labour Relations Act, which established a state-funded dispute-resolution commission, CCMA, to promote the private resolution of industrial disputes. The main legal framework guiding labour dispute resolution processes in South Africa is the Labour Relations Act 66 of 1995, which provides for Alternative Dispute Resolution (ADR) (Rwodzi, 2018). More so, according to Ampeire (2017), in South Africa, after the transition of power from the apartheid government to the democratic government, ADR has been used to address labour disputes.

The South African government has established various dispute resolution centres, such as the CCMA, to resolve labour disputes (Rapatsa, 2018). Dispute resolution methods in South Africa include conciliation, mediation, fact-finding, arbitration, and a combination of conciliation and arbitration (con-arb), with arbitration and conciliation being the most utilised (Ampeire, 2017; Rapatsa, 2018). Twyman (2001), however, had previously argued that the CCMA is characterised by an overburdened docket, insufficient resources, a lack of training, and a focus on quickly resolving disputes. In this context, the CCMA was unable to effectively establish and enforce normative principles of social equality with the same authority and national significance as the Labour Court (Twyman, 2001, p. 311). In Zambia, arbitration is mainly practised under the Arbitration Act Number 19 of 2000 to resolve labour disputes (Kasonde & Chitengi, 2020). Before the Arbitration Act of 2000, Zambia had an ancient Arbitration Act dating back to before independence in 1964. Statutory Instruments 72 and 73 of 2018 recognised party autonomy, which is an important principle in ADR.

Mutupa (2019) notes that parties now have a chance to choose their mediator from a list of accredited mediators. The old practice would require that the mediation office appoint the mediator on behalf of the parties (Mutupa, 2019). However, despite governments' efforts in Southern Africa to improve industrial relations dispute resolution systems, studies such as Uzhenyu (2017) and Rapatsa (2018) have found that these systems are ineffective in most Southern African countries. Bushe (2019) perceives Southern African nations as having unequal societies, which consequently affects the power balance between disputing parties. Capitalists are still perceived to have considerable autonomy and exert immense power, resulting in an imbalance of power between employers and employees. In a review of industrial dispute resolution procedures in Southern Africa, Christie and Madhuku (1996), as cited by Uzhenyu (2017), argue that labour dispute resolution processes in Southern Africa are not functional and suggest that they need to be viewed within the region's historical and socio-political context. According to a recent study by Price (2018) across 26 African countries, despite numerous attempts at modernisation, many are still struggling to establish functional, timely, and trusted labour dispute-resolution judicial systems.

In the same vein, Gathongo and Van der Walt (2018) noted concerns with the current dual dispute resolution system in Kenya. The major concerns were due to protracted referral timeframes for dismissal disputes, the lack of maximum timeframes for the agreed extension after the 30-day conciliation period has lapsed, and the absence of statutory timeframes for appointing a conciliator and for the arbitration process under both the Labour Relations Act and the Employment Act. These problems, according to Gathongo and Van der Walt (2018), stem from the absence of an independent statutory dispute resolution institution as envisaged by the Labour Relations Act. As a result, the Kenyan dispute resolution system has been criticised for a lack of impartiality, leading to an increase in strikes and lockouts (Gathongo & Van der Walt, 2018).

In a bid to compare Western and African countries in terms of their dispute resolution processes, researchers worldwide have attempted to analyse the effectiveness of labour dispute resolution systems and processes. However, it has been shown that the systems and processes are effective in developed countries (Gerber, 2019; Harnack, 2019; Ntuli, 2018); (Noone & Ojelabi, 2020); (Potočnik, Chaudhry, & Bernal-Valencia, 2019) whilst they are non-functional in most developing countries (Bushe, 2019; Kasonde & Chitengi, 2020); (Uzhenyu, 2017). For instance, Gerber (2019) found that the BRICS countries have varying levels of effectiveness in their ADR methods for labour disputes, with South Africa providing the least developed system. Potočnik et al. (2019) also found that the UK has one of the most effective and efficient labour dispute systems globally. In contrast, the study by Bushe (2019) assessed the efficacy of ADR labour dispute resolution systems in Botswana, South Africa and Zimbabwe and found that the systems were ineffective and less functional than expected. Similar results were also obtained by Gathongo and Van der Walt (2018), who examined the effectiveness of the Kenyan labour dispute resolution system.

Despite this, there seems to be a lack of evidence on the efficacy of labour resolution processes in developing countries in the Southern African region, particularly in Zimbabwe. In particular, despite the labour relations reforms undertaken in Zimbabwe, there is a lack of comprehensive research on the effectiveness of the newly introduced processes and systems. For instance, since the promulgation of the Labour Amendment Act Number 5 of 2015, no research has been conducted to determine the labour dispute resolution processes in Zimbabwe. This, therefore, motivates the researcher to analyse the labour dispute resolution processes in Zimbabwe post the Labour Amendment Act Number 5 of 2015.

2.6.1 The development of the dispute resolution system in post-independence Zimbabwe

The labour dispute resolution system in Zimbabwe has been overly dynamic, as it has, in most cases, been shaped by the country's socio-economic environment, which has not been stable over the past three decades. According to Sibanda (1985), the first five years of independence reflected colonial continuity, as they were characterised by union repression that denied the rights to strike and collective bargaining. Instead, the state introduced the National Minimum Wage Bill, which was enacted into an Act in 1980. The paternalistic nature of the state allowed only courts/litigation as the sole dispute resolution mechanism. The Labour Relations Act (Chapter 28, 01) Number 16 of 1985 was then introduced as the first legal instrument. Watadza (2015) observes that under this instrument, the authority to conduct conciliation rested with the Labour Officer, while compulsory arbitration was limited to disputes deemed likely to provoke labour unrest. Madhuku (2015) describes this epoch as a lengthy dispute-resolution structure that showed little sensitivity to conciliation and arbitration.

According to Sibanda (2002), the period from 1985 into the late 1990s saw the continuity of state corporatism in dispute resolution, as the MPSL&SW had overriding powers in handling disputes. Statutory minimum wages were then phased out in 1989 except in areas which did not have registered employers' organisations and trade unions. This development then gave rise to the establishment of NECs as bipartite institutions comprising equal representatives of employer and employee organisations (Sibanda, 2002). Through the creation of the NECs, there was a transition from the centralised system of handling labour disputes to devolution to the NECs. The NECs then institutionalised the collective bargaining and dispute resolution processes.

In the early 90s, Zimbabwe adopted a neo-liberal policy, which led to the implementation of the Economic Structural Adjustment Programme (ESAP) in 1992. Watadza (2015) describes this development as having brought changes to the Zimbabwean labour landscape, with the promulgation of the Labour Relations Amendment Act Number 12 of 1992. This law removed state controls on minimum wages and introduced sectoral bargaining. Further, Watadza (2015) notes that conciliation still remained optional, and no proper guidance was given on compulsory arbitration. Raftopoulos (2001) argues that this epoch saw the manipulation of conciliation and arbitration by employers who controlled the means of production.

The changing political landscape and the organisation of labour put great pressure on the government to reform its labour laws so as to comply with international best practices. This led to the enactment of the Labour Act (Amendment Number 17 of 2002). According to Madhuku (2010), this amendment curtailed the state's influence by giving more power and control to the parties in dispute. This was the first time dispute resolution was observed in Zimbabwean history, and at this stage, conciliation and arbitration were used as alternatives to the complex and cumbersome court process. The NECs' dispute resolution structures, which are conciliation and arbitration, were also clearly defined following this enactment (Madhuku, 2010). Before the promulgation of the Labour Amendment Act Number 5 of 2015, this process had been in place since 2002, with minor amendments in 2006. The promulgation of the Labour Amendment Act Number 5 of 2015 also saw a change in the role of the Labour Court. The law now required DAs and LOs to appear before Labour Court judges to confirm draft rulings.

The historical development of Zimbabwe's dispute resolution system, reviewed above, demonstrates a recurring structural pattern. Each major legislative reform has attempted to address the shortcomings of the previous reform without adequately anticipating the new institutional problems its own provisions would generate. The shift from pre-1985 State corporatism to ADR in 2002 addressed the rigidity of state control but introduced new ambiguities regarding compulsory arbitration. Whilst the Labour Amendment Number 5 of 2015 attempted to address the effects of the Zuva judgment, it introduced impartiality problems that the ZIMOCO judgment addressed, though it created ambiguity regarding the enforcement of the determinations it reinforced. The Labour Amendment Act Number 11 of 2023 corrected the gaps in the confirmation model by reverting to ADR, but also created the jurisdictional crisis raised in the DGL investments matter. This cyclical pattern of reform-generated disruption is the main analytical concern of this study. It provides the historical context upon which the empirical evaluation in Chapter 4 is grounded. The relevant question for this study, therefore, is: why have successive reforms consistently failed to produce improved institutional dispute-resolution processes, and what are the implications for a durable reform model?

2.7 Legislative framework for labour dispute resolution in Zimbabwe

2.7.1 Labour Act [Chapter 28:01]

According to Matsikidze (2013), in pre-colonial Zimbabwe, disputes were resolved through four main methods: chiefs' courts, religious platforms, families, and wars. The Industrial Conciliation Act was then promulgated in 1934, and it brought exclusive resolution to labour disputes. After independence, the Labour Relations Act of 1985 was introduced and, together with subsequent amendments, became the main anchor of labour dispute resolution (Ndhlovu, Mukuze & Ndhlovu, 2023). The Labour Act [Chapter 28:01] gives a platform for conciliation/mediation and arbitration in settling labour disputes. These are alternatives to adjudication by the ordinary courts (Madhuku, 2012). Institutions such as the MPSL&SW, the Labour Court and the NECs derive their mandate from the Labour Act [Chapter 28:01].

In present-day Zimbabwe, industrial relations disputes are largely settled through labour arbitration as stipulated in the Labour Act [Chapter 28:01] (Madhuku, 2010). The law, through the Labour Act [Chapter 28:01], made it mandatory that certain labour matters be handled through labour arbitration. Under the current Labour Act [Chapter 28:01], the handling of labour arbitration is the responsibility of state institutions. Arbitrators are appointed by the Minister of Public Service, Labour and Social Welfare (Madhuku, 2015). Matsikidze (2013) notes that under section 93 of the Labour Act [Chapter 28:01], conciliation is compulsory when handling disputes; it is the first process to be followed in an attempt to resolve them. In terms of sections 93 and 98 of the Labour Act [Chapter 28:01], in the event of the Labour Officer failing to conciliate a dispute and subsequently issuing a certificate of no settlement, the Labour Officer is obliged by law to refer the matter to "compulsory arbitration" (Madhuku, 2010).

In practice, under the Labour Act [Chapter 28:01], the Labour Officer agrees on terms of reference with the two parties to the dispute, which guide the arbitrator in resolving the dispute. Thus, Zimbabwean law makes it mandatory for certain types of disputes to be resolved through arbitration, and parties cannot opt out of this process (Duve, 2010). It follows, therefore, that whenever an industrial dispute has been referred to a LO and if there is no resolution, the matter has to be disposed of through an arbitral process.

Another key provision of the current Labour Act [Chapter 28:01] provides under section 98 (10) that an appeal on a question of law shall lie to the Labour Court from any decision of the arbitrator, and alternatively, an appeal for review can only be lodged with the High Court of Zimbabwe under very strict provisions of the 'Model law' of arbitration (Duve, 2010). On the other hand, Section 98 of the Labour Act [Chapter 28:01] is critical in that, when resolving labour disputes, the parties and the arbitrator are obliged to follow the provisions of International Conventions such as the New York Convention and the Vienna Convention (Madhuku, 2010).

2.7.2 Arbitration Act (Chapter 7:15)

The Arbitration Act (Chapter 7:15) gives effect to domestic and international arbitration agreements, subject to modifications. It also gives effect to the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on the 21st of June 1985. This gave effect to the Convention on the recognition and enforcement of foreign arbitral awards adopted in New York on the 10th of June 1958 to repeal the Arbitration Act (Chapter 7:02). The Arbitration Act (Chapter 7:15) repealed the Arbitration Act (Chapter 7:02) and amended the High Court Act (Chapter 7:06). The Arbitration Act (Chapter 7:15) provides the disputes that can be arbitrated on. These are any disputes which the parties have agreed to submit to arbitration. The Arbitration Act (Chapter 28:01) provides a more efficient means of dispute resolution through submissions and the enforcement of arbitral awards (Ndhlovu, Mukuze, & Ndhlovu, 2023). The Arbitration Act (Chapter 7:15) also stipulates matters that are not capable of determination by arbitration. These include criminal cases, agreements that are contrary to public policy, matters affecting the interests of minors or an individual under a legal disability. These can only be determined by arbitration if the High Court gives leave to do so. Matters concerning a consumer contract defined in the Consumer Contracts Act (Chapter 8:03) can also not be determined by arbitration unless the consumer has, by separate agreement, agreed thereto.

Munyuru (2024) notes that Zimbabwe recognises arbitration as a form of dispute settlement. Although there are few arbitrable matters under the Labour Act [Chapter 28:01], there is an acknowledgement of domestic and international arbitration agreements. The Arbitration Act [Chapter 7:15] also acknowledges international arbitration agreements. A regulation that applies when the place of arbitration is not Zimbabwe is incorporated. The Arbitration Act also considers any other pieces of legislation that contain provisions for arbitration, providing for arbitration as an arbitration agreement under section 4(1). Overall, the Arbitration Act [Chapter 7:15], governs the arbitration proceedings and also emphasises impartiality and independence of arbitrators (Madhuku, 2010).

2.7.3 The promulgation of the Labour Amendment Act Number 5 of 2015 and its effects on dispute resolution processes

The introduction of the Labour Amendment Act Number 5 of 2015 was largely a response to the Zuva judgment, a landmark case in Zimbabwe's dispute resolution system. Before this law, many employees were dismissed on notice under common law principles. The new law changed that by making it illegal to terminate employment on notice, except in certain cases, such as mutual agreement. However, since its enactment, Zimbabwe's labour dispute resolution system has faced challenges. The processes have become complex and technical, and many employers, employees, and stakeholders lack sufficient knowledge to navigate the system effectively.

Under the Labour Amendment Act Number 5 of 2015, ADR methods feed into court litigation. Section 93 of the Labour Act allowed disputes to be handled through conciliation, arbitration, and the Labour Court (Ndhlovu et al., 2023). Mucheche (2017) explained that LOs and DAs no longer needed to refer disputes of right for compulsory arbitration. Instead, they would issue rulings to be confirmed by the Labour Court. Disputes of interest were now handled at voluntary arbitration.

This system marked a significant departure from the previous approach. Previously, if a dispute remained unresolved after thirty days of conciliation, a LO or DA would issue a certificate of no settlement, and the matter would proceed to compulsory arbitration.

Under the Labour Amendment Number 5 of 2015, the process involved drafting rulings, court confirmation, and sometimes external parties such as the Sheriff, which made it longer, more cumbersome, and costlier, both physically and psychologically. Mucheche (2017) observes that these delays adversely affected the timely resolution of disputes, undermining the effective management of industrial relations and overall workplace harmony.

Marume and Furidzo (2019) highlight another problem: uncertainty around the rights of litigants under section 93 of the Labour Act. The law would grant LOs and DAs the authority to issue draft rulings, but it was unclear what exactly a draft ruling was. Moreover, during court confirmation proceedings, only the person against whom the ruling was issued was notified, leaving other interested parties out. This raised questions about fairness and the handling of partial successes. Ndhlovu et al. (2023) add that Labour Court procedures are difficult for the average employee to understand, often forcing them to seek costly legal representation.

Another concern was that the process of confirming rulings could pit LOs or DAs against the parties involved. Since these officers were supposed to be impartial, this adversarial process could create tension and undermine their role. In some cases, the same officer had to defend their ruling against a party that felt wronged, which could compromise impartiality and future dispute handling. Ndhlovu et al. (2023) argue that this reduced the role of LOs and DAs to mere complaint handlers rather than true dispute resolvers.

2.8 The Role of Labour Institutions in Dispute Resolution

Formal organisations or bodies that are frequently sanctioned by the state or internationally recognised are known as labour institutions that govern and coordinate employer-employee and employer-trade union relations in the industrial environment (Budd, 2004). They consist of international organisations such as the International Labour Organisation (ILO), national councils and trade unions such as the Zimbabwe Congress of Trade Unions (ZCTU). In theory, institutions establish normative frameworks, guidelines, and procedures for collective bargaining, dispute resolution, and the enforcement of labour standards (Edwards, 2003). As mediators in industrial relations, labour institutions can offer a structured framework and platform through which negotiations can take place, and conflicts can be resolved equitably, transparently and systematically.

The role of labour institutions in the context of the Zimbabwean National Employment Councils (NECs) is to influence dispute-resolution processes through the policies, procedures, and standards that govern conciliation, arbitration, and negotiation (Watadza, 2015). They foster social dialogue, employee representation, best practices, and capacity building among labour actors to effectively handle conflicts (Mucheche, 2017). This appeal ensures that NECs do not just act as administrative bodies but as institutionalised forums for fair and balanced dispute resolution. Locating NEC dispute resolution within the broader ecosystem of labour institutions enabled the research to assess the influence of external guidance, normative standards, and advocacy on the effectiveness, fairness, and sustainability of NEC interventions, especially following reforms such as the Labour Amendment Act Number 5 of 2015.

2.8.1 ILO Standards, Zimbabwe's ratification obligations and Evaluative Benchmarks.

The ILO is an influential international body that supports countries in resolving labour disputes through mediation, conciliation, and the development of effective legal frameworks (Gravel, Kohiyama, & Tsotroudi, 2014). It helps governments establish fair dispute resolution systems aligned with international standards, offers training to build negotiation and mediation skills, and shares knowledge on best practices. In Southern Africa, the ILO's influence is evident in its support for the ratification of core conventions and in its assistance to countries such as Botswana, Malawi, and South Africa in aligning their laws with international standards (Fenwick, Kalula, & Landau, 2007; Mokofe, 2020).

Zimbabwe has ratified a number of ILO Conventions that govern the operational standards and the institutional design of dispute resolution. Four ILO instruments are of relevance. Convention No. 87 (Freedom of Association and Protection of the Right to Organise, 1948) protects the rights of employers and employees to establish and affiliate to organisations of their choice. Convention No. 98 (Right to Organise and Collective Bargaining, 1949) protects employees against anti-union discrimination and promotes free and voluntary collective bargaining. Convention No. 151 (Labour Relations in the Public Service, 1978) establishes standards for dispute resolution in the public sector. Convention No. 92 (Collective Bargaining, 1951) promotes the use of ADR in collective labour disputes and provides that conciliation services should be free. This standard applies to the accessibility indicator in this study's evaluative framework.

Beyond these conventions, the ILO (2023) has provided an operational criterion with five indicators for effective dispute resolution institutions that this study adopts as international benchmarks. These are articulated as follows: (i) Independence- the institution should operate freely from political interference and with equal distance from social partners. (ii) Accessibility- the institution should provide justice in an easy, expeditious, affordable and non-discriminatory manner. (iii) efficiency- the institution should resolve disputes in a way that minimises costs and maximises benefits to the parties. (iv) impartiality- the institution should guard against perceived or actual bias and should create a culture of declaration of interests. (v) transparency- the institution should perform its dispute resolution functions in a transparent and accountable manner, its outcomes should not only be fair but should be seen to be fair. This ILO criteria maps directly onto five of the six evaluative comparative benchmarks, thereby providing international normative validation for the study's evaluative framework.

The Zimbabwe labour framework, through the ratification of major conventions and the adoption of recommended practices, should promote the provision of impartial conciliation and arbitration services, the representation of the employer and the employee, and the timely resolution of disputes (Chimhowu & Woodhouse, 2006). Nevertheless, it is indicated that although NECs primarily incorporate the ILO principles in their formal design, certain challenges often prevent full adherence to accessibility and efficiency standards, including delays, insufficient resources, and unequal capacity across sectors (Mucheche, 2017; Watadza, 2015). As a result, Zimbabwe's compliance with ILO obligations has been uneven. The developments detailed in Chapter 1 of Amendment Number 5 of 2015 demonstrate significant gaps between ratification and international compliance. The confirmation model that required impartial DAs to defend their own rulings before a labour court judge was constitutionally incompatible with the impartiality principle as defined by the ILO. The absence of enforcement mechanisms for a determination made by a DA under section 63 (3a) of the Labour Act violates the ILO's enforceability principle, while the absence of delivery timelines by the Labour Court affects efficiency. These gaps represent a systemic divergence between the international benchmarks and obligations and the institutional reality of the NEC dispute resolution framework. This study evaluates these divergencies empirically in Chapter 4 and addresses them in the reform model in Chapter 5.

2.8.2 Zimbabwe Congress of Trade Unions (ZCTU)

Founded in 1981 through the merging of several trade union groups, the ZCTU aimed to represent workers' interests and promote fair labour practices (Chikuhwa & Jacob, 2008). Initially, it was established under government influence to reduce disputes and increase government control over the labour movement. During colonial times, trade unions were mainly controlled by the white minority, who sought to protect their privileges. After independence in 1980, union membership surged as the new government supported workers' rights, leading to a more active and influential trade union movement (Williams, Gwyneth, Hackland & Brian, 1988). Membership reached approximately 20 000 in 1985.

Labour disputes and strikes also increased significantly, contrary to the wishes of the new government.

During the early years of Zimbabwe's independence, strides were made to unite the different strands of the labour movement by forming a single national centre, the United Trade Union of Zimbabwe (Jazdowska, 2001). The United Congress of Trade Unions of Zimbabwe, however, was dominated by white unionists and preferred to cooperate mainly with Western international labour federations. Jazdowska (2001) further notes that it was ignored and allowed to dissolve, paving the way for the Zimbabwe Congress of Trade Unions, which in 1981 was recognised by the government as the sole national labour centre. In the 1990s, the ZCTU grew increasingly opposed to the government due to the government's pursuit of neoliberal economic policies (Huddlestone & Sarah, 2005). At its 1985 Congress, the ZCTU launched a major economic statement "beyond ESAP" in a bid to criticise the government's adoption of the Economic Structural Adjustment Programme (ESAP) (Kayenze, 2006).

At the national level, the ZCTU plays a critical role in resolving labour disputes. The ZCTU is the primary trade union federation in Zimbabwe. The main aim of ZCTU is to provide mediation for the resolution of disputes within, between or among member trade unions when specifically delegated to do so by its affiliates (ZCTU, 2022). The ZCTU lobbies the government of Zimbabwe on national policies, practices, and standards related to labour, employment, and socio-economic issues affecting workers and employers.

2.8.3 Zimbabwe Federation of Trade Unions

The ZFTU is a national trade union centre in Zimbabwe, formed in 1993, representing workers across various sectors (Dandira et al., 2020). It advocates for the rights and welfare of workers across Zimbabwe. According to its mission statement, the ZFTU strives to transform workplaces through ensuring fair treatment, promoting safe working conditions and enriching the lives of workers through comprehensive social protection schemes (Bhebe & Mahapa, 2014). It aims to promote workers' rights, improve working conditions, and advocate for social and economic justice. Like ZCTU, ZFTU is involved in championing workers' rights, promoting safe working conditions, ensuring fair wages, providing legal protection and promoting social dialogue. Mahapa and Bhebe (2014) also note that ZFTU has become a pivotal force in addressing wage erosion caused by hyperinflation through pushing for wages that match the cost of living. Together with ZCTU, EMCOZ, and the government, ZFTU plays a significant role in the Tripartite Negotiating Forum, where it engages in discussions to resolve labour disputes and create a sustainable social contract that benefits all parties. Its officials also represent member employees in the dispute resolution process (Dandira et al., 2020).

2.8.4 Employers Confederation of Zimbabwe

The EMCOZ, established in 1980, is a membership organisation which promotes and protects the interests of employers and workers in Zimbabwe. This organisation plays a critical role in resolving disputes among employers and employees (EMCOZ, 2022). EMCOZ promotes joint representation to the government in areas of mutual concern in the labour market, such as advisory and consultancy services. In addition, the organisation lobbies for Zimbabwean employers' and employees' rights and interests locally and internationally (Chisamba, 2017). The EMCOZ also maintains a working relationship with the trade unions and, from time to time, promotes joint representation to the government on matters of mutual concern in the labour market.

This organisation plays a significant role in dispute resolution through its legal team. In 2015, EMCOZ initiated an ongoing appeal to the High Court of Zimbabwe against the enactment of section 18 of the Labour Act, which allows section 12 (which states the grounds for retrenchment procedures and benefits for employees) to be applied retrospectively. The organisation represented the employers, arguing that the retrospective application unfairly imposed liability for retrenchment packages on employers in respect of dismissals lawfully effected before the Amendment. EMCOZ contributes significantly to social dialogue by participating in the Tripartite Negotiating Forum (TNF), where it represents employers at the national level, shaping policies and influencing the development of labour legislation that impacts industrial relations.

EMCOZ offers organised representation of employers, which means their views are officially heard in NEC discussions, thereby improving the balance of the procedures and their credibility (Watadza, 2015). Conversely, its litigation-based approach, especially in its post-2015 cases, has sometimes been accused of prioritising the employer's interests over fair settlements, contributing to the length of the conflict and affecting the timeliness of the resolution (Mucheche, 2017). The role of EMCOZ in NECs is thus a two-pronged matter: on the one hand, its participation can be seen as a way to ensure that employer interests are considered and that decisions are challenged in court, but on the other hand, it may also create a delay in the timely, balanced decisions, which is a contradiction between the formal equity and efficiency of the post-amendment industrial relations model in Zimbabwe.

2.8.5 The Labour Court of Zimbabwe

The Labour Court is provided for and established by Section 172 of the Constitution, and Section 84 of the Labour Act [Chapter 28:01]. It is a special court of record that handles only employment matters. The provision which sets out its powers, functions and jurisdiction is provided for in Section 89 of the Labour Act [Chapter 28:01]. The creation of the Labour Court demonstrates the legislature's clear intent to centralise all labour matters within a single specialised body, a "one-stop shop", thereby promoting finality and swift resolution in labour litigation. In *Tuso vs City of Harare 2004 ZLR (1) (H)*, Bhunu J had the opportunity to consider the legal meaning of section 89(6) of the Act. The judge concluded as follows: "*It is manifestly clear to me that the intention of the legislature was to expressly exclude the jurisdiction of all other courts in areas where the Labour Court has jurisdiction in the first instance.*"

According to Senior President Mutema (as he then was), Section 89(1) of the Labour Act [Chapter 28:01] restricts the jurisdiction of the Labour Court to only those matters specifically provided for in subsections (1) and (6) of Section 89 of the Labour Act [Chapter 28:01]. As a result, the High Court retains the authority to hear and decide all other labour matters not assigned to the Labour Court by those subsections. Madhuku

(2012) notes that section 89(1) of the Labour Act [Chapter 28:01] takes away from the High Court all matters specified therein. The question which therefore arises is *"How about labour matters not specified in section 89(1)?"* Mucheche (2021) notes that the controversy created by the parallel jurisdiction of the Labour Court and the High Court has led to conflicting judgments, further clouding the issue. In the matter between *Confederation of Zimbabwe vs. Rita Marque Mbatha (HC 8795/14)*, Mathonsi J observed that section 171(1)(a) of the Constitution has reinstated the jurisdiction of the High Court on all labour matters which had been ousted by the provisions of section 89(6) of the Labour Act [Chapter 28:01]. Section 171(1)(a) of the Constitution, having granted the High Court original jurisdiction over all civil and criminal matters in Zimbabwe, supersedes section 89 (6) of The Act due to the Constitution's supremacy over all Acts of Parliament. Labour matters had previously been considered the exclusive preserve of the Labour Court before the new Constitutional order. Myambo and Munyanyi (2017) state that the Labour Court's primary role is to adjudicate labour disputes and administer labour law in Zimbabwe to advance social justice. It also provides a forum for resolving employment-related conflicts between employers, employees and trade unions. The Labour Court also appoints judges in accordance with section 84 of the Labour Act [Chapter 28:01] and, in terms of section 90 (3) of the Labour Act [Chapter 28:01], the Labour Court judges may make rules which govern its practices and procedures to be followed in the proceedings before the Labour Court. To this end, the Labour Court judges have their rules cited as the Labour Court Rules, 2017, published in Statutory Instrument 150 of 2017.

Gwisai (2006), states that the rules affirm the informal and flexible character of the Labour Court required under section 90A of the Labour Act [Chapter 28:01], in particular, that the court *"shall not be bound by the strict rules of evidence and the Court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party",* and that the court may descend into the arena and play an inquisitorial role.

Madhuku (2012) notes that, like any other special court, the Labour Court is a creature of statute and thus can only exercise the jurisdiction found in the relevant statutes, as stated in Section 172(2)(3) of the Constitution. Any order issued by a court or authority without the proper legal authority is considered void and of no legal effect. Gwisai (2006) concurred that the Labour Court has been conferred with exclusive jurisdiction in the first instance over labour matters covered by the Labour Act [Chapter 28:01]. In Gwisai's view, this capacity enables the court to fundamentally influence and drive Zimbabwean labour jurisprudence and its practical application in a manner that reflects the Act's pluralist spirit and underlying principles. Notwithstanding this extensive influence, the court's powers are inherently limited because it is a creature of statute, deriving all its authority exclusively from the enabling legislation. The matter between *Mabaudi v Mhora HH 60/11* is indistinguishable from the Labour Court, it was held that;

> *It is my considered view that the Magistrate should have declined to deal with the matter for want of a cause of action, thereby enabling the court to exercise its jurisdiction. The law of jurisdiction in the Magistrates Court was stated in Hatfield Town Management Board v Mynfred Poultry Farm [Pvt] Ltd 1962 RLR at 802 A-B. It has repeatedly been stated that the magistrates' court is a creature of statute*

> *and has no jurisdiction beyond that granted by the statute. It has no inherent jurisdiction such as is possessed by the superior courts and may claim no authority which cannot be found within the four corners of its statute.*

The principle in the *Mabaudi* matter referred to above is different, as the powers of the Labour Court are provided for in terms of section 89 of the Labour Act [Chapter 28:01], thus its decisions and actions are grounded in the rule of law and aligned with the country's labour legislation. The Labour Amendment Act Number 5 of 2015 introduced significant changes to the labour dispute resolution process in Zimbabwe, including the inclusion of litigation as an alternative method of dispute resolution. Court institutions, such as the Labour Court, were therefore intended to provide a more efficient and effective dispute-resolution process for both employers and employees. By promoting specialised courts, such as the Labour Court, to adjudicate labour disputes, the Government of Zimbabwe sought to dispense labour justice and equity in the employment relationship. Legal scholars such as Owen Fiss advocate enhancing the court system in the dispute resolution process. They have previously reasoned that the court system is more likely to do justice than conciliation, mediation, arbitration, settlement, rent-a-judge and mini-trials. The reasons being that the courts vest the powers of the state in officials who act as trustees for the public. Further, the courts are very visible, and their commitment to reason is unquestionable. Guided by the theory of justice as a framework, the extent to which the dispute resolution process, comprising both ADR and litigation, is considered fair, impartial, efficient, cost-effective and accessible is evaluated.

Daft (2004), as cited in Myambo and Munyanyi (2017), however, argues that achieving effectiveness is not always straightforward because different people want different things from the organisation. The Labour Court provides services to various stakeholders, including lawyers, employers, employees, trade unions, employers' organisations, the community, and the state. These stakeholders have different expectations of the Labour Court; therefore, each has a different interpretation of its goals. The stakeholders in the Labour Court have often raised concerns about the time it takes to dispose of disputes. Madhuku (2012) has also raised that the labour law does not impose a maximum time limit within which the Labour Court must deliver judgments. This gap in the law has, however, contributed to delays in resolving labour disputes. In support of this observation by Madhuku (2012), Myambo and Munyanyi (2017) also note that long delays in the court process create barriers to justice, hence the old adage that "justice delayed is justice denied." Representation is another principle of natural justice, which ensures that parties in a dispute are entitled to representation by representatives of their choice. Representation is another aspect of the Labour Court's accessibility. The Labour Court Rules, 2017 define representative as "(a) a legal practitioner registered in terms of the Legal Practitioners Act [Chapter 27:07]; (b) an official or employee of a registered trade union or employers' organisation of which the party is a member; or (c) a company representative." Madhuku (2012) views the Labour Court's definition as restrictive, as it defines the only form of representation accepted by the court, thereby excluding other potential representatives, such as consultants and fellow employees.

2.8.6 The Ministry of Public Service, Labour and Social Welfare

The MPSL&SW is a government ministry responsible for labour relations and welfare in Zimbabwe. The Encyclopaedia Zimbabwe (2022) describes it as the arm of government with statutory responsibility for protecting vulnerable populations in Zimbabwe and notes that it has two departments: the Department of Labour and the Department of Social Services. The Department of Labour addresses labour-related issues through its divisions: the Labour Relations Division, the Registration Process Division, the Labour Research and Economics Division, the National Employment Division, and the International Relations Division (Encyclopaedia, 2022).

Through its vision, the MPSL&SW aims to provide social security systems that promote a decent standard of living and a labour market environment that guarantees access to decent jobs for all. It also aims to promote fair labour practices, labour productivity, and social protection to enhance the social and economic well-being of the people (Maphiri, Matasane & Mudimu, 2021). Through its registration division, which is headed by the Registrar of Labour, the MPSL&SW is responsible for registering NECs, their CBAs, and Codes of Conduct, as well as certifying DAs. The registration division is also responsible for registering trade unions and employers' organisations, which are the founding parties of NECs (Encyclopaedia, 2022). In terms of section 63(3c) of the Labour Act [Chapter 28:01], interested parties or a LO may approach the Registrar of Labour for recourse on administrative issues such as delays or perceived bias of a DA. The Registrar may allocate the matter to another DA or LO to hear the matter afresh. In extreme cases, the Registrar of Labour may withdraw the appointment of the DA. Upon receiving a complaint from an interested party or LO, the Registrar may, after conducting a proper inquiry and giving the DA an opportunity to respond in writing, revoke the DA's appointment if there is sufficient evidence showing that the DA has failed to effectively carry out their duties or comply with this Act.

If a complaint is received involving an ongoing dispute or an unfair labour dispute alleging that the DA is unnecessarily slow or otherwise conducting himself or herself in an improper manner, the Registrar may direct the NEC to assign a different DA. The Registrar may also refer the matter to a Labour Officer. Matsikidze (2023), however, argues that LOs may not have sector-specific intimate knowledge. Further, challenges may arise when a LO attempts to interpret a CBA from a sector that he is alien to, and this may further jeopardise and delay the resolution of disputes.

Through section 63A of the Labour Act [Chapter 28:01] as amended through the Labour Amendment Act Number 5 of 2015, every NEC's secretary has an obligation to arrange for an audit of the council's income and expenses for the entire financial year. The audited financial report must be submitted to the Registrar of Labour within three months of the financial year's end or within fourteen days of completing the audit, whichever is later. The Labour Amendment Act Number 5 of 2015, through section 63A of the Labour Act [Chapter 28:01], gave the MPSL&SW powers to enforce and monitor a corporate governance framework within NECs through ensuring that public funds are properly accounted for. Under the same amendment, the Registrar of Labour serves an administrative role for all NECs, ensuring they execute their mandate in line with the requirements of the Labour Act [Chapter 28:01] (Uzhenyu, 2017). An administrator may be appointed by the Registrar of Labour to temporarily take over the administration of the NEC pending investigations into complaints regarding its operations.

Research shows that capable and trained officers play a critical role in facilitating timely conciliation and arbitration, guiding employers and employees through the procedures they must follow, and making unbiased decisions (Watadza, 2015; Mucheche, 2017). Gaps in the expertise of Labour Officers (their lack of knowledge of changing labour legislation, lack of training, or lack of awareness) have, however, been attributed to delays, inconsistent decisions, and perceived unfairness in decisions on disputes (Chimhowu & Woodhouse, 2006). Such capacity challenges not only undermine the efficiency of NEC's work but also make stakeholders doubt the fairness and legitimacy of the dispute-resolution procedures. The role of the Ministry of Labour's oversight is thus paramount; through proper monitoring, policy direction, and accountability systems, governance can be improved, procedural bottlenecks reduced, and the observance of statutory and ethical standards facilitated (ILO, 2016). Conversely, a lack of rigorous oversight can lead to increased administrative inefficiency and governance failures, underscoring the interplay among institutional capacity, administrative competence, and regulatory supervision in determining NEC's performance.

The institutional actors, namely the ILO, MPSL&SW, EMCOZ, ZCTU, ZFTU and the Labour Court reviewed above, collectively constitute the pluralist governance framework within which dispute resolution in NECs operates. Their formal roles suggest a system of coordinated and balanced tripartism. However, the doctrinal and scholarly literature reveal gaps between their expected institutional mandate and their operational reality. The EMCOZ's High Court challenges to certain legislative provisions, the ZCTU's opposition to the government, the Labour Court's jurisdiction shared with the High Court, and the MPSL&SW's capacity constraints in having an oversight role over the NECs constitute an institutional landscape characterised by inadequate coordination, competing mandates, and limited resources. These observations on the institutional shortcomings motivate the empirical investigations in Chapter 4, which test the effectiveness of the formal institutional framework, and the reform model in Chapter 5, which proposes certain institutional coordination processes to address the identified gaps.

2.8.7 NECs - Structure and Legal Framework

NECs are statutory bodies established under section 56 of the Labour Act [Chapter 28:01]. NECs are formed by the coming together of a registered trade union or a federation of registered trade unions and employers' associations, or a federation of registered employers' associations, and, once registered, operate within the confines of a duly registered constitution. Section 63 of the Labour Act [Chapter 2 8:01] further gives the NECs the duty to enforce Collective Bargaining Agreements (CBAs) and carry out statutory inspections to ensure compliance with the provisions of the CBAs through DAs who are full-time employees of the NECs. Thus, the Labour Act [Chapter 28:01] enables the NECs to create their own subsidiary legislation on CBAs and codes of conduct, which help them govern their respective sectors or industries. These are then promulgated into Statutory Instruments.

The NECs also enforce their CBAs through section 82 of the Labour Act [Chapter 28:01], which provides for the binding nature of registered CBAs. Section 82 of the Labour Act [Chapter 28:01] further stipulates that with effect from the date of its publication, on any date specified in it, the CBA becomes binding on the parties to it, all the members of such parties, employers, contractors and their respective employees in the undertaking or industry to which the agreement relates. According to the MPSL&SW 2020 Report on NECs, most disputes arising at the NEC level stem from the implementation of the CBAs. This study, therefore, evaluates dispute resolution processes for wage-setting disputes, as these issues often concern the underpayment of wages stipulated in the CBAs. Other disputes handled by the NECs include collective job actions, such as strikes, and dismissals arising from employment codes of conduct.

2.9 Conceptualisation of key terms

This section seeks to define and specify the main research ideas and concepts. Conceptualisation in research aims to eliminate confusion when key terms are understood and perceived differently. Some terms have varying meanings, and different people can form different perspectives on them; hence, conceptualisation helps break down complex ideas into a common language. In this section, the researcher consulted definitions from familiar sources, including dictionaries, journals, textbooks, online searches, and reputable academic sources.

2.9.1 Defining industrial relations

Dunlop (1958) defined industrial relations as "the complex interrelations among managers, workers and agencies of government". According to the ILO (2013), industrial relations concern the interactions between employers and employees and their respective organisations, as influenced by governmental interventions at work or arising outside the work situation. Armstrong, Goodman and Hyman (1981) view industrial relations as concerned with the systems and procedures used by unions and employers to determine the reward for effort and other conditions of employment. This is meant to protect the interests of employees and their employers and to regulate how employers treat their employees. Due to the conflicting interests between employers and employees at the workplace, disputes have continued to arise within the industrial relations system.

2.9.2 Defining a dispute

According to the Oxford Learners' Thesaurus (Oxford University Press, 2020), a dispute is 'any argument, disagreement, quarrel, difference of opinion, heated discussion, clash, or row between two or more persons about matters of interest between them'. The etymology of the term dispute is traceable to 1300 century from the Old French term *disputer* which is also traceable to the 12th century meaning to 'dispute, fight over or contend." The term is also attributable to the Latin term *disparate* which means to "discuss, weigh, explain examine and argue." The term *disparate* is derived from to words *"dis"* and *'put are'* whereat *dis* means "separately"; *put are* means "to count, consider," which originally meant "to prune" or "to cut, strike, stamp"). When used in Vulgate the sense "to argue or contend with words or to stand out. The most concise definition of a dispute defines it as ‘a disagreement between two or more individuals or groups. These definitions, while shedding light on the subject, do so in general without contextualising a workplace dispute.

A labour dispute is therefore defined by the ILO (2008) as “any controversy arising between a worker and an employer or trade union and employers in respect of the application of the law, collective agreement, work rules, employment contract or customary rules and also any disagreement arising during collective bargaining or in connection with a collective agreement. According to Saunders (1947), in most cases, unresolved disputes are accompanied by strikes, picketing, lockouts, boycotts, slowdowns, blacklisting, and other similar incidents, which may include violations of the law by representatives of either side. The disputes and conflicts that occur in the workplace have necessitated the implementation of dispute-resolution mechanisms to promote industrial harmony.

2.9.3 Distinguishing a dispute from a conflict

Whilst a conflict and dispute may both involve a disagreement over some issue. There are some conceptual differences between the two terms. Burton (1990) describes a dispute as a short-term disagreement that can result in the parties reaching a settlement. A dispute usually involves issues that are negotiable. A conflict, on the other hand, is usually long-term with deeply rooted issues that can be seen as non-negotiable (Burton, 1990). Pirie (2000) argues that conflict arises when interests are incompatible. The Concise Oxford English Dictionary therefore defines conflict as “a serious disagreement or argument; a prolonged armed struggle; an incompatibility between opinions, principles, etc". Burton (1990) also highlight that, by nature, each side in a conflict is fundamentally opposed to the success of the other. Consequently, each side will not compromise its own values at the risk of allowing those that they despise to achieve even the slightest victory.

According to Maiese and Burgess (2020), uncontained conflicts sometimes manifest as verbal or behavioural disagreements, which can lead to violence and international conflict. Such conflicts have the potential for violence and, for that reason, are usually condemned. However, conflict is an integral part of human behaviour, and there could be no movement or change without it. Decision-making necessarily contains an element of conflict; exchanges of ideas involve conflict; the democratic process is built on the normalcy of conflict of ideas and interests; conflict is an eternal feature of human existence. An irreconcilable conflict becomes potentially damaging when natural mechanisms for resolving it, such as negotiation or discussion, are inadequate. In such a case, other methods or processes may need to be employed. Conflict management or resolution is usually approached through processes that provide an understanding of the conflict and seek to address it by consensual means (Maiese & Burgess, 2020). Although some conflicts may be resolved by dispute resolution procedures such as injunctions, interdicts, or other court orders that restrain unlawful behaviour, arbitration, and mediation, conflicts are not necessarily amenable to resolution by these processes (Blake, Browne & Sime, 2016). On the other hand, disputes are amenable to resolution by dispute resolution processes.

A dispute may be defined as a class of conflicts that manifest themselves in distinct, justiciable issues. It involves disagreement over issues that can be resolved through negotiation, mediation, or other dispute-resolution processes involving a neutral third party (Black et al., 2016). The differences can usually be examined objectively by the parties in the case of negotiation or by the neutral in the case of the other methods, and the neutral can take a view on the issues to assess the correctness of one party or the other (Balek et al., 2016). Foskett (2005) observes that a dispute only arises when one party asserts a claim that is subsequently contested by the other. According to Brown and Marriott (1993), cited in Liubchenko (2016), the question as to whether or not a 'dispute' exists can be highly relevant, for example, where arbitration or other dispute resolution provision in a contract provides that disputes are to be referred to arbitration or to any other stipulated process. If no dispute exists, then a party wishing to enforce any aspect of the contract may do so through the courts; but if a dispute does exist, then the specified process must be followed (Liubchenko, 2016). Disputes between people are a normal part of human interaction. Whenever people gather together, whether in families, clubs, teams, political parties, nations or international coalitions, disagreements will emerge (Foskett, 2005). Prathamesh (2003), cited in Mwenda (2006), points out that it is elementary knowledge that disputes arise in society due to interaction amongst its members and that the greater and/or the more frequent the interactions amongst those with differing needs or conflicting interests, the higher the chances of disputes.

Disputes are an expression of people's differences, and by airing them, opportunities arise to better understand one another and peacefully resolve those differences. Mwenda (2006) is of the view that the opening up of world markets, given their diversity, has contributed to the eruption of differences, misunderstandings, and miscommunications, often culminating in complex disputes. According to Liubchenko (2016), the advent of e-commerce and the internet has emphatically underlined the phenomenon of the ‘global village’. The unsavoury result of this has been that disputes are not only arising at a far greater pace than ever before, but the same entail even greater complexities due to their cross-border and cross-cultural nature.

2.9.4 Distinction between behavioural and justiciable conflict

Landerkin and Pirie (2005) correctly state that the ways in which disputes are resolved can redefine relationships, redraw boundaries, redistribute wealth, reform laws, restrict movements, remove barriers, reshape thinking, and reframe problems and much more. The distinction between behavioural conflicts and justiciable disputes is important in the ADR discourse because of differences in the approaches required for their resolution and the limitations of dispute-resolution processes for behavioural conflicts (Burton, 1990). It is argued that although conflict can cause distress and is usually viewed negatively, it can also function positively, motivating people to take action and change their situations in ways that improve their lives and better fulfil their self-interests (Landerkin & Pirie, 2005). Those in conflict who want to get it resolved may be forced to consider their role in creating the conflict and often gain insight into.

2.9.5 Causes of industrial disputes

There are many factors that contribute to workplace disputes. According to Reddy (2004), issues that give rise to disputes include non-adherence to health and safety standards, long working hours, unpaid overtime, and other conditions of employment. Furthermore, industrial disputes arise from both economic and non-economic issues (Sinha, 2004). With respect to the economic aspect, issues such as wage deductions, wage structure, incentives, demand for higher wages, and job evaluation methods are the main causes of disputes. Reddy (2004) identifies the following as the main factors causing industrial disputes: Insufficient health facilities; Extreme workload; Rejection of legitimate claims and contractual rights; Interpretation of contract clauses; Issues outside the scope of agreements; and Lack of competence among supervisors and managers in human relations.

2.10 Conciliation in dispute resolution

This section defines conciliation and discusses its different forms, including mediation and fact-finding. A four-stage conciliation model propounded by Moore (1996) is also presented, whilst the fundamental principles of conciliation provide guidelines for the process that ought to be followed in a conciliation proceeding. This section discusses the conciliation process in Zimbabwe and its importance in dispute resolution.

2.10.1 Collective Conciliation

According to Cole (2000: 361), collective conciliation is a means by which employers and trade unions can be assisted in reaching mutually acceptable settlements of their disputes by a neutral and independent third party. Its essential characteristic is that its use is voluntary and that agreements reached in conciliation are the responsibility of the disputing parties. In conciliation, the parties reach an agreement with assistance from the conciliator to clarify misunderstandings or identify areas of common ground.

2.10.2 Conciliation

Edward De Bono (1993) describes conciliation as the practice of using a neutral third party in a dispute to help the disputing parties reduce the extent of their differences and reach an amicable settlement or agreed solution. The International Labour Organisation (ILO, 2002) defines conciliation as a consensus-based approach that seeks to help parties resolve their differences in a dispute and arrive at an agreed outcome. The term conciliation is often used interchangeably with mediation. According to Cole (2001), conciliation has to be distinguished from arbitration. Mwenda (2006) advances that in the case of conciliation, it's often viewed as non-facilitative and non-interventionist. Mediation, on the other hand, is seen as allowing for mediator proactivity. The opposite is often true with conciliation. Mwenda (2006) further distinguishes conciliation from mediation and notes that the accompanying process in conciliation can be less structured as compared to mediation. A conciliator, however, still endeavours to bring the parties in dispute together in a bid to help them to focus on the important aspects of their matter.

According to the ILO's Conciliation/ mediation training course module (2003), conciliation is a process in which a person independent of the parties attempts to assist them to resolve a dispute. The module also notes that conciliation normally includes: mediation, fact-finding and making a recommendation to the parties.

In Zimbabwe, the conciliation process was established in 2003, following the promulgation of the Labour Amendment Act Number 17 of 2002. Labour Officers employed by the MPSL&SW and DAs employed by the NECs are the conciliatory authorities in terms of the Labour Act [Chapter 28:01]. Before the enactment of the Labour Amendment Act Number 11 of 2023, where an NEC appoints a DA, a LO would have no jurisdiction in terms of section 63 (3b) of the Labour Act [Chapter 28:01] (Ndlovu et al., 2023). According to Feng and Xie (2020), the underlying principle of conciliation is that the parties are best equipped to resolve the dispute themselves. A conciliator cannot impose a decision on the parties, as they are only supposed to foster dialogue by examining the real issues and helping develop options for a just, equitable, and long-lasting resolution acceptable to both parties (Ndlovu et al., 2023). Further, parties also retain control over how their dispute is handled, and there is no requirement for a third party to make a binding decision (Ndlovu et al, 2023).

The process of conciliation is a major highlight of the Constitutional Court of Zimbabwe's judgment in *Isoquant Investments (Pvt) Ltd t/a ZIMOCO v Memory Darikwa, CCZ 6/20.* The presentation by the Honourable Chief Justice Malaba at the judges' symposium held at Troutbeck Inn, Nyanga, from the 17th to the 20th of September 2020, underscored the importance of conciliation as a statutory, compulsory method for resolving disputes arising out of employment relationships. Conciliation was described as "the expression on the part of the legislature of faith in it as an effective process for consensual seeking as a first step before the disputes become subjects of arbitration or adjudication." Shinde (2012), cited by the Chief Justice in his presentation, had also underscored the importance of conciliation as follows:

> *The importance of conciliation is that, in other proceedings, a decision is issued by the presiding authority and is binding accordingly. But in conciliation, an amicable settlement is reached by the parties themselves, and it is binding as per the decision. Third party, i.e., the conciliator, is just helping to reach a settlement and not dictating the terms or the decision.*

Chief Justice Malaba also highlighted jurisdictional facts that should exist before a dispute is referred to a Labour Officer for conciliation in terms of Section 93 (1) of the Labour Act [Chapter 28:01]. These are as follows;

- There must be a dispute.
- The dispute should have arisen within an employment relationship.
- The dispute should fall within the powers of an LO.
- The issue in dispute should not be subject to proceedings under the employment code of conduct in terms of section 101 (5) as read with section 101(6) of the Labour Act [Chapter 28:01].
- The parties should not be subject to proceedings at the NEC level. In other words, a DA should not be seized with the dispute in terms of section 63 (3b) of the Labour Act [Chapter 28:01].
- The referral should be timeous in terms of section 94 (1) of the Labour Act [Chapter 28:01].

A Labour Officer has to attempt to settle a dispute within thirty days after he/she begins the attempt. Though the Labour Act [Chapter 28:01] does not specify the actual means or method of conciliating a dispute, the overriding duty bestowed upon the LO is for him/her to have discretionary powers to choose the steps or procedures ordinarily associated with the process of conciliation as a dispute resolution method. In the *Isoquant Investments (Pvt) Ltd t/a ZIMOCO v Memory Darikwa CCZ 6/20* judgment, Chief Justice Malaba outlines that the conciliator has to “use effective interpersonal skills, ascertaining confidential information, obtaining admissions where necessary, analysing the dispute, facilitating alternative solutions, exploring different options for settlement and facilitating an agreement for the parties.”

Where a conciliator is able to facilitate a settlement, he/ she issues a certificate of settlement to the parties, citing the areas that the parties would have agreed on in terms of section 93 (2) of the Labour Act [Chapter 28:01]. The certificate of settlement was, however, not enforceable prior to the promulgation of the Labour Amendment Act Number 11 of 2023. The Labour Amendment Act Number 11 of 2023 now makes a certificate of settlement registrable and enforceable at law (Matsikidze, 2023). Where a conciliator fails to make the parties arrive at an agreement or consensus, a certificate of no settlement in terms of Section 93 (3) of the Labour Act [Chapter 28:01] is issued by the conciliator. The certificate of no settlement is an establishment of the fact that an attempt to settle a dispute through conciliation has failed. A certificate of no settlement provides the rationale for adopting arbitration or adjudication as the next stage in the dispute resolution process (Shinde, 2012). Under the Labour Amendment Act Number 5 of 2015, where conciliation fails, a Labour Officer or Designated Agent would then proceed to issue a draft ruling intended for confirmation by a Labour Court judge. The

Labour Amendment Act Number 11 of 2023, however, brought back the old system, in which, upon the issuance of a certificate of no settlement, the conciliator refers the matter to an arbitrator, who then makes a binding decision. The arbitrator's award is appealable, on a question of law, at the Labour Court in terms of section 98 (10) of the Labour Act [Chapter 28:01].

2.10.3 Mediation

Mediation is an ADR process classified as a form of negotiation that involves a neutral third party (Bowe, 2014). A trained mediator helps the parties to reach a voluntary resolution of their dispute and also facilitates the negotiation process between them. In mediation, a mediator meets with the parties to a dispute, either together or separately, and, through discussion, attempts to help them settle their dispute. Mediation may generally be described as a voluntary procedure whereby a neutral third party endeavours to bring the parties involved in a dispute to an agreed solution. The mediator lacks authority when the parties are unable to settle the dispute by agreement. There is no requirement that the parties reach a settlement, and at times they may not do so even after going through the mediation process (Mwenda, 2006). In mediation, parties are allowed to fully express themselves and be heard without being constrained by a binding adjudication. However, whilst a settlement cannot be forced on the parties, courts can enforce a settlement reached through mediation. Further, whilst parties may be free to choose their own mediator, there may be situations where they are confined to a pre-approved list.

Skilled negotiators can conduct research to identify and select a mediator whose style, attributes, and experience suit their needs and expectations, based on the peculiarities of the matter (Boulle, 2005). Mediators are usually classified as facilitative, evaluative, and transformative. Different mediators have their own unique styles of handling matters brought before them. Bowe (2014) views mediation as a forward-looking process which emphasises the present and future implications of a dispute. This is contrary to litigation, which focuses on the past.

Mwenda (2006) further notes that mediation is suitable for any issues that the parties can settle by negotiation. These issues may emanate from business, professional and personal relationships. Mediation has been used for a wide range of disputes, including civil, commercial, labour, interpersonal, community, family, and public disputes. Bowe (2014) also notes that many state and federal courts implement voluntary or mandatory mediation programs to encourage the settlement of disputes whilst conserving judicial resources. Mediation is considered a favourable alternative to litigation because it requires fewer resources. Further, the emotional costs of mediation are much lower, and parties control their own fate rather than leaving it to a judge or the court system (Bowe, 2014). Although there has been extensive debate about the differences between conciliation and mediation, there is little agreement on the similarities and differences between the two definitions (International Labour Organisation, 2013).

2.10.4 Fact-finding

Weast (1991) defines fact-finding as the conduct of a hearing by a neutral or neutrals, known as a fact-finder or a fact-finding panel, to assist the disputants in defining the issues in dispute and thereby proposing prospective resolutions with supporting arguments and evidence. It is a voluntary process in which an individual or an impartial third party assists the parties in determining facts relevant to a current or future dispute. It is a relatively formal procedure for settling disputes and can be structured within a semi-judicial framework. When mediation and conciliation fail to provide a settlement to a dispute and real differences still exist between parties, fact-finding can be useful in resolving the dispute (Martin, 1995). In fact, a conciliator attempts to assist parties in determining certain facts to help them settle the dispute. Fact-finding is useful where parties' views on certain facts differ, and this is preventing the resolution of a dispute. Fact-finding, therefore, answers the premise that facts alone can resolve a dispute. Any recommendation made is not binding on the parties. It has persuasive power and is used in order to assist the parties in attempting to settle a dispute. A recommendation should be given only if the parties to the dispute agree or the conciliator believes it will promote settlement.

2.11 A four-stage conciliation model

Table 2:2 below shows a four-stage conciliation model as postulated by Moore (1996), in his book "The Mediation Process, Practical Strategies for Resolving Conflict". Table 2.2 shows the ideal stages which a conciliator should go through in resolving a dispute. Although Moore's model is a clear procedural roadmap, its transfer to the context of NEC dispute resolution in Zimbabwe requires critical analysis. For example, NEC conciliators can adhere to the same steps, yet the fidelity and effectiveness of the procedure can be undermined by administrative delays, a lack of training for Labour Officers, and a lack of resources (Watadza, 2015; Mucheche, 2017).

STAGE	PURPOSE
A **Introduction**	To set the stage for the conciliation process by creating an environment and atmosphere that is comfortable for the parties and conducive to settlement. In addition, the purpose of the stage is to promote the parties' trust in the conciliation process and in the conciliator himself, as well as to reduce factors that may prevent settlement from being reached.
B **Analysis of the dispute**	Based on the information provided by the parties, to establish which factual and legal issues are in dispute and which facts the parties agree on.
C **Developing consensus**	To assist the parties in realigning and moderating their expectations in order to generate options to accommodate each other and resolve the dispute.
D **Conclusion**	To bring the conciliation process to an end through the drafting of an agreement where there is a settlement or confirming the deadlock and determining which issues are still in dispute, where there is no or partial resolution.

Table 2.2: The four-stage conciliation model

Source: Moore (1996: 346)

Moreover, although the model proposes consensus and mutual satisfaction, the power imbalance between employers and employees in Zimbabwe may require additional interventions to promote equity, such as regulatory oversight by the Ministry of Labour or the presence of trade unions. Placing the framework by Moore against the realities of NEC operations, this study utilises the model as a reference point in assessing whether the conciliation stages are appropriately applied, whether they play a role in timely and fair resolutions and the impact of structural and institutional challenges on the outcome of the dispute following the Labour Amendment Act Number 5 of 2015. By doing so, the model not only deepens theoretical understanding of conciliation but also establishes assessment standards by which NEC effectiveness can be measured.

2.11.1 Fundamental Principles of Conciliation

The ILO's conciliation/mediation training course module (2005) states that a fundamental principle of conciliation is that the parties ultimately choose whether to settle the dispute. The process is designed to assist parties to a dispute to reach an agreement, and a party to an agreement is free to agree or not to do so. Nothing that the conciliator decides, including fact-finding or making a recommendation, is binding on the parties unless they agree otherwise.

Whilst parties are free to settle or not, the conciliation process under the Labour Act [Chapter 28:01] is compulsory, to the extent that parties must at least try to resolve the dispute before utilising other mechanisms to resolve the dispute. Such mechanisms include collective job action and arbitration, amongst others (ILO, 2005, p. 184). The Labour Act [Chapter 28:01], also stipulates in section 104(2b), that no employees, workers' committee, trade union, employer, employers' organisation or federation shall resort to collective job action unless an attempt has been made to conciliate the dispute and a certificate of no settlement has been issued in terms of section 93 of the Labour Act [Chapter 28:01]. A party is required to attend a conciliation hearing, but no settlement may be imposed on the party. Parties will be encouraged to engage in the proceedings in a genuine attempt to settle. The Labour Amendment Act Number 11 of 2023 has, however, brought a sense of completeness to the conciliation process, where parties' agreements following the conciliation proceedings now result in a certificate of settlement that is enforceable at law (Mafongoya, 2021). Matsikidze (2023) also applauds this positive development and notes that a certificate of settlement can now be registered for enforcement as a civil judgment, making the conciliation a serious and worthwhile process. This is unlike previous legal provisions, where one party, especially the employer, would simply choose to renege on compliance with the certificate of settlement because of its non-binding effect.

2.11.2 Disputes requiring conciliation

The Labour Act [Chapter 28:01] requires a LO to be appointed to conciliate all disputes referred in terms of Section 93 (1) of the Labour Act [Chapter 28:01]. A DA has responsibilities similar to those of a conciliator under the applicable NEC. The LO or DA may refer a dispute directly to arbitration in terms of section 98 of the Labour Act [Chapter 28:01], if that has been agreed between the parties. Section 98(1) of the Labour Act [Chapter 28:01] empowers the Labour Court, if it considers it expedient to do so, to refer any dispute to a LO or DA or a person appointed by the court to conciliate the dispute. Both disputes of right and disputes of interest are subject to conciliation. With respect to disputes of interest, where a settlement is not reached, and a certificate of no settlement has been issued, the conciliator must enquire of the parties whether they wish to proceed with the arbitration route. Referral to voluntary arbitration is only through the consent of the disputing parties for such referral to be made.

According to Mucheche (2022), on the other hand, where disputes of right are involved, where there is no agreement arrived at during the conciliation proceedings, the conciliator proceeds to issue a certificate of no settlement before referring the matter for compulsory arbitration in terms of section 93(5) of the Labour Act [Chapter 28:01]. The effect of all these provisions is that the Labour Act [Chapter 28:01] promotes the settlement of disputes by agreement through conciliation before resorting to arbitration, adjudication, or collective job action.

The NECWEI follows its own conciliation procedure, which is peculiar to its own industry and sectors. Through the promulgation of S.I 77 of 2021, DAs from the NECWEI attempt to redress (conciliate) a dispute. Should the DA fail to redress the matter, a consent determination is issued upon the agreement of the disputing parties. Where parties are not in agreement, the DA requests submissions from the parties and then proceeds to make a determination. A consent determination, however, cannot be appealed against since the parties would have agreed to it (Munyai, 2023). Prior to the promulgation of the Labour Amendment Act Number 11 of 2023, if a party failed to comply with the provisions of a certificate of settlement, the party aggrieved by the lack of enforcement would refer the matter back to the conciliator. The conciliator would be left with no option but to refer it for arbitration as well. The Labour Amendment Act Number 11 of 2023 now recognises a certificate of settlement as a civil document which can be enforced in a court of law.

Matsikidze (2023) also notes that LOs and DAs can conciliate disputes that emanate from the enforcement of codes of conduct. Section 101 of the Labour Act [Chapter 28:01] would require that if any procedure dealt with in terms of a registered code of conduct is not concluded within 30 days, the aggrieved party could refer the matter to a LO or DA for him or her to act in terms of section 93 of the Labour Act [Chapter 28:01]. The Labour Amendment Act Number 11 of 2023 now brings a new dimension that once all the internal processes of handling a matter in terms of a code of conduct have been exhausted, any appeal now lies with the LO or DA, who then deals with it in terms of the same section 93 of the Act [Chapter 28:01].

2.11.3 Powers of a conciliator

The Labour Act [Chapter 28:01] gives the conciliator the powers to conciliate. To fulfil this function, a conciliator must determine a process to attempt to resolve the dispute and has the power and duty to do the following;

- Assess whether a dispute is properly referred for conciliation.
- Assess whether he/ she has jurisdiction to conciliate.
- Conduct the conciliation proceedings, taking into account the facts and circumstances of the case. The parties' wishes are also to be considered.
- Assist the parties in an independent manner, thereby helping them reach an amicable settlement.

- Disclose all the information received from one party to the other party so as to give the other party an opportunity to present their side of the case.
- Make proposals for the settlement of the dispute at any stage of the proceedings. These proposals need not be in writing and need not be accompanied by a statement of the reasons.
- Keep all the matters relating to the proceedings confidential.
- To refer an unresolved dispute for arbitration, in terms of section 93 (1) and (5) of the Labour Act [Chapter 28:01].
- To determine the terms of reference and share of costs for any such arbitration in terms of section 98 (4) and (7) of the Labour Act [Chapter 28:01] respectively.

Any settlement achieved through conciliation shall be recorded in writing in accordance with Form LR 1. If no settlement is achieved within the 30-day period prescribed by section 93(3) of the Labour Act [Chapter 28:01], the conciliation period may be extended by agreement between the parties in accordance with form LR 3. A certificate shall be issued by the conciliator in accordance with form LR 2, in the event that conciliation is unsuccessful. A conciliator shall, however, continue to attempt to intervene in a dispute after the issuing of a certificate of no settlement, in terms of section 93(3) of the Labour Act [Chapter 28:01]. Any such intervention shall be in accordance with the dispute prevention guidelines published by the Minister of Labour in terms of section 127 of the Labour Act [Chapter 28:01].

2.11.4 The promotion of conciliation and mediation

Under the Labour Relations Act, there was a very limited scope for mediation and conciliation. Labour Relations Officers were much more involved in making determinations rather than engaging in consensus-based processes. Conciliation was used to some extent, in the context of misconduct involving minor offences, for example, a LO would conciliate a minor breach of a disciplinary code. The Labour Relations Amendment Act Number 17 of 2002 actively promoted the use of conciliation and mediation by requiring that, for all disputes, with the exception of unfair labour practices, conciliation or mediation be used before referring a matter for arbitration. The Labour Relations Amendment Act Number 17 of 2002 challenged Labour Officers to become actively involved in conciliation rather than simply issuing determinations to resolve disputes. Conciliation remains an integral part of the dispute resolution process under the Labour Amendment Act Number 5 of 2015 and the Labour Amendment Act Number 11 of 2023, as it precedes other dispute resolution mechanisms such as arbitration and litigation.

2.11.5 Reasons for using Conciliation/ Mediation

Acland (1990) notes that mediation is based on negotiation, and the mediator's role is to introduce special features that turn adversarial win/lose negotiation into problem-solving. The mediator helps parties to talk to each other in ways that prevent misunderstandings, establish working relationships, clarify the issues and look for mutually acceptable solutions. Acland (ibid.) also notes that, ideally, parties should emerge from the proceedings feeling satisfied that all their needs and interests have been taken into account, that they have achieved the best possible outcome, and that they are able to re-enter the process the next time a problem comes up. Acland's analysis of conciliation or mediation supports the Dorchester District Court Mediation Unit (1999), which observes that the purpose of mediation is not to judge guilt or innocence, but to help parties get to the root of their problems and devise their own solutions to them. A mediator can help the parties talk it out, unrestrained by questions of admissibility. This should help parties concentrate on what should be done in the future rather than punishment and revenge, or who is responsible. For what past event?

Overall, Goldberg, Saunders, Rogers and Cole (2012) note that society cannot and should not rely on the courts for the resolution of disputes. Other mechanisms, like conciliation, may be superior in a variety of controversies. They may be less expensive, less intimidating, more sensitive to disputants' concerns and more responsive to underlying problems. They may dispense better justice, reduce alienation, foster the sense that a dispute was actually heard, and fulfil the need to retain control by not handing the dispute over to lawyers, judges, and the intricacies of the legal system. The mediator or conciliator, in contrast to the judges, has no power to impose an outcome on the disputing parties, but his function is to assist the parties in reaching their own agreement (Goldberg et al., 2012).

2.11.6 Conciliation/ mediation ground rules

The International Labour Organisation (ILO) (2014) provides some ground rules used to facilitate the conciliation process. These are as follows;

- Conciliation/ mediation is voluntary in its continuation.

- It is a confidential process; what is said in one caucus will not be conveyed by the conciliator to the other party without specific consent. What is discussed during conciliation will not be conveyed by the conciliator to anyone outside the conciliation without the permission of the parties.
- The conciliator should not be required at the instance of the parties to give evidence concerning the conciliation/ mediation at another forum.
- The proceedings are off the record and without prejudice, and therefore neither of the parties will seek to use anything that is said in the conciliation proceedings in any future proceedings. This also means that the parties may revert to their original positions if the process fails.
- The parties will speak without interruption.
- The parties will treat each other with respect and will act with self-discipline and dignity, for example, no name-calling and no violence.
- Conciliation/mediation should take place without prejudice to the parties' rights to take the dispute to another forum.
- The conciliator/ mediator has no power to rule on the dispute, to recommend solutions, to advise on substance or to negotiate on behalf of a party.

The conciliator/ mediator has the following powers:

i) To assess whether a dispute is properly referred to conciliation.

ii) To assess whether he/ she has jurisdiction to conciliate.

iii) To recommend a settlement.

2.11.7 The conciliation process in Zimbabwe

The Zimbabwe Draft Conciliation Guidelines (2004:04) provide that conciliation is a process in which an independent person attempts to assist the parties in resolving a dispute. The process normally includes mediation, fact-finding and making a recommendation to the parties. Section 93(1) of the Labour Act [Chapter 28:01] empowers a Labour Officer to whose attention a dispute has come, to attempt to settle the dispute through conciliation. The LO may intervene even if the dispute has not been referred by either party. Section 63 (3a) and (3b) of the Labour Act [Chapter 28:01] establishes a dispute system in which DAs acquire the same powers and duties as LOs, in respect of disputes occurring within the jurisdiction of their employment council.

Conciliation in Zimbabwe is therefore provided for by legislation. A conciliator has the power to assess whether a dispute is properly referred to conciliation, to assess whether or not he/ she has jurisdiction to conciliate, to recommend a settlement and to refer an unresolved dispute for arbitration in terms of section 93(1) and 93 (5) of the Labour Act [Chapter 28:01]. Post the Labour Amendment Act Number 5 of 2015, a number of changes have been made to the conciliation process. Where a LO or a DA is not successful in conciliating a dispute, section 93, which was amended by the Labour Amendment Act Number 5 of 2015, would require that a draft ruling, which is subject to confirmation by a Labour Court Judge, be made.

According to Marara (2022), the importance of conciliation is underscored by the fact that the legislature makes it compulsory with respect to disputes involving an unfair labour practice referred to a LO. The provisions require the parties' attendance at conciliation proceedings or, alternatively, empower the conciliation authority to compel their attendance. All disputes properly referred to a labour officer must first be subjected to the process of conciliation. Parties must at least try to resolve the dispute through conciliation before resorting to arbitration or adjudication (Marara, 2022). Jordaan and Stelzener (2012: 10) note that the conciliator, in conciliation proceedings, has no power whatsoever to order the parties to do anything with respect to the merits of the matter. The conciliator has powers over the conciliation procedure to be followed. As a result, he/she makes recommendations to the parties in a bid to try and help them reach an amicable settlement to the dispute.

2.12 Arbitration in dispute resolution

The ILO (1980) defined arbitration as a mechanism for resolving disputes in which the parties present evidence and arguments in a contested hearing before a third party, who then issues an arbitral award that is binding on the parties. The Conciliation and Arbitration Service (ACAS) of the UK defines it as a situation in which the parties jointly ask a third party to make an award that they undertake to accept. In this instance, the parties acknowledge that they cannot reach an agreement and therefore ask an outside referee to decide for them. Cole (2001) defines arbitration as a simple proceeding voluntarily chosen by parties who want a dispute determined by an impartial judge of their own mutual selection, whose decision, based on the merits of the case, they agree in advance to accept as final and binding.

Frans Barker and Maggie Holtzhauzen (2002;234) define arbitration as a method of settling a dispute by having an impartial third party, known as an arbitrator, who hears both the employer's and employee's side of the matter, thereafter, making a decision (a ruling or an award) on the terms of settlement of the dispute. The arbitrator's decision is final and binding on the parties concerned. Butler and Finsen (1993) note that arbitration is a procedure whereby the parties to a dispute refer the dispute to a third party, known as an arbitrator, for a final decision, after the arbitrator has first impartially received and considered evidence and submissions from the parties. Like courts, arbitration is a rights procedure in which the parties present evidence and arguments to a neutral third party who makes a binding decision (Ury et al., 2003).

Arbitration has long been used to settle a variety of disputes, and 95% of all collective bargaining contracts provide for the arbitration of disputes arising under the contracts. Arbitration comes in various forms. Two types of arbitration are of particular interest because they encourage the parties to return to negotiations: med/arb and final offer arbitration. Madhuku (2015) defined arbitration as "a procedure whereby a third party, who can be a sole arbitrator, a panel of arbitrators, or an arbitration court not acting as a court of law, is empowered to make a decision which disposes of *a dispute*." Bonda (2022) also notes that, under the Arbitration Act, an arbitration process may be conducted pursuant to an arbitration agreement. In terms of section 98 of the Labour Act [Chapter 28:01], an arbitrator carries the same authority as that of the Labour Court in hearing and deciding any dispute. Arbitration, therefore, resembles a court trial, in which a third, neutral party serves as a judge and makes decisions that are binding on the parties involved (Shonk, 2022).

Nkoane (2018) notes that arbitration can be used to resolve both disputes of interest and rights. A Labour Officer or a DA can refer a dispute for voluntary arbitration if it's a dispute of interest. Arbitration becomes voluntary when initiated by the parties, who then agree on their own terms of reference and submissions to facilitate the process. Bonda and Tsvangirai (2022) also outline the three distinct scenarios from which voluntary arbitration arises. These are as follows:

i) Where there is an agreement by parties to withdraw from mandatory conciliation in a bid to pursue voluntary arbitration in terms of section 93(1) of the Labour Act [Chapter 28:01].
ii) Where a certificate of no settlement is issued after conciliation fails and parties are to refer the dispute for voluntary arbitration in terms of section 93(5)(b) of the Labour Act [Chapter 28:01].
iii) Under the Arbitration Act (Chapter 7:15), following an arbitration agreement.

With respect to compulsory arbitration, a conciliation initiative should have failed before the conciliator could refer the matter for compulsory arbitration. This is supported by Araujo et al. (2020), who note that in systems that require compulsory arbitration, conciliation must precede the compulsory arbitration proceedings. Parties can also be made to follow the compulsory arbitration route following an order from the Labour Court in terms of section 98 (11) of the Labour Act [Chapter 28:01]. It is also worth noting that while disputes of interest are normally referred to voluntary arbitration, in the case of essential services, they are referred to compulsory arbitration (Dupont et al., 2018). Madhuku (2015), however, argued that the mere existence of arbitration as an option for dispute settlement may encourage the parties to cooperate with the conciliation process, which they control in full.

2.12.1 Med-Arb

Ury et al. (2003; 57) further note that the designer who is torn between mediation and arbitration may prescribe a hybrid, med-arb, in which the mediator serves as arbitrator if mediation fails. One advantage of med/ arb over mediation alone is efficiency. If mediation fails, there is no need to educate another neutral on the substance of the dispute. Another advantage is that the parties will know that the neutral will decide the dispute if they cannot, so they will pay greater attention to his/her suggestions, including the rights standards he/she may advance. Med-arb also encourages a negotiated resolution instead of an imposed one. The procedure also gives the third party the flexibility to arbitrate only those issues the parties cannot settle themselves, thereby keeping the determination of rights to a minimum and providing a built-in "loop back" to negotiation.

2.12.2 Disadvantages of med-arb

Med-arb has several disadvantages, among them are the following:

i) What appears to be a negotiated resolution may be perceived by the parties as an imposed one, thus diminishing the degree of satisfaction and commitment.

ii) Moreover, because the parties know that the neutral may decide the dispute, they may withhold information that would be useful in reaching a mediated settlement, but that would hurt them in arbitration.

iii) Alternatively, they may reveal information to the mediator that should have no bearing on his decision if he ends up arbitrating the dispute. If the dispute must be arbitrated, it may be difficult for the mediator to discount the information, and even more difficult for the losing party to believe that he did so.

2.12.3 Pendulum arbitration/ final offer

When arbitrating on disputes of right, the arbitrators have to decide between one interpretation and another; for instance, there is a straight choice. This approach (pendulum arbitration) has recently been applied to disputes of interest in a small number of cases. When pendulum arbitration is applied to disputes of interest, the arbitrator has to make a straight choice between the union's last claim and the employer's final offer. These force a win-lose outcome, rather than the traditional compromise awards that most arbitrators aim for to achieve a fair result for both parties. Awards from pendulum arbitration will give a clear result but may not necessarily stand the test of fairness or improve relations in the long term. According to Stevens (1966), pendulum arbitration, also known as final offer arbitration, is a form of arbitration in which the parties to the dispute submit a draft award, either simultaneously or in a sealed envelope, to an arbitrator. The arbitrator is then supposed to prepare the final award based on the selected draft award, without making any amendments. The selected draft award is to be accepted in its entirety; hence, the parties are compelled to be reasonable and moderate whilst drafting the award to increase the chances of its acceptability. Furthermore, all arguments advocating extreme stances are discarded, thereby ensuring the proceedings are succinct (Stevens, 1966).

According to Cole (2001), in Britain, pendulum arbitration is not common and is usually associated with a ‘single union, no strike’ agreement. The majority of such agreements make no provision for conciliation or mediation prior to going to arbitration. This means that parties move directly from a failure to agree to acceptance of a pendulum decision. Cole (ibid.) argues that this type of arbitral intervention is suited to organisations that have routinely adopted unrealistic positions. The advantages claimed for this kind of arbitration are:

(i) It encourages the parties to act reasonably in their respective claims and offers, since one of them must lose.

(ii) It restricts the discretion of the arbitrator by obviating any attempt at a compromise decision.

(iii) It simplifies the role of the arbitrator as the final award has to be prepared on the basis of the selected draft award. This is not the case with conventional arbitration, where the award must be prepared from scratch after evaluating all considerations and arguments (Stevens, 1966).

(iv) Consequently, it promotes a speedier resolution of disputes as the time between the conclusion of the hearing and the delivery of the award is drastically reduced.

The disadvantages of pendulum arbitration/ final offer are:

(i) There is no flexibility for the arbitrator who has to treat each party's last position as a total package and a decision made one way or the other.

(ii) Kessler (1987) has pointed out that it is not always clear what the final claim or offer is.

(iii) There is no prospect of reaching a face-saving formula in a win/ lose situation, and this may cause one of the parties to lose confidence in arbitration as a means of resolving disputes.

Kessler (1987) argues that future agreements of this kind will likely incorporate a conciliation or mediation step in the procedure before any reference to pendulum arbitration. This gives the parties concerned an opportunity to resolve the dispute themselves, albeit with third-party help. This alternative may be more attractive to the parties than having decisions made for them by an independent arbitrator.

In Zimbabwe, pendulum arbitration has been used in rights-based adjudication or compulsory arbitration. In such cases, where an unfair dismissal is alleged by the employee, the arbitrator issues an award that either directs the employer to reinstate (or award damages to the employee) or upholds the dismissal effected by the employer (Maitireyi, 2012). Pendulum arbitration is, however, uncommon in collective bargaining or any interest-based adjudication because the arbitrator considers both parties' positions and seeks an outcome that he deems favourable to both.

2.12.4 Key elements of arbitration

The key elements of arbitration are;

(i) A third party is involved in assisting the parties to resolve a dispute.

(ii) The role of the third party requires a high degree of independence.

(iii) Evidence is received and considered.

(iv) Submissions are made by parties for consideration by the arbitrator.

(v) The intention is to resolve the dispute through an adjudicative determination (parties themselves do not have control over the outcome).

(vi) The decision of the arbitrator is final and binding.

2.12.5 Weaknesses in current arbitral interventions in Zimbabwe

According to Maitireyi and Duve (2011), the following are potential weaknesses of arbitral interventions in labour disputes in Zimbabwe;

(i) The choice of an arbitrator may be made on populist grounds.

(ii) The arbitrator may be inclined to perform a balancing act instead of focusing on the merits of the reference.

(iii) Decision-making style tends to promote the promotion of unrealistic positions by both parties, and therefore, prolonged negotiations or collective bargaining exercises.

(iv) Decision-making style tends to discourage a bipartite resolution of a dispute by encouraging one or both of the parties to pin their hopes on an arbitral resolution of the dispute.

2.13 Suggested Differences between voluntary and compulsory arbitration

The ILO (2007) also outlined differences between voluntary and compulsory arbitration, which are discussed below.

2.13.1 Voluntary arbitration

- Parties choose to enter the arbitration process to resolve a dispute.
- Parties are able to select the time, date and place for arbitration.
- If the process is initiated privately and not under the auspices of the Ministry of Labour, parties can choose their arbitrator.
- An arbitration agreement is entered into between the parties, which regulates the issues to be decided upon by the arbitrator.
- Parties choose the arbitrator and have greater flexibility to agree on the powers of the arbitrator.
- The procedure is determined by the disputants and is often relatively simple and informal.
- The parties share the costs of the arbitration in agreed percentages.
- Settling the dispute through conciliation remains a possibility.
- Voluntary arbitration is governed by the Arbitration Act (chapter 7:15).
- An arbitral award from voluntary arbitration cannot be appealed against; it can only be set aside by way of application for review to High Court under Article 34 of the Model Law.

2.13.2 Compulsory arbitration

- Arbitration is initiated based on the nature of the dispute or the sector within which the dispute is taking place; for instance, both parties do not have to agree to enter arbitration.

- The time, date and place of arbitration are determined by the arbitrator.

- No arbitration agreement is entered into between the parties, but the Labour Officer makes a list of issues to be determined by the arbitrator.

- The outcome must be within the parameters set by the Labour Act [Chapter 28:01] and relevant Statutory Instruments.

- The parties cannot usually select the arbitrator - an arbitrator is allocated by the statutory institution.

- The party aggrieved by the decision of the arbitrator may appeal to the Labour Court in terms of section 98(10) on a question of law. In *Muzuva vs United Bottlers 1994 ZLR 217 (S),* the term question of law was held to mean:

- A question which the law itself has authoritatively answered to the exclusion of the right of the tribunal or court to answer the question as it thinks fit in accordance with what it considers to be the truth and justice of the matter;

- A question as to what the law is.

- A question which is within the province of the judge.

2.14 The Similarities and Differences between Arbitration and Conciliation

The International Labour Organisation (2007) has identified similarities and differences between conciliation and arbitration, and these are as follows;

2.14.1 Similarities

(i) Both make use of a third-party intervener.

(ii) The role of a third party requires a high degree of independence.

(iii) Both processes are relatively quick and save time and money.

(iv) Both are handled under the auspices of the Ministry of Public Service, Labour and Social Welfare

2.14.2 Differences

- Conciliation aims to resolve the dispute through a consensus-based approach. Arbitration is a rights-based or adjudicative process.
- Arbitration involves a neutral party rendering a legally binding decision after considering the arguments of both parties. Conciliation, on the other hand, revolves around a mediator facilitating communication and negotiation to help the parties reach a mutually acceptable agreement.
- Conciliation allows for more creative problem-solving.
- Conciliation allows parties to reach their own outcome; in arbitration, the arbitrator makes a finding.

- In conciliation, the dispute may remain unresolved. Arbitration will result in the matter being finalised.
- There is no appeal or review if an agreement is reached in conciliation. Awards made at the conclusion of an arbitration process may be reviewed (and appealed against in some jurisdictions).
- LOs and DAs of employment councils are empowered to conciliate disputes but not to arbitrate. The Labour Act provides that they refer matters to arbitration, which is conducted by appointed arbitrators.
- In arbitration, witnesses may be called and cross-examined by the opposing parties. Witnesses are not generally called in conciliation.

2.15 Negotiation

According to Maiese and Burgess (2020), negotiation is the first approach to take before resorting to other ADR methods. It is more informal and affords flexibility to the parties. In a negotiation, parties identify an issue and agree to meet to fix it. They also control the process and the solution (Maiese & Burgess, 2020). Colosi (1993) defines negotiation as any form of direct or indirect communication in which parties with opposing interests discuss the nature of a joint action they might take to resolve the dispute. Negotiations can be used to resolve an existing challenge or to lay the groundwork for a future relationship between the parties. Goldberg, Frank and Rodgers (1992) note that negotiation has also been characterised as a pre-eminent mode of dispute resolution and is present in virtually all aspects of everyday life, be it at the individual, institutional, national and global levels. Given the presence of negotiation in everyday life, it can also be applied within other dispute resolution processes, such as mediation and litigation (Goldberg et al., 1992). One of the most fundamental aspects of a successful negotiation is transparency. Parties, therefore, need to be clear about potential problems and challenges that may arise during negotiations. However, when a problem escalates, it may be necessary to recognise an informal negotiation as the first step in a potential ADR process.

2.15.1 Characteristics of a negotiation

2.15.1.1 Voluntarism

Negotiation is characterised by voluntarism, in that it is solely at the parties' will. The negotiation is not compulsory, and no party is obliged to accept the outcome; the parties have the right to withdraw at any time without penalty (Colosi, 1993). This principle emphasises that negotiation is consensual in nature and cannot be equated with adjudicative processes such as arbitration or litigation, in which participation may be required by law. Depending on the complexity and stakes of the dispute, participants can either negotiate personally or delegate to representatives, including legal professionals, union officials, or other professionals (Lewicki et al., 2016). Voluntarism, in this respect, guarantees the parties' agency, genuine dialogue, and mutually acceptable outcomes, which is especially important in the context of industrial relations, where it is essential to maintain ties between employers and employees (Fisher et al., 2011).

2.15.1.2 Non-Adjudicative

The non-adjudicative aspect of negotiation implies that conflicts can be resolved only through direct contact by the parties involved, with the mediator not serving as a judge or arbitrator (Goldberg et al., 1992). This aspect enables the parties to maintain complete control over the process and the end result, giving them flexibility in the interests and not necessarily legal rights to the dispute. Creative problem-solving and collaborative solutions are also promoted by non-adjudicative negotiation, where the parties are not bound by formal procedures or binding precedents (Moore, 2014). This may help mitigate adversarial tensions in the context of labour disputes, enhance working relationships, and encourage compliance, as the parties tend to follow the agreements they actively developed (Bercusson, 1991).

2.15.1.3 Informal

Negotiation is an informal process, and the parties can adopt their own rules and procedures rather than adhere to legal or procedural requirements. Such flexibility allows the parties to decide on important points, including the topic, time, place, and session format (Department of Justice Canada, 2022). Procedural aspects such as the number of negotiation meetings, confidentiality measures, and documents or evidence to be utilised in negotiations are also informal. According to scholars, such an informal structure helps create a more open and adaptive environment that promotes honest discussion and the search for mutually beneficial solutions (Fisher & Ury, 2011; Lewicki et al., 2016). Such informality can prove highly useful in labour relations, where, as NEC conciliators and parties will be encouraged to make the process sector-specific and attuned to organisational cultures, practical and contextually pertinent results are likely to be achieved.

2.15.1.4 Confidentiality

The cornerstone of negotiation is confidentiality, where the parties can speak freely without fear that the information will be used against them outside the negotiation arena. The Department of Justice Canada (2022) observes that statutory requirements regarding disclosure may still apply to negotiations in governmental and regulated contexts, though the parties usually have the freedom of choice regarding who and what is disclosed. Confidentiality promotes honesty, builds trust, and minimises reputational or strategic damage, which is especially relevant in labour conflicts where operational or personal secrets may be discussed (Goldberg et al., 1992; Lewicki et al., 2016). Confidentiality in the NEC context enables the employer and the employee to agree on settlement terms free from external influence, leading to just and sustainable settlements that withstand scrutiny without compromising the integrity of industrial relations.

2.15.1.5 Flexibility

According to Fisher, Rodger, and Ury (2011), the scope of a negotiation depends on the parties' choice. The parties can determine aspects ranging from the topic or topics to be the subject matter of a negotiation to whether they will adopt a position-based or interest-based bargaining approach (Ury, 1991).

2.15.2 Advantages of negotiation

In procedural terms, negotiation is the most flexible form of dispute resolution because it involves only parties with an interest in the matter (Ury, 1991). The parties are therefore free to shape the negotiations in accordance with their own needs. Whilst a negotiation, like any other dispute resolution process, cannot guarantee a party's success, it is more likely to yield a successful outcome when parties adopt an interest-based approach rather than a position-based one. Focusing on mutual needs and interests and using objective standards increases the likelihood of reaching an agreement that meets the parties' needs, an outcome often referred to as a “win-win” situation (Colosi, 1993). According to Fisher and Ury (2011), *“Your position is something you have decided upon, your interests are what cause you to so decide*.” When a problem is defined in terms of the parties' underlying interests, it becomes possible to find a solution that meets both parties' interests. Negotiation is a voluntary process that does not require recourse to a third party. This is important where the parties regard the matter as highly private or sensitive. When parties negotiate in good faith, the negotiation process provides them with the opportunity to reach an agreement that reflects their own interests (Fisher, Rodger & Ury, 2011). Further, negotiations may preserve or even enhance the relationship between the parties once an agreement is reached. It is also a less expensive and quicker way to address a problem than litigation.

2.15.3 Disadvantages of negotiation

While negotiation is a valuable dispute resolution mechanism, it has some disadvantages. Negotiation can be challenging if one party has more influence or power than the other;

this can lead to an unfair agreement (Fisher &Ury, 2011). Where a party with an interest in the matter is inadequately represented or excluded in the negotiations, the agreement's value is diminished. This also subjects the agreement to future challenges. Without legal knowledge and requisite expertise, parties may not be aware of their rights or entitlements, resulting in unfavourable agreements (Fisher & Ury, 2011).

Colosi (1993) notes that negotiations can be hampered by a lack of finality, as they may not be binding and parties may renege on their commitments. Some issues may simply not be amenable to negotiation; therefore, there will be no chance of agreement when parties are divided by opposing beliefs or ideologies, leaving little or no room for mutual concessions and no willingness to make any. Ury (2011) also notes that negotiations can be a lengthy process, time-consuming, resulting in delayed resolution.

The absence of a neutral party can prevent parties from concluding negotiations, as they may be unable to define the issues at stake and make progress towards a solution. In the absence of a neutral party, one party may attempt to take advantage of the other (Ury, 1991). Further, no party can be compelled to continue negotiating; any party that chooses to terminate negotiations may do so at any time in the process, notwithstanding the effort, time and resources that may have been invested by the parties. Negotiations can also be used as a stalling tactic, in which one party may prevent the other from asserting its rights through mechanisms such as arbitration and litigation.

2.16 Litigation in dispute resolution

The adjudication process is marked by procedures necessary for the proper exercise of the judicial power by the Labour Court, which is in terms of section 93 (5) (c) of the Labour Act. It is a dispute resolution process that allows parties to present their dispute to an independent third party for a decision. The predominant method of resolving disputes in Zimbabwe is litigation. Generally, litigation has a fearsome reputation of being emotionally and financially taxing. The procedures involved, to a layperson, are complex and protracted. Court cases are often protracted, and as a result of their complexity and customary length, lawyers inevitably charge exorbitant fees for handling litigation (Mutevedzi, 2021).

Because labour disputes usually involve employees who are not in a financial position to meet legal fees, alternative methods of dispute resolution have evolved to circumvent the usual pain associated with litigation. Access to justice, therefore, goes beyond access to courts of law (Mucheche, 2023). There is an assortment of pathways to resolve disputes without the intimidating formality, cost and complexity of litigation. As alluded to in this thesis, an increasing number of parties to disputes are resorting to alternative dispute resolution. This involves a third party providing professional, impartial assistance to reach a resolution acceptable to all parties. Alternative dispute resolution is so flexible that it can be used to resolve almost any kind of dispute, including those that cannot ordinarily be resolved by the courts.

In Zimbabwe, the most common methods of alternative dispute resolution are mediation, conciliation and arbitration (Gwisai, 2006). Adjudication is the use of the courts; the Labour Court was established to address employment-related disputes and is at the apex of ADR. The rationale for which the Labour Court was established was to give disputing parties an opportunity to settle their differences in an expeditious and equitable manner, in the process achieving social justice (Myambo & Munyanyi, 2017). By promoting specialised courts to address labour conflicts, the state seeks to dispense equity and labour justice in the employment relationship. In Marcussen and Cocksedge vs Dzikiti LC/H/53/05, Hove P (as she then was) observed that the Labour Court was created *"to dispense simple, cheap and industrial justice unhampered by legal jargon and technicalities"*. The court is a creature of statute under the Labour Act, whose purpose includes advancing social justice. The Court enjoys the full authority to look into issues of equity.

2.17 The quest for an alternative dispute resolution (ADR) philosophy

ADR has grown from what Lieberman and Henry (1986) refer to as a "bravely voiced hope" to a community of practice animated by the desire to resolve legal disputes outside the courtroom. Lieberman and Henry (1986) also argue that ADR has never had a unified theory to explain what it accomplishes or how it works, but that enough experience has been gathered to permit a search for a more analytical understanding of ADR and to draw lessons from it. The ADR roster, therefore, includes processes such as arbitration, mediation, conciliation, and, to some extent, negotiation. These processes are used to prevent disputes from arising or to resolve existing ones. ADR has also been expanded to include new hybrid devices that draw on courtroom procedures, such as mini-trials.

Presently, there is no consensus that any one of the different ADR approaches can properly and genuinely represent the ‘true spirit of ADR. However, by examining the main underlying objectives of ADR, it is possible to establish whether and to what extent there is an ADR philosophy. According to Mwenda (2006), some of the major underlying objectives of ADR are the principle of cooperative problem-solving, empowerment of individuals, reduction of delays and costs associated with litigation, production of better outcomes, preservation or enhancement of personal and business relationships, simplification of procedures and relative informality. The principle of cooperative problem-solving is regarded as one of the main objectives of ADR, but it has been argued that some parties in ADR may well be using the process as a means to an end, to get their case settled without necessarily feeling engaged in mutual problem-solving.

Some commentators have argued that ADR does not require the parties to adopt a problem-solving approach to be effective (Burton, 1990). ADR processes can be equally effective when the parties adopt positional bargaining, competitive negotiation, problem-solving, or any permutation of these or other approaches. As for empowerment, it is true that in many forms of ADR, the parties are empowered to some extent, as they are given greater responsibility for resolving their own issues. However, not all ADR processes, probably with the exception of mediation, empower the parties to any significant extent.

Mediation permits a neutral person to be privy to intimate facts from both sides. These are facts that the parties would not have shared with each other. With the knowledge the mediator gains from the parties, he/she can determine how far apart the parties are before devising a strategy to bridge the gap. The fact that the mediator can build on the parties' trust means he or she can help them explore workable options. Scholars like Lieberman and Henry (1986) debated whether ADR leads to a just result or merely an expedient one. They question the measurement of the justice of a private settlement and argue that it is an important issue, as it has not been well discussed in the ADR literature.

Lieberman and Henry (1986) state that what often prevents disputes from being resolved is the lack of open communication lines stemming from a lack of trust between the parties. The hypothesis underlying ADR is that parties can easily reach a voluntary settlement, just as a court would if they overcame their distrust of one another. Litigation, on the other hand, is the adversary process that operates on the theory of fundamental distrust, in which you can never place trust or faith in an adversary (Lieberman & Henry, 1986).

Moreover, where there are power imbalances between the parties, it is doubtful if the weaker party is truly 'empowered'. Nonetheless ADR can provide better outcomes. Without the constraints of conventional litigation, parties may, with the assistance of a neutral third party, adopt the process most appropriate to the dispute at hand. Further, because the process is consensual, the prospects of arriving at better terms of settlement are enhanced. The reader should, however, be mindful that a party may show a willingness to participate in ADR, not for purposes of reaching a negotiated settlement, but may have the intention of engaging in bad faith bargaining or using the process to harass or maintain unwanted contact with another party. Thus, a party that is willing to use ADR may not necessarily be willing to settle. Consensual participation by the parties could well be the fundamental assumption of most ADR methods and a key source of their legitimacy, but such ideals rest on the assumption that the parties participate in good faith and share a desire to resolve their dispute. Unfortunately, that might not necessarily be the case.

In jurisdictions which lack the benefit of years of experience with ADR, most litigants and their lawyers need some encouragement and some degree of compulsion to use ADR. Regarding the contention that ADR reduces costs and delays, this depends on the type of process and the complexity of the issues in the dispute.

Negotiation and mediation are regarded as more cost-effective than arbitration, which can be as protracted and expensive as litigation, especially when a case is complex or involves international commercial arbitration with multiple issues and parties. In his address to the ICCA Conference in Beijing on 18 May 2005, Marriott (2005) related his experience regarding international arbitration. He told the conference that with the exception of commodity and maritime cases, international arbitration, certainly as practised in the recognised international centres such as London and New York, has become more expensive and more complex in his professional life rather than less. Generally speaking, however, ADR is considered relatively cheaper than litigation.

One of the major objectives of ADR is the preservation or enhancement of personal and business relationships which would otherwise be irreparably damaged by the adversarial process of litigation. This is particularly important in situations where a continuing personal or business relationship is still necessary. In addition, due to the informality of ADR processes, parties can formulate their own rules of procedure and decide on the language in which they wish the proceedings to be conducted. This creates a more conducive atmosphere for negotiated settlements.

Led by Owen Fiss, a number of Western scholars questioned the rationale for using ADR methods such as conciliation, mediation, and arbitration to settle disputes. Owen Fiss was the first and boldest scholar to argue that out-of-court settlement is a *"capitulation to the conditions of mass society and should be neither encouraged nor praised.*" Legal scholars have also continued to argue that where both peace and justice are at stake in employment equity disputes, adjudication through the court system achieves both values whilst mediation and/ or arbitration fulfils only the immediate function of establishing peace between the disputing parties (Twyman, 2001).

Bearing the above objectives in mind, and while acknowledging the difficulty in achieving any one agreed ADR philosophy, Brown and Marriott (1999) are of the view that ADR complements litigation and other adjudicatory forms, providing processes which can either stand in their own right or be used as an adjunct to adjudication. This enables practitioners to select procedures (adjudicatory or consensual) appropriate to individual disputes. ADR allows parties greater control over resolving issues between them, encourages problem-solving approaches, and provides for more effective settlements that address substance and nuance. It also tends to enhance cooperation and support the preservation of relationships. Effective neutral third-party intercession can help overcome blocks to settlement and, by expediting and facilitating resolution, save costs and avoid the delays and risks of litigation.

ADR processes, such as adjudicatory procedures, have advantages and disadvantages that make them suitable for some cases but not for others. The analysis clearly embodies much of the essence of ADR. Dukes and Streeck (2020) have also noted that models for resolving labour disputes have undergone significant development during the past few decades. This has been triggered by the rapid advancement of globalisation and the expansion of the informal sector. ADR is therefore being promoted as the preferred alternative to litigious mechanisms, which can entail exorbitant legal practitioner costs and lengthy, complex court processes (Sigafoos & Organ, 2021).

2.18 Evaluating effectiveness in labour dispute resolution.

Dispute resolution is often evaluated on a single factor: whether the disputing parties reached a settlement, irrespective of how it was reached or the quality of the outcome (Jagtiana, 2018). While the effectiveness of the dispute resolution outcome is important, there is a wide range of indicators of a competent and effective dispute resolution process (Jagtiana, 2018). Measuring the effectiveness of a labour dispute resolution system in qualitative research involves exploring the experiences, perceptions and outcomes of stakeholders involved in the process. The current ADR framework shows that it cannot produce satisfactory results for the aggrieved parties in the dispute resolution process. Below are some ways to assess the effectiveness of a dispute resolution process.

2.18.1 Speed

Trudeau (2002) developed a framework for assessing the effectiveness of dispute resolution in terms of speed, accessibility, and knowledge. Speed refers to the pace at which any system operates in dispensing justice. This is also the time to resolution and measures the duration from dispute initiation to its resolution. Speed is therefore a paramount feature of justice delivery and effectiveness. Trudeau (2002) further notes that for the dispute resolution system to be considered just and effective, it should not be cumbersome and should also allow the expeditious handling of disputes.

Zimbabwe's current economic environment makes speed imperative. The atmosphere is characterised by hyperinflation, resulting in the erosion of wages and salaries. According to Mudoni (2017), the alternative dispute resolution process in Zimbabwe is ineffective because it lacks enforceable mechanisms for its determinations and outcomes, resulting in disputes taking longer to be finalised and spilling into the courts for registration and enforcement. Mudoni (2017) further notes a lack of clear indications regarding the resolution of industrial conflicts, particularly with respect to the timeframe within which labour disputes are to be administered and finalised. Madhuku (2012) claims that the Zimbabwean labour law does not impose a maximum time limit within which the Labour Court must deliver judgments. He argued that this gap in the law accounts for some of the delays in resolving labour disputes. Standards emerging from other countries provide a time limit within which a judgment must be made. Thus, Section 67(4) of the Malawi Labour Relations Act, 1996 states: *"Every decision, including any dissenting opinion,* *shall be issued to the parties within twenty-one days of the closing of the final sitting on the matter".*

The Industrial and Labour Relations Act, Chapter 269, Section 94 of Zambia says:

> *(1) The Court shall deliver judgment within sixty days after the hearing of the case. Judgment of the Court*
>
> *(2) Failure to deliver judgment, within the period stipulated in subsection (1), shall amount to inability by the Chairman or Deputy Chairman to perform the functions of his office, and the provisions of the Constitution shall apply. Cap. 1*

2.18.2 Impartiality and perceived fairness

According to Jollimore (2002), impartiality is the moral imperative requiring that conflicting claims be evaluated without prejudice. This should also be viewed as the "justice as fairness" principle by John Rawls, that everyone has the same basic liberties, which can never be taken away. Further, the concept of justice is understood as a proper balance between competing claims. Maitireyi and Duve (2011) add that the principal actors presiding over the process should be unquestionably competent and experienced in the field in which they operate. Further, they should be disinterested and neutral parties, and their decisions should satisfy the requirement of fairness. Mucheche (2023) also stresses that fairness is a key yardstick for ensuring that decisions in labour matters are made with a human face or heart, promoting equality and social justice and preventing exploitation. Fairness requires just, equitable, and impartial decision-making that does not show bias, discrimination, or favouritism against any person. In ascertaining, effectiveness, the stakeholders' perception of fairness, impartiality and transparency of the dispute resolution process is assessed. With respect to institutions that administer dispute resolution, the ILO (2023) notes that such institutions should also contribute to the rule of law by facilitating equitable redress of disputes, with appropriate enforcement mechanisms in place. The institution therefore performs its functions independently, impartially, and professionally in an accountable and transparent manner. It guards against perceived or actual bias in its processes and dispute resolution, and also creates a culture of declaring interests and managing conflicts of interest. Its outcomes are not only fair but also reached and perceived as fair (ILO, 2023).

2.18.3 Affordability and accessibility

According to Maitireyi and Duve (2011), a dispute resolution process is accessible if parties have full knowledge of how it works and how readily the facilities can be accessed. Enabling legislation also plays a part in making the system accessible. Trudeau (2002) refers to accessibility as the ease with which disputants can resort to the process without the complication of technical considerations and complex legal paperwork. Dispute resolution is also not accessible if the costs of resorting to it are prohibitive. Ndhlovu et al. (2022) also note that parties should also know whom to approach and how to involve dispute resolution institutions in their disputes. This conscientisation of the dispute resolution process by parties is only possible if they have access to the institutions or adequate information about their operations. This has also been argued by Trudeau (2002), who notes that conciliation and arbitration, as modes of alternative dispute resolution, are only accessible if parties have all the information about how they work and how readily accessible the facilities are. This also entails having knowledge of the procedures and the system in general. The ILO (2023) describes an effective institution as one that provides access to labour justice and the resolution of labour disputes in an affordable, easy, fast and non-discriminatory manner. An effective dispute resolution institution resolves disputes in a way that maximises benefits for users whilst minimising resource use (ILO, 2023).

The Labour Court rules SI 150 of 2017 rule 12 subrule (1) and (2) affirm the informal and inflexible character of the Labour Court required under Section 90A (1) of the Labour Act [Chapter 28:01] which states that "*the Labour Court shall not be bound by the strict rules of evidence and the court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party*". Various decisions of the Labour Court have affirmed its informal and flexible character. In *Kurwaisimba vs Windmill (Pvt) Ltd LC/H/42/06*, Musariri P (as he then was) held that the Court was not bound by the strict rule of evidence. Hove P (as she then was) aptly put it in *Guyo vs Trans Africa Timber Merchants LC/H/246/04* by stating "…. the Labour Court is an informal court, which is not restricted by the usual rules of evidence, as is the case in other courts. It is not concerned with technical issues but concerns itself with substantive issues of justice and fairness".

2.18.4 Expertise/ knowledge

Maitireyi and Duve (2011) note that the principal actors presiding over the process should be unquestionably competent and experienced in the field in which they operate. Brand et al (1997) noted that the people staffing the various institutions play a decisive role in determining how effectively and efficiently the system works. Dispute resolvers must strike a balance between the countervailing considerations of practical and informal resolution, on the one hand, and the maintenance of justice, impartiality, fairness, and order, on the other (Sithole & Munyai, 2017). Brand et al. (2008) also note that dispute resolvers should be unbiased, independent and fair; the dispute resolvers will not only determine the effectiveness of the system but also the views and attitudes of employers, employees, legal practitioners, employers' organisations and trade unions. In Zimbabwe, Madhuku (2012) also observed that the labour laws do not prescribe expertise in labour laws, especially where Labour Court judges are appointed. The majority of Labour Court judges are former magistrates who spent the greater part of their legal careers in criminal law (Madhuku, 2012). Given that the field of labour is continually evolving, specialised institutions such as the Labour Court should be staffed by experienced, qualified personnel.

2.18.5 Content analysis

Documents, reports, court judgments and reviewed literature also help to assess the effectiveness of a dispute resolution process. Based on the literature reviewed in this study, the effectiveness of dispute resolution has been hampered by the high costs of processes such as arbitration. This has also been a determinant of the accessibility of the arbitration system (Maitireyi & Duve, 2011). Scholars such as Matsikidze (2023) and Mucheche (2023) have also noted that the complexity and longevity of the dispute resolution process hinder the effectiveness and delivery of justice. The issue of impartiality is at the core of this study, as reviewed in the literature, especially the *Isoquant Investment (Pvt) Ltd t/a ZIMOCO v Memory Darikwa CCZ 6/ 20*, which dealt with the impartiality issues of a DA, resulting in it clearly spelling out the roles of designated agents and labour officers in order to resolve the issues of lack of neutrality.

2.18.6 Repeat disputes and escalation rates

Li and Cheung (2018) note that, to assess the effectiveness of the dispute resolution process, it is necessary to analyse the frequency of repeat disputes involving the same parties. There is also a need to track the number of cases escalating to higher authorities. MPSL&SW records and NECs' case registers are sources for identifying repeat cases involving the same parties and cases that escalate to other superior dispute-resolution bodies.

2.18.7 Contextual factors

External factors influencing dispute resolution, such as power dynamics and regulatory frameworks, play an important role in its effectiveness. Mphahlele (2016) observed that the failure of parties, particularly employers, to attend proceedings such as conciliation significantly undermines the effectiveness of dispute resolution. There are no sanctions or costs that are imposed for non-attendance (Mphahlele, 2016). Non-attendance at conciliation is mainly due to parties preferring to go straight to arbitration. Employers and trade unions may turn proceedings such as conciliation into power plays and posturing to impress, resulting in a refusal to settle.

2.18.8 Voluntarism

The ILO (2023) states that voluntarism implies that disputing parties are free to choose how they want their dispute resolved. The parties also maintain full control over the process and its outcomes. Further, a consensus-based settlement agreement is voluntarily implemented and is less likely to be challenged, thereby contributing to sustainable effectiveness (ILO, 2023). In Zimbabwe, however, voluntarism is not an absolute principle, as labour laws and the regulatory framework stipulate specific methods for resolving labour disputes (Madhuku, 2012). Through the same amendment, the Registrar of Labour plays an administrative role on all NECs by ensuring that they execute their mandate in line with the requirements of the Labour Act (Uzhenyu, 2017) Where conciliation fails and a certificate of no settlement is issued, section 93 of the Labour Act stipulates that disputes of interest should be referred to voluntary arbitration whilst under section 93, disputes of right which include underpayments of wages and disputes of interest from essential services are to be resolved through compulsory arbitration. Collective bargaining agreements emanating from NECs may also specify specific methods for dispute resolution (ILO, 2023).

2.18.9 Stakeholder satisfaction, outcome satisfaction and communication quality amongst stakeholders

To ascertain the effectiveness of a dispute resolution process, it is necessary to gather feedback from employees, employers, and council members on their experiences with the labour dispute resolution process and their satisfaction with the outcomes (Li & Cheung, 2018). Further, communication quality amongst stakeholders is critical. There is therefore a need to evaluate the relationships and communication patterns amongst stakeholders, as improved relations enhance the effectiveness and outcomes of dispute resolution.

2.18.10 Dispute resolution and impartiality

Langys (2019) defines impartiality in mediation and conciliation, first and foremost, as having no favourites. The mediator must treat each party to the conflict in exactly the same way. He/she is not supposed to exclude them or take sides in either party, regardless of their personal characteristics and conflict behaviour. Further, impartiality is characterised by the mediator having no power to settle the dispute or make a decision regarding the parties (Langys, 2019). The decisions depend solely on the parties, and at no point should they be taken away. The Mediator's Institute of Ireland Code of Ethics and Practice (2012) defines impartiality as freedom from favouritism, bias and prejudice, whilst Zamir (2011) defined impartiality as being able to maintain equal distance from both parties. Beer and Packard (2012) describe impartiality as giving each party the same time and the same opportunity to make their case. According to Jollimore (2002), impartiality is the moral imperative requiring that conflicting claims be evaluated without prejudice. This should also be viewed as the "justice as fairness" principle by John Rawls, that everyone has the same basic liberties, which can never be taken away. Rawls (1971) defines justice as a proper balance between competing claims. The principal actors presiding over disputes should be disinterested and neutral parties, and their decisions should satisfy the requirement of fairness. Mucheche (2023) also stresses that fairness is a key yardstick for ensuring that decisions in labour matters are made with a human face or heart, promoting equality and social justice and preventing exploitation. Fairness requires a just, equitable and impartial decision-making that does not show bias, discrimination or favouritism against any person.

Although the American Bar Association's Code of Conduct for Mediators (2005) contains elaborate ethical principles of impartiality, it is not directly applicable to the situation in Zimbabwe, where the NEC dispute-resolution system is applied, due to disparities in legal systems and industrial relations practices. Nevertheless, the aforementioned principles, including mediator neutrality, bias avoidance, and the need to withdraw in the event of an impartiality violation, are conceptually applicable to assessing the performance of NEC conciliators. It is essential to make sure that the work of the Labour Officers is performed without bias when it comes to making the whole process more trustworthy, ensuring the eventual outcomes are fair, and preventing the feeling that some people have been favoured over others, especially when there is an imbalance of power between the employer and the employee (Watadza, 2015; Mucheche, 2017). Through these broad ethical principles, the research developed evaluative standards to determine whether NEC conciliators are impartial, free of conflict management, and uphold procedural integrity, which are determinants of the legitimacy and effectiveness of post-2015 dispute-resolution mechanisms in Zimbabwe. It is applied by positioning international best practices as a conceptual framework rather than a prescriptive model, which can be applied in the Zimbabwean industrial relations setting in a contextually relevant manner.

Langys (2019) also notes that a mediator's impartiality is inseparable from neutrality, as both strongly influence the success of the mediation process. Maiese (2003) defines neutrality as being open-minded, not personally connected to the parties, and mutually accepted by them. Langys (2019), notes that impartiality is defined by the mediator's actions and behaviour, whilst neutrality is defined by the mediator's interest in the outcome of the dispute. Elements that help to ensure neutrality are therefore presented by Langys (2019) as follows:

- non-interference with the substance of the dispute.
- remaining indifferent to the mediation results and to the well-being of the parties.
- having non-existent relationships with the parties to the dispute except those in the mediation process; and
- no change in the parties' balance of interests and having no interest in the result.

In Zimbabwe, the Memory Darikwa and Isoquant Investment matter is a landmark, classic case that addressed impartiality issues among the DAs. According to Matsikidze (2023), the issue of impartiality arose because the employer, from the outset, felt that terminating employees' contracts on notice, based on the Zuva judgment, was correct. The fact that the DA who presided over the matter had produced a draft ruling which ordered the employer to pay the employees the stipulated minimum retrenchment package of the basic salary of two weeks per year served and proceeded to have it confirmed by the Labour Court was seen as an act of lack of impartiality on the part of the DA (Munyai, 2023). In the judgment, the employer who was the applicant in the matter made the following submission;

> *It is alleged that sections 93 (5a) and 5 (b) of the Act created a situation where the designated agent, who is expected to be impartial, ends up descending into the arena and taking sides with one of the parties. In this regard, it was alleged that section 93(5a) and (5b) of the Act violated the applicant's right to equal protection of the law*

According to Mrehwa (2020), the Memory Darikwa matter raised a situation in which one party felt there was no equal protection and benefit under the law. The fact that the DA would appear before a Labour Court judge to defend his/her position in support of one party at the expense of the other confirmed the act of lack of impartiality in the eyes of the losing party. Munyai (2023), notes that the employees now had an upper hand in the matter as the DA went all the way to defend the decision that she had made, which decision was against the employer.

Mrehwa (2020) also examined the matter of Trust Corporation Securities Private Limited v L.M Gabilo and Devorgille Patsanza (HC 4177/ 07) to help understand biases that arise in resolving labour matters. On the 26th of June 2007, the arbitrator in the matter remarked that the employee party (Devorgille Patsanza) had told him how she had suffered over the years. The employer's legal counsel sought an explanation of where the conversation had taken place. The arbitrator could not respond to the enquiry. Mrehwa (2020) argues that the impartiality of the arbitrator was doubted because of those remarks. The court therefore noted that there is a universal agreement among jurists of all countries that judicial tribunals should be impartial, honest and disinterested. The Constitution stipulates that "*The Courts are independent and are subject only to this Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice"* In

ADR, it is also important that LOs and arbitrators be impartial. By interpreting the labour laws and applying them to the facts of each case, LOs and arbitrators are part of the judiciary system (Mrehwa, 2020).

2.19 Strategies to address the challenges of the poor dispute resolution system

Based on the existing empirical evidence reviewed, several strategies can be employed to address the challenges posed by poor dispute resolution systems. One strategy to promote the efficacy of dispute resolution systems is to ensure their independence. According to Gathongo and Van der Walt (2018), it is becoming increasingly common for statutory dispute resolution systems to function independently of the state, even though financed by the same state through the Department of Labour. Bendeman (2006) also highlight that the independence of any dispute resolution institution is one of the cardinal principles of a just and effective dispute resolution system. Along the same lines, ILO (2020) reports that balanced, impartial, expeditious, and cost-effective dispute resolution systems are fundamental to addressing the challenges of poor dispute resolution.

On the other hand, several scholars, including Gathongo and Van der Walt (2018), believe that training conciliators, mediators and arbitrators can significantly address the challenges of poor dispute resolution. As stated by Gathongo and Van der Walt (2018), the successful practice of conciliation, mediation and arbitration requires a degree of skill and cannot be conducted by persons simply because they have knowledge of the law. In the same vein, Rapatsa (2018) submits that identifying appropriately qualified individuals to perform the dispute resolution process is pivotal. There is also a need to implement effective laws and regulations to enhance the efficiency and justice delivery of the dispute resolution system. Closely related to the issue of effective law enforcement is the enforcement of arbitral awards. According to Mahapa and Watadza (2015), to counter the current challenges of arbitration as a dispute resolution mechanism, the awards should not only be final but also enforceable.

The other strategy can be ensuring increased public awareness. According to ILO (2013), a labour dispute resolution institution is obliged to ensure that the parties it seeks to serve are aware of its existence, the policies it implements and the laws it administers. This requires that resources be made available to support a range of awareness-raising and information-transfer activities to ensure that existing and future users know which services are available and what they must do to access them (ILO, 2013). Some awareness and information activities have a general and promotional emphasis to ensure that the nature, purpose and functions of the labour dispute system are known and understood (Coetzee, 2021); (Rapatsa, 2018).

Considering the above discussion, it can be noted that previous studies have examined labour dispute resolution processes in developing and Southern African countries and have established that these processes still struggle to establish timely, functional, cost-efficient, neutral, and trusted labour dispute resolution mechanisms. Studies comparing developed and developing countries have also concluded that dispute resolution systems in developing countries lack efficacy. This lack of efficacy, especially in sub-Saharan Africa, has been attributed to the region's political and socio-economic challenges. The problem also exists in theory, wherein Marxist theory views employers as controlling and dominating labour through their superior economic and socio-political power, seeking to promote their own interests by shaping legislation that placates workers to avoid a broader working-class threat (Budd, 2008). In the same vein, labour conflicts are therefore channelled into tightly regulated channels preferred by business rather than labour. The state is a public-sector organisation with its own employees and its own rule of law, acting as an extension of employers' interests rather than the state's independent interests (Skocpol, 1985).

2.20 Empirical evidence

Colvin (2009) examines the distribution of outcomes in labour arbitration cases in the United States by analysing a dataset of over 4,000 cases. The author finds that the distribution of outcomes is heavily skewed towards the union, with unions winning 57% of the cases. The study also finds that the outcome of a case is strongly related to the arbitrator's decision-making style. Lipsky and Seeber (2020) provide an overview of labour dispute resolution processes in the public sector, including arbitration and mediation. The authors note that the outcomes of labour disputes in the public sector tend to be more favourable to unions than in the private sector, due to the greater legal protections for public-sector employees. However, the authors also note that the outcome of a labour dispute can be influenced by factors such as the strength of the union and the employer's bargaining power. Smith and Colvin (2013) analyse a dataset of over 2,000 labour arbitration cases in Canada to examine the distribution of outcomes. The authors find that unions win most cases, with 62% of cases going to a final decision. The study also finds that the outcome of a case is influenced by factors such as the type of dispute, the industry, and the arbitrator's decision-making style.

Baumgartner and Morris (2009) examine the impact of legal representation on the outcomes of labour arbitration cases in the United States. The authors find that the presence of a lawyer is associated with a higher likelihood of a favourable outcome for the party represented, regardless of whether the party is the union or the employer. However, the study also finds that the impact of legal representation on a case's outcome may vary with the type of dispute and the arbitrator's decision-making style.

ILO (2016) presents the results of a survey investigating the accessibility and transparency of labour dispute resolution processes in selected countries. The report examines a range of issues, including the availability of information on dispute resolution processes, the costs and duration of proceedings, and the impartiality of decision-makers. The report concludes that while many countries have made efforts to improve the accessibility and transparency of labour dispute resolution processes, there is still room for improvement.

The Commission on Industrial Relations (2016) report examines the accessibility of labour dispute resolution mechanisms in Kenya by comparing the country's legal framework to international standards and best practices. The report identifies several challenges to accessing labour dispute resolution mechanisms, including high costs, lengthy proceedings, and a lack of information and awareness. The report recommends several reforms to improve the accessibility and transparency of labour dispute resolution processes in Kenya.

ILO (2014a) examines the transparency and accountability of labour dispute resolution processes in selected countries. The report identifies several best practices for promoting transparency and accountability, including publishing decisions, making information on dispute resolution procedures available, and using independent and impartial decision-makers. The report also highlights the importance of civil society engagement in promoting transparency and accountability in labour dispute resolution processes.

The European Commission (2018) evaluates the implementation of the European Union's social dialogue, including mechanisms for resolving labour disputes. The report examines the accessibility and impartiality of these mechanisms, as well as their effectiveness in resolving disputes. The report concludes that while the social dialogue has been effective in promoting cooperation between employers and employees, there is still room for improvement in terms of accessibility and impartiality. The report recommends several measures to improve the transparency and accessibility of labour dispute resolution mechanisms in the EU.

Colvin (2011) examines the effectiveness of labour arbitration in addressing and rectifying injustices that have already occurred. The author analyses a dataset of over 1,000 labour arbitration cases in the United States and finds that arbitration is effective in resolving disputes and restoring justice in most cases. The study also finds that the effectiveness of arbitration is influenced by factors such as the strength of the union, the employer's bargaining power, and the arbitrator's decision-making style. ILO (2017) examines the role of labour inspection in addressing and rectifying injustices in labour disputes. The report identifies several best practices for using labour inspection to resolve labour disputes, including proactive inspection and monitoring, providing legal and technical assistance to workers, and promoting social dialogue. The report concludes that labour inspection can be an effective tool for addressing and rectifying injustices in labour disputes, particularly in cases where workers are vulnerable or marginalised.

A European Commission (2019) report evaluates the implementation of the European Union's mediation directive, which aims to promote the use of mediation as a mechanism for resolving disputes. The report examines the effectiveness of mediation in addressing injustices in labour disputes and finds that it can be an effective tool for resolving conflicts and restoring justice. The report also identifies several challenges to the effective use of mediation, including a lack of awareness and understanding of the process among stakeholders, as well as the need for greater support and resources for mediators.

ILO (2018) examines the effectiveness of labour inspection in promoting labour law compliance and broader decent work outcomes, including the rectification of injustices in labour disputes. The report identifies several best practices for using labour inspection to promote compliance and rectify injustices, including risk-based inspection strategies, technical assistance and training for employers and workers, and the promotion of social dialogue. The report concludes that labour inspection can be an effective tool for promoting compliance and rectifying injustices in labour disputes, particularly when used in conjunction with other mechanisms such as mediation and arbitration.

Whilst the Labour Amendment Act Number 11 of 2023 has also been promulgated, which, amongst other things, seeks to address challenges in labour dispute resolution, the significance of the study remains solid. This is from the point of view that matters of effectiveness cannot simply be projected through an Act of Parliament; they need to be enumerated for labour law practitioners. This study complements this enumeration with a framework that can be used to support the Labour Act [Chapter 28:01] hence the study is timeous.

2.21 Summary

This chapter has reviewed the comparative, theoretical, institutional, legislative and conceptual literature relevant to the evaluation of the dispute resolution process in NECs in Zimbabwe, post the Labour Amendment Act Number 5 of 2015. The chapter has established the analytical foundation for the empirical investigations in Chapter 4. The theoretical framework that anchors this study is Rawls' theory of justice, which provides the primary evaluative standard. The pluralist labour theory is the supporting institutional framework. Rawls provides the normative benchmarks which are (i) fair equality of opportunities, (ii) equal basic liberties, (iii) the difference principle, and (iv) the veil of ignorance. Pluralism, on the other hand, supplies the institutional context in which those principles must be applied. It also recognises the plurality of legitimate, competing interests among the state, employers and employees, and the structural inequality of the bargaining process that the Labour Act (Chapter 28:01) is designed to restrain. Five scholarly debates emerge from the reviewed literature: whether ADR or adjudication yields more desirable dispute-resolution outcomes; whether Rawlsian principles can be meaningfully applied when parties are structurally unequal; whether institutional autonomy and independence are necessary for impartiality; and whether legislative reform without capacity building can be effective. Lastly, the scholarly debates interrogate whether ILO benchmarks for accessible, independent and impartial dispute resolution can be met by bipartite sector-based NECs.

There are, however, research gaps that motivate this study: there is a lack of a study that empirically evaluates the effectiveness of NECs in Zimbabwe's dispute resolution process using a theoretically grounded, multi-indicator framework against effectiveness indicators. There has also been no comparative evaluation of NECs using consistent evaluative criteria, leaving NEC effectiveness in Zimbabwe lacking empirical theorisation and documentation. Lastly, there has not been any stakeholder-validated model anchored in stakeholder realities. This study addresses all these gaps.

The methodology adopted in the next chapter is designed to generate the primary qualitative data required to fill the gaps. The dual case strategy is put into perspective for the evaluation against the six evaluative effectiveness indicators.

CHAPTER 3: METHODOLOGY

3.0 Introduction

This chapter sets out the research methodology employed in this study and evaluates the effectiveness of the labour dispute resolution mechanisms in Zimbabwe's NECs, specifically the NECs for the Welfare and Educational Institutions and the NEC for the Energy sector, following the Labour Amendment Act Number 5 of 2015. The chapter is organised in eight methodological sections; Section 3.1 sets out the philosophical underpinnings, the interpretive paradigm and the qualitative approach that guide the epistemological commitments. Section 3.2 outlines the research design, while Section 3.3 provides justification for selecting the dual case. Section 3.4 outlines the study population, the purposive and snowballing sampling procedures and the sample size analytical basis. Section 3.5 sets out how the theoretical framework informed the research design and how effectiveness was operationalised through the six indicators. Section 3.6 sets out the data collection instruments, section 3.7 specifies the data collection procedure, while section 3.8 discusses the hybrid content and thematic analytical procedure and details the cross-case comparison. Section 3.9 addresses the reform model development methodology, and sections 3.10 and 3.11 discuss the validity, reliability and trustworthiness and set out the ethical considerations for the study.

The methodology is anchored in the theoretical framework developed in Chapter 2, which integrates Rawls' theory of justice and the pluralist labour theory as the evaluative lenses through which dispute resolution in NECs in Zimbabwe is viewed and assessed.

3.1 Research Philosophy and Approach

This study adopted a qualitative approach because it was exploratory, seeking to understand the underlying reasons and motivations behind certain phenomena and to uncover thoughts, opinions, and trends to explore the problem in depth (Wyse, 2011). On the same note, Denzin and Lincoln (2005) consider qualitative research a situated activity that locates the observer in the world and comprises interpretive and material practices that make the world visible. The world is rendered as a series of representations, including interviews, recordings, photographs, field notes, conversations, and memos to the self. This qualitative study enabled the researcher to examine labour dispute resolution processes in their natural contexts, seeking to interpret and understand the phenomena by examining how the involved parties ascribed meaning to, perceived, and experienced them. It was, therefore, fundamental to understand the different perceptions, opinions, interpretations, and experiences of the dispute resolution process among the research respondents.

A qualitative enquiry was preferred because it involves a higher degree of researcher immersion through experiential engagement, direct contact with research participants, and physical involvement in the setting (Ospina, 2004). Through a qualitative approach, the researcher gained a holistic picture of historically unique situations in which idiosyncrasies and the capture of language were important to meaning, thereby adding new knowledge to the researcher. The study also intended to make recommendations on how to improve the dispute resolution process; hence, ideas for improvement can be easily generated through in-depth discussions. The qualitative approach was suitable in this context as it explored the meanings that individuals or groups attached to a person or social issue (Creswell, 2009). An inductive approach is used in qualitative research, allowing the data to speak.

The qualitative study was informed by the interpretive paradigm, which holds that realities are socially constructed and that knowledge is produced through the exploration and understanding of the social world of the people being studied, with a specific focus on their interpretations and meanings (Al-saadi, 2014). Interpretivism adopts a relativist ontological stance, which holds that there is no single shared reality; rather, reality is known only through socially constructed meanings (Ritchie & Lewis, 2003). Individuals who have been subjected to this dispute resolution process under study have different experiences and perspectives. This paradigm, therefore, acknowledges that the focus of qualitative research is on the respondents' lived experiences and how they make sense of their lives and issues affecting them (Merriam, 2002). The interpretive paradigm is important to this study because it brings out views, attitudes, perceptions of different stakeholders concerning the dispute resolution process in NECs in Zimbabwe, post the Labour Amendment Act Number 5 of 2015.

3.2 Research design

A research design is a plan for a study that provides the overall framework for data collection (Leedy, 1997). McMillan and Schumacher (2001) define a research design as a plan for selecting subjects, research sites and data collection procedures to answer the research questions. This study employed a case study design, as it was deemed the most appropriate for exploring and understanding the dispute resolution systems under study in depth. Stake (1995) defines a case study as a strategy or an inquiry in which the researcher explores, in depth, a program, event, activity, process, or one or more individuals. Cases are bound by time and activity; hence, researchers collect detailed information using a variety of data-collection procedures over a sustained period (Stake, 1995). Yin (1994) defines a case study as an empirical research activity that, using diverse empirical material gathered in various ways, examines a specific present-day event or action within a bounded environment. In the qualitative phase, a deeper understanding of the cases was sought through case studies that explored the dispute-resolution experiences of two case units: NECWEI and the NEC for the Energy Sector. The case study was exploratory. The nature of the problem under investigation required an in-depth exploration of the dispute resolution processes and how they were perceived by those who administered them and those who were affected by them. The case study research design was appropriate for the study because it provided an investigative, holistic approach and was used to explore and explain the dispute resolution processes in the everyday contexts in which they occurred. The collective case approach was used, as the study examined multiple cases simultaneously to generate a broader appreciation of the dispute resolution issue under study. Case studies were conducted by collecting evidence from interviews, archival records and documents; hence, multiple sources of evidence were used.

The case study research design provided more realistic responses than a purely statistical survey, helped indicate answers to the problem, and allowed further elaboration and hypothesis generation (Shuttleworth, 2008). The claim that case studies produce “more realistic responses” than statistical surveys is a methodological simplification that conflates epistemological purpose with data quality. The case study, therefore, offers a different and more appropriate form of validity for the evaluative purpose of this study: the capacity to generate rich, contextual, situated evidence about the lived situational experience of NEC dispute resolution effectiveness (Yin, 2018; Flyvbjerg, 2011). It does not offer superior realism. Conducting the research on two NECs helped to fully explore the system. The research paradigm under which this study was premised was interpretivism, which emphasised social context and human complexity in understanding how people perceive a phenomenon (Kaplan & Maxwell, 1994).

The collective case approach and the interpretive paradigm were well-suited because this design sought to achieve a deeper understanding of the social phenomenon. It also acknowledged the importance of respondents’ subjectivity in the process. Not much had been researched about the dispute resolution processes in the epoch under study; the case study research design was appropriate. As established in the literature review, while existing scholarship has examined the procedural and doctrinal consequences of the post-2015 amendments, no prior empirical study has systematically evaluated the effectiveness of NEC dispute resolution using a theoretically grounded multi-indicator framework applied to stakeholder data, as this case study design enables.

3.2.1 Justification for case selection: NECWEI and the NEC for the Energy sector

The dual case selection was purposive; NECWEI represented a decentralised multi-sector NEC with ten sub-sectors. These include NGOs, welfare institutions, educational institutions and religious institutions. This diversity was likely to lead to a prevalence of different issues and a lack of monotony in the nature and complexity of disputes, suggesting that findings from such a set-up better represent macro-level issues across other NECs. The NEC for the Energy sector is a centralised, parastatal-dominated council, with ZESA Holdings as the principal employer. The NEC for the Energy sector experiences fewer disputes; however, these are technically complex, and ministerial influence in dispute resolution is significant. This contrast, where NECWEI is decentralised versus political dominance and technical specialisation in the Energy sector, strengthens the analytical and comparative leverage. Similarities in outcomes point to institutional and systemic legal drivers, while differences highlight industry-specific processes that require tailored solutions (Patton, 2015). The choice of NECWEI and the NEC for the Energy Sector was therefore intentional; their institutional dynamics, size, and operational complexity made them representative of the broader complexities and challenges of dispute resolution in NECs in Zimbabwe. The purposive dual case study design improves policy relevance and the transferability of findings to other NECs while maintaining the study's qualitative depth, on the expectation that governance and structural contrasts would generate analytical depth and allow the study to distinguish sector-specific dynamics from systemic legal effects.

3.3 Population and sampling

3.3.1 Population

According to Burns, Grove and Grey (2011), a population is defined as all the elements that meet the criteria for inclusion in a study. It is the aggregate or totality of all the objects, subjects or members that conform to a set of specifications (Polit & Hungler, 1999). Babbie and Mouton (2001) define the population as the group considered most appropriate for data collection.

In qualitative case study research, the population is conceptual rather than a statistical construct. It defines the universe of potential respondents from within which purposive selection is made to achieve stakeholder coverage and analytical depth, rather than statistical representativeness (Creswell & Poth, 2018). The population of 138 identified below represents the conceptual universe of individuals whose constitutional roles gave them direct and relevant knowledge of NEC dispute resolution during the study period. The study did not seek statistical representativeness of the population but purposively selected respondents from within it whose experiences, institutional perspectives, and expertise generated the most analytical and richest data for evaluating the effectiveness of dispute resolution in NECs. This distinction resolves the methodological tension that arises when presenting a quantified population in a qualitative study.

The population for this study comprised 13 designated agents, 10 employers' association officials, 50 labour lawyers, 7 Ministry of Labour Officials, 10 Trade Union officials, 7 EMCOZ officials, 15 ZCTU officials, 13 ZFTU officials and 13 Labour Court Officials.

This gave a conceptual population of 138. The key criteria for inclusion in the study population were participation in dispute resolution processes within the NECWEI and the NEC for the Energy Sectors in the previous five years preceding the study. By implication, it meant that those individuals who would not have participated in the dispute resolution process within the NECWEI and the NEC for Energy Sectors were excluded from the study. The population of the study comprised DAs employed in these two NECs, the trade unions and employers' organisations affiliated with them, and the labour lawyers who had argued cases before these NECs.

The population distribution is set out in Table 3.1 below.

Category	Number
Designated Agents	13
Employers Association Officials	10
Labour lawyers	50
Trade Union Officials	10
MPSL&SW Officials	7
Labour Court Officials	13
EMCOZ	7
ZCTU	15
ZFTU	13
Total	**138**

Table 3.1: Study Population

Source: Field data

The MPSL&SW officials were drawn from the Registration division based at the head office. 7 officials were selected because they represented those with direct regulatory oversight of the NECs; for the two NECs under study, this is the institutional basis for the fixed subtotal of 7.

All these sub-populations were included in the proposed study because, in one way or another, they had a bearing and influence on the operations of NECs. This study targeted the DAs, trade union officials, and employers' organisations in the sectors under study because they participate in the dispute resolution processes for their respective industries. The MPSL& SW is the parent Ministry for NECs, and it has been very instrumental in the creation of the labour laws, including Labour Amendment Numbers 5 of 2015 and 11 of 2023, which are under investigation. It is also seized with records of the nature of disputes, the dispute-resolution processes employed, and the status of all cases or disputes across industries or sectors. In all these sub-populations, respondents were aged 25 to 65, as they were likely to have the requisite attributes, including at least 5 years' experience and knowledge in labour dispute resolution. They also fell within the age range that is still in active employment; hence, their contribution was considered relevant and within the context of the information being sought. Both women and men were included in the study irrespective of race, ethnicity, interests, values, religion, culture, attitudes and beliefs.

The inclusion of MPSL&SW officials in this study was necessary to elucidate the development of these dispute-resolution processes and trends and their impact across industries (Creswell, 2010). It is the regulatory authority for NEC operations; hence, their inclusion in this study was vital. The inclusion of the judiciary service, especially the Labour Court's role in what was purely alternative dispute resolution (ADR), was crucial given the challenges litigation was seemingly causing, resulting in complex dispute-resolution processes and delays in finalisation. The Labour Court officials' experiences in handling labour disputes were also necessary, as they enabled the researcher to ascertain the extent to which the Labour Court had affected the dispute-resolution processes under study.

The EMCOZ, ZCTU and ZFTU are key umbrella bodies whose roles have been instrumental in shaping labour policy and social dialogue with the government on issues that affect the employment relationship. Their inclusion in this study was key to establishing how they have influenced the dispute resolution processes in Zimbabwe and the challenges they have encountered therein. Labour lawyers represent either employers or employees across sectors in labour matters and, in most cases, through to the finalisation of the cases. They are therefore privy to all the stages involved in these dispute resolution processes and the outcomes of the cases. They were therefore crucial in providing insight into these processes and in identifying weaknesses and loopholes in the system, with the aim of proffering solutions to the challenges.

3.3.2 Sampling procedure

Since this study is qualitative, it adopted a non-probability sampling technique. According to Creswell (2009), in a non-probability sampling, elements of the sample are chosen such that members of the population do not have an equal chance of being selected. This research adopted purposive and snowball sampling methods. All the groups were purposively selected. The snowballing sampling technique was also used to obtain referrals to the appropriate respondents within umbrella bodies such as Labour Court officials, EMCOZ, ZCTU, and ZFTU, where the researcher did not have sufficient initial knowledge of the individuals with the most relevant information on the dispute resolution processes under study.

The criteria for selecting individuals to participate in the study from the different subgroups were (a) their core duties involved direct participation in dispute resolution within the two NECs in the study; (b) they had received training in the interpretation and implementation of Labour Amendment Act number 5 of 2015; (c) they had participated in labour dispute resolution cases involving the two NECs in the last five years; and (d) they belonged to one of the subgroups in the study population.

In qualitative research, the sample size is often determined by reaching saturation. According to Saunders, Lewis and Thornhill (2016), saturation is attained when no new themes are emerging from further interviews. In this study, interviews continued across all stakeholder groups until no new insights considered substantive emerged. This meant that 39 interviews spanned all nine expert categories, and no additional themes were observed. Guest, Bunce, and Johnson (2006) provide empirical evidence that saturation of major themes is usually attained within the first 12 interviews, with 20 to 30 interviews sufficient to capture all thematic information in a qualitative study. The final sample of 39 participants exceeds the empirically supported saturation range, enhancing the robustness and the credibility of the findings.

3.3.3 Purposive Sampling

Purposive sampling is ideal if the researcher is interested in getting the views of more than one group of respondents (Denzin & Lincoln, 2005). Purposive sampling was used to select the individuals that participated in the study, with a participant profile, in essence, an inclusion criterion (which was basically the list of qualities that the respondents of the research should fulfil before they are selected) was developed, and this guided the sampling. In this study, officials of employers' organisations, trade union officials, and DAs affiliated with the two NECs were purposively selected. Labour lawyers who have argued cases before the two NECs were also selected. These were selected because they could provide a legal interpretation of the labour laws and the dispute resolution process. MPSL&SW officials were also selected through purposive sampling because of their regulatory role in NECs and their oversight of the dispute resolution process. These were believed to have adequate and relevant information on Zimbabwe's labour dispute resolution system, as they were also critical stakeholders in the creation and amendment of the Labour Act. A purposive sampling technique was used to select the officials from the EMCOZs, ZCTU and ZFTU. These were believed to have relevant information for the research questions.

To reduce bias associated with the purposive sampling technique, the researcher defined a target population for the study; hence, the study focused only on individuals in the NEC for Welfare and Educational Institutions and the NEC for the Energy Sectors who had participated in labour dispute resolution in the last 5 years. Furthermore, the study sample was matched to the target population to reduce bias and ensure that all people with expertise participated.

3.3.4 Snowball sampling

The study also used snowball sampling to recruit respondents. Snowball sampling is a non-random sampling technique when it is difficult to identify members of a particular population (Bryman & Bell, 2015). The process to attain the sample is to (1) identify a member of the group that needs to be studied, (2) ask for referrals, (3) ask referrals for referrals until the process snowballs, with the result of the final sample size being reached or when no new cases can be identified (Saunders, Lewis, & Thornhill, 2016). The main advantage of snowball sampling is that research can continue without a sample frame, and it is the only option for populations that are difficult to identify or that the researcher might not be privy to. However, a shortcoming of snowball sampling is that it may be hard to identify the first participant. However, in this study, a respondent in the DAs subgroup produced referrals to a senior DA noted for successful determinations and an interlocutor with direct experience of Labour Court procedures. Similarly, during an interview with a Labour Court Official, the researcher was referred to another official who had been directly involved in implementing procedural changes, particularly regarding the preparation and management of draft rulings. Furthermore, both the ZCTU and ZFTU respondents referred the researcher to their legal consultants, who handled most of their labour matters. Through this snowballing process, the researcher was able to access a diverse and informed group of respondents. These were initially unknown to the researcher, thereby enhancing the depth and credibility of the qualitative data collected. Snowballing helped the researcher leverage respondents' knowledge of other respondents with significant expertise in the research phenomenon.

3.4 Operationalisation of effectiveness

This study operationalised effectiveness in dispute resolution through six evaluative indicators derived from the comparative literature, the theoretical framework and the ILO standards. These are procedural fairness, timeliness, accessibility, stakeholder confidence, enforceability and compliance with ILO standards. Table 3.2 below maps each indicator to the specific interview questions and documentary sources through which it was empirically investigated, as well as to the research objective it serves. Together, the six indicators constitute the bridge between the abstract evaluative construct of effectiveness and the empirical evidence against which that construct is tested in Chapter 4.

Table 3.2 establishes the methodological bridge between the theoretical framework developed in Chapters 1 and 2 and the data collection and analysis process in this chapter. This operational mapping presents the study's first research objective, which aims to evaluate the methodological grounding of the NEC's dispute-resolution mechanisms. Effectiveness is then illuminated as a set of measurable, interview-generated, and documentary-supported criteria that can be systematically evaluated against empirical data rather than as an abstract concept.

Effectiveness Indicator	Operational Definition	Interview Question	Documentary Sources	Research Objective
Timeliness	Whether disputes are resolved within reasonable and legally prescribed timeframes (including the 30-day conciliation period and Labour Court confirmation timelines).	*"How long has it taken for the labour disputes to be brought to a finality?*	NEC case registers; conciliation agreement records; annual statistical returns.	Objective (a) evaluation of effectiveness
Procedural Fairness	Whether the process treats all parties equitably and without bias, including the DA impartiality standard established in ZIMOCO CCZ 6/20.	*"How is the DA's neutrality perceived by parties during the confirmation process at the Labour Court?"*	NEC hearing records; Labour Court confirmation records; ZIMOCO case documentation.	Objective (a) evaluation of effectiveness
Accessibility	Whether the process is practically available to all parties, regardless of geographic location, economic means, or legal sophistication.	*"What impediments do parties face in accessing NEC dispute resolution?"*	MPSL&SW reports; case referral records; decentralisation of DA offices.	Objective (b) stakeholder roles
Enforceability	Whether NEC outcomes (certificates of settlements, determinations and arbitral awards) are legally enforceable and actually enforced in practice.	*"What challenges arise in enforcing DA determinations and arbitral awards?"*	NEC enforcement records; Labour Court registration records; HH-118-22 documentation.	Objective (a) evaluation of effectiveness
Stakeholder Confidence	Whether parties perceive the process as fair, impartial, legitimate and worth engaging with.	*"What has been your relationship with other stakeholders in dispute resolution? How would you rate stakeholder confidence in*	NEC case-completion rates; abandonment/withdrawal statistics; participant-satisfaction indicators.	Objective (b) stakeholder roles

Effectiveness Indicator	Operational Definition	Interview Question	Documentary Sources	Research Objective
		the NEC dispute resolution process?"		
Compliance with ILO Standards	Whether the process meets the benchmarks established by ILO Conventions 87, 98, 151, Recommendation 92, and the 2023 ILO institutional-effectiveness criteria.	*"In your view, how does the NEC dispute resolution system meet international labour standards?"*	MPSL&SW compliance reports; ILO periodic review submissions.	Objective (a) evaluation of effectiveness

Table 3.2: Operationalisation of Effectiveness Indicators, Interview Questions and the Theoretical FrameworkSource: Researcher's own framework

3.4.1 How the Theoretical Framework Informed the Research Design

The study's use of Rawls' theory of justice, complemented by the pluralist labour theory, informed the research design at three specific points in the methodological process. First, it shaped the construction of the interview guide. The key question in assessing the dispute resolution process post the Labour Amendment Act Number 5 of 2015 concerns procedural fairness, high costs, and equal access to the process. These reflect the Rawlsian standard of 'justice as fairness', particularly the requirement that institutional arrangements treat all parties as equals regardless of their structural economic position.

Questions about DA impartiality and institutional independence reflect the constitutional dimension of Rawlsian justice identified in the ZIMOCO ruling. Questions about stakeholder roles, relationships and power dynamics reflect the pluralist recognition that structural power asymmetries must be actively managed by institutional mechanisms rather than assumed away.

Second, the theoretical framework guided the data interpretation process. When respondents described experiences of DAs' lack of neutrality, inaccessible processes, or unenforceable determinations, these experiences were interpreted not merely as operational complaints but as evidence of specific shortcomings in the Rawlsian effectiveness standard, revealing failures of procedural fairness, accessibility and enforceability. This allowed the analysis to move beyond description to a theoretically grounded evaluation. The descriptions of lack of stakeholder coordination, union fragmentation, employer non-attendance, or Ministry interference were also interpreted through the pluralist lens as institutional failures to achieve the pluralist balance that the NEC framework is designed to deliver.

Lastly, the architecture of the reform model developed in Chapter 5 is also informed by the theoretical framework. Each component of the model addresses a specific empirical shortcoming identified by the effectiveness indicators in Table 3.2. The proposed remedy is then evaluated against the Rawlsian fairness standard, which assesses whether it will yield more procedurally fair and accessible outcomes. Similarly, the pluralist standard assesses whether the proposed remedy will strengthen the institutional balance between competing labour-relations interests. The reform model stands out as a theoretically grounded response to empirically identified institutional deficits rather than a mere generic set of reform proposals.

3.5 Data collection instruments and procedures

3.5.1 Semi- Structured Interviews

Primary data were collected using semi-structured interviews. This data is collected from first-hand experience and has not yet been published; it is therefore more objective, authentic, and reliable (Kabir, 2016). According to Mathers, Fox and Hunn (2002), semi-structured interviews involve a series of open-ended questions based on the topic areas the researcher wants to cover. The open-ended nature of the questions defines the topic under discussion while also providing opportunities for both the interviewer and the interviewee to discuss some topics in more detail.

Semi-structured interviews were chosen because they best suited the study's interpretivist and qualitative approach. It offered a balance of flexibility and structure, enabling the researcher to focus on key themes whilst also giving the respondents the latitude to elaborate on their experiences. This was necessary given the diverse yet complementary perspectives of respondents such as DAs, employers' associations and trade unions. The semi-structured approach allowed the researcher to probe more deeply into specific issues such as institutional dynamics, procedural challenges, and the implications of the legal amendments. The conversational nature of the interviews helped build trust, hence encouraging respondents to speak candidly about sensitive institutional shortcomings. This depth and flexibility enabled the researcher to capture nuanced insights and contextual realities that more rigid methods, like structured questionnaires, might have missed.

Through semi-structured interviews, the researcher was also able to understand the target audience's habits and had the flexibility to use cues or prompts to encourage interviewees to place greater emphasis on their responses. This is also supported by Doyle (2020), who notes that semi-structured interviews are flexible: they do not follow a formalised list of questions; they are more open-ended and allow for an open discussion between the interviewer and the interviewee, unlike a straightforward question-and-answer format. Semi-structured interviews were therefore used to collect data from all 39 respondents in the study, who were all key actors in Zimbabwe’s labour dispute resolution framework.

3.5.2 Documentary Analysis

Secondary data were collected from NECs' internal records, which included complaint forms, walk-in and telephone registers, master case registers, certificates of settlement, determinations and arbitration awards files, NECs' annual government publications and statistical returns. Complaint forms helped show the date a matter was referred to the NEC for conciliation, the resulting agreement, or the reference to arbitration, indicating when the process was completed. The NECs' annual statistical returns submitted to the MPSL&SW showed the total number of cases resolved each year, the methods used, and the total number of cases still outstanding at various stages within the NECs.

The documentary sources served a specific, analytically purposive function of triangulation, complementing the interview data in three distinct ways. First, the NEC case registers and conciliation agreement records provided quantifiable evidence of timeliness, showing whether disputes were resolved within the 30-day conciliation period. This could then be compared with respondents' subjective perceptions of the timeliness of the dispute resolution process. This cross-validation was particularly important because respondents' memories of timeframes may be influenced by the emotional salience of specific disputes rather than the systemic pattern. Second, Labour Court confirmation records and the Nyanga Rural District Council matter provided documentary evidence of the enforceability deficit, corroborating interview data about the inability to register and enforce DAs' determinations. This triangulation converts a subjective stakeholder perception into an objectively verifiable institutional finding. Third, the MPSL&SW 2020 report data provided aggregate institutional performance data against which the interview-generated findings about individual cases and experiences could be contextualised and scaled. This triangulation approach, consistent with Patton (2002), reduced the risk that the findings might reflect the idiosyncratic experiences of individual respondents rather than the systemic pattern of NEC dispute-resolution effectiveness.

3.6 Data collection procedure

Data collection was carried out through a combination of semi-structured interviews and documentary review between January and August 2023. The researcher personally conducted all 39 interviews with respondents drawn from the two selected NECs, as well as legal practitioners and officials from the EMCOZ, ZCTU, ZFTU, Labour Court, and the MPSL&SW. Interviews were conducted face-to-face at the respondents' workplaces, with some conducted via virtual platforms such as Zoom and Google Meet when in-person meetings were not possible. Each interview lasted between 45 and 90 minutes. With respondents' consent, interviews were audio-recorded to ensure accurate capture of responses and notes were taken to record non-verbal cues and contextual details. All recordings were later transcribed verbatim by the researcher and verified for accuracy. Transcriptions were anonymised, and pseudonyms (R1- R39) were assigned to preserve confidentiality.

The interview guide was structured around the six effectiveness indicators established in Chapter 1 and developed in Chapter 2. The opening icebreaker question: 'What is your assessment of the labour dispute resolution process before and post the Labour Amendment Act Number 5 of 2015? 'established the temporal scope and enabled respondents to provide a comparative assessment for the pre and post the Labour Amendment Act Number 5 of 2015. Subsequent questions probed each effectiveness indicator in turn, with stakeholder-specific questions addressing the institutional experiences of Labour Court, DAs officials, lawyers, trade union groups, employer bodies, and MPSL&SW officials, respectively. The concluding snowballing question, 'Who else do you think I should contact for more information on this issue?' enabled the sample to expand through referrals. The researcher maintained a reflective field journal throughout the data collection period to document observations, emerging themes, and methodological adjustments

3.7 Analysis and organisation of data

3.7.1 Data analysis

This study employed a hybrid approach that combines qualitative content analysis as a first-pass coding procedure with thematic analysis as the primary analytical framework for generating, reviewing, defining, and naming themes. Qualitative content analysis was used in the initial coding phase to systematically reduce the interview transcripts into categories and codes (Krippendorff, 2004; Roller & Lavrakas, 2015). This identified specific textual units (phrases, sentences, and passages) relevant to the research questions and the evaluative effectiveness indicators. This initial content coding produced a structured set of coded categories across all 39 transcripts and documentary sources, organised in NVivo 13.

Thematic analysis (Braun & Clarke, 2006) was then applied to these coded categories to identify patterns, relationships, and overarching themes that transcended individual cases and respondent groups. Thematic analysis provided the analytical framework that enabled the researcher to move from describing coded categories to interpreting what those patterns mean for the effectiveness of NEC dispute resolution. The flexibility of thematic analysis enabled the examination of underlying conceptualisations and ideas that shaped the semantic content given by respondents. This is consistent with an inductive approach in which themes emerged from the data rather than being imposed by a predetermined framework (Braun & Clarke, 2006, p. 12).

The analytical process proceeded through six stages consistent with Braun and Clarke's (2006) framework. This included (i) the familiarisation of the data, where the 39 transcripts were read and re-read, and the documentary sources were also read to achieve deep immersion in the data. This step provided the cornerstone for identification of the codes and themes (Braun & Clarke, 2006; Creswell, 2009). This was followed by the (ii) initial coding, which generated initial codes using NVivo 13's node structure, drawing on both the pre-defined effectiveness indicators (deductive codes) and categories that emerged from the data itself (inductive codes). (iii) The theme search process enabled the grouping of coded categories into potential themes across the full dataset, while (iv) theme reviewing enabled the refinement of themes against the coded extracts and the full dataset to ensure meaningful distinction and coherence. (v) The theme definition and naming process produced clear definitions of each theme, naming them to reflect their analytical content. Lastly (vi) a write-up for the narrative in Chapter 4 that presents and interprets each theme in relation to the research questions and theoretical framework was then produced.

3.7.2 Cross-Case Comparison

Cross-case comparison was a core analytical procedure given the dual-case design, enabling the study to distinguish sector-specific dynamics from systemic legal effects. Cross-case comparison was conducted as follows. After themes were identified within each case unit (NECWEI and the NEC for the Energy sector) through thematic analysis, the themes were compared between the two case units. The comparison identified convergent themes, which were patterns present in both cases, indicating systemic or institutional drivers of effectiveness gaps that transcend sector-specific conditions. It also identified divergent themes, which were patterns unique to one case, indicating institutional arrangements, sector-specific dynamics and types of disputes that require tailored rather than generic solutions. This cross-case comparison procedure is directly consistent with Eisenhardt's (1989) and Yin's (2018) cross-case analysis methodology and with the pattern-matching approach to building theory from case study data.

3.7.3 Representation of the descriptions and themes in the qualitative narrative

The researcher provided a narrative outline of the analysis's findings, detailing a chronology of events, a discussion of the themes presented, the sub-themes, and multiple perspectives from the respondents. The researcher also used visuals, and descriptive information about each participant was presented in tabular form.

3.7.4 Interpretation of the meaning of the data

Lincoln and Guba (1985) describe this phase as one that captures the essence of the idea "What were the lessons learnt?" The researcher's personal interpretations, based on her experiences, were also highlighted among the lessons learned. A comparison of the findings with the theoretical underpinnings, the evaluative effectiveness indicator framework, and the reviewed literature was also conducted to derive the meaning of the data. Depending on the findings, these either supported or confirmed the available literature or diverged from it. Interpretations made were also expected to call for "*an action agenda for reform and change"*; this fulfils the research objective that sought to synthesise the analysis into a model of the dispute resolution process. The data analysis procedure followed in this qualitative study is depicted below:

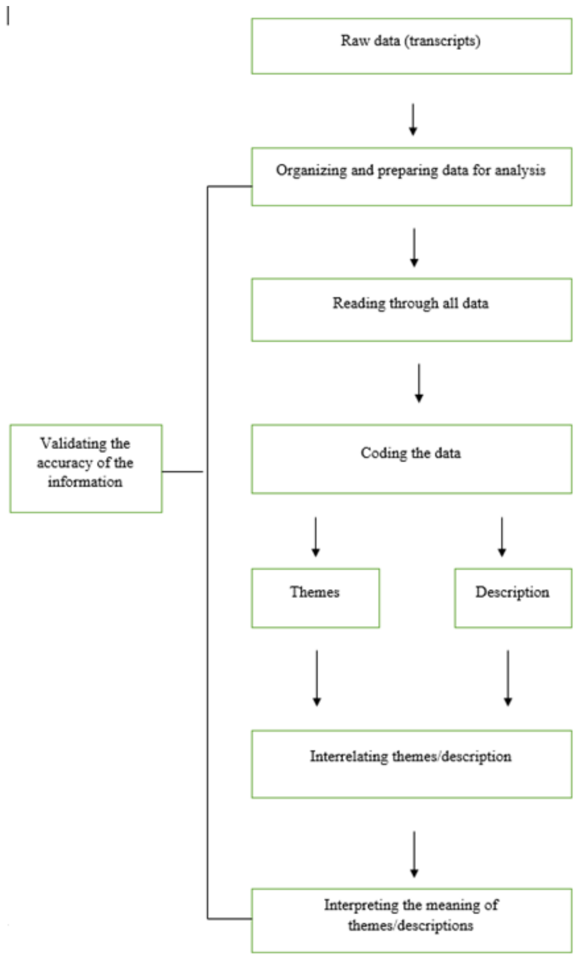

Figure 3.1: Data analysis in qualitative research

Source: Creswell (2009)

3.8 Model Development Methodology

The reform model presented in Chapter 5 is a conceptually synthesised model derived from the empirical findings, the theoretical framework and the comparative and ILO literature discussed in Chapter 2. These were integrated through a structured mapping exercise. The empirical findings present themes identified through thematic analysis of the 39 interview transcripts and documentary evidence, which reveal specific institutional deficits in the effectiveness of NEC dispute resolution across the six evaluative effectiveness indicators. The theoretical framework, informed by Rawls' theory of justice and complemented by the pluralist labour theory, provides the normative standard against which each identified gap or shortcoming is evaluated and prescribes the institutional characteristics that a reformed system should exhibit. Lastly, the comparative and ILO literature reviewed in Chapter 2 provides specific reform benchmarks from other jurisdictions and an ILO-validated institutional design framework that was assessed for transferability to Zimbabwe's NEC dispute resolution context.

The mapping exercise proceeded through three analytically distinct stages, set out in Table 3.3 below.

Stage	Analytical Procedure	Output
Stage 1	Each empirical theme generated through the hybrid content-and-thematic analysis was linked to the effectiveness indicator it implicated. It was also linked to the corresponding normative standard from the theoretical framework.	A structured matrix of empirical deficit, theoretical expectation and the institutional gap.
Stage 2	Each identified gap was linked to a reform component drawn from the comparative and ILO literature reviewed in Chapter 2. It was tested for institutional feasibility within Zimbabwe's regulatory, legal, and resource context.	A sequence of gaps, the proposed reform and the expected institutional outcome.

Stage	Analytical Procedure	Output
Stage 3	A cross-case comparison of identified deficits across NECWEI and the Energy Sector NEC was conducted. Convergent themes were used to identify systemic deficits, while divergent themes were used to identify sector-specific dynamics.	A distinction between adaptive reforms (tailored to sector-specific institutional characteristics) and universal reforms (addressing systemic deficits across all NECs)

Table 3.3: The Three-Stage Model Development Mapping Exercise

Source: Researcher's own framework.

The model that emerges from this three-stage process is therefore theoretically grounded, evidence-based and comparatively informed. Its components, together with their empirical findings and theoretical justification, are presented in Chapter 5.

3.9 Research validity, reliability and generalisability

3.9.1 Validity

This section explores the strategies employed to ensure the validity of a qualitative study titled "Evaluating the Effectiveness of Labour Dispute Resolution Mechanisms in Zimbabwe's National Employment Councils post the Labour Amendment Number 5 of 2015." The study investigated the lived experiences of stakeholders involved in dispute resolution processes within two NECs following the 2015 Labour Amendment Act. Validity, a cornerstone of qualitative research, ensures the findings accurately represent the phenomenon under study (Denzin & Lincoln, 2018). This study discusses how the chosen methodologies promote credibility, transferability, dependability, and confirmability. Validity in qualitative research refers to the extent to which the researcher checks the accuracy of the findings using specific procedures. It is based on determining whether the findings are accurate from the researcher's, participant's, and reader's standpoints (Creswell & Miller, 2000). Validity in qualitative research is associated with authenticity, reliability and credibility. Face validity also held significant weight in the initial stages of the research. It served as a litmus test to gauge the appropriateness and relevance of the interview guide and helped ensure that the research started on the right foot. The researcher received a quick assessment from colleagues and experts in the labour fraternity to help determine whether the questions were intuitively suitable for the purpose. Face validity refers to the extent to which a test or assessment appears on its face to measure what it is intended to measure. It is a subjective judgment made by experts or stakeholders based on how well the test's content aligns with its intended purpose (Royal, 2016).

The researcher also ensured content validity. Content validity helped ensure comprehensive representation and that the questions asked encompassed all relevant aspects of the dispute resolution policies and processes under investigation. The questions ranged from the formulation of dispute resolution policies and their implementation to public awareness, stakeholder involvement and relationships, challenges encountered, and the variation of opinions across the various demographic groups. The responses to these questions helped the researcher ascertain whether or not there was justice delivery and effectiveness in the dispute resolution system.

Internal validity revolves around the depth of understanding through ensuring that the researcher's interpretations were grounded in the respondents' realities (Stewart & Shamdasani, 2015). Internal validity is the authenticity and the truthfulness of the findings within the study itself. Techniques such as member checking, in which respondents reviewed and verified the researcher's interpretations, were also used to enhance validity. After the data had been collected and interpreted, the researcher revisited the respondents to confirm the researcher's interpretations and also to ensure that the researcher's understanding aligned with the respondents' meanings.

During the interviews, a number of respondents, especially legal practitioners and designated agents, cited labour case law to explain certain outcomes in various disputes brought before the courts. The researcher would go back to the respondents to gain a clear understanding of the case law and its impact on the dispute resolution process. One specific case law is the *ZIMOCO t/a Isoquant investments v Memory Darikwa* and the NEC for the Motor Industry, where the impartiality of the Designated Agent was questioned, resulting in the Constitutional court defining the roles of the Labour Officers and Designated Agents, further specifying that the latter's role hinged on attempting to redress or redressing a matter, resulting in them issuing determinations in settling disputes. The researcher took time to go back to the respondents to try and understand the implications of the judgment, the determinations process, challenges in their enforcement leading to more disputes which culminated into more High Court cases like the *Nyanga Rural District Council Workers Union v Nyanga Rural Council (ZWHHC 118/22)* where it was argued that the determinations issued by Designated Agents were a liquid document which could not be enforced because of the lack of provisions in the law that enabled enforcement.

To further ensure validity, the researcher employed multiple data collection strategies, namely semi-structured interviews and documentary evidence. The triangulation of these different data sources helped build a coherent justification for the themes. Patton (2002) notes that triangulation enables comparison and cross-checking of data, thereby assessing the consistency of information from different sources at different times. To ensure the quality and rigour of the study, the researcher ensured she reached data saturation. According to Hayashi, Abib, and Hoppen (2019, p. 102), data saturation is characterised by the number of interviews conducted until no additional useful information emerges. This had also been observed by Morse (2003, p. 1123), who noted that, through the saturation process, the researcher continues sampling and analysing data until no new data appear and all concepts in the theory are well developed. Creswell (2009) suggests taking back parts of the polished product, such as themes, the case analysis and the cultural description.

Follow-up interviews with respondents in which more information or clarification was needed were conducted, and these also gave those respondents the opportunity to comment on the findings. Thick, rich descriptions were also used to provide perspectives on the themes, making the results richer and more realistic. At the time of the study, the researcher was a labour practitioner within the NECs' structure, and to minimise chances of being biased, she made use of peer review in data analysis in order to ensure her findings and interpretation thereof remained objective, aligned to the study with minimum risk of bias (Creswell, 2009).

3.9.2 Reliability

Reliability indicates that the researcher's approach is consistent across different researchers and different research projects (Gibbs, 2007). To assess the reliability of this study, the researcher documented the procedures for the case studies and established a detailed case study protocol and database. The researcher followed the following reliability procedures as suggested by Gibbs (2007): -

- Standardising the research instruments. All respondents were asked the same questions within their respective subgroups. For instance, whilst most of the questions were standard, some questions would vary to cater for each subgroup, given the difference in their operations and roles.
- Checking the interview transcripts for mistakes which might have been made during the transcription stage
- Constantly comparing data with the codes to ensure that there is no shift in the definition and meaning of these codes.

3.9.3 Generalisability

Generalisability in qualitative research is most often applied to studies in which the inquirer examines several cases. The case study results can then be generalised to a broader theory (Yin, 2003). Whilst qualitative studies are subjective rather than objective and may not generalise to the entire population or other settings, there are alternative approaches to qualitative generalisation. Since the results of this study may not be generalisable to the entire population, it serves as a foundation for a broader study. This study also emphasised internal validity, in that what matters is the quality of the original research, which provides the platform on which generalisation can be built. The quality of the base study is satisfactory; hence, generalisation is assumed to be enhanced.

3.10 Research trustworthiness

Trustworthiness in qualitative research establishes the credibility, transferability and confirmability of the study's findings. These are discussed below.

3.10.1 Establishing credibility

Credibility refers to the respondents' confidence that the research accurately reflects their experiences (Denzin & Lincoln, 2018). To ensure credibility, Whittemore, Chase & Mandle (2001:43) pose the question "Do the results of the research reflect the experience of respondents or the context in a believable way?" To achieve this, the study employed triangulation, a strategy that utilises multiple data sources for verification (Nowell et al., 2017). Data collection involved semi-structured interviews with trade unions, labour court officials, employers, legal practitioners, government officials and NEC officials (Baker 2020). Document analysis of NEC records and dispute resolution procedures provided contextual information. By triangulating data from diverse sources, the study reduced the risk of bias and strengthened the credibility of its findings (O'Cathain, 2010). To ensure the study's credibility, the researcher used triangulation of semi-structured interviews and documentary evidence.

Furthermore, member checking, in which key findings and interpretations were shared with respondents for feedback, was employed (Lincoln et al., 2015). This allowed respondents to confirm the accuracy of their representation and fostered a collaborative research process. Finally, prolonged engagement with each NEC allowed for a deeper understanding of the dispute-resolution context and its nuances, enhancing the credibility of the study's portrayal (Merriam, 2019).

3.10.2 Enhancing Transferability

According to Shenton (2004), transferability refers to how the researcher demonstrates that the research findings are applicable to similar situations, populations and phenomena. Transferability refers to the extent to which the study's findings can be applied to other contexts (Lincoln et al., 2015). To promote transferability, the study utilised thick descriptions, rich and detailed accounts of the NECs' functioning, dispute resolution procedures, and stakeholder experiences (Geertz, 1973). These detailed descriptions allow readers to assess the applicability of the findings to similar contexts. Additionally, purposive sampling was employed (Patton, 2015). The NECWEI and the NEC for the Energy sector were chosen for their distinct characteristics: the size of their industries and the nature of their operations. This selection strategy facilitated the potential transferability of findings to other NECs across Zimbabwe. The researcher therefore used detailed descriptions to show that the research's findings are applicable to the other excluded NECs.

3.10.3 Strengthening confirmability

Confirmability refers to the degree to which the study's findings are a true reflection of the phenomenon under study and not simply a result of researcher bias (Lincoln et al., 2011). Negative case sampling, a strategy in which the researcher actively seeks out and presents counterexamples, was employed (Patton, 2015). For instance, the study not only explored cases where the Labour Act had a positive impact on dispute resolution but also cases where stakeholders perceived its effectiveness as limited. This approach strengthened the study's conclusions and reduced the risk of confirmation bias. Finally, peer debriefing, involving discussions with other researchers about the research design and findings, was conducted (Lincoln et al., 2011). Through these discussions, potential biases were identified, and the objectivity of the study's interpretations was strengthened.

3.10.4 Ensuring dependability

Dependability refers to the consistency of research findings over time and across researchers (Lincoln et al., 2011). To ensure dependability, the study maintained a detailed research log documenting all methodological decisions, data collection procedures, and data analysis steps (Tracy, 2013). This allowed for transparency and enabled other researchers to evaluate the research process and potentially replicate the study (Lincoln et al., 2011). Furthermore, the researcher acknowledged their own background and potential biases, a practice known as reflexivity (Lincoln et al., 2011). By critically reflecting on how their own experiences and perspectives influenced data interpretation, the researcher enhanced the dependability and trustworthiness of the study's findings.

3.11 Ethical considerations

Patton (2002) provides a comprehensive framework that identifies key ethical issues within research studies. These include explaining the purpose of the study, confidentiality, informed consent, data access and ownership, data collection boundaries, risk assessment, promises and reciprocity. For this study, the following steps were therefore taken: -

3.11.1 Informed consent

Written correspondence was sent to all selected and identified study respondents (employees, employers, labour lawyers, MPSL&SW officials, Labour Court officials, and designated agents) to inform them about the study and to solicit written informed consent. The letter explained:

- The purpose of the study and how the information was going to be used.
- The voluntary nature of participation and the right to withdraw at any time. Individuals who participated in the study were not bound, regardless of whether they chose to participate. Participation was voluntary, and respondents were advised that they were free to withdraw at any stage. Their withdrawal would not affect their relationship with the researcher.
- The anonymity and confidentiality of their responses - the respondents' responses were to be used strictly for the purposes of this study. Their real identities would not be used when presenting the study's findings.
- That the researcher would not ask them to respond to any questions unless they had given express informed consent that their narratives be captured and recorded

as part of the data collection in the study. The researcher further explained that all respondents would be free to access the final copy of the study findings and write-up upon request.

- That all individuals involved in the study would not get any material benefits from the research, but instead their insights and perspectives from their responses would be used to advance dispute resolution research and practice among NECs in the country.

3.11.2 Particular considerations

As a means of ensuring confidentiality and encouraging participation, the researcher emphasised to Designated Agents their right to participate without fear of employer reprisal. With respect to NEC officials, MPSL&SW and Labour Court officials, the researcher ensured that informed consent aligned with relevant internal data-sharing policies.

3.11.3 Confidentiality and anonymity

All data collected was anonymised, including the removal of identifiable information during transcription and analysis. The information extracted from the respondents was therefore not presented in a format that identified the individuals. Codes or pseudonyms to replace names in reports and publications were used. Data were securely stored to prevent unauthorised access. Confidentiality was thus guaranteed for all organisational records and personal information accessed. As a further safeguarding measure, pseudonyms were assigned to the respondents as R1-R39.

3.11.4 Privacy

All data collected during this study were treated with strict confidentiality. Personal identifiers were removed from transcripts and replaced with codes to ensure participant anonymity. The data were securely stored in a password-protected electronic folder accessible only to the researcher, and the anonymised data will be retained for 5 years after the study's completion to allow for verification and auditing. Thereafter, all electronic files will be permanently deleted. No data will be disclosed to third parties without the participants' prior consent and formal authorisation from the University’s Ethics Committee.

3.11.5 Fairness and justice

The study sought a balanced perspective by including viewpoints from all stakeholders within the labour fraternity (employees, employers, NEC officials, labour lawyers, MPSL&SW officials, and Labour Court officials). Language that could be perceived as biased towards one group or another was avoided. English, which is the universal language, was used throughout the interviews.

3.11.6 Vulnerability

The researcher was mindful of the potential vulnerability of respondents, especially Designated Agents, who could possibly be hesitant to express criticism for fear of repercussions. To that end, the researcher had a contingency plan in place to provide support resources (such as psychosocial support and counselling) if respondents disclosed experiences of workplace harassment or unfair labour practices.

3.11.7 Data sharing

The researcher had no intention of using the data obtained from the respondents of this study for any purpose other than the study. Should there be any future need to use data beyond the initial study scope, additional consent will be solicited from the respondents.

3.11.8 Ethical oversight

The study's ethical approval was obtained from Africa University's Institutional Review Board (IRB), sitting as the Africa University Research Ethics Committee.

3.11.9 Transparency

The researcher was transparent about her research methods and findings in this submission. A plan was put in motion to communicate study findings and recommendations to respondents and other stakeholders post the examination of the dissertation.

3.12 Chapter summary

This chapter has set out the methodological architecture of the study. A qualitative, interpretivist design, using a purposive dual-case study of NECWEI and NEC in the Energy sector, was adopted. From a conceptual population of 138 stakeholders across nine stakeholder categories, 39 respondents were purposively sampled and snowballed until thematic saturation was reached. Data were generated through semi-structured interviews and documentary analysis. Both instruments were structured around the six evaluative effectiveness indicators: procedural fairness, timeliness, enforceability, accessibility, stakeholder confidence, and compliance with ILO standards. These were operationalised from the Rawlsian principles, pluralist labour theory, and ILO standards. A hybrid analytical procedure, combining qualitative content analysis for initial coding with thematic analysis for theme generation (Braun & Clarke, 2006), was conducted in NVivo 13, with cross-case comparison between the two NECs enabling the study to distinguish systemic institutional drivers from sector-specific dynamics. The theoretical framework shaped the research design, the interview guide, and the interpretive lens applied to the data. It also informed the architecture of the reform model developed in Chapter 5. Ethical approval was obtained from Africa University's Institutional Review Board, and full protocols for confidentiality, informed consent, anonymity, and data security were implemented throughout the study. The next chapter presents the empirical findings, which are analysed and interpreted against the evaluative framework established here.

CHAPTER 4: DATA PRESENTATION, DISCUSSION, ANALYSIS AND INTERPRETATION

4.0 Introduction

This chapter presents, analyses, and interprets the study's empirical findings. The central research problem these findings address is whether, and in what ways, the legislative and institutional disruptions caused by the Labour Amendment Act Number 5 of 2015 and the subsequent restorative measures introduced by the Labour Amendment Act Number 11 of 2023 have affected the effectiveness of dispute resolution mechanisms in NECs in Zimbabwe. Effectiveness is evaluated against the six indicators introduced in Chapter 1, developed in Chapter 2 and operationalised in Chapter 3 of this study. These indicators are procedural fairness, timeliness, enforceability, accessibility, stakeholder confidence, and compliance with ILO standards.

The findings are organised around the study's three research objectives. The effectiveness of the NEC dispute resolution mechanisms established in objective one is evaluated across three legislative phases: the pre-2015 ADR-based system, the post-2015 ADR-litigation hybrid framework, and the post-2023 restored ADR regime. Case volume and time-to-resolution data from NECWEI and the NEC for the Energy sector provide documentary triangulation for the interview findings and are evaluated against the timeliness indicator. The IECMS monitoring system is evaluated against the accessibility and timeliness indicators. Objective 2 examines the roles, relationships, and interaction dynamics among key institutional stakeholders, with particular attention to how power asymmetries and stakeholder behaviours affect dispute-resolution outcomes. Objective 3 provides respondent recommendations, which are synthesised into strategic directions that form the empirical foundation for the reform model developed in Chapter 5. The major discussion sections around the three objectives then integrate the themed findings against the Rawlsian and pluralist theoretical frameworks established in Chapter 2.

4.1 Feasibility of Study Protocol and Response Rate

The respondents were drawn from all nine major categories integral to Zimbabwe's NEC processes (Figure 4.1). This diversity was seen as crucial in mitigating positional or organisational bias and in triangulating perspectives on effectiveness, challenges, and reform strategies.

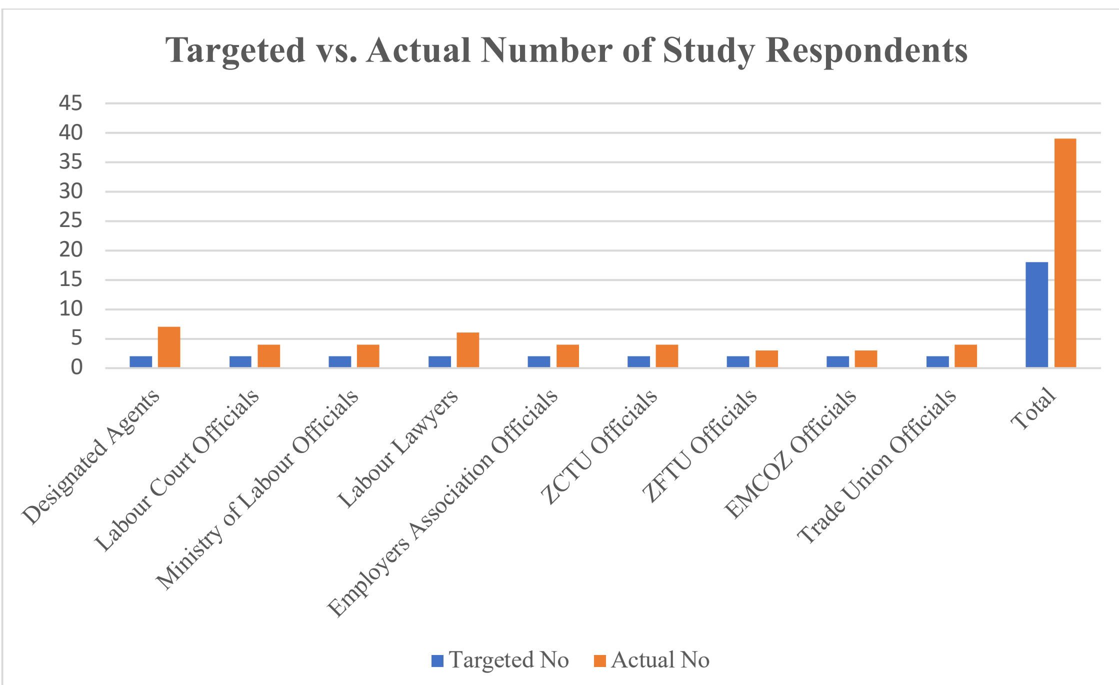

Figure 4.1: Targeted versus actual number of study respondents
Source: Field data

The study eventually surpassed the intended number of respondents for all groups, as more than two respondents per group were interviewed (Figure 4.1). This was due to the generated interest, which facilitated the acquisition of more comprehensive data. The researcher remained wary of data saturation, which was noted after going through interviews with 39 respondents across the categories. As can be seen in Figure 4.1, the study sample comprised;

- 7 Designated Agents (coded as Respondents R1, R2, R3, R4, R20, R24, R25),
- 4 Labour Officials (coded as Respondents R13, R15, R31, R32),
- 4 Ministry of Labour Officials (coded as respondents R8, R9, R28, R36),
- 6 Labour Lawyers (coded as Respondents R16, R17, R18, R26, R33, R34),
- 4 Employers Association Officials (coded as Respondents R5, R14, R19, R22, R23, R27),
- 4 ZCTU Officials (coded as Respondents R7, R21, R38, R39),
- 3 ZFTU Officials (coded as Respondents R10, R21, R35) and
- 3 EMCOZ Officials (coded as Respondents R11, R12, R37)

The demographic characteristics of the respondents are given in the following section.

4.2 Demographic characteristics of respondents

4.2.1 Gender of respondents

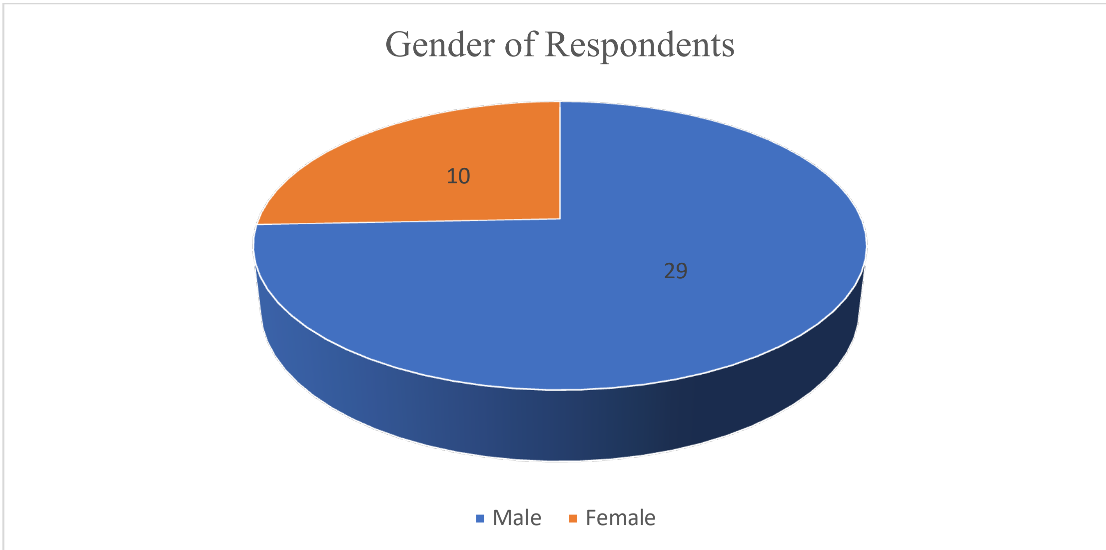

Figure 4.2: Demographic Characteristics of Respondents

Source: Field data

A total of 29 (74.36%) of the respondents were male, and 10 (25.64%) were female (see Table 4.2). The respondent age distribution showed that all respondents were over 30 years, with the largest proportion aged 41-50 (46.15%), followed closely by those aged 31-40 (30.77%) and those aged over 50 (23.08%). Evidently, there were more male than female respondents in the study sample, which was attributed to men generally being more active in the labour relations fraternity than women. This disparity, however, was deemed not to affect the validity of the findings, which were based on factual experiences and not necessarily gender-sensitive.

4.2.2 4.3.2 Age range of respondents

The age distribution of respondents in the study is shown in Figure 4.3 below.

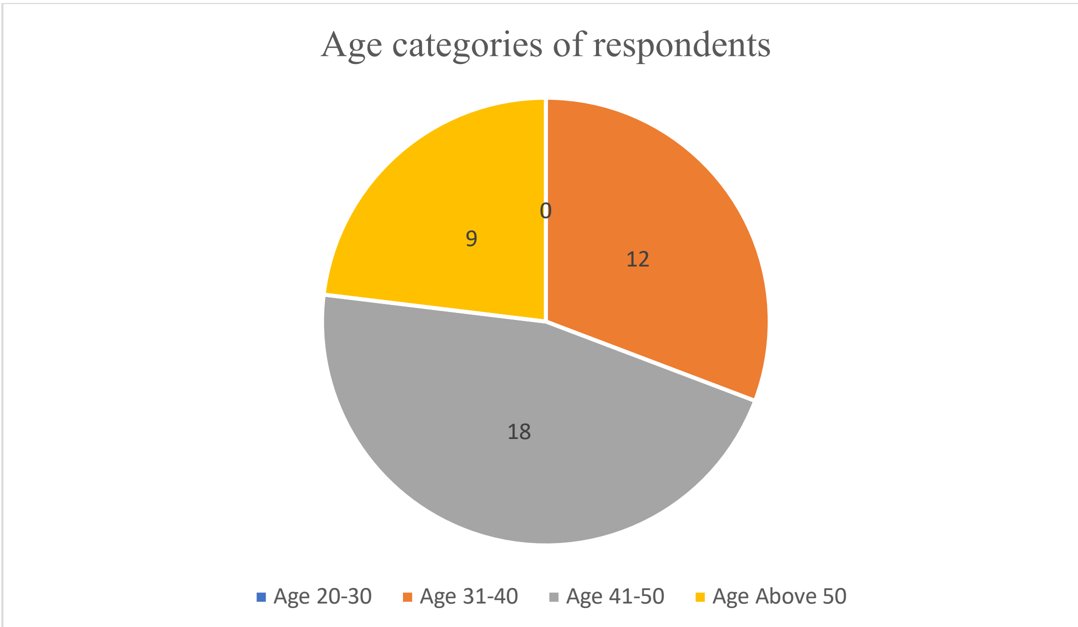

Figure 4.3: Age categories of study respondents

Source: Field data

As can be seen from the distribution, the age categories indicated a respondent pool with substantial professional maturity and lived experience in Zimbabwe's labour relations landscape. This corroborates the study by Hameed (2024), which finds that older respondents are more likely to have encountered a diverse array of dispute-resolution processes and to provide nuanced assessments of policy shifts over time. The absence of younger professionals, while a limitation, reflected recruitment patterns and the seniority typically required to participate in NEC activities and labour adjudication. This concentration, according to Fife and Gossner (2024), aligns with best practice in labour research, which seeks depth and truth over broad but potentially superficial coverage. Thus, the reliability of the findings was reinforced by the respondents' length of service and institutional memory, though future studies might benefit from incorporating emerging voices to capture generational shifts in attitudes.

4.3.1 Educational qualifications of respondents

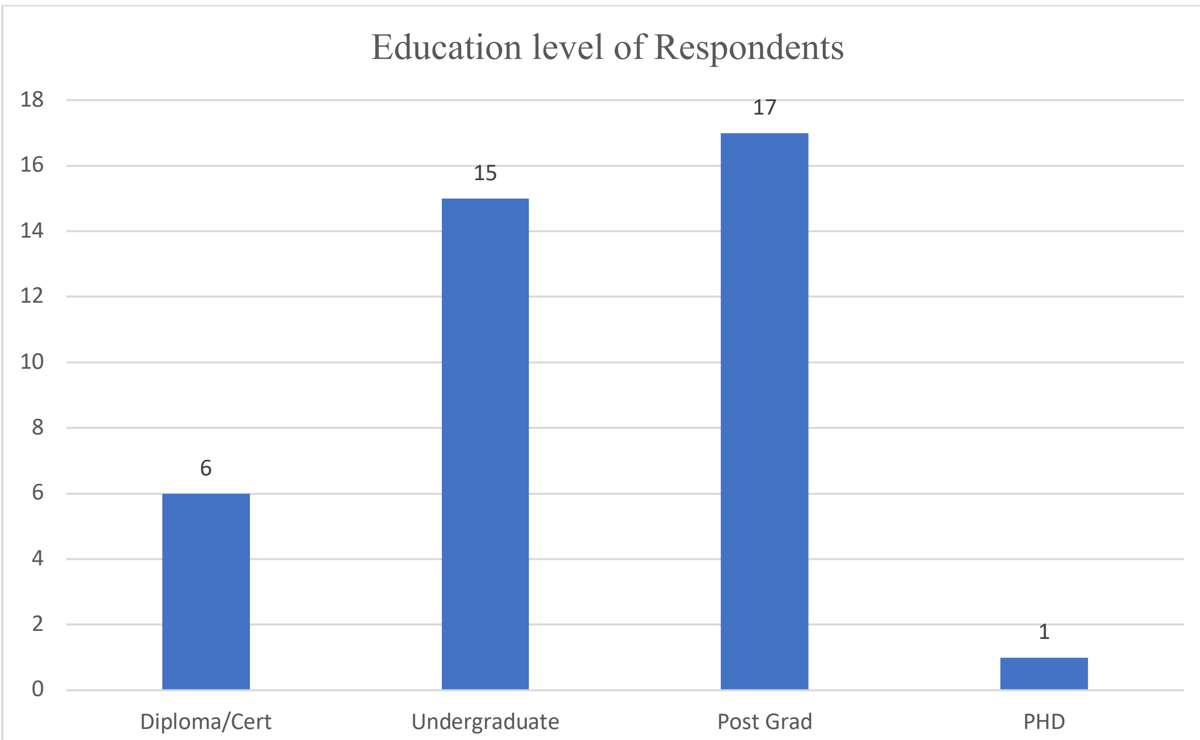

Figure 4.4: Education level of study respondents

Source: Field data

Analysis of educational attainment among respondents revealed a highly knowledgeable and competent respondent base, with 6 holding a diploma or certificate, 15 holding an undergraduate qualification, 17 holding postgraduate qualifications, and 1 holding a doctorate. Such a profile was noted as a recognised strength in this study, as it enhanced the validity of analytic interpretations and allowed for the interrogation of complex policy and procedural matters. The presence of respondents with advanced qualifications is consistent with the professional requirements of leadership roles in Zimbabwe's NECs and related institutions. The next sections present and discuss the findings of the study, thematised around the study objectives as given in detail in the following sections below:

4.3 Thematic Analysis under Objective 1: Evaluation of the effectiveness of the labour dispute resolution mechanisms used in Zimbabwe

4.3.1 Assessment of period before Labour Amendment Act Number 5 of 2015

Although there were mixed sentiments, a majority (25) of the respondents generally reported that the dispute resolution process before the Labour Amendment Act Number 5 of 2015 was organised and expeditious and accorded the MPSL&SW just enough power to be effective as a regulator. Although some delays and cost implications were alluded to, the process was mostly described as flexible and quasi-judicial, with binding outcomes. There were reported symbiotic relationships between stages in dispute resolution (i.e., conciliation and arbitration), to the extent that this increased the likelihood of bringing a matter to finality based essentially on those two stages, without too many complex intervening stages. The respondents who refuted this notion, however, reported that the process was rigid and fraught with bias and corruption, particularly regarding independent arbitration. The more specific issues raised by the respondents are categorised under the themes shown in Figure 4.5 below, with subsequent elaboration on each theme.

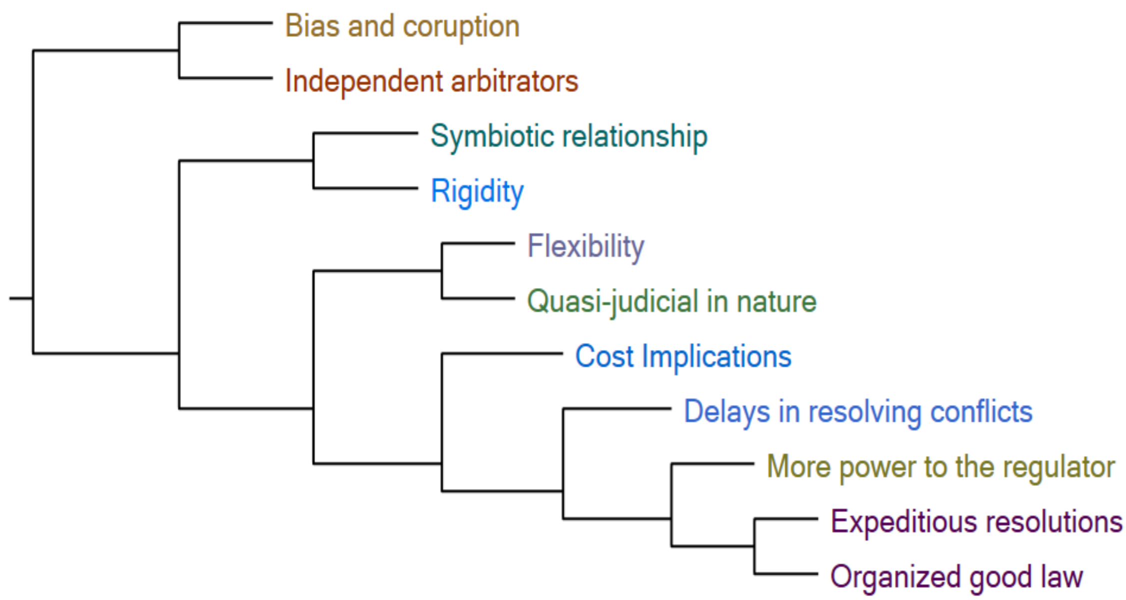

Figure 4.5: Themes for assessment of the period before the Labour Amendment Number 5 of 2015
Source: Field data

4.3.2 Expeditious resolutions and organised structure of the dispute resolution process facilitated by conciliators and independent arbitrators

Study findings revealed that a majority (24) of respondents generally viewed the pre-Labour Amendment Act Number 5 of 2015 dispute resolution framework as efficient, straightforward, and well organised. Respondents such as R13, R12, and R24 emphasised that the process was faster and less bureaucratic because it involved only two main stages, conciliation and arbitration. R13 responded as follows,

The ADR process before Amendment Number 5 was somehow faster as it only involved two stages, which were conciliation and arbitration." R24 also added that *"at that time,* *cases moved quickly as there was only conciliation and arbitration, so disputes didn't drag.*

R36 also praised this simplicity and noted that the clear procedural steps helped cases resolve quickly. Further, respondents, including R18, R19, R34 and R36, underscored the clear procedural structure of the system, noting that when conciliation failed, a certificate of no settlement would be issued, and the matter would immediately proceed to arbitration. This was supported by R1, R3, R20 and R23, who commended the robustness of this framework, explaining that most disputes were resolved at conciliation, while arbitration would serve as an effective final step. Respondent R4 further noted that the subsequent arbitration was a very quick, short process, with arbitral awards holding the same legal weight as High Court judgments. Respondents further characterised the pre-2015 process as a coherent and expeditious mechanism led by conciliators and independent arbitrators, which facilitated the timely and orderly resolution of disputes.

4.3.3 Flexibility and quasi-judicial nature of pre-2015 labour dispute resolution mechanisms

Respondents R4, R6, R20, R21, R33, and R36 highlighted the flexibility and quasi-judicial nature of dispute-resolution mechanisms prior to the Labour Amendment Number 5 of 2015. The reliance on ADR methods, especially conciliation and arbitration, was viewed as having created a more informal, user-friendly, and accessible process. Respondent R21 explained that these mechanisms operated outside the rigid procedural frameworks of formal courts, enabling parties to present their cases freely and, where necessary, in local languages. Following the 2015 amendment, however, R21 noted that the introduction of draft rulings and the requirement for court confirmation of decisions made the process more rigid and formal. This shift was perceived as reducing flexibility and increasing complexity, making the system more difficult for individuals without legal training to navigate. These views aligned with international recommendations from the ILO (2023) and the EU (2023), which encouraged the use of ADR mechanisms, such as conciliation and arbitration, for their speed, affordability, and flexibility compared with formal adjudication.

It was noteworthy that all the respondents described conciliation and arbitration as inclusive, informal, and participatory methods that promoted direct engagement between disputing parties. ADR mechanisms were further commended for fostering collaboration and problem-solving rather than confrontation. As respondent R5 emphasised, "*Alternative dispute resolution is more favourable to lay people. It is accommodating and allows individuals to engage without needing legal representation, unlike going to the courts, where you need to understand strict legal procedures.*"

Likewise, R6 observed, "*Conciliation, in particular, is effective because it allows both parties to reach a mutual understanding. It isn't about winning or losing, but about finding middle ground.*"

Such perspectives suggest that ADR methods helped bridge the gap between formal legal systems and the practical realities faced by ordinary workers and employers. These methods' flexibility thus enabled disputants to focus on substantive issues rather than procedural technicalities, while their less informal nature made justice more accessible to those lacking legal expertise or resources. Respondents generally viewed ADR as a collaborative and people-centred approach that supported fairness and constructive dialogue.

The less formal and quasi-judicial nature of ADR processes was also identified as a key strength of the period before the Labour Amendment Number 5 of 2012 system. Respondents appreciated that proceedings were conducted in an approachable and inclusive manner, free from the intimidating atmosphere of formal courts. R36 explained that, "*The process avoided the strict rules of courts, allowing people to present themselves in a more open and accessible manner, free from the constraints typically associated with formal legal proceedings.*"

Similarly, R5 reflected on the relaxed and participatory environment fostered by ADR, "*People were free to express themselves in a manner that felt natural and uninhibited. They were not required to conform to strict formats or adhere to complex legal formalities, which often create barriers to genuine communication.*"

All the respondents concurred that the use of local languages and simplified procedures promoted inclusivity and understanding. The absence of rigid procedural requirements encouraged open dialogue and equal participation regardless of educational or socio-economic background. This informality was viewed as particularly beneficial for purposes of maintaining workplace relationships while ensuring equitable access to justice. Thus, almost all the respondents described ADR under the pre-2015 framework as accessible, flexible, and empowering, emphasising its capacity to deliver fair outcomes without the barriers commonly associated with formal litigation.

4.3.4 Challenges encountered during dispute resolution before the Labour Amendment Act Number 5 of 2015

While more than 90% of respondents acknowledged that the dispute resolution system prior the Labour Amendment Act Number 5 of 2015 was effective, several challenges were identified. These included bias and corruption, high arbitration costs, delays in resolving disputes, an imbalance of regulatory power, and employer non-compliance with ADR outcomes. These challenges collectively undermined confidence in the system and were contended to have contributed to the eventual shift away from the pre-2015 framework. These responses from the study are detailed in the following sections:

4.3.4.1 Bias and corruption

In discussing the challenges, a recurring theme among respondents was the perception of bias and corruption in the pre-2015 dispute-resolution mechanisms. For instance, R8 had this to say, *"Arbitrators were handing down absurd decisions or arbitral awards, and the belief was that they were being corrupt and receiving bribes."* Similarly, R12 noted that *"there were corruption allegations as well, hence the work of Labour Officers, Designated Agents, and Arbitrators had to be checked."* Perceptions of corruption were also further linked to the NECs, which were viewed as favouring certain parties. R20 explained, *"There was a belief that NEC officials are corrupt,"* which arguably influenced the decision to amend the Labour Act. Respondents such as R12, R28 and R36, however, noted that corruption was not confined to NECs but rather a broader systemic issue affecting various actors in dispute resolution processes. R36 particularly noted that *"it was not only the NEC's officials, but even independent arbitrators also showed questionable practices."* This reveals that corrupt tendencies in dispute resolution created an institutional crisis.

4.4.4.2 Unfavourable costs of arbitrations

High arbitration costs emerged as a significant barrier to justice, particularly for employees. R3, R26, R38, and R39 described arbitration as financially burdensome, often beyond the reach of ordinary workers. R38 stated, *"Arbitration fees were on the high side and beyond the reach of the majority of employees,"* while R39 added that the process was *"a heavy expense on parties who had lost jobs or were claiming unpaid salaries."* These costs discouraged employees from pursuing legitimate claims, leading to the perception that the system favoured employers. R26 also added that *"the process favoured those who could afford high fees,"* effectively marginalising disadvantaged employees. Conversely, R1 indicated that unions and employers' associations faced minimal financial burdens, as their members were better resourced. R1 further indicated that *"...the disputants were not asking for resources, especially the members from the union and the employers' association."* Some respondents, including R25, however, highlighted that those latter reforms sought to reduce these costs by empowering DAs to handle disputes internally, thereby minimising reliance on costly independent arbitrators.

4.4.4.3 Delays in resolving conflicts

Another common challenge reported pertained to delays in resolving disputes. R3, R8, and R15 indicated that arbitrators were not bound by specific timeframes, resulting in prolonged proceedings. R8 observed that *"Arbitrators were taking longer to resolve disputes and issue awards,"* while R36 described the pre-2015 process as *"quite slow, resulting in disputes taking longer to be resolved."* Delays were also attributed to judicial backlogs at the Labour Court, which handled cases from multiple industries, unlike NECs, which were industry-specific. R13 explained, *"The Labour Court does not deal with one industry as is found in the NECs… it is like a convergence of all industries; hence it could take some time."* Additionally, R20 pointed out that conciliation was not binding, therefore leading parties, particularly employers, to take it less seriously and request unnecessary postponements, which would, needless to say, further delay dispute resolution.

4.4.4.4 Shift of power to the regulator

R7, R10, R14, R20 and R38 also noted concerns regarding the centralisation of power in the hands of the regulator and the government. As R14 argued, *"The government, the regulator essentially yielded too much power instead of just regulating the legislation,"* describing the system as cumbersome and overly controlled. In contrast, R9 and R6 noted that earlier systems had more balanced roles, where LOs facilitated conciliation and arbitration without excessive regulatory interference. Over time, however, these roles evolved, with DAs assuming more responsibility, leading to uncertainty about procedural authority and consistency across institutions.

4.4.4.5 Employer non-compliance

Finally, R7, R10, R14 and R30 raised concerns about employer non-compliance with ADR outcomes. Some employers reportedly refused to implement conciliation or arbitration decisions, forcing employees to seek enforcement through higher courts. As R30 stated, *"Employers are also reluctant to implement some decisions that come through ADR… in most cases, then you go to higher courts to have enforcement take place."* This disregard for ADR outcomes reportedly undermined the credibility of the system and contributed to delays in achieving finality in labour disputes.

While the pre-2015 dispute resolution mechanisms were praised for their accessibility and structure, respondents emphasised that corruption, cost, delays, and overregulation significantly undermined their effectiveness and eroded public confidence, ultimately prompting the 2015 legislative reforms. These shortcomings collectively highlighted gaps in accountability and procedural consistency, prompting calls for legislative reform to restore trust and enhance regulatory balance in Zimbabwe's labour relations framework.

4.3.5 Assessment of period after Amendment 5 of 2015

Figure 4.6 below illustrates the thematic responses from study respondents regarding the efficacy of dispute resolution after Amendment 5 of 2015. As can be observed, the respondents noted that the post-2015 amendments had introduced significant challenges, shifting the focus toward greater formality, increased court involvement, and a loss of flexibility.

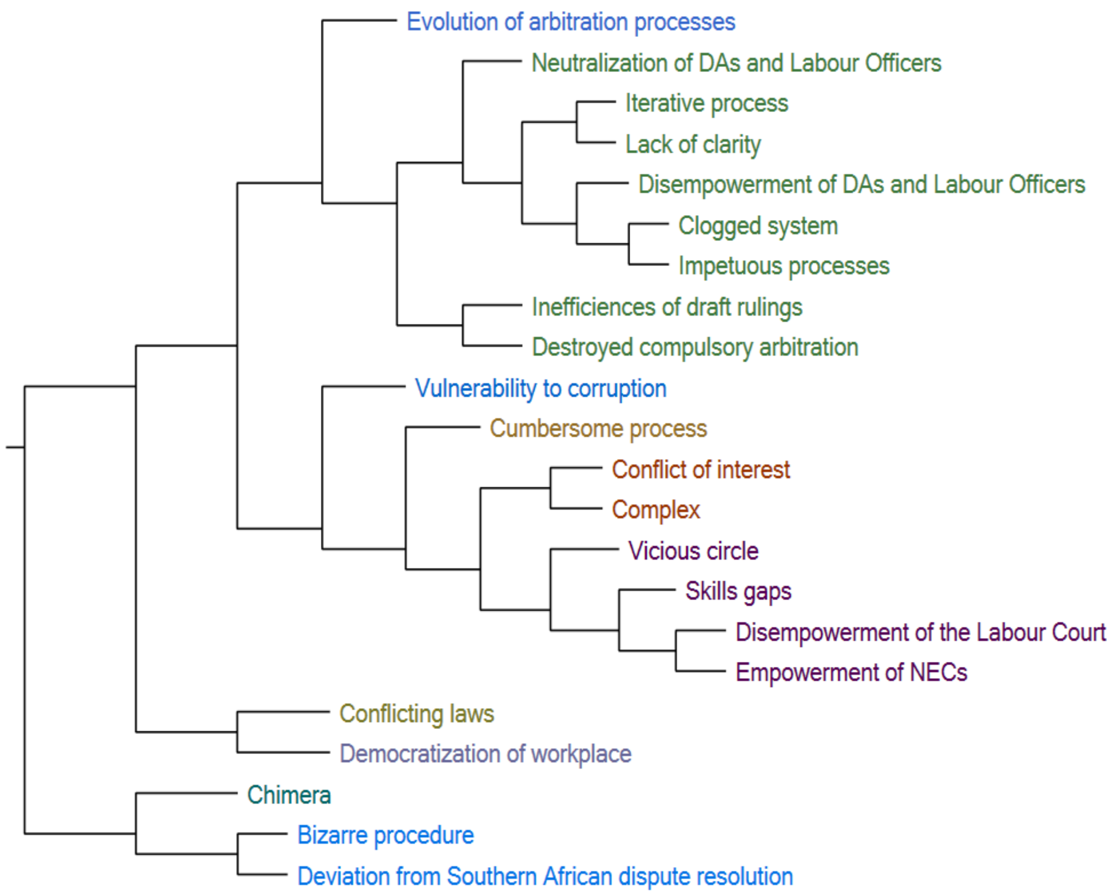

Figure 4.6: Themes for assessment of the period after Labour Amendment Act Number 5 of 2015

Source: Field Data

Findings under each of the emerging themes are given in greater detail in the following sections.

4.3.5.1 Evolution of a hybrid -ADR-litigation framework

Respondents such as R14 and R8 observed that the amendment had replaced the earlier, simpler model with a blended system that integrated ADR processes into a more judicial framework. R8 described this as a hybrid of ADR and litigation, while cautioning that the change ultimately made the process more complicated. Five respondents, including R20 and R34, expressed concern that the role of arbitration had significantly diminished, noting that the Labour Amendment Act Number 5 of 2015 almost did away with arbitration, thereby weakening an essential alternative to court litigation. R20 further stated that landmark cases such as ZIMOCO v. Memory Darikwa were frequently cited as pivotal in clarifying the jurisdiction and responsibilities of DAs and LOs. R33 highlighted that the judgment distinguished between redressing and attempting to redress vis-à-vis conciliation and determinations, while R5 cautioned that the amendment blurred boundaries, drawing DAs into disputes beyond their adjudicative scope. Similarly, R9 referred to the "Darikwa isoquant" decision, which empowered DAs to determine matters to finality but required them to conciliate first. Uncertainties also surrounded the appeal process in the post-amendment era, as noted by R17. The respondent questioned the Labour Court's power to entertain appeals under the Labour Act itself, underscoring potential legal gaps that may require higher judicial interpretation. Collectively, the findings illustrated that while the hybrid ADR-litigation framework aimed to enhance procedural rigour and reduce abuse, it instead introduced legal ambiguities, overlapping roles, and concerns about access to justice within Zimbabwe's post-2015 labour dispute resolution landscape.

4.3.5.2 Neutralisation of designated agents and labour officers' powers

A dominant theme emerging from the respondents pertained to the neutralisation and disempowerment of Designated Agents and Labour Officers following the 2015 amendments. Study respondents R1, R2, R3, R4, R20, R24, and R25 described how DAs, once central to the dispute resolution process, were relegated to clerical and facilitative roles, thereby losing their prior authority to issue binding determinations. R20 specifically mentioned that they were now required to prepare draft rulings subject to Labour Court confirmation, effectively stripping them of independent decision-making powers. R30 similarly emphasised that *"DAs can no longer finalise cases, they only draft rulings,"* capturing the loss of the DAs' independent power.

R14 and R17 further noted that DAs' roles had been reduced to neutral persons who only conciliated, while R6 observed that the amendment neutralised the powers of DAs and labour officers as they could no longer resolve disputes conclusively. R8 and R36 acknowledged that these reforms were intended to curb corruption but conceded that rulings now had no legal effect without confirmation by a Labour Court judge. The resulting reliance on the Labour Court created bottlenecks, with R20 lamenting that the system was clogged with petty issues that could previously have been handled at lower levels. Meanwhile, R1, R12, and R19 highlighted that this restructured model eroded the efficiency and autonomy that had defined the pre-2015 system. R28 emphasised that DAs could no longer finalise matters, while R19 linked the confusion over DAs' powers to subsequent legislative developments, such as the transition from voluntary to statutory

NECs. The findings, therefore, indicated that the Labour Amendment Act Number 5 of 2015 significantly weakened the institutional authority of DAs and LOs, increasing reliance on the courts, contributing to administrative inefficiencies and prolonged case resolution times.

4.3.5.3 Iterative, ambiguous, and cumbersome processes

Respondents consistently described the post-2015 dispute resolution framework as iterative, ambiguous, and cumbersome, characteristics noted to undermine the intended efficiency of the reforms. The amendment's procedures reportedly often led to repeated cycles of conciliation, arbitration, and court confirmation, thereby delaying final outcomes. R15, R17, R3, R4, and R25 noted concern about cycles of conciliation, with seemingly no resolution in sight. A ruling is issued and confirmed, while R7 and R38 describe a protracted series of steps that extended the resolution timeline.

R21 criticised the law as rushed and reactionary, while R12 observed that the parties and institutions involved were not entirely sure of their mandate. Respondents such as R3, R22, and R30 further described the legislative framework as confused and poorly crafted, resulting in inconsistent application by LOs and DAs. This uncertainty was compounded by overlapping jurisdictional boundaries and inconsistent enforcement mechanisms, as discussed by respondents R18 and R19, with R30 adding that it became unclear which institution had final authority at each stage.

A recurring issue from conversations with the respondents was the clogging of the Labour Court with cases that could have been resolved through ADR. R20 emphasised that *"the Labour Court was clogged with disputes that could have otherwise been resolved by alternative dispute resolution",* while R8 and R26 noted that there were now so many stages involved, making the process overly complex. R21 specifically cited the Drum City and ZIMOCO judgments as attempts to clarify these procedural ambiguities, although most respondents felt that these rulings further exposed inconsistencies in the law. Meanwhile, R11, R21 and R30 characterised the confirmation process as cumbersome, contrary to the Labour Act's goal of prompt dispute resolution. The cumulative effect of these challenges was a prolonged, confusing, and reactionary system that reportedly left disputants disillusioned and overburdened the judicial system. All the respondents agreed that the 2015 reforms, while well-intentioned, had undermined efficiency, accessibility, and the spirit of ADR, thus signalling a need for clearer legislation, streamlined procedures, and restoration of authority to lower-level labour institutions.

4.3.5.4 Inefficiencies in draft rulings

A dominant concern among respondents was the inefficiency of the draft-ruling system introduced by the 2015 Labour Amendment. Respondents such as R33, R34 and R38 linked this inefficiency to the removal of arbitration, procedural complexity, and the weakened authority of LOs and DAs. The elimination of arbitration reportedly reduced the flexibility of the dispute resolution framework, narrowing the avenues through which cases could be efficiently settled. As R17 observed, *"With the removal of arbitration, one* *layer of our alternative dispute resolution mechanisms was actually removed, resulting in longer timelines and reduced efficiency."*

Similarly, R37 noted that "*Labour Officers and Designated Agents' powers were taken away",*

which compounded inefficiencies by overburdening the already congested Labour Court system.

The introduction of draft rulings, which had no legal effect until confirmed by the Labour Court, further complicated proceedings. R23 explained, *"Draft rulings have no legal effect until such a time when they are confirmed by the Labour Court,"* leading to delays and perceptions of bias. Labour Officers and DAs were required to justify their draft rulings before the Court, placing them in potentially conflicted and compromised positions. This dual role reportedly eroded trust, as respondents such as R23 indicated, *"People sort of lost confidence in the DAs and Labour Officers… at some point they are part of the dictates."* Respondents viewed this system as cumbersome, time-consuming, and inconsistent with the principles of accessible justice that had characterised the pre-2015 period.

Despite the widespread criticism, 5 respondents noted incremental improvements with subsequent adjustments. R19 highlighted the transition from draft rulings to final determinations, explaining, *"Now the determinations are final, it's no longer the draft,"* and that *"once it is registered, it becomes enforceable."* Nevertheless, most respondents, including R33 and R36, emphasised that enforcement issues remained unresolved and called for further legislative reform to clarify enforcement mechanisms and eliminate residual inefficiencies. The findings, therefore, show that while the draft ruling system was intended to enhance procedural legitimacy, it instead introduced new inefficiencies, blurred roles, and weakened confidence in the resolution of labour disputes.

4.3.5.5 Severe curtailment of compulsory arbitration

R21 asserted that the amendment dealt a heavy blow, virtually curtailing, if not destroying, the effectiveness of compulsory arbitration as a mechanism. R21 elaborated that arbitration was replaced by the process of confirmation and draft rulings, which introduced delays and procedural bottlenecks. R6 had the following to say, "*Amendment Number 5 took away conciliation and arbitration, reducing Labour Officers to mere drafters of rulings awaiting court confirmation.*"

R4 outlined a long process involving consultation, certification, drafting, and confirmation under Section 93 of the Labour Act. This bureaucratic layering replaced the simplicity and finality of arbitration with a system that was regrettably slow, burdensome, and inaccessible. The change also reportedly eroded workers' rights, with R39 lamenting that the amendment created six possible stages at which the finality of a labour dispute would be determined, effectively diluting employees' right to appeal or to secure timely redress.

4.3.5.6 Vulnerability to corruption

R6, R16, R3, R7 and R39 consistently highlighted vulnerability to corruption as a major challenge emerging from the post-2015 labour dispute resolution framework. LOs and DAs were viewed as being under immense pressure to compromise their neutrality, often due to weak oversight, inadequate remuneration, and the ambiguity of their roles. R3 described the precarious position of DAs who had to deal with social partners who could at times be their employers, emphasising that maintaining impartiality thus required exceptional firmness. R3 also revealed that "employers can be funny" by offering bribes such as vehicles or housing, suggesting that financial vulnerability made DAs susceptible to unethical conduct.

Other respondents, such as R16, echoed concerns that the amendment's procedural changes blurred accountability and increased discretion, thereby creating opportunities for corruption. R13 noted that LOs and DAs lost their impartiality as they became embroiled in the very disputes they were supposed to adjudicate, while R15 suggested that some officers were *"not really interested parties,"* creating room for negligence or collusion. R25 agreed with these sentiments and noted that "*it appeared the DA was defending the employers' interest, yet he was simply fulfilling his duties*." In sum, these accounts revealed a system in which poor working conditions, high discretion, and weak institutional checks created a fertile environment for corrupt practices. The majority of respondents thus agreed that without structural reforms, ethical risks would persist, undermining both confidence in the system and the integrity of its outcomes.

4.3.5.7 Complexity of the post-2015 process

The post-amendment period was widely described as complex, technical, and confusing. Respondents such as R28 and R36 reported that the 2015 reforms lengthened the dispute resolution process and introduced multiple procedural layers that many practitioners struggled to navigate. R15 described the amendment as lengthening the process and introducing new technicalities and challenges, while R23 and R5 highlighted that draft rulings were invalid until confirmed, delaying enforcement. R2 pointed out the conflict of interest inherent in requiring adjudicators to justify their own rulings before the Labour Court, saying, *"You became part of the issue when you were just supposed to be an adjudicating authority."* This reveals the impartiality crisis which was created by the Labour Amendment Act Number 5 of 2015.

R5, R6, R10, R20 and R21 criticised the redundant confirmation process, with R10 questioning why Labour Court confirmation was necessary, asserting, *"It is not giving purity of narrative within the labour framework."* These complexities were seen as undermining efficiency and neutrality while placing unrealistic burdens on practitioners unfamiliar with court procedures. Respondents R2 and R15, however, noted that, despite the complications, the experience provided exposure to litigation and broadened the professional understanding of LOs and DAs. Respondents generally agreed that while the amendment expanded procedural formality, it compromised simplicity, neutrality, and accessibility, hallmarks of the earlier ADR-based model.

4.3.5.8 Conflict of Interest

Conflict of interest emerged as a pervasive issue following the 2015 amendment. Respondents highlighted how LOs and DAs, once neutral mediators, became both adjudicators and litigants, compromising impartiality. R2 observed, *"You became part of the issue when you were just supposed to be an adjudicating authority,"* while R1 confirmed that employers frequently alleged bias during confirmation hearings. R16 underscored the expectation of neutrality in judicial processes, warning that the amendment blurred this principle by forcing DAs to defend their own decisions in court. Respondents such as R3, R5, and R23 described how this dual role fostered distrust among social partners, with employers perceiving DAs as siding with workers and vice versa. R3 noted, *"The DA will be pitching himself on the side of the winning party,"* a dynamic that deepened acrimony between trade unions, employers, and the dispute resolution institutions. R25 also had this to say;

> *It may appear that the DA is defending the draft ruling against the employer, but in reality, he is simply fulfilling an administrative obligation. These accusations of bias can undermine the DA's perceived neutrality, causing parties to lose confidence in the process.*

R12 and R30 further indicated that the system created delays and confusion, as the parties and institutions involved were unsure of their mandates. The consensus among respondents was that the amendment entrenched structural conflict of interest, eroding trust and complicating the labour dispute resolution process.

4.3.5.9 The vicious circle of unresolved disputes

35 of the respondents described the post-2015 dispute resolution system as a vicious circle, characterised by non-final decisions, enforcement challenges, and recurring disputes. For instance, R3 noted that certificates of settlement could be easily disregarded, creating a cycle of unresolved cases. R14 echoed this similar frustration, stating, *"You can celebrate success, but then you can't gain anything out of it."* R21 further added that DAs had ceased to be conduits for settlement because their determinations required confirmation by the Labour Court, undermining finality.

The lengthened procedures and bureaucratic delays reportedly further perpetuated this cycle. R4 compared the earlier arbitration system to a High Court judgment, contrasting it with the new, long, winding road. Employers were also seen as exploiting these inefficiencies to intentionally delay outcomes. As R39 explained, "*Employers could take advantage of the system's inefficiencies to prolong the resolution of disputes."* In essence, the findings depict a self-perpetuating cycle of delay, non-enforcement, and procedural redundancy, which frustrated stakeholders.

4.3.5.10 Skills gaps and reliance on experiential learning among DAs

Respondents, including R1, R2, R24 and R25, highlighted insufficient technical knowledge, limited understanding of court rules, and a lack of structured training. R2 candidly stated, *"We did not get training, but we got some form of training after we were now in the system,"* indicating reliance on experiential learning. Similarly, R15 and R31 observed that many DAs were failing to understand and comprehend Labour Court procedures, while R9 noted, *"People had to understand labour court rules despite lacking legal backgrounds."*

R1, R2, R3 and R4 acknowledged gradual improvement through informal learning and peer collaboration. R4 mentioned that sharing determinations with colleagues helped bridge knowledge gaps. However, R17 and R18 emphasised that some DAs still lacked the technical competence to justify their decisions, with R26 stressing that legal training was necessary, as most DAs lacked a legal background. R10 further added that DAs should be specialised in their industries to ensure informed judgments. Most of the respondents, therefore, identified a clear need for systematic capacity-building programmes to equip officers with the legal and procedural expertise required under the post-2015 framework

4.3.5.11 Challenges with ambiguous legal provisions

All the respondents highlighted conflicting and ambiguous legal provisions as a persistent challenge after the 2015 amendment. Respondents such as R3 described the legal framework as "confused" and insufficiently supportive of dispute resolution, citing unclear mandates for DAs under the Labour Act. Reference was made to key judgments such as ZIMOCO and Sakarombe, which were necessary to clarify DAs' authority, but also created further inconsistencies. R3 remarked that the courts would direct DAs to follow a specific section of the Labour Act, yet the section would not be specific. This underscored the dependence on judicial interpretation rather than statutory clarity.

All the respondents expressed concern over enforcement ambiguities. R19 specifically stated, *“Once it is registered, it becomes enforceable,”* but added that an amendment to the Act is needed to clearly bring out that enforcement provision. The overlapping roles of DAs and LOs, coupled with inconsistent appeal procedures, reportedly contributed to confusion and uneven application of the law. These findings demonstrate that conflicting and incomplete legal provisions have hindered effective dispute resolution, calling for legislative reform to harmonise mandates, clarify enforcement, and strengthen institutional coherence.

4.3.6 Assessment of the dispute resolution process in Zimbabwe after Labour Amendment Act Number 11 of 2023

Figure 4.7 below illustrates the issues raised by the respondents after the Labour Amendment Act 11 Number of 2023, in an attempt to redress challenges brought about by the Labour Amendment Act Number 5 of 2015.

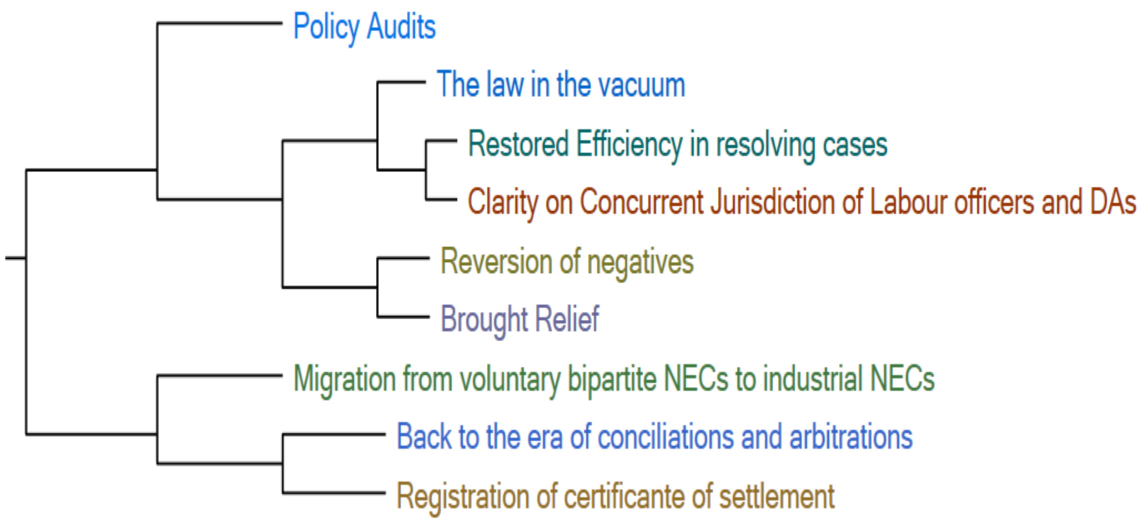

Figure 4.7: Themes for assessment of the dispute resolution process in Zimbabwe after Amendment 11 of 2023

Source: Fieldwork

4.3.6.1 Restored efficiency in resolving cases

All the respondents consistently noted improved efficiency in labour dispute resolution following Amendment Number 11 of 2023. The removal of the cumbersome draft ruling confirmation process and other bureaucratic steps introduced by Amendment Number 5 was seen as a major improvement. As R20 observed, *"With the coming up of the labour amendment, it is no longer necessary to go through lengthy processes."* R11 highlighted that, prior to the amendment, cases took longer than expected… resources were a bottleneck to the prompt settlement of disputes.

A major milestone is the restoration of enforceability of certificates of settlement, which was anticipated to strengthen the role of conciliation and arbitration. R17 explained, *"Enforcement of certificates of settlement brought back the power of conciliation and arbitration."* These provisions revived the authority of NECs and LOs, allowing quicker, less adversarial resolutions. R14 added, *"The amendment gave NECs and labour officers the authority to consider and to some extent determine matters, a change that reduced the Labour Court's workload."* As R17 noted, *"The system was clogged with petty issues… that a labour officer or designated agent could easily resolve."* A few respondents, such as R3, R21, R35 and R37, however, cautioned that some processes, though streamlined, could now require legal representation, potentially limiting workers' access. R25 and R26 also indicated challenges in enforcing certificates of settlement due to gaps in the law. Respondents generally viewed the Labour Amendment Number 11 of 2023 as a significant step toward restoring procedural efficiency and institutional balance in labour dispute resolution.

4.3.6.2 Clarity on concurrent jurisdiction between labour officers and designated agents

The 2023 amendment introduced concurrent jurisdiction between LOs and DAs, addressing delays that had plagued the earlier system. Section 63 now provides that if a DA fails to act within 30 days, a LO may assume jurisdiction. R20 noted,

> *If a matter is reported to a designated agent and 30 days lapse before proceedings commence, a party can approach a labour officer to execute their mandate."*

> Similarly, R6 emphasised, *“If a designated agent does not dispose of a case within a certain period, labour officers are now empowered to intervene.*

This mechanism was meant to ensure timely resolution and prevent disputes from stagnating at one level. R17 observed that the amendment encourages efficiency within employment councils by holding both DAs and LOs accountable. Respondents, like R6, suggested the need for internal supervisory processes within NECs to ensure compliance with timeframes. The concurrent jurisdiction provision was, however, viewed as a positive development that promotes efficiency, accountability, and timeliness in dispute resolution.

4.3.6.3 Relief and reversion of negatives

A majority of the respondents (30) regarded the Labour Amendment Act Number 11 of 2023 as a corrective measure that reversed the negative consequences of the Labour Amendment Act Number 5 of 2015. R20 remarked, “*We went back to the position prior to 2015,”* while R17 confirmed, *“The conciliation process as we used to know it prior to 2015, the arbitration process, both compulsory and voluntary… was brought back.”* This reversion eliminated cumbersome procedures, such as the confirmation of draft rulings, which respondents such as R11 and R37 described as a lengthy process in which draft rulings were subjected to further scrutiny at the Labour Court. The new framework reportedly empowered LOs and DAs to make binding decisions, though some respondents cautioned that reduced court oversight might compromise accountability.

R8 noted that while the amendment *"aimed to curb delays… it also removed the Labour Court's oversight."* Although the amendment restored efficiency, concerns about corruption resurfaced. R13 pointed to *"the absence of proper set guidelines to screen arbitrators,"* warning that this could reintroduce unethical practices. Nonetheless, respondents acknowledged that constitutional ambiguities from the Labour Amendment Act Number 5 of 2015 were resolved, with R17 stating that *"constitutional questions that arose with Amendment Number 5 were all removed."* Respondents therefore viewed the Labour Amendment Act Number 11 of 2023 as a major relief, reinstating effective dispute resolution mechanisms and addressing prior legal uncertainties.

4.3.6.4 A return to the era of conciliations and arbitrations

Respondents widely discussed the return to conciliation and arbitration under the 2023 amendment. While many (16) praised its efficiency, others (7) expressed concern that it revived pre-2015 challenges. R35 noted, *"The process was slow, especially where the employer would try to frustrate it,"* and R9 cautioned, *"We have gone back to exorbitant arbitrator fees and other challenges we faced before 2015."* Further, concerns about corruption and lack of regulation also emerged. R13 mentioned corruption allegations against arbitrators and the lack of properly established guidelines for their screening. R9 emphasised the need for regulations governing arbitrations, particularly regarding fees. Despite these reservations, others saw the return to arbitration as beneficial. R11 argued that it "promotes prompt settlement of disputes, while R20 asserted that "*sanity has been restored to arbitration*". All respondents agreed that although the amendment reintroduced familiar challenges, its potential for faster, more accessible dispute resolution outweighed the drawbacks. The consensus was that stronger regulatory oversight would be necessary to sustain these improvements and prevent the re-emergence of corruption or inefficiency.

4.3.6.5 The law in the vacuum

Several respondents (14) highlighted the persistence of the law in a vacuum, where new legislative provisions fail to align with existing institutional frameworks. R33 critiqued Section 101 of the Labour Act for creating confusion between NEC appeals committees and designated agent appeal procedures, noting that these committees could, in fact, be *ultra vires* because, in terms of S101 of the Act, an appeal was not meant to be directed to an appeals committee anymore, but directed rather to the DAs. This inconsistency, respondents argued, undermines clarity and uniformity in the appeal process. R20 also raised concerns about unequal oversight, observing, *"The Registrar is only having oversight on designated agents and penalising them without having the same on the labour officer, yet these authorities are at par."* He further argued,*" that it would have been more appropriate if both were regulated by the same provisions, as both could delay or act improperly."* This selective accountability, rooted in perceptions that NECs were more corrupt, has left LOs relatively unchecked. R1, R2, R3, R4, R20, R24 and R25 all agreed that these inconsistencies reflect gaps in legislative design. As R20 observed, *"If a labour officer delays, a party is still left with that option of seeking a mandamus order in the High Court… to try and force the labour officer to do his duties."* Thus, while the Labour Amendment Act Number 11 of 2023 addressed several procedural inefficiencies, it failed to harmonise overlapping jurisdictions or create balanced accountability mechanisms, leaving residual gaps in the legal framework.

4.3.7 Evaluating the expeditious handling of labour disputes as an effectiveness indicator - Case volumes and time to resolution (2015-2023)

The analysis of the timeous and expeditious handling of labour disputes spans the three legislative phases, highlighting timeliness as one of the most persistent challenges within Zimbabwe's labour dispute resolution framework. Across all periods, almost all the respondents consistently identified delays in finalising disputes as a major impediment to effectiveness. Findings from the respondents revealed diverse experiences regarding the number of cases handled since the promulgation of the Labour Amendment Act Number 5 of 2015, the duration of dispute resolution, and the underlying causes of these delays. Respondents' estimates varied by industry, reflecting differences in sectoral structures and dispute typologies. For instance, R14 reported handling between 40 and 50 disputes, attributing this to the large size of his industry, while R19 estimated fewer than 50. R18 had managed more than 20 cases across two NECs, covering retrenchments, dismissals, and collective bargaining matters, whereas R17 and R16 emphasised the prevalence of individual grievances relating to employment conditions. R23 and noted that case inflows remained consistent over the years, with workers regularly reporting employment rights violations to their respective NECs.

In terms of timeframes, respondents reported wide variations in timeous resolution. R14 indicated that cases could take up to six months to conclude, particularly when employers deliberately delayed proceedings, while R19 observed that some cases were finalised within the prescribed time limits. However, disputes requiring arbitration or court confirmation were described as lengthy and bureaucratic, with respondents such as R13 and R17 citing average durations of one to five years at the Labour Court due to procedural technicalities and backlogs. Although R17 noted some improvement, reducing resolution times to six months or a year in certain cases, most respondents agreed that the post-2015 system remained significantly slower than before. The introduction of additional stages, such as the draft ruling and confirmation process, and, later, the mediative arbitration introduced by the 2023 Amendment, was identified as a structural contributor to delays, particularly because they lacked defined timelines. R21 and R35 emphasised that conflicting provisions and unclear jurisdictional boundaries further prolonged litigation, while R16, R12 and R30 attributed delays to repeated postponements, complex multi-party cases, and the rising cost of legal processes, which discouraged parties, especially employees, from pursuing disputes to a final resolution.

Sectoral data further reinforce these findings. Records (Figure 4.4) from the NEC for the Energy Sector (2015-2023) indicate a relatively stable caseload averaging around 100 disputes annually, with the lowest numbers recorded in 2020 and 2021 due to COVID-19-related industrial slowdowns. Although most cases were resolved at the confirmation stage before the Labour Court, R16 noted that appeals and confirmations often extended the process by an additional three to six months, largely due to court backlogs. R3 and R4 indicated that the relatively stable caseload was attributed to parties learning from precedent cases. This would reduce the need of having similar cases with the same attributes being presented to the NEC for resolution.

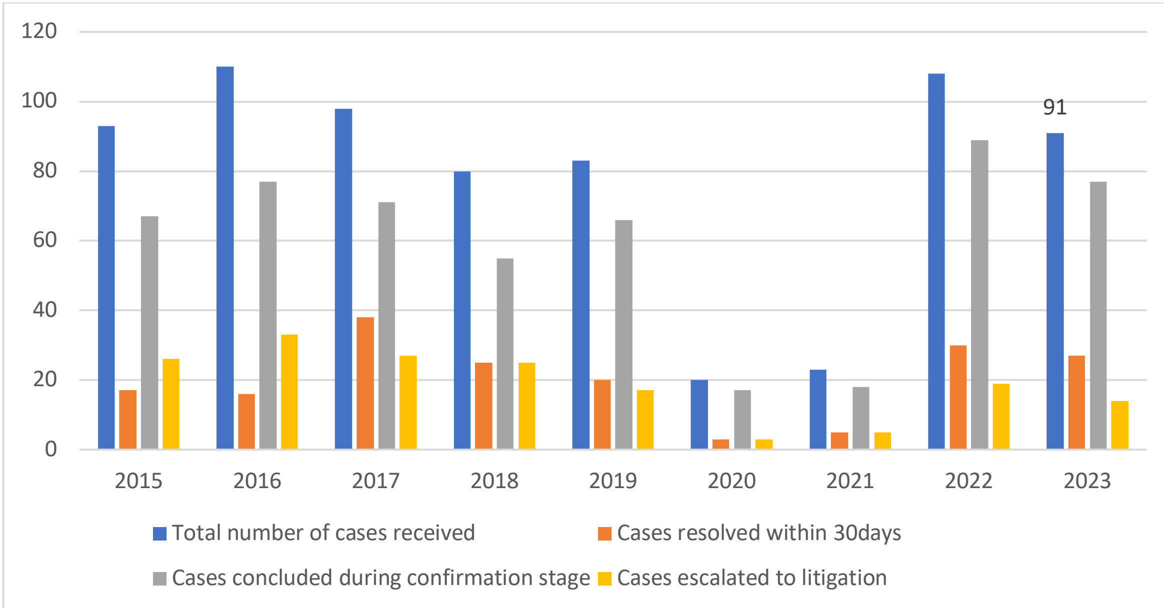

Figure 4.8: NEC for the Energy Sector Case flow, 2015-2024

Source: Field data

Conversely, the NEC for Welfare and Educational Institutions (NECWEI) recorded longer timelines and a high incidence of repeat disputes, with 360 recurrent cases involving the same parties between 2015 and June 2023. These recurrent disputes primarily arose from underpayment issues following new collective bargaining agreements (CBAs), often linked to budgetary constraints in fee-dependent educational institutions. The failure of some employers to meet back pay obligations triggered a cycle of repeated grievances and delayed compliance, exacerbating inequalities in line with Rawls' difference principle, which seeks fairness for the least advantaged. The NEC's inability to enforce the back pay obligations signals a collapse of the rule-governed mechanisms through which pluralism expects competing interests to be channelled (Kahn-Freund,1983).

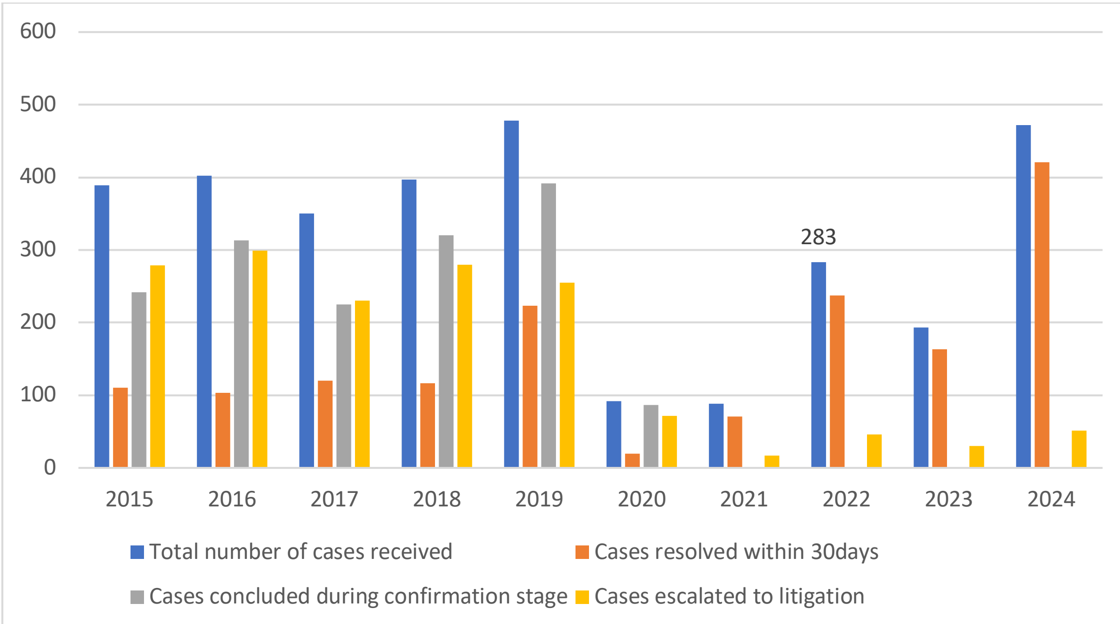

Figure 4.9: NEC for the Welfare and Educational Institutions Statistics (2015- 2014)

Source: NEC for the Welfare and Educational Institutions Records

R17, R33 and R34 noted institutional and behavioural contributors to delay, while R30 cited staff shortages among DAs as contributing to delays. R16 specifically mentioned inconsistent performance among NEC personnel and confusion among workers about where to file disputes, with some reporting to employers' associations rather than unions or NECs. Emotional factors also influenced timelines; R17 observed that employees' emotional investment in disputes sometimes led to an unwillingness to accept reasonable settlements, prolonging conciliation processes. Moreover, R26 and R30 indicated that some employers were reported to use deliberate delaying tactics to frustrate employees until potential awards lost value due to inflation and time erosion.

4.3.8 Monitoring mechanisms for efficient service delivery in dispute resolution by NECs

The study noted that the effectiveness of dispute resolution within NECs was increasingly shaped by monitoring mechanisms aimed at ensuring efficiency, transparency, and accountability. One of the most significant recent developments highlighted by R13 and R15 was the introduction of the Integrated Electronic Case Management System (IECMS). This digital platform enabled the online filing, tracking, and management of labour disputes, substantially reducing delays and administrative inefficiencies previously associated with manual case handling. By allowing cases to be monitored electronically in real time, the IECMS was seen to enhance transparency and minimise the risks of lost or tampered documents. R5, R9, R12, and R15 emphasised that the system had proven instrumental in reducing case stagnation within registries and in improving communication among disputing parties, LOs, and NEC administrators. R31 also indicated that managing cases using an electronic management system meant that all cases would be fully accounted for, unlike physical files that could be forgotten and accumulate without action.

Despite its positive impact, respondents (R15, R31, and R32) still noted several implementation challenges, particularly regarding accessibility for individuals with limited digital literacy or resources. R15 acknowledged that the Judicial Service Commission (JSC) had established electronic kiosks in major urban centres and magistrates' courts to enable users to conveniently file documents and access the IECMS platform. These kiosks represented a proactive attempt to bridge the digital divide, extending access to those in remote areas who may lack personal internet connectivity. Additionally, the JSC had undertaken various information dissemination initiatives, including public awareness campaigns on radio and social media, as well as open days to educate citizens about the system's functionality. These multi-channel outreach strategies have notably been effective in promoting awareness and encouraging broader participation in the digital dispute resolution process. Nonetheless, respondents cautioned that continued technical support and system maintenance were critical to ensuring the platform's long-term success, and that further outreach was required to engage marginalised communities still excluded from digital participation.

Beyond digital innovations, R8 and R20 highlighted a range of institutional oversight mechanisms designed to strengthen NEC accountability and efficiency. These include the regular attendance of Labour Office representatives at NEC meetings and symposiums, the mandatory submission of quarterly and annual performance reports, and the Registrar of Labour's authority to deregister incompetent or non-performing entities. The Registrar of Labour also has the power to intervene in cases where disputes have been unduly prolonged, a measure intended to enhance administrative responsiveness. These mechanisms collectively provide a structured framework for continuous monitoring and evaluation of NEC performance, ensuring that dispute resolution processes remain both credible and efficient. However, respondents emphasised that the success of these mechanisms depends heavily on consistent enforcement, adequate institutional capacity, and the proactive engagement of both regulators and social partners.

4.3.9 Discussion and interpretation of themes under Objective 1

The assessment of Zimbabwe's labour dispute resolution framework across the three legislative periods reveals a cyclical pattern of reform, experimentation, and partial restoration. The pre-2015 era promoted fair accessibility to dispute resolution and placed much trust on conciliation and arbitration as the primary mechanisms for resolving disputes. It performed reasonably well against three of the six effectiveness indicators. Regarding timeliness, the two-stage conciliation-arbitration model achieved faster resolution than the post-2015 hybrid model, consistent with the ACAS and CCMA comparative benchmarks identified in Chapter 2. Regarding accessibility, the informal, voluntary, and non-litigious nature of the proceedings, without mandatory legal representation, lowered the practical barriers to participation. This reflects Rawls' principle of fair equality of opportunity. The system was, however, deficient in enforceability as certificates of settlement were non-binding. This enforceability shortcoming, identified by all respondents as a systemic problem, is what the Rawlsian difference principle deems unjust. In pluralist terms, unenforceable outcomes hollow out the institutional counterweight that collective bargaining is designed to provide. The structurally weaker party is left without the protective mechanism pluralism regards as essential (Fox, 1974; Kahn Freund, 1983). Arbitral awards could also be delayed due to a lack of timelines. Studies by Mudoni (2017) and Gathongo and Van de Walt (2018) corroborate these findings and show that, under ADR, conciliation certificates were often non-binding; hence, disputes could not be brought to a finality. Madhuku (2012) also noted that although ADR was faster than litigation, the absence of statutory time limits led to delays.

The pre-2015 system's combination of procedural accessibility and substantive enforcement failure is the foundational institutional problem that successive legislative frameworks have attempted, and largely failed, to resolve.

The post-2015 regime represents a systematic regression across all six effectiveness indicators simultaneously. The introduction of draft rulings requiring Labour Court confirmation added procedural stages, lengthening the resolution of cases. This finding is corroborated by the MPSL&SW (2020) aggregate data, which show that fewer than 30,000 of 53,750 disputes were resolved within 30 days. The constitutionally identified impartiality deficit (ZIMOCO CCZ 6/20) signifies the most serious effectiveness failure of the post-2015 period, where DAs were required to defend their rulings as parties before the Labour Court. This structurally destroyed the impartiality on which the Rawlsian procedural fairness standard depends. Increased procedural complexities, high costs, and legal technicalities arising from the compulsory involvement of the Labour Court for confirmation purposes significantly reversed the accessibility gains of the pre-2015 ADR system. DAs' determinations under section 63(3a) also remained liquid documents, with no enforcement pathways confirmed in the *Nyanga Rural District Council HH-118-22 matter*. This created an enforcement loophole that made even successful outcomes practically worthless. Mucheche (2017) and Ndlovu et al. (2023) also confirm this position, noting that the restructuring under the Labour Amendment Act Number 5 of 2015 shifted the system away from the previous ADR cycle to a judicially dependent model in which rulings could not take effect until confirmed. 35 of 39 respondents described the post-2015 system as a 'vicious circle', and this measures against the ILO (2023) criterion that institutions must be perceived as legitimate. This finding constitutes a complete failure of institutional legitimacy, resulting in the erosion of stakeholder confidence.

While the intentions of the 2015 amendment were ostensibly positive, aiming to align labour law with the Constitution and promote fair labour practices (Uzhenyu, 2017), both the literature and the findings indicate the outcomes deviated from those intentions. No study in the literature reviewed outrightly defends the system under the post-Labour Amendment Act Number 5 of 2015 as effective. Scholars observed that after the Labour Amendment Act Number 5 of 2015, delays, limited accessibility, enforceability, and timeliness became prevalent in the NEC system without corresponding capacity improvements. Mucheche (2017) characterised the 2015 dispute resolution process as lengthy and complex, further noting that lengthy proceedings had significantly characterised dispute resolution after the amendment. However, the literature provides context that the amendment was a reaction to specific events, such as the Zuva case, which enabled mass terminations on notice. The law prohibited employers from terminating on notice, which improved job security, but it also complicated dispute resolution. The post-2015 period is therefore not a partial failure of effectiveness on one or two indicators; it is a systemic, simultaneous collapse across the entire effectiveness framework. This confirms the theoretical prediction that legislative reform without adequate constitutional design and institutional capacity building generates compounding rather than additive institutional dysfunction.

The Labour Amendment Act Number 11 of 2023 represents a partial restoration of effectiveness across the indicators of timeliness, accessibility, and enforceability. The restoration of the ADR model, the registrable certificates of settlement ensuring enforceability, and the concurrent jurisdiction provision address the gross procedural failures of the post-2015 regime. However, the post-2023 period reintroduces the pre-2015 vulnerabilities that originally motivated the 2015 amendment. The absence of effective arbitrator screening mechanisms still leaves the bias and corruption concerns unresolved. The Registrar of Labour exercises oversight over DAs but not over LOs, which have equivalent dispute-resolution responsibilities, creating a selective accountability framework that contradicts the pluralist requirement for balanced institutional governance. The selective accountability of DAs but not LOs creates a new asymmetry that the pluralist theory identifies as institutionally destabilising.

The DGL Investments matter's jurisdictional crisis demonstrates that the legislative base of the NEC system remains constitutionally fragile, affecting the dispute resolution framework. The post-2023 period is therefore best characterised as a necessary but inadequate corrective legislative reform. It removes the most acute dysfunctions of the post-2015 hybrid framework but does not yet provide the independent arbitrator accreditation, institutional architecture, enforceable timelines, balanced oversight of DAs and LOs and clear jurisdictional transitional provisions meant to sustain long-term effectiveness gains. This analytical conclusion directly motivates the reform model in Chapter 5.

The documentary evidence from both NECs systematically confirms the empirical findings about delay. The MPSL&SW (2020) aggregate statistics show a timeliness compliance rate below 56%. The UK's ACAS benchmark of 70% resolution before a tribunal, set out in Chapter 2, reveals that Zimbabwe's post-2015 dispute-resolution performance falls significantly below established international standards. The NECWEI's 360 recurrent disputes are analytically significant because they demonstrate a causal relationship between timeliness failure and dispute multiplication. When disputes for collective bargaining awards are not resolved in time to retain real value in a hyperinflationary economy, the underpayments continue to accumulate. This violates the Rawlsian basic liberties and difference principles, as the erosion of wages and benefits is continually felt by disadvantaged employees. The pluralist theory also reinforces that the structural inequality of bargaining power that the labour law exists to counteract is, on this evidence, being reproduced rather than corrected by the NEC system (Kahn-Freund, 1983). This is a feedback loop that any effective reform model must break. The cross-case comparison reveals that NECWEI's timeliness failures are primarily administrative in origin, with high-volume cases taking longer to settle, whereas the Energy NEC's timeliness failures are primarily structural, characterised by political interference that reduces DA independence and low DA staffing, resulting in overreliance on external arbitrators. A review of the literature by scholars such as Madhuku (2010) confirms the prevalence of administrative challenges in dispute resolution; however, the findings in this research amplify the impact of technical and structural constraints. This reveals that while the dispute resolution challenges faced by both NECs may be systemic, they are also sector-specific. These differences confirm that any dispute resolution reform must integrate national systemic legal fixes with sector-sensitive operational strategies. This is a distinction that the reform model in Chapter 5 addresses explicitly.

The IECMS embodies the potential and the limitations of technology-led institutional reform in a resource-constrained environment. Its contribution to effectiveness is real, particularly in administrative accountability and timeliness. However, it is distributed unevenly, with urban, formally employed, and digitally literate parties benefiting the most, while those in remote areas, in informal employment, and with limited access to technology benefit the least. These are the groups that Rawls' difference principle precisely requires the system to prioritise. This differential impact is consistent with the East Asian comparative finding in Chapter 2 that accessibility in dispute resolution must be institutionally enforced rather than culturally or technically assumed. The IECMS is therefore a necessary but partial effectiveness intervention. It addresses timeliness and confidence at the administrative level but does not substitute for the legislative and institutional reforms needed to address impartiality, enforceability and structural accessibility. Against the accessibility indicator, the JSC's establishment of kiosks at magistrates' courts and in some remote areas is a partial solution for groups most likely considered structurally disadvantaged. These are the groups that Rawls' difference principle prioritises. If implemented properly, the system's reduced document loss, real-time tracking, and more accountable case management address the "vicious circle" of unresolved disputes. This was identified by the majority of the respondents as the primary driver of reduced stakeholder confidence.

Across all three phases discussed above, the findings reveal that the effectiveness and expeditious handling of disputes remain critical weaknesses in Zimbabwe's labour dispute resolution system, despite successive legislative reforms. Although the Labour Act envisions resolution within 30 days, in practice, most cases take 6 months to a year. The assessment of Zimbabwe's labour dispute resolution framework across the three legislative periods reveals a cyclical pattern of reform, experimentation, and partial restoration. The cycle continues without any structural reforms, hence the need for the reform model proposed in Chapter 5.

4.4 Thematic Analysis under Study Objective 2 - Analysing the roles of key stakeholders in the dispute resolution processes in Zimbabwe

As noted earlier, this study's objective sought to examine the roles, relationships, and participation of key stakeholders in Zimbabwe's labour dispute resolution system. Drawing on insights from respondents across government, employer associations, trade unions, NECs, legal practitioners, and the labour courts, the analysis highlights the multi-layered governance structure underpinning the country's industrial relations framework. The objective is to understand how each stakeholder contributes to dispute prevention, management, and resolution, as well as to the formulation of labour policies that regulate employment relations. Labour dispute resolution in Zimbabwe operates within a tripartite framework involving the government, employers, and employees, supported by institutional structures such as NECs and the Labour Court.

4.4.1 Roles and responsibilities

Figure 4.6 below shows the key stakeholders and their roles in the dispute resolution process in the NECs. Based on the respondents' data, several key stakeholders in labour dispute resolution in Zimbabwe have been identified, along with their respective roles. R7, R16 and R17 lamented the lack of proper training for the main players, such as trade union and employers' association representatives, yet they have a responsibility to craft and implement dispute resolution policies in NECs. R16 further noted that whilst DAs already possess the relevant qualifications, there is a need for continued learning, as labour laws are continually evolving. R26 emphasised that continuous professional development was crucial for all stakeholders, given the evolving labour laws.

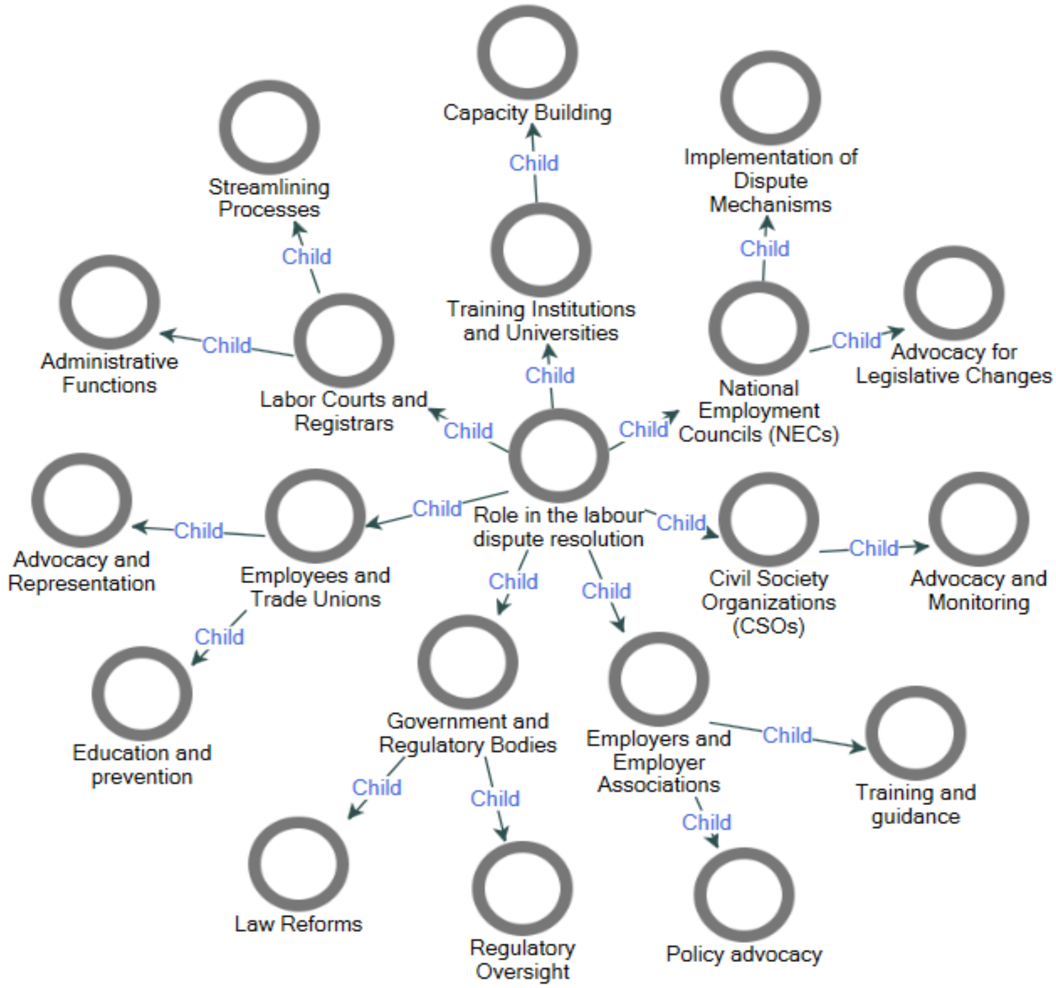

Figure 4.10: Roles in the Labour Dispute resolution and relationship amongst stakeholders

Source: Fieldwork

These respondents identified the need for universities and training institutions to provide training and knowledge on current labour laws. R7, R10 and R114 also emphasised the role of civil society in disseminating information about worker rights, dispute resolution procedures and available options. These additional stakeholders, as identified in the study, help improve the dispute resolution system.

4.4.2 Employers and their umbrella bodies

Employers, represented through their associations, serve as the mouthpiece for businesses, advocating for their interests in policy discussions as highlighted by R12, *"Our role, obviously, is to be the mouthpiece for employers, get their contributions or input for further deliberations at the Tripartite Negotiating Forum level."* Respondents who include R1, R2, R4, R20, and R37 also reported receiving training and guidance. They conduct workshops to educate employers on labour law compliance and effective business strategies. R12 emphasises, *"We do hold a significant number of workshops throughout the year… Members do, however, benefit from reduced investment fees."* Most importantly, R5 and R23 highlighted their important role in dispute resolution as parties to the NEC, where they negotiate CBAs that direct the dispute-resolution process. R27 noted that umbrella employer bodies consolidate feedback from employer members; "*we gather input from affiliates who sit in NEC meetings to inform negotiations at TNF level, "* ensuring a business perspective at national forums. However, R27 also critiqued their own federation, noting that *" sometimes information that is gotten from membership is not taken as such."* This highlights a weakness in how member employers' concerns are integrated. R37 likewise emphasised that the federation advised members on labour laws to prevent disputes, stating that " *we help our members navigate regulations to avoid disputes."* Employers' Associations and their umbrella body EMCOZ act as intermediaries between businesses and policymakers. This helps push for compliance and employer-friendly regulations which acknowledge gaps in internal engagement.

4.4.3 Employees, trade unions and labour federations

R6, R7, R10 and R14 indicated that they played an advocacy and representation role. They represented employees' interests, ensuring their voices were heard in legislative processes. R6 mentioned, *"We are directly affected, and no one should make laws for us without our input."* R20 highlighted, *"Their duty is to properly advise their clients… assists in prevention of disputes and also in resolution."* There was also emphasis on the educational role that the unions play, as R30 indicated that "*we train and advise members on their rights to promote early resolution of issues, to avoid formal disputes*." R38 and R39 also added that their federations channelled their trade unions' concerns to the TNF to ensure that labour perspectives are also reflected in national laws.

4.4.4 Government and regulatory bodies

With respect to regulatory oversight, the MPSL&SW is tasked with ensuring compliance with labour laws and enhancing the effectiveness of NECs. R8 pointed out,

> *The office of the Registrar of Labour is responsible for registering CBAs produced by NECs and ensuring they conform to public policy. NECs serve the public interest and also use public funds to deliver services. Scrutiny by the Ministry of Labour, through the Registrar, is critical. Section 63A of the Labour Act requires that NECs submit audited financial statements to the Registrar, not later than the 31st of March every year.*

R20 also stated, *"The Ministry as a regulator plays an important role in ensuring that NECs are compliant."* The government is also responsible for law reform through facilitating legal amendments to improve labour dispute resolution processes. R20 emphasised the need for the Ministry to clarify legal challenges arising from the Labour Act. R28 and R36, however, noted that the government provided training and advisory support to NECs to strengthen dispute resolution mechanisms. R28 also further noted that the MPSL&SW did not only enforce current laws, but also "*brings clarity to legal changes by proposing amendments."* Thus, the MPSL&SW has a duty to drive reforms, oversee compliance and mediate engagement among employers and unions.

4.4.5 National Employment Councils (NECs)

All respondents noted that NECs were responsible for formulating and implementing dispute resolution mechanisms in their respective sectors. R6 had this to say, *"We have played our part to see to it that what we have put in place is being adhered to."* R5, R23, and R26 also mentioned advocacy for legislative changes regarding the role of NECs. R6 mentions the need for advocacy related to the SI 77 of 2024 regulations, indicating a proactive approach to legislative engagement.

4.4.6 Labour Court and Registrars

Registrars play a key role in ensuring the proper functioning of labour courts by managing case filings and providing guidance to parties involved in disputes. R15 explained, "*The Registrar plays an administrative function at the Courts to ensure that the Court environment is set for the proceedings."* R31 also added, *"We recommend that the senior* *judge should issue practice directives that would give clarity to some of the issues."* R32 also expressed the need for specialised training for court staff to improve efficiency and suggested that "*registrars have to receive induction in labour procedures to reduce delays."* In short, the Labour Court should anchor legal consistency with its registrars, ensuring that the court process runs smoothly so that NEC-led mechanisms are complemented.

4.4.7 Training institutions and universities

R7, R11, R12, and R26 stressed the need to consult academic institutions to provide training and capacity building for stakeholders in dispute resolution. These respondents stated that when stakeholders have an in-depth understanding of labour laws and relevant statutes, all facets of an effective dispute resolution system are met. R26 recommended that law programmes include ADR courses and labour laws to prepare future officers and legal practitioners. Academic institutions contribute to capacity building by training stakeholders in labour laws and dispute resolution mechanisms. R16 noted, *"I have also been involved in training some of the institutions to try and bring them up to speed with the pertinent environment."* In essence, continuous education for all stakeholders was seen as essential for an effective dispute resolution system.

4.4.8 Civil society organisations

R7, R9, and R21 highlighted aspects of civil society organisations (CSOs) and the crucial role they play in advocating for workers' rights and monitoring compliance with labour laws. They indicated that these were important stakeholders who provide independent oversight and ensure that both employers and regulators adhere to established norms. R35 observed that these CSOs provided legal literacy and "*ensured that both regulators and employers adhered to established norms.*" CSOs, therefore, had a role in complementing regulators and unions through raising rights awareness and advocating for fair practices.

4.4.9 Insights on roles and responsibilities

The analysis highlights the multifaceted roles of stakeholders in Zimbabwe's labour dispute resolution framework. Employers and their associations advocate for business interests, while trade unions represent employee concerns. Government bodies and regulatory agencies oversee compliance and legal reform, and NECs implement dispute resolution mechanisms and advocate for necessary changes. Labour courts, with the help of registrars, ensure that the judicial process is efficient and fair. Finally, academic institutions contribute to capacity building, enhancing the effectiveness of the dispute resolution landscape. Each stakeholder's active participation is vital for fostering a fair and effective labour dispute resolution system.

The analysis reveals that Zimbabwe's labour relations system is sustained by an intricate network of interdependent stakeholders, each playing a complementary role in shaping, implementing, and monitoring labour policies. Employers and their umbrella body EMCOZ act as critical advocates for business interests, ensuring that the operational realities of industry inform CBAs and policy decisions. They also promote compliance and capacity building through workshops and advisory services. On the other hand, trade unions serve as the collective voice of employees, championing their rights and ensuring representation in both negotiation and policy formulation spaces. Their dual role in advocacy and education helps to prevent disputes and empowers workers to engage meaningfully in workplace justice. The MPSL&SW and associated regulatory bodies provide the essential oversight and enforcement framework, ensuring that NECs comply with statutory obligations and that dispute resolution mechanisms operate within the bounds of public policy. Through the Registrar of Labour and Labour Court systems, the government anchors transparency, procedural fairness, and legal consistency in the industrial relations environment.

At the operational level, NECs occupy the centre of dispute resolution, developing sector-specific rules, negotiating CBAs, and implementing mechanisms that govern workplace relations. Their proximity to industry dynamics allows them to bridge the gap between policy intent and practice. Supporting this institutional framework are Registrars of the Labour Courts who facilitate procedural order, manage case flows, and issue directives that enhance legal clarity and reduce delays. Academic institutions further strengthen this ecosystem by providing technical training, research, and capacity building, while CSOs play an emerging but important watchdog role in promoting accountability and inclusivity. Collectively, these actors create a multi-layered governance architecture in which collaboration, mutual accountability, and continuous learning are essential for an efficient and equitable labour relations system. The insights affirm that the effectiveness of dispute resolution in Zimbabwe depends not only on legislative design but also on the synergy and responsiveness of all stakeholders involved.

4.4.10 Relationships amongst stakeholders

The analysis of stakeholder relationships in Zimbabwe's labour and employment sector, based on responses from various stakeholders, revealed a complex web of interactions. The stakeholders were noted to include the MPSL&SW, trade unions and their mother bodies (ZCTU and ZFTU), employer associations and their mother body EMCOZ, NECs, the Labour Court and the workers. Across these interactions, professionalism, formal engagement, and the need for greater consultation were consistent themes, while emerging challenges posed potential disruptions to these relationships. A holistic picture of these relationships.

4.4.10.1 Ministry of Public Service, Labour and Social Welfare and the Central Role in Labour Policy

The MPSL&SW was noted to play a pivotal role in policy formulation and in mediating among employers, employees, and their representative bodies. Respondents such as R10 and R12 emphasised the importance of the Ministry in facilitating fruitful engagement on platforms such as the TNF, where critical labour, economic, and social protocols are discussed. As R10 noted, the Ministry recognised that it could not act unilaterally and that it must involve key labour centres such as the ZCTU and the ZFTU. This shift towards greater inclusivity signals the Ministry's acknowledgement of the indispensable role of labour unions in shaping national labour policies. The principle of tripartism, engaging government, employers, and employees, is critical for the ongoing evolution of labour dispute resolution mechanisms. R12 highlighted the importance of continuous social dialogue, which ensures that the concerns and suggestions of all parties are heard and considered in shaping policies. This collaborative approach can foster a more cohesive labour environment, reduce tensions and facilitate smoother dispute resolutions.

4.4.10.2 Ministry of Public Service, Labour and Social Welfare and challenges with policy implementation

While relationships with the MPSL&SW are largely described as cordial and collaborative, R20 and R6 express concerns about limited consultation on policy changes, particularly regarding the registration of new organisations and amendments to the NEC constitutions. R12 echoes this sentiment, advocating for less unilateral government decision-making and more thorough stakeholder engagement.

4.4.10.3 Labour Court and the Minimal but Necessary Interactions

Several respondents, including R20 and R15, describe limited interaction with the Labour Court, primarily when disputes cannot be resolved through alternative means. While interactions are largely professional, R21 raises significant concerns about the impartiality of Labour Court judges, particularly their dual roles as employers. He highlights cases such as *Takaendesa vs Proton, in which worker appeals are dismissed on technical grounds, suggesting a failure by the Court to uphold social justice and to* align with the Labour Act. The perception that judges are swayed by their personal interests as employers undermines trust in the system.

4.4.10.4 Labour Court - Adaptation and Professionalism

Despite these concerns, R15 and R31 note that NEC representatives and other stakeholders have adapted well to court processes and have developed strong working relationships with court officials, who are described as cooperative and professional. This adaptive capacity bodes well for maintaining effective, albeit limited, engagements with the judiciary. R21's critique of the Labour Court's alignment with employer interests reflects a broader concern about the influence of employers on legal processes. This underscores the need for greater balance and fairness in the handling of labour disputes to prevent the perception that the system favours employers over workers.

4.4.10.5 NECs and Positive Regional Dynamics

R20 and R25 noted that, at the regional office level, the NECs are generally viewed as functioning smoothly, with fewer major conflicts among stakeholders than at the head offices. This is in comparison to the relationship between the DAs and principals at the head office. R20 reports that relationships with NECs and DAs are positive, particularly when handling disputes or collective bargaining agreements. R6, however, warns of potential future challenges as new players enter the NEC framework, armed with different philosophies that may disrupt longstanding agreements. This evolving dynamic threatens cohesion within NECs and could lead to fragmentation among employers and trade unions. This disparity can be explained by decentralisation theory, which holds that these processes are more successful when carried out at a closer operational level, where actors are more institutionally proximate and familiar with local labour processes. Regional

NECs enjoy closer communication, shared local interests, and faster feedback, which facilitates collaboration between DAs and principals. Conversely, the relationship between the head office and the subsidiaries is more formal and distant, which can create tension and misalignment. Interpretively, the relatively higher efficiency of regional NECs reflects the value of decentralised structures in promoting trust, unity, and less problematic dispute-resolution processes, although the influx of new stakeholders with different methods can disrupt this balance.

4.4.10.6 Digitalisation, COVID-19 and resistance to innovation

One notable challenge that R20 raises is the resistance from both trade unions and employer associations to new initiatives, such as the digital platforms introduced during the COVID-19 pandemic. This resistance indicates a tension between traditional and modern approaches to labour relations, with stakeholders hesitant to embrace new technologies that could disrupt the status quo. R15, R31 and R32 had also noted that digital literacy constraints amongst older, lower-literacy employees and those working remotely created a practical, accessible barrier. Technological innovation, however, cannot resolve this accessibility failure without parallel investment in digital literacy skills and access infrastructure, such as assisted filing and kiosks.

The unwillingness to be more innovative in NECs, specifically in the adoption of digital tools accelerated by the COVID-19 pandemic, is more indicative of underlying structural and cultural causes. Trade unions and employers as stakeholders tend to be reluctant to adopt new technology because of poor access to digital infrastructure and lack of technical expertise. This aversion is strengthened by the cultural attachment to traditional processes of labour relations, in which long-standing practices and hierarchies are seen as stable and familiar. The long-standing NEC manual case management culture shows a dependency path that requires change management rather than simply introducing new technology.

From a pluralist perspective, resistance to institutional change that disrupts existing power arrangements is predictable. It must, however, be managed through stakeholder design of new systems rather than through a top-down implementation.

4.4.10.7 Trade unions' links to collaboration and unification

One of the most notable developments in the trade union sector is the growing collaboration between major labour centres, particularly the ZCTU and the ZFTU. R10 and R30 emphasise that unions are moving beyond ideological and political affiliations to focus on core labour issues, uniting under the common goal of protecting workers' rights and improving working conditions. This shift reflects a maturation of trade union leadership, as members become more academically equipped to engage in modern labour discourse.

4.4.10.8 Trade unions and memoranda of understanding

R12 adds that unions have begun formalising their partnerships with each other and with employer associations, signing Memoranda of Understanding to tackle socio-economic challenges, rising poverty, and inequality. This growing cooperation is a positive step towards addressing the country’s broader economic and social challenges, demonstrating that even historically competing interests can align when faced with common problems.

4.4.10.9 Trade Unions and fragmentation risks

Despite this collaboration, fragmentation remains a concern. Both R6 and R23 point to the splintering of trade unions, often influenced by political affiliations, which threatens to weaken workers' collective bargaining power. The creation of politically connected splinter organisations is seen as a tactic to divide the labour movement, diluting its effectiveness and undermining its ability to negotiate on behalf of workers.

4.4.10.10 Employers’ associations and professionalism, but rising tensions

As with trade unions, relationships between employer associations and other stakeholders are generally professional, with little direct conflict reported by respondents like R20 and R12. However, there are signs of tension on the horizon. R6 and R26 anticipate that the entry of new employer associations, particularly those with differing views on collective bargaining and wage agreements, will create friction within the sector. This is compounded by the growing number of splinter organisations, as R23 points out, who argues that political influence is playing a role in the creation of new employer bodies, further complicating the landscape.

The interactions between employer associations and other stakeholders are usually professional, with little direct conflict, as with trade unions. Nevertheless, recent conflicts are associated with increasing disintegration within the employer group, with the advent of new associations with differing standpoints on collective bargaining agreements and political factors shaping organisations. Whereas union fragmentation is more ideologically and membership-based, employer fragmentation is more strategic and usually dictated by market competition and political favours. Analytically, this difference implies that despite the fact that both types of fragmentation bring difficulties to cohesion, employer fragmentation can generate additional structural and negotiation complications, which can undermine consensus-building in the processes of resolving disputes in NECs

4.4.10.11 Tripartite Negotiating Forum (TNF), social dialogue and a platform for cooperation

The TNF is consistently highlighted as a crucial platform for fostering dialogue between the government, employers, and trade unions. R7, R10, R11, and R37 note that the government has come to recognise the importance of consulting all stakeholders before making major policy decisions, which has led to the creation of various protocols on economic, social, legal, and financial issues. This consultative approach is crucial for maintaining social stability and ensuring that all parties feel represented in the decision-making process. R12 reinforces the importance of social dialogue, noting that despite competing interests, employers and trade unions are beginning to realise the necessity of partnering to address the country's socio-economic challenges. The MOUs signed by ZCTU, ZFTU, and employer associations signal a shift towards greater cooperation, even as economic challenges such as poverty and inequality persist.

4.4.11 Stakeholder relationship tiers framework

Based on data obtained in the study, the research developed a framework to depict the complex and evolving relationships among the key stakeholders in Zimbabwe's labour and employment sector. These stakeholders included the MPSL&SW, trade unions, ZCTU, ZFTU, employer associations, the NECs, the Labour Court, and the workers themselves. The relationships were notably dynamic and characterised by both cooperation and tension, shaped by policy changes, socio-economic challenges, and the entry of new actors (Figure 4.11).

While the study reported that collaboration and consultation were improving among Zimbabwe's labour stakeholders, challenges such as fragmentation, the entry of new actors, and tensions with the Labour Court threatened to undermine these gains. The MPSL&SW's role as mediator reportedly remained critical, and the evolving relationship between trade unions and employer associations presented opportunities for unified action in the face of socio-economic challenges.

Figure 4.11: Relationship tiers

Source: Field data

With respect to the effectiveness indicators established in this study, the regulatory tier, namely the MPSL&SW, and the Labour Court determine the enforceability and timeliness indicators, as they are expected to provide a legally coherent, enforceable, and timely procedural framework. From the findings in objective one, these effectiveness indicators have not been met, revealing deficits in these institutional arrangements. NECs, as an institutional tier, also determine the realisation of the procedural fairness and accessibility indicators, as they must be adequately resourced and capacitated to deliver the dispute-resolution function. The DAs must also be structurally independent. The interaction of the three tiers determines the stakeholder confidence indicator, as parties who are satisfied with the outcome tier tend to have confidence in the process, regardless of what the institutional tiers and the regulatory framework formally prescribe. This tiered analysis explains the post-2015 constitutionally deficient framework, which negatively affected the institutional tier's performance, resulting in failures in the outcome tier. This erodes stakeholder confidence in the entire tier system.

The labour and employment sector in Zimbabwe was marked by a web of relationships that continued to face significant challenges amid emerging tensions, particularly around new entrants in NECs, the splintering of unions, and perceived biases in the Labour Court. The MPSL&SW played a central role in mediating these relationships, but its tendency towards unilateral decisions, particularly in policy implementation, had raised concerns among key stakeholders. Trade unions and employer associations, though traditionally at odds, were reportedly increasingly collaborating to address common socio-economic challenges, facilitated by platforms like the TNF.

The overarching theme in these relationships is the importance of consultation and partnership. As R10 and R12, and others have pointed out, the days of acting in silos are over. The future of labour relations in Zimbabwe hinges on continued engagement, collaboration, and the ability to adapt to new players and shifting dynamics within NECs, unions, and employer associations. Continued adaptation and engagement will be necessary to maintain a balanced and fair labour landscape.

The challenges outlined in the analysis underscore the need for a more collaborative and inclusive approach to labour dispute resolution. Stakeholders must work together to address the root causes of these challenges and promote an environment in which disputes can be resolved fairly and promptly. Enhancing the accessibility, affordability, and efficiency of the resolution processes will not only benefit workers but also generally contribute to a more stable and productive labour market. The active participation of unions, employers, and government representatives in reform efforts is crucial to achieving a balanced and equitable labour dispute resolution system that serves the interests of all parties involved.

The table below summarises what emerged from the study: the complex web of actors and the roles they played in dispute resolution in NECs. Constitutional compliance, enforceable timelines, and legislative clarity are all important prerequisites for improvements at the institutional and outcome tiers. Institutional-tier actors cannot perform their dispute-resolution functions effectively without a coherent and constitutionally equipped regulatory framework. This analytical tier system analysis directly informs the composition of the reform model in Chapter 5.

Stakeholder /Structure	Role/Function	Interactions/Dynamics	Challenges	Influence and Adaptation	Influence on Policy and Labour Relations
Ministry of Labour	Central Mediator	Consults with Trade Unions (TNF), engages Employer Associations, coordinates with NECs, and provides frameworks for the Labour Court.	Increasingly criticised for employer bias.	Needs to balance the mediator role while addressing concerns of unilateralism.	TNF is the most influential platform for policy discussion and social dialogue.
Trade Unions	Worker Representation & Rights Protection	Traditionally confrontational with Employer Associations (CB focus), now shifting towards collaboration (MoUs).	Experiencing fragmentation (splinter groups). Vulnerable due to the growth of the informal sector.	Must adapt to fragmentation and the informal sector, focus on unified action across labour centres.	Lobby for employee rights and influence policy at the TNF level
Employer Associations	Represent Employer Interests	Traditionally confrontational with Trade Unions (CB focus), now shifting towards collaboration (MoUs).	Face pressures from competing associations.	Must adapt to changing philosophies on CB.	To uphold fair labour practices so as to promote harmonious industrial relations resulting in productivity.
NECs (Sectoral)	Dispute Resolution & Collective Bargaining at the Sectoral Level	Generally smooth regional relationships.	Face challenges from new entrants and resistance to modernisation (e.g., digital platforms).	Continue crucial role in regional/sectoral dispute resolution, though influence may wane.	Make their contributions to TNF through business and labour.

Labour Court	Resolves Labour Disputes (when other mechanisms fail)	Maintains professional relationships with stakeholders.	Perceived bias towards employers. Dismissal of worker appeals erodes confidence.	Influential in legal outcomes, but perceived bias threatens legitimacy.	Develop user-friendly Labour Court rules that are easy for stakeholders to interpret. Assist in developing policies that expedite dispute resolution.
Workers	Ultimate Stakeholders	Represented by Trade Unions.	Vulnerable due to union fragmentation and the growth of the informal sector/gig economy.	Need to stand up for their rights, mostly through Trade Unions, and be involved in platforms where they can air their views.	Be assisted by Trade Unions in lobbying for their rights and be visible in platforms that advocate for policy change.
TNF	Platform for Policy Discussions & Socio-Economic Agreements	Facilitates social dialogue for government, business, and Labour	Unilateralism by the government	Need for the voice of the stakeholders to be heard	Most influential platform for policy discussions and socio-economic agreements.

Table 4.1: Structure of labour dispute resolution in NECs

Source: Field data

The reform model chapter begins with the proposed legislative amendments, which constitute the regulatory-tier reforms, and then addresses the institutional-tier improvements, such as DA training, enhanced NEC governance, and resource allocation. The outcome tier enhancement then becomes the enforcement mechanisms, the monitoring mechanisms and the feedback loops.

4.4.12 Effects of the collective bargaining process on dispute resolution

Collective bargaining agreements culminate from sector-specific negotiations between employers' associations and trade unions. CBAs contain the dispute-resolution processes adopted by an NEC. These CBAs are registered by the MPSL&SW, while DAs are responsible for their enforcement and compliance in their respective sectors. Based on the data from the respondents regarding the effects of the collective bargaining process, the synthesised analysis is as follows:

4.4.12.1 Framework for dispute resolution in NECs

R19 noted that negotiations with trade unions were structured around the arbitration agreements outlined in the NEC constitution. This establishes a formal procedure for resolving disputes, emphasising the importance of an industry code of conduct in guiding negotiations. R6 elaborates on establishing a collective bargaining agreement for dispute settlement, which provides a clear outline of the dispute-resolution process. However, he acknowledges that the initial framework did not specify a definitive timeframe for resolution, indicating a need for further amendments to ensure clarity and protection for all parties involved. R1, R2, R20, R24, and R25 all indicated that the NECWEI promulgated SI 77 of 2021 to address disputes by issuing determinations or addressing issues arising from inspections. A determination is automatically issued by a DA to address disputes emanating from a dispute of right. R20 articulates that SI 77 of 2021 was promulgated to address the gap in the Labour Act where a determination made in terms of section 63 of the Act had no provision for enforcement. R20 further states that;

> *SI 77 of 2021 addresses disputes of right, and when a dispute of right arises out of an inspection, the designated agent issues a determination. Where disputes of interest arise during an inspection, conciliation and arbitration come into play. Naturally, a dispute of interest cannot be resolved by adjudication because you cannot create rights for parties.*

R20, R1, R2 and R9 raised that whilst section 63 of the Labour Act (Chapter 28:01) provides an option to redress disputes by issuing determinations or attempting to do so through conciliation, SI77 of 2021 only provides for the determinations route. The respondents also add that whilst section 63 of the Labour Act has an overriding effect on SI77 of 2021, the NECWEI has a standing policy of redressing disputes of right only through determinations. R1, R2, R3, R4, R20, R24 and R25, however, lamented the lack of enforceability of the determinations, as the courts and legal experts argued that there was no provision in the labour laws that enabled registration and enforcement. Respondents like R20 describe the S.1 77 of 2021 development as being ultra vires section 63 of the Labour Act (Chapter 28:01).

4.4.12.2 Challenges faced

As the study established, SI 77 of 2021 appeared to be giving a litigation effect on every aspect of dispute resolution, including inspections, where a DA, upon noting an anomaly during inspections, can proceed to issue an order of compliance and, in the process, cite parties that he/ she did not hear. This can also be very unsettling to parties who find themselves entangled in a dispute that they did not create. S1 77 of 2021 takes away the parties' right to have their disputes settled through conciliation and arbitration, dispute resolution options enshrined in the Labour Act.

R22 mentioned the existence of statutory instruments governing collective bargaining; however, the respondent pointed out significant challenges in practice. This suggests that while a legal framework may be in place, the implementation of these agreements may be hindered by various factors, including potential resistance from stakeholders. R12 highlighted the role of employers' associations, which negotiate on behalf of their members. The respondent points out that although these associations engage in wage negotiations, policy-related challenges often arise. These issues are brought to attention monthly for further discussion and guidance at the TNF level. R20 also mentioned that SI 77 of 2021 did not give room for ADR but instead goes straight to resolving a dispute of right through determinations.

4.4.12.3 Role clarity and representation

R21 emphasised the importance of understanding the distinct roles of stakeholders during negotiations. He suggests that when making policy decisions as members of the NEC, individuals must adopt a policymaker's perspective. Conversely, when representing specific parties in a dispute, they should switch to a representative role to avoid conflicts of interest and ensure fair representation during negotiations.

4.4.12.4 Impact of collective bargaining

The collective bargaining process is characterised by a structured framework for dispute resolution, but it also faces significant challenges that can impact its effectiveness. The clarity of roles among stakeholders, the need for precise guidelines and timeframes in agreements, and ongoing communication between business and labour on platforms like the TNF are crucial to the success of collective bargaining initiatives. By addressing these challenges and maintaining clear roles during negotiations, stakeholders can improve the effectiveness of the collective bargaining process and foster better labour relations.

4.4.13 Participation in the formulation of labour policies

4.4.13.1 Stakeholders

Stakeholders in Zimbabwe's labour relations system actively contribute to the formulation of labour policies through multiple institutional and consultative platforms that promote dialogue, negotiation, and evidence-based decision-making. The NECs serve as foundational structures in which employers and employees jointly develop codes of conduct and CBAs that shape dispute-resolution frameworks within specific sectors. As R14 noted, these forums enable direct participation through workshops and negotiations to align sectoral practices with national labour policy.

At the national level, the TNF stands out as the primary platform for social dialogue between government, labour, and business, formalised through the TNF Act of 2019. Respondents such as R11, R12, R28 and R29 emphasised that the TNF facilitates structured consultation and consensus-building on key policy reforms, including those governing dispute resolution. Complementing this are ministerial committees and advisory bodies, where federations and sectoral representatives, as highlighted by R14 and R21, channel stakeholder perspectives into policy instruments such as the Arbitration Act, retrenchment frameworks, and HIV and AIDS workplace policies.

In addition, research institutes and academic bodies play an evidence-based support role, contributing data-driven insights to inform employment and labour reform initiatives. R7 described how institutional research underpins the Zimbabwe Employment Policy, ensuring that worker and employer experiences inform legislation. Internal, general, and national councils within federations further reinforce participatory governance by consolidating members' input before engagement at higher policy forums. Collectively, these mechanisms demonstrate a multi-layered participatory framework in which employers, employees, government, and technical bodies collaborate to refine and strengthen Zimbabwe's labour and dispute resolution architecture.

4.4.13.2 Levels of participation

The data reveal varied levels of stakeholder involvement in labour policy formulation, ranging from active participation to limited or minimal engagement, reflecting differences in institutional access, representation, and organisational capacity.

4.4.13.3 Active and direct participation

Several respondents, including R11, R6, and R7, reported direct engagement in shaping labour policy and dispute resolution mechanisms. R11 emphasised their organisation's involvement in the formulation and review of the TNF Act, noting: *"We are reviewing the TNF Act… We were also invited to participate in the training… We are very much involved."* Similarly, R7 and R38 highlighted their institution's contribution through research-based participation, with R7 indicating that *"We do participate in the formulation of the policy… We are very interested in how we are going to treat migrant workers and deal with skills shortages."* These examples illustrate a high degree of involvement, where stakeholders influence both legislative content and implementation frameworks.

4.4.13.4 Limited or indirect participation

R14 described more peripheral involvement, where contributions are mediated through representative organisations. R14 explained this shift from direct to indirect engagement, stating: *"Because we are not in the federation, we don't get direct input there, but we still contribute through the NEC."* Likewise, R23 and R26 noted minimal participation, with R23 explaining: *"Not directly, but through EMCOZ, because sometimes they solicit our* *views ahead of the tripartite meetings, though it's at a minimum."* Such cases suggest partial engagement, in which input is filtered through intermediary institutions rather than direct dialogue platforms.

4.4.13.5 Minimal or no participation

30% of the respondents reported negligible involvement in policy processes. R19 explicitly stated: *"We have never been involved. But we hardly complain, no outcry."* Similarly, R23, R27 and R5 acknowledged limited interaction with their membership and inadequate mobilisation for consultation, indicating missed opportunities for grassroots participation. These accounts highlight ongoing disparities in access and inclusivity across stakeholder groups, underscoring the need for more structured and inclusive mechanisms for policy engagement within Zimbabwe's labour governance framework.

4.4.13.6 Effectiveness of contributions and consideration in policy outcomes

Although multiple platforms facilitate stakeholder participation in labour policy formulation, respondents expressed mixed views regarding the extent to which their contributions are genuinely reflected in final policy outcomes.

4.4.13.7 Substantial influence

R7, R10, R11 and R12 reported meaningful incorporation of their inputs into policy frameworks. R11 estimated that *"on a balance of probability, maybe 70% of what we wanted to see… was taken on board,"* citing acceptance of proposals on fixed-term contracts. Similarly, R7 confirmed that much of the employment policy framework *"reflects the views that we have contributed,"* underscoring the influence of research-based recommendations. R21 and R35 also highlighted the government's responsiveness to stakeholder feedback. R21specifically noted that the return to pre-2015 dispute resolution mechanisms followed *"an outcry from employers and employees through the Tripartite Negotiating Forum."* These reflections suggest that structured dialogue through the TNF and evidence-driven advocacy have, in some cases, led to tangible policy adjustments, particularly evident in the 2023 labour amendments.

4.4.13.8 Selective consideration

Respondents from the social partners (10) described a more limited impact, where only selected proposals were adopted. R12 acknowledged that *"in some cases, unilateralism in the case of government adopting what it wants"* persists, though expressed optimism that the TNF Act would help institutionalise shared decision-making. R10 offered a critical view, citing instances where government resistance diluted stakeholder efforts, particularly in the push for fair wages, remarking, *"It took ZCTU to push… this is actually short-changing… but because you are dealing with shield contrivance, he then comes back again on another angle."* These examples illustrate persistent challenges of power asymmetry and selective incorporation of non-state input.

4.4.13.9 Limited consideration

R7, R10, R11, R12 and R38 voiced frustration that their contributions were often disregarded or altered in the final legislative texts. R22 lamented, *"Our contributions… they will consider, but what comes out of the law is something else."* Likewise, R27 criticised weak engagement within organisations such as EMCOZ, arguing that *"the input that is gotten from membership is sometimes not taken as such… emphasis at times may operate within a given framework."* These concerns point to weaknesses in feedback mechanisms and the depth of consultation, which limit the perceived legitimacy of the policy process.

4.4.13.10 Perceived bias

While R21 described a growing appreciation of labour's role as a "key asset in business," other respondents, including R10, R22 and R37, suggested that decision-making remains skewed in favour of government priorities, undermining balanced participation. Collectively, these mixed perspectives indicate that although Zimbabwe's labour policy environment has made notable strides toward inclusivity through institutions like the TNF, the effectiveness of stakeholder contributions remains uneven, shaped by structural hierarchies, selective government responsiveness, and limited accountability in policy implementation.

4.4.14 Challenges and tensions in stakeholder engagement

Several challenges emerge from the data, reflecting the complexity of stakeholder participation in labour policy formulation.

4.4.14.1 Internal divisions and fragmentation

R14 and R30 alluded to excluding non-federation members from the TNF, thereby limiting their direct input. This suggests that internal divisions within unions or employer bodies may marginalise certain voices.

4.4.14.2 Leadership issues

R5 criticised the current leadership of EMCOZ, stating that engagement with membership had decreased. This implies that organisational weaknesses and leadership changes can negatively affect stakeholder participation in policy formulation.

4.4.14.3 Government unilateralism

A recurring theme, particularly in R12, R10, and R37, is the government's unilateral adoption of policies, even after stakeholder contributions. This suggests a power imbalance in which the government’s ability to selectively consider input undermines the participatory nature of platforms like the TNF.

4.4.14.4 Need for legislative alignment

R11 and R37 highlight how certain policy proposals are rejected on constitutional grounds, implying that some stakeholder contributions may not align with existing laws, thus limiting their influence on final policy outcomes.

4.4.14.5 Summary on the analysis of roles of key stakeholders in the dispute resolution processes in Zimbabwe

The findings demonstrate that Zimbabwe's labour dispute resolution system relies on an intricate network of interdependent stakeholders whose effectiveness depends on collaboration, clear role delineation, and mutual accountability. Employers and their associations advocate for business interests and compliance, while trade unions safeguard workers' rights and promote equitable working conditions. The MPSL & SW, together with the Registrar of Labour and the Labour Court, anchors regulatory oversight and legal consistency, ensuring adherence to statutory frameworks. NECs serve as the operational hubs of dispute resolution, developing sector-specific rules, negotiating CBAs, and mediating conflicts, while training institutions and civil society provide technical capacity and independent monitoring.

Despite the strong institutional foundation, several challenges persist. Stakeholder participation in policy formulation and dispute resolution remains uneven, with evidence of government unilateralism, fragmented union representation, and limited inclusion of smaller or non-federated actors. The analysis also highlights a tension between traditional mechanisms and modern reform initiatives such as digital case management systems, which, while promising, face resistance and accessibility challenges. These factors often hinder the full realisation of participatory governance envisioned under the TNF framework.

The transition towards a more collaborative, transparent, and accountable labour relations environment is evident but incomplete. The effectiveness of Zimbabwe's dispute resolution processes will continue to depend on sustained social dialogue, the strengthening of NEC capacities, and genuine incorporation of stakeholder input into policy reforms. Continuous institutional learning, enhanced data systems, and capacity-building at all levels are critical to deepening trust among actors and ensuring that dispute resolution mechanisms promote both industrial harmony and socio-economic justice.

4.4.15 Discussion and interpretation- Roles of stakeholders in the dispute resolution process in Zimbabwe

The findings suggest that Zimbabwe's labour dispute resolution system is an intricate network of interdependent stakeholders. The analysis underscores that no single actor can ensure effective dispute resolution on its own. There is therefore a need for collaboration, mutual accountability and clear role delineation for the parties to function optimally. This mirrors the literature, which documents the roles of EMCOZ, ZCTU, ZFTU, and the government as pivotal actors working together in the TNF to negotiate sustainable solutions and social contracts within the labour fraternity. The literature also emphasises that employee and employer organisations help institutionalise fair dispute resolution systems. Raftopoulos (2021) specifically indicates the role of ZCTU lobbying for pro-worker policies, whilst EMCOZ champions employers' interests mostly through dialogue.

The findings also confirm the literature reviewed, which indicates that the dispute resolution process has often been weakened by stakeholder fragmentation and the state's over-centralisation. Historically, the state's dominance shaped Zimbabwe's industrial relations landscape. Sibanda (2002) and Madhuku (2010) characterise the post-independent period as state corporatism, in which the MPSL&SW exercised overriding control over disputes, resulting in limited autonomy for unions and NECs. Raftopoulos (2021) and Watadza (2015) also confirmed that an imbalance of power and poor coordination among the state, employers and labour undermine dispute resolution processes and outcomes. This finding aligns with the pluralist labour theory, which holds that a balance of power among autonomous actors, the state, employers and labour, is necessary for effective dispute resolution. Where that balance collapses, NECs are structurally constrained from mediating conflict on equal terms. The study's findings for the energy sector point to the influence of parastatal politics, which also affects the dispute resolution process by DAs. While not discussed extensively in the literature reviewed, there is an implied link. Chigudu (2021), referencing the historical context, noted that NECs originated in industrial relations systems that sometimes had political or racial influences. Moreover, literature on Zimbabwe's labour relations post-independence points out that government or political interventions in labour disputes have occurred, for example, during ESAP in the 1990s or in certain public sector strikes. Respondents in the Energy sector lamented the continuous involvement and influence of political figures in the dispute resolution processes. This political interference can be seen as a manifestation of this politicisation that literature has alluded to historically. Political interference is likely to compromise the objectivity of dispute resolution. While the literature acknowledges this problem, it does not appear to propose a solution. In contrast, literature highlights that sectors with strong social dialogue institutions or clear frameworks, especially those with active unions and employer associations, tend to handle disputes more systematically. The presence of ZCTU or ZFTU-affiliated unions and employers affiliated to EMCOZ in a sector can influence how disputes are approached.

In NECWEI, findings reveal that the union is very active, which literature suggests leads to more formalised dispute handling, though not necessarily faster. In the Energy sector, whilst unions exist, the dominant employer is the state, and this seemingly undermines the union's leverage due to challenges of autonomy from the government. The literature has also documented ZFTU, which is known to be more aligned with the government, and the ZCTU, which is often oppositional. Both operate across sectors, including the Energy sector. The implication is that political dynamics could affect union behaviour, and this is resonant with the findings of employees' fear and hesitation. This is a structural breach of the Rawlsian veil of ignorance principle and the procedural fairness effectiveness indicator, in which actors whose independence is most critical are controlled by those with the greatest influence and stake in the outcomes. This is simultaneously a pluralist failure. Pluralism requires that the state act as an even-handed regulator and not an interested party. Where it instead controls the actors meant to be independent, the tripartite balance among state, employers and employees, central to the pluralist conception, collapses into the asymmetry pluralism is designed to prevent (Clegg, 1975; Hyman, 1975).

The study explored the role of stakeholders in influencing and shaping dispute resolution outcomes through the collective bargaining process. It is worth noting that the NECWEI developed its industry's dispute resolution system, emanating from a collective bargaining process under S.I 77 of 2001. Based on the study's findings, this instrument has had unintended consequences in dispute resolution. Respondents observe that the resolution of disputes by determinations as provided for in this instrument diluted the tenets of ADR. Disputes emerging from these outcomes lack ownership by the parties as they are externally imposed.

Raftopoulos (2016) and Kanyenze et al. (2020) critique Zimbabwe's tripartite system for its state interference and procedural irregularities in dispute resolution. The basis being that the collective bargaining process continues to mirror a top-down regulatory function at the expense of voluntary consensus-building. Matsikidze (2023) has also warned that the promulgation of CBAs as statutory instruments replaces negotiation with prescription. This has an effect of undermining industrial democracy and social justice. Comparative studies in Kenya have also shown that effective stakeholder participation in collective bargaining is achieved through a balance in participatory flexibility and stakeholder enforceability. S.I 77 of 2021 tends to be more formal than ADR principles, which encourage restoration, dialogue, and mutual ownership (Omolo, 2019).

Both the literature reviewed and the study's findings indicate that employers in Zimbabwe hold significantly more power than employees due to economic, institutional, and legal factors. This disparity affects the dispute-handling process, resulting in partiality, delays, and weakened bargaining power for employees. In countries like Germany, co-determination laws require employee representation on company boards to reduce socio-economic power imbalances (Harnack, 2019). This is contrary to the Zimbabwean system, where employers' associations exert influence in NECs, securing rulings that further their business interests. Mucheche (2023) also argued that Labour Court proceedings are often in favour of employers due to their lengthiness and judicial bias. Further, employers often have better access to legal resources, while employees are usually self-actors or rely on fragmented trade unions with limited financial and legal expertise.

From a theoretical perspective, findings also corroborate Rawls' Theory of Justice, which argues that just systems require equality of participation. Pluralism specifies the institutional form this equality must take. There should be parity in representation between employers and organised labour within the NEC structures. Further, there is a need to remove structural power imbalances so that all parties can participate morally as equals behind the "veil of ignorance". It is this study's considered view that when an actor, such as the state, holds disproportionate authority, it violates conditions of fairness, thereby breaching procedural justice. There is, therefore, a failure to guarantee equal opportunities for redress. Emphasis on equality, mutual respect, and fairness by scholars such as Young (2019) and Singh (2022) confirms the empirical observation that state overreach impacts justice delivery. This has a bearing on impartiality and inclusiveness.

The finding that 30% of respondents reported limited involvement in policy processes corroborates the literature finding that the government fast-tracked the Labour Amendment Act Number 5 of 2015 (Mucheche, 2017), which is analytically significant as a governance criticism. Limited consultation at policy formulation stages explains three effectiveness failures identified in the first objective. Firstly, the absence of the NECs in the drafting of the confirmation model resulted in the impartiality flaw not being identified before the enactment. This necessitated constitutional litigation, culminating in the ZIMOCO judgment, to resolve it. Secondly, the absence of labour market inputs, including employers, in the determinations model resulted in an enforcement gap for the DAs' determinations under section 63(3a) of the Labour Act, as confirmed in the *Nyanga Rural District Council (HH-118-22)* matter. Lastly, the lack of transitional provisions in the 2015 and 2023 legislative amendments indicates the absence of NECs' operational input in the design of the transition. This led to the jurisdictional challenge raised in the DGL matter. The causal chain has been that limited consultation at the formulation stage results in institutional design failures and, eventually, a collapse in systemic effectiveness. This is traceable in the empirical findings and constitutes one of the most significant findings of the study.

The role descriptions provided by respondents reveal a gap between the formal institutional mandates documented in the literature and the operational reality experienced in practice. Each institution has a clearly defined statutory mandate; the MPSL&SW oversees compliance; NECs implement sector-specific dispute resolution; the Labour Court provides adjudication; EMCOZ represents employers; the ZCTU and ZFTU represent workers. However, respondents consistently described a system in which power asymmetries, capacity constraints and coordination failures prevent these mandates from being effectively discharged. Measured against the stakeholder confidence indicator, the repeated theme of role confusion, encapsulated in R30's observation that 'it became unclear which institution had final authority at each stage', highlights a confidence deficit that goes beyond individual institutional performance to the systemic legibility of the dispute resolution process itself. Parties who do not know which institution to approach, or whom to approach, find that the institution they approach cannot resolve their dispute, and end up abandoning the process. This produces the case abandonment rates that the empirical data identifies as one of the most damaging consequences of the post-2015 dispute resolution framework. Interpreted through the pluralist theoretical lens, the stakeholder analysis reveals a structural crisis of pluralist balance, marked by increased state regulatory dominance, jurisdictional uncertainty, and union and employer fragmentation. This pattern constitutes what Fox (1974) described as the breakdown condition of pluralist labour relations, in which institutional mechanisms for managing competing interests are overridden by the state. The legitimate expectations of other actors are then suppressed, resulting in the loss of legitimacy of the institutional framework. The pluralist labour theory predicts that the effectiveness of dispute resolution in NECs depends on mutual accountability and the quality of coordination across the entire institutional network. It therefore does not depend on a single actor's performance. Where any actor fails, the impact on the effectiveness of dispute resolution is significant because the actors are interdependent. The proposed model in Chapter 5, therefore, proposes holistic improvements and reforms to the coordination mechanisms, the NEC governance framework, the TNF architecture and the Registrar of Labour's accountability scope. By doing so, the institutional network as a whole achieves the tripartite balance that both Rawlsian justice and pluralist labour theory require.

Additional stakeholders bolster this framework, with training institutions and universities aiding capacity building by imparting knowledge to mediators, arbitrators, social partners, and lawyers. On the other hand, NGOs and Civil Society have a watchdog role through advocacy for fairness and compliance with labour standards. The analysis underscores that no single actor can attain effective dispute resolution on its own. There is a need for clear role delineation, collaboration, and mutual accountability among all stakeholders.

Both the theoretical framework and the findings underscore that balanced power sharing, autonomy, and stakeholder integration are vital for effective dispute resolution. Inadequate stakeholder integration and persistent state overreach were identified in both the literature and the findings as violating the Rawlsian principles of equality of participation and fairness. There is a need to reaffirm tripartite collaboration to enhance the effectiveness and legitimacy of Zimbabwe's dispute resolution system. NECs should be empowered as autonomous yet accountable institutions with a culture of shared justice and mutual trust among all stakeholders.

4.5 Thematic analysis based on Objective 3 - Providing recommendations to key stakeholders for reviewing the dispute resolution mechanisms

This section presents strategic recommendations to strengthen Zimbabwe's labour dispute resolution mechanisms, drawing on insights from respondents and evidence from earlier analyses of legislative reforms, institutional practices, and stakeholder roles. The recommendations focus on improving fairness, accessibility, and efficiency within the NECs and the broader industrial relations framework. Central themes include the need for a harmonised and comprehensive legal framework, stronger NEC governance, enhanced stakeholder education, and wider adoption of ADR methods. The strategies also emphasise the use of technology, cultural responsiveness, and sustained tripartite collaboration among government, employers, and employees. These measures aim to create a transparent, timely, and equitable dispute resolution environment that aligns with international labour standards and promotes industrial harmony.

4.5.1 Strategies adoptable for improved dispute resolution in NECs in Zimbabwe

Based on insights from respondents in recent discussions, a comprehensive analysis of best practices for labour dispute resolution at the workplace and industry levels can be delineated. These practices focus on establishing an effective framework that promotes fairness, efficiency, and clarity. Here's a detailed overview:

4.5.1.1 Comprehensive legal framework

The Labour Amendment Act Number 5 of 2015 introduced significant changes to improve labour relations and dispute resolution. While the amendment sought to streamline processes and clarify regulations, there is a prevailing sentiment among stakeholders that more needs to be done. All respondents highlighted the need to establish clear and harmonised regulations. R16 and R21 emphasised the necessity for a comprehensive legal framework that integrates various labour laws across sectors. This harmonisation is crucial for ensuring consistent application and understanding of labour rights and obligations. A robust legal framework is crucial for effective dispute resolution, with R39 suggesting that "*reform should also include anti-corruption safeguards and accountability for all actors*". Laws governing arbitration and ADR must be well-defined, accessible, and regularly updated to remain relevant. For the legal framework to be effective, R2 and R9 emphasise the need to harmonise labour laws across different sectors to ensure consistency. This includes integrating codes of conduct that apply universally across industries.

A comprehensive legal framework will also ensure that disputes are addressed within reasonable timeframes to prevent escalation. R20 and several other respondents emphasise the importance of resolving disputes promptly to ensure all parties feel heard and to avoid unnecessary delays. R30 highlighted persistent gaps in the enforcement of NEC decisions. R30 further noted that, despite recent amendments, there are still legal loopholes in the enforcement of certificates of settlement at the conciliation stage. A recommendation by respondents was therefore made to explicitly strengthen enforcement provisions by legislating a binding effect for NEC settlements and awards, and setting timeframes for implementation. Dispute outcomes will therefore not be undermined by legal uncertainty. This recommendation addresses the enforceability gap for determinations, the absence of statutory timelines and the jurisdictional confusion on the roles of LOs and DAs.

Enforcing this recommendation requires that the indicators of timeliness, impartiality, enforcement, and procedural fairness be met.

4.5.1.2 Strengthening National Employment Councils (NECs)

NECs play a pivotal role in mediating and arbitrating disputes at the industry level. However, challenges persist in their operations, as highlighted by respondents like R15 and R21. The effectiveness of NECs is hampered by inconsistencies in how disputes are addressed and a lack of clear guidelines governing their functions. There is a call for NECs to adopt practices and develop CBAs that align with the amended Labour Act, ensuring they serve as effective platforms for conflict resolution rather than mere bureaucratic entities. R20, R24 and R25 also pointed out that determinations made by DAs in terms of section 63 of the Labour Act (Chapter 28;01) still suffered from enforcement challenges. This implied that NECs needed stronger statutory authority, with more adjudicative power devolved to DAs, ensuring that rulings are easily registrable in courts. This recommendation is in response to the institutional tier failures, which revealed the absence of devolved adjudicative authority, skills gap and adequate resourcing.

4.5.1.3 Education and awareness

A recurring theme in the discussions pertained to the need for improved education and awareness among both employers and employees regarding their rights and the dispute resolution process. R6 noted that better-informed stakeholders would likely lead to fewer disputes arising from misunderstandings or ignorance of labour laws. Comprehensive training and outreach initiatives were noted by respondents such as R6, R20, and R25 as essential to equipping all parties with the knowledge needed to navigate the dispute resolution landscape effectively. Institutions such as trade unions and employer associations should develop ongoing training programs to keep members informed about changes in laws and best practices.

R6 advocated for educating both employers and employees about their rights and obligations. Echoing this, R35 cautioned that even simple dispute resolution procedures required legal representation, potentially limiting access. R35 underscored this need for education by arguing *that "if workers and employers understand how the NEC system works, they can use it more efficiently, without always resorting to costly lawyers.*" R9 also highlighted the importance of training qualified arbitrators and mediators to ensure they possess the necessary skills to handle disputes effectively. Understanding the legal framework and procedures can make the dispute resolution system more user-friendly, thereby reducing disputes stemming from ignorance.

4.5.1.4 Implementation of alternative dispute resolution (ADR)

The emphasis on ADR methods has grown since the amendment, with R9 advocating for a robust, well-regulated, and accessible ADR system. However, the practical application of ADR mechanisms remains inconsistent, leading to delays and frustrations among stakeholders. Establishing clearer procedures and training qualified arbitrators and mediators are necessary steps to enhance the credibility and efficiency of ADR processes. R9 advocated adopting effective ADR mechanisms to resolve disputes before they escalate into formal processes. This includes mediation and arbitration as viable options that can expedite resolution. In practice, R24 observed that assigning disputes from failed conciliation to NEC arbitrators, rather than immediately to courts, can reduce delays and lower costs, hence empowering DAs to handle disputes internally. By reinforcing ADR at the NEC level with appropriate oversight, 90% of respondents believed that disputes could be resolved faster and more amicably, with the most intractable cases reserved for courts.

4.5.1.5 Quality assurance mechanisms

As R16 suggests, establishing quality assurance systems can help evaluate the effectiveness of dispute resolution mechanisms. This can include regular reviews and assessments to ensure that outcomes meet established standards. There is a need to implement feedback mechanisms, as collecting feedback from the parties involved in disputes can help identify areas for improvement and enhance the overall process. Respondents such as R36 and R37 also recommended regular performance reviews of NECs, which include audits of case outcomes and stakeholder feedback surveys. R25 and R26's views on enforcement gaps imply the need for a formal tracking system to monitor the cases. Embedding these feedback loops and review processes is essential in identifying bottlenecks timeously, identifying training needs and ensuring that all outcomes from DAs adhere to legal standards.

4.5.1.6 Cultural and contextual considerations

Understanding the socio-economic and cultural context in which these mechanisms operate is vital for their success. R7 pointed out the importance of looking beyond local practices to international examples that may be adapted to Zimbabwe's unique circumstances. Creating a labour dispute resolution framework that resonates with the local workforce's realities can lead to more effective outcomes. Understanding the unique socio-economic and cultural contexts of the workforce is essential in tailoring dispute resolution processes. R7 suggests examining regional practices and integrating relevant elements to create a more effective framework. R24 suggested incorporating local languages and customary negotiation approaches into NEC procedures to enhance accessibility. R3 pointed out that sector-specific norms should be upheld, as different industries may require tailored thresholds or timelines. The overarching idea from these respondents was that rules and processes should not simply be copied from developed countries but adapted to Zimbabwe's unique system, enhancing trust in the system.

4.5.1.7 Effective use of technology

R1, R2, R3, R15 and R13 highlight the importance of using both physical and virtual platforms for dispute resolution. Implementing online dispute resolution (ODR)[4] systems

[4] Online Dispute Resolution - the use of technology to facilitate the resolution of disputes between parties (OECD, 2024).

can facilitate quicker resolutions, reduce costs and enhance accessibility. R2 also stated that conducting virtual hearings can improve accessibility. R2 specifically mentioned that;

> *Virtual hearings do not require parties, especially employees, to incur transport costs, as they can be heard from wherever, as long as they have devices that enable them to access the network and get online.*

R2 also added that the ability to submit or file documents online improves dispute resolution. Effective use of technology can also improve data collection, data-driven decision-making and feedback loops. As emphasised by R11 and R29, the lack of accurate data hampers effective policy formulation and implementation. R11 stresses the need for accurate data to inform policy decisions and to ensure that reliable information is available to address disputes. R15 and R32 highlighted a clear benefit of using an electronic case management system, with 15 expressing that *"all cases were fully accounted for, unlike physical files, which would be forgotten and start gathering dust."* Combined with Online Dispute Resolution (ODR) platforms, these technologies can shorten timeframes, enhance accessibility, reduce travel costs and allow real-time tracking. By analysing trends in disputes and resolutions, stakeholders can develop targeted interventions to address recurring issues. This recommendation addresses the failures in accessibility, timeliness, and procedural fairness.

A robust system for collecting, analysing, and utilising data on disputes and resolutions is critical for identifying trends and areas needing improvement. Establishing feedback loops where stakeholders can voice their experiences will enhance the system's responsiveness and adaptability.

4.5.1.8 Collaboration and tripartism

R12, R7, and R37 emphasised the importance of tripartism, in which government, employers, and employees collaborate in the labour dispute resolution process. This can be achieved through platforms that facilitate dialogue and negotiation. R37 explicitly underlined that *"dispute resolution must be a joint government, employer and worker effort, tripartism should be seen to be essential."* R7 and R39 also encouraged continued support for labour think tanks and civil society to function as independent monitors.

Establishing forums for regular interaction between stakeholders can enhance understanding and cooperation in resolving disputes. This can also foster a sense of shared responsibility in labour relations. Respondents emphasised the need to capacitate and strengthen the TNF. By weaving these recommendations into the narrative, this study provides a balanced, evidence-based roadmap for improving the NECs' dispute resolution mechanisms and enhancing stakeholder confidence.

4.5.2 Discussion and Interpretation

The Labour Amendment Act Number 5 of 2015 has provided a foundational framework for labour dispute resolution in Zimbabwe; however, its effectiveness is undermined by implementation challenges, gaps in stakeholder education, and a need for harmonisation across various labour laws. The role of NECs remains significant, yet their operations require clearer guidelines and better integration with the amended legislation. To enhance the effectiveness of labour dispute resolution mechanisms, Zimbabwe must prioritise the creation of a coherent legal framework, the promotion of education and awareness, the leverage of technology, and the active participation of all stakeholders in ongoing dialogues. The respondent recommendations resonate with gaps already discussed in the literature. Madhuku (2012), Mudoni (2017), and Mucheche (2021) argue that weak institutional capacity negatively impacts service delivery, a point confirmed by the respondents' call for structured training and oversight. Global ILO guidelines (2020) and comparative studies in South Africa and Kenya by Benjamin (2013) and Omolo (2019) highlight digital case tracking as critical for accessibility and timeliness; the same remedy was also independently advanced by the respondents. The issue of enforcement has been recurring in the labour scholarship in Zimbabwe. Myambo and Mnyanyi (2017) and Mucheche (2017) raised concerns regarding conciliated matters which ended up as unenforced awards, eroding trust in dispute resolution. Recommendations from the respondents in this study address the gap by advocating digital integration between the NECs and the Courts, resulting in greater transparency and efficiency.

With respect to state unilateralism, Raftopoulos (2016), Matsikidze (2023), and Munyuru (2024) criticised Zimbabwe's corporatist tradition, in which state dominance overrides genuine tripartism. They urge genuine tripartite engagement and the decentralisation of decision-making powers. While the literature recognises that institutional autonomy in NECs is vital, it falls short in outlining how it can be operationalised. This gap is bridged through recommending a structured NEC and the MPSL&SW interface with jurisdictional boundaries and feedback loops. This helps in the realisation of what was theorised in literature but never designed. Recommendations from the findings contribute to this study's model, which will be discussed in the next chapter. Across all thematic areas, the study highlights a remarkable convergence between the literature and its findings. The same challenges, which include enforcement gaps, unequal capacity, state dominance, weak accountability and limited feedback, are identified, and congruent remedies have been offered. This convergence confirms that the recommendations proffered in the findings and the literature are not just isolated opinions but collective imperatives validated by both theory and experience. Synthesising these shared recommendations and interpreting them through the lens of Rawls' theory of justice and the pluralist labour theory, this study transforms stakeholder experiences and scholars' propositions into a coherent, justice-oriented model. In this synthesis, Rawls provides the normative test of justice while pluralism provides the institutional test of whether NEC structures can sustain that justice in conditions of bargaining power disequilibrium.

The findings and literature underscore that effective labour dispute resolution in Zimbabwe hinges on a holistic approach that integrates legal, institutional, and technological reforms with continuous stakeholder engagement. Strengthening NECs and harmonising labour laws will enhance consistency and clarity, while robust education and training initiatives will empower all parties to participate more meaningfully in dispute resolution processes. Expanding the use of ADR, ensuring quality assurance, and leveraging digital tools will further reduce delays and promote accessible justice.

Ultimately, a culture of collaboration, anchored in the principles of tripartism and accountability, is essential for sustaining progress.

By addressing these critical areas through the proposed model, the country can foster a more equitable and efficient labour environment that benefits employees, employers, and the economy as a whole. The best practices for labour dispute resolution encompass a holistic approach that integrates legal clarity, stakeholder education, technology, and effective communication. By implementing these practices at both the workplace and industry levels, stakeholders can foster a collaborative environment that not only resolves disputes efficiently but also promotes healthier labour relations. These measures will ultimately contribute to a more stable and productive working environment in Zimbabwe. Stakeholders can also transform Zimbabwe's dispute resolution system into one that is efficient, inclusive, and responsive to the evolving dynamics of the modern labour market.

4.6 Chapter Summary

Chapter 4 presented and interpreted the study's empirical findings in line with its three objectives. It began by establishing the research problem, illustrating the post-2015 collapse of the NEC dispute resolution system across all six effectiveness indicators. It also framed all the findings as evaluations against the evaluative indicators. The chapter then went on to evaluate the effectiveness of dispute resolution mechanisms across the three legislative phases (i) pre-Labour Amendment No. 5 of 2015 period, (ii) the post-2015 hybrid ADR - litigation framework, and (iii) the post-Amendment No. 11 of 2023. The analysis revealed a cyclical pattern of reform, dysfunction and partial restoration. The cross-NEC comparison also distinguished administrative drivers of failure within the NECWEI from those in the NEC for the Energy sector that stemmed from political influence. The timeliness failure identified in the empirical findings was also confirmed by documentary evidence from the case volume and time-to-resolution data. The IECMS analysis, whilst it proved necessary for administrative accountability and timeliness, was limited by accessibility challenges for structurally disadvantaged and incapacitated users.

Under Objective 2, the stakeholder analysis revealed the pluralist analytical prediction that NEC dispute-resolution effectiveness depended on mutual accountability and coordination across the entire institutional framework. State dominance, limited consultation, and union fragmentation emerged as strong factors disrupting stakeholder coordination. Finally, under Objective 3, the findings were synthesised into broad strategic directions for improving dispute resolution in NECs, mapped to the empirical weaknesses they address, and evaluated against the six effectiveness indicators. Among the aspects covered were the imperative needs for a more coherent legal framework, stronger, better-supervised NECs, expanded ADR, systematic training, technological support, and more meaningful tripartite dialogue. These conclusions provide the empirical and conceptual foundation for the dispute resolution model proposed in the next chapter.

Implementing this model would allow NECs in Zimbabwe to fulfil their original purpose as efficient providers of labour justice. Each design choice was informed by the study's findings and aligned with the Rawlsian principles of justice, the pluralist labour theory and practical lessons from other jurisdictions. It also aligns with constitutional requirements for swift and fair dispute resolution, as well as with international labour standards that promote alternative dispute resolution. Successful implementation would yield numerous benefits, for example, workers would receive faster justice and feel more confident in exercising their rights, while employers would have a more predictable and less disruptive means of resolving disputes, reducing court time and collective job actions. The workplace environment would also improve, characterised by greater compliance and cooperation.

In the broader context, an effective dispute resolution system is a pillar of sound industrial relations and economic development. It contributes to social peace, which is attractive to investment and to enterprise productivity. Employees who trust that disputes will be heard fairly are more likely to commit to their work and engage in dialogue rather than engage in labour unrest. Employers who know that frivolous claims can be efficiently dismissed and legitimate ones rectified are more likely to respect labour standards, knowing deviations will be corrected anyway. Thus, the ripple effect of this model extends beyond individual disputes, as it fortifies the rule of law in the labour market and underpins a just work environment, a cornerstone of decent work as champion ned by the ILO.

In conclusion, this chapter demonstrates that Zimbabwe can significantly improve labour dispute resolution in NECs by re-emphasising alternative dispute resolution methods, supported by robust legal frameworks and stakeholder involvement. The outlined recommendations offer a realistic path to reform. The model's success hinges on thorough implementation and ongoing collaboration among government, employers, and unions.

With these elements, Zimbabwe's NECs can become models of efficient labour dispute resolution, ensuring disputes lead to justice, equity, and lasting workplace harmony.

CHAPTER 5: DISPUTE RESOLUTION MODEL FOR ZIMBABWE'S NATIONAL EMPLOYMENT COUNCILS

5.0 Introduction

This chapter develops a dispute resolution model for the National Employment Councils (NECs) in Zimbabwe to address the above empirical flaws established in Chapter 4. The research problem that motivates the reform model development is the demonstrated gap between the NECs in Zimbabwe's dispute resolution framework post-2015 and its effectiveness. The empirical evidence presented in Chapter 4 of this study, generated across 9 stakeholder categories and 39 respondents established that the system fell short of all the six effectiveness indicators. The six effectiveness indicators introduced in Chapter 1 and operationalised in Chapter 3 are procedural fairness, stakeholder confidence, timeliness, enforceability, accessibility and the ILO standards. This chapter develops reforms that are designed to respond directly to the empirical deficits. Six interlocking deficits in the post-2015 dispute resolution framework were documented in Chapter 4 and these were procedural delays, compromised DA impartiality, accessibility limitations, stakeholder confidence deficits and the non-compliance to ILO standards. Each reform component of the model is derived from the empirical deficits, making them evidence-based interventions designed to address specific institutional weaknesses.

The model is therefore designed to deliver measurable improvements against the six effectiveness indicators outlined above. These indicators constitute the monitoring framework set out in this chapter. The chapter moves systematically from the empirical gaps identified in Chapter 4 through to model specification, implementation stage, constitutional and feasibility assessment and lastly to a monitoring framework which empirically evaluates the effectiveness of the reforms.

The model provides a practical and theoretically informed stream of promoting the effectiveness of labour dispute resolution after the Labour Amendment Act Number 5 of 2015 by connecting the proposed reforms directly to the research questions and findings in Chapter 4. The next section presents the model.

5.1 The proposed Model for NEC Dispute Resolution

The schematic diagram for the proposed NEC Dispute Resolution Model is as given in Figure 5.1 below:

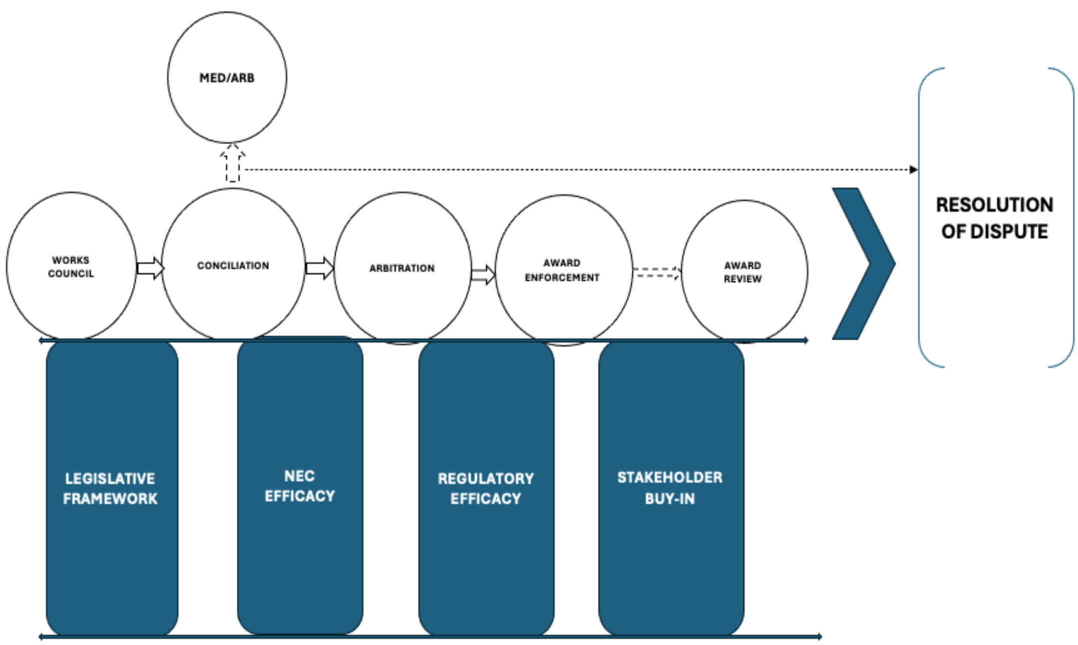

Figure 5.1: Model for NEC Dispute Resolution

Source: Researcher's own model

The model is designed to integrate conciliation, arbitration, and legal adjudication in a coherent sequence, ensuring that most disputes are resolved through ADR mechanisms while still providing the safeguard of legal oversight. The proposed model can be visualised as a multi-stage linear process with feedback loops embedded in a supportive institutional framework. The proposed model presented in Figure 5.1 establishes a dispute resolution process which prioritises early consensual resolution. It endeavours to have dispute resolution finalised at the arbitration level; however, it proceeds to adjudication only for defined cases, using stricter criteria.

5.2 Components of the model

5.2.1 Early Resolution at the Workplace Level (Works Council)

This model prioritises early dispute resolution, even before formal NEC involvement through conciliation. Drawing on international best practices, it advocates that employers, particularly larger organisations, establish internal grievance procedures. This involves employees initially addressing concerns with supervisors or HR, potentially through internal committees or peer reviews. Workers' Committees and Works' Councils are essential structures at the shopfloor level, meant to address grievances and other issues that may escalate into disputes. As part of their mandate, NECs would therefore assist organisations to have these structures in place and train them on their responsibilities. NECs would then facilitate this by providing member employers with guidelines and training for workplace representatives in basic mediation. Successful internal resolution avoids formal disputes, saving time and maintaining relationships. The employees would, however, retain the right to escalate the issues to the NEC if the grievance is not resolved within a set timeframe, for example, two weeks.

5.2.2 Conciliation at the NEC (Stage 1 ADR)

When a dispute reaches the NEC, the first step should be conciliation with a Designated Agent (DA). To streamline this process, the model proposes scheduling conciliation proceedings promptly. A conciliator facilitates a meeting between the employee/union and the employer, aiming for a voluntary settlement. The conciliator's role would be strictly facilitative, without the power to impose outcomes. Techniques such as joint problem-solving and separate meetings are used to identify underlying interests. To aid the settlement process, conciliators can, with the parties' consent, seek expert opinions or refer to past cases in the sector to enhance perceived fairness. Agreements would then be recorded as binding contracts, and if conciliation succeeds, the dispute ends with a mutually beneficial agreement, which is a certificate of settlement. If it fails, the conciliator will issue a certificate of no settlement, maintaining neutrality and not providing a determination. All conciliation proceedings must be concluded within 30 days of the matter being filed. The 30-day timeframe is not arbitrary; it corresponds to the period specified in section 93(3) of the Labour Act (Chapter 28;01). Its retention in the model preserves statutory continuity.

5.2.3 Independent Arbitration at the NEC (Stage 2 ADR)

For disputes not resolved at conciliation, the next step in the model is arbitration by a DA registered as an arbitrator with the MPSL&SW. Where conciliation fails, in the case of a dispute of interest, the parties would then agree on the terms of reference, the appointment of the arbitrator, and the rules governing the process. In the case of compulsory arbitration, the conciliator would determine the terms of reference in consultation with the parties. Regarding the appointment of the arbitrator, the NEC would then have to establish a list of arbitrators, with cases assigned in the order of that list. This approach reduces the bias that would occur when the conciliator allocates a case to a preferred arbitrator. This arrangement confirms Rawls' principle of the "veil of ignorance" where arbitrators are simply presented with disputes without their influence on which matter they would rather work on. It also satisfies the pluralist requirement of structural impartiality, whereby the random allocation of cases insulates the arbitrator's institutional role from the influence of any single stakeholder. This sustains the neutrality that pluralism regards as a precondition for legitimate dispute resolution.

The model proposes a legislative reform, for instance, the promulgation of a statutory instrument put in place at the NEC level, to operationalise this arrangement. The model does envision a relatively informal hearing, not bound by strict court evidence rules, that is conducted fairly and gives each side a chance to present their case, including witnesses and documents. Arbitrators would be required to render their decision within a fixed period, in this instance, the proposal being 30 days from appointment to ensure timeliness. The arbitrator's task would be to hold a hearing and issue a binding award on the dispute.

This arbitration stage incorporates legal adjudication in a specialised forum. Arbitrators would be directed to consider not only the law and the contract but also principles of equity and the specific circumstances of the case, a common feature in labour arbitration. The awards would be written with reasons to provide transparency. To align with justice, the model provides that at the enforcement stage, an aggrieved party may seek the indulgence of the Labour Court only on limited grounds, such as gross irregularity, bias, or a clear error of law, as well as other grounds discussed earlier. This limitation is important, as it ensures that trivial or time-wasting appeals do not congest the system. Arbitration is therefore maintained as a final resolution in the vast majority of cases. Essentially, the Labour Court's role shifts to an appellate one, focusing only on whether the arbitration was conducted fairly and in accordance with the law, rather than rehearing the whole dispute.

This is similar to South Africa's CCMA model, where arbitration awards can be reviewed by the Labour Court on procedural grounds rather than on the merits, a practice that has been effective in limiting court cases. In addition, by having arbitration handled under the auspices of the NEC, enforcement can be streamlined, where the winning party can register the arbitration award with the Labour Court for enforcement if the losing party doesn't comply voluntarily, as provided in the Labour Act, wherein Section 98 of the Act allows registration of awards. This means the outcome of arbitration carries the weight of a court order without needing a fresh hearing.

5.2.4 Integration of Conciliation and Arbitration (Mediation-Arbitration)

In the literature reviewed, Mediation-Arbitration (med-arb) was analysed, and its advantages were identified as timeliness and the parties' voluntarism. The model could therefore allow for med-arb, where the same neutral might first try mediation or conciliation. In the event that conciliation fails and a certificate of no settlement is issued, both parties may agree that the conciliator or mediator switch roles to serve as arbitrator to decide the case. This can be efficient because the neutral already understands the dispute. It should also be noted that the mediator or conciliator should be an appointed arbitrator so that he/she can smoothly switch roles. The mediator, in his/her new role as the arbitrator, would still proceed to issue an arbitral award that is enforceable at the Labour Court. This promotes the expeditious resolution of disputes whilst still drawing on the conciliator's knowledge to narrow the gap. In any case, the core is to have independent arbitration as the pillar of dispute resolution in the model, which is expected to bring finality to the bulk of unresolved disputes quickly and fairly, thus unclogging court processes.

5.2.5 Labour Court and Higher Courts (Stage 3 Adjudication)

While the model emphasises ADR, it maintains a vital role for the Labour Court as a custodian of law and fairness. The Labour Court would handle certain exceptional cases. An exceptional case is one that raises a substantial question or questions on constitutional interpretation and may also concern the constitutional validity of the Labour Act or its subsidiary legislation. The determination that a case is exceptional should be made by the Labour Court itself. On its own motion or by application by either party. This framework is consistent with the Constitutional Court referral procedures and preserves the structural logic of the court system and hierarchy.

Further, if a dispute involves an urgent interdict, for example, an unlawful collective action or strike issue, the Labour Court would be the appropriate court for immediate relief. The idea would not be to route every case through arbitration if it squarely falls under a matter that requires a court's immediate involvement. However, those cases are considerably fewer. Thus, the Labour Court's workload would focus on overseeing the system rather than serving as the first port of call for routine disputes. By doing so, the Labour Court can develop labour jurisprudence through its judgments, which guide arbitrators and conciliators in the future, ensuring consistency and legality. Parties would retain the right to appeal Labour Court decisions to the Supreme Court or a designated Labour Appeal Court if one is established by future law, but again typically on points of law. This layered approach reflects international best practices, in which specialised labour courts and tribunals coexist with ADR to provide a comprehensive system.

5.2.6 Differentiation between Dispute Types

The model explicitly distinguishes between disputes of interest and disputes of right, as their nature and appropriate methods of resolution differ. For disputes of interest such as wage negotiations deadlock, the model continues to promote voluntary arbitration and collective bargaining solutions. NECs can offer voluntary arbitration by DAs appointed as arbitrators for disputes of interest, if both sides agree to a binding decision rather than industrial action. If not, and a collective job action is pursued, the NEC, through its DAs, can still mediate to help settle the industrial action or set terms to end the dispute. For disputes of right, the full conciliation, then arbitration and labour court model as described above applies. This two-tier approach ensures that the system is not one-size-fits-all but tailored to the nature of the dispute.

5.3 Mapping Empirical Weaknesses to Reform Components

The mapping exercise presented in Table 5.1 below operationalises the model's logic. For each empirical deficit established in Chapter 4, the table links it with (i) the affected effectiveness indicator, (ii) the corresponding reform component, (iii) the Rawlsian and pluralist principles on which the reform is anchored, and (iv) the expected measurable outcome against which the model’s success can be evaluated. Following this structure, every reform component is therefore empirically anchored, theoretically grounded and operationally measurable.

In Table 5.1 below, each reform component is a targeted response to an empirical institutional gap, grounded in the theoretical framework and intended to produce expected empirical outcomes.

Empirical Weakness (Chapter 4)	Effectiveness Indicator	Reform Component (Chapter 5)	Theoretical Grounding	Expected Outcome
Procedural delays exceeding statutory windows	Timeliness	Works Council early resolution; codified 30-30-60 timeframes with automatic referral.	Rawls principle on equal basic liberties requires a timely hearing; pluralism requires operational capacity to mediate.	Increase in disputes resolved within statutory windows.
Compromised DA impartiality (ZIMOCO CCZ 6/20) matter	Procedural Fairness	Separation of conciliation and adjudication; rotational arbitrator roster; ring-fenced DA funding.	Rawls's equal basic liberties principle demands the right to an impartial hearing; pluralism also highlights impartiality as a condition of institutional legitimacy.	Increased stakeholder confidence and impartiality in dispute resolution.
Fragmented enforcement; Nyanga Rural District Council (HH-118-22) matter	Enforceability	Streamlined Labour Court registration of awards; provision of enforcement provisions; enhanced contempt remedies.	Rawls principles require that just outcomes be realised Pluralism advocates for institutional legitimacy via binding outcomes.	Increase in the number of awards registered and enforced within stipulated timeframes.
Limited accessibility	Accessibility	ODR integration; decentralised DA offices; multilingual guidance materials.	Rawls's principle of fair equality of opportunity emphasises accessibility; pluralism advocates accessible forums as a counterweight to power asymmetry.	Increase in unrepresented individual filings; ODR channel uptake measured quarterly.
Stakeholder confidence gaps; process abandonment	Stakeholder Confidence	Tripartite governance of the dispute resolution system; arbitrator roster; transparent case tracking; published outcome reports.	Rawls theory of justice emphasises public reasonableness; Pluralism highlights shared confidence as a basis for legitimacy.	Enhanced stakeholder confidence; reduced case abandonment rate; repeat-engagement rate tracked annually.
ILO standards non-compliance	ILO Compliance	Alignment of NEC governance with Conventions 87, 98, 151.	Convergence of Rawlsian fairness and pluralist collective rights at international benchmarks.	Positive assessment on relevant indicators in Zimbabwe's ILO periodic review.

Table 5.1: Model mapping
Source: Researcher's own model

5.4 Model Type, Variables and Monitoring Framework

The proposed framework is a governance-based model. The model follows the dispute resolution sequence of Works Council procedures, conciliation (with an option of med-arb), arbitration and the Labour Court review stages. These mechanisms, together with specified timeframes, actors and decision rules, constitute the conditions under which the procedural design operates. The model's dependent variable is the effectiveness of dispute resolution in NECs in Zimbabwe. This is measured through the expected outcomes presented in Table 5.1. The independent variables comprise the reform components: the procedural sequencing of the dispute resolution process, the codified timeframes, the separation between conciliation and arbitration functions, the arbitrator roster system, the enforcement framework, and the ODR and accessibility provisions. The conditions that then enable the independent variables to produce the dependent outcome are the mediating variables. These include resource allocation, stakeholder buy-in, institutional capacity and regulatory coherence. The moderating variables that will determine the success of the proposed reform include political will, stakeholder buy-in, macroeconomic conditions, and sectoral differences between NECWEI and the NEC in the Energy sector.

5.4.1 Monitoring Framework

Effectiveness will be monitored through a three-tier process which involves institutional monitoring, regulatory oversight and external validation. The NECs need to collect quarterly dispute-resolution statistics across the six indicators, which are benchmarked against the measurable outcomes highlighted in Table 5.1. The MPSL&SW will then aggregate the NEC quarterly reports into annual NEC performance reports on dispute resolution, which are to be tabled before the TNF. The ILO provides the external validation function through its periodic review process, which checks compliance with its conventions and provides an independent benchmark against which internal monitoring mechanisms can be enforced. Data benchmarked against the effectiveness indicators should be collected within the first year of implementation to enable measurement of improvements against a documented starting point. This monitoring framework is a component of the proposed reform model, enabling empirical evaluation of effectiveness and supporting an evidence-based intervention.

5.5 Incorporation of Preventive ADR and Dialogue

An often-overlooked aspect of dispute systems is preventive measures, which focus on preventing disputes. The model encourages NECs to facilitate regular social dialogue forums in their sectors, where employers and unions discuss emerging issues, such as the implications of new technology, retrenchments, and wage trends, outside the context of a specific dispute. Such dialogue can pre-empt many disputes by addressing concerns proactively or, at least, by building communication channels that make resolving disputes internally easier. Additionally, NECs can engage in inspections training both managers and worker representatives in conflict management skills, creating an overall culture that favours negotiation over confrontation.

These preventive measures are also feasible to implement, as they repurpose existing institutions rather than create new ones, and can be rolled out through the phased roadmap in 5.17. The reforms will be monitored against the six effectiveness indicators and the measurable targets presented in Table 5.1. and tracked through the specific metrics drawn from the NEC records.

5.6 Visualising the Process Flow

In practice, a dispute would follow the following path:

(I) Internal handling (if possible) → (ii) NEC conciliation → (iii) NEC arbitration →, (iv) Labour Court Enforcement (legal oversight)

A dispute under this model moves sequentially through the four stages: internal handling through works councils; conciliation with room for mediation-arbitration (med-arb); arbitration if conciliation fails; and Labour Court review and enforcement. There is also recourse to higher courts in constitutionally significant matters. This model preserves the parties' capacity to revert to a less formal stage, where necessary. This is a capacity designated in dispute system design scholarship as a “loopback” (Rowe, 1997). Loopbacks reflect the Rawlsian principle of procedural fairness, in which parties should not be barred from consensual resolution merely because the dispute resolution process has moved them past an earlier stage. The pluralist institutional principle is also reflected in its preference for mediation as a mode of dispute resolution and for adjudication as a residual mode. This gives flexibility for settlement at any stage of a dispute.

5.7 Roles and Responsibilities

The model assigns clear roles: DAs at the conciliation stage handle facilitation, and arbitrators make decisions on the merits. The Labour Court enforces the arbitral awards and handles legal questions, and stakeholders (unions/employers) play a part in both representing parties and overseeing the fairness of appointments, for example, having a say in who gets on the arbitrator roster, thereby trusting the process more.

5.8 Ensuring Fairness and Impartiality

To address concerns like those raised in the 2020 *Isoquant Investment and Memory Darikwa* Constitutional Court case, the model separates the conciliation and adjudication functions. A conciliator will not later defend or judge the case, as that role would be taken by different actors. DAs therefore remain true neutrals. In the case of med-arb discussed above, however, with the parties' consent, a conciliator can switch to the role of arbitrator after a failed conciliation attempt. The model proposes that since the arbitrators are drawn from the pool of NEC DAs, the labour laws should protect such DAs from being coerced by social partners to the NEC into making decisions that favour a certain party. The labour laws would thus need to incorporate heavy penalties for such behaviour. Additionally, the process allows each party to object to a particular arbitrator if they perceive a conflict of interest, in which case another arbitrator from the panel is appointed. This has been noted as a common safeguard in arbitration rules.

5.9 Timeframes

For the system to work effectively, each stage should be subject to time limits. For example, conciliation should ideally be concluded and the certificate of settlement issued within 30 days of the referral. Where conciliation proceedings are not conciliated within 30 days, the NEC automatically refers the matter to an arbitrator. Arbitration hearings should be conducted and an award issued within 30 days thereafter. The Labour Court should aim to hear any appeal within 2 months of a filing. These timeframes ensure the whole process, from dispute filing to final resolution, doesn't exceed approximately 4 to 6 months in normal cases, which is a drastic improvement over scenarios where parties have to wait a year or more for matters to be finalised. Fast-tracking mechanisms can be introduced for particularly urgent cases, for example, unlawful dismissals where reinstatement is sought can be expedited.

5.10 Outcome Enforcement

Once a dispute is resolved either by settlement or an arbitral award, compliance is critical. The model suggests that the Labour Court should have the power to enforce certificates of settlement, arbitral awards, and its own judgments. The procedures in the Labour Court are quicker and more flexible than those in the Magistrates' Court and the High Court, which are governed by stringent rules. For instance, a trade union representative cannot appear in the High Court. A dismissed employee would therefore need to appoint a legal practitioner, yet they would no longer have the financial capacity to engage one for enforcement purposes in the High Court. As a result, in designing this model, considerations from both Rawls' Theory of Justice and the pluralist labour theory were applied. The former supplied the normative principles of fairness and the latter the institutional principles that translate fairness into workable NEC structures. The model is protective of the weaker party through representation rights and preventing undue delays, which often hurt employees more, and upholds impartiality. The model therefore guarantees fundamental procedural and substantive rights to all parties, particularly workers in weaker bargaining positions. In this model, employees, regardless of socioeconomic status, have unrestricted access to the dispute resolution system.

5.11 Constitutional Compliance of the Proposed Model

The proposed model constitutionally affirms the guarantees of administrative justice, fair hearings and fair labour practices as enshrined in section 65 of the Constitution of Zimbabwe. Section 68 of the Zimbabwean Constitution guarantees impartial, efficient, proportionate and procedurally and substantively fair administrative conduct. This is operationalised in this model through the separation of conciliation and adjudicating functions, which remedies the impartiality defect exposed in the *ZIMOCO CCZ 6/20* matter. The codified 30-30-60 timeframes and the automatic referral system operationalise timeliness and efficiency, whilst the proposed NEC-governed arbitrator system addresses impartiality at the arbitration stage. Section 69 of the Constitution guarantees a timely and fair public hearing before an impartial and independent tribunal. This is secured by the same proposed timeframes alongside the supervisory review design. Whilst the legislative reform proposed in this model limits appeals to defined substantive grounds, it preserves the inherent review process of the High Court and the Constitutional Court. This ensures that no decision under this model, whether administrative or arbitral, is made beyond constitutional supervision. Judicial review is a constitutionally mandated supervisory jurisdiction which may not be extinguished by the legislature or any administrative decision-making. The model further protects judicial independence by removing employer influence over DAs' functions.

Just as the model protects judicial independence through preserved review, it also protects the fairness principle of the adjudicative process through the burden-shifting rule. The burden-shifting role rests on the doctrinal foundation that, once an employee shows a prima *facie* case, the onus is on the employer to prove that its conduct was fair. Within the proposed model, this rule operates at the arbitration stage, where in prima *facie* cases of unfair labour practice, the employer also produces comparator data to justify the fairness of its conduct.

5.12 Implementation of Legislative Amendments

This section outlines a roadmap for operationalising the proposed model within Zimbabwe's NECs and the broader labour relations framework. The implementation plan is staged and comprehensive, aiming to ensure a smooth move from the current system to the new model while minimising disruptions and resistance. Key components of implementation include necessary legislative amendments, capacity building for institutions and personnel, stakeholder engagement and buy-in, and the adoption of digital case management systems to support the process. The first step is to align the legal framework with the model. This will likely involve amending the Labour Act [Chapter 28:01] and related regulations, essentially retooling and solidifying them. Given that the

Labour Amendment Act 11 of 2023 reintroduced ADR elements, the new amendments can build on that momentum. Key legislative changes would include:

5.12.1 Clarification of conciliation procedures and roles

The Labour Act should be amended to detail the conciliation process at the NEC level. The current section 93 of the Labour Act provides for conciliation by LOs and does not explicitly incorporate NEC DAs as conciliators for disputes in their respective industries. This avoids scenarios of interpretation in which courts have previously argued that the provision refers only to the LO and the DA. Section 93 should be amended to formalise the 30-day timeframe for conciliation, without a provision for an extension. S.1. 217 of 2003 addresses the gap in the Labour Act and provides for the extension of conciliation to up to 90 days to bring clarification. This provision should be removed so that conciliation remains within a 30-day time frame. Where conciliation is not resolved within the 30-day timeframe, the dispute is automatically referred for arbitration.

If the certificate of settlement is in favour of a litigant, he/she should be allowed to submit it to the Labour Court, and the procedures should be simple and straightforward. That submission and the allegation that it has not been complied with should be enough to shift the burden to the debtor to show cause why the certificate should not be registered and enforced. This addresses challenges in enforcing certificates under the Labour Amendment Act Number 11 of 2023.

The proposed amendments align with South Africa's statutory framework, namely the Labour Relations Act 66 of 1995, which stipulates a 30-day conciliation period. The CCMA reports a conciliation settlement rate of 60 per cent under this framework.

5.12.2 Finality of Arbitration

Arbitration should be final, whether voluntary or compulsory. The Labour Act, therefore, needs to be amended so that it does away with the general appeal and review of arbitral awards. There is a need for an amendment to the Labour Act to add a provision that deals with the enforcement of awards by the Labour Court, whereby the debtor would be given an opportunity to oppose the enforcement only on specified grounds. Some of the grounds to oppose the execution of the awards may be as follows, as provided in Article 36 of the Arbitration Act.

a. The award does not address the dispute referred for arbitration

b. The party against whom the award is invoked was not given proper notice of the arbitration proceedings

c. The subject matter of the dispute is not capable of settlement by arbitration under the laws of Zimbabwe

d. The award is contrary to public policy in cases where the making of the award was induced or effected by corruption or fraud. This could also be in instances where there was a breach of the rules of natural justice in the arbitration process.

e. In appropriate cases, the Labour Court can be given the powers to modify the award, taking into consideration the principles of fairness and justice. Where possible, the modified award would be carried into execution against the debtor.

This model provides for med-arb by a conciliator who also possesses an arbitration appointment. There is therefore a need to amend the Labour Act, specifically Section 98. This provision, which at the moment prevents a conciliator from being appointed as an arbitrator in the same matter, should be qualified to allow parties who consent to utilise the same conciliator as an arbitrator.

5.12.3 Defining the Arbitration Framework and the establishment of a legal basis for the Qualifications

At the moment, the only qualification for the appointment of arbitrators is a social science degree; an arbitrator might possess the degree without the requisite experience. There is therefore a need to stipulate a minimum number of years of experience. This model proposes, in addition to the qualification, a minimum of 3 years as an LO and DA. At the time of the study, the appointment of arbitrators is indefinite, and an arbitrator can remain relaxed and never be promoted, which does not encourage competence. The arbitration awards should be submitted to the dispute resolution committee for review of the arbitrators' performance, based on the quality of the awards and factors such as turnaround time. The dispute resolution committees established within the NECs should have the expertise to assess and evaluate arbitrators from time to time, with updates on progress and performance provided to the MPSL&SW. There is therefore a need to improve the statutory regime by including minimum years of experience in labour issues. This model recommends at least three years.

The provision therefore has to outline the criteria for appointment, such as the minimum experience, knowledge of labour and demonstrated impartiality, amongst other attributes. This ensures competence and echoes the finding that arbitrator quality and appointment transparency were concerns. Under this provision, the Labour Act should also state that dispute resolution must be conducted by an arbitrator on the NEC roster, unless the parties mutually agree on someone else. The law should outline how arbitrators are appointed, for example, by mutual agreement of parties from a list, or by the NECs. The law should provide the infrastructure for arbitration, for instance, who can arbitrate and how they are chosen, to curb corruption. The law should also include clauses prohibiting the acceptance of bribes, rewards, or gifts from parties, with penalties for misconduct aligned with existing anti-corruption laws. This model therefore proposes that section 17 of the Labour Act should be amended so that the Minister of Public Service, Labour and Social Welfare, in consultation with the Labour Court, makes the rules for governing arbitration.

5.12.4 Strengthening enforcement provisions

Currently, the Labour Act has gaps in the enforcement of determinations by DAs; an amendment to section 63 of the Labour Act is therefore needed to explicitly provide for the enforceability of such determinations, as is the case with arbitral awards. The procedures for the enforcement of arbitral awards shall apply to the enforcement of these determinations, with necessary changes. The Act should also stipulate the penalties for failure to comply with the order. Just like in the findings of the study, Myambo and Munyanyi (2017) highlighted that previously, the Labour Act lacked a mechanism for penalties and the execution of the DAs' determinations; the amendments proposed by this model resolve this by giving determinations a clear path to execution in the NECs' dispute resolution system. Enforcement mechanisms need to be enhanced to ensure that settlements and awards are honoured. Settlement agreements reached through NEC conciliation should carry the same weight as Labour Court consent orders upon registration, thereby conferring the same enforcement effect at the Labour Court. To also cater for other situations that might have enforcement gaps, this model suggests a new provision in the Labour Act titled *"Enforcement of decisions not provided for elsewhere in this Act." T*his provision should therefore explicitly state that any decision made in terms of the Labour Act, whose enforcement is not provided for anywhere in the Act, should be enforced the same way an arbitral award is enforced in terms of section 98.

5.12.5 Enhancing NECs' legal standing and support

Given that the model leans on NECs to manage conciliation and support arbitration, the Labour Act should therefore reinforce the NECs' mandate in dispute resolution. There is a need to modify Section 62 of the Act on the functions of NECs to clearly empower NECs to administer the conciliation and arbitration system. It should explicitly state that NECs are responsible for the conciliation of disputes within their sectors or industries and may establish their own dispute-resolution committees. This could include allowing NECs to establish their own panels of arbitrators, subject to national accreditation, and possibly their own internal dispute-resolution rules, provided they meet minimum standards.

In practice, some NECs have already drafted some Statutory Instruments to guide operations, for example, NECWEI has SI 77 of 2021 on dispute resolution. Formal law should thus encourage rather than inhibit such innovations. The NEC constitutions should provide for a dispute resolution committee that oversees the performance and functions of conciliators and arbitrators. There also have to be specified minimum qualifications and the level of experience in dispute resolution. This model proposes a conciliation and arbitration diploma similar to the one offered by the University of Zimbabwe. This ensures that the dispute resolution committees in NECs are also equipped to handle these tasks. To also resolve the challenges arising from the new section 56 of the Labour Amendment Act Number 11 of 2023, especially regarding the disputed existence of the NEC and the DA's jurisdiction, there is a need for an interim provision to clarify the issues. Section 56 (1) should contain a provision which reads "*…to avoid doubt, employment councils that were in existence on the promulgation date of the Labour Amendment Number 11 of 2023 should continue to exist, subject to compliance with new obligations imposed by this section."* Some of the new obligations now require the NECs to operate as if they were statutory rather than voluntary councils. Constitutions of the NECs are also required to have provisions on the admission of new parties and the minimum threshold for admission to avoid the proliferation of unrepresentative parties like "briefcase unions."

5.12.6 Incorporation of timelines and efficiency mechanisms

Whilst some time limits exist in regulations, the Labour Act has to codify key timelines. For example, the maximum period for conciliation should be 30 days, and the arbitration hearing should commence, and the award be issued within 30 days of the hearing. The

Labour Court review should be filed within 21 days of the award. The Act or accompanying regulations should set target timelines; for example, conciliation must occur within 30 days of dispute referral, the arbitration award within 30 days of arbitration commencement, and Labour Court appeals should ideally be resolved within 60 days. Administrative guidelines already exist, but codifying them as regulations adds accountability. While it may be hard to enforce deadlines in court, at least in ADR stages, these can be enforced through management oversight; for example, an arbitrator who consistently delays could be removed from the roster or face disciplinary action. The labour representatives in this study criticised the lack of statutory timeframes; hence, adding them would hold the process accountable for timeframes.

5.13 Stakeholder Engagement and Buy-in

Effective labour relations reform requires the backing of key players in the industry, such as the Government's Ministry of Public Service, Labour and Social Welfare, employer organisations such as EMCOZ and umbrella Trade Union bodies like ZCTU and ZFTU. Meaningful social dialogue is key to this model's successful implementation. The implementation strategy should involve tripartite consultations to fine-tune the proposed model and legislative adjustments. Zimbabwe's existing bipartite NEC structure and the TNF can facilitate discussions on these reforms. Addressing potential stakeholder concerns is also very critical. The MPSL&SW is expected to support these reforms as they align with its goal of promoting social justice and efficient labour markets. The MPSL&SW would need to provide resources and possibly adjust LO roles relative to DAs to prevent duplication. This was a key stakeholder concern where it was felt that the Labour Amendment Number 11 of 2023 allowed for LO intervention in NECs.

The government must also ensure the model complies with constitutional rights, such as the right to a fair hearing and administrative justice. This model addresses previous Constitutional Court concerns by clearly separating roles. The judiciary, particularly Labour Court judges, should be consulted. While they might initially be concerned about inconsistent arbitration awards, their involvement in arbitrator training and guideline setting can alleviate these concerns, ensuring they remain the final legal authority. In general, parties seek efficient, cost-effective and predictable dispute resolution. However, they might have reservations about an ADR system being biased or arbitrators favouring either party. To gain stakeholders' support, the model should emphasise the professionalisation of arbitration, ensuring decisions are made by qualified arbitrators and the finality of awards, which ultimately limits lengthy appeals. Promoting a faster process can demonstrate that justified employer actions will be confirmed quickly. Training for HR and managers on the new system and encouraging early settlements is also important. Stakeholders at TNF should be involved in drafting the rules for arbitrator appointments to build trust in the system's neutrality.

Trade unions seek a dispute resolution system that safeguards workers' rights, is accessible without excessive legal jargon, and delivers prompt justice. They may be apprehensive about any system that appears to restrict access to the courts, for example, the current provisions which deny trade unions access to the High Court. There is therefore a need for buy-in for unions to understand that arbitration in this model is a faster, impartial alternative, with potential for quicker remedies and judicial review. This should garner union support. Unions also benefit from faster resolutions, as they often represent workers in these forums. Building trust through union involvement in arbitrator selection or process monitoring is crucial. Based on the findings and statistics, the fact that only a fraction of disputes are resolved within a month highlights the detrimental delays in the current system, providing a strong argument for reform. The engagement process can be formalised by establishing a reform task force comprising representatives of all the social partners and NECs. This task force would oversee the drafting of amendments, propose subsidiary regulations, such as arbitration rules, and set a rollout timeline. Public awareness campaigns could also be part of engagement efforts, informing workers in large and small businesses about the new dispute-resolution avenues to ensure clarity on rights and processes.

5.14 Capacity Building for NECs and dispute resolution practitioners

A model is only as good as the people running it. Thus, substantial training and capacity development are needed for all stakeholders involved. Capacity building for NECs and Dispute Resolution Practitioners is therefore proposed as follows;

5.14.1 Training of Designated Agents/Conciliators

There is a need to retrain DAs to focus on conciliation skills, enhancing their interest-based bargaining, communication techniques, and neutrality. Universities and training institutions can run intensive mediation training workshops for NEC personnel. In South

Africa, the Office of the Judge President recently introduced mandatory mediation in Gauteng. This was meant to filter the caseload, enabling only cases warranting judicial attention to be enrolled. The diversion of cases that could be settled through effective mediation by professional mediators was considered appropriate. Mandatory mediation has been part of the South African law for three decades in the labour law field pursuant to the Labour Relations Act of 1995. Continued certification of conciliators could be introduced to standardise the quality of their outputs. Since conciliation is voluntary in its outcome, the conciliator's skill often determines success rates. Investing in training should increase settlement rates, thus reducing the load on arbitration/courts. Criteria for arbitrators should include knowledge of labour law and integrity. Training for arbitrators should cover not just the law but also how to write clear awards, manage hearings, and ensure procedural fairness. The ILO or regional bodies like the Southern African Development Community could assist with arbitrator training programs, given their interest in promoting ADR. Moreover, arbitrators need familiarity with the industries they serve; hence, an NEC-specific orientation is useful, for example, in understanding common practices in the Energy sector compared to NECWEI.

5.14.2 Resource Allocation to NECs

Many NECs may be under-resourced, which was part of the current system’s problem. For example, in the energy sector, only two Designated Agents handle disputes nationwide. The implementation should channel resources to hire additional Designated Agents or support staff. Funding could come from a small levy on employers, allocated to a dispute resolution fund. This is a common feature in other countries in the region, where they fund their ADR bodies through a payroll levy or contributions from bargaining agreements. To improve on dispute resolution, NECs might also need better physical and logistical infrastructure. These may include conducive offices or meeting rooms for conciliations and arbitrations, recording equipment for arbitration hearings, among other things.

5.14.3 Judicial Training: Labour Court judges should also be oriented to the new system

This study found that some Labour Court judges are appointed from among magistrates and lack the requisite knowledge of labour law. To handle arbitration appeals effectively, judges lacking experience in this area would benefit from capacity building or knowledge sharing with experts from regions such as South Africa or with organisations such as the ILO. Training institutions and universities also play an important role in imparting knowledge to stakeholders, as the study's findings indicate. This would enable them to develop a uniform process that balances respecting the arbitrator's decisions with addressing significant irregularities.

5.14.4 Information Systems and Administration

Capacity building includes administrative capability. NEC secretariats might need training in online case management, including docketing cases, promptly scheduling sessions, and communicating with parties. A standardised case intake form and process could be introduced across all NECs so that every dispute referral captures the necessary information and automatically triggers the next steps. When a case is logged, a conciliator is immediately assigned, and the system automatically generates a hearing date within the set timelines.

5.14.5 Digital Case Management and ODR (Online Dispute Resolution) Systems

Embracing technology will considerably improve the efficiency and transparency of the dispute resolution process. A digital case management system can track each dispute from filing to closure, send reminders for upcoming hearings, and maintain records of outcomes. For implementation, the MPSL&SW, in collaboration with NECs, can adopt or develop labour dispute management software for use by each NEC. This could be a centralised platform accessible to all 48 NECs, ensuring consistency and ease of reporting. Each case entered would include fields for the type of dispute, conciliation dates, and outcome, along with dashboards that highlight cases nearing a deadline without action, enabling proactive management. The MPSL&SW has an oversight role in monitoring dispute resolution. This is currently done by submitting physical quarterly reports to the office of the Registrar of Labour. Case management software that unifies the MPSL&SW helps manage disputes efficiently, securely, and reliably, reducing human error and delays. The MPSL&SW is also equipped to make timeous policy decisions on dispute resolution, thereby improving the effectiveness and justice delivery.

To modernise dispute resolution and address logistical challenges, particularly for geographically dispersed parties, Online Dispute Resolution (ODR) should be integrated. Initial conciliation sessions, for instance, could be conducted through teleconference or secure video platforms when in-person meetings are not possible. This approach, widely adopted during the COVID-19 pandemic, offers significant time and cost savings. The NEC's digital infrastructure could facilitate document submission and secure online communication with conciliators. It is essential to ensure accessibility to all parties, including the vulnerable employees, recognising that not all workers have internet access. This preserves the dictates of Rawls theory of Justice. Therefore, a hybrid system that combines digital and in-person options is critical. A digital system would collect valuable data, including the number of disputes by sector, settlement rates, and average time to resolve. The MPSL&SW and NECs should periodically analyse this data, and if one NEC has a very low settlement rate, it could indicate that training or different approaches are needed there. If a certain type of dispute, perhaps underpayments of prescribed minimum wages, always goes to arbitration, the requisite NECs should re-examine their collective bargaining processes and outcomes and consider policy interventions to address the root cause.

Part of making the system accessible is a user-friendly interface. This could result in a situation where a worker with a dispute could even initiate a case online by filling in a form that is then sent to the NEC. Alternatively, at least the unions and employer representatives can handle the online filing on behalf of their members. Such convenience can increase usage and reduce the time lost in just getting the paperwork started. As recommended in the study's findings, kiosks should be made available to institutions such as Magistrates' Courts in decentralised areas, where trained personnel assist employees in accessing court proceedings online.

Due to the significant changes involved, it is recommended to implement the new dispute resolution model through pilot programs using a phased rollout. Initially, the model could be tested in NECWEI and the NEC for the Energy Sector, both of which have been central to this study. These sectors exhibit diverse characteristics: NECWEI has regional offices and high case volumes, while the Energy NEC faces resource constraints. A year-long pilot in these NECs, incorporating the new training and full conciliation and arbitration process, would allow for monitoring settlement rates, identifying challenges, and gathering stakeholder feedback. Lessons learned from the pilot would then inform refinements before a phased rollout to other NECs, prioritising sectors with high volumes of disputes, such as Commercial and Manufacturing. Each NEC may require minor adjustments to suit its specific needs, while maintaining the core model.

Effective implementation requires public awareness and accessibility to reach all end-users, including employees and small-scale employers who may not participate in stakeholder meetings. Awareness campaigns should educate workers about their rights under the new system; hence, the role of civil society, as highlighted in the study's findings. Similarly, small businesses, often outside employer associations, need to be informed about the proposed changes to avoid inadvertently bypassing NEC processes and, in the process, be encouraged to join employer associations. DAs can distribute informational pamphlets in workplaces and conduct awareness seminars on this online dispute resolution process. NEC websites and workplace visits can also be used to inform management and workers about dispute resolution options. The aim is to ensure the system is utilised and not ignored due to a lack of knowledge.

5.14.6 Continuous Monitoring and Adjustment

After implementation, a dedicated oversight body comprising all stakeholders should continuously monitor the system's effectiveness. This includes tracking resolution times, identifying potential arbitrator bias, and assessing NEC performance. Public reports on these metrics will build trust and demonstrate the system's success. For example, reporting an 80% resolution rate within 60 days would reinforce stakeholder support. Any identified issues, such as loopholes causing delays, should be addressed with prompt amendments. Implementing a digital system requires investment and staff training, but it will improve efficiency over time. This change management process, involving careful legal adjustments, stakeholder consensus, capacity building, technology integration, and phased rollout, will lead to a trusted, efficient, and fair dispute resolution system, contributing to a stable and productive work environment.

Transitioning to a digital system will require financial investment, possibly through government funding or international support, as well as staff training. Over time, digitisation will significantly improve the accessibility and the speed of dispute resolution, as prescribed by the law. This implementation process involves managing change within the labour relations system and requires careful legal adjustments, stakeholder agreement, capacity building, technology integration, and a phased rollout. The goal is to establish a trusted, efficient, and fair system that fosters a stable and productive workplace.

5.14.7 How the Model Addresses Identified Challenges

Whilst the proposed NEC dispute resolution model is aimed at resolving challenges arising from this study's findings and the literature reviewed, this section details how the model addresses the main challenges identified. The main challenges include bias and impartiality issues, corruption, delays, high costs, weak enforcement, and lack of political will/commitment. Below is an analysis of each challenge and the model's specific measures to address them:

5.14.7.1 Bias and Lack of Impartiality

The study found perceptions of bias in the Labour Amendment Act Number 5 of 2015 system, where DAs were seen as taking sides or having a conflict of interest when they both conciliated and then defended their rulings in court. The model embeds principles of fairness and impartiality, drawing on Rawls' Theory of Justice, for instance, by separating the roles of a conciliator and an arbitrator. The same separation reflects the pluralist institutional principle that distinct functions within a dispute resolution system require distinct structural roles. This is meant to ensure that no single actor can collapse the procedural distance between mediation and adjudication on which institutional adjudication on which institutional legitimacy depends (Kahn-Freund,1983). It also ensures neutrality hence answering past concerns about bias in the process. A DA who facilitates a settlement will not decide the case if it goes to arbitration. Instead, an independent arbitrator steps in, ensuring a fresh, unbiased perspective. The exception is where there is consent of the parties for the conciliator to take up the arbitrator role as provided for in med-arb. The appointment of arbitrators through the sequential following of a roster or an arbitrator's list removes any party influence in "forum shopping" for friendly decision-makers. Furthermore, the model calls for impartiality safeguards in which arbitrators and DAs must declare any conflicts of interest, and parties can request a replacement if they suspect bias, with oversight by the NEC or the MPSL&SW.

The ILO (2021) emphasises that effective systems require processes that are seen as fair and neutral, free from discrimination or favouritism. This model's structure institutionalises impartial decision-making, addressing both real and perceived bias. Over time, as stakeholders see that outcomes are determined by facts and law rather than connections or bribes, trust in the system should be restored. This resonates with Rawls's view that justice requires decisions made without knowledge of one' s own stake. This means disputes are decided by outsiders with no personal interest in the parties. By ensuring transparency and neutrality, the model directly combats bias.

5.14.7.2 Corruption

Related to bias, corruption was reported as a serious issue, especially in arbitration before the Labour Amendment Number 5 of 2015 where some arbitrators were accused of favouring those who could pay. The model addresses corruption on multiple fronts. First, the free conciliation stage removes any financial transaction at the initial phase, and any settlement arises from mutual agreement rather than one side "buying" a decision. The outcomes at this stage are not binding; they are subject to mutual agreement. Secondly, arbitration under the model is subject to professional standards, with arbitrators bound by ethical codes, for example, those of the Chartered Institute of Arbitrators or a national ADR association, and any allegations of bribery will lead to disciplinary action, up to blacklisting from the panel. The model could include assigning arbitrators on a rotational basis, following a sequential roster to prevent parties from repeatedly using the same individual, thereby reducing the risk of collusion. Thirdly, by introducing digital case management, the model reduces face-to-face interactions in scheduling or procedural matters that could be avenues for corrupt bargaining; filings and case assignments can be automated to some extent for transparency.

The model also recommends adequate remuneration and resources for conciliators and arbitrators, funded by the levies discussed earlier, so that these officials are less susceptible to petty corruption stemming from low remuneration. A key perception that drove the 2015 reform was that NECs were corrupt; the model's emphasis on independent arbitration and oversight directly counters this. The culture of accountability, through oversight committees such as the proposed dispute resolution committees in the NECs and user feedback on dispute processes, will make it harder for corrupt behaviour to go undetected. In short, by eliminating structural incentives for corruption, like one person having too much unchecked power and increasing transparency, the model creates an environment of integrity. This fulfils the Rawlsian requirement that justice system procedures be conducted in good faith and should also be publicly credible. Stakeholders will regain confidence when outcomes are transparent, and merit based.

5.14.7.3 Delays and Backlogs

The model restores speed and accessibility by making conciliation the first mandatory step and arbitration the main route for unresolved disputes, thereby largely bypassing the slow Labour Court route except for enforcement purposes. Global best practices from the ILO and comparative countries underscore that such ADR-centric systems tend to be more efficient and satisfactory to users. The NECWEI and the Energy sector case studies demonstrated the possible tangible benefits of the proposed model, including faster resolution times, improved enforcement, and more consistent decision-making. For instance, the NECWEI could significantly increase its resolution rate, currently around 58%, by implementing trusted, independent arbitration to reduce appeals. Similarly, the Energy Sector could overcome enforcement challenges through the authority of arbitration awards and increased personnel support, ensuring effective dispute management despite limited staff. These examples prove the model's practicality and adaptability to diverse real-world situations.

The current system's delays are widely decried as lengthy, complex, and winding dispute-resolution processes due to protracted court confirmations and appeals. As a remedy to this, the model significantly streamlines the process. Conciliation is intended to occur shortly after a dispute is reported. The NECs should set a guideline like "within 2 weeks of referral". If conciliation fails, arbitration can be invoked immediately, avoiding the months of waiting for a Labour Court confirmation, as was the case under the Labour Amendment Number 5 of 2015. Instead, only contested cases go to court at the enforcement stage, and even then, on limited grounds which the Labour Court can address faster than a full *de novo* trial.

The model also calls for strict timelines at each stage. As already proposed, these timelines can be reinforced by amendments to the Labour Act by reinserting time limits that stakeholders had demanded in past reforms. Moreover, the introduction of digital case tracking will help monitor elapsed times and send alerts if a case is nearing a deadline, prompting intervention by supervisors. Compared to the prior hybrid system, this model is leaner essentially a two-step process (conciliation then arbitration) for most disputes, thus, its inherently faster. Empirical evidence from similar systems supports this wherein South Africa's CCMA resolves a large volume of cases swiftly and contributing to labour stability (Bushe, 2019).

Additionally, early resolution at conciliation through training and continued certification of arbitrators means that many cases won't even need arbitration, reducing backlog. To illustrate the impact, under the model, a typical dispute could be settled within a few weeks through conciliation, whereas previously it would take months going through Labour Court. Even arbitration plus a possible court intervention under the model should conclude far sooner than the old multi-appeal process. In essence, "justice delayed is justice denied" as outcried by Madhuku (2010) is addressed by the model's emphasis on ADR efficiency. In this instance, every dispute gets an earnest attempt at prompt resolution, and the procedural path is shortened. This improves compliance with the Labour Act's purpose of expeditious dispute resolution and justice delivery under Section 2A. Expeditious resolution not only benefits employees who get remedies sooner and employers who remove uncertainties, but it also reduces the socio-economic costs of unresolved disputes like strikes and loss of productivity. By providing timely outcomes, the model aligns to Rawls's concept that a just system should not impose undue burdens, like long waits, on those seeking redress, particularly the least advantaged who suffer most from delays. Pluralism also reinforces this by advancing that prompt resolution sustains the credibility of collective bargaining and prevents the structural drift toward unilateral employer action that occurs when institutional remedies become too slow to function (Flanders, 1965). For example, a dismissed worker with no income cannot afford years awaiting justice.

5.14.7.4 High Costs

High costs were identified as a barrier to justice whether costs of arbitration fees or of legal representation in protracted litigation. The model mitigates costs in several ways. Conciliation is free at the point of use; NECs, being part of the industrial relations machinery, will provide conciliation through NEC levies or the additional special fund to be levied. If a case proceeds to arbitration, the cost is still covered by the special fund. The model's streamlined nature also means fewer legal fees; parties might not need legal representation for conciliation they can be accompanied by union representatives. Arbitration is simpler than High Court litigation, potentially reducing the need for expensive legal representation, as union representatives can still take up the role. By limiting Labour Court involvement, the model avoids the heavy costs associated with drawn-out court cases, court fees, and legal fees incurred from multiple appearances.

Furthermore, quicker resolution inherently lowers cost each month, as additional months of dispute might mean lost wages for workers or operational costs for employers.

The model could also encourage cost-effective practices, such as document-only arbitration, for a quicker, more straightforward resolution. Another aspect is access to representation, where the model supports that parties have the right to representation by union officials, legal practitioners, or labour consultants. In a bid to ensure equity, this model considers it prudent to establish a legal aid or pro bono scheme for underprivileged workers in arbitration reviews. This could be done in partnership with NGOs and civil society, as established by the study's findings. The model therefore strives to make the dispute resolution process “accessible at reasonable cost”, aligning with recommendations that effective dispute systems should be affordable to the users. By removing or reducing fees at key stages and cutting unnecessary procedures, the financial hurdle is lowered. This particularly helps employees, who often abandoned cases due to costs and delays in the old system, as established by the findings. In Rawlsian terms, the model promotes fair equality of opportunity by not pricing out those with fewer resources. Parties, regardless of affordability, can utilise the dispute resolution mechanisms.

5.14.7.5 Lack of Enforcement of Outcomes

A significant challenge was that even when determinations or arbitral awards were issued, they often went unenforced, creating a hollow victory for the winning party. The model remedies this by establishing straightforward enforcement routes. As described, any NEC conciliation settlement or arbitration award can be registered with the Labour Court for enforcement. The model builds on section 98 of the Labour Act, which ensures arbitration awards are executable under the Arbitration Act. Essentially, the model transforms dispute resolution from a once-off decision into a process that culminates in an actual remedy. This addresses stakeholder frustrations where, previously, a DA's determination had "no teeth" without Labour Court confirmation, and even after confirmation, enforcement was unclear. By plugging this gap, the model upholds the principle that justice must not only be done but must be seen to be done. Enforced outcomes also enhance the credibility of NEC parties, wherein they will engage in conciliation more earnestly if they know settlements will hold up. Further, losing parties are more likely to comply with awards voluntarily if they know enforcement is certain. In light of the foregoing, robust enforcement mechanisms close the loop of dispute resolution, ensuring that the rights previously vindicated through the process result in actual compliance. This fulfils Rawls' requirement that institutions deliver actual fairness in outcomes, where a right or obligation has been established, it must be carried through; the system would fail the least advantaged, who cannot otherwise secure compliance. In pluralist terms, enforceability is the institutional bridge between agreement and effect. Without it, the negotiated balance that pluralism treats as the central achievement of labour institutions cannot hold.

5.14.7.6 Lack of political will

The most intractable challenge in the study was the lack of political will to implement and sustain improvements in the system. Respondents and the literature noted that reforms often depended on political leaders' priorities, and inconsistent commitment continues to hamper the labour dispute system. The model cannot by itself create political will, but it is structured to require and encourage continuous stakeholder engagement and government support. By involving a tripartite oversight body (government, employers, unions) in the model's governance, the model institutionalises stakeholder input and creates pressure on political authorities to act. For example, if the oversight body regularly reviews the system's performance, it can publicly call out the government when arbitrator posts are left unfilled or when the budget for NECs is inadequate.

The model's alignment with international best practices and ILO standards can also be leveraged to garner political support. Political leadership is more likely to show will when reforms are framed as the adoption of respected global norms, especially since Zimbabwe has ratified ILO conventions and seeks to demonstrate compliance. This should emphasise how these changes benefit not just workers but also the investment climate, by reducing industrial strife. Another aspect is transparency, where the model will publish statistics, for example, the number of disputes resolved, the average time and compliance rates, which creates accountability as attained through the online dispute resolution system. If the data shows persistent challenges, it puts pressure on officials not to ignore the problem. Moreover, by initially achieving some quick wins, for instance, rapidly clearing backlog cases through targeted arbitration drives, the model can gain political momentum, showcasing success that officials would want to associate with. The TNF can serve as a platform to secure commitments; as noted, social partners had provided input on needed changes, which were partly heeded in the Labour Amendment Act Number 11 of 2023.

The model's proposals can be taken through the TNF to get formal buy-in. In essence, the model builds structures that embed the need for political support into regular operation through oversight and reporting, and it aligns with the interests of multiple stakeholders to generate collective will. By demonstrating fairness and efficiency, the model may also depoliticise the dispute resolution arena if stakeholders see the system working impartially. Additionally, training and capacity-building components will involve ministry officials, helping to create a bureaucratic commitment to the system's success even as individual ministers change, addressing the instability caused by frequent reshuffles noted in the study. Ultimately, sustained political will remains a challenge beyond pure design, but the model's inclusive governance and transparency are tools to nurture that will ensure effectiveness in dispute resolution. As Matsikidze (2023) notes, without political will, even good laws remain unenforceable. The model's success, therefore, depends on continued advocacy and on political leaders' recognition that an effective labour dispute system is crucial to national socio-economic well-being.

5.15 Challenges and Mitigation Strategies

5.15.1 Resistance to Change

Although the proposed model aims to improve dispute resolution, its implementation will likely face challenges. It is crucial to predict these obstacles and develop strategies to overcome them. This section addresses potential legal, institutional, cultural, and practical hurdles. A significant challenge is resistance from stakeholders who are comfortable with the current system or who perceive the new model as detrimental. For example, legal practitioners might oppose the finalisation of disputes at arbitration due to reduced litigation. Unions or employers might also lack trust in the arbitrators. To mitigate this challenge, there is a need to broaden education and dialogue to build trust with the system. Sharing success stories from pilot programs or similar systems, like the CCMA in South Africa, can also be persuasive. Involving sceptical groups in training and neutral selection processes, such as allowing union and employer-nominated arbitrators, can increase confidence. The legislative process should also be used to address stakeholder concerns, ensuring amendments include necessary safeguards.

5.15.2 Capacity Constraints and Quality Control

The implementation of the model may be hindered by a lack of skilled arbitrators and conciliators, leading to poorly written awards and backlogs. Inconsistent quality among the arbitrators can also damage confidence. To mitigate this, intensive training and mentorship programs are crucial. Training institutions and universities should be utilised to extend labour law programmes to all relevant stakeholders. Pairing new and experienced arbitrators, implementing peer review, and monitoring conciliator performance through feedback and settlement rates are essential. NECs should therefore introduce robust performance management systems to assess performance.

5.15.3 Enforcement Difficulties

A major challenge in the dispute resolution process is ensuring compliance with awards and settlements, as enforcement procedures are often slow and complex. To mitigate this, legal reforms should simplify the process, enabling sheriffs to directly enforce registered arbitration awards. Penalties for unjustified refusal to comply, such as fines for employers, should be implemented. Clear guidelines should also be established for employer rights when employees refuse reinstatement. The Labour Court should set a precedent of upholding awards and penalising non-compliance.

5.15.4 Resource Limitations and Funding

A significant challenge that the implementation of this model would face is resource limitation, which could hamper the hiring of sufficient conciliators and arbitrators and the establishment of a digital system. It should be noted that NECs vary in size and scope of coverage, which affects NEC levy collections. Given the financial disparities among NECs, government, ILO, or donor funding may be necessary for initial investments in training and technology. Sustainable funding options include allocating a portion of NEC levies to a central fund or implementing a small arbitration fee for employers. Reallocating existing employer contributions and sharing arbitrators across NECs can also optimise resource use.

5.15.5 Legal Challenges and Precedent

The new system could face legal challenges, particularly regarding compulsory arbitration, which finalises the dispute, and constitutional rights, with claims that it infringes on the constitutional rights to a fair hearing or access to justice. While most jurisdictions accept arbitration with judicial review, constitutional compliance is key. To minimise this risk, constitutional lawyers should be involved in drafting the law to ensure due process standards are met. Leaving the courts with room only for the enforcement of awards and for other issues that arise from that will also satisfy judicial oversight requirements. If a legal challenge arises, the state and stakeholders should strongly defend the system by highlighting its fairness and efficiency improvements and citing successful examples from other countries, such as South Africa. There would be a need to emphasise the challenges posed by the old system, which formed the basis of the previous ZIMOCO Constitutional Court case.

5.15.6 Cultural Adjustments

Parties might view conciliation as a formality which hinders its effectiveness. To address this, the model should emphasise arbitration as the next step so as to reduce the incentive to sabotage conciliation. The default arrangement, where, if conciliation proceedings are not finalised within 30 days, should motivate the parties to settle. Conciliators should be well-trained to foster problem-solving and utilise second sessions. Success stories and pre-conciliation meetings can also encourage genuine engagement. Building trust in conciliators through transparency and ethical conduct is crucial. A backlog of existing disputes requires careful management to foster confidence in the system. However, cases already in progress should likely continue in court. Staggering implementation, with new disputes entering the new system and old ones continuing in parallel, can also help manage the transition.

5.15.7 Sectorial Differences and Consistency

Ensuring consistent implementation across various NECs is a key challenge. Disparities in effectiveness can lead to uneven access to justice. To address this, the digital platform and the MPSL&SW oversight can highlight differences and find ways to address them.

Implementing staff exchange programs between high and low performing NECs can facilitate knowledge transfer. The annual NEC symposiums can also be utilised to share information and create equal opportunities for information dissemination amongst NECs. Centralising functions such as arbitrator assignment can help ensure resource sharing, especially in smaller NECs that cannot afford to employ more than one DA. Regular meetings of NEC principals, with an MPSL&SW official in attendance, can promote standardised practices. Ultimately, the MPSL&SW can intervene in poorly performing NECs with an emphasis on capacity building.

5.15.8 Technology Adaptation

Implementing a synchronised digital system that provides information for all the NECs may be cumbersome, and technical challenges may arise. User inexperience and connectivity issues, particularly in remote areas, are also foreseeable challenges. To mitigate these issues, the model will select user-friendly, reliable software and conduct thorough testing. There will be a need to provide comprehensive training for all NEC administrative staff and other relevant stakeholders. Initially, it will be essential to maintain manual backup systems until the digital system is proven effective. For areas with poor connectivity, there should be an option to work offline with data synchronisation or by utilising phone communication. If necessary, a hybrid system should be implemented to enable staff to digitise paper filings immediately. Gradually, as users become more comfortable, the digital system will become standard.

By anticipating and addressing potential challenges with the outlined strategies, the new dispute resolution model has a greater chance of successful implementation and long-term sustainability. Each challenge presents an opportunity for improvement, such as transforming stakeholder resistance into collaboration through inclusive processes and strengthening institutions through targeted training. Continuous monitoring and adaptability are essential for the successful implementation. The commitment of all parties will be crucial in overcoming initial hurdles, as the benefits of faster resolutions, reduced court costs, and improved labour relations will ultimately lead to widespread acceptance.

5.16 Chapter Summary

Zimbabwe's labour dispute resolution system, particularly within the NECs, is at a critical, transformative era. While workplace conflicts are unavoidable, their management determines whether they lead to undesirable outcomes or constructive improvements. The current system, especially since 2015, has failed to provide prompt and fair dispute resolutions, resulting in significant backlogs and stakeholder discontent. This chapter has proposed a comprehensive model, informed by extensive research that prioritises alternative dispute resolution (conciliation and arbitration) within the NEC framework, supported by essential legal and institutional changes. The proposed model directly confronts the weaknesses of the current system with targeted solutions. By ensuring impartial neutrals, rooting out corruption, lowering costs, restraining unproductive judicial intervention, expediting procedures, institutionalising stakeholder oversight and enforcing outcomes, the model provides a holistic improvement.

Implementing this model would allow NECs in Zimbabwe to fulfil their original purpose as efficient providers of labour justice. Each design choice was informed by the study's findings and aligns with both the Rawlsian justice principles and the pluralist labour theory, as well as practical lessons from other jurisdictions. It also aligns with constitutional requirements for swift and fair dispute resolution and with international labour standards that promote alternative dispute resolution. Successful implementation would yield numerous benefits, for example, workers would receive faster justice and feel more confident in exercising their rights, while employers would have a more predictable and less disruptive means of resolving disputes, reducing court time and collective job actions. The workplace environment would also improve, characterised by greater compliance and cooperation.

In the broader context, an effective dispute resolution system is a pillar of sound industrial relations and economic development. It contributes to social peace, which is attractive to investment and to enterprise productivity. Employees who trust that disputes will be fairly heard are more likely to commit to their work and engage in dialogue rather than labour unrest. Employers who know that frivolous claims can be efficiently dismissed and legitimate ones rectified are more likely to respect labour standards, knowing deviations will be corrected anyway. Thus, the ripple effect of this model extends beyond individual disputes, as it fortifies the rule of law in the labour market and underpins a just work environment, a cornerstone of decent work as championed by the ILO.

In conclusion, this chapter demonstrates that Zimbabwe can significantly improve labour dispute resolution in NECs by re-emphasising alternative dispute resolution methods, supported by robust legal frameworks and stakeholder involvement. The outlined recommendations offer a realistic path to reform. The model’s success hinges on thorough implementation and ongoing collaboration among government, employers, and unions. With these elements, Zimbabwe’s NECs can become models of efficient labour dispute resolution, ensuring disputes lead to justice, equity, and lasting workplace harmony.

CHAPTER 6: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

6.0 Introduction

The previous chapter suggested a framework to improve alternative dispute resolution (ADR) within the National Employment Councils (NECs) in Zimbabwe and promote the effectiveness of labour dispute resolution systems. This chapter concludes the thesis by consolidating the study's findings and demonstrating how each research objective has been met. It also presents a structured set of recommendations derived from the reviewed literature and empirical evidence. The study evaluated the effectiveness of labour dispute resolution systems in NECs in Zimbabwe following the Labour Amendment Act Number 5 of 2015. That question arose because, despite the Amendment's objective of aligning Zimbabwe's dispute resolution framework with the Constitution and ILO standards, scholars and stakeholders reported persistent delays, accessibility constraints, enforcement gaps, and compromised impartiality, suggesting flaws in the Amendment. This study's objectives were as follows; (a) to critically evaluate the effectiveness of labour dispute resolution systems in the NECs in Zimbabwe post the Labour Amendment Number 5 of 2015; (b) to examine stakeholder perceptions, dynamics and institutional relationships within the NECs system post the Labour Amendment Act Number 5 of 2015; (c) to develop a justice oriented-oriented, empirically grounded model for effective dispute resolution in NECs and (d) to formulate differentiated recommendations and strategies for reform.

This chapter is organised into sections that summarise the study and its principal findings, state the study's contribution, present the study’s conclusions structured around the objectives, articulate the implications of the findings for policy and practice, and elaborate recommendations across legislative, technological, institutional, capacity, governance, and stakeholder coordination. It also identifies the direction for further research and closes the chapter with a systematic statement demonstrating how each objective was met.

6.1 Summary of the study

This section traces the thesis’s logical progression across its six chapters. Chapter 1 identified the research problem, which revealed a gap between what the Labour Amendment Act Number 5 of 2015 and its subsequent amendment sought to achieve and what they have delivered in practice. The study highlighted the research problems, objectives, and questions, and located the study within the post-Zuva judgment labour regulatory environment.

Chapter 2 developed the theoretical and conceptual framework. In terms of the theoretical framework, it adopted Rawls' theory of justice as the primary evaluative standard, while the pluralist labour theory provided a supporting institutional framework. This dual framework derived six evaluative effectiveness indicators against which the performance of the NEC dispute resolution system is evaluated. These were timeliness, enforceability, procedural fairness, accessibility, stakeholder confidence and ILO compliance. Chapter 3 set out an interpretivist, qualitative, dual study of the NECWEI and the NEC for the Energy sector methodology. 39 respondents were selected through purposive and snowball sampling methods across the nine stakeholder categories. Semi-structured interviews and documentary analysis structured around the six evaluative indicators were used. The data analysis process was guided by a hybrid content and thematic analytical procedure in NVivo 13. Chapter 4 presented the findings, which revealed that the post-Labour Amendment Act Number 5 of 2015 framework fell short on every indicator. Instead of resolving systemic weaknesses as intended, it created procedural delays, compromised DA impartiality, fragmented enforcement, reduced stakeholder confidence and accessibility, and led to non-compliance with ILO standards.

Chapter 5 developed a governance-based model with nine components, each mapped to a specific empirical weakness. These were also grounded in the Rawlsian and pluralist principles and gauged to a measurable target. The chapter also established the model's constitutional compliance under sections 65, 68, and 69 of the Constitution of Zimbabwe as amended. The model restores procedural coherence, enhances enforceability, strengthens impartiality and embeds continuous capacity building. The synthesis across all the chapters demonstrates that the current dispute resolution framework in NECs in Zimbabwe remains misaligned with the principles of effectiveness and justice delivery.

6.2 Thesis contribution to knowledge

The study makes original contributions across four interrelated categories: theoretical, empirical, methodological, and policy. The study enunciates each contribution in turn.

6.2.1 Theoretical Contributions

This study is the first sustained application of Rawls' theory of justice to Zimbabwe's institutional framework for labour dispute resolution. It demonstrates how the four Rawlsian principles: fair equality of opportunity, equal basic liberties, the veil of ignorance and the difference principle can operationalise a normative evaluation of effectiveness in dispute resolution institutions. The study also further combines the Rawlsian principles with the pluralist labour theory in a complementary relationship. This shows how the Rawlsian evaluative criteria and the pluralist institutional framework can jointly generate a theoretically rational evaluative framework. The study therefore advances a comparative labour law theory which shows how justice and fairness, together with institutional pluralist analyses, can be integrated in settings where neither tradition was originally developed.

6.2.2 Empirical Contribution

The study provides the first systematic empirical evaluation of dispute resolution in NECs in Zimbabwe, post the Labour Amendment Act Number 5 of 2015 and the subsequent Labour Amendment Act Number 11 of 2023. Through 39 semi-structured interviews drawn from nine stakeholder categories and documentary analysis across the three legislative periods defined in Chapter 4, the study generates original evidence on institutional performance. This did not previously exist in scholarly literature. The NECWEI and the NEC for the Energy sector dual-case comparative evidence enabled the study to distinguish whether the institutional deficits experienced by both NECs were sector-specific or systemic. This is a distinction that prior doctrinal or single- sector studies in the Zimbabwean dispute resolution system have not been equipped to make. The study therefore contributes a wealth of empirical evidence on procedural fairness, timeliness, enforceability, accessibility, stakeholder confidence and ILO compliance. This contribution is now available for policy, subsequent research and reform efforts.

6.2.3 Policy Contribution

The reform model developed in Chapter 5, and the thematically organised recommendations presented in this chapter, constitute the policy contribution of this study. The reform model is an evidence-based response to documented empirical weaknesses presented in Chapter 4. The study therefore provides policymakers, the MPSL&SW, the TNF, the NECs, the Labour Court, and labour relations practitioners with a structured dispute-resolution reform that is also implementable and monitorable. The constitutional compliance analysis provided in the model chapter enhances the policy contribution by ensuring that the recommended reforms are constitutionally defensible under the 2013 Constitution of Zimbabwe.

6.2.4 Methodological Contribution

The methodological contribution lies in the study's dual-case comparative design applied to a qualitative evaluation of institutional effectiveness in a contemporary southern African context. The dual case comparative design provides a replicable model for interrogating institutional variation within a common legislative framework. The study, therefore, demonstrates a comparative logic that differentiates systemic from sector-specific failures or drivers of institutional performance. The Stakeholder Relationship Tier

Framework, developed in Chapter 4 from empirical data on stakeholder roles and relationships, is an original diagnostic tool validated using data from 39 respondents. It integrates multi-actor relational dynamics into a structured analytical model. The hybrid content and thematic analytical procedure combined content analysis for initial coding against the evaluative effectiveness indicators with thematic analysis to develop interpretive themes. This offers a methodologically repeatable approach for future evaluations of other sector-based dispute resolution institutions in comparable jurisdictions.

6.3 Conclusions

This study sought to evaluate Zimbabwe's labour dispute resolution processes within NECs following the promulgation of the Labour Amendment Act Number 5 of 2015 and subsequent reforms, including the Labour Amendment Act Number 11 of 2023. Its four objectives were to critically evaluate the effectiveness and fairness of NEC dispute resolution systems post-2015; to examine stakeholders perspectives, dynamics and institutional relationships with the NEC system post-2015; to develop a justice oriented in the dispute resolution process in Zimbabwe, to recommend areas of improvement, to develop a justice-oriented, empirically grounded model for effective dispute resolution in NECs; and to formulate differentiated recommendations and strategies for reform.

Based on evidence gathered from key stakeholders and triangulated with the reviewed literature on dispute resolution design, the study concludes that the system has not met the evaluative effectiveness indicators defined in Chapter 1 and developed in Chapter 2. To be considered effective and just, the labour dispute resolution system must be affordable, accessible, expeditious, impartial, procedurally clear, context-sensitive, ILO-compliant, and capable of producing outcomes that boost stakeholder confidence. As Maitireyi and Duve's (2011, p. 145) study on dispute resolution effectiveness in Zimbabwe shows, shortcomings across these dimensions erode trust in the system and affect the delivery of justice. Key findings point to delays in resolving labour disputes in NECs. The average time to resolve disputes in the two NECs is 6 months, particularly during the period of the Labour Amendment Act Number 5 of 2015. This falls outside the acceptable timeframes, making dispute resolution less effective. Parties involved in disputes in NECs generally expressed dissatisfaction with the dispute resolution process due to numerous hindrances. These include limited capacity, process complexity and bureaucratic delays. Whilst scholars like Myambo and Munyanyi (2017) noted that the labour dispute in Zimbabwe is accessible to the majority of workers and that parties to the employment relationship have full knowledge of the system components, such as how the facilities can be accessed, the language used in the proceedings and generally the atmosphere of the proceedings, findings of the study do not confirm that position. A further conclusion drawn from the study was that DAs were essentially learning on the go due to a lack of structured training, clear procedural guidelines, and adequate institutional support.

While the reforms were mainly guided by normative principles aimed at aligning the law with constitutional and ILO standards, their practical implementation, especially within NECs, has produced a confusing and fragmented landscape. The hybrid conciliation-litigation model introduced in 2015 and the reversion to ADR in 2023 caused periods of instability that entrenched cyclical processes and backlogs. Across all three phases examined, which are the pre- Amendment Act Number 5 of 2015 era, the post-2015 hybrid regime and the post Labour Amendment Act Number 11 of 2023 framework, findings from this study consistently described a system that struggled to deliver on the effectiveness indicators. From an accessibility and speed perspective, findings confirmed that the 2015 hybrid model slowed down dispute resolution and created procedural loops. Entrenched backlogs at the Labour Court were also witnessed. This falls outside Trudeau 2000's framework for evaluating dispute resolution, which treats accessibility, speed and expertise as the main indicators of effectiveness. After the Labour Amendment Act Number 11 of 2023, which restored ADR principles, respondents reported jurisdictional overlaps between LOs and DAs, transitional confusion and continued delays. The ILO (2020) emphasises predictable and expeditious procedures as key to effective dispute resolution, yet Zimbabwe's experience continues to show persistent gaps between the legal design and the lived experience.

Another conclusion concerns social justice and the protection of disadvantaged employees, as emphasised by Rawls' difference principle. While a labour dispute resolution system should protect disadvantaged employees from delays, prohibitive costs and procedural complexities, the evidence in this study shows the contrary. In practice, the burdens of delays, uncertainty, and costs have been borne by employees, yet they have the fewest resources and the least bargaining power. This misalignment between the purpose of the reforms and their actual impact on the ground reveals a system that falls short of justice as fairness, especially for the vulnerable employees. Still grounded in

Rawls' theory, the study's findings reveal a fundamental conclusion: the labour dispute resolution systems in NECs in Zimbabwe do not yet reflect the attributes of fairness, efficiency and equity. A just dispute resolution system, according to Rawls, should provide fair equality of opportunity, guarantee equal basic liberties, and protect disadvantaged employees. This Rawlsian commitment to social justice and the protection of the disadvantaged employees is institutionally reinforced by the pluralist labour theory. The theory holds that the structural inequality of bargaining power between the employer and employee is a defining feature of the employment relationship. It therefore requires institutional counterweights, accessible mediation, collective representation and rule-governed dispute resolution to be remedied. Where Rawls advances the normative position that just institutions must work to benefit the least advantaged, pluralism provides the institutional architecture through which that position is realised in the labour realm. The post-2015 reality in dispute resolution has been one of procedural biases, unequal access and unmet obligations. This confirms that socially just outcomes were not delivered. Objective 1 of the study is answered in the negative, as both the literature and the findings confirm that, despite the legal reforms, the dispute resolution system is not optimally effective.

The research uncovered a glaring shortcoming, related to the impartiality of the DA and the enforceability of the dispute-resolution outcomes. Determinations made by DAs remain unenforceable due to a lack of legal provisions to support their enforcement, as argued in the 2022 High Court case of *Zimbabwe Rural Districts Council Workers Union v Nyanga Rural District Council and Others (HH118/22)*. Employees who have determinations in their favour still struggle to benefit from them because these are not readily enforced. Such enforcement failures directly contravene the notion of an effective dispute resolution process. In accordance with Rawlsian justice, an effective system must also ensure that decisions have the force to fulfil the promise of justice. The study also concludes that issues of impartiality on the part of the DA are a critical weakness which undermined the effectiveness of dispute resolution in NECs. The post-2015 dispute resolution framework placed DAs in conflicted roles, requiring them to conciliate, prepare a draft ruling if conciliation failed, and later defend it before a Labour Court judge. This eroded the perceptions of neutrality and violated the principles of procedural fairness articulated in the theoretical framework.

The study also concludes that the effectiveness of dispute resolution depends heavily on stakeholder coordination and the institutional and resource conditions under which each actor operates. The empirical evidence presented in Chapter 4 established unevenness among institutional actors in implementing the post-2015 reforms. The MPSL&SW, the Labour Court and the DAs, who were respondents in the regulatory and adjudicatory categories, reported resource and coordination constraints in operationalising statutory reforms. Limited training budgets, understaffing and deferred infrastructure investment in case management and accessibility channels were the effects of resource constraints. Coordination limitations also manifested in uneven stakeholder engagement across sectors, inconsistent regulatory guidance across NECs, and gaps in the institutional pathways linking NEC dispute-resolution processes to labour court enforcement. The reform recommendations in this chapter, therefore, address institutional deficits and resource constraints through actor-specific, time-bound, and measurable proposals.

The study also establishes that the NEC dispute resolution systems operate within a broader institutional environment in which sectoral, political and economic factors influence implementation. The involvement of parastatal employers in the NEC for the Energy sector introduces governance considerations that shape dispute-resolution dynamics in ways different from those observed in NECWEI. Employers' associations' and trade unions' engagement was found to vary in coordination, capacity, and consistency, which had negative effects on the timeliness and outcomes of dispute resolution proceedings. These observations highlight the need to strengthen institutional capacity coordination and adequate resourcing for all stakeholders. The pluralist labour theory has also provided an institutional diagnosis in this regard, wherein it articulates that, in a system constituted by the legitimate competing interests of employers, employees and the state, the effectiveness of mediating institutions depends on their operational capacity to discharge their statutory tripartite mandates under conditions of structural asymmetry in bargaining power. Where coordination, resourcing, and capacity are absent, the pluralist mediating function diminishes, as a matter of institutional design rather than of actors' dispositions. Together with the Rawlsian justice, it establishes the criteria of fairness by which institutional performance is evaluated. The reform recommendations in this chapter have also addressed institutional shortcomings through time-bound, measurable, actor-specific proposals.

The study's findings point to an urgent need for capacity building and reforms to address the identified challenges and shortcomings. The challenges outlined in the analysis also underscore the need for a more collaborative and inclusive approach to labour dispute resolution. Stakeholders must work together to address the root causes of these challenges and promote an environment in which disputes can be resolved fairly and promptly. Enhancing the accessibility, affordability, and efficiency of the resolution processes will not only benefit workers but also contribute to a more stable and productive labour market. The active participation of unions, employers, and government representatives in reform efforts is crucial to achieving a balanced and equitable labour dispute resolution system that serves the interests of all parties involved. Only by strengthening legal provisions, streamlining procedures and ensuring the competence and neutrality of conciliators and arbitrators can the dispute resolution process truly become fair, expeditious and accessible to all parties.

Based on these conclusions, it is evident from both the literature reviewed and the study's findings that the dispute resolution processes in Zimbabwe have not met the effectiveness indicators defined in this study. Zimbabwe's dispute resolution system, especially within NECs, therefore still falls short of optimal effectiveness. Whilst there have been notable legal reforms, this study concludes that the dispute resolution process in NECs in Zimbabwe has not been effective, given the challenges it has revealed. These conclusions justify the proposed model in Chapter 5. The proposed model is presented as an evidence-based response to the challenges raised, and it provides a comprehensive framework to address the shortcomings. Structured around core principles of fairness, impartiality, efficiency, and accountability, the model outlines clear step-by-step procedures, a strengthened institutional framework, and regular capacity-building for stakeholders in the dispute resolution system. By embedding transparent processes and oversight, it directly mitigates bias and corruption, while streamlining timelines and simplifying procedures, reducing prolonged delays. The model also introduces enforcement mechanisms to ensure that resolutions are binding and implemented, closing the gap that previously left many determinations unenforced. Aligned with ideals of fairness and efficiency, the model ultimately fosters stakeholder trust by ensuring that disputes are resolved equitably, promptly, and credibly.

6.4 Implications for practice

This research carries significant implications for both scholarship and practice in the field of labour relations. Academically, it fills an important gap in the literature on Zimbabwe's labour dispute resolution post the Labour Amendment Act Number 5 of 2015. It contributes to the broader understanding of dispute resolution in NECs in Zimbabwe and similar contexts. This confirms observations by other African scholars, such as Bushe (2019), that even with legal reforms, systems often struggle to be timely and trusted. Theoretically, the findings reinforce the relevance of Rawlsian justice in the context of labour relations. A just system must ensure that both employers and employees can utilise the dispute resolution without bias and undue burden. In line with Rawlsian principles, the results underscore that unequal power dynamics and high arbitration fees violate the notion of fairness. The implications for practice that emanate from the Rawlsian standard are that fairness, equal access, and impartiality must be incorporated into the operational design of NEC dispute resolution. The Rawlsian implications are reinforced by the pluralist implications for practice, which hold that dispute resolution in NECs needs to be evaluated in terms of the institutional preconditions of mediation, structural impartiality, and regulatory coordination. DAs must be demonstrably independent of the state, employers and employees, and equipped to treat conflict as a legitimate expression of divergent interests rather than an administrative nuisance. To ensure substantive fairness, meaningful representation of all interest groups must be guaranteed.

6.5 Implications for policy

The study generates implications for labour relations policy and labour law in Zimbabwe at the legislative, institutional design and policy process levels. At the legislative level, the study brings an evidence-based account of how the post-2015 legislative framework has fared in practice, demonstrating the gap between the Labour Amendment Act Number 5 of 2015's architectural intent and its operational delivery. This provides the Parliament of Zimbabwe and the MPSL&SW with the empirical evidence necessary to calibrate the next reform cycle to real institutional weaknesses rather than assumed ones. This gap between intent and delivery is what Rawls' difference principle identifies as a failure to secure fairness for the least advantaged. It is also what the pluralist labour theory identifies as the inability of statutory text alone to sustain institutional balance.

At the institutional design level, the study established that the legislative reform alone is not enough to constitute a determinant of effectiveness. Factors such as regulatory coordination, institutional capacity and the resource structure are equally determinative of effectiveness. The policy implication is therefore that any legislative reform must run in parallel with reforms to the resource and institutional conditions under which it is implemented. This pairing remains underdeveloped in the labour policy practice in Zimbabwe.

Lastly, the policy process level should uphold the value of stakeholder-informed and evidence-based policy development. The empirical evidence was derived from the institutional actors within the NEC dispute-resolution framework. Based on the evidence from this study, their incorporation into policy should be a precondition rather than an optional refinement post-reform. This, in Rawlsian terms satisfies the requirement that just institutions be ones to which all stakeholders, reasoning fairly could give their assent, while in pluralist terms, it institutionalises the tripartite voice on which dispute resolution in NECs depends.

6.6 Findings, Recommendations, Responsibility Matrix

The core recommendations are presented in structured form in Table 6.1 below. It identifies the empirical findings presented in Chapter 4, the recommendations for addressing the empirical deficits, the actors or institutions responsible for implementation and the expected outcomes that will confirm effective implementation of the recommendations.

Empirical Weakness (Chapter 4)	**Targeted Recommendation**	**Responsible Actor**	**Expected Outcome**
Procedural delays; exceeding statutory timeframes.	Enact the codified 30-30-60 timeframes with automatic referral. Need for fast-track mechanisms for urgent cases.	MPSL&SW (regulations) Parliament (legislative amendment to the Labour Act)	Increase in disputes resolved within statutory windows.
DA impartiality	Ring-fence DA remuneration from the social partners' funded sources; Separate conciliation and adjudication functions	MPSL&SW; NECs social partners; Parliament	Zero DA funding dependency on disputing parties; a decrease in the number of awards set aside for procedural defects
Fragmented enforcement of determinations and awards	Streamline Labour Court registration of awards and settlements; strengthen contempt remedies. Codify the determinations' enforcement provisions.	Labour Court; Judicial Service Commission; Parliament.	An increase in determinations and awards registered and enforced within codified timeframes.
Limited accessibility: geographic, informational and economic.	Decentralise DA offices; produce multilingual guidance materials and deploy ODR channels.	NECs' social partners; MPSL&SW (standards); ZCTU/ZFTU (outreach).	Increase in unrepresented employee filings; ODR uptake tracked quarterly.
Stakeholder confidence deficit; process abandonment.	Establish a tripartite arbitrator roster; enhance case-tracking transparency; publish outcome reports; separate conciliation and arbitration functions.	NECs social partners; MPSL&SW Tripartite Negotiating Forum.	Reduced case abandonment rate; repeat-engagement tracked annually.

Empirical Weakness (Chapter 4)	**Targeted Recommendation**	**Responsible Actor**	**Expected Outcome**
Weak capacity among DAs, arbitrators, and other stakeholders.	Institute structured initial and continuing professional training; accredit training providers; capacity building for Trade Unions.	MPSL&SW; NEC social partners; accredited training institutions.	All DAs and arbitrators certified under an accredited programme within the codified timeframes.
Non-alignment with ILO standards	Align NEC governance with Conventions 87, 98 and 151; institute periodic compliance audits	MPSL&SW; Parliament (ratification of ILO conventions where outstanding); TNF	Positive assessment on relevant indicators in Zimbabwe's ILO periodic review.
Weak regulatory oversight of NEC performance	Establish MPSL&SW regulatory function to aggregate NEC reporting; table NECs' annual performance report at TNF	MPSL&SW Department of Labour (Registration Division)	Annual NEC performance report tabled at TNF within 12 months of each reporting year

Table 6.1: Findings-Recommendations-Responsibility-Outcome Matrix

Source: Researcher's own synthesis.

The matrix demonstrates that each recommendation is as a result of empirical deficits and is therefore, specifically allocated to the responsible actors for the realisation of expected outcomes. The thematic elaboration of these recommendations is presented in section 6.7 below.

6.7 Recommendations

The study has concluded that dispute resolution in Zimbabwe is characterised by a weak institutional framework, inadequate labour laws, lengthy and complex procedures, high costs, and limited access to justice. These persistent problems in dispute resolution place a serious demand on policymakers and scholars to devote attention to these issues in a bid to offer recommendations that improve the process. The study culminates in a set of recommendations aimed at various stakeholders in the dispute resolution process. These recommendations seek to enhance the efficiency, fairness, and effectiveness of resolving labour conflicts in Zimbabwe's NECs. Given the multifaceted nature of the dispute resolution process, the recommendations are tailored to specific actors: the government, employers (and their associations), employees (and trade unions), NECs themselves, the Labour Court, and other key stakeholders such as arbitrators and labour officers. In addition to implementing the proposed model, implementing these additional recommendations in a coordinated manner could address the identified challenges and move the system toward better outcomes. The recommendations of the study are organised under five thematic categories, which are: (a) legislative reform, (b) institutional reform, (c) capacity and governance reform, (d) technological reform and (e) stakeholder coordination reform.

6.7.1 Legislative Reform

The government should take the lead in strengthening the legal and institutional framework for labour dispute resolution. This includes reviewing labour law regularly and providing clarity, consistency, and enforcement power in the dispute resolution process.

There is a need for a comprehensive legal framework that promotes social justice by making labour laws more equitable, fair, and transparent. For example, the law should explicitly impose timeframes for the Labour Court to handle cases and for all stages of dispute resolution, so that cases do not drag on indefinitely. The Parliament should therefore enact amendments to codify the reform proposal's time frames: 30 days for conciliation, 30 days for arbitration, and 60 days for the Labour Court review process. Statutory appeals should also be limited to defined substantial grounds while preserving the High Court's inherent review jurisdiction. Exceptional cases requiring constitutional court referral should be referred in accordance with the criteria set out in the reform model. Introducing statutory deadlines will help curb undue delays and backlogs.

A comprehensive legal framework should also ensure that the rights of all the actors involved in a labour dispute are protected. DA expressed concern about the interference of NEC principals who would, in some instances, try to influence the outcome of the dispute resolution proceedings. In worst-case scenarios, designated agents have been threatened with dismissal when they rule against a certain party's wishes. Parliament should amend the law to protect the independence of NEC conciliators/arbitrators. Interference with a DA in the exercise of their statutory function, whether by a trade union, an employers' association, or any other party, should be declared an unfair labour practice subject to sanction.

A comprehensive legal framework should also help strengthen NECs by enabling them to exercise binding dispute-resolution powers. Enforceability of dispute-resolution outcomes is one of the indicators used to measure the system. There has to be an express provision for the direct enforceability of DAs' determinations through a streamlined Labour Court registration system. To meet these attributes, this study recommends the inclusion of specific provisions in the Labour Act to make determinations more enforceable, either by allowing simpler legal mechanisms or by clearly and expressly mandating enforcement by the Magistrates' or High Courts. Key legal changes should ensure that NEC-issued determinations are directly enforceable without onerous procedures, and that any remaining confirmation or appeal steps are streamlined.

The study also recommends a code of practice for arbitrators, fully backed by legislation. The code of practice should ensure that arbitrators have a standard operating procedure in place. According to the International Bar Association (1987), an arbitrator should be independent, impartial, competent, diligent and discreet. The code of practice should therefore establish the manner in which these abstract qualities can, in practice, be assessed. The code of practice should also clearly incorporate the terms of arbitrators' acceptance of appointment. A prospective arbitrator should accept an arbitration appointment only if they are sure of their competence in dealing with the issue in dispute. They should also accept an appointment when they are able to give the arbitration process the attention and time that parties are reasonably entitled to expect. Madhuku (2010) also notes that a prospective arbitrator should disclose all facts that may give rise to doubts about his independence or impartiality. The code of practice should therefore include disclosure clauses under which arbitrators reveal any facts that may give rise to an appearance of bias. Past and present business relationships involving any party to the dispute, representatives or witnesses should also be disclosed. Parliament should therefore enact an enforceable code of practice for mediators and arbitrators backed by legislation. The code should set professional and ethical standards, including the disclosure of conflicts of interest, and provide specialisation and accreditation requirements for legal practitioners appearing in labour matters.

6.7.2 Stakeholder Coordination Reform

The Tripartite Negotiating Forum (TNF) should be the institutional locus for strengthened stakeholder engagement on dispute resolution. The TNF's role should be formalised to include the annual review of NEC performance reports and the oversight of the tripartite governance of the NECs' arbitrator roster. It should also have a strategic oversight role in the reform model's implementation roadmap and facilitate structured consultation on legislative and regulatory developments. This study's empirical findings reveal that stakeholders close to dispute resolution are best placed to identify both the legislative framework gaps and workable reforms. NECs' experience and evidence can, with no doubt, inform policy development. The government, through the MPSL&SW, should therefore facilitate regular tripartite dialogue and include all relevant stakeholders in policy discussions. Such inclusive dialogue can help identify gaps and craft reforms informed by on-the-ground experiences.

The employers and Trade Unions' federations (EMCOZ, ZCTU and ZFTU) should strengthen the capacity and mandates of their representatives on NEC platforms and in the TNF, and should commit to constructive engagement with NEC systems. Unions and employees should participate constructively in dispute resolution processes and avoid abandoning them. Unions are also encouraged to work within frameworks like the TNF to voice workers' concerns on policy matters, ensuring that the laws and regulations reflect the realities employees face. Employers, on the other hand, should also avoid frivolous appeals and technical delays, and all parties should respect and implement outcomes, unless there are serious grounds for contest.

Academic bodies and civil society organisations with standing in the labour relations fraternity should have formal consultative status for the capacity-building and accessibility workstreams. Civil society bodies and independent academics should be encouraged to conduct annual reviews of the Labour Court's and the NEC's performance to enable independent accountability of the dispute resolution system.

The findings of this study reveal a concerted effort by the MPSL&SW and the NECs to collaborate through annual symposia that provide an interface between the two bodies and enhance training and development. There is also emphasis on the importance of tripartism and social dialogue, in which the government, labour and business collaborate to develop the dispute resolution process. These social partners now derive their mandate from the TNF Act, and this Act should be reviewed to incorporate other important stakeholders in dispute resolution, such as NECs, so they can contribute based on their experience. These collaborative platforms should rigorously examine the dispute-resolution provisions, identify gaps and grey areas, and develop recommendations for onward transmission to policymakers. By doing so, policymaking is informed by stakeholders in dispute resolution who are well-versed in the challenges associated with it and how they can be resolved. This collaborative approach facilitates a culture of inclusivity, thereby promoting a smooth, just, effective and more applicable dispute resolution process.

Collective bargaining processes within NECs should be concluded expeditiously, before the current agreement lapses. This removes the back pay and underpayment aspects that generate repeat cases reported on in the empirical findings. Informal pre-negotiation engagement should be normalised to reduce the time required for formal negotiations.

6.7.3 Institutional reform

The NECs must be strengthened and reformed to enhance their dispute resolution capacity. The NECs should implement the structural changes proposed in the reform model. As industry-level institutions, NECs are on the front line of handling labour disputes in various sectors, and the study's findings suggest several ways they can be more effective. First, NECs need adequate resources and funding to carry out their functions. Enforcement of the NEC levy obligation should be through statutory remittance provisions and enforcement clauses for non-compliant employers. This ensures that NEC funding is not dependent on the goodwill of potentially non-compliant parties. There is a need for ring-fenced remuneration for the Designated Agent to remove the funding dependency that compromises impartiality. With better funding, NECs can hire and train more DAs and staff, upgrade infrastructure, and introduce modern case management systems.

The research recommends regular training and capacity-building programs for NEC personnel. DAs should receive continuous professional development in areas like conciliation techniques, arbitration writing skills, and updates on labour law, so that they handle cases competently and impartially. The NECs should also improve outreach and education within their sectors: as noted in the study, increased outreach by DAs (for instance, visiting workplaces to inform employers and employees about dispute resolution processes) can raise awareness and possibly prevent disputes through early intervention. There is also a need to decentralise NEC offices to improve geographic accessibility; this should be supplemented by circuit hearings for areas that cannot be decentralised. Collaborative arrangements where NECs share hearing facilities to reduce costs should be established.

Another recommendation is for NECs to adopt a more proactive inspection and advisory role. The findings pointed out that sector-based inspections help identify potential labour issues before they mushroom into disputes. NECs should conduct regular inspections of workplaces in their industry, not in a punitive "fault-finding" spirit, but to ensure compliance and to advise employers on correcting problems early, such as unpaid wages or safety issues. By separating the inspection function from the adjudication function, NECs can encourage employers to view inspections as collaborative and educational rather than as a prelude to litigation. Moreover, NECs can implement internal monitoring and evaluation of dispute resolution by tracking case durations, analysing bottlenecks, and soliciting feedback from users (employers and employees) to continually improve their processes.

The study, through the proposed model in Chapter 5, also suggests that NECs embrace ADR methods even under the current law. Even if a particular NEC, such as the NECWEI under study, has shifted toward a determination model, it should still utilise conciliation or mediation wherever possible to allow the parties to settle mutually. ADR promotes homegrown solutions for dispute resolution, improving relationships between employers and employees and further reducing the likelihood of future disputes. Findings from the study point to ADR as a more efficient dispute resolution system, as it is more cost-effective, reduces legal fees, and mitigates the negative impact of protracted dispute resolution processes on productivity. Further, faster resolution of disputes through ADR can help reduce the backlog of cases in NECs. ADR, through its flexibility and reduced costs, can also help increase access to justice for workers with limited resources. In the literature reviewed, Mwenda (2006) notes that just and effective dispute resolution should endeavour to empower the parties so that they play an active role in resolving their dispute.

At the regulatory level, the MPSL&SW should establish a dedicated NEC oversight and reporting unit within the Registration Division. This unit should be responsible for aggregating the NEC performance data against the six performance indicators and monitoring compliance with the statutory framework. An NEC performance report should then be tabled annually at the TNF platform. The MPSL&SW should also develop a National Dispute Resolution policy to delineate the roles of LOs and DAs in addressing role-conflict issues arising from the Labour Amendment Number 11 of 2023 and to protect the impartiality of each office.

The Labour Court plays a vital role as the appellate or reviewing body in Zimbabwe's labour dispute resolution framework. To improve the overall system, the Labour Court must address issues of delay and accessibility on its end. Statutory timeframes for the Labour Court's handling of labour appeals and review cases should be set in line with the legislative reform proposed in the reform model. The court should also adopt a case-triage system that prioritises time-sensitive matters, such as wrongful dismissals. Support resources and allocation of additional judges may be required to handle caseloads within the set timeframes. Periodic training sessions for the labour court judges, arbitrators, and DAs should be held to discuss recurring points of law arising from NEC cases. This transforms the Labour Court's relationship with lower-tier dispute resolution institutions from bottleneck to backstop.

In summary, NECs should bolster their institutional capacity, ensure their processes are user-friendly and known to all sector respondents, and commit to impartial, swift dispute handling. Strengthening NECs is pivotal because an empowered NEC structure reduces the overflow of cases to the Labour Court and brings justice closer to the workplace.

6.7.4 Capacity and Governance Reform

The capacity-building requirements identified by the empirical evidence cannot be addressed by ad hoc training programs. There is a need to establish a structured, accredited, and continuing professional development framework for all dispute resolution stakeholder groups. Designated Agents and arbitrators should be capacitated in conciliation, determination drafting, procedural standards for arbitration, evidential rules, the content of the legislated code of practice, and labour law updates. This should also extend to stakeholder representatives serving on the NEC apex committees, other dispute-resolution-related committees, and the TNF. The MPSL&SW, in consultation with the TNF and accredited training institutions, should develop a certified curriculum for DAs and arbitrators. Initial certification of all currently practising DAs and arbitrators should be completed within 24 months of the program’s launch, thereafter continuing professional development will be mandatory annually.

Corporate governance within NECs should be strengthened by board charters that delineate council members' and the chairperson's responsibilities, codified conflict-of-interest rules, sanctions for non-compliance, and meaningful stakeholder engagement through Annual General Meetings and regular stakeholder updates. The MPSL&SW should intensify its oversight of NEC governance by imposing strict quarterly reporting requirements and enforcing financial audits, and by imposing firmer punitive measures for maladministration.

The parties' capacity is as much a determinant of the effectiveness of dispute resolution as the institutions' capacity. Trade unions and employer associations should therefore invest in their own capacity to engage with NEC processes. Trade unions should educate their members on their rights and grievance procedures, while employers should train managers and supervisors on conflict management and labour law compliance. Both parties should engage constructively with NEC processes rather than treating NEC proceedings as opportunities for delay or as adversarial litigation.

By taking these steps, policy-level shortcomings are addressed, creating an enabling environment for fair and expeditious dispute resolution. Zimbabwe should follow the structure of South Africa's Bargaining Councils, which have direct enforcement mechanisms. Under the CCMA framework, conciliation settlement rates are reported to be approximately 60 per cent, and the substantial majority of referred disputes are resolved within statutory timeframes. Adopting best practices from other jurisdictions, such as South Africa's model, in which bargaining council decisions are directly enforceable, could be beneficial.

6.7.5 Technological Reform

NEC processes should be digitalised to address the cost, accessibility and delay challenges identified in the empirical findings. The NECs, together with the MPSL&SW technical support, should implement a unified digital case management system integrated with online dispute resolution (ODR) capability as proposed in the reform model. The system should provide case tracking from filing to enforcement and enable remote hearings for parties in locations where physical access is limited. It should also integrate with the Labour Court registry to streamline the registration of settlements and awards, and produce the quarterly reports required by the monitoring framework proposed in the reform model. Digitalised record management would then address the archival vulnerabilities identified in the study, where physical filing systems were found to pose risks of document destruction or loss.

Parallel provision of physical access channels must be maintained throughout to avoid creating new digital-divide exclusions, particularly for the vulnerable informal-sector workers and rural parties. This is also in accordance with Rawls's difference principle. Feedback mechanisms emanating from stakeholder surveys, complaints channels and online feedback platforms should be integrated into the system so that continuous improvement is not assumption-driven but data-driven.

Taken together, these five thematic recommendations consolidate the study's substantive recommendations into a structure that addresses each reform theme to the identified actor, with empirical evidence and alignment with the reform model in Chapter 5.

6.8 Strategies that NECs can employ to improve dispute resolution

In a bid to increase the efficiency and effectiveness of NECs and promote justice service delivery, there is a need to build the capacity and strengthen NECs. This can be achieved through the adoption of the following strategies:

6.8.1 Training and capacity building.

NECs should be provided with adequate resources, training, and capacity-building programmes to enhance their effectiveness in resolving labour disputes. Findings of the study point to the need for NECs to adopt practices that align with the Labour Act (Chapter 28: 01) and its amendments for them to be effective in dispute resolution. There is a need for increased outreach programmes by DAs in NECs to help raise awareness about NECs and their role in resolving labour disputes. Sector-based inspections conducted by DAs were also identified in this study as effective ways to prevent disputes from arising or to quickly provide remedies for potential disputes. DAs should intensify inspections in a bid to increase conscientisation of parties on labour issues, as well as to quickly identify and rectify labour issues that can potentially turn into disputes. In that respect, there has to be a separation of roles between inspections and litigation so that inspections become more educative than being mere fault-finding missions. More effective advisory services may help streamline the dispute resolution process further and lead to more efficient outcomes.

NECs need resources to carry out their functions efficiently; non-payment of levies and refusal by some institutions can negatively impact their operations. NECs carry a statutory duty and require resources to serve their respective industries. There must be enforcement mechanisms to ensure employers pay NEC levies, which fund NEC administration and service delivery. There should be a provision in the labour laws that provides for the statutory remittance of NEC levies and the enforcement of such. Prosecution clauses for employers who fail to remit NEC levies can also be incorporated into the law to ensure compliance.

As per the proposed model, the study recommends that the NECs invest in capacity building and in staff and member training to enhance dispute-resolution skills. Awareness and education campaigns should be launched by NECs to inform stakeholders about the dispute resolution processes and their benefits. There is also a need for the government to review and amend relevant legislation to strengthen dispute resolution processes in NECs, ensuring they are more efficient and effective. There is a clear need for comprehensive reforms to enhance the labour dispute resolution system. This includes streamlining processes, diversifying payment options, and fostering better communication between unions, employers, and government bodies. Improved legal frameworks, along with the involvement of all stakeholders in the formulation of labour laws, can create a more balanced and efficient system.

6.8.2 Enhancing Corporate Governance in NECs

Promoting corporate governance in NECs involves implementing practices that ensure fairness, accountability and transparency. NECs should foster stakeholder engagement by maintaining open channels with stakeholders, providing regular updates on council activities and decisions. Annual General Meetings should be held to gather input from stakeholders on key issues and policy decisions, and also hold directors, councillors and management accountable for certain actions. The MPSL& SW should also increase its oversight role in monitoring these NECs. Beyond the directive requiring NECs to submit annual financial audits and quarterly reports, there is a need for the MPSL&SW to implement stronger punitive measures against maladministration and the misgovernance of resources. NECs should also follow codes of conduct and board charters that define each council member's and chairperson's duties to avoid overlapping responsibilities. These should also outline the ethics, expected behaviour, and conflict-of-interest guidelines for council members. Sanctions for non-compliance with codes of conduct, policies and procedures should be clearly spelt out.

6.8.3 Timeous Conclusion of CBAs

Social partners should also commit to concluding wage negotiations for the following year before the end of the current year. For instance, in the NECWEI, early conclusion of CBAs helps NGO sectors whose operations depend on donor-funded projects with specified timeframes, as well as educational institutions that also face budgetary constraints. When CBAs are concluded expeditiously, the need for back pay is avoided because institutions can plan accordingly. Where there is a curb on underpayments and non-payments, repeat disputes are reduced. Since deadlocks between employers' associations and trade unions during negotiations are inevitable, there is a need for the above-mentioned training programmes in negotiation skills so that the parties can quickly find common ground and, where possible, make concessions to promote win-win outcomes.

NECs also need to be standardised; the MPSL & SW need to set the number of sittings that a general council or a negotiations committee should have. Negotiation meetings should be conducted after thorough preparation and consultation to avoid the need for perpetual sitting allowances. Parties to the negotiation proceedings should normalise engaging in informal meetings outside the scheduled official ones, as a relaxed atmosphere can prompt them to weigh as many options as possible to achieve the best negotiation outcomes. This strategy saves a lot of time, allowing parties to then formalise the negotiation proceedings.

6.8.4 Fine-tuning CBAs and NEC regulations to be in line with the provisions of the labour laws

The NECWEI should amend SI 177 of 2021 on dispute resolution to allow the disputants to participate in the resolution of the dispute before a decision is imposed on them. SI 177 of 2021 must align with the Labour Act to allow for ADR elements before any form of adjudication is considered. Findings from a DA inspection must be brought to the parties' attention to determine whether they dispute the issue in question. If there is a dispute, a Designated Agent different from the one who carried out the inspection should conciliate the dispute and issue a certificate of settlement or, where applicable, a certificate of no settlement. In the case of a dispute of interest, where a certificate of no settlement is issued, the dispute can be referred to voluntary arbitration. In the case of a dispute of right, designated agents should go the compulsory arbitration route. Where a dispute of right comes before a DA, they should hear the evidence and produce the award.

6.8.5 Promoting the impartiality of designated agents in dispute resolution

The study posits that procedural improvements in NECs, through streamlining, are necessary to reduce delays and make the dispute resolution process more effective. Issues of impartiality of the Designated Agents in dispute resolution were a central point of discussion in this study. The two NECs under study could easily relate to the perceived impartiality. Confirmation of rulings before a Labour Court judge compromised the impartiality of Designated Agents, as they became interested parties by defending those rulings. There is therefore a need that decisions made by Designated Agents be transparent, fair and unbiased. From the study's findings, impartiality can be improved through a process in which a Designated Agent issues a determination or ruling that does not require confirmation by the Labour Court. When the parties are not satisfied with the Designated Agent's determination, they should pursue litigation on their own. Like NECWEI, NECs should have their own homegrown dispute-resolution mechanism in the form of a gazetted Statutory Instrument. Research findings also pointed to aspects of bias and alleged corruption in which Designated Agents lose their impartiality to supplement their paltry incomes. Designated agents should therefore be financially emancipated so that they preserve their impartiality. When issues of impartiality are addressed, public confidence in the dispute resolution system improves.

6.8.6 Need for the NECs to digitalise their processes and procedures

In this era of digitalisation, there is a need to digitise NEC processes and procedures to expand the geographical footprint, thereby improving accessibility, reducing costs, and shortening delays. NECs should establish online dispute resolution platforms to facilitate the resolution of labour disputes. Technological enhancements in NECs should enable the establishment of effective data management systems to track and monitor labour disputes and NEC performance. Online dispute resolution systems can be quicker, less costly and more convenient for parties, resulting in improved justice delivery and effective dispute resolution. Through digitalisation, cases are easily tracked to their final resolution. Findings of this study also point to the need for data-driven decision-making and feedback loops. Inadequate record-keeping by NECs was also identified as a challenge in operations, as they were still relying on physical, manual filing, which posed a risk of documents going missing or being destroyed. There is therefore a need for a digitalised record management to secure information. When a robust system is used to collect, analyse, and utilise data on disputes and resolutions, trends and areas needing improvement are easily identified. Establishing feedback loops through surveys, questionnaires, online feedback platforms and complaints and suggestions boxes enables stakeholders to voice their feedback, which can help identify areas for improvement in the dispute resolution process. This results in a transparent dispute resolution process which boosts trust and confidence amongst stakeholders and also promotes stakeholder satisfaction. This study also conceptualises that a conducive technological environment is necessary for effective dispute resolution outcomes.

6.8.7 Decentralisation of NEC structures and the employment of adequate personnel

To be considered effective and just, the labour dispute resolution system must be affordable and accessible to the majority of workers, requiring both parties to the employment relationship to be fully aware of the system components, such as how the facilities can be accessed, knowledge of the procedures, the language used in court, and in general, the mood during the proceedings Maitireyi and Duve (2011). While the finalisation of these disputes shows some positive outcomes, significant challenges remain, including accessibility issues and a lack of well-established communication channels. NECs should also be decentralised and employ sufficient personnel to resolve disputes. Decentralisation increases parties' access to dispute resolution processes, resulting in greater effectiveness and justice delivery. Where the NEC employs enough Designated Agents, dispute handling and finalisation become quicker. On the other hand, where there are enough Designated Agents in an industry, quality outcomes are guaranteed as labour matters are not quickly rushed through. NECs should also consider adopting the circuit hearings approach to further reach areas that may not be feasible for them to decentralise. This entails that the dispute resolution function of the NECs has wider coverage and increased accessibility. Costs for parties who would ordinarily have travelled to points with an established dispute resolution facility are also reduced. NECs can also enter into collaborations in specific areas where they share facilities to facilitate hearings. This cuts costs whilst also improving accessibility for all NECs.

6.8.8 Strengthening the MPSL& SW regulatory function

The MPSL&SW should assume a more active oversight role by ensuring legal and procedural coherence during any legislative transition. For example, the introduction of a new section 56 under the Labour Amendment Act Number 11 of 2023 shifted NECs from voluntary to statutory status, triggering uncertainty about the existence of NECs and the jurisdiction of DAs in dispute resolution.

The MPSL&SW should also invest in capacity-building programs that include ethical training and legal procedures for all dispute-resolution actors. This study also recommends creating a digital monitoring system to track performance across NECs, case timeliness, and compliance. Further, it is recommended that the MPSL&SW develop a national dispute resolution policy framework that delineates the roles of LOs and DAs to prevent role conflict and protect impartiality.

6.8.9 Concluding restatement

The thesis concludes by demonstrating that each of its research objectives has been achieved based on the evidence presented. Objective 1, which sought to evaluate the effectiveness of dispute resolution systems in NECs in Zimbabwe post the Labour Amendment Act Number 5 of 2015, was achieved by operationalising effectiveness into six indicators: timeliness, accessibility, procedural fairness, enforceability, stakeholder confidence, and ILO compliance. These indicators were derived jointly from the Rawlsian justice, the pluralist labour theory and the ILO standards. This generated an original foundation of qualitative and documentary evidence across the three legislative periods and the two case NECs. The evaluation concluded that dispute resolution in NECs had not been effective across all of the six indicators. This produced a normative non-fulfilment verdict that the system does not satisfy the requirements of fair equality of opportunity, equal basic liberty of timely hearing, and the difference principle. The pluralist theory also points to the insufficient institutional preconditions for effective tripartite mediation, regulatory coordination, structural impartiality and operational capacity.

The second objective sought to provide an analysis of stakeholder roles and relationships. This objective was discharged through (a) the mapping of all nine institutional categories and their roles, (b) the development of the Stakeholder Relationship Tiers Framework, which is an original identification of the hierarchical institutional dependencies among the stakeholders. (c) The analysis of how tiered relationships influence the flow of dispute-resolution cases and the distribution of institutional control over reform. The key empirical finding is that the DAs' financial dependency on tier 1 and 2 employers and the trade unions is the structural root cause of the impartiality deficit and the ZIMOCO matter constitutional defect. This finding links the stakeholder analysis directly to the effectiveness evaluation of Objective 1 and the reform model design under Objective 3. The Rawlsian outcome is that the stakeholder relational design does not satisfy the veil of ignorance principle, because, from a position of ignorance, parties would not consent to their future institutional role in structural dependencies that currently operationalise dispute resolution. From a pluralist perspective, the current design of stakeholder relationships undermines the institutional independence necessary for legitimate mediation. The financial dependence of DAs on the parties whose disputes they preside over violates the impartiality structure on which pluralist mediation rests.

The third objective sought to develop a justice-oriented reform model grounded in the theoretical framework, empirical evidence and comparative practice. This objective was fulfilled through the reform model developed in Chapter 5. The recommendations derived from the model are presented in the thematic categories of legislative reform, institutional reform, capacity and governance reform, technological reform, and stakeholder coordination reform. These were linked to the specific empirical evidence, responsible actors and expected outcomes in Table 6.1. The proposed reform model, if implemented as expected, would satisfy the equal basic liberties principle through accessible platforms and timely hearings. It would also fulfil the difference principle by providing institutional protection for disadvantaged employees. The fair equality of opportunity principle is also satisfied by removing geographical and financial barriers to access. From a pluralist perspective, the ring-fencing of DA funding, the separation of conciliation and arbitration, and the arbitrator roster would restore the institutional prerequisites for effective mediation amid structural disequilibrium in bargaining power.

Taken together, the objectives address the research problem articulated in Chapter 1: whether dispute resolution processes in NECs in Zimbabwe have been effective following the enactment of the Labour Amendment Act Number 5 of 2015. The evidence presented in this study shows that they have not been effective, for reasons that have been proven to be diagnosable and institutionally curable. The reform model in Chapter 5 and the recommendations proffered in this chapter provide an evidence-based, theoretically anchored, and constitutionally defensible means of attaining effective dispute resolution in NECs in Zimbabwe. This thesis concludes with a combination of diagnostic and reformative contributions that define doctoral scholarship in the field of institutional evaluation.

6.9 Suggestions for further research

While this thesis has provided valuable findings, it also opens up avenues for further investigation. There is a need for broader sector coverage; future studies could expand the scope beyond the two NECs examined to include other sectors. With 48 NECs in Zimbabwe, researching additional councils could reveal different experiences or challenges, thereby giving a more comprehensive picture of dispute resolution effectiveness across industries. Such research would help determine whether the identified issues are widespread or specific to certain sectors.

This study revealed many insights into stakeholders and their impact on the TNF. It would be worthwhile to investigate the role of the TNF and policy coordination (and similar social dialogue platforms) in labour dispute resolution. For instance, research could examine how effectively the TNF facilitates consensus on labour policies or dispute prevention strategies. Additionally, since the Labour Court's role sparked much debate in this study, a dedicated inquiry into the effectiveness of dispute resolution within the Labour Court (perhaps comparing pre- and post-amendment performance) would be valuable. Such a study might analyse case durations, outcomes, and stakeholder satisfaction with the Labour Court process in the context of labour disputes.

With the rise of digital tools, future research could explore the impact of technology on dispute resolution and its integration into NEC dispute resolution processes. This might include studying the use of online case management systems, virtual hearings (especially learned during COVID-19), and digital communication platforms for handling labour disputes. Understanding the potential challenges and benefits of using such digital platforms in dispute resolution, for example, increased accessibility for remote parties vs technological barriers, would provide insight into modernising the system. Technology could be a double-edged sword, and research could identify best practices for using it to improve efficiency without excluding those less tech-savvy.

This study, from a John Rawls Theory of Justice perspective and based on the findings, suggested that the dispute resolution process in NECs in Zimbabwe infringed on employees' rights to access to justice. A study of employees' perceptions of dispute resolution processes in NECs could provide a more nuanced understanding of these mechanisms' effectiveness from an employee perspective. This study suggested that some aspects of the current system may infringe on workers' rights to effective justice. Another research avenue is to examine employees' perceptions of the NEC dispute resolution processes and workers' perspectives on access to justice. A focused study that gathers workers' experiences, especially those who have gone through conciliation, arbitration, or the Labour Court, could provide an in-depth understanding of how these mechanisms are serving or failing the very people they are meant to protect.

There is also a need to study the longitudinal effects of legal reforms, given that the Labour Amendment Act Number 11 of 2023 was implemented during this study; further research could track its long-term effects. A longitudinal study might assess over the coming years whether the reintroduction of ADR and other provisions truly leads to quicker dispute resolution and a reduced backlog. Future research could track whether new issues arise, for instance, if arbitration costs and corruption issues resurface. This would help evaluate the sustainability of the 2023 reforms and identify if additional amendments are necessary. Similarly, comparative research into the impacts of the 2015 and 2023 amendments could yield lessons on which types of legal frameworks are most effective for labour disputes in the Zimbabwean context. In conclusion, while this thesis has addressed its core questions, ongoing research is essential to continue improving labour dispute resolution in Zimbabwe. The labour relations landscape is dynamic, and factors such as economic conditions, political will, and social change influence how disputes are handled. Continuous study, ranging from broad policy-level analysis to ground-level stakeholder experiences, will support the evolution of a dispute resolution system that is fair, efficient, and trusted by all parties involved.

References

Abend, G. (2008). The meaning of 'theory'. *Sociological Theory, 26*(2), 173-199. https://doi.org/10.1111/j.1467-9558.2008.00324.x

ACAS. (2001). *The ACAS Arbitration Scheme (England and Wales) Order 2001* (Statutory Instrument 2001 No. 1185). UK Government. https://www.legislation.gov.uk/uksi/2001/1185/contents/made

ACAS. (2023). *Annual report 2021/22*. Advisory, Conciliation and Arbitration Service. https://www.acas.org.uk/acas-annual-report-2021-22

Ackers, P. (2002). Reframing employment relations: The case for neo-pluralism. *Industrial Relations Journal, 33*(1), 2-19. https://doi.org/10.1111/1468-2338.00216

Ackers, P., & Wilkinson, A. (2005). *Understanding work and employment: Industrial relations in transition*. Oxford University Press.

Acland, A. F. (1990). *A sudden outbreak of common sense: Managing conflict through mediation*. Hutchinson Business Books.

ADRAC. (2019, December 3). *Effectiveness in ADR: Key issues*. Australian DR Advisory Council. https://www.adrac.org.au/copy-of-e-comms

Al-Saadi, H. (2014). *Demystifying ontology and epistemology in research methods*. ResearchGate. https://www.researchgate.net/publication/260244813

Ampeire, A. (2017). *Alternative dispute resolution: Mediation, conciliation, arbitration*. Fountain Publishers.

Araújo, R. (2020). Brazil's move from litigation to mediation and arbitration: Lessons for BRICS. *European Procedure Law Review, 27*(4).

Araújo, S., Safradin, B., & Brito, L. (2020). *Labour conflicts and access to justice: The impact of alternative dispute resolution*. ETHOS Project.

Armstrong, P. J., Goodman, J. F. B., & Hyman, J. D. (1981). *Ideology and shop-floor industrial relations*. Croom Helm.

Babbie, E. R., & Mouton, J. (2001). *The practice of social research*. Oxford University Press.

Baker, A. (2020). *Covid 19: Implications for the future of dispute resolution*. Baker McKenzie. https://www.bakermckenzie.com

Banerji, O. (2020a). Labour law and industrial relations in India: An overview. *iPleaders Blog*. https://blog.ipleaders.in/labour-law-and-industrial-relations-in-india/

Banerji, O. (2020b). Mechanism of settlement of disputes under the Industrial Disputes Act. *iPleaders*.

Beer, J. E., Packard, C. C., & Stief, E. (2012). *The mediator's handbook* (4th ed., revised and expanded). New Society Publishers.

Behrens, M., & Dribbusch, H. (2018). Employer resistance to works councils. In H. Dribbusch, F. J. Krings, & P. Leisink (Eds.), *Workers' voice in the workplace: The challenges of representing employee interests in changing work environments* (pp. 53-72). Routledge.

Bendeman, H. (2006). An analysis of the problem of the labour dispute resolution system in South Africa. *African Journal on Conflict Resolution, 6*(1), 81-113.

Benjamin, P. (2013). *Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)* (Working Paper No. 47). International Labour Organization. https://www.ilo.org/publications/assessing-south-africas-commission-conciliation-mediation-and-arbitration

Bercusson, B. (1991). *Trade unions in Britain today*. Manchester University Press.

Bethaux, E., & Mias, A. (2021). De la justice prud'homale à la justice algorithmique? Le cas de la plateforme de la 'résolution amiable des litiges'. *Droit et Société, 107*(1), 163-183.

Bhebe, Q., & Mahapa, M. (2014). The decline in trade union density in the 21st century in Zimbabwe: A case of Zimbabwe Congress of Trade Unions (ZCTU). *Journal of Human Resources, 2*(1), 67-82.

Blake, S., Browne, J., & Sime, S. (2016). *A practical approach to alternative dispute resolution* (4th ed.). Oxford University Press.

Blyton, P., & Turnbull, P. (2004). *The dynamics of employee relations*. Palgrave Macmillan.

Bonda, I. (2022). *The essential guide to labour relations in Zimbabwe: The labour practitioner's toolbox*. Paran International.

Bonda, I., & Tsvangirai, F. P. (2021). Alternative dispute resolution mechanisms to manage workplace disputes among national employment councils in Zimbabwe. *The Dyke, 15*(3), 1-27.

Boquen, A. (2021). *China's Hukou system explained*. NH Global Partners. https://nhglobalpartners.com/the-chinese-hukou-system-explained

Boulle, L. (2005). *Mediation: Principles, process, practice* (2nd ed.). LexisNexis Butterworths.

Bowe, G. (2014). Skills and values: Alternative dispute resolution: Negotiation, mediation, collaborative law, and arbitration [Book review]. *Yearbook on Arbitration and Mediation, 6*, 467.

Brand, J., Steadman, F., & Lotter, C. (2008). *Labour dispute resolution and institutional resilience: A comparative analysis*. Juta.

Brandl, B., & Braakmann, N. (2021). Union density and collective bargaining in North America: Trends and implications. *International Journal of Human Resource Management, 32*(5), 1001-1018.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology, 3*(2), 77-101.

Brett, J. M., & Goldberg, S. B. (1988). Grievance mediation in the coal industry: A field experiment. *Industrial and Labor Relations Review, 42*(1), 49-69. https://doi.org/10.2307/2523730

Brown, H. J., & Marriott, A. L. (1993). *ADR principles and practice*. Sweet & Maxwell.

Brown, H. J., & Marriott, A. L. (1999). *ADR principles and practice* (2nd ed.). Sweet & Maxwell.

Bryman, A., & Bell, E. (2015). *Business research methods*. Oxford University Press.

Budd, J. W. (2004). *Employment with a human face: Balancing efficiency, equity, and voice*. Cornell University Press.

Budd, J. W. (2008). *Labor relations: Striking a balance* (3rd ed.). McGraw-Hill/Irwin.

Burgess, P., Corby, S., & Höland, A. (2017). *The roles, resources and competencies of employee lay judges*. Wirtschafts- und Sozialwissenschaftliches Institute (WSI). https://www.econstor.eu/bitstream/10419/215982/1/hbs-fofoe-wp-051-2017.pdf

Burns, N., Grove, S. K., & Grey, J. (2011). *Understanding nursing research: Building evidence-based practice* (5th ed.). Elsevier/Saunders.

Burton, J. W. (1990). *Conflict: Resolution and prevention*. Macmillan.

Busetto, L., Wick, W., & Gumbinger, C. (2020). How to use and assess qualitative research methods. *Neurological Research and Practice, 2*(14).

Bushe, B. (2019). *The efficacy of alternative dispute resolution (ADR) in labour dispute resolution: A critical comparative analysis of Botswana, South Africa and Zimbabwe* [Doctoral dissertation, UNISA].

Butler, D., & Finsen, E. (1993). *Arbitration in South Africa: Law and practice*. Juta.

Chigudu, D. (2021). Picking up pieces of good corporate governance to sustain National Railways of Zimbabwe. *Indian Journal of Corporate Governance, 14*(1), 27-47. https://doi.org/10.1177/09746862211007042

Chikuhwa, J., & Jacob, T. (2008). *The history and role of the ZCTU in Zimbabwe* [Unpublished manuscript].

Chisamba, T. (2017). *The role of EMCOZ in Zimbabwean industrial relations* [Unpublished master's dissertation].

Christie, R. H., & Madhuku, L. (1996). The industrial dispute resolution procedures of Southern Africa. *African Journal of International and Comparative Law, 8*(2), 286–308.

Clegg, H. A. (1975). *Trade unionism under collective bargaining*. Blackwell.

Coetzee, S. A. (2021). Promoting fair individual labour dispute resolution for South African educators accused of sexual misconduct (Part 1). *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg, 2021*(1), 29-42.

Cole, S. R. (2001). Uniform arbitration: 'One size fits all' does not fit. *Ohio State Journal on Dispute Resolution, 16*(3), 759-795.

Colosi, T. R. (1993). *On and off the record: Colosi on negotiation*. Kendall/Hunt.

Colquitt, J. A. (2001). On the dimensionality of organisational justice: A construct validation of a measure. *Journal of Applied Psychology, 86*(3), 386-400. https://doi.org/10.1037/0021-9010.86.3.386

Colvin, A. J. S. (2009). Empirical research on employment arbitration: Clarity amidst the sound and fury? *Employee Rights and Employment Policy Journal, 11*(2), 405-447.

Colvin, A. J. S. (2011). An empirical study of employment arbitration: Case outcomes and processes. *Journal of Empirical Legal Studies, 8*(1), 1-23. https://doi.org/10.1111/j.1740-1461.2010.01200.x

Colvin, A. J. S. (2021). The growing use of mandatory arbitration: Implications for employment rights. *Industrial and Labour Relations Review, 74*(4), 981-1008.

Constitutional Court of Zimbabwe. (2018). *Isoquant Investments (Pvt) Ltd t/a ZIMOCO v Darikwa* [2018] ZWCC 6. https://zimlii.org/akn/zw/judgment/zwcc/2018/6/eng@2018-05-30/source

Constitutional Rights Foundation. (2007). *Bill of Rights in action: The evolution of employment dispute resolution*. https://www.crf-usa.org/

Cookson, G., Bennett, T., & Wibberley, G. (2023). *Demographic disparities in access to UK employment justice*. ACAS.

Covin, A. J. S. (2021). Mandatory arbitration agreements in the US private sector. *Labour Studies Journal, 46*(2).

Creswell, J. W. (2009). *Research design: Qualitative, quantitative, and mixed methods approaches* (3rd ed.). SAGE Publications.

Creswell, J. W. (2010). *Research methods and statistics*. SAGE Publications.

Creswell, J. W. (2012). *Educational research: Planning, conducting, and evaluating quantitative and qualitative research* (4th ed.). Pearson.

Creswell, J. W. (2018). *Research design: Qualitative, quantitative, and mixed methods approaches* (5th ed.). SAGE Publications.

Creswell, J. W., & Miller, D. L. (2000). Determining validity in qualitative inquiry. *Theory Into Practice, 39*(3), 124-130.

Creswell, J. W., & Poth, C. N. (2018). *Qualitative inquiry and research design: Choosing among five approaches* (4th ed.). SAGE Publications.

Daft, R. L. (2004). *Organisation theory and design* (8th ed.). South-Western/Thomson.

Dandira, M., Chufama, M., Nyoni, N., & Kandjinga, E. S. (2020). The influence of trade unions on promoting industrial relations in Zimbabwe. *International Journal of Business Management and Technology, 4*(6), 79–88.

Davy, U., & Chen, A. (2022). *Law and social policy in the Global South: Brazil, China, India, South Africa*. Routledge.

De Bono, E. (1993). *Conflicts: A better way to resolve them*. Penguin Books.

Deakin, S., & Morris, G. S. (2009). *Labour law* (5th ed.). Hart Publishing.

Denzin, N. K., & Lincoln, Y. S. (Eds.). (2005). *The SAGE handbook of qualitative research* (3rd ed.). SAGE Publications.

Denzin, N. K., & Lincoln, Y. S. (Eds.). (2018). *The SAGE handbook of qualitative research* (5th ed.). SAGE Publications.

Department of Justice Canada. (2022). *Access to justice and dispute resolution in Canada: Policy and research perspectives*. Government of Canada. https://www.justice.gc.ca/eng/rp-pr/jr/ajdrp-rprpa/index.html

Dix, G., & Barber, B. (2015). The changing face of work: Insights from ACAS. *Employee Relations, 37*(6), 670-682.

Doorey, D. J. (2020). Labour dispute resolution in Canada: Boards, tribunals, and courts. *Canadian Labour and Employment Law Journal, 23*(1), 1-25.

Downe-Wamboldt, B. (1992). Content analysis: Method, applications, and issues. *Health Care for Women International, 13*(3), 313-321.

Doyle, A. (2020). *What is a semi-structured interview? Definition and examples of a semi-structured interview*. The Balance Careers. https://www.thebalancemoney.com/what-is-a-semi-structured-interview-2061632

Drury, C. (2020). *Management and cost accounting* (10th ed.). Cengage Learning.

Dukes, R., & Streeck, W. (2020). *From industrial citizenship to private ordering? Contract, status, and the question of consent*. Max Planck Institute for the Study of Societies.

Dunlop, J. T. (1958). *Industrial relations systems*. Holt Rinehart and Winston.

Dunlop, J. T. (1993). *Industrial relations systems* (Rev. ed.). Harvard Business School Press.

Dupont, P.-L., Kirk, E., McDermont, M., & Anderson, B. (2018). *Promoting access to injustice? Alternative dispute resolution and employment relations in the UK* (ETHOS Project Report). University of Bristol.

Edwards, P. (2003). *Industrial relations: Theory and practice*. Blackwell.

Eisenhardt, K. M. (1989). Building theories from case study research. *Academy of Management Review, 14*(4), 532-550. https://doi.org/10.2307/258557

Employers Confederation of Zimbabwe. (2022). *About EMCOZ: Mission and activities*.

Feng, J., & Xie, P. (2020). Is mediation the preferred procedure in labour dispute resolution systems? Evidence from employer-employee matched data in China. *Journal of Industrial Relations, 62*(1), 81-103.

Fenwick, C., Kalula, E., & Landau, I. (2007). *Labour law: A Southern African perspective*. International Labour Office.

Fereday, J., & Muir-Cochrane, E. (2006). Demonstrating rigour using thematic analysis: A hybrid approach of inductive and deductive coding and theme development. *International Journal of Qualitative Methods, 5*(1), 1-11.

Fisher, R., Ury, W., & Patton, B. (2011). *Getting to yes: Negotiating agreement without giving in* (3rd ed.). Penguin.

Flanders, A. (1965). *Industrial relations: What is wrong with the system?* Faber and Faber.

Forsyth, A. (2014). Dispute resolution systems in the United States: Lessons for other jurisdictions. *Journal of Industrial Relations, 56*(2), 123-140.

Forsyth, D. R. (2014). *Group dynamics* (6th ed.). Wadsworth Cengage Learning.

Foskett, D. (2005). *The law and practice of compromise* (5th ed.). Sweet & Maxwell.

Fox, A. (1966). *Industrial sociology and industrial relations*. National Industrial Society.

Fox, A. (1974). *Beyond contract: Work, power and trust relations*. Faber and Faber.

Freeman, R. (2007). *Rawls on justice and fairness in labour relations*. Oxford University Press.

Freeman, R. B., & Medoff, J. L. (1984). *What do unions do?* Basic Books.

Freeman, S. (2007). *Justice and the social contract: Essays on Rawlsian political philosophy*. Oxford University Press.

Gabriel, J. (2014). Theoretical frameworks in research. SAGE Publications.

Gathongo, J. K. (2018). *Labour dispute resolution in Kenya: Compliance with international standards and a comparison with South Africa* [Doctor Legum (LLD) thesis, Nelson Mandela Metropolitan University].

Gathongo, J. K., & Van der Walt, A. (2018). Towards an effective Kenyan labour dispute resolution system: A comparison with the South African labour dispute resolution system. *Obiter, 39*(2), 458-488.

Gaul, T., & Precht, R. (2023). Digitalisation of German labour courts post-COVID. In T. Gaul & R. Precht (Eds.), *The impact of technological disruption on German labour law: Risks and opportunities*. Academic Resource Index.

Geertz, C. (1973). *The interpretation of cultures: Selected essays*. Basic Books.

Gerber, M. (2019). *Alternative dispute resolution in the BRICS nations: A comparative labour law perspective*. University of the Western Cape.

Ghellab, Y., Varela, R., & Luebker, M. (2022). *Social dialogue and industrial relations in times of crisis* (ILO Discussion Paper Series). International Labour Organisation.

Gibbs, G. R. (2007). *Thematic coding and categorizing: Analysing qualitative data*. SAGE Publications.

Gillham, B. (2000). *Case study research methods*. Continuum.

Goldberg, S. B., Sander, F. E. A., & Rogers, N. H. (1992). *Dispute resolution: Negotiation, mediation, and other processes* (2nd ed.). Little, Brown.

Goldberg, S. B., Sander, F. E. A., Rogers, N. H., & Cole, S. R. (2012). *Dispute resolution: Negotiation, mediation, arbitration, and other processes* (6th ed.). Wolters Kluwer Law & Business.

Goldman, S., Shapiro, D., & Pearsall, M. (2016). *Conflict, self-insight, and dispute resolution*. International Labour Office.

Government of Zimbabwe. (2015). *Labour Amendment Act, No. 5 of 2015*. Government Printers.

Gravel, E., Kohiyama, T., & Tsotroudi, K. (2014). *Resolving individual labour disputes: A comparative overview*. International Labour Office.

Guest, G., Bunce, A., & Johnson, L. (2006). How many interviews are enough? *Field Methods, 18*(1), 59-82.

Gumbo, S. (2022). The original position and the veil of ignorance in Rawls' theory. *Journal of Political Philosophy, 30*(2), 145-162.

Gwisai, M. (2006). *Labour and employment law in Zimbabwe: Relations of work under neo-colonial capitalism*. Zimbabwe Labour Centre and Institute of Commercial Law, University of Zimbabwe.

Gwisai, M., Matsikidze, R., & Mucheche, C. (2020). Labour rights under Zimbabwe's new Constitution: The right to be paid a fair and reasonable wage. *University of*

Zimbabwe Law Journal, 2(1), 204-232. https://uzlj.uz.ac.zw/index.php/uzlj/article/view/44

Haipeter, T., & Rosenbohm, S. (2023). *Decentralisation of collective bargaining in Germany: Recent trends and challenges*. Institut für Arbeit und Qualifikation, Universität Duisburg-Essen.

Hameed, U. (2024, January). *Qualitative data analysis* [Presentation]. National Textile University. https://doi.org/10.13140/RG.2.2.18417.25440

Harnack, K. (2019). Mediation and conciliation of collective labour conflicts in Germany. In M. C. Euwema, F. J. Medina, A. B. García, & E. Romero Pender (Eds.), *Mediation in collective labour conflicts* (pp. 99-112). Springer.

Heery, E. (2016). *Framing work: Unitary, pluralist and critical perspectives in the twenty-first century*. Oxford University Press.

Hilal, A., & Alabri, S. S. (2013). Using NVivo for data analysis in qualitative research. *International Interdisciplinary Journal of Education, 2*(2), 181-186.

Huddleston, S., & Sarah, H. (2005). Neoliberalism and the ZCTU: Labour politics in the 1990s. *Impartiality and Trust*.

Hyman, R. (1975). *Industrial relations: A Marxist introduction*. Macmillan.

Hyman, R. (1989). *The political economy of industrial relations: Theory and practice in a cold climate*. Macmillan.

International Bar Association. (1987). *Rules of ethics for international arbitrators*. International Bar Association.

International Labour Organisation. (2013). *Labour dispute systems: Guidelines for improved performance*. International Training Centre of the ILO.

International Labour Organisation. (2014a). *Best practices in resolving employment disputes in international organisations* [Conference proceedings]. ILO.

International Labour Organisation. (2014b). *Substantive provisions of labour legislation: Settlement of collective labour disputes* (Chapter IV, Industrial and Employment Relations Department, Social Dialogue). ILO.

International Labour Organisation. (2016). *Resolving individual labour disputes: A comparative overview*. International Labour Office.

International Labour Organisation. (2021). *Labour dispute prevention and resolution systems: Global trends and best practices*. ILO.

International Labour Organisation. (2023). *Access to labour justice: A diagnostic tool for self-assessing the effectiveness of labour dispute prevention and resolution*. International Labour Office. https://www.ilo.org/publications/access-labour-justice-diagnostic-tool-self-assessing-effectiveness-labour

Inyanjui, J. N., Juma, D., Njeru, A., & Onyango, J. (2021). Employee welfare, CSR strategy, and performance of public universities in Kenya. *The Strategic Journal of Business & Change Management, 8*(2), 76–86.

Jazdowska, N. (2001). *Will they ever learn? Work representation in Zimbabwe's manufacturing industry 1980–1998* [Doctoral dissertation, Coventry University].

Jollimore, T. (2002). Impartiality. In E. N. Zalta (Ed.), *The Stanford encyclopedia of philosophy*. Stanford University. https://plato.stanford.edu/entries/impartiality/

Kabir, S. M. (2016). *Methods of data collection: Basic guidelines for research; An introductory approach for all disciplines* (1st ed.). Book Zone Publication.

Kahn-Freund, O. (1983). *Labour and the law* (3rd ed., P. Davies & M. Freedland, Eds.). Stevens.

Kanyenze, G., Kondo, T., Chitambara, P., & Martens, J. (2011). *Beyond the enclave: Towards a pro-poor and inclusive development strategy for Zimbabwe*. Weaver Press.

Kaplan, B., & Maxwell, J. A. (1994). Qualitative research methods for evaluating computer information systems. In J. G. Anderson & C. E. Adyin (Eds.), *Evaluating health care information systems: Methods and applications* (pp. 45-68). SAGE.

Kasonde, J., & Chitengi, B. (2020). Labour arbitration and dispute resolution in Zambia. *Sabinet African Journals*.

Kayenze, G. (2006). *Beyond ESAP: ZCTU's economic statement and labour activism*. Weaver Press.

Kessler, S. (1987). The swings and roundabouts of pendulum arbitration. *Personnel Management*, December, 38-42.

Kinyanjui, S. (2010). Restorative justice in traditional pre-colonial 'criminal justice systems' in Kenya. *Tribal Law Journal, 10*, 1-17.

Kochan, T. A. (2019a). Employment dispute resolution in the United States: The role of statutory law. *Industrial Relations Journal, 50*(2), 101-115.

Kochan, T. A. (2019b). Shaping the future of work: Challenges and opportunities for labour-management relations and workplace dispute resolution. *Dispute Resolution Journal, 74*(1), 11-31.

Kochan, T. A., Katz, H. C., & McKersie, R. B. (1986). *The transformation of American industrial relations*. Basic Books.

Krippendorff, K. (2004). *Content analysis: An introduction to its methodology* (2nd ed.). SAGE Publications.

Kwaramba, & Uzhenyu, D. (2017). The impact of the Labour Amendment Act 2015 on the termination of employment contracts in Zimbabwe. *International Journal of Research in Social Sciences, 7*(12).

Landerkin, H., & Pirie, A. (2005). *Dispute resolution: Redefining relationships and boundaries*. Oxford University Press.

Langys, E. (2019, August 6). *Mediator impartiality and neutrality: What is it about?* LinkedIn. https://www.linkedin.com/pulse/mediator-impartiality-neutrality-what-egidijus-langys

Leedy, P. D. (1997). *Practical research: Planning and design* (6th ed.). Prentice Hall.

Lewicki, R. J., Saunders, D. M., & Barry, B. (2016). *Negotiation* (7th ed.). McGraw-Hill Education.

Li, K., & Cheung, S. O. (2018). Bias measurement scale for repeated dispute evaluations. *Journal of Management in Engineering, 34*(4), 04018016. https://doi.org/10.1061/(ASCE)ME.1943-5479.0000617

Lieberman, J. K., & Henry, J. F. (1986). Lessons from the alternative dispute resolution movement. *University of Chicago Law Review, 53*(2), 424-439. https://doi.org/10.2307/1599646

Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic inquiry*. SAGE.

Lincoln, Y. S., Lynham, S. A., & Guba, E. G. (2011). Paradigmatic controversies, contradictions, and emerging confluences, revisited. In N. K. Denzin & Y. S. Lincoln (Eds.), *The SAGE handbook of qualitative research* (4th ed., pp. 97-128). SAGE.

Lipsky, D. B., Seeber, R. L., & Fincher, R. D. (2020). The National Labour Relations Board and political change. *Labour Law Journal, 71*(1), 23-38.

Liubchenko, O. (2016). *E-commerce, the Internet, and the global village: Implications for dispute resolution*. Baltija Publishing.

Madhuku, L. (2010). *Labour law in Zimbabwe*. Weaver Press.

Madhuku, L. (2012a). *Labour law in Zimbabwe*. African Books Collective.

Madhuku, L. (2012b). *The alternative dispute resolution system in Zimbabwe: Some comparative perspectives*. Hein Online.

Madhuku, L. (2015). *Labour law in Zimbabwe*. Weaver Press.

Madzingira, F. (2015). *Terminating employee rights: A discussion of Nyamande and Another v Zuva Petroleum*. Oxford Human Rights Hub. https://ohrh.law.ox.ac.uk/terminating-employee-rights-a-discussion-of-nyamande-and-another-v-zuva-petroleum/

Mafongoya, C. P. (2021, September 6). *Dispute resolution mechanisms under the Zimbabwean law*. Lex Amicus.

https://lexamicuszw.wordpress.com/2021/09/06/dispute-resolution-mechanisms-under-the-zimbabwean-law/

Magogo, B. (2024). *Commentary on DGL Investments v Martin Ndlovu & 14 Others (LC/MT/70/23)*.

Maguire, M., & Delahunt, B. (2017). Doing a thematic analysis: A practical, step-by-step guide for learning and teaching scholars. *All Ireland Journal of Higher Education, 9*(3), 3351-33514.

Maiese, M. (2003). *Types of justice*. Beyond Intractability, University of Colorado Boulder.

Maiese, M., & Burgess, H. (2020, September). *Limiting escalation/de-escalation*. Beyond Intractability. Conflict Information Consortium, University of Colorado Boulder. https://www.beyondintractability.org/essay/limiting-escalation

Mail & Guardian. (2015, August 6). Massive Zim job losses in wake of court ruling. *Mail & Guardian*. https://mg.co.za/article/2015-08-06-massive-zim-job-in-wake-of-court-ruling

Maitireyi, P., & Duve, D. (2011). Labour arbitration effectiveness in Zimbabwe: Fact or fiction? *African Journal on Conflict Resolution, 11*(3), 135-158.

Maphiri, M., Matasane, M. A., & Mudimu, G. (2021). Challenges to the effective implementation of SDG 8 in creating decent work and economic growth in the

Southern African Hemisphere: Perspectives from South Africa, Lesotho and Zimbabwe. In S. Vertigans & S. O. Idowu (Eds.), *Global challenges to CSR and sustainable development: Root causes and evidence from case studies* (pp. 39-63). Springer. https://doi.org/10.1007/978-3-030-62501-6_3

Marara, A. (2022, April 10). Conciliation explained. *The Sunday Mail*. https://www.sundaymail.co.zw/conciliation-explained

Marriott, A. L. (2005). [Address on international commercial arbitration]. In A. J. van den Berg (Ed.), *New horizons in international commercial arbitration and beyond* (ICCA Congress Series No. 12, Beijing 2004). Kluwer Law International.

Marume, T., & Furidzo, T. (2019). *Challenges facing litigants under the Labour Amendment Act No. 5 of 2015 in Zimbabwe*. Marume & Furidzo Legal Practitioners. http://www.marumeandfuridzo.com/challenges-facing-litigants-under-labour-amendment-act-no-5-of-2015-in-zimbabwe/

Mashamba, J. (2014). *Alternative dispute resolution practice in Tanzania: Law and practice*. Mkuki & Nyota.

Mataire, L. (2015, July 30). The President speaks on job losses. *The Herald*. https://www.heraldonline.co.zw/president-speaks-on-job-losses-2/

Mathers, N., Fox, N., & Hunn, A. (2002). *Trent's focus for research and development in primary health care: Using interviews in a research project*. Trent Focus.

Matsikidze, R. (2013). *Alternative dispute resolution in Zimbabwe: A practical approach to arbitration, mediation & negotiations*. Molhurst. https://openlibrary.org/books/OL30668656M/

Matsikidze, R. (2023, July 19). *A critical commentary on the Labour Amendment Act Number 11 of 2023*. IPMZ Briefing. https://ipmz.co.zw/wp-content/uploads/2023/07/RODGERS-MATSIKIDZE-A-CRITICAL-COMMENTARY-ON-THE-LABOUR-AMENDMENT-ACT-No-11-of-2023-IPMZ-BRIEFING-19th-JULY-2023-1.pdf

Matsvai, S., & Chikomba, C. (2022). Factors affecting performance of learners at Grade 7: A case of Chikomba District Primary Schools in Mashonaland East Province of Zimbabwe. *Journal of Research, Innovation and Implications in Education, 5*(4), 11-20.

McMillan, J. H., & Schumacher, S. (2001). *Research in education: A conceptual introduction* (5th ed.). Longman.

Merriam, S. B. (2002). *Qualitative research in practice: Examples for discussion and analysis*. Jossey-Bass.

Merriam, S. B., & Tisdell, E. J. (2019). *Qualitative research: A guide to design and implementation* (4th ed.). Jossey-Bass.

Mhlanga, D., & Ndlovu, E. (2021). Socio-economic and political challenges in Zimbabwe and the development implications for Southern Africa. *Journal of African Foreign Affairs, 8*(3), 25-48.

Miles, S. (2012). Stakeholder: Essentially contested or just confused? *Journal of Business Ethics, 108*(3), 285-298.

Ministry of Labour. (2020). *Consolidated report: 53,750 disputes across 43 NECs*. Government of Zimbabwe.

Mokofe, W. M. (2020). Achieving decent work for digital platform workers in South Africa. *Obiter, 41*(3), 573–592. https://doi.org/10.17159/obiter.v41i3.9580

Mokofe, W. M. (2022). *Study on labour relations and 'platform workers': Labour alternative dispute resolution modes in Zimbabwe*.

Moore, C. W. (1996). *The mediation process: Practical strategies for resolving conflict* (2nd ed.). Jossey-Bass.

Moore, C. W. (2003). *The mediation process: Practical strategies for resolving conflict* (3rd ed.). Jossey-Bass.

Moore, C. W. (2014). *The mediation process: Practical strategies for resolving conflict* (4th ed.). Jossey-Bass.

Moyo, S. (2010). *Labour law in Zimbabwe*. Legal Publications.

Mphahlele, W. K. (2016). *The labour relations disputes resolution system: Is it effective?* [Mini-dissertation, LLM (Labour Law), University of Pretoria]. UPSpace Institutional Repository. https://repository.up.ac.za/handle/2263/53164

Mrehwa, T. (2020). *Isoquant Investments (Pvt) Ltd t/a ZIMOCO v Memory Darikwa (CCZ 6/20)*. Tau Mrewa Legal Commentary. https://taumrewa.co.zw/isoquant-investments-private-limited-t-a-zimoco-v-memory-darikwa-ccz-6-20/

Mucheche, C. (2017). Amendments to the Zimbabwean Labour Act (Chapter 28:01) and their implications on the employment relationships: A review of some critical sections of the Labour Amendment Act No 5 of 2015. *The Zimbabwe Electronic Law Journal: Commentary on Contemporary Legal Issues*.

Mucheche, C. (2023a). *Legal overview of the Labour Amendment Act, 2023*. CM Law Chambers. https://cmlawchambers.co.zw/wp-content/uploads/2023/11/LEGAL-OVERVIEW-OF-LABOUR-AMENDMENT-ACT-2023-BY-CALEB-MUCHECHE.pdf

Mucheche, C. (2023b). *Topical issues in Labour Amendment Act Number 11 of 2023* [Symposium presentation]. CM Law Chambers. https://cmlawchambers.co.zw/wp-content/uploads/2023/11/LABOUR-LAW-IN-ZIMBABWE-TOPICAL-ISSUES-IN-LABOUR-AMENDMENT-ACT-No.-11-OF-2023-BY-COMMERCIAL-LABOUR-LAWYER-CALEB-MUCHECHE.pdf

Mucheche, C. H. (2021). *Labour law and industrial relations in Zimbabwe*. Zimlaw Trust.

Mucheche, C. H. (2022). *Consolidated labour law, dispute resolution and labour broking law in Zimbabwe, Namibia, and South Africa*. Zimlaw Trust.

Mudoni, T. V. (2017). *An analysis of the effectiveness of conciliation and arbitration as labour dispute resolution mechanisms in Zimbabwe* [Master's thesis, Midlands State University]. http://hdl.handle.net/11408/2952

Munyuru, N. B. (2024, October 7). *Zimbabwe - Country by country guides to arbitration*. Jus Mundi. https://jusmundi.com/en/document/publication/en-zimbabwe-country-by-country-guide

Mutasa, R. (2015). *Client alert: Zimbabwe's Supreme Court delivers landmark employment law ruling, Don Nyamande & Anor. v Zuva Petroleum (Private) Ltd. SC43/15*. Makone Attorneys.

Mutevedzi, J. (2018, December 6). Litigation: The best way to solve disputes? *Business Times*. https://businesstimes.co.zw/litigation-the-best-way-to-solve-disputes/

Mutevedzi, J. (2021, May 23). Arbitration vs other dispute resolution methods. *The Standard*. https://www.newsday.co.zw/thestandard/2021/05/23/arbitration-vs-other-dispute-resolution-methods

Mutupa, M. (2019). *Party autonomy and mediator selection in Zambian ADR*.

Mwenda, W. S. (2006). *Paradigms of alternative dispute resolution and justice delivery in Zambia* [Doctoral dissertation, University of South Africa]. UNISA Institutional Repository. https://uir.unisa.ac.za/handle/10500/2163

Myambo, A., & Munyanyi, T. (2017). Effectiveness of the Labour Court in labour dispute management in Zimbabwe. *International Journal of Social and Administrative Sciences, 2*(1), 15-30.

Müller, W., & Weitbrecht, H. (2024). Works councils and co-determination in Germany. *Industrial Relations Journal, 10*(13), 12-47.

Ndhlovu, P., & Ndhlovu, P. (2022). The dark side of Section 63(3b) of the Labour Act (Chapter 28:01): The perspective of the stakeholders. *Conflict Resolution Quarterly, 40*(2), 187-197. https://doi.org/10.1002/crq.21357

Ndhlovu, P., Mukuze, K., & Ndhlovu, P. (2023). Labour alternative dispute resolution modes in Zimbabwe. *The Economic and Labour Relations Review, 34*(3), 555-571. https://doi.org/10.1017/elr.2023.26

Ndlovu, M., & Sibanda, M. N. (2022). Digital technologies and the changing journalism cultures in Zimbabwe: Examining the lived experiences of journalists covering the COVID-19 pandemic. *Digital Journalism, 10*, 1059–1078.

Necbrick. (2018). *The history of Zimbabwean National Employment Councils*. https://necbrick.com/history-zimbabwean-necs/

NewsDay. (2015, August 21). Job cuts: Chamisa denies responsibility. *NewsDay*. https://www.newsday.co.zw/news/article/103878/job-cuts-chamisa-denies-responsibility

Nkoane, P. (2018). Time for the tide to change for rules of engagement in labour law: A proposal for effective wage dispute resolution. *Law, Democracy & Development, 22*(1), 48-73. https://doi.org/10.4314/ldd.v22i1.5

Noone, M. A., & Ojelabi, L. A. (2020). Alternative dispute resolution and access to justice in Australia. *International Journal of Law in Context, 16*(2), 108-127.

Nowell, L. S., Norris, J. M., White, D. E., & Moules, N. J. (2017). Thematic analysis: Striving to meet the trustworthiness criteria. *International Journal of Qualitative Methods, 16*(1), 1-13.

Ntuli, M. (2018). Labour dispute resolution in Africa: A comparative analysis. *African Journal of Labour Relations, 42*(1), 45-62.

Ntuli, N. (2018). Africa: Alternative dispute resolution in a comparative perspective. *Conflict Studies Quarterly, 22*(1), 1-26.

Nussbaum, M. (2019). *Creating capabilities: The human development approach*. Harvard University Press.

OECD. (2024). *OECD online dispute resolution framework*. OECD Publishing.

Omolo, J. (2019). Labour market trends and industrial relations in Kenya: Challenges and opportunities. *African Journal of Economic Policy, 26*(1), 45-67.

Ospina, S. (2004). Qualitative research. In G. R. Goethals, G. J. Sorenson, & J. M. Burns (Eds.), *Encyclopedia of leadership* (pp. 1279-1284). SAGE Publications.

Oxford University Press. (2020). *Oxford learners' thesaurus: A dictionary of synonyms* (2nd ed.). Oxford University Press.

Patton, M. Q. (2002). *Qualitative research and evaluation methods* (3rd ed.). SAGE Publications.

Patton, M. Q. (2015). *Qualitative research and evaluation methods* (4th ed.). SAGE Publications.

Payne, G., & Payne, J. (2004). *Key concepts in social research*. SAGE Publications.

Pogge, T. (2002). *World poverty and human rights: Cosmopolitan responsibilities and reforms*. Polity Press.

Polit, D., & Hungler, B. (1999). *Nursing research: Principle and method* (6th ed.). Lippincott.

Potočnik, K., Chaudhry, S., & Bernal-Valencia, M. (2019). Mediation and conciliation in collective labour conflicts in the United Kingdom. In M. C. Euwema, F. J. Medina, A. B. García, & E. Romero Pender (Eds.), *Mediation in collective labour conflicts* (pp. 209-225). Springer.

Price, C. (2018). Alternative dispute resolution in Africa: Is ADR the bridge between traditional and modern dispute resolution? *Pepperdine Dispute Resolution Law Journal, 18*, 393-405.

Raftopoulos, B. (2001). The labour movement and the emergence of opposition politics in Zimbabwe. *Labour, Capital and Society, 33*(2), 256-286.

Raftopoulos, B. (2016). The Zimbabwean crisis and the challenges for the left. *Journal of Southern African Studies, 32*(2), 203-219.

Raftopoulos, B. (2021). *The Zimbabwean labour movement: From hopes for transformation to challenges of decline*. SAPES Trust.

Rambaree, K., & Faxelid, E. (2013). Considering abductive thematic network analysis with ATLAS-ti 6.2. In *Advancing research methods with new technologies* (pp. 170–186).

Rapatsa, M. (2018). The Commission for Conciliation, Mediation and Arbitration (CCMA) and Alternative Dispute Resolution (ADR) in labour relations in South Africa: An appraisal of efficacy and challenges. *Tribunal Juridical, 8*(Special), 202-211.

Rawls, J. (1971). *A theory of justice*. Harvard University Press.

Rawls, J. (1999a). *A theory of justice* (Rev. ed.). Harvard University Press.

Rawls, J. (1999b). *Justice as fairness: A restatement*. Harvard University Press.

Rawls, J. (2004). *Justice as fairness: A restatement*. Harvard University Press.

Rawls, J. (2019). *A theory of justice* (Rev. ed.). Harvard University Press. (Original work published 1971; revised edition 1999)

Reddy, C. R. (2004). *Industrial relations*. Himalaya Publishing House.

Ritchie, J., & Lewis, J. (Eds.). (2003). *Qualitative research practice: A guide for social science students and researchers*. SAGE Publications.

Roller, M. R., & Lavrakas, P. J. (2015). *Applied qualitative research design: A total quality framework approach*. Guilford Press.

Rose, J. B. (2018). Non-union dispute resolution in Canadian firms. *Relations Industrielles/Industrial Relations, 73*(3), 401-420.

Rowe, M. P. (1997). Dispute resolution in the non-union environment: An evolution toward integrated systems for conflict management? In S. E. Gleason (Ed.), *Workplace dispute resolution: Directions for the 21st century* (pp. 79-106). Michigan State University Press.

Rutsche, D. M. (2019). *John Rawls und das Problem der demokratischen Stabilität: Eine Untersuchung zur Theorie und Praxis des politischen Liberalismus* [Dissertation].

Rwodzi, N. T. (2018). *The use of alternative dispute resolution mechanisms in labour relations in the workplace in South Africa* [Master's dissertation, University of Fort Hare].

Sachs, B. I. (2018). Agency fees and the First Amendment. *Harvard Law Review, 131*(4), 1046-1095.

Sanders, A. (2009). Part one of the Employment Act 2008: 'Better dispute resolution?'. *Industrial Law Journal, 38*(1), 30-45.

Saunders, B., Sim, J., Kingstone, T., Baker, S., Waterfield, J., Bartlam, B., Burroughs, H., & Jinks, C. (2018). Saturation in qualitative research: Exploring its conceptualisation and operationalisation. *Quality & Quantity, 52*(4), 1893-1907.

Saunders, M., Lewis, P., & Thornhill, A. (2016). *Research methods for business students* (7th ed.). Pearson.

Saunders, P. H. (1947). *Types of labour disputes and approaches to their settlement*. Duke University School of Law.

Saundry, R., Bennett, T., & Wibberley, G. (2018). Inside the mediation room: Efficiency, voice and equity in workplace mediation. *The International Journal of Human Resource Management, 29*(6), 1157-1177.

Sen, A. (2019). *The idea of justice*. Harvard University Press.

Shenton, A. K. (2004). Strategies for ensuring trustworthiness in qualitative research projects. *Education for Information, 22*(2), 63-75.

Shonk, K. (2022). *Alternative dispute resolution (ADR) and conflict management*. Program on Negotiation at Harvard Law School.

Shuttleworth, M. (2008). *Case study research design*. Explorable.com. https://explorable.com/case-study-research-design

Sibanda, A. (2002). Industrial relations in Zimbabwe today: Declining social responsibility of the state. In the *3rd Regional Congress of the International Industrial Relations Association*. IIRA.

Sibanda, A. E. (1985). *Labour legislation in Zimbabwe: Historical and contemporary perspectives*. University of Zimbabwe Institutional Repository.

Sibanda, D. N. (2016). Labour matters: Dispute resolution process now paralysed. *The Chronicle*. http://www.chronicle.co.zw

Sigafoos, J., & Organ, J. (2021). 'What about the poor people's rights?' The dismantling of social citizenship through access to justice and welfare reform policy. *Journal of Law and Society, 48*(3), 362–385. https://doi.org/10.1111/jols.12312

Simon, M. K., & Goes, J. (2013). *Scope, limitations, and delimitations*. Dissertation Success.

Singh, R. K. (2021). A critical analysis of unfair labour practices and victimisation in the context of industrial relations law. *International Journal of Law, Justice and Jurisprudence, 1*(2), 107-109.

Singh, S. (2022). Justice: Distributive, procedural and corrective principles in law and society. *International Journal of Law, Justice and Jurisprudence, 4*(09), 345-562.

Sinha, P. R. N., Sinha, I. B., & Shekhar, S. P. (2004). *Industrial relations, trade unions, and labour legislation* (2nd ed.). Pearson Education.

Sisson, K. (2009). *Why employment relations matter* (Warwick Papers in Industrial Relations No. 92). University of Warwick.

Sithole, K., & Munyai, T. (2017). Evaluation of the Labour Court as an instrument for dispute resolution in Zimbabwe. *Quest Journals - Journal of Research in Business and Management, 4*(11), 60-65.

Skocpol, T. (Ed.). (1985). *Vision and method in historical sociology*. Cambridge University Press.

Stake, R. E. (1995). *The art of case study research*. SAGE Publications.

Stevens, C. M. (1966). Is compulsory arbitration compatible with bargaining? *Industrial Relations: A Journal of Economy and Society, 5*(2), 38-52. https://doi.org/10.1111/j.1468-232X.1966.tb00450.x

Stewart, D. W., & Shamdasani, P. N. (2015). *Focus groups: Theory and practice* (3rd ed.). SAGE Publications.

Teague, P., & Roche, W. K. (2012). *Industrial relations theory: An introduction*. Oxford University Press.

Thornicroft, J. (2019). Specialised labour courts in Canada: The Quebec experience. *Labour/Le Travail, 84*, 145-162.

Tracy, S. J. (2013). *Qualitative research methods: Collecting evidence, crafting analysis, communicating impact*. Wiley-Blackwell.

Trebilcock, M. J. (2019). *Law, institutions and development*. University of Toronto Faculty of Law.

Trudeau, G. (2002). *L'évolution de la justice du travail au Canada*. Les Presses de l'Université Laval.

Twyman, C. M. (2001). Finding justice in South African labour law: The use of arbitration to evaluate affirmative action. *Case Western Reserve Journal of International Law, 33*(3), 307-340. https://scholarlycommons.law.case.edu/jil/vol33/iss3/2/

Twyman, R. (2001). The CCMA and the Labour Court: Authority, resources, and social equality in South African dispute resolution. *Industrial Law Journal*.

Ury, W. (1991). *Getting past no: Negotiating with difficult people*. Bantam Books.

Ury, W. (2003). *The third side: Why we fight and how we can stop*. Penguin.

Ury, W. (2011). *Getting to yes with yourself*. HarperOne.

Uzhenyu, D. (2017a). Challenges facing employees to strike in Zimbabwe despite the provisions of the new Zimbabwe Constitution Number 20 of 2013. *International Open and Distance Learning Journal, 3*(2), 1-14.

Uzhenyu, D. (2017b). Labour dispute resolution in Southern Africa: Challenges and prospects. *International Open and Distance Learning Journal, 3*(2), 1-14.

Uzhenyu, D. (2017c, September). Labour disputes stifling progressive labour relations in Zimbabwe's construction industry (2013-2016). *IOSR Journal of Business and Management, 19*(9), 74-81. http://www.iosrjournals.org

Vaughan-Whitehead, D., Ghellab, Y., & Muñoz de Bustillo Llorente, R. (Eds.). (2021). *The new world of work: Challenges and opportunities for social partners and labour institutions*. Edward Elgar Publishing.

Wajcman, J. (2000). Feminism facing industrial relations in Britain. *British Journal of Industrial Relations, 38*(2), 183-201. https://doi.org/10.1111/1467-8543.00159

Watadza, C. (2015). *The effectiveness of conciliation and arbitration as dispute settlement mechanisms in the ferro-alloy industry* [Master's dissertation, Midlands State University].

Watadza, C., Mahapa, M., & Muchadenyika, C. E. (2016). Effectiveness of conciliation and arbitration in the ferro-chrome industry in Zimbabwe. *European Scientific Journal, 12*(25), 331-349. https://doi.org/10.19044/esj.2016.v12n25p331

Welsh, N. (2004). *Dispute resolution and social justice: Rawls' theory in practice*. Publication Office of the European Union.

Welz, C., Fromm, A., Contreras, R. R., & Boehmer, S. (2016). *Mapping key dimensions of industrial relations*. Publication Office of the European Union.

Wheeler, H. N. (2019). Mediation in US labour disputes: The role of the FMCS. *Dispute Resolution Journal, 74*(2), 55-68.

Williams, G., Hackland, B., & Brian, H. (1988). *Trade unions in Zimbabwe: A historical overview*. Weaver Press.

Wyse, S. E. (2011, September 16). *What is the difference between qualitative research and quantitative research?* Snap Surveys. https://www.snapsurveys.com/blog/qualitative-vs-quantitative-research/

Yin, R. K. (1994). *Case study research: Design and methods* (2nd ed.). SAGE Publications.

Yin, R. K. (2003). *Case study research: Design and methods* (3rd ed.). SAGE Publications.

Yin, R. K. (2018). *Case study research and applications: Design and methods* (6th ed.). SAGE Publications.

Young, I. (2019). *Fairness and impartiality in labour dispute resolution*. International Labour Office.

Zamir, R. (2011). The disempowering relationship between mediator neutrality and judicial impartiality: Toward a new mediation ethic. *Pepperdine Dispute Resolution Law Journal, 11*(3), 467-516.

Zimbabwe Congress of Trade Unions. (2022). *About ZCTU: Mission and activities*.

Zinyemba, A., et al. (2017). *Labour relations in Zimbabwe*. University Press.

Appendices

APPENDIX A: Semi-Structured Interview Guide for Designated Agents

EVALUATING THE EFFECTIVENESS OF LABOUR DISPUTE RESOLUTION MECHANISMS IN ZIMBABWE'S NATIONAL EMPLOYMENT COUNCILS, POST THE LABOUR AMENDMENT NUMBER 5 OF 2015

This semi-structured interview guide is designed to collect data in relation to the research on "*Evaluating the Effectiveness of the Labour Dispute Resolution Mechanisms in Zimbabwe's National Employment Councils, Post The Labour Amendment Number 5 of 2015"* being studied in partial fulfilment of the PhD Studies award at Africa University. The research study focuses on labour dispute resolution mechanisms in Zimbabwe following the Labour Amendment Act Number 5 of 2015. Through an in-depth analysis of this case study, the study aims to establish the magnitude of the challenges posed by the Labour Amendment Act Number 5 of 2015 to dispute resolution processes, with the intention of addressing the challenges that have arisen post its implementation.

In the end, it is hoped that the best practice for labour dispute resolution in the workplace is achieved. Information that will be obtained from this semi-structured interview will be treated as confidential and will not be used for any other purpose other than that which will be required for the thesis. The respondents' identities will not be quoted by name in any way for their contributions. In light of the above, I, Rose Mambo, therefore seek your cooperation in accomplishing this study. Your participation in this study is greatly appreciated.

PART 'A' Personal Information

You are kindly requested to annotate your answer in the provided boxes choosing a, b, c, d, or e whatever the case may be.

1. Please state your age:

a. 25 – 35
b. 36 – 46
c. 47 – 57
d. 58 - 65

2. What is your gender?

a. Male
b. Female

3. What is the level of your work position?

a. Entry level Designated Agent
b. Middle Level Designated Agent
c. Senior Level Designated Agent

4. For how long have you served as a Designated Agent in the NEC?
5. What are your qualifications ?

a. Undergraduate
b. Post graduate
c. PHD
d. Other

1. **PART ‘B’: Research Guiding Questions**
2. What is your evaluation of the dispute resolution process in Zimbabwe before and post the Labour Amendment Number 5 of 2015?
3. What challenges are you facing when adjudicating and determining labour disputes that would have been brought to your attention in terms of Section 93 of Amendment Number 5 of 2015?
4. What are the challenges you encounter at the Labour Court during the confirmation of your draft ruling?
5. How is your neutrality as the Designated Agent perceived by the Employer and the Employees' parties during the confirmation process at the Labour Court?
6. What challenges arise in the regulation and enforcement of your order /determination?
7. In your view, what are the factors that have negated the dispute resolution process in your NEC since the introduction of the Labour Amendment of 2015?
8. What has been your relationship with stakeholders such as the Ministry of Labour, the Labour Court, the Employers' Organisations and Trade Unions in your sector?
9. In your view, what has been the role of the stakeholders in influencing the labour dispute resolution process in your NEC?
10. What do you think should be best practice for labour dispute resolution at the workplace?

CLOSING REMARKS

Thank you for taking your time to respond to the above questions. Your contribution will help in providing findings and analysis for this study.

Best Regards

R MAMBO

PhD Candidate

Africa University

APPENDIX B: Semi-Structured Interview Guide for EMCOZ Officials, ZCTU Officials, ZFTU Officials, Employers Association Officials and Trade Union Officials

This semi-structured interview guide is designed to collect data in relation to the research on "*Evaluating the Effectiveness of the Labour Dispute Resolution Mechanisms in Zimbabwe's National Employment Councils, Post the Labour Amendment Number 5 of 2015"* being studied in partial fulfilment of the PhD Studies award at Africa University. The research study focuses on labour dispute resolution mechanisms in Zimbabwe following the Labour Amendment Act Number 5 of 2015. Through an in-depth analysis of this case study, the study aims to establish the magnitude of the challenges posed by the Labour Amendment Act Number 5 of 2015 to dispute resolution processes, with the intention of addressing the challenges that have arisen post its implementation.

In the end, it is hoped that the best practice for labour dispute resolution in the workplace is achieved. Information that will be obtained from this semi-structured interview will be treated as confidential and will not be used for any purpose other than that which will be required for the thesis. The respondents' identities will not be quoted by name in any way for their contributions. In light of the above, I, Rose Mambo, therefore seek your cooperation in accomplishing this study. Your participation in this study is greatly appreciated.

PART 'A' Personal Information

You are kindly requested to annotate your answer in the provided boxes by choosing a, b, c, d, or e, as appropriate.

1. Please state your age:

a. 25 – 35
b. 36 – 46
c. 47 – 57
d. 58 - 65

2. What is your gender?

a. Male
b. Female

3. What is the level of your work position?

a. Entry level Official
b. Middle Level Official
c. Senior Level Official

4. For how long have you served as an official in your Organisation?

5. What are your qualifications ?

a. Undergraduate
b. Post graduate
c. PHD

d. Other

1. PART ‘B’: Research Guiding Questions

2. What is your evaluation of the dispute resolution process in Zimbabwe before and post the Labour Amendment Number 5 of 2015?
3. How many labour disputes have you been involved in in your industry since the promulgation of the Labour Amendment Number 5 of 2015?
4. How long has it taken for the labour disputes to be brought to a finality?
5. In your capacity as representative for employer/ employees, what challenges have you encountered during labour dispute resolution?
6. How have parties involved attempted to resolve the challenges?
7. In your view, what are the factors that have negated the dispute resolution process in your NEC since the introduction of the Labour Amendment Number 5 of 2015?
8. What has been your relationship with stakeholders such as the Ministry of Labour, the Labour Court and Designated Agents in labour dispute resolution?
9. As representatives for employers/ employees in industrial relations, have you at some point participated in the formulation of labour policies, especially dispute resolution in platforms such as the Tripartite Negotiating Forum (TNF)?
10. How have your contributions been taken on board?
11. In your view, what should be your role as stakeholders in the promulgation of the dispute resolution legislation?
12. At the NEC level, how have dispute resolution processes been factored into the collective bargaining (CB) process?
13. What do you think should be the best practice for labour dispute resolution at the workplace and at the industry level?

APPENDIX C : Semi-Structured Interview Guide for Ministry of Labour and Labour Court Officials

EVALUATING THE EFFECTIVENESS OF THE LABOUR DISPUTE RESOLUTION MECHANISMS IN ZIMBABWE'S NATIONAL EMPLOYMENT COUNCILS, POST THE LABOUR AMENDMENT NUMBER 5 OF 2015

This semi-structured interview guide is designed to collect data in relation to the research on "*Evaluating the Effectiveness of the Labour Dispute Resolution Mechanisms in Zimbabwe's National Employment Councils, Post The Labour Amendment Number 5 of 2015"* being studied in partial fulfilment of the PhD Studies award at Africa University. The research study focuses on labour dispute resolution mechanisms in Zimbabwe following the Labour Amendment Act Number 5 of 2015. Through an in-depth analysis of this case study, the study aims to establish the magnitude of the challenges posed by the Labour Amendment Act Number 5 of 2015 to dispute resolution processes, with the intention of addressing the challenges that have arisen post its implementation.

In the end, it is hoped that the best practice for labour dispute resolution in the workplace is achieved. Information that will be obtained from this semi-structured interview will be treated as confidential and will not be used for any purpose other than that which will be required for the thesis. The respondents' identities will not be quoted by name in any way for their contributions. In light of the above, I, Rose Mambo, therefore seek your cooperation in accomplishing this study. Your participation in this study is greatly appreciated.

PART 'A' Personal Information

You are kindly requested to annotate your answer in the provided boxes choosing a, b, c, d, or e whatever the case may be.

1. Please state your age:

a. 25 – 35
b. 36 – 46
c. 47 – 57
d. 58 - 65

2. What is your gender?

a. Male
b. Female

3. What is the level of your work position?

a. Entry-level Official
b. Middle Level Official
c. Senior Level Official

4. For how long have you served as an official in your Organisation?

5. What are your qualifications?

a. Undergraduate
b. Postgraduate

c. PHD
d. Other

PART 'B': Research Guiding Questions

1. What is your evaluation of the dispute resolution process in Zimbabwe before and post the Labour Amendment Number 5 of 2015?
2. What has been your role in the labour dispute resolution policy?
3. What are the challenges that have emanated from the promulgation of the Labour Amendment Number 5 of 2015, especially in implementing the dispute resolution sections and clauses?
4. What are the factors behind these challenges?
5. From your experience, how have these challenges affected the industrial relations system and the NECs?
6. What has been the average turnaround time for NECs in handling dispute resolution matters?
7. What has been your role as a regulator to ensure smooth delivery and timeous resolution of disputes in NECs?
8. What are the monitoring mechanisms in place to ensure efficient service delivery in dispute resolution by NECs?
9. What has been your relationship with stakeholders such as NEC Officials, Designated Agents, employers, employee representatives and their mother bodies in labour dispute resolution?
10. What do you think can be done to enhance service delivery in dispute resolution in NECs?

APPENDIX D: Semi-Structured Interview Guide for Legal Representatives

EVALUATING THE EFFECTIVENESS OF THE LABOUR DISPUTE RESOLUTION MECHANISMS IN ZIMBABWE'S NATIONAL EMPLOYMENT COUNCILS, POST THE LABOUR AMENDMENT NUMBER 5 OF 2015

This semi-structured interview guide is designed to collect data for the research study, "Evaluating the Effectiveness of the Labour Dispute Resolution Mechanisms in Zimbabwe's National Employment Councils, Post the Labour Amendment Number 5," being conducted in partial fulfilment of the PhD Studies award at Africa University. The research study focuses on labour dispute resolution mechanisms in Zimbabwe following the Labour Amendment Act Number 5 of 2015. Through an in-depth analysis of this case study, the study aims to establish the magnitude of the challenges posed by the Labour Amendment Act Number 5 of 2015 to dispute resolution processes, with the intention of addressing the challenges that have arisen post its implementation.

In the end, it is hoped that the best practice for labour dispute resolution in the workplace is achieved. Information that will be obtained from this semi-structured interview will be treated as confidential and will not be used for any purpose other than that which will be required for the thesis. The respondents' identities will not be quoted by name in any way for their contributions. In light of the above, I, Rose Mambo, therefore seek your cooperation in accomplishing this study. Your participation in this study is greatly appreciated.

PART 'A' Personal Information

You are kindly requested to annotate your answer in the provided boxes, choosing a, b, c, d, or e, whichever the case may be.

1. Please state your age:

a. 25 – 35
b. 36 – 46
c. 47 – 57
d. 58 - 65

2. What is your gender?

a. Male
b. Female

3. What is the level of your work position?

a. Partner
b. Associate
c. Intern

4. For how long have you served as an official in your organisation?

5. What are your qualifications?

a. Undergraduate
b. Postgraduate
c. PHD
d. Other

PART 'B': Research Guiding Questions

1. What is your evaluation of the dispute resolution process in Zimbabwe post the Labour Amendment Number 5 of 2015?
2. How many labour dispute cases have you argued before the Designated Agents from the NEC Welfare and Educational Institutions and the NEC for the Energy Sectors since the promulgation of the Labour Amendment Number 5 of 2015?
3. What has been the nature of the cases?
4. How many of those cases have been finalised within the NEC structures?
5. For those cases that have escalated to the Labour Court and to the Magistrates'/ High Court, how long has it taken to bring them to finality?
6. What are the hurdles/ impediments that you face in going through the dispute resolution stages highlighted in section 93 of the Labour Amendment Number 5 of 2015?
7. What has been your relationship with stakeholders such as NEC Officials, Ministry of Labour Officials, Labour Court Officials, Designated Agents, employers and employees representatives and their mother bodies in labour dispute resolution?
8. What has been your role as a Legal Practitioner in ensuring the smooth delivery and timeous resolution of disputes, especially in NECs ?
9. What do you think can be done to enhance service delivery in dispute resolution in NECs ?

APPENDIX E: Informed Consent Form

Good Morning / Good Afternoon

My name is Rose Mambo, and I am a final-year Business, Peace, Leadership, and Governance Candidate at Africa University. I am carrying out a study on the topic " **Evaluating the Effectiveness of the Dispute Resolution Mechanisms in National Employment Councils in Zimbabwe, post the Labour Amendment Number 5 of 2015.**

I kindly ask you to commit to this study by answering the questions I will ask.

The purpose of this study is to explore the dispute resolution processes in Zimbabwe, specifically in the NEC sector, post the Labour Amendment Number 5 of 2015. This is being done to make recommendations on dispute-resolution best practices in the workplace. You were selected for the study because of the role you play in industrial relations, more specifically, in the resolution of labour disputes. This study will also reach out to all other stakeholders in dispute resolution, including those who craft dispute resolution processes, those who execute dispute resolution legislation, and those who are affected by it.

If you decide to participate, the interview is expected to last an hour, and you will be asked to respond to the questions you are asked.

This study takes into consideration the prevalence of the Covid 19 pandemic and the strict adherence to the Covid 19 protocols provided by the World Health Organisation (WHO) as necessary. Virtual interviews will be conducted unless there are hindrances. In such instances, physical interviews will be conducted while strictly observing set Covid 19 regulations, such as wearing of masks, having established sanitisation points and encouraging regular sanitisation and social distancing.

Please note that there will be no direct benefits or incentives for participating in this research. The study, however, has the potential to shape public policy and improve dispute-resolution legislation. It also adds to scholarly literature.

Also, kindly note that no names or other forms of personal identification will be required for this study. Information that is obtained in this study will not be linked to you as a participant and will not be disclosed without your permission.

Participation in this study is voluntary, and should you feel the need to withdraw, you may do so at any time. Discontinuing participation will not have any negative consequences and will not affect your relationship with the researcher or Africa University.

In the event that you have decided to participate in this study, please kindly sign in the spaces below as an indication that you have read and understood the information provided in this consent note and also that you are agreeing to participate. You are also at liberty to ask any questions if you have any areas that need clarification before you commit to signing.

Name of Research Participant (Please Print) Date

Signature of Research Participant

If you have any questions concerning this study or consent form beyond those answered by the researcher including questions about the research, your rights as a research participant, or if you feel that you have been treated unfairly and would like to talk to someone other than the researcher, please feel free to contact the Africa University Research Ethics Committee on telephone (020) 60075 or 60026 extension 1156 email aurec@africau.edu

Name of Researcher ---

APPENDIX F: Letter of Approval to Conduct an Academic Research (NECWEI)

National Employment Council

For the Welfare and Educational Institutions

Head Office
Box CY 2373, Causeway
16 Crighton Road
Groombridge, Mt. Pleasant
HARARE, ZIMBABWE

Tel: +263 242 755053 / 70163
Cell: +263 713 047 3
Email: rose@necwei.co.zw / priscilla@necwei.co.z
jenifer@necwei.co.zw / info@necwei.co.
Website: www.necwei.co.

Regional Offices

BULAWAYO
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5th Floor, East Wing
Hebert Chitepo Street
Btwn. 8th & 9th Avenue
Box 1076
Cell: +263 772 278 092
+263 786 893 487
Email: statshisiwe@necwei.co.zw
gibson@necwei.co.zw

GWERU
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Post Office Building
Box 2170
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+263 773 683 799
+263 772 401 536
Email: transmore@necwei.co.zw

MUTARE
Tel-One
Pension Fund Building
1st Floor
Office 125 & 126
East Wing
3rd Street
Box 50
Cell: +263 779 620 292
+263 773 073 721
Email: blessing@necwei.co.zw

MASVINGO
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Box 1831
Tel: +263 392 265803
Cell: +263 773 267 934
+263 772 849 083
Email: judith@necwei.co.zw

MARONDERA
Suite 102
1st Floor
Concorde House
The Green
Cell: +263 772 382 366
+263 774 333 013
Email: thomasina@necwei.co.zw

1 March 2022

Africa University
College of Peace, Leadership and Governance
Fairview Road (Off Nyanga Road)
Old Mutare

Dear Sir/ Madam

RE: REQUEST TO CONDUCT AN ACADEMIC RESEARCH ON THE LABOUR DISPUTE RESOLUTION PROCESSESS IN NATIONAL EMPLOYMENT COUNCILS IN ZIMBABWE, POST THE LABOUR AMENDMENT NO.5 OF 2015

Please kindly note that Rose Mambo was authorised to carry out a study on "evaluating dispute resolution process in National Employment Councils in Zimbabwe" within this NEC.

Yours faithfully

B. Mapisaunga (Mr.)
CHIEF DESIGNATED AGENT

APPENDIX G: Letter of Approval to Conduct an Academic Research (NECEI)

NATIONAL EMPLOYMENT COUNCIL FOR THE ZIMBABWE ENERGY INDUSTRY

MAIN OFFICE
48 Edmunds Avenue
Belvedere
HARARE, ZIMBABWE
Email Address: necelectricity@gmail.com
Phone: 0242-788523/4/5

10 March 2022

IB/IB

PHD for Peace, Leadership and Governance Candidate
Africa University
Fairview Road (Off Nyanga Road)
Old Mutare
MUTARE, ZIMBABWE

Attention: R. Mambo

Dear Madam

RE: **REQUEST TO CONDUCT AN ACADEMIC RESEARCH ON THE LABOUR DISPUTE RESOLUTION PROCESSES IN ZIMBABWE POST THE LABOUR LAW AMENDMENT ACT NUMBER 5 OF 2015:A CASE STUDY OF THE NATIONAL EMPLOYMENT COUNCILS.**

Your letter dated 17 February 2022 and the above subject matter are pertinent.

The NEC for the Zimbabwe Energy Industry writes to advise you that your request to conduct an academic research on the labour dispute resolution processes in Zimbabwe post the labour law Amendment Act No. 5 of 2015 has been granted.

Kindly conduct our Designated Agent Mr I. Bonda on (0242) 788523-5 for assistance.

We wish you the best in your studies

Warm regards

E.M CHINJEKURE
GENERAL SECRETARY

APPENDIX H: AFRICA UNIVERSITY RESEARCH COUNCIL RESEARCH APPROVAL

AFRICA UNIVERSITY
A United Methodist-Related Institution

COLLEGE OF BUSINESS, PEACE, LEADERSHIP AND GOVERNANCE

24/02/2022

Africa University Research Ethics Committee

Ref: Approval for AUREC Proposal Submission
Rose Mambo has worked on the proposal and I can confirm that it is ready for review by your esteemed committee.

Respectfully submitted,

Dr. P. Zvavahera ------------------------------------
Supervisor's Name Supervisor's Signature

Dr. T. Nyikadzino
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H.O.D's Name H.O.D's Signature

APPENDIX I: AFRICA UNIVERSITY RESEARCH COUNCIL RESEARCH APPROVAL

AFRICA UNIVERSITY
A United Methodist-Related Institution
Investing in Africa's future

AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE (AUREC)

P.O. Box 1320 Mutare, Zimbabwe, Off Nyanga Road, Old Mutare-Tel (+263-20) 60075/60026/61611 Fax: (+263 20) 61785 website: www.africau.edu

Ref: AU2549/23 24 January 2023

ROSE MAMBO
C/O Africa University
Box 1320
MUTARE

RE: AN EVALUATION OF THE EFFECTIVENESS OF THE LABOUR DISPUTE RESOLUTION PROCESSES IN ZIMBABWE, POST THE LABOUR AMENDMENT ACT NUMBER 5 OF 2015: A CASE STUDY OF THE NATIONAL EMPLOYMENT COUNCIL FOR WELFARE AND EDUCATIONAL INSTITUTIONS AND OF THE ENERGY SECTORS

Thank you for the above-titled proposal that you submitted to the Africa University Research Ethics Committee for review. Please be advised that AUREC has reviewed and approved your application to conduct the above research.

The approval is based on the following.
a) Research proposal
- **APPROVAL NUMBER** AUREC 2549/23
  This number should be used on all correspondences, consent forms, and appropriate documents.
- **AUREC MEETING DATE** NA
- **APPROVAL DATE** January 24, 2023
- **EXPIRATION DATE** January 24, 2024
- **TYPE OF MEETING** Expedited
  After the expiration date, this research may only continue upon renewal. For purposes of renewal, a progress report on a standard AUREC form should be submitted a month before the expiration date.
- **SERIOUS ADVERSE EVENTS** All serious problems having to do with subject safety must be reported to AUREC within 3 working days on standard AUREC form.
- **MODIFICATIONS** Prior AUREC approval is required before implementing any changes in the proposal (including changes in the consent documents)
- **TERMINATION OF STUDY** Upon termination of the study a report has to be submitted to AUREC.

AFRICA UNIVERSITY
RESEARCH ETHICS COMMITTEE (AUREC)
APPROVED
P.O. BOX 1320, MUTARE, ZIMBABWE

Yours Faithfully

Chinzou

MARY CHINZOU
ASSISTANT RESEARCH OFFICER: FOR CHAIRPERSON
AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE