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FACULTY OF COMMERCSE

RESEARCH TOPIC

WORKPLACE DISPUTE RESOLUTION: AN EVALUATION OF THE EFFECTIVENESS OF ARBITRATION IN THE DIAMOND MINING SECTOR IN ZIMBABWE

SUBMITTED BY

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DECLARATION

I, Elimon Shumba, do hereby declare that this dissertation: “Workplace Dispute Resolution: An Evaluation of the Effectiveness of Arbitration in the Diamond Mining Sector in Zimbabwe” is my own original work and that all sources used and quoted have been specified, acknowledged and referenced accordingly. I also confirm that I have not previously, in its entirety or part submitted it to any university for a degree.

Signed……………………………………… Date………………………………………….

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ABSTRACT

Arbitration of labour disputes is a key feature in the resolution of labour disputes in Zimbabwe. Dissatisfaction in the manner in which arbitration of labour disputes is being conducted has been expressed. Chief Justice Godfrey Chidyausiku during the opening of the 2014 legal year commented on and lamented on numerous appeals to the Labour Court which he attributed to the lack of knowledge by arbitrators in making arbitral awards. The Chief Justice classified some of the decisions by arbitrators as outrageous and in complete defiance of logic. A representative of the Employers Confederation of Zimbabwe had earlier on in March 2013 criticized arbitrators of making arbitral awards which had no relevance to the prevailing economic environment and had called for the banning of independent arbitrators. An Advocate of the High Court of Zimbabwe and a labour lawyer in April 2012 accused arbitrators of turning the process into a money spinning venture. This study sought to evaluate the effectiveness of arbitration as method of dispute resolution in workplace disputes in the diamond mining sector in Zimbabwe. The Budd and Clovin (2008) model of evaluating disputes resolution method was used in this study. The model uses three factors to evaluate effectiveness of any dispute resolution method and these are, efficiency, equity and voice. The research used the mixed method approach for triangulation and corroboration of findings. This study was based on a sample of size 56 respondents made up of 46 employees and 10 employers from diamond mining companies in Zimbabwe. Convenience sampling, simple probability sampling and judgmental sampling were used to select the sample. The researcher used a single questionnaire to collect both quantitative data and qualitative data. Quantitative data was obtained from close-ended part of the questionnaire and qualitative data from the open ended data.

The findings of the research are that arbitration as a method of dispute resolution is not effective because of prohibitive transactional costs, delays in resolution of labour disputes, the legalistic procedures and legal language used in proceedings. Complicated regulations for enforcement of arbitral awards and perceived bias in decision-making were also identified as reasons for lack of effectiveness of the arbitration process.

It is recommended that an Institution funded by the government be established to offer free arbitration. It is also recommended that simple regulations be put in place with time frames to ensure simple conduct of entire arbitration process.
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My heartfelt thanks goes to my wife Felistus, sons Fari and Chenge and my daughters Audrey, Anesu and Tariro for their enduring patience during the whole period of the study for the MBL. I would like to express my gratitude to my supervisor Mr. Eddy Moyo for his guidance support and encouragement during the period of my research. I also extend my gratitude to my friend Tendai Knowledge Mudzimuirema for the encouragement all the time and my ex-workmate Munashe Madzikanga for the invaluable advice and assistance. Above all, I would like to thank the All Might Lord God for giving me the strength and resources for the whole programme.
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CHAPTER 1

INTRODUCTION

1.1 Introduction
Workplace dispute resolution is concerned about the settlement of labour disputes between employers and employees or between employer representatives and employee representative. The common methods of settling workplace disputes are negotiation, mediation, conciliation and arbitration. Workplace dispute resolution in Zimbabwe is governed by the Labour Act Chapter 28:01. This current research was concerned with the effectiveness of arbitration as a method of dispute resolution in the diamond mining sector in Zimbabwe.

1.2 Background to the Study.
This research examined perceptions of employers and employees regarding the effectiveness of arbitration as a method of labour dispute resolution in the mining sector in Zimbabwe. It examined perceptions of employers and employees on whether the arbitration of labour disputes is an effective method of dispute as envisaged by Section 2 a (1) (f) of the Labour Act Chapter 28:01 and Article 154 of 1981 of the International Labour Organisation (ILO). The study was conducted in the Diamond Mining Sector in Zimbabwe. A combination of a case study and survey methods were used to determine the perceptions of employees and employers in the diamond mining sector in Zimbabwe regarding the effectiveness of the arbitration process. The research drew from the work of human resources management in general and labour relations in particular. The Budd and Clovin (2008) model of evaluation of dispute resolution methods was used to examine perceptions of employers and employees regarding the effectiveness of the arbitration process. The factors used to examine if the arbitration process is effective in the resolution of labour disputes are efficiency, equity and voice. According to Budd and Clovin (2008) the three factors of efficiency, equity and voice are suitable for evaluation and comparison of any dispute resolution method. Arbitration is one of the methods of dispute resolution and hence the use of these factors in this study. In approaching the research study, relevant literature on dispute resolution particularly on arbitration was reviewed.
focused on whether arbitration as a method workplace dispute resolution provides for a just, effective and expeditious resolution of labour disputes and hence effective.

Globalization and competition for goods and services in world has made companies worldwide realize the need to adopt best practices in human resources management (Steadman 2009). Human resources is defined as a strategic and coherent management of people who individually and collectively contribute to the achievement of organizational objectives (Armstrong 2006). Best practices in human resources management involves working with and through people to achieve the objectives of both the organization and its members (Coates, Furlong and Downie 1997). One of the core components of human resources management is labour relations management (Armstrong 2006). Labour relations management in any country is guided by the labour law of the country and hence it is country specific (Brown 2013). Workplace disputes are inherent in any employer-employee relationship and hence mechanism to manage and resolve workplace dispute is a critical element of any labour relations policy (Temba 2013). Labour relations peace is achievable when there is a clear manner of handling employer-employee disputes at the workplace Coates et al (1997). Steadman (2009) avers that dispute resolution mechanism in any country’s labour relations practice is critical for the attraction and retention of both domestic and foreign investments and attraction and retention of both domestic and foreign investments is critical to the economic success of any country Zimbabwe included. Arbitration is one of the key methods of dispute resolution methods in Zimbabwe. It is important to find out if the practices of arbitration as currently practiced in the diamond mining sector in Zimbabwe, provide for a just, effective and expeditious resolution of labour disputes which is a crucial element for establishment and promotion of industrial peace. A dispute resolution method according to Budd and Clovin (2008) is only effective if it provides for a just, effective and expeditious resolution of disputes.

News paper reports in the Zimbabwe herald of 19 April 2012, 5 March 2013 and 14 January 2014 have shown that stakeholders in labour relations have are dissatisfied with the process of labour arbitration as currently practiced in Zimbabwe. The Chief Justice of the Republic of Zimbabwe, Chief Justice Godfrey Chidyausiku during the opening of the 2014 legal year lamented the way labour arbitration was being conducted in Zimbabwe. Chief Justice Chidyausiku stated that the Labour Court had a huge backlog of labour cases standing at 2276
cases as at 10 January 2014. He attributed the backlog to the fact that there were too many appeals against arbitral awards. Lack of knowledge on the part of arbitrators in arriving at the arbitral awards was cited as the reason for poor arbitral awards which led to numerous appeals. The Chief Justice described the decision of arbitrators as outrageous and in complete defiance of logic. He also accused arbitrators of making decisions which had no relevance to the economic realities of the country. The Chief Justice’s comments are reported in the Zimbabwe herald newspaper of 14 January 2014. A representative of the Employer Confederation of Zimbabwe (EMCOZ) on 5 March 2013 had earlier called for the banning of independent arbitrators accusing them of making arbitration decisions which did not make business sense and were divorced from economic reality of the country. The representative of EMCOZ stated that most of the decisions by arbitrators were being appealed against and were being reversed on appeal. However the Zimbabwe Congress of Trade Union supported arbitrators and stated that arbitrators were doing a good job as reported in the Zimbabwe herald newspaper of 5 March 2013. On the 19 of April 2012, An Advocate of the High Court of Zimbabwe and a Labour Law Practitioner, Advocate Mpofu accused arbitrators of turning the arbitration process into a money spinning venture by issuing piece-meal decisions. Taking into account the concerns raised regarding the arbitration process, it is imperative that the arbitration process as currently practiced in the diamond mining sector in Zimbabwe be examined to determine if the process is just, effective and expeditious.

Previous research in Zimbabwe regarding the effectiveness of the arbitration was conducted by Maitireyi and Duve (2011). The study examined the arbitration process using the Trudeau (2002) model which uses accessibility, speed and expertise as factors to determine the effectiveness of the arbitration process. The study by Maitireyi and Duve (2011) was conducted before the promulgation of Statutory Instrument 173 of 2012 that is the Labour (Arbitration) Regulations. Before the coming into force of Statutory Instrument 273 of 2012, arbitration fees were not regulated and hence arbitrators charged whatever they deemed appropriate now arbitration fees are stipulated by law. Prior to the promulgation of Statutory Instrument 173 of 2012 qualification required for one to be an arbitrator were not specified now the qualifications required for one to be appointed an arbitrator are specified. Section 7 of statutory instrument 173 of 2012 provides for a code of ethics which arbitrators are required to adhere to. When the Maitireyi and Duve (2011) study was done the code of ethics for arbitrators was not in place. The legal environment
The study focused on examination of perceptions of employers and employees on whether arbitration as a method of dispute resolution does provide for a just, effective and expeditious resolution of labour disputes in the diamond mining sector in Zimbabwe. The Budd and Clovin (2008) model was considered to be the appropriate model and the factors used for examination were, efficiency, equity and voice.
1.3 Statement of the Problem
According to Bosch et al (2004) disputes are bound to take place in any employment relationship. The provision of an effective dispute resolution mechanism is the hallmark of an effective labour relations policy and practice (Steadman 2009). Arbitration is one of the methods of dispute resolution methods as provided for by the Labour Act Chapter 28:01. According to Section 2 A (1) (f) of the Labour Act Chapter 28:01 the objective of the dispute resolution methods is to provide for a just, effective and expeditious settlement of labour disputes. The Zimbabwe Herald of 19 April 2012 quotes Advocate Thabani Mpofu of the High Court of Zimbabwe and a Labour law practitioner accusing arbitrators of lack of expertise, thereby compromising the arbitration process. A representative of the Employer Confederation of Zimbabwe is reported in the Zimbabwe herald of the 5 March 2013 calling for the banning of independent arbitrators and accusing them of making decisions which are divorced from economic situation of the country rendering arbitration ineffective. The Chief Justice of the Republic of Zimbabwe attributed the congestion of and delays in finalizing labour cases in the manner in which the arbitration process was being conducted. The Chief Justice’s dissatisfaction is reported in the Zimbabwe herald of the 14 January 2014. These press reports from 2012 to 2014 have shown dissatisfaction with the arbitration process as currently practiced in Zimbabwe. Concerns have been raised regarding the quality of arbitral awards and expertise of the arbitrators. The concerns raised have negative impact on the provision of a just, effective and expeditious resolution of labour disputes and hence provision of an effective dispute resolution method. The question that arose for this study, is whether the arbitration process as currently practiced provides for a just, effective and expeditious resolution of labour disputes as envisaged by the Labour Act Chapter 28:01 and the International Labour Organisation Convention 154 of 1981, hence this study.

1.4 Purpose of the Study.
The purpose of this study was to examine the current arbitration process to determine if the process provides for a just, effective and expeditious and hence effective in the resolution of labour disputes as envisaged by the Labour Act Chapter 28:01 and make recommendations for improvement of the arbitration process and hence is an effective method of dispute resolution.
1.5 Research Objectives
To determine if the arbitration process provide for:

i. the efficient resolution of labour disputes

ii. fair and just resolution of labour disputes

iii. the participation of disputants in the resolution of labour disputes

1.6 Research Questions:
The following research question will attempt to answer whether arbitration provides for a just, effective and expeditious resolution of labour disputes.

How do employees and employers perceive:

i. the efficiency of the arbitration process

ii. the fairness and justice of the arbitration process

iii. the participation of the disputants in the arbitration process.

1.7 Significance of the Study
The study may be useful to policy makers in making them realize the shortcomings in any in the current arbitration processes and guide policy makers in coming up with regulations that enhances arbitration as a method of workplace dispute resolution. It is hoped that improvement in the arbitration process, will ensure that labour disputes are resolved in a just, effective and expeditious manner for the benefit of the Mining Sector and the country as a whole. It is hoped that improved workplace dispute resolution of labour disputes will promote industrial peace and harmony which is crucial for investment in the country.

1.8 Assumptions.
   a) The participants were familiar with and knowledgeable about the current practices of arbitration.

   b) It is assumed that the participants gave reliable and valid information
1.9 Delimitation.
   a) The study was limited to labour related disputes as defined in the Labour Act Chapter 28:01 in the mining sector in Zimbabwe.
   b) The study focused strictly on evaluating the arbitration process.
   c) The study is conducted in the diamond mining sector in Manicaland in Zimbabwe

1.10 Limitations
   a) The study was based on the perception held by the respondents to the study. As such, assessments that were made on the effectiveness of the arbitration process in the diamond mining sector in Zimbabwe were based on subjective analysis. This shortcoming constitutes a minor limitation of this study.
   b) There was suspicion on the purpose of the research by members of the workers committee members. The members were assured that the research was for academic purposes only and were referred to request to participate in the study document which clearly spelt the purpose of the study and rights of participants.

1.11 Structure of Dissertation
Chapter 1: Introduction and background of the study

The chapter will present an introduction to the study, along with the relevant background of the study. The chapter will state the research questions of the study and problem statements. The potential benefits and expected outputs of the study will also be presented.

Chapter 2: Literature review

The chapter will present an overview of the arbitration process and will briefly present the global, regional and local practices. The Chapter will also present theories that inform arbitration and models that are used to evaluate effectiveness of dispute resolution methods. The chapter will justify the choice of model used for evaluating arbitration process that is adopted for this
study. Empirical literature will be presented and its relevance to current study highlighted. Issues that emerge from literature are presented.

Chapter 3: Methods and materials of the study

Chapter 3 will provide details of the methods and materials that will be used for conducting the study along with the relevant references. This will chose a research design and provide reason for the choice. It will also select and motivate on the measuring instruments. The chapter will also discuss the study design, the sample size of the study and the research instrument.

Chapter 4: Results of the study

This chapter will present results from the findings and analysis of the data collected.

Chapter 5: Discussion, Recommendations and Conclusion

This chapter will present discussion of key results and findings and provide conclusions and recommendations.

1.12 Chapter Summary

This chapter introduced the research and highlighted the background to the study as well as study objectives. In Chapter 2 the theoretical and empirical literature is reviewed. The history of arbitration and current practices are considered. The chapter also highlights emerging issues from literature relevant to the research question.
CHAPTER 2  
LITERATURE REVIEW

1.13 Introduction.
This chapter considered theories and models for evaluation of dispute resolution methods. It also considered empirical literature at global, regional and local levels. The history of arbitration and current practices in arbitration in Zimbabwe and in the diamond mining sector is also considered.

1.14 Parent Discipline
Labour arbitration stems from the field of Human Resources Management. According to Storey (1995) human resources management is defined as the management is defined as a distinctive approach to employment management which seeks to obtain a competitive advantage through the deployment of highly skilled and committed workforce through using an array of techniques. Human resources management is concerned with people and how to optimize the performance of the people. Human resources management activities include but are not limited to the following activities, recruitment and selection, performance management, human resources training and development, employee safety and wellness and labour relations. Labour relations is concerned with the relations between the employer and the employees at the workplace. According to Coates, Furlong and Downie (2007) best practices in human resources dictates that organisations fit dispute resolution mechanism to human resources management. Arbitration is a method of dispute resolution and is governed by the labour relations applicable to the organisation. The subject of arbitration broadly falls under the Human Resources Management area.

1.15 Immediate Discipline
The immediate discipline that informs arbitration is labour relations. Labour relations is concerned with the interaction between employees and employers. The external environment that directly impacts on labour relations is the legal environment and the economic environment. Labour relations is concerned about the conditions of service, collective bargaining agreements, grievance and disciplinary handling issues. Labour relations is influencing by both country and
international legislation. In Zimbabwe labour relations is influenced by the Labour Act and the ratified International Labour Organisations Conventions. Labour relations involve the resolution of disputes between employers and employees among other activities. According to Chartier and Gosselin (1962) arbitration is one of the methods of alternative dispute resolution methods together with conciliation and mediation. Arbitration therefore is a key element in labour relations as it is key in the resolution of workplace disputes. In Zimbabwe the arbitration is governed by the Labour Act Chapter 28:01 and the Arbitration Act Chapter 7:15. The subject of arbitration specifically falls under the Labour Relations Management area.

1.16 Theoretical and Conceptual framework
Labour arbitration according to Zack (1997) together with other process such as mediation and conciliation form part of dispute resolution mechanism referred to as alternative dispute resolution processes (ADR.). It is based on the view that dispute resolution method must be accessible to all employees irrespective of financial status, level of education or location (Bendeman 2006). It is also based on the concept that justice delayed is justice denied and hence the need to resolve labour disputes expeditiously in the interest of all parties concerned (Ndimirwimo 2008). Labour arbitration is an alternative to litigation in a court of law (Madhuku 2012) The recognition that litigation in court requires knowledge of court procedures and is highly technical, expensive and time consuming is the basis for promotion of dispute resolution methods such as arbitration (Robert and Palmer 2005)

1.16.1 Theories on labour arbitration
Labour arbitration is informed by theories applicable to labour relations. Theories of labour relations according to Watson (1987) are informed by the definition of what reality is and what it should be as defined by a particular society. Theories are based on the world view held by respective societies. There are three basic perspectives that inform labour relations and these are, the unitary approach, the pluralist approach and the radical approach (Fox 1966). The unitary approach is based on the perspective that employers and employees have common interest and hence the existence of conflict is not recognized. The pluralist approach is based on the view that employees and employers have different interests and hence conflict is inevitable and hence need to manage conflict. The radical perspective is based on the basis that there is an exploiter and the exploited and does not recognize the legitimacy of management and hence the existence of trade
unions is for the purpose of confronting employers (Fox 1966; Clegg 1975; Farnham and Pimlott 1985).

1.16.2 Unitary theory

The Unitary theory views an organisation as composed of a unified authority where employers and employees have common interests. According to this theory all members of the organisation have the same objectives and aims. The unitary theory places emphasis on common values and interest. According to the unitary theory, there is no conflict of interest between the employees and the employer. The unitary theory is associated with Fox (1996).

According to Rose (2008) the unitary perspective regards trade unions as intruders and outsiders and hence trade unionism is suppressed and outlawed. Conflict is regarded as evil and irrational. Farnham and Pilmott (1995) states that the essential characteristics of this perspective include the existence of common interest among employers and employees, the presence of a single authority, that conflict is a product of the trouble makers who should be uprooted and that trade unions are outsiders.

1.16.3 Radical theory

The radical approach is associated with the Marxist ideology (Fox 1966) Labour relations conflict is not only viewed as result of workplace disagreements but also as a manifestation of economic and social division that define the struggle between capital and labour. According to Rose (2008) this perspective is based on the fact that conflict is inherent and unavoidable in capitalist society. The theory views workers as being in a state of permanent disadvantage and hence role of the trade unions is to fight for the exploited employees. The legitimacy of management/company interests according to Fox (1966) is contested and role of trade unions is to confront the employers.

1.16.4 Pluralistic approach and justification for adoption for the current study

According to Clegg (1975) cited in Farnham and Pimlott (1985) the pluralist theory is based on the acceptance that any organisation is made up of different groups with different interest which they bring to the workplace. The theory accepts that different groups have different values, interests and objectives. The theory accepts that employees and employers have different
interests and objectives and hence conflict is inevitable (Budd, Gomez and Meltz 2004) The acceptance of existence of conflict makes it imperative to come up with ways to prevent and manage conflict if and when conflict arises (Budd et al 2004) According to Budd et al (2004) the pluralist paradigm is based on the need to balance the competing interests of employers and employees.

According to Fox (1966) the State in a pluralistic approach has a role to play in workplace industrial relations. The role of the state according to Fox (1966) is mediating between the competing interests of employers and employees through legislation. The State therefore provides the law within which employers and employees practice labour relations. In the case of Zimbabwe the State has provided the Constitution of Zimbabwe (Amendment No 20) and the Labour Act Chapter 28:01 as the basis for labour relations in the country. Labour arbitration in Zimbabwe is operating in a legal environment where there is a realization that law is not only State law which according to Dupret (2007) is known as legal pluralism. Legal pluralism according to Fallk- Moore (1978) as cited by Dupret (2007) is appropriate for socio–legal situation and labour arbitration is a socio–legal issue.

1.16.5 Models of Evaluation of dispute resolution mechanisms.

The evaluation of arbitration process is guided by models that are used for evaluating and comparing dispute resolution procedures. Cole (2013) identifies four models for evaluating and comparing dispute resolution mechanism. In this study three basic models which are; the Feuille Model (1979), Conlon and Meyer Model (2004) and Tyler and Blader Model (2004) are chosen and are discussed for their relevance to this study.

1.16.6 Feuille Model

The Feuille Model was developed by Peter Feuille in 1979. According to this model, efficacy of any dispute resolution mechanism is measured on the following three aspects, ability to protect the interest of the public, protection of employee interests and redress hostility and encouragement of compliance with arbitral awards.

Protection of interests of the public is concerned with prevention of strikes which disrupt production and affects the economy (Feuille 1979). This view is also shared by Budd and Clovin
(2008) who state that prevention of strikes and promoting production is one of the elements of efficiency in evaluating and comparing of dispute resolution mechanisms.

Protection of employee interests according to Feuille (1979) in concerned with the production of timely settlements of disputes. It is also concerned with fair, just and equitable outcomes. Budd and Clovin (2008) also identifies the fair, expeditious and just settlements of disputes as a key element in evaluating and comparing disputes resolution mechanism

Redressing hostilities according to Feuille (1979) is concerned with the promotion and sustenance of good employer–employee relationship. Budd and Clovin (2008) also recognize that a dispute resolution mechanism must also be evaluated on its ability to maintain good working relations which have an impact on production at the workplace. Feuille (1979) also identifies the process’ ability to encourage compliance with arbitral awards and hence bring finality to the dispute as an important aspect. Budd and Clovin (2008) also acknowledge compliance with the award as important arising from the expertise of the arbitrator to give unbiased and reasoned awards to the extent those participants perceive the award as fair. Budd and Clovin (2008) deal with this aspect under the equity dimension.

1.16.7 Conlon and Meyer Model.

Evaluation of dispute resolution mechanism is based on measurement of four indicators which are; the settlement characteristics, justice, relationships and transactional costs (Cole 2013). The model is based on the labour dispute process’s ability to encourage settlements of disputes, provide justice at a cost which is not a hindrance to accessing the process.

Settlements characteristics are concerned with the process’s ability to encourage voluntary settlements of disputes. According to Budd and Clovin (2008) the process of arbitration may encourage voluntary settlements of agreement as parties may be afraid to have decisions imposed on them. Budd and Clovin (2008) avers that where there is a possibility of order costs being made against the losing party labour arbitration may encourage parties to arrive at voluntary settlements.

Evaluation according to this model may also be based on the ability to provide both procedural and substantive justice. Procedural justice refers to providing and following set procedures in
handling the dispute while substantive fairness refers to making a decision based on the evidence produced (Cole 2013). Budd and Clovin (2008) cover the issue of procedural and substantive fairness under the equity and voice dimensions.

Evaluation of the dispute resolution is also done on the basis of its ability to maintain relationship between the parties to the dispute (Cole 2013). The dispute mechanism system has to be evaluated on its ability to improve relationship. Budd and Clovin (2008) deal with this aspect under the efficiency dimension.

1.16.8 **Tyler and Blader Model.**

Evaluation of dispute resolution mechanism under this model is done using the ability of the dispute resolution mechanism to provide justice, opportunity for participation of the parties, neutral forum, trust and provision of respect to the parties (Cole 2013)

Evaluation on provision of justces refers to ensuring that there are procedures in place that are used in the dispute resolution method and that the procedures are followed. It also requires that the decision be based on the available evidence (Cole 2013). This is in line with the equity dimension used in Budd and Clovin (2008).

Evaluation on the provision for participation of the parties requires parties to the hearing to be able to attend the hearing and give evidence to support their own case. It also gives the parties the opportunity to challenge the evidence of the other party (Cole 2013) Budd and Clovin (2008) deals with this aspect under the voice dimension which in addition gives the parties an opportunity to influence the proceedings through appointment of an arbitrator.

The provision of a neutral forum requires that the arbitrator be independent and neutral and that there is no bias in the conduct and decision of the arbitrator (Cole 2013). Budd and Clovin (2008) deal with this aspect under the equity dimension. According to Cole (2013) the arbitrator must gain the trust of the parties and Budd and Clovin (2008) regards trust of the arbitrator as one of the aspects influencing compliance with awards so does respect with which the parties are treated.

The three models discussed above are adequately covered by the Budd and Clovin (2008) which is used in this study for evaluating the arbitration process in the diamond mining in Zimbabwe.
in this study. The Budd and Clovin (2008) model is considered the most appropriate model in this study for evaluating arbitration in determining whether or not arbitration provide for a just, effective and expeditious resolution of labour disputes in the diamond mining sector in Zimbabwe. It is considered the most appropriate model for this study because it is comprehensive in that it covers all elements used in the other three models discussed herein.

1.16.9 Budd and Clovin Model and justification for model as choice for the current study

In this study the model developed by Budd and Clovin (2008) is used. The model is based on three factors which are efficiency, equity and voice. According to Budd and Clovin (2008), efficiency is concerned with the ability of the arbitration system to conserve scarce resource, equity is concerned with the fairness and justice of the arbitration system and voice is concerned with the participation of the parties to the dispute in the arbitration process and the ability of the participants to influence the outcome. The Model by Budd and Clovin (2008) is chosen as the appropriate model for this study because the model encompasses all the aspects covered in the three models discussed above. The factors used in Budd and Clovin (2008) model are discussed below.

1.16.9.1 Efficiency

According to Budd and Clovin (2008) efficiency of a dispute resolution mechanism is measured on the cost involved in the dispute resolution, the speed involved in finalizing the dispute and the promotion of productive relationship. Budd and Clovin (2008) avers that an efficient dispute resolution mechanism is one that is expeditious and conserves scarce resources both time and money.

In labour arbitration efficiency relates to the time taken to finalize the dispute which is the time taken from the time the matter is referred to the arbitrator to the time an arbitral award is made. The Labour Act Chapter 28:01 is silent on the time an arbitrator must take before making an award. In South Africa the CCMA is required to conclude the matter within 90 days and an internal high efficiency rate of 60 days (Bhorat et al 2007) set by the CCMA. In Tanzania the Commission for Mediation and arbitration is required to issue an award within 30 days of the matter having been referred for arbitration (Temba 2013)
Efficiency is also about the ability to access the arbitration process without being constrained by financial circumstances (Robert and Palmer 2005). The cost related to arbitration according to Hay, Shleifer and Vishny (1996) include arbitration fees for the arbitrator, legal fees, payment to witness and order costs. In Zimbabwe the cost of the arbitrator is paid by the parties to the arbitration process Section 98 of the Labour Act and there is no provision for assistance to pay legal fees where parties or any party is represented by a legal practitioner. In South Africa legal representation of any part is restricted (Temba 2013, Benjamin 2013). In South Africa according to Bendeman (2006) arbitration before the CCMA commissioner is free and in Tanzania according to Temba (2013: ) access to the CMA is free.

Efficiency of labour arbitration can also be measured by its ability to promote productivity by stopping strikes that are disruptive to production (Budd and Clovin 2008). According to Section 98 once a matter has been referred for arbitration collective job action is prohibited.

The efficiency criterion in this study is measured on the accessibility of labour arbitration to the parties in relation to cost in money and time taken to resolve the dispute. This is so because systems that are slow and take a long time to resolve are inefficient (Budd and Clovin 2008). Efficiency is also measured in this study on its ability to stop collective job action (strikes). This is so because strikes cause disruptions in production and affects the efficiency of the organisation (Budd and Clovin 2008). Strained working environment has negative effect on quality of production and customer service (Budd and Clovin 2008). Efficiency will also be measured on the arbitration process’s ability to promote productive relationship at the work place where employees are motivated to perform.

1.16.9.2 Equity

Equity in labour arbitration is concerned with fairness and justice in decision making (Budd and Clovin 2008). One of the most important aspects of fairness and justice is the expertise and integrity of the arbitrator (Maitireyi and Duve 2011). Issues used to measure equity include, the knowledge of the arbitrator in arbitration of labour disputes, absence of bias in decision making and reliance on evidence adduced. Downs (1999) states that the issuing and enforcement of awards is a key element in measuring the effectiveness of the arbitration process because enforcement bring finality to the dispute. This view is also shared by Madhuku (2012) and
Benjamin (2013). In this study equity is also measured on the easy and time taken to enforce arbitral awards. Enforcement of awards delivers justice to aggrieved part hence it is a critical element (Benjamin 2013)

The equity criteria is also evaluated on the ability of the arbitration process to deliver fairness and justice through compliance with procedural and substantive justice and through ensuring the enforcement of the awards as provided for in the Budd and Clovin (2008) model.

1.16.9.3 Voice.

Voice in labour arbitration is concerned with the ability of the participants to effectively take part in the arbitration process (Budd and Clovin 2008). It is also concerned with the ability of the parties to the dispute to influence decision making (Budd and Clovin 2008). According to Robert and Palmer (2005) participation in labour arbitration must not be constrained by lack of knowledge by the participants. Labour arbitration is measured on the basis of the simplicity of the process to the extent that everyone can access the process without any problems (Bhorat et al 2007)

Voice in labour arbitration is also measured by the ability of the parties to influence the arbitration process (Budd and Clovin 2008). Ability to influence decisions is measured by the involvement of parties in the appointment of arbitrators and agreement of the parties on specific issues to be arbitrated upon (Budd and Clovin 2008). It is also measured by the opportunity given to the parties to present their own case and choose representative of own choice (Budd and Clovin 2008)

Voice is evaluated in this study on the arbitration process’s ability to promote participation of the parties. Labour arbitration will be analyzed on the knowledge required for the parties to actively participate in the process both in the arbitration process and enforcement of the process. This is so because according to Robert and Palmer (2005) the processes must be simple to the extent that an individual’s personal circumstances such as level of education must not be a hindrance to accessing the dispute resolution mechanism. Labour arbitration is also evaluated on its ability to provide the parties an opportunity to present own case and to be assisted in the presentation of the case.
1.17 Empirical Studies
Similar studies concerning the efficacy of dispute resolution have been undertaken in other countries such as Canada, United States of America, South Africa Namibia, Tanzania and Zimbabwe. Studies cited herein have been cited for their relevance to the current study of evaluating the current arbitration process against its mandate of providing an effective, just and expeditious resolution of labour disputes as stipulated in the Labour Act Chapter 28:01.

1.17.1 Global Scenario

1.17.1.1 The Ontario Municipality on effectiveness of medi-arbitration (CANADA)
Cole (2013) published a research conducted in Canada on resolution of collective bargaining agreements for Fire Fighters in the Municipality of Ontario specifically on the efficacy of the dispute resolution mechanism with emphasize on med-arbitration. Medi-arbitration is a hybrid of mediation and arbitration. The study covered a two seven year period that is 1985-1997 and 1997 to 2003.

Cole (2013) used what he called the unified model to evaluate the effectiveness of the resolution of collective bargaining agreement disputes. The metrics used by the researcher are justice that is both procedural and substantive justice, transactional costs, relational issues and public interests. Budd and Clovin (2008) covers transactional costs, relational issues and public interests under the efficiency dimension and covers procedural justice under voice and substantive justice under equity.

The bench marks used to measure efficacy is the length of time taken between the expiry of the collective bargaining agreement and the award of a new one, the number of days taken during the hearing, and the length of time between mediation and arbitration Primary data for the study was obtained through interviews with employers association members, trade union, community leaders and arbitrators. Data collection was done through field interviews and questionnaires. Secondary data obtained through records filed by the Ontario Fire Fighters and the collective bargaining agreements.

The findings were that the introduction of medi-arbitration in addition to the process of conciliation and arbitration, did not enhance dispute resolution and on the contrary, the introduction resulted in more days between the expiry of the collective bargaining agreement and
the award of a new agreement and there was an increase in the days taken between mediation and arbitration and the number of hearings also increased. The finding was that the introduction of medi-arbitration resulted in lengthy delays in issuing the award and resulting in increased cost.

Although the study by Cole (2013) was done in Canada, the factors used study. The factors used evaluate the effectiveness of the dispute resolution mechanism are similar those used in the current study.

1.17.1.2 The Clovin (2011) study on employment arbitration and processes.( USA)

In the United States of America, Clovin (2011) carried out a study on employment arbitration centering on case outcomes and processes. The study compared arbitration outcomes to court litigation outcomes. The method used was literature survey. Data was obtained from reports filed with the American Arbitration Association (AAA) in California. The data was obtained from reports of outcomes of arbitration from January 2003 to December 2007. Data was analyzed using content analysis.

The findings were that arbitration outcomes are generally less favourable to employees than those obtained from litigation in a court of law. It was also found out that a substantial number of employees who are self represented tend to get less favourable results than those represented by lawyers. The two findings raise issues of equity and accessibility to the arbitration process the findings suggest that seeking legal representation is necessary which raises the issues of cost to the employee putting into question accessibility to the arbitration process into question.

The study also found out that where there is repeat employer–arbitrator pairing, employees tend to get less favourable outcomes Employer-arbitrator pairing occurs when one arbitrator conducts multiple cases regarding the same employer. This finding puts the issue of equity into question in particular the aspect of neutrality of the arbitrator.

The study also made a finding that arbitration does produce quicker resolution of labour disputes than court litigation. Clovin (2011) study does show that arbitration is a quicker method of dispute resolution but does not in all cases result in equitable and cheap resolution of labour disputes as shown by the fact that self representing employees are at a disadvantage and hiring of representation comes with cost which affects accessibility to arbitration.
The Clovin (2011) study though done in the United States of America is relevant to the current study in that issues such as fairness, costs and speed covered in the Clovin study are also covered in the current study.

1.17.1.3 Comparative study on arbitration practices : USA and China

Xinjileta, Jenks and Weihong (2008) carried out a comparative study on arbitration practices in United States of America and China. The objectives of the study was done to compare arbitration procedures of United States of America and China, identify labour issues that may be problematic for China and recommend how China may address future workplace problems. The study carried out content analysis of labour legislation and practices in the United States of America and China.

The findings were that arbitration in the United States of America is well defined and is acceptable by both employers and employees. The study found out that in the United States parties have confidence in the arbitration process and hence compliance with arbitral awards is not a challenge. In the United States of America arbitration proceedings are final as courts do not entertain labour disputes. In China arbitration is done in accordance with the Law of Labour Disputes, Mediation and Arbitration 2007. The findings were that arbitration in China is not well defined as there is preference to mediation and negotiation. The research also showed that arbitration in China is not final because anyone not satisfied with the decision of the arbitration court has right to appeal to the People’s Court. The findings of the study were that arbitration in China is undermined by lack of finality of disputes. It was also found that arbitration in China suffer from lack of support by Trade Unions for fear of losing jobs. The other major finding was that China has high levels of illiteracy and hence a majority of employees are not familiar with arbitration processes hampering the effectiveness of arbitration of the arbitration process as a method of resolving disputes.

The study recommended that legislation be changed to make arbitration final and binding. It was also recommended that there be clarity regarding the issue of the arbitration committee and arbitration court which appear to have the same mandate. The researchers recommended that they be strict enforcement of existing laws to balance power between employers and employees.
The study also recommended that employees be trained and be capacitated to ensure full participation in arbitration.

The study by Xinjiletu et al (2008) is relevant to the current study is that it shows why arbitration of labour disputes in the United States of America is successful and why it is also not so successful in China.

1.17.2 **Regional Scenario**

1.17.2.1 **Temba (2013) Comparative study of CMA, CCMA and FWA**

Temba (2013) carried out a comparative analysis between institutions established for the purpose of dispute resolution in the following countries, Tanzania, South Africa and Australia. The institutions are Commission for Mediation and Arbitration (CMA) established in Tanzania, Commission for Conciliation Mediation and Arbitration (CCMA) in South Africa and Fair Work Australia (FWA) in Australia. The examination was intended to find out if the institutions have achieved the mandate of providing cheap, quick, informal and fair resolution of labour disputes. The researcher used data obtained from the institutions and the law applicable in each country. The factors used to evaluate were accessibility, speed and cost. In relation to Australia, FWA was established in 2009 and hence researcher did not obtain adequate information on issues to do with speed and cost.

The findings were that access to both CCMA in South Africa and CMA in Tanzania is easy. This is so because services offered by these institutions are free. Access is also easy because there are no pleadings required making the process accessible even to the unskilled. The finding on expeditiousness is that the alternative dispute resolution methods are quicker than litigation. However challenges were noted in big cities like Gauteng in South Africa, Dar es slaam, Mwanza and Arusha in Tanzania. In Tanzania lack of funding for the CMA has also been cited as a major challenge to the labour arbitration process. The research pointed out that the CMA did not have offices and sittings were being conducted in community halls in some cases.

The findings are also that arbitration has assumed a highly technical and legalistic approach and has become time consuming. In Tanzania the unrestricted involvement of lawyers has made the process expensive. The right to seek review of arbitration awards is being exploited resulting in
length delays in the finalization of labour disputes in Tanzania and South Africa. The quality of awards in both countries has been found to be poor with serious grammatical and spelling mistakes. According to the researcher some of the awards lacked logic. The reason for poor awards is attributed to lack of knowledge and training on the part of arbitrators.

1.17.2.2 Benjamin (2013) on effectiveness of the (CCMA) in South Africa

Benjamin (2013) conducted a study in South Africa on behalf of the International Labour Organisation (ILO) on the effectiveness of the Commission for Conciliation, Mediation and Arbitration’ ability to resolve disputes in an efficient and expeditious manner. The study was based on literature survey and data was collected from the Electronic Management System. The Electronic Management Systems (EMS) records details including the contents of the matter of every case referred to CCMA and tracks the matter from date of referral to date of award.

The findings were that the CCMA is efficient and expeditious in resolving labour disputes. The study attributed the high the efficacy of the CCMA to the Electronic Case Management System which tracks each and every case from date of referral to date of conclusion providing an expiry date for each stage. The establishment of the Training and Development Unit (TDU) which is responsible for regular training of Commissioners has also been identified as contributing to the high performance levels of the CCMA. Restriction of legal representation has also been identified as one of the aspects contributing to the high performance of the CCMA as commissioners are able to deal with disputes without following highly technical procedures and disputes are resolved without delay and without legal costs to the parties.

However the study confirmed earlier study by Benjamin (2007) that enforcement of awards remained a major challenge. The study indicated that non compliance with awards was high and required employees to take the long route of approaching the Labour Court to have award certified. The study found out that employees were not adequately skilled to enforce the award without assistance. The study concluded that the efforts of the CCMA were being undermined by lack of easy and cheap enforcement procedures.

The study by Benjamin (2013) is relevant to the current study in that it shows what has contributed to the efficient and effective resolution of labour disputes in South Africa and points
out to challenges which despite the success exist in the dispute resolution institution in South Africa faces. The study is also relevant in that it reveals factors that hinder the efficacy of the dispute resolution mechanism.

### 1.17.2.3 Bhorat et al (2007) on effectiveness of arbitration in South Africa.

Bhorat et al (2007) carried out an investigation into the effectiveness and efficiency of the dispute resolution mechanism in South Africa concentrating on the Commission for Conciliation Mediation and Arbitration (CCMA). The factors used to measure efficiency and effectiveness are the turnaround time, postponements and settlements outcomes. The study compared regions in South Africa and sectors on turn around, postponements and settlement outcomes. The study surveyed data for the period 2002 to 2005. Data was collected from the CCMA data base from the Electronic Management System.

The findings in the research revealed that Kwa Zulu Natal was ranked as the best performer for the entire period and the Eastern Cape as the worst followed by Gauteng Province. The differences in efficiency levels are attributed to differences in organizational efficiency.

The findings also indicate that all the regions did not meet the targets set and hence did not achieve the efficiency levels as set by the CCMA. The study indicated that in the entire period under survey none of the regions met the parameters of efficiency. The study indicated that either the CCMA had set for itself too high targets or that the CCMA was not operating as expected.

In relation to Sectorial efficiency, there was no difference between sectors of the economy. The perceptions that the agricultural and domestic sector accounted for more referral cases was not supported by any evidence as the efficiency rate in these two sectors was found to be not different from other sectors.

Postponements of disputes were found to be a major problem affecting efficiency and this was attributed to part-time commissioners. There was suspicion that postponements by part-time was motivated by financial gain.

### 1.17.2.4 Bendeman (2007) on employer-employee relation with reference to arbitration.

Bendeman (2007) carried out a study on whether compulsory conciliation and arbitration are effective in creating a less adversary labour relations system and is appropriate for improvement
of employer-employee relationship. Literature survey was used for this study. The findings in this study was that conciliation and arbitration as currently practiced promotes the adversary system and that other methods that promotes collaboration are required.

The study also confirms earlier findings in the research by Bendeman (2006) where findings were that the Labour Relations Act 66 of 1985 had created a complicated system which the parties did not have the capacity to operate. The study also confirms earlier finding in Bendeman( 2006) that labour relations has been reduced to following procedures as opposed to interaction between the employer and the employee and that this does not promote relations between the parties. This study is relevant to the current study which seeks to establish if the labour arbitration system in Zimbabwe is informal and easy to follow and therefore accessible to all employees in the diamond mining sector.

Studies carried out in Canada, United States of America and South Africa are relevant in that they provide factors used in the evaluation of the arbitration process as a method of dispute resolution. The studies show that despite variations in the factors used to evaluate efficacy of dispute resolution, the all encompassing factors are efficiency, equity and voice which model was developed by Budd and Clovin (2008). The Budd and Clovin (2008) model is the chosen model for evaluation in this study

1.17.3 **Zimbabwe Scenario.**

1.17.3.1 **Madhuku (2012) on dispute resolution in Zimbabwe.**

Madhuku (2012) made an analysis of the alternative dispute resolution mechanism in Zimbabwe concentrating on conciliation and arbitration. The analysis was done by surveying literature on dispute resolution. The finding of the study is that alternative dispute resolution mechanism in Zimbabwe is not effective. Madhuku (2012) identified four reasons which have negatively impacted on alternative dispute resolution as, the existence of a two tier labour relations system, the lack of clarity in the scope of conciliation and arbitration, the status of the Labour court in relation to the High Court and absence of adequate institutional and administrative framework to deal with conciliation and arbitration.
Madhuku (2012) pointed out that a two tier system where employees employed by the State are not covered by the Labour Act Chapter 28:08 means that those employees are not subjected to the applicable provisions of the Labour Act Chapter 28:01 that deal with conciliation and arbitration. Madhuku (2012) also pointed to the absence of guideline to deal with conciliation and arbitration as contributing to the lack of effectiveness. The other aspects identified as contributing to the lack of effectiveness identified in the Madhuku ((2012) study include perceived lack of competence on part of arbitrators, the costs of arbitration and the laborious and confusing process of enforcement of arbitral awards done under the Labour Act Chapter 28:01

Madhuku (2012) recommended for the establishment of a law that ensures the supervision of arbitrators and suggested that all cases be registered with the Registrar of the Labour Court and be subject to automatic review. The study also recommended for the establishment of Independent Commission for conciliation and arbitration in line with practices in other SADC countries such as South Africa, Lesotho, Swaziland and Botswana.

1.17.3.2 Effectiveness of the arbitration system in Zimbabwe. Maitireyi and Duve(2011)

Maitireyi and Duve (2011) studied the effectiveness of the arbitration system in Zimbabwe. The study was done in the Commercial Sector in the Bulawayo Metropolitan area. The study was carried out to find out if arbitration was effective as a method of dispute resolution. Three factors were used to evaluate the effectiveness of the arbitration process which is accessibility, speed and expertise. The descriptive survey method was used. The study used non random sampling methods of convenience and judgmental. The justification for the use for convenience method was easy accessibility to the respondent and judgmental was used because the study required people with appropriate knowledge of labour arbitration. The questionnaire and interviews were used as methods of data collection.

The finding in the Maitireyi and Duve (2011) is that labour arbitration process in Zimbabwe is largely not effective. The study was concerned with the effectiveness of the arbitration process in Zimbabwe using the commercial sector as a case study The study indicated that arbitration is not effective due to perceived lack of expertise on the party of arbitrators as well as prohibitive costs of the arbitration process and complicated procedures associated with arbitration. The study
however found out that the arbitration process was expeditious as expressed by both employers and employees. The findings of Maitireyi and Duve (2011) contradicts the finding of Mariwo (2008) who conducted a study on conditions of employment in the Security Industry which at the time was part of the Commercial Sector which found that arbitration cases in the Security Industry took long to be resolved because of the absence of enough arbitrators in the Commercial Sector. Mariwo (2008) indicated that labour disputes took in excess of three years to resolve.

The study by Maitireyi and Duve (2011) centered specifically on arbitration as a method of dispute resolution in Zimbabwe. The current study also study also centers on arbitration in Zimbabwe. The Maitireyi and Duve (2011) study was done in the Commercial Sectors of Zimbabwe and the current study is done in the Mining Sector in Zimbabwe. The Maitireyi and Duve (2011) study used an evaluation model by Trudeau (2002) which uses three factors that is accessibility, speed and expertise. The current study uses the model by Budd and Clovin (2008) which uses three factors efficiency, equity and voice.

The Maitireyi and Duve (2011) study restricted the issue of costs only to actual fees paid to the arbitrator. Transactional costs are a critical component in evaluating a dispute resolution mechanism (Cole 2013; Budd and Clovin 2008; Robert and Palmer 2005.) Transactional costs in arbitration include fees paid to arbitrators, fees paid to lawyers and order costs (Budd and Clovin 2008; Robert and Palmer 2005; Hay et al 1996) The current study will therefore in addition to arbitrator fees covered in Maitireyi and Duve (2011) study cover fees paid to lawyers.

Enforcement of awards bring finality to labour disputes (Benjamin 2013; Madhuku 2012 and Downs 1999). The fact that enforcement of awards brings finality to arbitration proceedings shows that enforcement of awards is critical in the evaluation of the arbitration process (Budd and Clovin 2008). The Maitireyi and Duve (2011) study did not deal with the enforcement of awards and this current study does use the enforcement of awards as one of the critical elements in the evaluation of the arbitration process.

According to Budd and Clovin (2008) a dispute resolution mechanism must also be evaluated on its ability to promote employer-employee relationship and protect public interest. Cole (2013) also states that a dispute resolution mechanism must be evaluated on its promotion of employer-
employee relations and public interest. Budd and Clovin (2008) states that employer-employee relationship are crucial in the preservation of scarce resources by way of improving productivity and reducing costs which are critical in the efficient operations of any organisation. The Maitireyi and Duve (2011) study did not cover relational issues which are crucial in evaluation of dispute resolution methods (Budd and Clovin 2008, Cole 2013) This study uses relational issues as one of the elements in the evaluation of arbitration as a method of dispute resolution.


1.17.3.3 Mariwo: Challenges facing the private security sector in Zimbabwe.

Mariwo (2008) carried out study on conditions of service in the Private Sector in Zimbabwe. The Private Security Sector at the time of the study was a sub-sector of the Commercial Sector covered by the National Employment Council for the Commercial Sectors of Zimbabwe. The study was undertaken on behalf of International Labour Organization (ILO) to bring to the challenges facing the private security sector. One of the objectives of the study was to analyze the dispute resolution mechanism and identify challenges to the same.

The study design used was a qualitative one and a sample of 13 Security firms was used and the sampling method used convenience sampling. Secondary data was obtained from ILO conventions, statute law, previous research and print media. Primary data was obtained through questionnaires, observations and personal interviews.

The findings were that dispute settlement in the National Employment Council was largely compromised by non compliance with the decision of the National Employment Council Designated Agents. In relation to matters referred for arbitration to the National Employment Council appointed arbitrators, it was found out that the arbitration took too long to be conducted as cases would be heard after three years. The reason cited for the delay was that there were insufficient arbitrators in the National Employment Council for the Commercial Sector of
Zimbabwe. The findings are that the delay in arbitration hindered the effective settling of disputes in the Private Security Sector.

1.18 History of Labour Arbitration in Zimbabwe 1980 -2002

At the dawn of independence in 1980 labour relations was practiced within the confines of the Industrial Conciliation Act of 1959. The Industrial Conciliation Act of 1959 remained in force until 1995 when it was repealed by the Labour Relations Act 16 of 1985. The State in 1980 introduced the Minimum Wages Act 4 of 1980 and the Employment Act 13 of 1980. According to Madhuku (2012:5) the Industrial Conciliation Act of 1959 did not have any meaningful provision for alternative dispute resolution mechanism of which arbitration is one of them and Madhuku (2012) further state that the Minimum Wages Act 4 of 1980 and the Employment Act 13 of 1980 did not have any provisions for alternative dispute resolution and hence did not have any provisions dealing with arbitration.

The Labour Relations Act (LRT) Chapter 28:01 came into effect in 1985 and Section 93 introduced the process of conciliation which was not mandatory. Compulsory arbitration was introduced but only for disputes that could lead to collective job action (Section 93 (5) of the Labour Act Chapter 28:01). The Labour Relations Act 16 of 1985, according to Madhuku (2012:7) provided for a length dispute resolution by State actors and seven levels of dispute resolution mechanism were established

The Labour Relations Act Chapter 28:01 was amended by Labour amendment Act 17 of 2002. The amended section 93 of the Labour Relations Act Chapter 28:01 recognized the process of conciliation and arbitration as methods of dispute resolution of labour disputes. Section 93(5) of the Labour Act Chapter 28:01 spells out circumstances when a labour relations officer may refer a matter for compulsory arbitration. In the case of disputes of rights, the labour officer is empowered to refer a matter for compulsory arbitration where the process of conciliation has failed. In the case of a dispute of interest where the parties are engaged in an essential service, the labour officer has the authority to refer the matter for compulsory arbitration. However in the case of a dispute of interest and where the parties are not engaged in an essential service, the labour officer can only refer the matter for compulsory arbitration with the agreement of the parties (Section 93 (5) (a) (b) and (c) of the Labour Act Chapter 28:01).
The Labour Relations Act Chapter 28:01 was further amended by the Labour amendment Act 7 of 2005 which resulted in the current consolidated Labour Act Chapter 28:01. The current labour Act recognizes conciliation and arbitration as methods of dispute resolution. According to the Labour Act Chapter 28:01, arbitration can only occur after conciliation has failed. The first step is to conciliate and if conciliation is achieved, a certificate of settlement is issued and the agreed solution is enforced. The labour officer is required to settle the matter within 30 days. If conciliation fails, the labour officer issues a certificate of no settlement and matter is referred for arbitration. Section 98 (5) of Labour Relations Act 28:01 which governs disputes that can be referred for compulsory arbitration remains as provided for by Labour Amendment Act no 17 of 2002 discussed above.

1.19 **Current practices of labour arbitration in Zimbabwe:**

In the mining sector a dispute that cannot be settled internally in the organization is referred either to a designated agent or a labour officer as stated in Section 93 of the Labour Act Chapter 28:01. Section 93 of the Labour Act Chapter 28:01 obliges a designated agent or labour officer to whom a dispute has been referred or who has become aware of the dispute to attempt to settle the matter through conciliation. Conciliation is a system of dispute resolution where a thirdly part assists the parties to a dispute to arrive at a settlement (Steadman 2009). The labour officer or designated agent does not impose a decision on the parties. Statutory Instrument 217 of 2003 makes it clear that the role of the conciliator is not to make a decision but to help the parties to a dispute to arrive at a decision which is essentially a decision of the parties to a dispute.

If the parties reach a decision, the labour officer or designated agent issues a certificate of settlement and the decision is binding and enforceable (Section 93 of the Labour Act Chapter 28:01). The labour officer or designated agent must finalize conciliation proceedings within 30 days. According to Section 93 of the Labour Act, where a labour officer or designated agent fails to settle the matter by conciliation within 30 days a certificate of no settlement is issued and dispute is referred for arbitration. The terms of reference and issues to be arbitrated upon are agreed between the parties to the dispute (Statutory Instrument 217 of 2003). The labour officer or designated agent chooses an arbitrator for the case from a list of arbitrators appointed by the Minister of Labour. (Section 98 (6) of the Labour Act Chapter 28:01 as read with Labour (Arbitration) Regulations Statutory Instrument 173 of 2012.
1.19.1 **Appointment of Arbitrators**

Arbitrators are appointed by the Minister of Labour in consultation with the Senior President of the Labour Court (Section 98 (6) of Labour Act). There appointment and conduct of arbitrators is done in accordance with Statutory Instrument 173 of 2012 Labour (Arbitration) Regulations of 2012. The qualifications required for one to be appointed an arbitrator is a minimum of a first degree and two years experience in Human Resources Management or in Labour Relations. A Diploma in Industrial Relations or a Diploma in Conciliation and Arbitration is an added advantage (Section 3 (2) (a) of Statutory Instrument 173 of 2012). According to Section 4 (1) of Statutory Instrument 173 of 2012, an arbitrator has authority to arbitrate on all labour disputes referred. This means the arbitrator is entitled to deal with both disputes of interests and dispute of rights in respect to both individual and collective disputes.

Arbitrators may be appointed from labour relations officers employed by the State, designated agents employed by Employment Councils or from the members of the public on application to the Minister of Labour (Section 3 of Statutory Instrument, 173 of 2012.) Application for appointment to be an arbitrator has to be accompanied by an application fee of $100.00. Anyone appointed as an arbitrator has to have valid certificate of appointment and the appointment is for a period of one year and renewal is made on an annual basis upon application for renewal (Section 3 of Statutory Instrument of 173 of 2012).

Section 6 of Statutory Instrument 173 of 2012 stipulates the fees to be paid to arbitrators and limits the fees at $300.00 for individual disputes, $400.00 for collective disputes and $500.00 for disputes between employer and employee associations. Arbitration fees are shared between parties to the dispute (Section 98 (7) of the Labour Act Chapter 28:01.) According to Statutory Instrument 173 of 2012, the stipulated fees due to arbitrators does not apply to labour officers employed by the State or designated agents employed by Employment Councils. The arbitration by labour officers or designated Agents appointed as arbitrators is done for free.

Section 7 of Statutory Instrument 173 of 2012 which is the Code of Ethics for arbitrators, provides details regarding how the arbitrator must conduct themselves. Section 7(1) of Statutory Instrument 173 of 2012 requires the arbitrator to treat all disputes brought before the arbitrator in a confidential manner and requires the arbitrator to be impartial. In the case where the arbitrator has current or past relationship with any of the parties before the arbitrator, the arbitrator is
obliged to disclose such current or past relationship or association and in the event of one part to the dispute objecting to the arbitrator then the arbitrator must stand down.

Section 7(1) of Statutory Instrument 173 of 2012 further requires an arbitrator to ensure that that the hearing is fair and adequate and hence must give each part sufficient opportunity to present own case and counter presentation of the other part. Arbitrator must ensure that the proceedings are conducted in such a manner that fair and efficient resolution of the dispute occurs. Section 7 (1) of Statutory Instrument 173 of 2012 places an obligation on the arbitrator to ensure that delaying tactics and harassment of parties does not occur.

According to Section 7(2) of Statutory Instrument 173 of 2012 once an arbitrator has made a decision in a matter, the arbitrator is not allowed to tell any of the parties about the decision in advance and neither is the arbitrator allowed to discuss the substance of the arbitration proceedings with any other person. Section 7(3) of Statutory Instrument 173 of 2012 prohibits arbitrators to canvass for clients or cases from the Ministry of Labour offices and forbids any advertisement for clients. Acceptance of gifts prior or during or after the arbitration hearing, which gifts may be construed as having an influence on the matter under arbitration is prohibited (Section 7 (5 ) of Statutory Instrument 173 of 2012).

In South Africa conciliation and arbitration is conducted by the Commissioners appointed by the Commission for Conciliation and Arbitration (CCMA). The Commission is an independent body that is funded by the State (Bendeman 2006). Conciliation and arbitration services are offered free of charge (Bhorat et a 2007). According to Bendeman (2006) the Commissioner has a specific period in terms of the law within which he must finalise a matter referred for arbitration and it is 90 days but the Commission itself has set a 60 day target as the measure for effectiveness in terms of turnaround periods. The Labour Court in South Africa unlike in Zimbabwe has the power to enforce arbitral awards which is not the case in Zimbabwe as enforcement in Zimbabwe is done either by the High Court or Magistrate Court (Benjamin 2013)

In Tanzania arbitration is conducted by Commissioners appointed by the Commission for Mediation and Arbitration (CMA). Services offered by the Commissioners is free because it the Commission is funded by the State (Temba 2013). A Commissioner to whom a matter has been referred for arbitration is expected by law to finalise the matter within 30 days of such referral.
1.19.2 Arbitral awards

The decision of the arbitrator according to Section 98 (9) of the Labour Act is deemed to be the decision of the Labour Court. The decision of the Labour Court in Zimbabwe in compulsory arbitration can only be challenged on a point of law while the decision in voluntary arbitration can only be challenged in accordance with Article 34 of the Arbitration Act because voluntary arbitration is governed by the Arbitration Act.

The enforcement of awards made by arbitrators in compulsory arbitration is done in accordance with Sections 98 (14) and (15) of the Labour Act Chapter 28:01. The enforcement is done through the Magistrate Court or High Court depending on the amount. The enforcement is done in either the Magistrate Court or High Court because the Labour Court in Zimbabwe does not have the power to enforce its own decision as confirmed in the matter between Trust Me Security versus Lucia Mararike and 4 others HH 345 -14.

The reason why the arbitral awards made by the arbitrators in accordance with Section 98 of the Labour Act chapter 28:01 are registered with the Magistrate or High Court is because the Labour Court does not have the power to enforce its own decisions or awards as stated in the case of Trust Me Security versus Lucia Mararike and 4 others HH 345-14.

Registration of an award and enforcement thereof in the High Court is done in accordance with the Rule 226 (1) of the Rules of the High Court of Zimbabwe, 1971(RGN 1047 of 1971)..

Registration may be done through a court application or a chamber application. According to the High Court rules a court application requires that one serves the application on the other party and matter goes before the judge for argument. A chamber application on the other hand requires writing to the judge and if the other party does not file opposing papers the arbitral award is executed. Execution of the arbitral award put the matter to finality. Madhuku (2012) indicated that enforcement of voluntary arbitration and execution of the same is effective compared to enforcement and execution done in accordance with Section 98 of the Labour Act Chapter 28:01. Madhuku (2012) characterized enforcement and execution of awards done in accordance with the Section 98 of the Labour Act Chapter 28:01 as laborious and confusing.

There are no stipulated procedures for registration of arbitral awards in the Magistrate Court. Section 98 (14) and (15) of the Labour Act Chapter 28:01 merely refers to submission for
registration and enforcement of awards. There are no guidelines or indications in the Labour Act Chapter 28:01 as to what is meant by submission for registration. In the case of Trust Me Security Vs Lucia Mararike and 4 others HH 354-14. Lucia Mararike and 4 others had proceeded with a copy of the arbitral award to the Magistrate Court and had submitted it to the clerk of court for registration and enforcement. The clerk of Court registered the award and issued a writ of execution in line with procedures that had been drafted by a Provincial Magistrate. Trust Me Security appealed to the High Court to stop the execution of the award. The High Court made a decision that the registration of an award in the Magistrate Court must proceed by way of a court application as opposed to mere submission for registration and enforcement and hence reversed the enforcement of the award.

1.19.3 Appeals/ Reviews and Setting aside of arbitral awards

Appeals against decision of the arbitrator lie in the Labour Court. Section 98 (4) of the Labour Act Chapter 28:01 clearly stipulates that appeals can only be made on a point of law and not on a point of fact. Gwisai (2007) states that restriction of appeals to only appeals on a point of law is aimed at bringing finality to the proceedings by preventing frivolous appeals.

The Labour Act Chapter 28:01 does not define what a point of law is neither does it define a point of fact. The Supreme Court in the matter of Muzuva versus United Bottlers (Pvt) Ltd 1994 ZLR (1) 217 (S) settled the issue of point of law and this is spelt out by Gwisai (2007: 285) in the following way:

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

b) Question as to what the law is;

c) A question which is within the province of the judge instead of the jury

d) Misdirection on the facts or evidence before the arbitrator that is so outrageous in their defiance of logic to amount to a serious misdirection

e) A case where making an award is in violation of grounds specified in the Model Law

The High Court may only set aside the decision of the arbitrator in accordance with Article 34 of the Arbitration Act
a) If the party making the application furnishes proof that the-

I. That a party to the arbitration agreement was under some incapacity or the said agreement is not valid under the law to which parties have been subjected to or the said agreement is not valid under the law to which the parties have been subjected to it or failing any indication on the question under the law or

II. Party making the application was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to to present his case or

III. The award deals with a dispute not contemplated by or not falling within the terms of the submission or on matters beyond the scope of the submission

IV. The composition of the arbitral tribunal or procedure was not in accordance with the agreement of the parties

b) The high Court finds that –

I. The subject matter of the dispute is not capable of settlement by arbitration under the law of Zimbabwe or

II. That the award is in conflict with public policy of Zimbabwe.

Article 34 of the arbitration Act defines an award which is in conflict with public policy as one where the making of the award was induced or affected by fraud or corruption and where the award was made in breach of the rules of natural justice.

In the case of Tirivangani versus the University of Zimbabwe, the Supreme Court SC 23/ 2012 reversed an arbitral award dismissing Tirivangani from the University of Zimbabwe for absenting himself from duty thereby repudiating his contract of employment. The Supreme Court ruled that Tirivangani was not made aware of the disciplinary proceedings against him and hence the dismissal was not in compliance with the principles of natural justice which requires that an individual must be heard before a decision is made against him/her.

The Labour Court confirmed the position that an arbitral award is set aside if the arbitration proceedings violate Article 34 of the Arbitration Act in the case of Diamond Mining Company versus Foster Mukwada and others LC/ MC/16 /14. This is a case that had been referred for compulsory arbitration. During the arbitration proceedings Diamond Mining Company requested
that it be allowed to call witnesses to give oral evidence and this was denied by the arbitrator. The arbitrator insisted that the case proceeds on the basis of documents filed on record. The arbitrator gave an award against diamond Mining Company. The Labour Court set aside the arbitral award on the basis that it violated Article 24 of the Arbitration Act which specifically states that in the absence of an agreement to proceed on the basis of documents filed on record, and then oral hearing must be conducted. In this case the arbitrator had denied Diamond Mining Company the right to give oral evidence and neither was there an agreement to proceed on documents filed on record.

Labour arbitration must be done in compliance with the Labour Act Chapter 28:01, Statutory Instrument 173 of 2012 and the Arbitration Act Chapter 7:15. The most important sections to comply with in labour arbitration are Section 93 of the Labour Act 28: 01 relates to reference of a matter to arbitration and 98 of the Labour Act Chapter 28:01 relates to the arbitration processes. In relation to the Arbitration Act 7:15 the most important articles to take care of are Article 24 of the Model Law which deals with conduct of hearing and article 34 which deals with basis on which deals with the setting aside of arbitral awards. The issue that arises is whether the labour arbitration process as currently practiced provides for a just, effective and expeditious resolution of labour disputes as envisaged by the Labour Act Chapter 28:01.

1.20 Current Arbitration Processes in Mining Sector in Zimbabwe
The disputes subject for arbitration in the mining sector in Zimbabwe include both disputes of rights and dispute of interests. Individual and collective disputes in the mining sector are also subject to the arbitration process. Disputes of rights arise in the mining sector from non compliance with the Collective Bargaining Agreement for the Mining Sector Statutory Instrument 160 of 1990 and unfair labour practices. Individual disputes can arise in the mining sector from disciplinary cases done in accordance with Statutory instrument 15 of 2006 which is the National Employment Code.

1.21 Issues that emerge from Literature Review
Literature on labour arbitration in Zimbabwe shows that the processes is largely not effective as demonstrated by Madhuku (2012) Maitireyi and Duve (2011) and Mariwo (2008). Prohibitive costs, lack of expertise on part of arbitrators (Madhuku 2012, Maitireyi and Duve 2011) are cited as some of the aspects that impact negatively on arbitration. Mariwo (2008) cites
unavailability of sufficient arbitrators as being responsible for delays in finalization of disputes. Literature review also shows that they are problems in the legislation itself as the Labour Court is not able to enforce its own awards which are the arbitral awards made by arbitrators and yet the Constitution recognizes it as part of the judiciary and is listed as one of the courts in Zimbabwe,(Section 162 of the Constitution of Zimbabwe Amendment (No.20) No 1.) Literature shows that legislation does not provide procedures for registration and enforcement of arbitral awards in the magistrate court (Section 98 (14) and (15) of the Labour Act.

Literature review from South Africa shows that the process of arbitration is accessible because arbitration process is free (Bhorat et al 2007). Literature shows that the handling of disputes through arbitration has improved as a result of establishment of a training unit within the CCMA in South Africa and the introduction of the Electronic Management System (Benjamin 2013).

1.22 Summary
The Chapter considered theoretical and empirical literature on the subject historical and current practices of arbitration in Zimbabwe. The Chapter also highlighted issues arising from literature on the subject. The next Chapter the research methodology used in the current study is discussed.
CHAPTER 3

RESEARCH METHODOLOGY

2.1 Introduction
This chapter focused on the research methodology. It discussed procedures used in conducting the research. The main areas of focus were research design, research strategy target population, sampling procedures and data collection instruments.

2.2 Research Philosophy
Guba and Lincoln (1994) state that any research is based on a research paradigm which is a belief system or world view held by a community. This study is based on the realism paradigm which combines both qualitative and quantitative research methods. Realism paradigm is adopted for this study because of its recognition of flexibility and diversity in social perspective. This study is about perceptions of employers and employees regarding the practice of labour arbitration practices in the mining sector in Zimbabwe. This research is a socio–legal issue where multiple realities are expected and mixed research methods do provide access to multiple realities.

This study is both qualitative and quantitative in nature. According to Onwuegbuzie and Collins (2007) the purpose for using mixed research methods are, triangulation, complimentarity, initiation, development or expansion. According to Web et al (1996) triangulation entails using more than one method or source of data in the study of social phenomena. Although triangulation ordinarily uses multiple observers, it is also used to refer to a process of cross checking of findings derived from both qualitative and quantitative research (Decoan, Bryman and Fenton 1998). The justification for using both qualitative and quantitative research method in this study is triangulation.

The realism paradigm is appropriate for this study because this study does combine both qualitative and quantitative research methods to provide corroboration of findings.
Corroboration of findings is important in this research to improve reliability of the findings and hence justifying the need for a combination of qualitative and quantitative methods.

2.3 Quantitative approach
Quantitative approach according to Kothari (2004) refers to a group of methods that emphasize the generation of data in quantitative form. The data is subjected to rigorous quantitative analysis in a form and rigid manner. In quantitative approach probability sampling is used and the sample is expected to be representative of the population. Results from quantitative approach are generalised to the population.

2.4 Qualitative approach.
Qualitative approach research methods are concerned with studying things in their natural settings to make sense of a phenomenon in terms of the meaning people bring to the settings. According to Denzin and Lincoln (2000) it is concerned with people’s attitudes, opinions and values with regard to the phenomenon. Qualitative approach is not based on quantitative data analysis. The common sampling method for qualitative approach is purposive sampling and purposive sampling was used and in particular judgemental sampling because the issue under investigation requires respondents knowledgeable in arbitration

2.5 Research approaches
Saunders, et al. (2003) write that the extent to which a researcher is clear about theory at the beginning of the research project raises important questions about the research design. Two approaches therefore can be adopted, namely the deductive approach and the inductive approach. In this study the researcher adopted both inductive and deductive approaches. Inductive approach is associated with qualitative research while deductive approach is associated with quantitative research (Creswell and Plano Clark 2007). Trochim (2006) defines the inductive approach as moving from the specific to the general while deductive begins with the general to the specific. Burney (2008) states that inductive approach moves from specify observation to broader generalization and referred to as a bottom-up approach and it involves a degree on uncertainty and deductive approach referred to as a top-down approach which works from general to more specific. The inductive approach was used to collect qualitative data while the deductive approach was used to collect quantitative data in this study
This study used mixed methods research design. According to mixed method research Johnson, Owneugbuzie and Turner (2007) mixed method research is a type of research where a researcher or team of researchers use elements of qualitative and quantitative research approaches for the purposes of breadth and depth and corroboration. For the purposes of this research the definition of mixed research methods presented by Johnson et al (2007) was adopted. The purpose for using mixed methods in this research was to ensure that the researcher looked at the phenomena from multiple points of view with the intention of overcoming the problems of relying on one method and for corroboration of findings of one method by the other.

According to Cronholm and Hjalmarsson (2011) cited Caruth (2013 ) the use of mixed methods in research has advantages and disadvantages. Cronholm and Hjalmarsson (2011) point of that words, photos and narration can be used to add meaning to numbers and numbers can add precision to words photos and narration. They further states that mixed methods may be used to handle a wide range of research questions which cannot be held by a single design. The authors also state that mixed methods also offer enhanced validity through crosschecking and can add insight and understanding that may be missed when a single research design is used. The other advantage stated by Cronholm and Hjalmarsson (2011) of using mixed methods is mixed methods increases the capability to generalize results compared to use of one qualitative design.

The disadvantages cited by Cronholm and Hjalmarsson (2011) are that the use of mixed methods is time consuming and expensive and may require the use of more than one researcher. The use of mixed methods requires proficiency in both qualitative and quantitative research design. Another disadvantage cited by the authors is that it may be difficult to defend.

The four major research designs in mixed methods research include convergent parallel design, explanatory research design, and exploratory research design and embedded research design. (Teddlie and Yu 2003). The designs are identified by the following factors purpose, procedure for data collection and priority given between quantitative and qualitative methods ( Swartout 2014: 4)

(a) Convergent parallel research design is used when the purpose of the research is to best understand or develop more complete understanding of the research problem by obtaining different but complimentary data for confirmation purposes. The collection of data is done at the
same time. In convergent parallel design equal priority is given to both qualitative and quantitative data (Creswell and Plano Clark 2007 Cameron 2009)

(b) Explanatory Sequential research design is used when the purpose is to help explain qualitative data using results from quantitative data. Collection of data is two phased. Quantitative data is collected first and the results from quantitative data are used to frame qualitative research questions. Priority in explanatory sequential research design is given to quantitative data (Creswell and Plano Clark 2007 Cameron 2009)

(c) Exploratory Sequential research design is used when the purpose is to help explain quantitative data using qualitative data. Collection of data is two phased and qualitative data is collected first. The priority in exploratory sequential research design is qualitative data (Creswell and Plano Clark 2007 Cameron 2009)

(d) Embedded research design is used to answer different questions that require different types of data. Both sets of data may be collected and analyzed at the same time or in a two phased manner. Equal priority is given to both qualitative and quantitative data (Creswell and Plano Clark 2007; Cameron 2009)

For the purpose of this study the convergent parallel design was used because the purpose of using the mixed methods in this study is triangulation so as to obtain a better understanding of labour arbitration practices in Zimbabwe from different sources.

2.6 Research strategies
Ferguson (2005) defines a research strategy as a plan of action that gives direction to efforts, enabling one to conduct research systematically rather than haphazardly. It covers the logic of research design, data collection methods and approaches to data analysis that will be employed to provide acceptable to the answers to the research problems. They are also the ways in which data is obtained in any research and these include experiments, survey and case study among other strategies

2.6.1 Survey Methods
Surveys methods are associated with the use of quantitative research methods. They are normally used where large volumes of data are involved with quantitative methods of analysis.
This researcher in this study used the survey research method to collect data from individuals who had experience and knowledge in arbitration practices in the diamond mining companies in Zimbabwe.

In this study the survey method was justified because the study asked respondents regarding their experience about the current practices in the mining sector in Zimbabwe. Findings from survey provide for generalization of findings. However survey methods would not yield much about the underlying meaning of data hence its combination with the case study method.

2.6.2 **Case Study**

Case studies seek to understand social phenomena within a particular setting. This strategy was used in this study in combination with the survey method. According to Yin (1984) case study approach refers to a group of methods which emphasizes qualitative analysis. Data in case study is collected from small number of participants using mostly observation, in-depth interviews and longitudinal studies. Case study are used to collect data through the intensive examination of a phenomenon in a particular group or situation (Siggelkow 2007) Case study provides an opportunity to ask penetrating questions to obtain deep insight about an issue being studied. According to Gable (1994) findings from case study may be specific to the organization under study and may not be generalized.

In this study the case study approach was justified by the fact that the study was carried out in a specific context which is the diamond mining sector in Zimbabwe. The study sought to gain insight into the current practices of arbitration in the diamond mining sector in Zimbabwe and in doing so asked penetrating questions regarding current practices from different groups in the diamond mining sector in Zimbabwe. The study did not only seek perceptions of the respondents regarding the practices by also sought to understand from the respondents why they held such perceptions and asked respondents to provide their own suggestions to improve the arbitration process. However the case study method as stated by Gable (1994) does not provide on its own for generalizability of findings and hence the need for a survey method to enhance generalizability of findings. The uncertainty of findings in case study motivated the use of case study with the survey method for corroboration of findings and hence the need for a combination of two methods in this study.
It is clear therefore in this study that there were issues that could not be revealed by the use of a case study on its own as they were issues that could not be resolved by a survey study on its own. In this study it is clear that the shortcomings in one approach were compensated by the strengths in the other approach hence justifying the use of the case study and survey method in this study. The combination of the case study and survey method in this study also increased reliability of the results through triangulation and hence justifying the use of a combination of the two methods

2.7 Target Population
Population according to Leedy (1989) populations refers to the largest body of individuals or any other unit that is being researched from which a sample is drawn. The target population of the study consisted of human resources managers and workers committee members in seven nine mining companies in Zimbabwe three trade unions in the mining industry and one employer organisation in the diamond mining sector. This population is familiar and knowledgeable about labour relations in the mining industry and labour arbitration in particular. The population by virtue of their knowledge and or participation in labour arbitration provided appropriate information to the researcher. The researcher collected data from 5 Mining organisations in the Mutare District, 3 Trade Unions in Mining Sector and in Employer Organisation in the Mining Sector. The researcher issued 11 questionnaires at each of the mining companies one for the human resources manager as the employer and 10 for the workers committee, 15 questionnaires for all the 3 Unions in the Mining Sector 5 for each union and 5 for the only Employer Organisation in the Mining Sector making a total of 75 questionnaires.

2.8 Sampling
Kothari (1990: 187) defines sampling as a process of obtaining information about an entire population by examining only a part of it. The researcher according to Kothari (1990) quite often selects only a few items from the universe for his study purposes and those selected constitute what is technically called a sample. Trochim (2006) describes sampling as a process of selecting such items from the entire population. Leedy (1989) states that sampling can be divided into two major categories namely probability and non-probability sampling also known as purposive sampling.
2.9 Non Probability (Purposive) Sampling
Zikmund (2003) defines non-probability sampling as a technique in which units of the sample are selected on the basis of personal judgment or convenience. Bhattacharyya (2003) and Welman and Kruger (1999) argue that in non-probability sampling, some elements have no known chance of being included as the researcher uses the available subjects according to convenience. Zikmund (2003:380) argues that there are no appropriate statistical techniques for measuring random sampling error from a non-probability sample. Purposive sampling was used to choose diamond mines in Mutare District because they were accessible to the researcher and it was also cost effective for the researcher. Judgmental sampling was used to choose participants to the study as the study required people who were knowledgeable and familiar with arbitration practices.

2.10 Probability Sampling
Leedy and Omrod (2010) state that under probability sampling each member of the population has an equal chance of being selected. Zikmund (2003:379) defines probability sampling as a sampling technique in which every member of the population has a known nonzero probability of selection and cites the simple random sample as the best known probability sample, in which each member of the population has an equal probability of being selected.

Mixed research methods require the use of both probability sampling and non probability sampling (Tashakkori and Teddlie 2003:173) Probability sampling is used primarily in quantitative research while non-probability sampling is primarily used in qualitative research (Tashakkori and Teddlie 2003:173). There are seven diamond mining companies in the Mutare District and five of the companies from which a sample was drawn were chosen through simple probability. In this study both probability and purposive sampling were used.

2.11 Sampling plan
Kotler and Keller (2006:110) explain the sampling plan as consisting of the sampling unit, sample size and sampling procedure. The sampling unit refers to the target population that will be sampled, while sample size refers to how many people should be surveyed. The sampling procedure refers to how respondents should be chosen (Kotler and Keller 2006)

In this study, the sampling methods used were convenience sampling, probability sampling and judgmental sampling. The diamond mining companies in Zimbabwe are geographically spaced
throughout the country and hence the population of study which is the mining companies in Mutare District were chosen using convenience sampling. Diamond mining companies in the Mutare District were easily accessible to the researcher. There are seven major mining companies in Mutare and the researcher chose five mines through probability sampling. The respondents from the chosen mining companies were chosen through judgmental sampling. This was done because the respondents must be people knowledgeable or familiar with labour arbitration in the diamond mining sector in Zimbabwe. Respondents from the trade union and employer organisation were chosen through judgmental sampling because of their knowledge in the subject under study which is labour arbitration. The researcher personally distributed the questionnaire to the organisations. In order to improve the response rate the response the researcher distributed questionnaire through the respective human resources manager and in employer and employee associations through the respective heads of the organisations.

Teddlie and Yu (2007) state that the decision to arrive at a sample size in mixed research requires a compromise between the qualitative design and quantitative design. A qualitative design normally requires a small sample and a quantitative design a larger sample (Teddlie and Yu 2007). According to Bian (2012) the sample size in convergent parallel design may be equal or unequal in mixed method research. Teddlie and Yu (2007) states that in mixed methods the need for compromise between qualitative and quantitative design requires that the sample size for qualitative design be increased thereby compromising the collection of detailed information. The sample of 75 respondents from 5 companies was decided through compromising by increasing respondents in qualitative design to 75 respondents for collection of both qualitative and quantitative data. Qnwuegbuzie and Collins (2007) states that in mixed methods both qualitative data and quantitative data must be collected concurrently and from the same sample if the purpose for using mixed methods is triangulation. According to Creswell and Plano Clark (2007) the issue of sample size in convergent parallel design is one of the challenges of using mixed methods. Creswell and Plano Clark (2007) states that because the purposes for collecting qualitative and quantitative data are different, the sample size is different hence raising challenges in determining the sample size. The suggestion by Creswell and Plano Clark (2007) is that collection of a large qualitative sample may address this challenge. This is also stated by Teddlie and Yu (2007). Accordingly in this research to address the issue of different sample sizes, the researcher deliberately collected a larger sample for qualitative data to match sample
for collection of quantitative data. Taking into account that both sets of data was collected concurrently and from the same sample and also taking into account that according to Bian (2012) the sample size for both sets of date may be equal or unequal, in this study both sets of data were collected from the same respondents.

2.12 Data Collection Instruments and Procedures

According to Sekaran (2004), data collection methods include interviews, questionnaires and observation methods. In mixed methods research, data collection may be done either concurrently or sequentially (Onwuegbuzie and Collins 2007) Concurrent collection of data entails collection of qualitative data and quantitative data at the same time. Sequential collection of data entails collecting either qualitative data first and use of the findings to collect quantitative data or vice versa. The determination of whether data is collected concurrently or sequentially is based on the purpose for using mixed methods (Creswell 2007). Where the purpose for using mixed methods is triangulation, as in this case, then data collection is done concurrently (Onwuegbuzie and Collins 200) In this study both qualitative data and quantitative data was collected concurrently from the same respondents because the purpose of using mixed methods in this study was triangulation.

According to Creswell and Plano Clark (2007) a questionnaire which is open–ended and closed–ended may be used to collect both qualitative data and quantitative data at the same time from same respondents. In the current study, open ended part of the questionnaire was used to collect qualitative data while closed–ended part of the questionnaire was used to collect quantitative data. In this study, the researcher used a single questionnaire which is open ended and closed ended to collect qualitative and quantitative data respectively. The use of a single questionnaire was appropriate for research this because data is collected concurrently and from the same respondents

The data was collected using personally administered questionnaires. Sekaran (2003:251) presented the following advantages for using personally administered questionnaires being less expensive in that the questionnaire was distributed to respondents at within two days. The anonymity encouraged respondent to take part because their identity remained confidential.
Blaxter, *et al.* (2003) argues that although there are potential difficulties in devising and using a questionnaire, there are also a number of different ways in which questionnaires can be administered. Questionnaires can be distributed by post to intended respondents, can be administered over telephone or face to face and can also be sent over internet. The researcher personally distributed and collected the questionnaire. The researcher personally distributed the questionnaire and collected the questionnaire for the purpose of improving the response rate.

The questionnaire (*Appendix B*) used to collect data was divided into three areas that is Part A, B and C. Part A contained information about the respondents, Part B contained survey questions used to collect quantitative data while Part C was used to collect qualitative data. The headings on questionnaire clarified the information sought. The questions

### 2.13 Pilot Study

Mc Burney (2001) defines pilot study as a tentative small-scale study done to pre-test and modify study design and procedures. For this research, a pilot study comprising 10 respondents was done. The respondents involved in the pilot did not participate in the main research. The respondents were requested to answer all questions. It took 15 minutes on average to answer the questionnaire. This was done mainly to test the research instrument.

The respondents showed difficulty in understanding some terminology. The researcher replaced the terms with simpler words in order to make all sentences understandable. The study continued with the same set of questions as simplified.

### 2.14 Reliability and Validity the Data Collection Instrument

To ensure the reliability of the measuring instruments, the researcher ensured that the questions or statements on a questionnaire schedule were not ambiguous, tricky or presented in a confusing format. For this research instrument the most suitable type of validity is face validity because the research will comprise questionnaires administered to individual respondents. The respondents, who were the target population of this research, commented on the questionnaires that were provided to them in order to assist the research instrument to answer the research objectives.

A pilot study was done, then after the results of the pilot study the same process was be repeated and gave results consistent with the pilot study results. Basic to the validity of a questionnaire is asking the right questions phrased in the least ambiguous way. The researcher ensured that the
right questions were asked, and that the questions were phrased in clear and least ambiguous manner. The researcher ensured that the questions adequately answer the research question. To ensure reliability and validity of the data collection instrument, a pilot study was done to ensure that questions were clear, simple and that they provided answers to research questions. After the results of the pilot study a re-test was done and the same results were obtaining thereby confirming the reliability and validity of the questionnaire used.

2.15 Data analysis and Presentation.
Proctor (2000) states that analysis of data requires that all primary data received are edited to correct errors or omissions. Schindler, et al. (2003) state that data analysis involves reducing accumulated data to a manageable size, developing summaries, looking for patterns, and applying statistical techniques. According to Onweugbuzie and Leech (2006) in convergent parallel research design, quantitative data and qualitative data are analyzed independently using techniques applicable to quantitative and qualitative data respectively. Descriptive statistics was used to analyse quantitative data and thematic content analysis was used for analysing qualitative data. Quantitative data is presented in form of percentages, tables and graphs and qualitative data presented using tables and qualitative statements.

According to Onweugbuzie and Leech (2006) comparison of results to confirm or disconfirm similarities of findings is one of the activities done in the analysis of qualitative and quantitative data. In this study analysis of qualitative and quantitative data was done independently. Findings from qualitative data were compared with findings from quantitative data. Findings from qualitative data were compared with findings from quantitative data. A single report of findings was made after comparison.

2.16 Ethical Considerations
According to Saunders et al (2009) there are three basic principles that define ethics of research involving human beings and these are beneficence, respect of persons and justice. It is basic principles that human are not harmed or suffer any adverse consequences by undertaking in the research. In this study the researcher advised the subjects as shown in Appendix A about their right to privacy and confidentiality. The participants were advised that they could withdraw at any stage of the proceedings. All participants participated with full knowledge of their right as shown on Appendix A.
2.17 Summary.
Chapter 3 considered research methodology. The next ensuing chapter 4 presents, analyses and interprets data.
CHAPTER 4

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.0 Introduction

This chapter makes an analysis and interpretation of research findings. Results were presented in the form of discussion of results embracing reference to theory and empirical studies.

3.1 Response Rate.

75 Questionnaires were distributed to respondents and 56 were completed and returned. The response rate is 74.7%. The response rate was high enough to allow for continuation of the research and to render reliability and validity of results of the study. The response rate is higher than 50% that is considered appropriate as stated by Saunders et al (2000).

3.2 Sample Characteristics

The sample was made up of 46 employees and 10 employers making an overall sample of 56 respondents. The 46 employees were made up of 12 members of the Trade Union and 34 members of the workers committee drawn from 5 mining companies. The employer sample was made up of 5 human resources managers from 5 mining companies and 5 mining executives who are members of the Chamber of Mines.

3.2.1 Ages of Respondents

54 respondents representing 87.7% of the respondents were between the ages of 31 to 46 years. This showed that the majority of the respondents were mature individuals capable of clearly understanding of the issues around arbitration.

3.2.2 Level of Education

25 employees representing 54.3% have attained Diploma Level qualifications. 11 employees possess a first Degree representing 23.9% and 1 employee has a Masters degree representing 2.2% of the employee respondents. A total of 37 employees representing 80.4% have diploma and above qualifications. 6 employer respondents had first Degrees making up 60% while 4 representing 40% have Masters Degree. The overall percentage of the respondents who posses
Diploma and above was 83.4%. The level of education by the respondents shows that they are people who are able to fully comprehend arbitration processes.

3.2.3 Years of handling labour relations

Table 1: Years Handling Labour Rations

<table>
<thead>
<tr>
<th></th>
<th>employee/trade union</th>
<th>employer/employer organisation</th>
<th>Overall</th>
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<tbody>
<tr>
<td>Frequency</td>
<td>%</td>
<td>Frequency</td>
<td>%</td>
</tr>
<tr>
<td>1.25</td>
<td>1</td>
<td>2.2</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>17.4</td>
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<tr>
<td>4</td>
<td>14</td>
<td>30.4</td>
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<tr>
<td>5</td>
<td>6</td>
<td>13.0</td>
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<td>6</td>
<td>7</td>
<td>15.2</td>
<td>4</td>
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<tr>
<td>7</td>
<td>5</td>
<td>10.9</td>
<td>2</td>
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<tr>
<td>8</td>
<td>1</td>
<td>2.2</td>
<td>1</td>
</tr>
<tr>
<td>9</td>
<td>2</td>
<td>4.3</td>
<td>2</td>
</tr>
<tr>
<td>10</td>
<td>1</td>
<td>2.2</td>
<td>0</td>
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<tr>
<td>15</td>
<td>1</td>
<td>2.2</td>
<td>0</td>
</tr>
<tr>
<td>46</td>
<td>100</td>
<td>10</td>
<td>100</td>
</tr>
</tbody>
</table>

Only 1.8% had less than 3 years in handling labour relations matters and 89.2% had more than 3 years experience in labour relations. The experience possessed by respondents in labour relations was appropriate for the respondents to take part in this study.

3.2.4 Years handling arbitration

89.2% of the respondents had 3 years and above in handling arbitration cases and only 1 employee had less than 3 years. The experience by the respondents was appropriate and made them able to comment on arbitration processes
Table 2: Years Handling Arbitration

<table>
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<tr>
<th></th>
<th>employee/trade union</th>
<th>employer/employer organisation</th>
<th>Overall</th>
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<td></td>
<td>Frequency</td>
<td>%</td>
<td>Frequency</td>
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<tr>
<td>1.25</td>
<td>1</td>
<td>2.2</td>
<td>0</td>
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<tr>
<td>2</td>
<td>0</td>
<td>0.0</td>
<td>1</td>
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<tr>
<td>3</td>
<td>8</td>
<td>17.4</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>16</td>
<td>34.8</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>7</td>
<td>15.2</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>8</td>
<td>17.4</td>
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<td>7</td>
<td>5</td>
<td>10.9</td>
<td>2</td>
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<td>8</td>
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<td>9</td>
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<tr>
<td>15</td>
<td>1</td>
<td>2.2</td>
<td>0</td>
</tr>
<tr>
<td>46</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Number of years handling arbitration: n=56

3.2.5 Knowledge of objectives of arbitration by respondents.

96% of the respondents state that they know the objectives of the arbitration process making them suitable respondents to provide perceptions regarding the effectiveness of arbitration as a method of dispute resolution in the mining sector in Zimbabwe. Table 3 below shows the respondents’ responses
Table 3: Knowledge of objectives of arbitration

<table>
<thead>
<tr>
<th></th>
<th>employee/trade union</th>
<th>employer/employer organisation</th>
<th>Overall</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Frequency</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>strongly agree</td>
<td>13</td>
<td>2</td>
<td>15</td>
<td>26.8</td>
</tr>
<tr>
<td>mostly agree</td>
<td>31</td>
<td>8</td>
<td>39</td>
<td>69.6</td>
</tr>
<tr>
<td>neither agree/disagree</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1.8</td>
</tr>
<tr>
<td>mostly disagree</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1.8</td>
</tr>
<tr>
<td></td>
<td>46</td>
<td>10</td>
<td>56</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Knowledge of objectives by respondents: n=56

3.3 **Quantitative presentation, analysis and interpretation:**

Presented, analyzed and interpreted first is the quantitative data collected to answer the research questions. In each case survey questions were used to answer the research questions.

3.3.1 **[i] How employees and employers perceive the efficiency.**

This research question was answered by answering six survey questions. Each survey question is presented, and the response to the question is presented, analysed and interpreted.

(a) Arbitration fees of $300.00

41 employees making up 89.1% of the employees strongly agreed that the $300.00 paid for arbitration is high. 3 employees making up 6.5% of the employees mostly agreed that the fees of $300.00 are high. A total of 44 employees representing 95.6% considered fees paid to arbitrators for individual dispute as high. None of the employees considered the fees as low. The 4.6% were not sure whether the fees were high or not. The figure below shows the response by respondents.

60% of the employers did not agree that the fees were high and 1.8% of the employer respondents strongly disagreed with the statement that the fees were too high. 30% of the employer respondents were not sure whether the fees were high or not.
The finding is that 95.6% employees considered the fees paid to arbitrators as being high. 60% of the employers consider the fees paid to be low. However, 30% of the employer respondents were unable to say whether the fees were high or not with 1.8% of the employers agreed that the fees are high. The differences in perception regarding the fees paid can be explained by ability to pay. Overall, 78.4% of the respondents found the fees to be high. The overall finding is that the fees are high.

The implications for the high fees make the arbitration process costly and hinder accessibility to the arbitration process as a result of inability to pay. The figure below show the response of respondents.

Figure 1: Arbitration fees of $300.

<table>
<thead>
<tr>
<th>The arbitration fees of 300 paid for individual dispute is high</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
</tr>
<tr>
<td>strongly agree</td>
</tr>
<tr>
<td>mostly agree</td>
</tr>
<tr>
<td>neither agree/disagree</td>
</tr>
<tr>
<td>mostly disagree</td>
</tr>
<tr>
<td>strongly disagree</td>
</tr>
</tbody>
</table>

Arbitration fees for individual disputes: n=56

b). Arbitration fees of US$400.00 paid for collective disputes is high
89.1% of the employees considered the fees as high and 2.2% of employers did not consider fees as high while 2.2% were not sure whether the amount was high or not. 70% of the employers did not consider the fees as high while 30% were unsure. The finding is that the majority of the employees considered the fees as high while a majority of employers did not consider the fees as high. However a 30% of the employer respondent did not consider fees as high or low. The difference in perceptions between employees and employers may be due to ability to pay. The general finding is that the fees are high.

Table 4: Arbitration fees $400.00

<table>
<thead>
<tr>
<th></th>
<th>employee/trade union</th>
<th>employer/employer organisation</th>
<th>Overall</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>%</td>
<td>Frequency</td>
</tr>
<tr>
<td>strongly agree</td>
<td>39</td>
<td>84.8</td>
<td>0</td>
</tr>
<tr>
<td>mostly agree</td>
<td>2</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td>neither agree/disagree</td>
<td>1</td>
<td>2.2</td>
<td>3</td>
</tr>
<tr>
<td>mostly disagree</td>
<td>1</td>
<td>2.2</td>
<td>6</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>3</td>
<td>6.5</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>46</td>
<td>100</td>
<td>10</td>
</tr>
</tbody>
</table>

Arbitration fees for collective disputes: n=56

(c) The Arbitration fees paid of $500.00 paid for disputes between employer and employee association is high.

57.4% of the employees regarded the fees as high and 30% were not sure whether the fees are high or not. 80% of the employers did not consider the fees as high while 10% are not sure with 10% considering fees as high. A majority of employees considered fees as high while a majority of the employers considered the fees as not being high.
The finding is that employees consider amount paid to arbitrators as high and employers consider amount paid for arbitration as low. The difference may depend on ability to pay as employers are in a better position to pay than employees. Employees therefore considered access to arbitration as costly while employers considered it as affordable. This finding agrees with Maitreyi and Duve (2011) study that access to arbitration is negatively impacted by prohibitive costs. An efficient method of dispute resolution must be accessible to all irrespective of the financial circumstances of the individual as stated by Bendeman (2006). The fact that employees considered access to arbitration process costly it meant that the efficiency test fails on account of its lack of accessibility to all irrespective of the financial position of the individual.

(d) The resources spent on arbitration have adverse effect on operations

Figure 2: Effect of resources spent on arbitration on operations

Resources spent on arbitration have adverse effect on operations: n=56.

66.7% of the employees agreed that resources spent on arbitration adversely affect operations and 100% of the employers agreed that resources spent on arbitration have adverse effects operations. An overall 72.7% of all the respondents agreed that arbitration has adverse effect on operations. And 3.6% of the employees did not agree that arbitration has negative effects on arbitration. 28.9% of employee neither agreed nor disagreed. The finding is that the majority of
the respondents agree that arbitration has adverse effect on operations. The perception by the respondents showed that arbitration as a method of dispute resolution does not promote productivity in the organization. According to Budd and Clovin (2008) an efficient dispute resolution must promote productivity at workplace. The finding that the arbitration as practiced currently in the mining sector does not promote productivity affects its ability as an efficient dispute resolution method. The results are not consistent with the observation by Budd and Clovin (2008) and hence arbitration is not efficient on account of the fact that it negatively affects operations of the organization. The response of the respondents is as shown on figure above.

(e) The arbitration process adversely affects relationship at workplace.

Table 5: Effects of arbitration on employer-employee relationship

<table>
<thead>
<tr>
<th></th>
<th>employee/trade union</th>
<th>employer/employer orgs</th>
<th>Overall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>%</td>
<td>Frequency</td>
<td>%</td>
</tr>
<tr>
<td>strongly agree</td>
<td>29</td>
<td>3</td>
<td>32</td>
</tr>
<tr>
<td>mostly agree</td>
<td>10</td>
<td>7</td>
<td>17</td>
</tr>
<tr>
<td>neither agree/disagree</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>mostly disagree</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>46</td>
<td>10</td>
<td>56</td>
</tr>
</tbody>
</table>

Effects of arbitration on employee-employer relationship n=56

84.7% of the employees agreed that arbitration adversely affects employer-employee relationship and 100% of employers agreed that arbitration adversely affects employer-employee relationship. The finding is that arbitration negatively affects employer–employee relationship. Cole (2013) states that an efficient dispute resolution method promotes employer–employee relationship which is essential for productivity at workplace. The finding that arbitration does not
promote but strains employer–employee relationship is inconsistent with the observation of Cole (2013) and Budd and Clovin (2008) and hence failed the test of an efficient dispute resolution method. The implications of the finding is that arbitration as currently practiced in the diamond mining sector is not efficient because it strains employer-employee relationship.

(f) Time taken to issue award

73.4% of the employees agreed that the time taken for an award to be issued from time matter is referred to an arbitrator to the time award is over 60 days and 100% of the employer agreed that the time taken for an arbitration award to be issued from date matter is referred to the arbitrator and time of issue of the award is over 60 days. In overall 78% agreed that the time taken is over 60 days. Both the employer and employee agreed that the time taken to make an award is long. While the arbitration process in Zimbabwe does not give time frames, the 60 days is used to measure whether the process is expeditious or not by using the time frames of arbitration process in South Africa. The finding is that the time taken to arrive at an award from time issue is referred to an arbitrator is long and hence arbitration is not expeditious. These findings do not agree with the finding in Maitireyi and Duve (2011) study which found out that arbitration was expeditious. The difference may be due to the turnaround periods used and in Maitireyi and Duve (2011) study. In the Maitireyi and Duve study (2011) the time used to determine whether arbitration is expeditious or not is not stated while in this study 60 day period was used. The implications of this finding are that arbitration as currently practiced is not efficient because it is not expeditious. The Figure below shows the response by respondents on issue of time taken from time matter is referred for arbitration to the time arbitration is issued.
Figure 3: Period taken to issue arbitration award

Period taken to issue an award: n=56

The finding on the efficiency of the arbitration as currently practiced is that it is not efficient because of the following reasons:

a) The cost for arbitration is high,

b) That arbitration fees are a hindrance to accessibility to arbitration for the employees,

c) That the arbitration process negatively affects the company’s operations,

d) That arbitration process strains relationship between employees and employers

e) That the arbitration process is not expeditious.

An effective dispute resolution method is one which is efficient in the resolution of disputes. The finding that arbitration is not an efficient method of resolving labour disputes means that it is not an effective method of dispute resolution

3.3.2 1(ii) How employees and employers perceive fairness and justice (equity).

(a) Explanation of roles by arbitrator.
Figure 4: Explanation of roles by arbitrator

85% of the employees agreed that the arbitrator explains the role of all the parties to the dispute while 100% of employers agreed that the arbitrator explains the roles of all parties to the dispute. The finding is that both the employees and employers agreed that the arbitrator explains roles of the parties. Explanation of roles of all parties according to Budd and Clovin (2008) is an important step in complying with procedural fairness in arbitration of disputes. This implies that arbitrators comply with one of the rules of fairness. The results are consistent with the observation by Budd and Clovin (2008) on observing one of the rules on fairness. The finding is that the arbitrators explains the roles to both parties to the arbitration process which is one of the requirement for complying with equity in handling labour disputes through arbitration. The views of the respondents are as shown in Figure above.
(b) Fairness to all sides

89% of the employees agreed that the arbitrator conducts the case in a fair manner and 100% of the employers also agreed that the arbitrator is fair. The finding is that the arbitrator is fair. This finding conflict with the finding in Maitireyi and Duve (2011) study which made a finding that both employees and employers perceived arbitrators as unfair. The difference may be explained by the fact that statutory instrument 173 of 2012 introduced procedures which arbitrators are supposed to follow during the hearing and introduced a code of ethics. Section 8 of the Code of ethics criminalizes failure to follow the procedures outlined. The Maitireyi and Duve (2011) study was done before the introduction of Statutory instrument 173 of 2012. The finding that the arbitrator is fair to both sides is consistent with Budd and Clovin (2008) observation that an effective dispute resolution method requires that an arbitrator be fair to both in the conduct of hearing arbitration proceedings.

(c) Provision of sufficient time to present own case by parties to the dispute.

95% of the employees agreed that parties to a hearing are given sufficient opportunity to present own case and 100% of the employers also agreed that sufficient opportunity is given. The finding is that both employees and employers agreed that the arbitrator provides sufficient time to all parties to present own case which is a requirement for fairness and justice. This finding confirms that arbitrators are complying with statutory instrument 173 of 2012 which obliges arbitrators to provide sufficient opportunity to parties to a labour dispute to present own case.

(d) Decision of arbitrators in relation to bias..

60.8% of the employees considered decisions of the arbitrators as unbiased and 39.2% of the employees considered the decisions as biased. 20% of the employers considered the decisions of the arbitrator as unbiased and 80% considered decisions as biased. The results showed that according to employers while the arbitrator conducts the arbitration process in a fair manner providing each part with sufficient opportunity to present own case, the decision that follow are biased. The response is as shown on figure below.
Figure 5: Bias on part of arbitrator

![Bar chart showing decision of arbitrator bias](chart.png)

**The decision of the arbitrator is always unbiased**

- **strongly agree**: 4.3% (0% Frequency Overall)
- **mostly agree**: 56.5% (50.0% Overall)
- **neither agree/disagree**: 19.6% (30.0% Overall)
- **mostly disagree**: 19.6% (50.0% Overall)

**Decision of arbitrator always unbiased**

n=56

While the majority of employees considered the decisions as unbiased, a large party of the employees 39.2% considered the decisions biased. There is a general trend that while both parties consider the hearing process as fair, they did not have the same confidence in relation to decisions made. The findings are consistent with the Maitireyi and Duve (2011) study that decisions of arbitrators are perceived as being biased.

(e) Time taken to enforce arbitral awards.

89.1% of the employees agree that enforcement of awards take more than 90 days from day of issue and 100% of employers agree enforcement take more than 90 days. Effective remedies are a measure of fairness and justice according to Budd and Clovin (2008). The finding is that enforcement of awards is not expeditious. This finding agrees with the study by Madhuku (2012) and Benjamin (2013).

(f) Procedures for enforcement of awards.

95.6% of the employees consider procedures for enforcement of awards as difficult and 100% of the employers agree that procedures for enforcement of awards is are difficult. The finding is that
both employers and employees consider the process of enforcement of awards as difficult. Arbitration procedures according to Bendeman (2006) must be simple and easy to the extent that they can be accessed by all irrespective of educational or financial position. The finding agrees with Madhuku (2012) who describes enforcement procedures as laborious and confusing. The arbitration process fails the test on the accessibility of enforcement procedures due to their being difficult to follow.

(g) Role of legal practitioners in enforcement of awards

95.6% of the employees and 100% of the employers agree that enforcement of awards require assistance of legal practitioners. The finding is that enforcement requires assistance of legal practitioners. The implication is that only those able to pay legal practitioners are able to enforce arbitral awards. Arbitration process which is fair and just must be a cheap method of dispute resolution (Bhorat, Pauw and Mncube 2007). Engagement of legal practitioners is costly in any situation. In this respect arbitration fails to offer a cheap method of dispute resolution and hence failed the test of fairness and justice.

(i) Quality of arbitral awards.

43.4% of the employees and 10% of the employers agreed that decisions of the arbitrators are well reasoned. 57.6% of the employees and 80% of the employer did not agree. The finding is that the majority of employees and employers consider the decisions of the arbitrators as poorly reasoned. This finding is consistent with the findings of Temba (2013) who indicated that the quality of arbitral awards in Tanzania and South Africa was poor due to grammatical and spelling mistakes. The current arbitration system failed the test on account of quality of arbitral awards issued. The response on quality of decisions as shown on the figure below.
3.3.3 **1(iii) how employees and employers perceive participation of the parties (voice).**

(a) Knowledge of labour law required in the arbitration process.

97.8% of employees and 100% of the employers agreed that participation in the arbitration process requires knowledge of labour law. The finding therefore is that for one to participate fully in the arbitration process knowledge of labour law is required. This hinders access to arbitration to participate fully to those who lack labour law. Arbitration must be accessible to all according to Bendeman (2006) irrespective of educational level. The arbitration process failed the test on accessibility to the process by all.

(b) The arbitration process is loaded with legal language

89.2% of the employees and 100% of the employers agreed that arbitration process is loaded with legal language. The finding is that the arbitration process is legalistic and hence hinders full participation of ordinary people who do not understand legal language. The process failed the
test on account of failure to provide a voice to all except those who understand legal language. Response of respondents is as shown on table below.

Figure 7: Use of legal language

<table>
<thead>
<tr>
<th>Table</th>
<th>employee/trade union</th>
<th></th>
<th>employer/employer organisation</th>
<th></th>
<th>Overall</th>
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<td>%</td>
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<td>10</td>
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n=56

(c) The arbitration process requires legal representation.

95.7% of employees and 100% of employers stated that the arbitration process requires legal presentation. Both employees and employers considered legal representation as a requirement to participate in the arbitration process. The implication is that the process gives voice to those who are able to engage and pay legal fees making the process costly. Full participation is hindered by costs and technical nature of the arbitration process. This finding agrees with Bendeman (2006) who described the South African dispute resolution as having assumed a highly technical and legalistic position. The process failed the test on account of need to engage lawyers.

(d) Choice of own representative.

All employees and employers agreed that the arbitration process allows parties to choose own representative. According to Budd and Clovin (2011) a dispute resolution method that provides
parties to choose own representative provides voice to the parties to a dispute. The finding is that the arbitration provides voice to parties by allowing parties to be represented by people of own choice. This finding is consistent with the observation of Budd and Clovin (2008) regarding providing voice to parties to a labour arbitration process.

Overall finding is that full participation of the parties is constrained by the legalistic manner in which proceedings are conducted, the use of legal language, the costs involved in hiring lawyers making participation full participation for all in the process irrespective of their standing difficult. The arbitration process as currently practiced under performed in providing voice to the parties.

The overall finding is that the arbitration process as currently practiced in the diamond mining sector in Zimbabwe is not efficient, fair and just and neither does it provide voice to parties to labour dispute. The arbitration system as currently practiced does not provide for a just, effective and expeditious resolution of labour disputes and hence it is not an effective method of dispute resolution. The process is ineffective because of the following:

a) The high cost associated with paying fees to arbitrators and hiring of legal practitioners/consultants

b) The failure of the process to promote productivity at workplace

c) The long delays in resolving labour disputes through arbitration

d) The highly technical and legal procedures used in the arbitration process.

e) The difficult procedures for enforcement of awards.

f) The perceived bias in decision making on the part of arbitrators

3.4 Qualitative presentation, analysis and interpretation

This section presents analyses and presents qualitative data collected from the respondents to answer the research question. The data was collected from the open-ended part of the questionnaire. The collected data was used to answer the research questions.
3.4.1 1 (i) how employee and employers perceive the efficiency.

The research question was answered using four-open ended survey questions in which the respondents answered the questions in their own words and content analysis was used to analyse and interpret the responses to the questions asked.

(a) What is your comment regarding the fees paid to arbitrators for arbitration processes in relation to affordability?

There was a general consensus with 96% of the employees that the fees paid for arbitration are high but 70% employers said the fees were affordable. This may be explained by the financial soundness of organizations compared to individual employees. Some employers however thought that the fees were affordable but high for employees. This brings to the conclusion that the fees are high especially for employees. One employee stated “The fees are very high and must be scrapped”. An employer stated that “The fees are affordable and justified”. Another employer stated that “The fees are affordable but may be a burden on the employee”. The finding is that the fees are high are supported by 90% of the employee and 30% of the employers who 20% of them who stated that although the fees are affordable the employees may not be able to pay.

b] In your opinion does the amount paid to arbitrators promote access to the arbitration process? Explain your answer

The responses also substantiate the point of high fees. 80.4% of the employees and 60% of the employers were saying the fees are a hindrance to access arbitration process. One employee respondent stated that “The fees paid to arbitrators is high and employees may fail to get obtain the award from the arbitrator because of inability to pay”. Another employee stated that “These fees are too high for employers to pay, they affect ability of employee to access justice”. Another employer stated that “The fees are not an obstacle to any employee who has a genuine case”. Another employer stated that “The fees may be a hindrance because employee may not be able to raise the fees”. There is agreement that the fees paid to arbitrators is a hinderers access to arbitration.

c] In your opinion is the assistance of legal practitioners necessary in arbitration proceedings?
All the employers 100% said the process requires the services of the lawyer and 89.1% of the employees also said they require lawyers. Some said since the employer uses a lawyer there was no other option than to seek legal representation. The general conclusion therefore is that legal assistance is necessary. One employee stated that “There is use of legal language so a lawyer is necessary”. Another employee stated that “Employers always engage legal practitioners so it is necessary for me to have one”. An employer stated that “Arbitration is a legal process where knowledge of labour law is required so legal practitioners are a necessity”. The finding is that the arbitration process as currently practiced has made lawyers a permanent feature thereby escalating the cost of the arbitration process. The use of legal practitioners makes the process highly technical and legalistic. The costs associated with hiring legal practitioner and the assumption of legalistic procedures negatively impacts on the arbitration system by virtue of being costly and highly technical and yet arbitration must be accessible to all irrespective of educational or financial status (Bendman 2006).

(d) Employer/ employee Relationships

Employees and employers agree that arbitration process does not promote employee-employer relationship at the workplace. The parties actually state that arbitration strains relationship. One employer stated that “If an employee wins an arbitration case and comes back to work, the employee becomes difficult to manage”. Another employer stated that “The arbitration process strains employer-employee relationship because there is always a winner and a looser”. An employee stated that “Employer always harasses employees who take cases for arbitration”.

The finding is that arbitration as a method of dispute resolution and is currently practiced does not promote good employer-employee relationship necessary for productivity and hence to that extent it is not an efficient method of dispute resolution.

The finding is that arbitration is not an efficient dispute resolution method because of the following:

a) It is costly on account of fees paid to arbitrators and hired legal practitioners

b) It has assumed a highly technical and legalistic posture

c) It does not promote employer-employee relationship at workplace
3.4.2 1[ii] How employees and employers perceive fairness and justice (Equity).

(a) Employees and employers perceptions on fairness, knowledge of arbitrators, bias and quality of decisions

63% of the employees agreed that the conduct of proceedings is fair but 90% of employers stated that the conduct of proceedings is unfair. 36% of employees stated that the process is unfair. One employee stated that “Arbitrators are fair to both sides”. Another employee stated that “Arbitrators favour the rich and those represented by well known lawyers”. An employer stated that “Arbitrators always favour employees”. While a majority of employees perceive arbitrators as fair, 90% of the employers perceive arbitrators as unfair. A 36% of the employees which is not a small number also perceive arbitrators as unfair.

When the issue of bias was responded to, 56.5% of the employees agreed that the process was not biased while 39.1% of the employees considered arbitrators as biased and provided reasons such as bribery, corruption and tendency to please the rich and the renowned of lawyers. 36% of employers considered the decisions of the arbitrators as biased. A 39.1% of the employees considered arbitrators to be biased. One employee stated that “Arbitrators dance to the tune of employers”. One employer respondent stated that “There is always bias in favour of the employee”. Taking into account that 90% of the employers and 39.1% of the employees perceive arbitrators as biased, the finding is that the arbitration process as currently practiced is perceived as biased.

60.9% of the employees and 20% of employer view the quality of decisions as good and clear, which is in sharp contrast with the 80% of employers who stated that the decisions are not well reasoned and lack clarity. One employer respondent stated that “The decisions are vague and lack clarity”. One of the employee respondent stated “The quality of decisions is good”. The finding is that the quality is perceived as fair by a majority employee as good but as bad by employers. Employees who consider the quality to be poor are 20% which is a sizeable number and hence the general finding is that the quality of arbitral awards is perceived as being not good.

Demonstration of adequate knowledge of labour arbitration by arbitrators

The knowledge of the labour law is very critical in arbitration. Employers and employees seem to agreed on this aspect with 80% of the employees pointing that knowledge of labour is good.
while 55.6 of the employers consider the knowledge of arbitrators as inadequate. An employer respondent stated that “Arbitrators have a vague understanding of the labour law.” Most employers stated that arbitrators did not possess business appreciation. An employer respondent stated that “Arbitral awards at times do not consider the business implications which will not only affect the employer but the employee as well.” Both parties in the main considered arbitrators as having adequate knowledge of the law although a 44.4% of the employers considered arbitrators as lacking in the knowledge and 20% of employees also considered arbitrators as lacking in knowledge.

(b) Procedures of enforcement of arbitral awards

Both the employees (97.8%) and the employers (100%) agreed that the enforcement of awards is difficult, one requires good knowledge of court procedures thus a legal practitioner is necessary to assist. One employee respondent stated that “Enforcement of awards is not easy because they are specific procedures to be followed” An employer respondent stated that “Enforcement of arbitral awards is done at the court and court procedures are used and knowledge of court procedures is required. It is not easy.”

The finding is that the enforcement of arbitral awards require someone who is knowledgeable in court procedures and to that extent restrict access to those without the requisite knowledge and yet arbitration must be accessible to all who need it irrespective of their circumstances.

(c) Time taken from the time an award is issued to the execution of the award

71.1% of the employees stated the process may take from 1 year to four years while 77.7% of the employers also gives 1 year to 4 years. While there is no specification for this period in Zimbabwe, the time taken is too long considering that after leaving employment the majority of employees in Zimbabwe have no other means to sustain themselves. The process failed the test of fairness on the basis of remedies not being effective, in that the execution of awards is not expeditious. The response of the respondents is as shown below.
3.4.3 1[iii] How employees perceive the participation

Three survey questions were asked to answer this research question. Each of the survey question is presented and responses are presented, analyzed and interpreted

(a) Arbitration procedures easy or difficult?

91.3% of the employees and 100% of the employers stated that the arbitration process is formal and highly technical. 8.7% of the employee however said it is easy to follow and not strict. One employer respondent stated that “The procedures are formal and are not easy to follow as they are specific procedures to be followed and require legal representation” An employee respondent stated that “Arbitration processes follow specific procedures and are not easy to follow require assistance”. The finding is that arbitration as currently practiced follows formal procedures and those procedures are not easy resulting in engagement of lawyers.

(b) In your opinion does the arbitration process encourage participation of all parties in dispute resolution Encourage ? Explain your answer
The majority of the employees which 78.3 % perceived the process to encourage participation but 21.7% of the employees disagreed. 100% of the employers perceived of the arbitration process as not encouraging participation as it requires a lawyer. One employee respondent stated that “*It encourages participation because each party is given an opportunity to present own case*” An employer representative stated that “*The process requires engagement of lawyers so those who cannot afford lawyers are constrained. It does not encourage participation*”. The finding is that the employees and employers are not in agreement. To the extent that the process requires the use of lawyers, it does not encourage participation of all parties as those that cannot afford lawyers are negatively affected.

(c) Is arbitration cheap, informal and expeditious.

In terms of expeditious resolution of labour disputes the process was viewed as taking a long time and was considered expensive as one has to pay arbitrator, lawyer and consultants, time consuming since finalization of case takes time and if either party is unsatisfied there is need for appealing, the procedures are formal (legal based). 89.1% of the employees and 100 % of the employers supported this view. The finding is that the arbitration is considered as expensive, time consuming and formal and legalistic.

The finding is that the participation of the parties is compromised by the following:

a) The costs of hiring lawyers

b) The long time taken to resolve cases

c) The highly technical and legalistic procedures used in arbitration.

Suggested problems and solutions.

The following were identified as the problems-

a) Absence of a body that monitors arbitration, Currently the process does not have guidelines, slow and there is failure to enforce awards on time

b) Arbitrator lack the business knowledge

c) Corruption and bribes
d) The costs for the process are high

e) Lack of clarity in enforcement procedures

f) Lack of confidence in the arbitration process

The respondents proposed some changes they felt would enhance the arbitration process in Zimbabwe, some of the changes suggested by the respondents formed the basis of some of the recommendations made in this study. 32.6 % of the employees were of the view that enforcement of awards procedures should be made simple and 90 % of the employees want arbitration to be for free. Like the South African scenario 15.2 % of the respondents want a body to monitor the arbitration process. 2.2 % from the employee side and 25% of the employers prefer labour arbitration to be handled like voluntary arbitration where appeals are restricted. Finally 62.5 % of the employers felt changes must be in the selection of arbitrators who are good in law and business.

3.5 Arbitrator Preference.
84.2 % of employees and 100% of employers favored the independent arbitrator and their main reason for that choice was that independent arbitrators are more efficient as compared to other arbitrators. 13.2% of employee favored the NEC because they offer free service. Only 2.6 % preferred a government arbitrator because they are not intimidated.

3.6 Findings from qualitative data presentation and analysis
The arbitration process as currently practiced is not efficient, and that it is not fair and just, and that does not provide voice to the parties. The process does not provide for a just, effective and expeditious method of dispute resolution and hence it is an ineffective method of dispute resolution.

3.7 Comparison of findings between survey and case study methods.
The findings between the two different methods are compared using the findings of the following factors which are the basis for evaluation of the effectiveness arbitration system as a method of resolution of labour disputes in the mining sector in Zimbabwe. The factors are efficiency, equity and voice. The comparison as shown in the table below
Table 6 Comparison of findings

<table>
<thead>
<tr>
<th>Factor</th>
<th>Quantitative data findings</th>
<th>Qualitative data findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>Arbitration is not efficient due to costs, long time taken to resolve cases</td>
<td>Arbitration is not efficient due to high costs of the arbitration process arising from arbitration fees and cost of hiring lawyers</td>
</tr>
<tr>
<td>Fairness and Justice</td>
<td>Arbitration is not fair and just due to the fact that arbitration is loaded with legal language which curtails participation of those who are not familiar with legal language. It is also not fair due to the fact that the remedies are not effective due to the difficult procedures of enforcing awards. Arbitration was also found not to be fair and just due to perceived bias on the part of arbitrators</td>
<td>Arbitration is not fair and just due to the fact that arbitration procedures are formal and legalistic. It is also not fair and just because of difficulties and delays in enforcement procedures. Arbitration is not fair and just because the entire arbitration process take a long time as long as five years in other cases. Arbitrators were also perceived as biased.</td>
</tr>
<tr>
<td>Voice</td>
<td>Arbitration procedures do not give voice to all irrespective of educational and/or financial status because of the formal procedures used in process and use of legal language</td>
<td>Arbitration procedures do not provide voice to all because of the use of legal language to the extent that the use of legal practitioners has become a necessity there by making access to arbitration difficult to poor employee who are unable to understand legal language or afford the cost of arbitrators and cost of hiring legal practitioners</td>
</tr>
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</table>

3.8 Combined Findings

Both methods confirm that the arbitration process is not efficient, it is not fair and just and it does not provide voice to parties to the arbitration process. The arbitration process does not
therefore provide a just, effective and expeditious resolution of labour disputes hence as currently practiced it is an ineffective method of dispute resolution.

3.9 Summary of Chapter:
Chapter 4 considered data presentation, analyses and interpretation. The next ensuing chapter 5 presents findings, conclusion and recommendations arising from the study.
CHAPTER 5

SUMMARY FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter presents summary, conclusion findings and recommendations of a study conducted to evaluate the effectiveness of arbitration as a method of resolving labour disputes in the diamond mining sector in Zimbabwe. It also provides for areas for further studies emerging from findings of the research.

5.1 Summary findings of study.

a) Literature does show that any dispute resolution method that is just, effective and expeditious must be efficient in the conservation of the organization’s scarce resources both time and money. This study has shown that arbitration takes long to conclude labour disputes and that it is costly in that there is payment of arbitrators and legal practitioners as the study has revealed that representation by legal practitioners is a necessity. Results has also indicated that arbitration results in strained employer-employee relationship and that it negatively impacts on productivity. Arbitration as currently practiced is not an efficient method of resolving labour disputes.

b) Budd and Clovin (2010) identifies equity which is fairness and justice as key element in measuring the effectiveness on any dispute resolution method. This study has shown that fairness and justice are compromised by unbiased decisions whose quality is poor. It is further compromised by the ineffectiveness of remedies given by the arbitrators as a result of difficult enforcement procedures which take a very long time to give results and further requires the assistance of legal practitioners. The use of legal practitioners raises costs. The arbitration process as currently practiced does not provide for a fair and just resolution of labour disputes.

c) Any just and fair dispute resolution method must provide any opportunity for all parties to fully participate in the process irrespective of the person level of education (Bendeman 2006). This study has shown that arbitration has become legalistic and that full
participation requires knowledge of labour law. This therefore means that those not familiar with legal language and labour law cannot fully participate on their own account in arbitration as currently practiced. This therefore means arbitration fails to give voice to all parties and hence it is not fair and just to that extent.

5.2. Conclusions.
An efficient arbitration system is one that conserves scarce resources of the organization. The research finding has indicated that arbitration is not efficient because it is costly, takes a long time, does not promote productive relationship in organization. The arbitration process as currently practiced is not fair and just because of the technical and legalistic processes used during the arbitration process and failure to provide effective remedies. The use of legal language and the costs associated with engaging lawyers and arbitration fees restricts access to arbitration. The arbitration process as currently practiced is neither efficient, fair and just nor does it provide voice and hence it is not fair, just and expeditious. A dispute resolution method that does not provide for a fair, just and expeditious resolution of disputes is ineffective. Therefore arbitration as currently practiced is an ineffective method of dispute resolution.

5.3 Recommendations of the Study
a) It is recommended that a body to take charge of arbitration in the form of the Commission for Mediation, Conciliation and Arbitration of South Africa and Commission for Mediation and Arbitration in Tanzania be established. This is in line with other SADC countries like Lesotho and Swaziland. The body will be funded by the State but will act independently.

b) It is recommended that arbitration be conducted at no cost to ensure that all parties can equally access arbitration without the impediments of financial resources.

c) To address the issue of biased decision making and poor quality of decisions, it is recommended that all decisions of the arbitrators be subject to automatic review. It is also recommended that that there be continuous training of arbitrators.

d) There are no time frames within which an arbitrator must make a decision. To ensure that the period of handling arbitration is managed to reduce time taken, regulation must be put
into place that provides for time frames within which certain activities must be completed in the arbitration process.

e) Benjamin (2013) indicated that the establishment of the Electronic Management System has improved the quality of arbitration through reduction of time taken to finalise a dispute in South Africa. The Electronic Management System is a system that records and provides details about the status of each case referred to the CCMA. It provides targets date showing dates by which a hearing must have taken place and dates by which an award should be issued. It is recommended that all cases referred for arbitration be captured in one system irrespective of where the case has been reported to ensure that progress on the case can be monitored.

f) The Labour Court does not currently have the jurisdiction to enforce awards or decisions made by arbitrators or the Labour Court. Such awards based on the amount are either enforced by the Magistrate Court or the High Court. It is common cause that these courts are already congested thereby further delaying the finalization of the dispute. It is recommended that the Labour Court be granted jurisdiction to enforce its own awards or decisions and decisions of arbitrators.

g) The enforcement procedure for arbitral awards lacks clarity and requires the engagement of legal practitioners. It is recommended that clear and simple enforcement procedures be put into place so that employees do not incur costs and delays in enforcing awards in their favour.

h) In South Africa according to Benjamin (2013) the establishment of a Training Unit within the CCMA for continued training of commissioners has improved the quality of decisions/awards issued by commissioners. It is recommended that there be continuous and mandatory training for arbitrators.

5.4 Area of further study.
The research revealed important aspects that warrant further study which are;

a) The preference by respondents to independent arbitrators as compared to National Employment Council and Ministry of labour arbitrators who conduct free arbitration.
b) The basis of perceptions by respondents that decisions of arbitrators are biased.
References


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Chartier and Gosselin (1962) :Some basic Issues in Labour Management-Arbitration: Industrial Relations Vol 17 (3) pp127-158


GORVEMENT PUBLICATIONS

Zimbabwe Government


Government of Zimbabwe Chapter 28:01, Harare, Zimbabwe

Labour Relations (Conciliation) Regulations Statutory Instrument 217 of 2003

Labour Relations (Arbitration) Regulations Statutory Instrument 173 of 2012


DECIDED LABOUR CASES.

Lucia Mararike and 4 others Vs Trust Me Security HH 345-14: www.zimlii.org/harare-high-court?

Tirivangani Vs University of Zimbabwe SC 23/ 2012. www.zimlii.org/judgement/supreme-court

Diamond Mining Company Vs Foster Mukwada and others LC/MC/16 /14. www.zimlii.org/zw/judgement/labour-court
APPENDIX A: REQUEST TO COMPLETE QUESTIONNAIRE

Dear Participant

RE: AN EVALUATION OF THE EFFECTIVENESS OF ARBITRATION PROCESS IN THE MINING SECTOR IN ZIMBABWE.

You are asked to participate in this research conducted by Shumba Elimon currently enrolled for a Master's Degree in Business Leadership at Bindura University of Science Education. The study is undertaken in partial fulfillment of the requirements for the attainment of the Master Degree in Business Leadership. You have been selected as a possible participant in this study in your capacity as an employee/trade union or employer/employers’ organisation party to labour arbitration in the Mining Sector in Zimbabwe.

1. PURPOSE OF THE STUDY: The purpose of the research is to evaluate the effectiveness of the arbitration process in the Diamond Mining Sector in Zimbabwe as a method of resolving labour disputes.

2. PROCEDURES: If you agree to participate in this study, we would ask you to answer the questions/statements on the questionnaire in all honesty and to the best of your knowledge.

3. POTENTIAL RISKS AND DISCOMFORTS: Participation in this study does not predispose anyone to any risk, discomfort or inconvenience except for the time that it takes to complete the questionnaire.

4. POTENTIAL BENEFITS TO SUBJECTS AND/OR TO SOCIETY: The potential benefit of this study is to comprehend the current practices of labour arbitration with a view to make recommendations for the benefit of both employers and employees.

5. PAYMENT FOR PARTICIPATION: There is no payment for participation in this study.
6. CONFIDENTIALITY: Any information that is obtained in connection with this study and that can be identified with you will remain confidential.

7. PARTICIPATION AND WITHDRAWAL: You can choose whether to be in this study or not. If you agree to be in this study, you may withdraw at any time without consequences of any kind.

8. IDENTIFICATION OF INVESTIGATORS: If you have any questions or concerns about the research, please feel free to contact: Elimon Shumba, on 0771 563 251 or 0772 136 874 or email shumba.eli@gmail.com, Mr. E Moyo, Supervisor on 0712 234 383 or 0772 337 028.

9. RIGHTS OF RESEARCH SUBJECTS: You may withdraw your consent at any time and discontinue participation without penalty. You are not waiving any legal claims, rights or remedies because of your participation in this research study. If you have questions regarding your rights as a research subject, contact the Mr. E Moyo Lecturer Bindura University of Science Education on 0772 337 028.

Please tick below if you have read and understood the information provided above and agrees to take part in the study under conditions stated above.

I agree to participate: Tick applicable

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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APPENDIX A: RESEARCH QUESTIONNAIRE

Administered by E. SHUMBA 2014

This questionnaire is directed to respondents who have a working knowledge of workplace dispute resolution with particular focus on arbitration. I am carrying out a study on: - An evaluation of the effectiveness of arbitration in the Diamond Mining Sector in Zimbabwe. I am kindly requesting your participation by giving me your honest view so as to enable me to successfully complete my research.

Instructions to Respondents:

1. Please read and understand questions before attempting to complete the questions contained in this questionnaire.
2. Do not disclose your identity in any part of this questionnaire.
3. Information you supply will be treated with the strictest confidentiality.
4. Please give your honest answers in each question [There is neither good nor bad answers]
5. Where the space provided is too small to accommodate your views you are free to attach additional paper but clearly label the question.
6. Where appropriate please put a tick within the box using black or blue ink.
7. Please make an attempt to answer all questions.

For any clarifications contact me 0771563251/ 0772136874
Section A: Demographic Data

Please tick on the box that best describes you

Identity of Respondent

<table>
<thead>
<tr>
<th>Employee /Trade Union</th>
<th>Employer/ Employer Organisation</th>
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1. Please fill the following demographic information,

a. Age [yrs]

<table>
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<th>26-30</th>
<th>31-35</th>
<th>36-40</th>
<th>41-45</th>
<th>46-50</th>
<th>51 and above</th>
</tr>
</thead>
</table>

b. [i] Highest level of education

O level

Certificate

Diploma

1st degree

Masters

c. Number of years handling labour related disputes

d. Number of years in handling arbitration issue
Section B

1. (a) I know the overall objectives of arbitration.

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
<th>Mostly disagree</th>
<th>Strongly disagree</th>
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</table>

(b) I prefer arbitration by

<table>
<thead>
<tr>
<th>NEC Arbitrator</th>
<th>Labour Officer</th>
<th>Independent arbitrator</th>
</tr>
</thead>
</table>

2. Statement (Efficiency)

   e.g. Arbitration is one of the alternative dispute resolution methods

   ✓ Strongly agree

   a) The arbitration fees of $300.00 paid for individual disputes is high

   | Strongly agree | Mostly agree | Neither agree / disagree | Mostly disagree | Strongly disagree |

   b) The arbitration fees of $400.00 paid for collective disputes is high

<p>| Strongly agree | Mostly agree | Neither agree / disagree | Mostly disagree | Strongly disagree |</p>
<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
<th>Mostly disagree</th>
<th>Strongly disagree</th>
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</thead>
</table>

c) The arbitration fees of $500.00 paid for disputes between Employer and Employees Association is high.

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<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
<th>Mostly disagree</th>
<th>Strongly disagree</th>
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</table>

d) The resources spent on arbitration have adverse impact on operations

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<thead>
<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
<th>Mostly disagree</th>
<th>Strongly disagree</th>
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</table>

e) The arbitration process adversely affects relations at workplace

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<thead>
<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
<th>Mostly disagree</th>
<th>Strongly disagree</th>
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f) The time taken from the time dispute is referred to the arbitrator to the time taken for an arbitral award is over 60 days

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<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
<th>Mostly disagree</th>
<th>Strongly disagree</th>
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</table>
3. Statement (Equity)

a. The arbitrator always explains the roles of all parties to the arbitration process.

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<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
<th>Mostly disagree</th>
<th>Strongly disagree</th>
</tr>
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</table>

b. The arbitrator is always fair to all parties

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<thead>
<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
<th>Mostly disagree</th>
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</table>

c. The arbitrator always provide each party with sufficient opportunity to present own case

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<tr>
<th>Strongly agree</th>
<th>Mostly agree</th>
<th>Neither agree / disagree</th>
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d. The decision of the arbitrator is always unbiased

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<th>Neither agree / disagree</th>
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e. Enforced of arbitral awards take more than 90 days to be enforced

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<th>Neither agree / disagree</th>
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f. Procedures for enforcement of arbitral awards are difficult to follow.

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<th>Neither agree / disagree</th>
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g. Enforcement of arbitral awards require assistance of legal practitioners.

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<th>Neither agree / disagree</th>
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h. Decisions of arbitrators are always well reasoned.

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**4. Statement (Voice)**

a. Knowledge of labour law is required for participation in arbitration process

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<th>Strongly agree</th>
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<th>Neither agree / disagree</th>
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b. The arbitration process is loaded with legal language

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<th>Neither agree / disagree</th>
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c. The arbitration process requires legal representation

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<th>Strongly agree</th>
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<th>Neither agree / disagree</th>
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d) Parties to the arbitration process have the right to choose own representative.

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<th>Strongly agree</th>
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<th>Neither agree / disagree</th>
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Section C

Efficiency

5. What is your comment regarding the fees paid to arbitrators for arbitration processes in relation to affordability?

6. In your opinion does the amount paid to arbitrators promote access to the arbitration process? Explain your answer.

7. In your opinion is assistance of legal practitioners necessary in arbitration proceedings? Explain your answer.

8. In your experience does arbitration promote good employer-employee relationship? Explain your answer.
9. What do you say about the conduct of arbitrators in the following areas

- Demonstration of fairness to both parties

- Bias

- Quality of arbitral awards

- Demonstration of adequate knowledge of labour arbitration.

10. In your own opinion are the procedures for enforcement of arbitral awards easy or difficult? Explain your answer.
11. In your experience how long does it take for the dispute to be finalized from the time the award is issued to the time the winner of the award receives the benefits? What do you think are the reasons for the delay if any?

Voice.

12. In your opinion are the procedures used in the arbitration process informal and easy to follow? Explain your answer.

13. In your opinion does the arbitration process encourage participation of all parties in dispute resolution? Explain your answer.

14. Does arbitration provide a cheap, informal and expeditious resolution of labour disputes? Explain your answer
General

15 What do you think are the problems with the arbitration process in Zimbabwe?

16 What changes if any would you want to see in the arbitration process in Zimbabwe?

17 Can you give suggestions which you think must be incorporated in to improve labour arbitration in Zimbabwe?

18 What should be done to enhance the resolution of labour disputes in Zimbabwe?
19 What is your choice of arbitrator between, NEC arbitrator, Labour Officer and Independent arbitrator? Explain your answer.

Thank you for your participation!