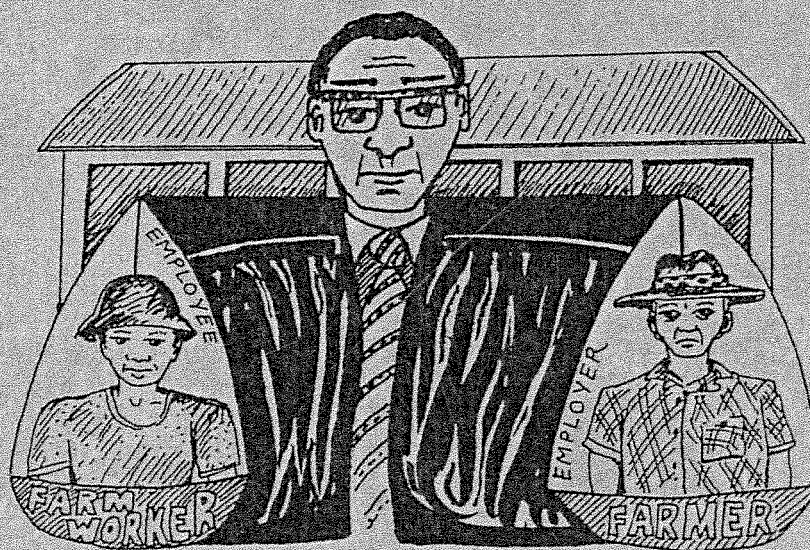


FARMWORKERS PROJECT RESEARCH REPORT SERIES: NO. 2

A Survey of Individual Labour Disputes at Selected District Labour Courts in Namibia in 1994

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TERMINOLOGY

The following is a list of abbreviated terminology used in some parts of this report to make for easier reading:

"ADR"	alternative dispute resolution
"community"	community services: social and personal care services, e.g. sanitation, sewerage, refuse; organisational activities of, e.g. trade unions, employer organisations, professional organisations.
"holiday"	Sunday or public holiday
"leave"	annual or sick leave

EXECUTIVE SUMMARY

1. DEMOGRAPHICS OF RESPONDENTS

This data was gathered during the survey conducted by the Farmworkers Project at the Legal Assistance Centre (LAC) between 1 December 1994 and 12 January 1995. The following district labour courts were surveyed: Keetmanshoop, Okahandja, Ondangwa, Oshakati, Swakopmund, Walvis Bay and Windhoek.

The majority of cases were surveyed at the Windhoek District Labour Court - 55.3% of the total. At 3.4% Oshakati recorded the lowest number of survey cases. Of the 320 case files, 74% involved male workers (complainants) and 26% female workers. The highest percentage of cases involving female workers (36%) was recorded for Ondangwa, while the lowest figure (12%) was recorded for Okahandja.

Almost two thirds of all labour cases were concentrated in only six industries: retail (19%), construction (16%), hotels (11%), transport (11%), private houses with employed persons (9%) and agriculture (8%). All workers in the agricultural, fishing and finance sectors were males. The highest concentration of female workers (67%) was in the private households with employed persons (domestic service) sector.

Agricultural cases were predominantly heard in Keetmanshoop (40%) and Windhoek (32%), while those in the fishing sector were heard only in Walvis Bay (89%) and Swakopmund (11%). Almost three quarters of both manufacturing and mining cases were heard in Windhoek. No cases were recorded for the manufacturing industry in Okahandja, Ondangwa and Oshakati. Similarly, no cases for the agricultural and private household industries were recorded in Oshakati.

Sixty per cent of all female cases and 54% of the total male cases were reported at the Windhoek District Labour Court. The Swakopmund District Labour Court handled a larger percentage of cases involving women (10%) than those involving men (8%). Only Windhoek, Swakopmund and Ondangwa handled a larger percentage of female cases than male cases.

2. COMPARISONS BY INDUSTRY

About 54% of the workers surveyed worked in the retail, construction, hotel and transport industries. The mining, fishing and finance sectors had the lowest concentration of cases surveyed. The highest percentage of cases for the agricultural industry (33%) was recorded for the Okahandja district, while an even higher percentage (50%) was recorded for the hotel industry at the Oshakati District Labour Court.

Seventy-one per cent of female employee cases originated in the following industries: retail (28%), private households (23%) and hotel (20%). Close to 60% of the cases involving male employees originated in the construction (18%), retail (16%), transport (12%) and agricultural (11%) industries. All the cases in the agricultural, fishing and finance sectors involved only male workers. The number of female cases surveyed in the mining and public sectors were negligible.

3. LEGAL REPRESENTATION

The majority of complainants (60%) were not legally represented. Trade unions represented about a fifth, while attorneys represented 11% of the total workers surveyed. The Legal Assistance Centre (LAC) advice offices also represented about 11% of all workers in the survey. Keetmanshoop and Okahandja had the highest levels of non-representation for complainants, while Windhoek and Walvis Bay had the highest levels of representation for complainants. Walvis Bay had the highest legal representation by an LAC attorney or paralegal. Almost 70% of the total employers in the survey represented themselves at the district labour courts. Employers in Ondangwa and Keetmanshoop had the highest levels of self-representation.

Seventy-two per cent of workers employed in the agricultural industry were not legally represented at all. Fifty-six per cent of workers in the fishing industry were represented by LAC attorneys or paralegals. Trade unionists represented a quarter (25%) of workers in the mining industry and 30% of workers in the construction industry. Public sector workers had the highest representation by private attorneys (64%). Agriculture, finance and private households with employed persons were the industries with the lowest legal representation for workers.

Almost all the employers (respondents) in the private households (93%) and manufacturing (80%) sectors represented themselves in the district labour courts. Employers in the mining industry (25%) and public service or government (18%) recorded the lowest figures for self-representation. Employers in the mining (75%) and fishing (56%) industries had the highest representation by a private attorney.

Twenty per cent of the total female employee sample had trade union representation, in contrast to 17% of the male employee sample. Similarly, the percentage of female workers (17%) who were represented by LAC attorneys or paralegals was higher than that of male workers (9%). The percentage of male workers who were not legally represented is slightly higher than that of female workers not represented. There was a minimal difference in the representation percentages of female and male employers.

4. TYPES OF COMPLAINTS

About 82% of the total cases were disputes involving unfair dismissal (39%) and unpaid salary or severance pay (43%). Unpaid leave was another common complaint. Windhoek recorded the highest percentage for complaints involving unfair dismissal (45%). Swakopmund (68%) and Walvis Bay (70%) recorded the highest percentages for unpaid salaries. At 12%, Keetmanshoop recorded the highest percentage for unpaid overtime work, while Oshakati recorded the highest percentage (19%) for unpaid leave.

At 75% of the total cases, the mining industry recorded the highest percentage for unfair dismissal, with the second highest percentage for the same complaint recorded by the agricultural (39%) and private households (39%) industries. Seventy per cent of cases in the fishing industry involved salary disputes. The retail sector recorded the highest percentages for both unpaid overtime (18%) and unpaid annual or sick leave (27%). The public sector recorded the highest figures for unpaid Sunday or public holiday work (17%) and unfair disciplinary action (8%).

An almost equal number of male (45%) and female (44%) employees lodged complaints in connection with unfair dismissal. More female (41%) than male (36%) cases were related to unpaid salaries. The number of female workers (7%) complaining about unpaid leave was greater than that recorded for male workers (3%). More male workers (11%) than female workers (2%) lodged labour

complaints with regard to unpaid overtime. Cases involving unpaid Sundays and public holidays were restricted to male workers, while cases involving unfair disciplinary action were restricted to female workers.

5. TYPES OF RELIEF SOUGHT

The types of relief sought by complainants at the district labour courts surveyed were as follows: payment (56%), reinstatement (24%), compensation (17%) and other (3%). The highest numbers of requests for compensation were recorded for Oshakati and Keetmanshoop. Windhoek and Oshakati registered the highest numbers of requests for reinstatement.

Requests for payment constituted 83% and 82% of all cases in the transport and fishing industries, respectively. Close to 70% of domestic workers sought payment as relief. Seven out of 10 workers in the agricultural, mining and finance industries lodged no monetary claims at all. Eleven per cent of workers in the fishing sector made claims in each of the NS11000-NS16000 and above NS21000 monetary cohorts. About 27% of workers in the public sector requested payment of above NS21000.

Female workers in comparison to male workers recorded the highest percentages for relief sought in connection with reinstatement (27% vs 22%) and compensation (20% vs 16%). Female workers were more likely to request reinstatement and compensation, while male workers were more likely to request payment.

6. POSTPONEMENT STATUS

Overall, close to 60% of cases were not postponed at all. The majority of cases were finalised at the first hearing or during the first session of the labour conference.. About 93% of cases in Ondangwa and 80% of cases in Okahandja were not postponed. At 75% of its cases, the Oshakati District Labour Court reported the highest postponement figure. Of the cases postponed in Oshakati, 53% were postponed once, 29% twice and 18% three times or more.

The following industries recorded the highest number of postponements: community (63%), finance (57%) and fishing (56%). The following industries recorded the highest figures for non-postponement: agriculture (75%), manufacturing (71%) and mining (63%). Of the cases postponed, 52% were postponed once, 29% twice and 19% three times or more. The majority of cases in the fishing (80%) and hotel (85%) industries were postponed once. Ninety-one per cent of the cases involving domestic workers were postponed either once or twice.

Forty-nine per cent of female cases and 39% of male cases were postponed. While cases involving female workers tended to be postponed more often than those involving males, the cases involving males tended to be postponed more times than those involving females. For female cases the breakdown is as follows: 65% postponed once, 25% twice and 10% three times or more. For male cases the breakdown is: 48% postponed once, 31% twice and 10% three times or more.

7. REASONS FOR POSTPONEMENT

A high number of cases (37%) were postponed for good reason - to settle. But many postponements (27%) were necessitated by respondents failing to turn up for the hearing or for the labour conference. All cases in Okahandja and Walvis Bay were postponed for settlement. Sixty per cent of the total cases in Oshakati were postponed due to time constraints. Ondangwa recorded the highest figure

(33%) for postponement due to the absence of complainants. Half of the cases in Windhoek were postponed for settlement.

Requests for postponement made by labour inspectors were most numerous in the private households (89%), community (83%), retail (78%) and mining (67%) sectors. Slightly more than two thirds of the requests in the fishing industry were made by complainants. All the cases in the agriculture, manufacturing and community sectors were postponed for settlement. Similarly, 86% of cases in the transport industry were postponed for settlement. All the cases in the finance sector and half of the cases in the fishing sector were postponed due to the absence of complainants.

Seventy-five per cent of postponements for cases involving female employees and 61% of cases involving male employees were requested by labour inspectors. The number of requests made by employees for postponement was higher for males (17%) than for females (8%). Forty per cent of the cases involving women were postponed for settlement, compared to 34% of those involving men. About 32% of male cases and 20% of female cases were postponed due to the absence of respondents. The number of female cases postponed due to the absence of both parties, or due to the complainants' absence, or due to time constraints, was higher than the number observed for male cases.

8. CASE DURATION

About 30% of the total cases recorded were still pending at the time of the survey. Almost 70% of the total were concluded in less than 100 working days. Oshakati (27%) and Swakopmund (25%) recorded the highest percentages for cases concluded in less than 21 working days. Okahandja recorded the highest percentage (29%) for cases concluded after 181 working days.

Two out of 10 cases in each of the community and public industries were concluded within 20 days or less. More than half (55%) of the cases in both the fishing and finance sectors were concluded in between 21 and 60 days. A quarter of all cases in the mining industry took between 141 and 180 days to conclude. The manufacturing sector recorded the highest percentage for cases taking too long to conclude. About 20% of the manufacturing sector cases were concluded in 181 days or more.

There is a minimal difference between female and male cases with regard to their duration from the date of filing to the date of settlement. However, male cases tended to be settled in a slightly shorter period than female cases. For example, 42% of the male cases compared to 37% of the female cases were completed in less than 61 days or two months.

9. JUDGEMENT PASSED

Judgement was not passed in 30% of the total cases recorded. Payment was the judgement most frequently passed - in almost 40% of the total. Sixteen per cent of the total were dismissed, while 9% were withdrawn. The highest percentages of pending cases were in Oshakati (64%), Swakopmund (50%) and Okahandja (35%). Twenty-four per cent of the cases in both Windhoek and Okahandja were dismissed.

The mining sector recorded the highest percentage of cases pending, with half of these cases not settled at the time of the survey. Very few cases were pending in the manufacturing and transport sectors. Twenty per cent of cases in the fishing sector were withdrawn, while 38% of cases in the mining sector were dismissed. The construction and private household sectors recorded the second highest percentages (22%) for dismissed cases.

Thirty per cent of all male cases and 29% of all female cases were pending at the time of the survey. About 45% of female employees and 37% of male employees were granted payment. Seventeen per cent of male cases were dismissed, while only 7% of female cases were dismissed.

10. MONETARY AWARDS

In 63% of the total cases, no payment was granted. The amount of money granted was concentrated in the under N\$6000 bracket. Oshakati recorded the highest percentage (82%) for no payment granted, while Ondangwa recorded the highest figure for payments in the N\$1000 and less category.

Workers in the manufacturing and private household sectors were most likely to be granted payment. More than two thirds of the complainants in the agriculture, fishing, community, public and mining sectors were granted no payment at all. Forty-one per cent of domestic workers received N\$1000 and less, while 40% of the workers in the manufacturing sector were granted between N\$1001 and N\$6000. Workers in the fishing sector were awarded the highest amounts in payment, with 11% of these workers paid in excess of N\$21000.

More female workers (31%) than male workers (18%) were granted payment in the monetary cohort of N\$1000 or less. An equal percentage of male and female workers were granted payment in the N\$1001-N\$6000 cohort.

1942-1943, 1944-1945

1. 1942-1943: The first year of the war, the United States entered the war on December 8, 1941, following the attack on Pearl Harbor. The war was fought in the Pacific and Europe.

2. 1944-1945: The final year of the war, the United States and its allies defeated the Axis powers.

The war was fought in the Pacific and Europe. The United States and its allies defeated the Axis powers. The war was fought in the Pacific and Europe. The United States and its allies defeated the Axis powers. The war was fought in the Pacific and Europe. The United States and its allies defeated the Axis powers.

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1946-1947: The year after the war, the United States and its allies began to rebuild the world.

1948-1949: The year after the war, the United States and its allies began to rebuild the world.

The war was fought in the Pacific and Europe. The United States and its allies defeated the Axis powers. The war was fought in the Pacific and Europe. The United States and its allies defeated the Axis powers.

Chapter 1

INTRODUCTION

1. BACKGROUND

The District Labour Court Survey was designed and carried out within the framework of the Student Holiday Project based at the Legal Assistance Centre (LAC). The Student Holiday Project takes on students undertaking legal studies at universities in South Africa and Namibia during the December break.

The survey, conducted between 1 December 1994 and 12 January 1995, covered the following district labour courts: Keetmanshoop, Okahandja, Ondangwa, Oshakati, Swakopmund, Walvis Bay and Windhoek. For reasons relating to logistics and cost, it was decided to limit the study to towns in which LAC advice offices are located, these being Windhoek, Ondangwa, Rundu, Walvis Bay, Keetmanshoop and Gobabis.

The survey was restricted to cases filed at the specified district labour courts during 1994. This restriction was necessitated by the fact that 1994 was the first calendar year in which cases were adjudicated for the whole year in terms of both the Labour Act of 1992 and the Rules of the District Labour Courts gazetted in 1993. 1994 also presented the first opportunity to assess the operation and effectiveness of the district labour courts for a whole year.

2. AIMS AND OBJECTIVES

A number of aims and objectives were set for this project, as follows:

- a) To monitor the operation of the district labour courts within the context of the mechanism established in terms of the Rules of the District Labour Courts (1993), and to assess the extent to which the rights of workers and employers were being met in relation to the Labour Act (Act 6 of 1992).
- b) To highlight important trends, for example the type of labour cases predominating, the frequency of legal representation, the nature of settlements granted by courts, the regularity of postponements, etc.
- c) To make specific recommendations and suggestions in terms of particular areas in need of streamlining, as well as procedures that may need altering.
- d) To offer students an opportunity to acquaint themselves with Namibia's Labour Act and the Rules of the District Labour Court, and additionally, to provide an opportunity for them to beef up their work profiles.

3. SURVEY METHODS

A survey questionnaire was designed based on the various forms used for laying and processing labour complaints, which forms are set out in the Rules of the District Labour Court. Hence, the information gathered in the survey was limited by the nature of the data provided on the forms. An attempt was made to gather extra information from handwritten notes contained in the files on, for

example, postponement frequencies, judgement dates, payments granted to complainants, etc. Since data are not tabulated by sex, the sex of complainants and respondents was determined on the basis of their first names. But attempting to supplement the available information in this manner cannot always be successful.

The draft questionnaire was pre-tested on case files at the Windhoek District Labour Court and then revised accordingly before the survey. Since most of the answers could be identified in advance, it was decided to pre-code the questions to speed up the data entry and analysis processes. The entire sample should have included all cases filed and taken up during 1994 at each of the courts surveyed, but a few files were incomplete or unavailable to enumerators at the time of the survey.

Information was gathered on a range of themes, and these themes were disaggregated and tabulated according to geographical location, industry and sex. Information on the following broad themes was obtained from the questionnaire:

- a) Demographic characteristics of complainant and respondent
- b) Geographical and industrial distribution of cases
- c) Legal representation of complainant and respondent
- d) Type of complaint lodged and relief sought
- e) Case duration and postponements
- f) Judgement passed

4. PERSONNEL AND TRAINING

Field assistants for the survey were recruited from among those students who applied for a holiday job with the LAC. With the exception of Windhoek, where two research assistants were employed, one student was recruited to enumerate each of the district labour courts. A one-day training course, designed specifically for this project, was organised for the research assistants. A training manual was prepared for the research assistant responsible for the Keetmanshoop district, as she was unable to attend the training session. The training session concentrated mainly on two issues: how to complete the questionnaire and where to find the required information in the case file.

5. DATA ENTRY AND ANALYSIS

As mentioned above, almost all of the questions were pre-coded. Only in a few instances was it necessary to create new codes, particularly where items categorised as "other" proved to be large enough to be broken up. During the data entry phase, obvious inconsistencies were removed. Further consistency checks, aimed at detecting coding and entry errors, were made by a second person. These consistency checks were applied to a random sample of about 20% of the total sample. Data were entered and tabulated using Microsoft Excel software.

6. STUDY LIMITATIONS

Because the survey was restricted to areas in which the LAC advice offices are located, it does not reflect all cases dealt with by all district labour courts in the country. Caution should thus be exercised in generalising the findings. However, the surveyed courts are located all over the country and the sample size is large enough to allow for some broad assessments to be made. It is hoped that this study can be utilised as a reference in planning and analysing similar surveys.

Chapter 2

DISPUTE RESOLUTION MECHANISMS IN NAMIBIA

1. INTRODUCTION

Before Namibia's independence in March 1990, industrial relations in the territory were governed by outdated colonial legislation in the form of the Wage and Industrial Ordinance of 1952 and a host of other laws regulating labour among the various ethnic groups. These laws did not protect workers' rights and interests, but were enacted for the maximum exploitation of black labour in Namibia. The laws also did not create forums for the resolution of disputes. Any industrial action on the part of workers was regarded as unlawful and offenders were liable for criminal prosecution.

Soon after independence the new government, under pressure from its major constituency, Namibian workers, took the initiative to redress the labour situation. After extensive negotiations between all major interest groups and with the assistance of the International Labour Organisation and labour lawyers in Namibia and South Africa, the Labour Act (6 of 1992) was finally promulgated by the National Assembly in April 1992 and came into operation in November 1992.

With reference to its preamble, the purpose of the Labour Act can be summarised as: necessary for the furtherance of labour relations conducive to economic growth, stability and productivity, through the promotion of an orderly system of free collective bargaining, the improvement of wages and conditions of employment of employees and the advancement of persons who have been disadvantaged by past discriminatory laws and practices; and the regulation, free from discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status, of the conditions of employment of all workers in Namibia.

Namibia has a population of approximately 1.6 million people and a relatively small economy. The country relies heavily on imports of manufactured products and processed foods. According to the 1991 Population and Housing Census, about 40% of all employed persons are engaged in the private sector, while the government accounts for almost 20% of all employed persons. Table 1 below gives a breakdown of employed persons according to their employment status.

Table 1: EMPLOYED PERSONS BY EMPLOYMENT STATUS

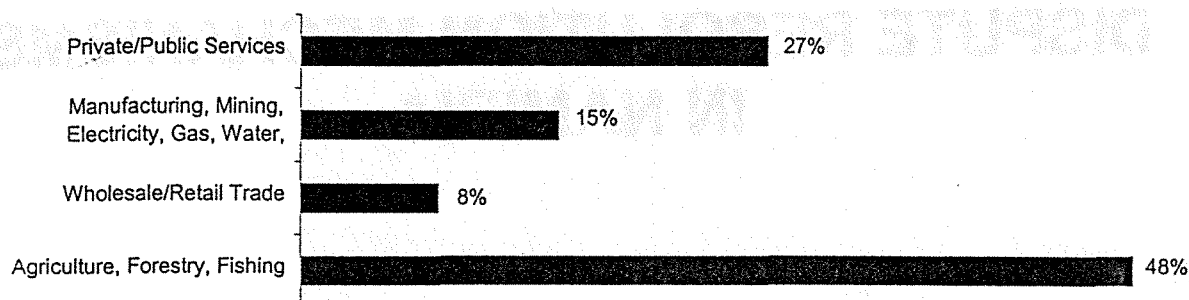
Employed Persons - 388 014					
Employer	Own account worker	Employee government	Employee private	Unpaid family	Other
7 737 2%	78 751 20%	72 541 19%	145 536 38%	82 153 21%	1 296 0.30%

Source: 1991 Population and Housing Census

The same census figures indicate that in respect of the different industries, agriculture, forestry and fishing employ the highest percentage of workers (48%), while the private and public sectors employ the

second highest (28%). The following graph illustrates the number and percentages of persons employed in the different industries:

Figure 1: EMPLOYED PERSONS BY INDUSTRY (%)



Source: 1991 Population and Housing Census

2. DISPUTE RESOLUTION MECHANISMS IN TERMS OF THE LABOUR ACT

The Act makes extensive provision for the resolution of disputes after deadlock has been reached between parties involved in a labour dispute. It also makes a distinction between disputes of rights and disputes of interest and the procedures to be followed to resolve such disputes. The Act further provides for the establishment of specialist courts to deal with labour disputes in the form of the district labour courts (lower courts) and the Labour Court, which has the same status as the Namibian High Court. Provision is also made for parties to refer disputes to mediation or arbitration. The Act has not laid down specific rules for these procedures. These are voluntary or optional procedures which parties can agree to, except in the case of essential services where compulsory arbitration is prescribed for the resolution of disputes.

2.1 Nature of disputes

2.1.1 Individual disputes

This information was obtained from the Ministry of Labour and from the First Annual Report of the Labour Advisory Council. It covers the period 1 January 1992 to 31 December 1994. The cases surveyed involve mostly individual workers who approached the Labour Inspector with complaints.

Table 2 below shows the number of complaints by industry and year lodged with the Ministry of Labour during the period 1 January 1992 to 31 December 1994.

Overall, the majority of cases (52%) lodged during the period 1 January 1992 to 31 December 1994 emanated from the following industries: construction (22%), agriculture and fisheries (15%) and private households (15%). In both 1992 and 1993 more than a quarter of all cases were from the construction industry. The wholesale and retail trade recorded the fourth highest number of cases.

In 1992 complaints were most frequently related to wage payments (28%), termination of employment (21%) and annual leave (15%). It is significant to note that during this period the district labour courts

were not operational and the complaints were dealt with by the Labour Inspector in terms of the old Conditions of Employment Act of 1986.

Table 2: INDIVIDUAL LABOUR COMPLAINTS LODGED AT MINISTRY OF LABOUR BY INDUSTRY AND YEAR

Industry	Number of Complaints							
	1992		1993		1994		Total	
	#	%	#	%	#	%	#	%
Agriculture & Fisheries	611	20	152	7	456	17	1219	15
Mining & Quarrying	50	2	24	1	31	1	105	1
Manufacturing	97	3	13	1	96	4	206	3
Electricity & Water	100	3	83	4	112	4	295	4
Construction	774	25	617	28	346	13	1737	22
Wholesale & Retail Trade	308	10	171	8	401	15	880	11
Catering & Accommodation	48	2	193	9	32	1	273	3
Transport & Communication	268	9	193	9	87	3	548	7
Finance, Insurance & Estates	123	4	111	5	68	3	302	4
Community & Social Services	78	2	95	4	73	3	246	3
Domestic Workers	404	13	414	19	368	14	1186	15
Other activities	261	8	109	5	610	23	980	12
Total	3122	100	2175	100	2680	100	7977	100

In 1993, 46% of all cases were resolved in favour of employees and 27% in favour of employers, while a further 27% were still pending. The most frequent complaints were related to payment of wages (19%), termination of employment (19%) and overtime (14%).

In 1994, the most frequent complaints were related to salary payments (16%), termination of employment (15%) and overtime (11%). Of the 2250 cases for which information was available, 70% were resolved in favour of employees and 24% in favour of employers, while the remaining 6% were still pending. Of these 2250 cases, 435 cases (19%) were referred to the district labour courts. Of the cases referred to the district labour courts, 113 (26%) were still unresolved at the end of December 1994.

2.1.2 Collective disputes

Collective disputes refer to disputes that arise between trade unions and employers or employer organisations. During the period November 1992 to December 1994, only 11 conciliation boards were established to determine issues such as the dismissal of employees, revision and adjustment of salaries, wage increases and improvements in conditions of employment. Of these, four were resolved at the conciliation board meetings. In three of the disputes the workers went on strike after the failure of the conciliation board, while for the remaining disputes agreements were reached outside the conciliation boards without industrial action taken.

Since it is compulsory for parties to refer disputes to the Labour Commissioner for the establishment of a conciliation board, very few instances of unlawful industrial action occur. During the period January 1992 to December 1994, only seven unlawful strikes occurred, which in most cases did not last more than one week. One can therefore draw the conclusion that most parties abide by the dispute resolution procedures in terms of the Labour Act.

2.1.3 Mediation and arbitration

In the period December 1992 to December 1994, approximately eight mediations and approximately nine arbitrations were held. These figures were obtained from three attorneys involved in mediation and

arbitration in Namibia. In most cases mediations were convened to deal with disputes regarding salary increases and/or improvement of the working conditions and employment benefits. Most of the arbitrations held dealt with unfair dismissals of individuals or groups of employees. Trade union officials indicated that the main reason for their not opting for arbitration or mediation is that these procedures can be very costly. At the time of writing there are only three lawyers dealing with alternative dispute resolution procedures in Namibia, and they decide on the fees and other expenses to be paid.

2.2 Dispute resolution practices

2.2.1 Courts

From interviews with trade union officials and employers it was learned that there are various shortcomings in the present dispute resolution procedures. The major shortcoming relates to the application of the rules of and procedures in the district labour courts. In all towns there are complaints relating to the ineffectiveness and lack of competence of the presiding officers in these courts. The main problem is that most, if not all, of the presiding officers in the district labour courts and the Labour Court have never done labour law as a course at university or college, nor have they practised labour law in the courts. They therefore lack a basic understanding of the dynamics involved in labour disputes and principles such as fairness and equity in labour law.

The Labour Act prescribes that all complaints with regard to conditions of employment and unfair dismissal or unfair disciplinary action be referred to the district labour courts. Since the costs involved in lodging a complaint with a district labour court is only N\$25, most parties have no option but to pursue this route. The process can be time-consuming, however, since insufficient facilities are allocated to the district labour courts, cases are not allocated sufficient court days (depending on the issues involved, number of witnesses, etc.) and parties unnecessarily delay proceedings due to postponements and failure to appear.

Although the court rules are adapted to suit the layperson, it still requires a lot of skill to master the court procedures and the drafting of court documents. Trade union officials are presently using the courts, but it will take time for them to build confidence and learn the necessary skills to make the most of their right of appearance. Employers, on the other hand, have the necessary resources to pay legal practitioners to handle their cases. With their training and knowledge of the court procedures, legal practitioners manipulate the process and intimidate unrepresented workers and untrained union officials. In this regard the unions feel that presiding officers should play a more positive role to ensure that justice and fairness prevail.

2.2.2 Labour inspectors

Labour inspectors play a vital role in the resolution of disputes. They are investigators and also mediators or conciliators in the process. The unions have very little confidence in the labour inspectors and it is mostly non-union members who approach the inspectors to investigate complaints. Many accusations of bribery and partisan behaviour are levelled against inspectors.

In terms of the Rules of the District Labour Court the inspectors must convene a conference before the trial begins. The purpose of the conference is to assist parties to settle the dispute or to agree on certain facts to limit the issues in dispute. Inspectors therefore need mediation skills to try to reach a settlement between the parties.

In practice most workers are not satisfied with the manner in which the labour inspectors deal with the investigations. Particularly in the smaller towns where there are no attorneys or trade unions, workers are forced to accept unfair settlement offers from employers. Most employers do not have a problem with the manner in which inspectors operate, but some feel that inspectors, especially those with a trade union background, are partisan.

2.2.3 Conciliation boards

The Labour Act requires that after a deadlock has been reached between trade unions and employers or employer organisations, the matter must be referred to the Labour Commissioner who establishes a conciliation board to try to settle the matter. If a dispute of interests is unresolved, the parties have various options: they can refer the matter to mediation or arbitration or embark on industrial action. If it is a dispute of rights, a party cannot embark on industrial action, but can refer the matter to the Labour Court or arbitration if mediation fails.

From interviews conducted with trade union leaders, it appears that they are in favour of the conciliation boards, since parties are forced to discuss issues in the presence of an independent chairperson. This has a positive psychological effect and produces quicker results. Employers are also in favour of the conciliation boards, but feel that they can be time-consuming and are sometimes prematurely established. They feel that parties should be given the maximum time to resolve disputes internally. They also feel that some unions do not commit themselves to the process and are just waiting for the conciliation board to finish so that they can go on a legal strike.

2.2.4 Mediation and arbitration

As mentioned above, alternative dispute resolution procedures have not been effectively exhausted in Namibia. This is mostly due to the high costs involved, lack of expertise to facilitate processes and the inexperience of trade union members and employers in dealing with these procedures. Presently there are only three legal practitioners who are acceptable as neutrals to both trade unions and employers. Trade unions expressed the desire for more competent mediators and arbitrators. If a cost-effective and less time-consuming arrangement can be made, they will fully support mediation and arbitration.

The larger employers also favour mediation and arbitration because the parties have control over the process, it is less time-consuming and more cost-effective, since they use their own industrial relations personnel instead of legal practitioners. Smaller companies which do not have personnel departments indicated that it is time-consuming for management to attend mediation or arbitration proceedings. They would rather pay an attorney to represent them in court.

2.3 Effectiveness of dispute resolution procedures

2.3.1 In terms of the Labour Act

From the available figures it is very difficult to gauge the success of dispute resolution procedures, and whether parties are completely satisfied with the outcome, since many other factors influence the process, for example the high rate of unemployment in Namibia, ignorance of the parties regarding the procedures, incompetence of labour inspectors or unequal resources of the parties.

It appears, however, that conciliation boards assist parties to resolve disputes and if an agreement is reached, parties in all instances abide by the terms of the agreement. This is also true in respect of mediation. In most instances parties also abide by the awards of the arbitrators and the judgements of the district labour courts. No arbitration award has been challenged in the courts or not complied with by the parties. The same can probably be said of the decisions of the district labour courts. In 1994 only 11 out of 322 settled cases were appealed against.

Both unions and employers have adequate access to information regarding the nature and number of collective disputes, which is obtainable from the Labour Commissioner. Information on individual disputes lodged with the district labour courts is also available and one can accurately determine the nature and number of industrial disputes and their outcome. These and related matters formed the basis of the present study.

2.3.2 *In terms of procedural agreements between parties*

2.3.2.1 Standard procedures

According to union officials and company representatives interviewed, there is a standard procedural agreement in all recognition agreements. Not all of these procedural agreements were updated after 1992 to include some of the provisions of the Labour Act. One major problem is that some companies have their own internal disciplinary procedures which are not negotiated with the unions. The union becomes aware of them only when approached by a member regarding pending disciplinary action. The vastness of the country and the decentralisation of management in parastatals and bigger companies makes it difficult to properly implement and monitor dispute procedures. In the mining industry procedural agreements are closely monitored and followed because company management systems are highly centralised and the officials properly trained to deal with disputes.

Parties by all means try to abide by the agreed procedures. Where a recognition agreement exists the disclosure of information is no problem. Unions are usually advised by companies that they can obtain the financial statements from the company auditors. However, smaller companies are reluctant to divulge information of this nature. The Labour Act does not compel disclosure, but it can be regarded as 'bad faith' negotiation if relevant information is not disclosed. The parties usually agree to keep information disclosed during negotiations confidential; for example, they agree not to disclose it to the press.

2.3.2.2 Recurrence of disputes

Only certain disputes recur, for example wages and unfair dismissal disputes. Other disputes, concerning issues such as victimisation of shopstewards, union recognition or improvements in working conditions, very seldom recur. This is usually because at first the employers are not aware of the law, but once they are made aware they are more careful.

Both parties feel that clear dispute resolution procedures in terms of the Labour Act or a collective agreement improve relationships between the parties. Through negotiations both sides get a better understanding of the concerns and interests involved. In most cases a positive personal relationship also develops between the parties. The procedures therefore improve rather than harm relationships.

23.23 Administration of dispute resolution procedures

Both sides admit that they do not have enough skills and knowledge to effectively deal with the resolution of disputes. Many disputes are delayed and stretched out due to different interpretations of the agreements or the provisions of the Act. Unions do not have the capacity to effectively administer and monitor dispute resolution procedures. The Namibia Transport and Allied Workers Union (NATAU), for example, has only four organisers in the entire country. This puts tremendous strain on officials and it is difficult to implement the procedures properly.

One of the major problems with regard to the administration of dispute resolution procedures is the lack of industrial councils. The only exception is in the pelagic fishing industry, where five companies have formed a negotiating forum with the Namibian Food and Allied Workers Union (NAFAU). There is also a Chamber of Mines, but they prefer to conduct negotiations on an individual basis. The Labour Advisory Council is a statutory tripartite body, and is the only body that monitors disputes on a national scale. However, no negotiations regarding disputes take place at this level.

3. IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

All parties are very keen on the implementation of effective, efficient and cost-saving dispute resolution mechanisms, especially informal and voluntary mediation and arbitration. However, these mechanisms should be improved. There will be no institutional barriers regarding the implementation of ADR in Namibia. As mentioned earlier, the Labour Act make provision for mediation and arbitration and an Arbitration Act is also in force. Parties feel, however, that on the level of individual disputes, mediation should be implemented. The suggestion is that the Rules of the District Labour Court should make provision for proper mediation before the matter goes to trial. The present Rule 6 pre-trial conference is inadequate in that it does not compel full disclosure and participation.

There will be no resistance from any quarters regarding the implementation of an ADR programme. As mentioned above, not many legal practitioners are involved in ADR and they will certainly support such a move together with the unions and employers. All parties involved in labour relations should be used to promote and support the establishment of ADR. In this respect the Labour Advisory Council can play a promotional role.

The practical implementation of an ADR programme or institution will not be difficult. The suggestion is that an ADR seminar be organised in Namibia where all the key role-players are invited, namely unions, employers, the Ministries of Labour and Justice and private legal practitioners. One of the aims of such a seminar would be to establish an ADR body. There is no need for a pilot project. People are already aware of ADR, and what they need is practical training and a promotional campaign on the advantages of ADR.

4. TRAINING NEEDS OF ADR USERS

Most unions and employer representatives indicated a general awareness of ADR. However, it is only representatives of the major employers who possess the necessary skills to participate in ADR. The smaller employers lack these skills. There is a further need to train government officials, especially labour inspectors, in ADR skills. Most legal practitioners who could be potential neutrals will also benefit

from introductory skills training, while the existing neutrals might need advance skills training. The level of training needs therefore differs dramatically.

It is therefore suggested that introductory skills training can be conducted in Namibia with the assistance of the local neutrals. Once this is completed, more advanced courses could be arranged with the assistance of experts from the Southern African region. The cost of training should be shared between participants. A potential donor can be approached to carry the cost of outside trainers and accommodation of participants, while participants can pay course fees to cover the costs of local trainers, the training venue and other expenses. All parties expressed an urgency for the implementation of such courses.

5. CONCLUSION

The Labour Act of Namibia has created a new and exciting dispensation for the resolution of labour disputes. The framework is there. However, there are many shortcomings in respect of the human resources and skills necessary to effectively administer, monitor and participate in the procedures. Urgent attention should be given to the training of presiding officers in the labour courts, the skills and attitudes of labour inspectors, the skills and knowledge of union officials and certain employers, the streamlining of procedural agreements and the training of ADR users and neutrals.

Chapter 3

GEOGRAPHICAL DISTRIBUTION

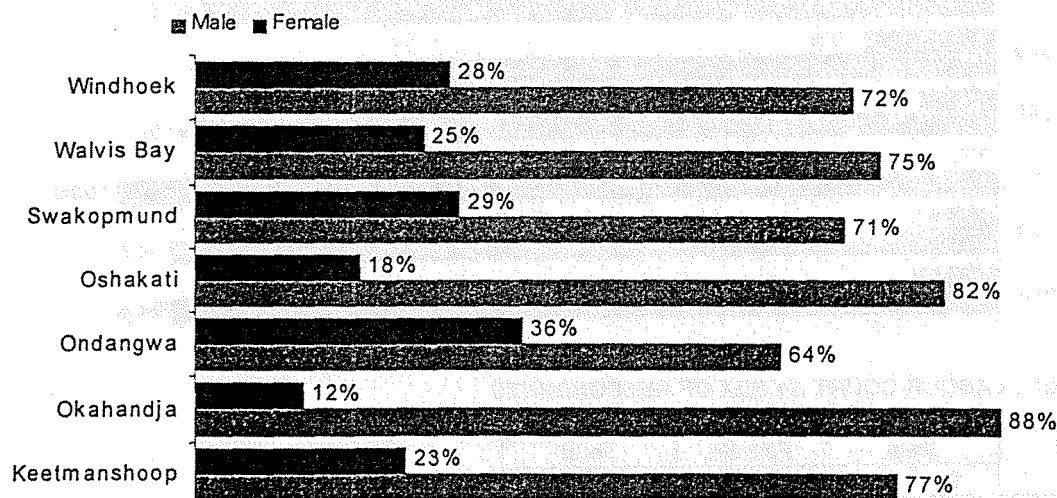
1. INTRODUCTION

A total of 323 case files were surveyed in all seven district labour courts. Most cases were surveyed at the Windhoek court (55.3%), followed by Keetmanshoop (16.5%) and Swakopmund (8.8%). The breakdown for the remaining cases is as follows: Walvis Bay (6.3%), Okahandja (5.3%), Ondangwa (4.4%) and Oshakati (3.4%).

2. DEMOGRAPHICS

Of the 320 case files for which the sex of the workers (complainants) was available, 74% were male and 26% were female. (See Figure 2 and Table 3 below.) It is therefore clear that female workers as compared to their male counterparts tend to lay fewer labour complaints with the courts. This discrepancy could be due to working women not knowing their labour rights, or it could be due to their finding court procedures intimidating or cumbersome. It is also plausible that women have fewer problems at work than their male colleagues. Further research is needed to identify the actual reasons for labour court cases being reported predominantly by men.

Figure 2: SEX OF COMPLAINANT BY DISTRICT LABOUR COURT



There are marked geographical discrepancies in the number of labour cases involving women. For example, the highest percentage of cases involving female workers (36%) was recorded for Ondangwa, while the lowest percentage (12%) was recorded for Okahandja. The corresponding figure for female workers in Windhoek was 28%. Again, the reasons for a higher percentage of cases being lodged by women in Oshakati are not obvious, particularly since Oshakati is a less industrialised town than are some of the other labour court localities.

Table 3: LABOUR COURT BY SEX OF COMPLAINANTS

Labour Court	Male		Female		Total	
	#	%	#	%	#	%
Keetmanshoop	41	77	12	23	53	100
Okahandja	15	88	2	12	17	100
Ondangwa	9	64	5	36	14	100
Oshakati	9	82	2	18	11	100
Swakopmund	20	71	8	29	28	100
Walvis Bay	15	75	5	25	20	100
Windhoek	127	72	50	28	177	100
Total	236	74	84	26	320	100

Regarding the gender distribution of employers (respondents) in the survey, the vast majority were male, with only 10% female - a figure far below that of the female complainants, at 26% of the total. This could be due to the fact that with the exception of employers in the domestic sector, employers generally tend to be men. On the other hand, according to the 1991 Population and Housing Census, women make up 44% of the labour force in Namibia, so here again further research is necessary to determine the reasons for this discrepancy.

The highest number of female respondents were involved in cases in the Swakopmund court (15%). Conversely, all the respondents at the Ondangwa court were male. The numbers of female respondents in Oshakati, Walvis Bay and Windhoek closely follow the all-district trend. (See Figure 3 and Table 4.)

Figure 3: SEX OF RESPONDENT BY DISTRICT LABOUR COURT (%)

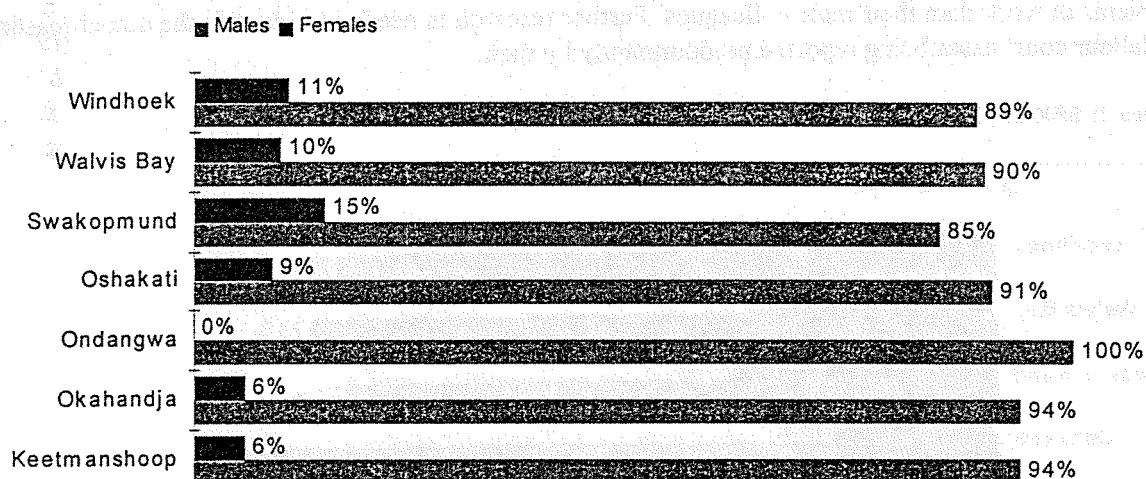


Table 4: DISTRICT LABOUR COURT BY SEX OF RESPONDENTS

Labour Court	Male		Female		Total	
	#	%	#	%	#	%
Keetmanshoop	50	94	3	6	53	100
Okahandja	16	94	1	6	17	100
Ondangwa	14	100	0	0	14	100
Oshakati	10	91	1	9	11	100
Swakopmund	23	85	4	15	27	100
Walvis Bay	18	90	2	10	20	100
Windhoek	158	89	20	11	178	100
Total	289	90	31	10	320	100

3. INDUSTRIAL DISTRIBUTION

About 54% of cases surveyed involved workers in the retail, construction, hotel and transport industries. A further 9% and 8% of complainants worked in private households (as domestic workers) and in the agricultural sector, respectively. The mining, fishing and finance sectors had the lowest concentration of cases surveyed. (See Table 5.)

Table 5: CASES BROUGHT TO DISTRICT LABOUR COURT BY INDUSTRY (1994)

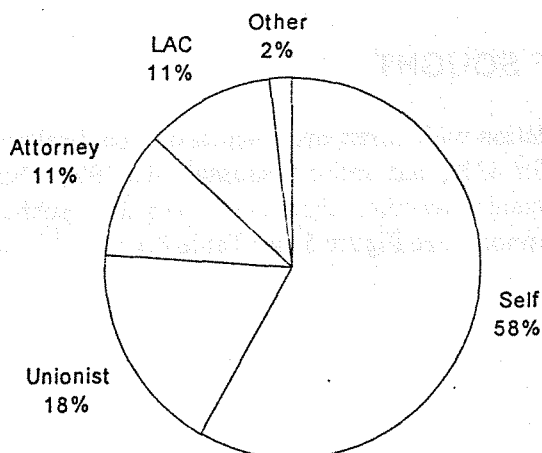
Labour Court	Agriculture	Fishing	Mining	Manufacturing	Construction	Retail	Hotel	Transport	Finance	Private Houses	Community	Public	Other	Total
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Keetmanshoop	20	0	4	2	8	35	6	6	4	6	8	2	0	100
Okahandja	33	0	0	0	7	13	20	13	7	7	0	0	0	100
Ondangwa	7	0	0	0	36	29	0	14	0	14	0	0	0	100
Oshakati	0	0	0	0	20	50	20	10	0	0	0	0	0	100
Swakopmund	4	4	0	7	30	7	19	11	0	11	7	0	0	100
Walvis Bay	0	50	0	6	6	6	0	13	0	6	6	6	0	100
Windhoek	5	0	3	6	15	16	11	11	2	10	7	5	9	100
TOTAL	8	3	3	5	15	19	10	10	2	9	6	3	5	100

An analysis of cases filed by industry and district labour court reveals that the majority of cases were concentrated in the construction, retail, hotel and transport industries. The highest percentage for the agricultural industry (33%) was recorded for the Okahandja district. An even higher percentage (50%) was recorded for the hotel industry at the Oshakati court. The Ondangwa court recorded the highest percentages for both the construction industry (36%) and private households (14%). Labour cases at the remaining labour courts tended to be well spread across the various industries.

4. LEGAL REPRESENTATION

The majority of complainants ($\pm 60\%$) were not legally represented. Trade unions represented about a fifth of the total workers surveyed, while attorneys represented 11%. The Legal Assistance Centre (LAC) and its regional advice offices also represented about 11% of all workers. (See Figure 4 and Table 6.)

Figure 4: COMPLAINANTS' LEGAL REPRESENTATION



An interesting picture emerges in comparing workers' legal representation and district labour courts. Keetmanshoop and Okahandja, for example, had the highest level of non-representation for complainants, while Windhoek and Walvis Bay had the highest level of representation. The latter two towns also had the highest level of representation by a private attorney. Additionally, Walvis Bay had the highest representation by an LAC attorney or paralegal; exactly half of all labour cases there were defended by the LAC. Windhoek, with 28% of its total cases defended by a trade unionist, had the highest level of trade union representation. It is noteworthy that close to one fifth of labour cases in Oshakati were defended by a trade union official. (See Table 6.)

Table 6: DISTRICT LABOUR COURT BY COMPLAINANTS' REPRESENTATION

Labour Court	Self		Private Attorney		LAC Attorney/ Paralegal		Trade Unionist		Other		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
Keetmanshoop	49	92	0	0	1	2	3	6	0	0	53	100
Okahandja	16	94	0	0	0	0	1	6	0	0	17	100
Ondangwa	12	86	1	7	0	0	1	7	0	0	14	100
Oshakati	8	73	0	0	1	9	2	18	0	0	11	100
Swakopmund	22	79	1	4	3	11	2	7	0	0	28	100
Walvis Bay	8	40	2	10	10	50	0	0	0	0	20	100
Windhoek	73	41	31	17	21	12	50	28	5	3	180	100
Total	188	58	35	11	36	11	59	18	5	2	323	100

Almost 70% of all employers represented themselves at the district labour courts. Only about one in every three employers had an attorney representing them. Employers in Ondangwa and Keetmanshoop had the highest level of self-representation. Employers in Windhoek and Walvis Bay had the highest level of access to a private attorney. Of the Walvis Bay employers, 55% were represented by an attorney. In contrast, only 8% of employers in Keetmanshoop had a private attorney representing them. (See Table 7.)

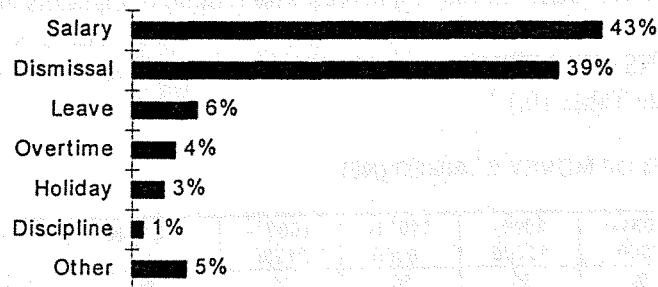
Table 7: DISTRICT LABOUR COURT BY RESPONDENTS' REPRESENTATION

Labour Court	Self		Private Attorney		Other		Total	
	#	%	#	%	#	%	#	%
Keetmanshoop	48	91	4	8	1	2	53	100
Okahandja	12	71	4	24	1	6	17	100
Ondangwa	14	100	0	0	0	0	14	100
Oshakati	7	64	3	27	1	9	11	100
Swakopmund	23	82	5	18	0	0	28	100
Walvis Bay	9	45	11	55	0	0	20	100
Windhoek	111	62	62	34	7	4	180	100
Total	224	69	89	28	10	3	323	100

5. TYPE OF COMPLAINT AND RELIEF SOUGHT

The majority of the cases recorded (82%) were in connection with unfair dismissal and unpaid salary or severance pay. Of these, salary disputes accounted for 43%, and unfair dismissals for 39%. The third most common complaint was unpaid leave. Unpaid overtime, unpaid Sundays and public holidays, and unfair disciplinary action were not that common. (See Figure 5 and Table 8.)

Figure 5: TYPE OF COMPLAINT LODGED



At the district level, Windhoek recorded the highest percentage for unfair dismissal (45%) and Keetmanshoop the second highest. Concerning unpaid salary disputes, Swakopmund (68%) and Walvis Bay (70%) recorded the highest number of cases. Keetmanshoop recorded the highest level for unpaid overtime (12%), while Oshakati recorded the highest level for unpaid leave (19%). Okahandja recorded the second highest level for unpaid leave. Walvis Bay recorded the highest level for unfair disciplinary action. (See Table 8.)

Table 8: DISTRICT LABOUR COURT BY TYPE OF COMPLAINT

Labour Court	Dismissal	Salary	Overtime	Leave	Holiday	Discipline	Other	Total
	%	%	%	%	%	%	%	%
Keetmanshoop	34	39	12	8	5	0	3	100
Okahandja	34	31	9	16	6	0	3	100
Ondangwa	36	57	0	0	0	0	7	100
Oshakati	31	19	6	19	6	0	19	100
Swakopmund	30	68	0	3	0	0	0	100
Walvis Bay	26	70	0	0	0	4	0	100
Windhoek	45	40	1	5	2	1	6	100
Total	39	43	4	6	3	1	5	100

The types of relief sought by complainants were distributed as follows: payment (56%), reinstatement (24%), compensation (17%) and other (3%). The majority of workers thus sought payment as relief. This is the expected trend given that most complaints laid at the courts were related to unpaid money. (See Table 9.)

With the exception of Windhoek and Keetmanshoop, all the district labour courts reported an above average figure for payment sought. For example, 86% was recorded for Ondangwa, 84% for Swakopmund and 82% for Walvis Bay. The highest numbers of requests for compensation were recorded for Oshakati and Keetmanshoop, while Windhoek and Oshakati registered the highest numbers of requests for reinstatement. (See Table 9.)

Table 9: DISTRICT LABOUR COURT BY TYPE OF RELIEF SOUGHT

Labour Court	Reinstatement		Compensation		Payment		Other		Total	
	#	%	#	%	#	%	#	%	#	%
Keetmanshoop	10	19	15	29	26	50	1	2	52	100
Okahandja	1	6	1	6	12	75	2	13	16	100
Ondangwa	1	7	1	7	12	86	0	0	14	100
Oshakati	4	33	4	33	4	33	0	0	12	100
Swakopmund	2	6	3	10	26	84	0	0	31	100
Walvis Bay	2	9	2	9	18	82	0	0	22	100
Windhoek	66	31	35	17	101	48	8	4	210	100
Total	86	24	61	17	199	56	11	3	357	100

In about 54% of cases, no specific monetary claim was made by employees. The corresponding figure for claims made for the monetary category N\$1000 and below was 18%. A similar percentage was recorded for the monetary category N\$1001-N\$6000. All the employees who lodged complaints at the Ondangwa court made specific monetary claims. Of these, 64% and 29% made claims in the monetary categories N\$1000 and less and N\$1002-N\$6000, respectively. Of the employees in Walvis Bay, 10% claimed more than N\$21000. (See Table 10.)

Table 10: DISTRICT LABOUR COURT BY SUM OF MONEY CLAIMED (N\$)

Labour Court	None	< 1000	1001-6000	6001-11000	11001-16000	16001-21000	> 21000	Total
	%	%	%	%	%	%	%	%
Keetmanshoop	66	15	19	0	0	0	0	100
Okahandja	65	18	18	0	0	0	0	100
Ondangwa	0	64	29	7	0	0	0	100
Oshakati	45	18	36	0	0	0	0	100
Swakopmund	61	21	14	0	0	4	0	100
Walvis Bay	35	30	15	5	5	0	10	100
Windhoek	56	14	16	3	3	2	6	100
Total	54	18	18	2	2	1	4	100

6. POSTPONEMENTS AND CASE DURATION

Overall, close to 60% of cases had not been postponed at all. Thus only 4 out of 10 cases were postponed. (See Figure 6 and Table 11.) This means that the majority of cases were settled at the first hearing or during the first session of the labour conference.

At the district level, Oshakati reported the highest figure for postponement (75%) and Windhoek the second highest (47%). The highest figures for non-postponement were reported for Ondangwa (93%) and Okahandja (80%). (See Figure 6 and Table 11.)

Figure 6: DISTRICT LABOUR COURT BY POSTPONEMENT STATUS

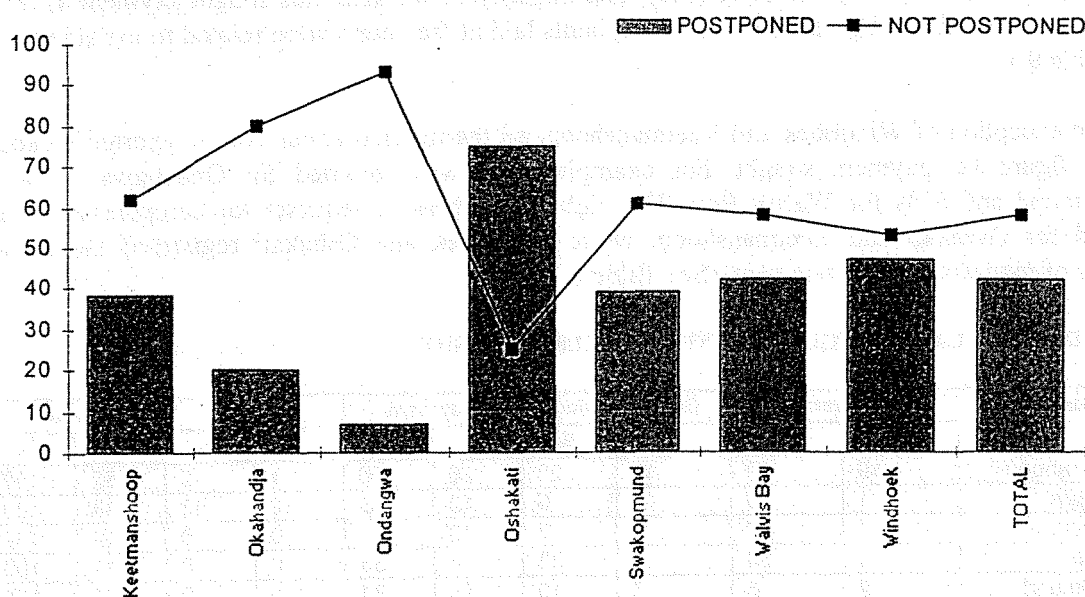


Table 11: DISTRICT LABOUR COURT BY POSTPONEMENT STATUS

Labour Court	Postponed		Not Postponed		Total	
	#	%	#	%	#	%
Keetmanshoop	20	38	33	62	53	100
Okahandja	3	20	12	80	15	100
Ondangwa	1	7	13	93	14	100
Oshakati	6	75	2	25	8	100
Swakopmund	11	39	17	61	28	100
Walvis Bay	8	42	11	58	19	100
Windhoek	81	47	93	53	174	100
Total	130	42	181	58	311	100

Of the cases that were postponed, 53% were postponed once, 29% twice and 18% three times or more. Thus half were postponed once and half twice or more. (See Table 12). Table 13 shows which parties requested a first postponement, and Table 14 gives the reasons for postponement.

Table 12: DISTRICT LABOUR COURT BY NUMBER OF POSTPONEMENTS

Labour Court	Once		Twice		Thrice +		Total	
	#	%	#	%	#	%	#	%
Keetmanshoop	16	80	1	5	3	15	20	100
Okahandja	3	100	0	0	0	0	3	100
Ondangwa	0	0	1	100	0	0	1	100
Oshakati	3	50	0	0	3	50	6	100
Swakopmund	5	45	6	55	0	0	11	100
Walvis Bay	7	88	1	13	0	0	8	100
Windhoek	35	44	28	35	17	21	80	100
Total	69	53	37	29	23	18	129	100

Requests for a first postponement were made by the respective parties as follows: the labour inspector (65%), complainant (14%), respondent (18%) and both complainant and respondent (3%). Almost 7 out of 10 requests for postponement were made by the labour inspector. Table 13 shows that employers are more likely than employees to request postponements.

In both Keetmanshoop and Ondangwa, all requests for postponement were made by the labour inspector - a figure much higher than the national average of 67%. Only in Windhoek were requests for postponement made by both complainants and respondents.

Table 13: DISTRICT LABOUR COURT BY REQUEST FOR FIRST POSTPONEMENT

Labour Court	Inspector		Complainant		Respondent		Both Parties		Total	
	#	%	#	%	#	%	#	%	#	%
Keetmanshoop	14	100	0	0	0	0	0	0	14	100
Okahandja	1	50	0	0	1	50	0	0	2	100
Ondangwa	1	100	0	0	0	0	0	0	1	100
Oshakati	4	67	0	0	2	33	0	0	6	100
Swakopmund	2	20	4	40	4	40	0	0	10	100
Walvis Bay	1	50	1	50	0	0	0	0	2	100
Windhoek	52	65	11	14	14	18	3	4	80	100
Total	75	65	16	14	21	18	3	3	115	100

The reasons given for postponement do not cover all the case files, as this information is not provided on the standard forms. Hence this data set should be used with caution. The range of reasons given were as follows: to settle the case (37%); respondent absent (27%), complainant absent (14%), both parties absent (14%) and time constraints (8%).

The majority of cases (37%) were postponed for good reason - to settle. It is clear that many postponements were due to respondents not turning up at the hearing or the labour conference. (See Table 14.) Labour inspectors requested two thirds of the total postponements, and in 8% of these cases the request was probably made due to time constraints on the part of the inspector.

Table 14: DISTRICT LABOUR COURT BY REASON FOR POSTPONEMENT

Labour Court	Complainant Absent		Respondent Absent		Both Parties Absent		To Settle		Time Constraints		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
Keetmanshoop	1	20	2	40	2	40	0	0	0	0	5	100
Okahandja	0	0	0	0	0	0	1	100	0	0	1	100
Ondangwa	1	33	1	33	0	0	0	0	1	33	3	100
Oshakati	0	0	2	40	0	0	0	0	3	60	5	100
Swakopmund	2	29	3	43	2	29	0	0	0	0	7	100
Walvis Bay	0	0	0	0	1	100	0	0	0	0	1	100
Windhoek	6	12	11	22	5	10	25	51	2	4	49	100
Total	10	14	19	27	10	14	26	37	6	8	71	100

All cases in Okahandja and Walvis Bay were postponed for settlement. Both parties in these two courts seemed to co-operate very well with the judicial authorities. Of the total cases at Oshakati, 60% were postponed due to time constraints, and likewise 33% of the total at Ondangwa. Four out of 10 cases at Keetmanshoop, Oshakati and Swakopmund were postponed due to the absence of respondents. Ondangwa recorded the highest figure (33%) for postponement due to the absence of complainants. Half of the cases in Windhoek were postponed for settlement.

Table 15: DISTRICT LABOUR COURT BY CASE DURATION FROM FILING TO SETTLEMENT
(# working days)

Labour Court	0-20	21-60	61-100	101-140	141-180	181+	Total
	%	%	%	%	%	%	%
Keetmanshoop	9	66	15	4	6	0	100
Okahandja	18	24	24	0	6	29	100
Ondangwa	14	64	0	7	14	0	100
Oshakati	27	55	9	9	0	0	100
Swakopmund	25	14	25	18	0	18	100
Walvis Bay	10	45	20	15	10	0	100
Windhoek	7	19	34	14	13	12	100
Total	11	31	27	12	10	10	100

Table 16 below shows that only 30% of the total cases were still pending when the survey was conducted. However, figures for the different localities show marked variations in this regard. So, to calculate the duration of all cases surveyed during 1994, two assumptions were made: (1) only the working days - excluding public holidays - during the period under review were taken into account; and (2) it was assumed that the pending cases were settled by 20 December 1994. This approach overestimates the ability of the courts to settle cases in time, as those cases filed towards the end of the year are credited as having been concluded within a much shorter period.

Overall, the distribution of cases in terms of their duration as measured by day cohorts were distributed as follows: 1-20 days (11%), 21-60 days (31%), 61-100 days (27%), 101-140 days (12%), 141-180 days (10%) and 181 days or more (10%). Only 11% of the cases took 20 days or less to settle. A further 58% of the total cases were settled between 21 and 100 days. About a third of the total were settled in 100 or more working days.

The highest percentages for cases settled in less than 21 working days were recorded for Oshakati (27%) and Swakopmund (25%). Two thirds of the total cases in Keetmanshoop and Ondangwa were settled in between 21 and 60 days. A third of all the cases in Windhoek were settled in between 61

and 100 days. Okahandja recorded the highest percentage (29%) for cases settled after 181 working days.

7. JUDGEMENT

A range of judgements were granted in cases lodged with the various district labour courts. (See Table 16.) No judgements were granted in 30% of the total cases surveyed. Payment was granted in almost 40% of the total, making this the most frequent type of judgement. Of the total, 16% were dismissed and 9% were withdrawn. Reinstatement and compensation were rarely granted, despite these types of relief being sought by workers in 41% of all the survey cases. It is not clear why the courts seemed to prefer granting payment over both reinstatement and compensation. ("Payment" is usually granted where workers are owed money by their employers, whereas "compensation" is granted where unfair disciplinary action has been taken against the worker.)

The highest levels of pending cases were recorded for Oshakati (64%), Swakopmund (50%) and Okahandja (35%). Of all the cases in Windhoek and Okahandja, 24% were dismissed. Payment was most often granted in Keetmanshoop (58%), Walvis Bay (55%) and Swakopmund (39%). Compensation and reinstatement seemed to be insignificant across all the labour courts.

Table 16: DISTRICT LABOUR COURT BY TYPE OF JUDGEMENT GRANTED

Labour Court	Reinstatement		Compensation		Payment		Dismissed		Withdrawn		Pending		Total	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Keetmanshoop	1	2	2	4	31	58	1	2	1	2	17	32	53	100
Okahandja	0	0	0	0	6	35	4	24	1	6	6	35	17	100
Ondangwa	0	0	0	0	10	71	0	0	0	0	4	29	14	100
Oshakati	1	9	1	9	1	9	0	0	1	9	7	64	11	100
Swakopmund	0	0	0	0	11	39	3	11	0	0	14	50	28	100
Walvis Bay	0	0	0	0	11	55	0	0	2	10	7	35	20	100
Windhoek	9	5	6	3	59	31	46	24	25	13	43	23	188	100
Total	11	3	9	3	129	39	54	16	30	9	98	30	331	100

No monetary award was granted in 63% of the total cases. This figure compares favourably with the 54% recorded for no money claimed by workers (see Table 10 above). The amount of money granted was concentrated in the below N\$6000 bracket, and the amount granted in 21% of the cases in which awards were made was under N\$1001. This compares favourably with the amount of money requested by workers, in 18% of these cases. Awards in the N\$1001-N\$6000 cohort were granted in 13% of these cases. (See Table 17.)

Table 17: DISTRICT LABOUR COURT BY SUM OF MONEY GRANTED (N\$)

Labour Court	None	<1000	1001-6000	6001-11000	11001-16000	16000-21000	>21000	Total
	%	%	%	%	%	%	%	%
Keetmanshoop	62	26	9	2	0	0	0	100
Okahandja	65	29	6	0	0	0	0	100
Ondangwa	29	43	21	7	0	0	0	100
Oshakati	82	9	9	0	0	0	0	100
Swakopmund	64	29	7	0	0	0	0	100
Walvis Bay	50	40	5	0	0	0	5	100
Windhoek	66	15	16	3	1	0	0	100
Total	63	21	13	2	0	0	0	100

Oshakati recorded the highest figure (82%) for no money granted, while Ondangwa recorded the highest figure for money granted in the N\$1000 and less category. Ondangwa recorded the highest figure - almost twice the national average - for money granted in the N\$1001-N\$6000 bracket.

Chapter 4

INDUSTRIAL DISTRIBUTION

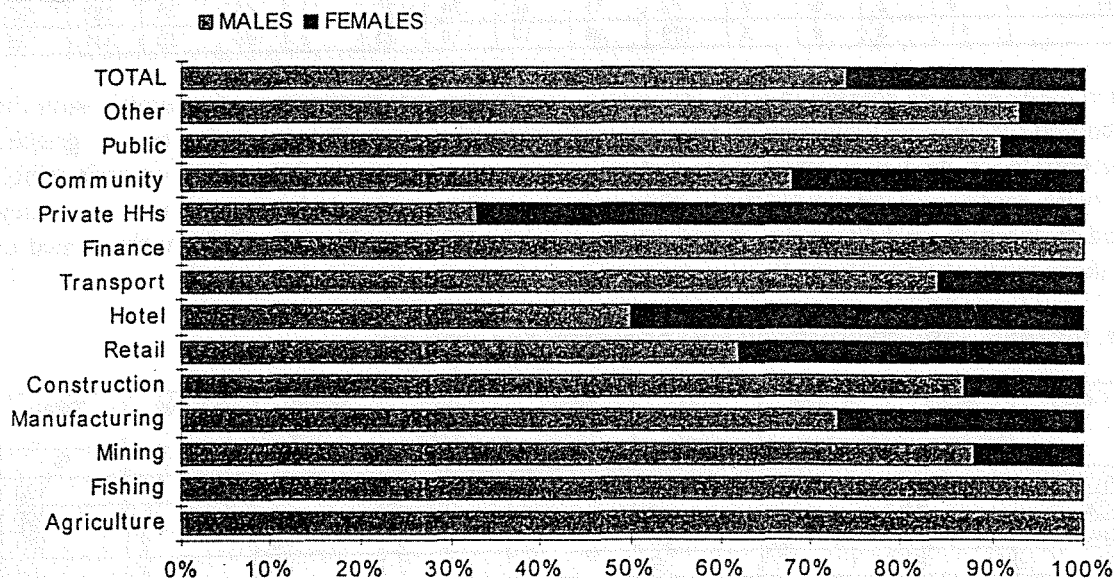
1. INTRODUCTION

Almost two thirds of all the cases surveyed were concentrated in only six industries. In descending order these are: retail/wholesale/vehicle repair (19%), construction/water/electricity (16%), hotels/restaurants (11%), transport/storage/communications (11%), private houses with employed persons (9%) and agriculture/hunting (8%). More than a third (35%) of the total cases were constituted by the retail and construction industries. The breakdown for the remaining cases is as follows: community/personal (6%), manufacturing (5%), public/government (4%), fishing (3%), mining (3%) finance/real estate/renting (2%) and other (5%). (See Table 18.)

2. DEMOGRAPHICS

Overall, male workers constituted 74% and female workers 26% of the cases. However, there are industrial variations concerning the sexual distribution of the survey population. For example, all workers in the agricultural, fishing and finance sectors were males. The highest concentration of female workers (67%) was in the private households with employed persons (domestic service). This figure is two and a half times larger than the national average (26%). (See Figure 7 and Table 18).

Figure 7: INDUSTRY BY SEX OF COMPLAINANT



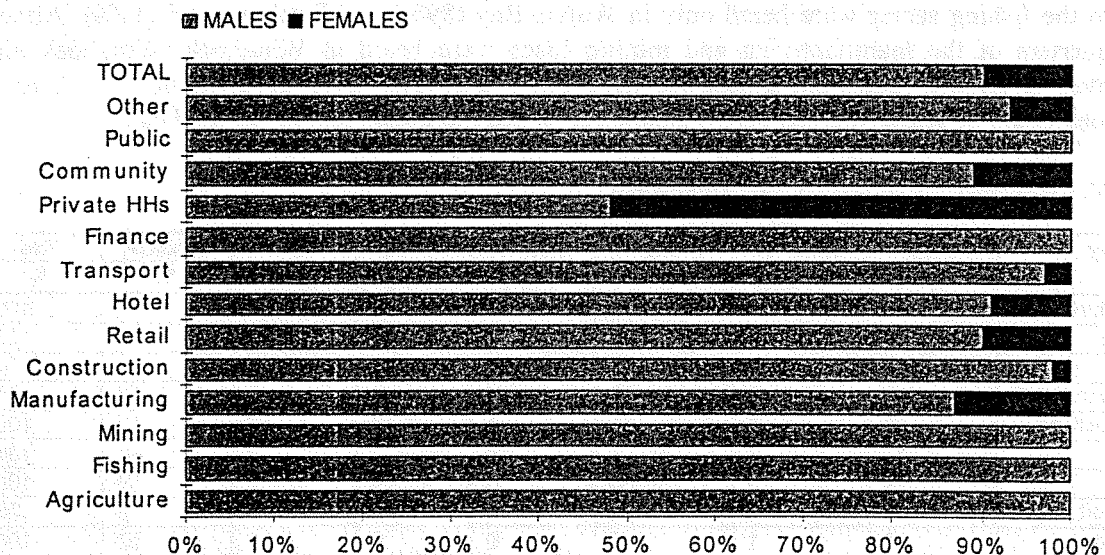
The second and third largest numbers of cases involving female workers were in the hotel (50%) and retail industries (38%), respectively. Close to a third (32%) of workers in the community industry were females. Close to 80% of all female workers were concentrated in four industries: retail, private households, hotel and community. Mining (13%), construction (13%) and the public sector (9%) recorded the lowest concentration of female workers.

Table 18: INDUSTRY BY SEX OF COMPLAINANT

Industry	Males		Females		Total	
	#	%	#	%	#	%
Agriculture	25	100	0	0	25	100
Fishing	9	100	0	0	9	100
Mining	7	88	1	13	8	100
Manufacturing	11	73	4	27	15	100
Construction	41	87	6	13	47	100
Retail	36	62	22	38	58	100
Hotel	16	50	16	50	32	100
Transport	27	84	5	16	32	100
Finance	6	100	0	0	6	100
Private Houses	9	33	18	67	27	100
Community	13	68	6	32	19	100
Public	10	91	1	9	11	100
Other	13	93	1	7	14	100
Total	223	74	80	26	303	100

The figures for female employers in relation to male employers differ markedly from those observed for female and male employees. For example, while the percentage for female workers in private households is 2.5 times the total average for all female workers, the corresponding figure for female employers is 5.2 times the total average for all female employers. About 52% of the total female employers in contrast to 48% of male employers were in the private households with employed persons industry. The manufacturing industry had the second highest concentration of female employers (13%) and the community industry (11%) the third highest. (See Table 19.)

Figure 8: INDUSTRY BY SEX OF RESPONDENT



The ratio of female to male employers as a percentage of the total employers by industry reveals that females are not adequately represented in almost all the industries. The exception to this rule is in the private households sector where women constituted 52% of the total employers surveyed in this industry. The manufacturing (13%), community (11%) and retail (10%) industries had, respectively, the second, third and fourth largest concentrations of female employers. (See Figure 8 and Table 19.) It could be that female employers are more fair in their treatment of their employees, or that workers employed by women do not feel the need to lodge complaints. It is also plausible that the low

representation found for women at the industry level is due to the fact that there were very few female employers in the survey - only 10% of all employers.

Table 19: INDUSTRY BY SEX OF RESPONDENT

Industry	Males		Females		Total	
	#	%	#	%	#	%
Agriculture	25	100	0	0	25	100
Fishing	9	100	0	0	9	100
Mining	8	100	0	0	8	100
Manufacturing	13	87	2	13	15	100
Construction	46	98	1	2	47	100
Retail	52	90	6	10	58	100
Hotel	29	91	3	9	32	100
Transport	31	97	1	3	32	100
Finance	6	100	0	0	6	100
Private Houses	13	48	14	52	27	100
Community	17	89	2	11	19	100
Public	11	100	0	0	11	100
Other	13	93	1	7	14	100
Total	273	90	30	10	303	100

The agriculture, fishing and mining industries were 100% dominated by male employers. The finance, agriculture and fishing industries were 100% dominated by male workers. The construction (2%) and transport (3%) industries had the lowest concentration of female employers.

3. GEOGRAPHICAL DISTRIBUTION

Agricultural cases were predominantly heard in Keetmanshoop (40%) and Windhoek (32%), while cases in the fishing sector were heard only in Walvis Bay (89%) and Swakopmund (11%). Almost three quarters of the manufacturing and mining cases were heard in Windhoek. Windhoek also dominated in all the remaining industries. (See Table 20.) This over-representation of cases in Windhoek could be due to the fact that Windhoek recorded more than half of the total cases.

Table 20: INDUSTRY BY DISTRICT LABOUR COURT

Industry	Keetmans	Okavango	Ondangwa	Oshana	Swakop	Walvis	Windhoek	Total
	%	%	%	%	%	%	%	%
Agriculture	40	5	4	0	4	0	32	100
Fishing	0	0	0	0	11	89	0	100
Mining	25	0	0	0	0	0	75	100
Manufacturing	7	0	0	0	13	7	73	100
Construction	9	1	11	4	17	2	55	100
Retail	31	2	7	8	3	2	46	100
Hotel	9	3	0	6	16	0	59	100
Transport	9	2	6	3	9	6	59	100
Finance	29	1	0	0	0	0	57	100
Private Houses	11	1	7	0	11	4	63	100
Community	21	0	0	0	11	5	63	100
Public	10	0	0	0	0	10	80	100
Other	0	0	0	0	0	0	100	100
Total	17	5	5	3	9	5	56	100

Excluding Windhoek, Swakopmund had the greatest concentration of cases in both the construction (17%) and hotel (16%) industries. After Windhoek, Keetmanshoop had the second highest occurrence of labour cases in the mining (25%), retail (31%), finance (29%) and community (21%) industries.

No cases were recorded for the manufacturing industry in Okahandja, Ondangwa and Oshakati. Similarly, no cases were recorded for the agricultural and private household industries in Oshakati.

4. LEGAL REPRESENTATION

Of the workers employed in the agricultural industry, 72% were not legally represented at all. Of those who were represented, 8% were represented by the LAC and 4% by trade unions. Of the workers in the fishing industry, 56% were represented by the LAC. This figure is five times higher than the total average for LAC representation (11%). Trade unions represented a quarter (25%) of workers in the mining industry. The construction industry had the highest representation by trade unions (30%). (See Table 21.)

Table 21: INDUSTRY BY COMPLAINANTS' REPRESENTATION

Industry	Self		Private Attorney		LAC Attorney/ Paralegal		Trade Unionist		Other		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
Agriculture	18	72	4	16	2	8	1	4	0	0	25	100
Fishing	3	33	1	11	5	56	0	0	0	0	9	100
Mining	5	63	1	13	0	0	2	25	0	0	8	100
Manufacturing	9	60	1	7	2	13	3	20	0	0	15	100
Construction	26	55	0	0	6	13	14	30	1	2	47	100
Retail	30	51	7	12	4	7	17	29	1	2	59	100
Hotel	20	63	2	6	2	6	7	22	1	3	32	100
Transport	19	59	5	16	3	9	5	16	0	0	32	100
Finance	5	71	0	0	1	14	1	14	0	0	7	100
Private Houses	19	70	1	4	4	15	2	7	1	4	27	100
Community	10	53	2	11	1	5	5	26	1	5	19	100
Public	2	18	7	64	2	18	0	0	0	0	11	100
Other	10	67	3	20	1	7	1	7	0	0	15	100
Total	176	58	34	11	33	11	58	19	5	2	306	100

The public sector had the highest representation of workers by private attorneys: about 2 out of every 3 workers were defended by private attorneys. Agriculture, finance and private households with employed persons were the industries with the lowest legal representation. It is not clear why in this regard the finance sector stands among these other two sectors, which are known to be relatively marginal in terms of labour relations.

Table 22: INDUSTRY BY RESPONDENTS' REPRESENTATION

Industry	Self		Attorney		Other		Total	
	#	%	#	%	#	%	#	%
Agriculture	18	72	6	24	1	4	25	100
Fishing	4	44	5	56	0	0	9	100
Mining	2	25	6	75	0	0	8	100
Manufacturing	12	80	2	13	1	7	15	100
Construction	35	74	11	23	1	2	47	100
Retail	44	75	14	24	1	2	59	100
Hotel	20	63	11	34	1	3	32	100
Transport	18	56	14	44	0	0	32	100
Finance	5	71	2	29	0	0	7	100
Private Houses	25	93	2	7	0	0	27	100
Community	11	58	8	42	0	0	19	100
Public	2	18	4	36	5	45	11	100
Other	13	87	2	13	0	0	15	100
Total	209	68	87	28	10	3	306	100

In contrast to workers by industry, the number of employers who had legal representation was relatively low. It is interesting to note that almost all the employers in the private household (93%) and manufacturing (80%) industries represented themselves in the district labour courts. Conversely, employers in the mining (25%) and public/government (18%) sectors recorded the lowest figures for self-representation - probably due to the fact that mining companies are financially able to afford legal services, and government attorneys are ready to defend civil servants. Table 22 shows that 45% of the cases involving employers in the public sector were defended by "other", which presumably refers to a government attorney. The mining (75%) and fishing (56%) bosses had the highest representation by a private attorney.

5. TYPE OF COMPLAINT AND RELIEF SOUGHT

Overall, the majority of cases were in connection with unfair dismissal (38%) and unpaid salary or severance pay (43%). At 75% of its total cases, the mining industry recorded the highest percentage for unfair dismissal. The second place is occupied by the agricultural (39%) and private household (39%) industries. Of the cases in the fishing industry, 70% were in relation to salary disputes. Likewise, more than half of the cases in the construction and private household industries were in connection with salary disputes. The retail sector recorded the highest percentages for both unpaid leave (27%) and unpaid overtime (18%). The public sector recorded the highest figures for unpaid holiday (17%) and unfair disciplinary action (8%). (See Table 23.)

Table 23: INDUSTRY BY TYPE OF COMPLAINT LODGED

Industry	Dismissal %	Salary %	Overtime %	Leave %	Holiday %	Discipline %	Other %	Total %
Agriculture	39	32	7	5	9	0	9	100
Fishing	30	70	0	0	0	0	0	100
Mining	75	25	0	0	0	0	0	100
Manufacturing	45	36	5	0	0	5	9	100
Construction	36	52	0	3	2	0	8	100
Retail	0	36	18	27	9	0	9	100
Hotel	37	46	6	9	0	0	2	100
Transport	52	35	2	2	2	2	4	100
Finance	22	33	0	22	0	0	22	100
Private Houses	39	54	0	5	0	0	2	100
Community	52	38	0	0	3	7	0	100
Public	50	17	0	0	17	8	8	100
Other	32	58	5	0	0	0	5	100
Total	38	43	4	6	3	1	6	100

Overall, the types of relief workers sought were distributed as follows: payment (55%), reinstatement (24%), compensation (18%) and other (3%). Payment disputes constituted 83% and 82% of all cases in the transport and fishing industries, respectively. The majority of workers in the mining (56%) and manufacturing (38%) industries sought reinstatement as relief. Compensation was sought more often by agricultural workers (32%) and retail workers (27%). Close to 70% of domestic workers sought payment as relief. Similarly, 66% of construction workers claimed payment. (See Table 24.)

Overall, 54% of workers did not lodge monetary claims and 18% of workers made monetary claims in each of the following cohorts: N\$1000 and less, and N\$1001-N\$6000. Seven out of 10 workers in the agricultural, mining and finance industries did not lodge monetary claims at all. The highest numbers of workers claiming payment in the N\$1000-N\$6000 cohort were in the manufacturing (27%) and finance (29%) industries.

Table 24: INDUSTRY BY TYPE OF RELIEF SOUGHT

Industry	Reinstatement		Compensation		Payment		Other		Total	
	#	%	#	%	#	%	#	%	#	%
Agriculture	6	19	10	32	13	42	2	6	31	100
Fishing	1	9	1	9	9	82	0	0	11	100
Mining	5	56	0	0	4	44	0	0	9	100
Manufacturing	6	38	1	6	9	56	0	0	16	100
Construction	7	14	10	20	33	66	0	0	50	100
Retail	14	21	18	27	32	48	2	3	66	100
Hotel	8	20	9	23	23	58	0	0	40	100
Transport	14	35	6	15	18	45	2	5	40	100
Finance	0	0	0	0	5	83	1	17	6	100
Private Houses	6	21	2	7	19	68	1	4	28	100
Community	10	37	4	15	11	41	2	7	27	100
Public	4	36	1	9	6	55	0	0	11	100
Other	5	29	0	0	11	65	1	6	17	100
Total	86	24	62	18	193	55	11	3	352	100

Table 25: INDUSTRY BY SUM OF MONEY CLAIMED (N\$)

Industry	None	< 1000	1001-6000	6000-11000	11001-16000	16001-21000	> 21 000	Total
	%	%	%	%	%	%	%	%
Agriculture	72	12	12	0	4	0	0	100
Fishing	56	11	11	0	11	0	11	100
Mining	75	13	13	0	0	0	0	100
Manufacturing	40	20	27	13	0	0	0	100
Construction	45	17	19	4	2	6	6	100
Retail	51	14	29	0	0	0	7	100
Hotel	53	25	13	0	3	3	3	100
Transport	53	22	16	6	3	0	0	100
Finance	71	0	29	0	0	0	0	100
Private Houses	56	41	4	0	0	0	0	100
Community	63	11	16	11	0	0	0	100
Public	45	9	9	0	9	0	27	100
Other	60	13	27	0	0	0	0	100
Total	54	18	18	3	2	1	4	100

Of the manufacturing workers, 13% lodged claims of between N\$6000 and N\$11000. Of the workers in the fishing sector, 11% made claims in each of the N\$11000-N\$16000 and above N\$21000 cohorts. Of the public sectors workers, 27% claimed more than N\$21000. (See Table 25.)

6. POSTPONEMENTS AND CASE DURATION

Close to 60% of the total cases had not been postponed. Postponements by industry showed interesting variations. For example, postponements were most numerous in the community (63%), finance (57%) and fishing (56%) industries, and percentages for these industries were more than 10% higher than the total average of 42%. (See Figure 9 and Table 26.)

The total average for cases not postponed was 58%. Non-postponement levels were highest in the following industries: other (93%), agriculture (75%), manufacturing (71%) and mining (63%). Thus, postponement levels were highest for the community and finance sectors, while the converse was true for the "other" and agricultural sectors.

Figure 9: INDUSTRY BY POSTPONEMENT STATUS

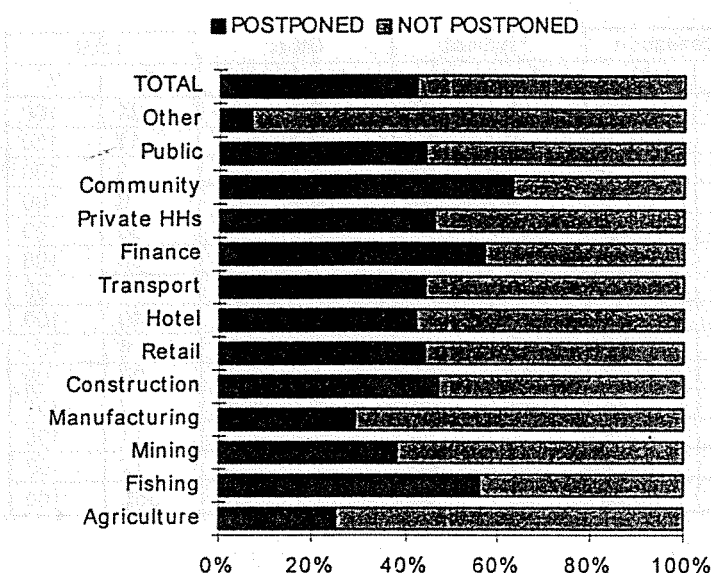


Table 26: INDUSTRY BY POSTPONEMENT STATUS

Industry	Postponed		Not Postponed		Total	
	#	%	#	%	#	%
Agriculture	6	25	18	75	24	100
Fishing	5	56	4	44	9	100
Mining	3	38	5	63	8	100
Manufacturing	4	29	10	71	14	100
Construction	22	47	25	53	47	100
Retail	24	44	31	56	55	100
Hotel	13	42	18	58	31	100
Transport	14	44	18	56	32	100
Finance	4	57	3	43	7	100
Private Houses	12	46	14	54	26	100
Community	12	63	7	37	19	100
Public	4	44	5	56	9	100
Other	1	7	13	93	14	100
Total	124	42	171	58	295	100

Of those cases postponed, 52% were postponed once, 29% twice and 19% three times or more. Half of the cases were thus postponed once and the other half twice or more. Cases involving agricultural and community workers were postponed as follows: a third were postponed once, a third twice and a third three times or more. Postponements in the mining and manufacturing industries were as follows: two thirds of the cases were postponed once and the remaining third three times or more. The majority of cases in the fishing (80%) and hotel (85%) industries were postponed once. Of the cases involving domestic workers, 90% were postponed twice or less, with close to 60% postponed once. (See Table 27.)

Requests for postponements were made by the following parties: the labour inspector (66%), respondent (18%), complainant (14%) and both complainant and respondent (2%). Thus, two out of three cases were postponed at the request of labour inspectors. Requests for postponement in the agricultural industry were equally divided between labour inspectors, complainants and respondents. Postponements requested by inspectors were most numerous in the private households (89%), community (83%), retail (78%) and mining (67%) industries. Requests by respondents were most numerous in the public, mining, agriculture and construction industries. Slightly more than two thirds

of postponement requests in the fishing industry were made by complainants - almost 5 times as many requests than the total average of 14%. (See Table 28.)

Table 27: INDUSTRY BY NUMBER OF POSTPONEMENTS

Industry	Once		Twice		Thrice+		Total	
	#	%	#	%	#	%	#	%
Agriculture	2	33	2	33	2	33	6	100
Fishing	4	80	1	20	0	0	5	100
Mining	2	67	0	0	1	33	3	100
Manufacturing	2	67	0	0	1	33	3	100
Construction	4	18	13	59	5	23	22	100
Retail	15	63	4	17	5	21	24	100
Hotel	11	85	1	8	1	8	13	100
Transport	8	57	3	21	3	21	14	100
Finance	2	50	2	50	0	0	4	100
Private Houses	7	58	4	33	1	8	12	100
Community	4	33	4	33	4	33	12	100
Public	2	50	2	50	0	0	4	100
Other	1	100	0	0	0	0	1	100
Total	64	52	36	29	23	19	123	100

Table 28: INDUSTRY BY REQUEST FOR FIRST POSTPONEMENT

Industry	Inspector		Complainant		Respondent		Both Parties		Total	
	#	%	#	%	#	%	#	%	#	%
Agriculture	1	33	1	33	1	33	0	0	3	100
Fishing	1	33	2	67	0	0	0	0	3	100
Mining	2	67	0	0	1	33	0	0	3	100
Manufacturing	3	75	0	0	0	0	1	25	4	100
Construction	12	55	3	14	7	32	0	0	22	100
Retail	18	78	2	9	3	13	0	0	23	100
Hotel	7	58	2	17	2	17	1	8	12	100
Transport	7	58	2	17	3	25	0	0	12	100
Finance	1	50	1	50	0	0	0	0	2	100
Private Houses	8	89	0	0	1	11	0	0	9	100
Community	10	83	1	8	1	8	0	0	12	100
Public	1	33	1	33	1	33	0	0	3	100
Other	1	100	0	0	0	0	0	0	1	100
Total	72	66	15	14	20	18	2	2	109	100

Overall, the following reasons were given for postponement: to settle (39%), respondent absent (24%), complainant absent (14%), both parties absent (14%) and time constraints (8%). All the cases in the agriculture, manufacturing and community sectors were postponed for settlement. Similarly, 86% of cases in the transport industry were postponed for settlement. All the cases in the finance sector and half of the cases in the fishing sector were postponed due to the absence of the complainant. Of the cases in the construction industry, 56% were postponed due to the absence of respondents. In the retail and community sectors, 21% and 20% of the cases, respectively, were postponed due to time constraints. (See Table 29.) This situation could be due to the large numbers of other cases lodged at the labour courts.

The distribution of the total number of cases by day cohorts was as follows: 1-20 days (11%), 21-60 days (31%), 61-100 days (27%), 101-140 days (12%), 141-180 days (10%) and 181+ days (10%). Thus, close to 70% of cases were concluded within 100 days or less. Two out of 10 cases in both the community and public sectors were concluded within 20 days or less. More than half (55%) of the cases in the fishing and finance sectors were concluded in between 21 and 60 days. (See Table 30. The assumptions made to calculate the duration of cases should be borne in mind when reading this table.)

Table 29: INDUSTRY BY REASON FOR POSTPONEMENT

Industry	Complainant Absent		Respondent Absent		Both Parties Absent		To Settle		Time Constraints		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
Agriculture	0	0	0	0	0	0	4	100	0	0	4	100
Fishing	1	50	0	0	1	50	0	0	0	0	2	100
Mining	0	0	0	0	0	0	0	0	0	0	0	100
Manufacturing	0	0	0	0	0	0	3	100	0	0	3	100
Construction	2	13	9	56	1	6	2	13	2	13	16	100
Retail	0	0	2	14	5	36	4	29	3	21	14	100
Hotel	3	30	2	20	0	0	5	50	0	0	10	100
Transport	0	0	1	14	0	0	6	86	0	0	7	100
Finance	1	100	0	0	0	0	0	0	0	0	1	100
Private Houses	2	29	2	29	1	14	2	29	0	0	7	100
Community	1	20	1	20	1	20	1	20	1	20	5	100
Public	0	0	0	0	0	0	1	100	0	0	1	100
Other	0	0	0	0	1	100	0	0	0	0	1	100
Total	10	14	17	24	10	14	28	39	6	8	71	100

Table 30: INDUSTRY BY CASE DURATION FROM FILING TO SETTLEMENT (# working days)

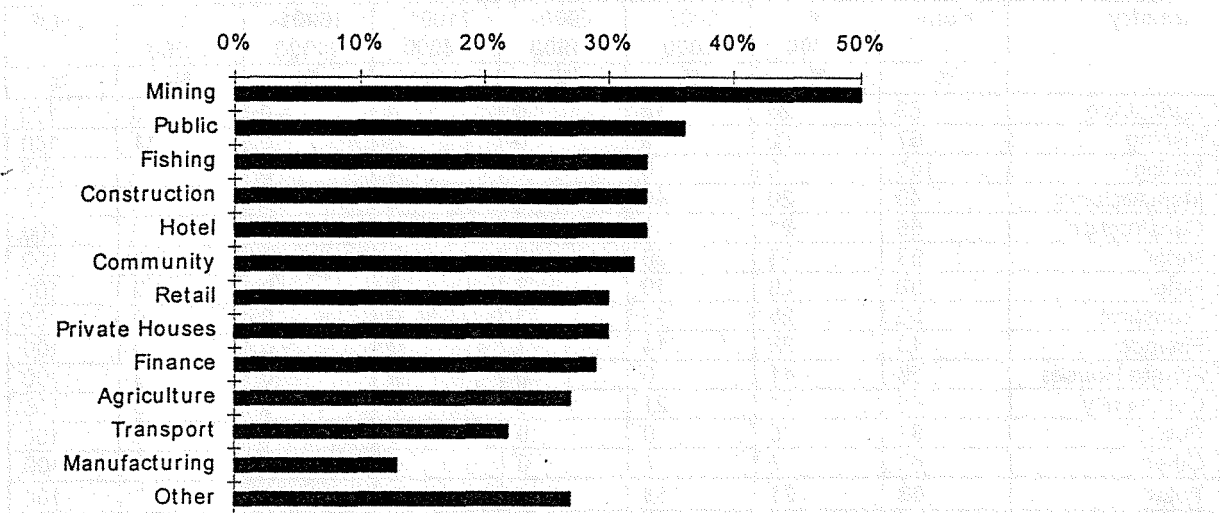
Industry	1-20	21-60	61-100	101-140	141-180	181+	Total
	%	%	%	%	%	%	%
Agriculture	8	40	12	20	12	8	100
Fishing	11	56	22	11	0	0	100
Mining	0	25	78	0	25	13	100
Manufacturing	7	40	13	13	7	20	100
Construction	13	32	23	17	6	9	100
Retail	14	39	25	3	12	7	100
Hotel	9	22	28	19	16	6	100
Transport	3	25	34	13	9	16	100
Finance	0	57	29	0	0	14	100
Private Houses	11	15	37	4	15	19	100
Community	20	13	60	0	7	0	100
Public	21	26	16	16	11	11	100
Other	9	27	18	36	9	0	100
Not Stated	6	41	29	12	0	12	100
Total	11	31	27	12	10	10	100

In the community sector, 60% of the cases were concluded in between 61 and 100 days, while 20% of the cases in the agricultural sector were concluded in between 101 and 140 days. A quarter of all cases in the mining industry took between 141 and 180 days to conclude. The manufacturing sector recorded the highest percentage for cases taking too long to conclude. For example, 20% of these cases were concluded in not less than 181 days. The duration of cases is mainly influenced by the number of postponements.

7. JUDGEMENT

Overall, 29% of the cases were pending at the time of the survey. A further 17% were dismissed by the courts, while another 9% were withdrawn by workers. Mining recorded the highest percentage for pending cases, as half of the cases in this sector were not finalised at the time of the survey. The second, third, fourth, fifth and sixth largest concentrations of pending cases were in the public service (36%), hotel (33%), construction (33%), fishing (33%) and community (32%) sectors. Very few cases were pending in the manufacturing and transport sectors. (See Figure 10 and Table 31.) Both dismissals and withdrawals of cases filed by workers could be taken as indicators of employers' successes at the district labour courts.

Figure 10: INDUSTRY BY CASES PENDING



The range of judgements granted by the district labour courts was as follows: payment (39%), dismissal (17%), reinstatement (4%) and compensation (3%). Of the cases in the fishing sector, 20% were withdrawn, and in the mining sector 38% were dismissed. After mining, the construction industry (22%) and private households (22%) recorded the highest percentages for dismissal.

Table 31: INDUSTRY BY TYPE OF JUDGEMENT GRANTED

Industry	Reinstatement		Compensation		Payment		Dismissed		Withdrawn		Pending		Total	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Agriculture	0	0	2	8	11	42	2	8	4	15	7	27	26	100
Fishing	0	0	0	0	4	44	0	0	2	22	3	33	9	100
Mining	0	0	0	0	0	0	3	38	1	13	4	50	8	100
Manufacturing	0	0	1	6	10	63	1	6	2	13	2	13	16	100
Construction	1	2	1	2	14	29	11	22	6	12	16	33	49	100
Retail	5	8	4	7	25	42	5	8	3	5	18	30	60	100
Hotel	1	3	0	0	17	52	4	12	0	0	11	33	33	100
Transport	1	3	0	0	15	47	5	16	4	13	7	22	32	100
Finance	0	0	0	0	4	57	1	14	0	0	2	29	7	100
Private Houses	0	0	0	0	12	44	6	22	1	4	8	30	27	100
Community	0	0	1	5	6	32	4	21	2	11	6	32	19	100
Public	1	9	0	0	1	9	3	27	2	18	4	36	11	100
Other	2	13	0	0	2	13	7	47	0	0	4	27	15	100
Total	11	4	9	3	121	39	52	17	27	9	92	29	312	100

Compared to workers in other industries, workers in manufacturing and private households were more likely to be granted payment. Workers in the agricultural and retail sectors were more likely to be granted compensation and reinstatement, respectively, in settlement.

Payment was not granted as in 63% of the total cases surveyed. The amount of money granted was concentrated in the monetary category N\$6000 and less (34%). This figure could be higher if the no money granted category is removed from the calculation. Only 2% of the payment granted was in the over N\$6000 cohort. More than two thirds of complainants in the agriculture, fishing, community, public and mining industries were granted no payment at all. Of the domestic workers granted payment, 41% received N\$1000 and less, and 40% of the workers in the manufacturing sector were granted between N\$1001 and N\$6000. Of the workers granted payment in the finance sector, 14% received payment in the N\$6000-N\$11000 cohort. Workers in the fishing sector were awarded the highest amounts, with 11% of them paid in excess of N\$21000. (See Table 32.)

Table 32: INDUSTRY BY SUM OF MONEY GRANTED (N\$)

Industry	None	< 1 000	1001- 6000	6000- 11000	11001- 16000	16001- 21000	> 21000	Total
	%	%	%	%	%	%	%	%
Agriculture	68	20	12	0	0	0	0	100
Fishing	67	22	0	0	0	0	11	100
Mining	100	0	0	0	0	0	0	100
Manufacturing	40	20	40	0	0	0	0	100
Construction	66	21	9	4	0	0	0	100
Retail	63	15	20	2	0	0	0	100
Hotel	50	28	16	3	3	0	0	100
Transport	53	28	16	3	0	0	0	100
Finance	43	29	14	14	0	0	0	100
Private Houses	59	41	0	0	0	0	0	100
Community	68	11	21	0	0	0	0	100
Public	91	0	0	9	0	0	0	100
Other	87	7	7	0	0	0	0	100
Total	63	21	13	2	0	0	0	100

Whether or not payment is awarded is probably determined by the legal representation of both the worker and the employer. For example, the mining industry, which had the highest number of employers represented by an attorney, recorded no monetary awards to workers. Conversely, despite having the second highest number of employers represented by an attorney, the fishing industry recorded the highest number of monetary awards to workers, probably due to the fact that workers in this industry had the highest level of representation by the LAC. It is possible that workers employed in the low-paying industries, such as domestic service, are granted lower payments in conformity with what they are entitled to.

Chapter 5

SEX DISTRIBUTION

1. INTRODUCTION

As mentioned previously, male complainants constituted about 74% and female complainants about 26% of the survey sample. However, a different picture emerges when these data are disaggregated by sex. In this chapter, the available data relating to the sex of both complainants and respondents are compared using a number of variables.

2. DEMOGRAPHICS

Overall, the majority of complainants (55%) lodged their complaints at the Windhoek District Labour Court. Furthermore, 60% of all female cases and 54% of all male cases were reported at this court. The Swakopmund court also handled a larger percentage of cases involving females (10%) than males (8%). Equal percentages of males and females (6%) were reported for cases at Walvis Bay. With the exception of Ondangwa, the male to female ratio for cases at the district labour courts was favourable to male workers. Only Windhoek, Swakopmund and Ondangwa handled a larger percentage of female cases than male cases. (See Table 33.)

Table 33: SEX OF COMPLAINANT BY LABOUR COURT

Sex	Keetmans	Okavango	Ondangwa	Oshana	Swakop	Walvis	Windhoek	Total
	%	%	%	%	%	%	%	%
Male	17	6	4	4	8	6	54	100
Female	14	2	6	2	10	6	60	100
Total	17	5	4	3	9	6	55	100

The distribution of cases involving female and male employers is more or less similar to that for employees. For example, the largest concentrations of female cases were heard at the Windhoek and Swakopmund courts, while at Walvis Bay the male to female ratio for employers was equal. Interestingly, no single female employer was recorded as a respondent at the Ondangwa court. The ratio for female employers and employees in Windhoek is 65% and 60%, respectively. (See Table 34.)

Table 34: SEX OF RESPONDENT BY LABOUR COURT

Sex	Keetmans	Okavango	Ondangwa	Oshana	Swakop	Walvis	Windhoek	Total
	%	%	%	%	%	%	%	%
Male	17	6	5	3	8	6	55	100
Female	10	3	0	3	13	6	65	100
Total	17	5	4	3	9	6	56	100

3. INDUSTRIAL DISTRIBUTION

The following industries had the highest concentrations of female employees: retail (28%), private households (23%) and hotels (20%). Thus, close to a third of the total cases brought by women

originated in the retail sector. The majority of cases brought by male employees originated in the following industries: construction (18%), retail (16%) and transport (12%). All the cases in the agricultural, fishing and finance sectors involved only male workers, and the number of female cases in the mining and public sectors was negligible. Of the total male cases, 11% were recorded for the agricultural industry. (See Table 35.)

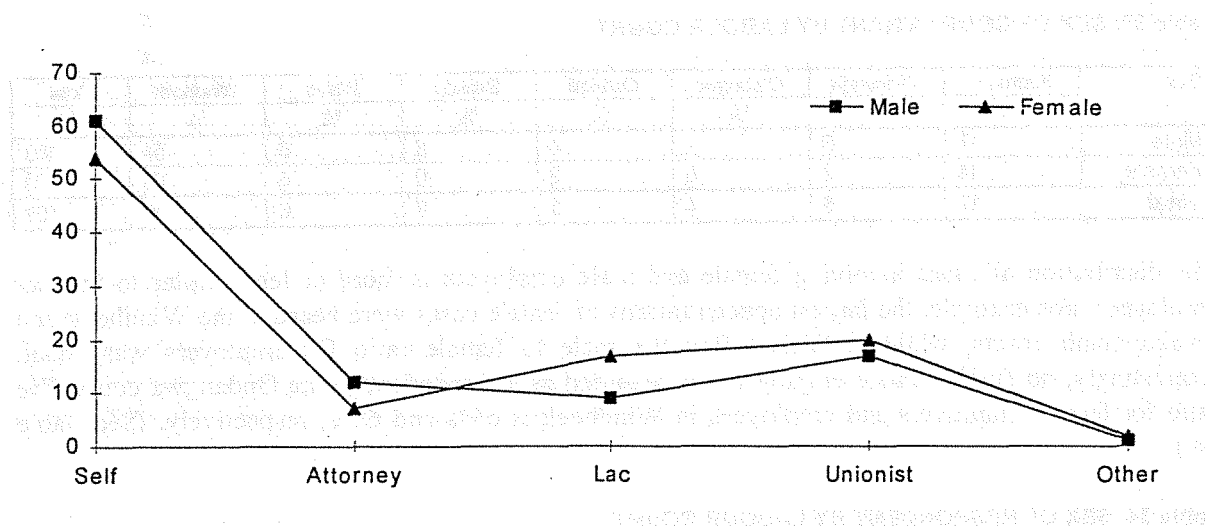
Table 35: SEX OF RESPONDENT BY INDUSTRY

Sex	Agriculture	Fishing	Mining	Manufacturing	Construction	Retail	Hotel	Transport	Finance	Private Houses	Community	Public	Other	Total
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Male	11	4	3	5	18	16	7	12	3	4	6	4	6	100
Female	0	0	1	5	8	28	20	6	0	23	8	1	1	100
Total	8	3	3	5	16	19	11	11	2	9	6	4	5	100

4. LEGAL REPRESENTATION

Of the total female employee sample, 20% were represented by trade unionists in contrast to 17% of the male employee sample. Similarly, the percentage of female workers (17%) who were represented by LAC attorneys and paralegals was higher than that for male workers (9%). (See Figure 11 and Table 36.)

Figure 11: SEX OF COMPLAINANT BY REPRESENTATION (%)



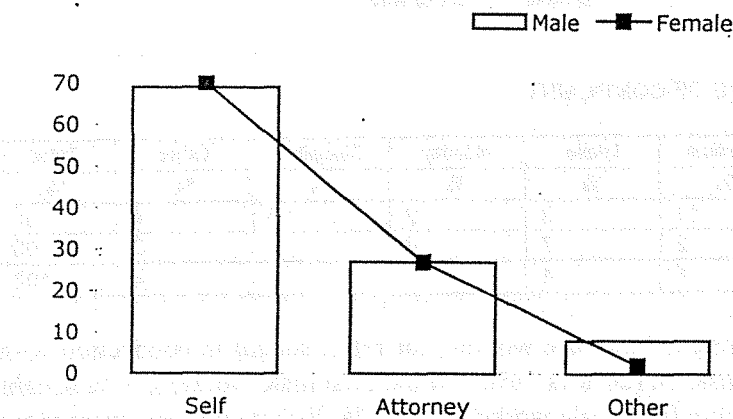
A similar pattern was observed for female (7%) and male (12%) employee representation by private attorneys. However, the percentage of unrepresented male workers is slightly higher than that of female workers. It is thus clear that women workers tend to have better access to legal representation than male workers.

The differences between female and male employers' legal representation are minor. Overall, a higher percentage of both male (69%) and female (70%) employers tended to have no legal representation in contrast to male (61%) and female (54%) employees. This situation is contrary to popular expectations. (See Figure 12 and Table 37.)

Table 36: SEX OF COMPLAINANT BY REPRESENTATION

Sex	Self		Private Attorney		Lac Attorney/Pa ralegal		Trade Unionist		Other		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
Male	143	61	28	12	22	9	40	17	3	1	236	100
Female	45	54	6	7	14	17	17	20	2	2	84	100
Total	188	59	34	11	36	11	57	18	5	2	320	100

Figure 12: SEX OF RESPONDENT BY REPRESENTATION (%)



Equal percentages (27%) of female and male employers were represented by a private attorney. This figure is almost 14 times that of male workers and close to 4 times that of female workers. As expected, no employers were defended by either a trade union or the LAC.

Table 37: SEX OF RESPONDENT BY REPRESENTATION

Sex	Self		Private Attorney		Other		Total	
	#	%	#	%	#	%	#	%
Male	164	69	64	27	8	3	236	100
Female	59	70	23	27	2	2	84	100
Total	223	70	87	27	10	3	320	100

5. TYPE OF COMPLAINT AND RELIEF SOUGHT

An almost equal number of male workers (45%) and female workers (44%) lodged complaints in connection with unfair dismissal. More female cases (41%) than male cases (36%) were related to unpaid salaries. The number of female workers (7%) complaining about unpaid leave was higher than that recorded for male workers (3%). (See Figure 13 and Table 38.)

More male workers (11%) than female workers (2%) lodged labour complaints with regard to unpaid overtime. Male workers are therefore six times more likely than their female counterparts to be involved in disputes concerning overtime. Unpaid Sunday and public holiday cases were restricted to male workers, while cases relating to unfair disciplinary action were restricted to female workers.

Figure 13: SEX OF COMPLAINANT BY TYPE OF COMPLAINT LODGED (%)

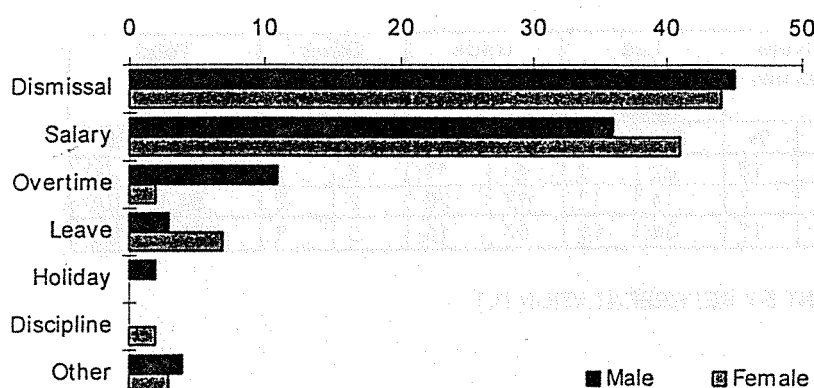


Table 38: SEX OF COMPLAINANT BY TYPE OF COMPLAINT

Sex	Dismissal	Salary	Overtime	Leave	Holiday	Discipline	Other	Total
	%	%	%	%	%	%	%	%
Male	45	36	11	3	2	0	4	100
Female	44	41	2	7	0	2	3	100
Total	45	37	8	4	1	1	4	100

Female workers recorded higher percentages than male workers for relief sought in connection with reinstatement (27% vs 22%) and compensation (20% vs 16%). Of the total male workers, 59% sought payment as relief. The corresponding figure for female workers was 50%. Female workers were more likely to request reinstatement and compensation, and male workers were more likely to request payment. (See Table 39.)

Table 39: SEX OF COMPLAINANT BY TYPE OF RELIEF SOUGHT

Sex	Reinstatement		Compensation		Payment		Other		Total	
	#	%	#	%	#	%	#	%	#	%
Male	61	22	44	16	162	59	6	2	273	100
Female	25	27	18	20	46	50	3	3	92	100
Total	86	24	62	17	208	57	9	2	365	100

A large number of workers both female (55%) and male (54%) lodged no monetary claims at all. A quarter of all women requested payment of N\$1000 and less, while about 19% of all men made claims ranging between N\$1001 and N\$6000. (See Table 40.) Generally, workers tend to make smaller monetary claims.

Table 40: SEX OF COMPLAINANT BY SUM OF MONEY CLAIMED(N\$)

Sex	None	< 1000	1001- 6000	6001- 11000	11001- 16000	16001- 21000	> 21000	Total
	%	%	%	%	%	%	%	%
Male	55	16	19	3	2	1	5	100
Female	54	25	14	2	1	1	2	100
Total	54	18	18	3	2	1	4	100

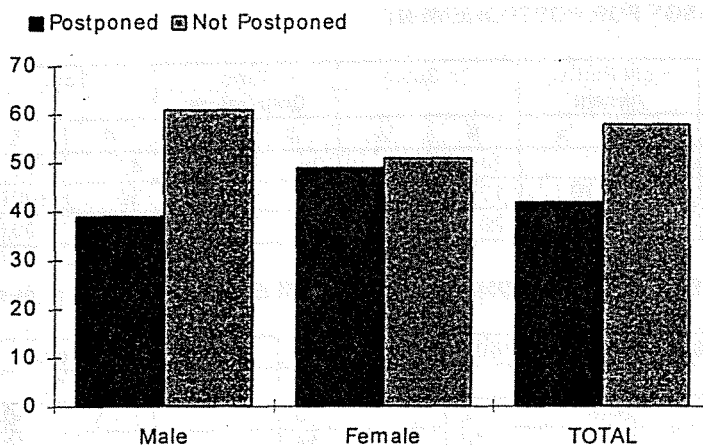
6. CASE POSTPONEMENTS AND DURATION

Overall, close to 60% of the survey cases had not been postponed. Of those cases postponed, 51% involved female workers and 61% involved male workers. (See Figure 14 and Table 41.) This means that 6 out of 10 cases were resolved at the first appearance. Expressed differently, 49% of female cases and 39% of male cases were postponed. This 10% difference clearly indicates that cases involving women workers were more likely to be postponed.

Table 41: SEX OF COMPLAINANT BY POSTPONEMENT STATUS

Sex	Postponed		Not Postponed		Total	
	#	%	#	%	#	%
Male	89	39	138	61	227	100
Female	40	49	41	51	81	100
Total	129	42	179	58	308	100

Figure 14: SEX OF COMPLAINANT BY POSTPONEMENT STATUS (%)



Almost half of the cases involving female workers were postponed. Of these, 65% were postponed once, 25% twice and 10% three times or more. Close to 40% of all cases involving male workers were postponed. Of these, 48% were postponed once, 31% twice and 10% three times or more. While cases involving women tended to be postponed more often than those involving men, those involving men tended to be postponed more times than those involving women. (See Table 42.)

Table 42: SEX OF COMPLAINANT BY NUMBER OF POSTPONEMENTS

Sex	Once		Twice		Thrice+		Total	
	#	%	#	%	#	%	#	%
Male	42	48	27	31	19	22	88	100
Female	25	65	10	25	4	10	40	100
Total	68	53	37	29	23	18	128	100

Overall, 65% of the cases were postponed at the request of labour inspectors, and inspectors requested postponement in 75% of the cases involving female workers. The corresponding figure for cases involving male workers is 61%. Requests for postponement by complainants were more numerous for male workers (17%) than for female workers (8%). Likewise, requests for postponement by respondents were more numerous for cases involving male workers (19%) than for those involving female workers (14%). No marked gender difference is apparent regarding requests for postponement by either party. (See Table 43.)

Table 43: SEX OF COMPLAINANT BY REQUEST FOR FIRST POSTPONEMENT

Sex	Inspector		Complainant		Respondent		Both Parties		Total	
	#	%	#	%	#	%	#	%	#	%
Male	47	61	13	17	15	19	2	3	77	100
Female	27	75	3	8	5	14	1	3	36	100
Total	74	65	16	14	20	18	3	3	113	100

Overall, the majority of cases (almost 40%) were postponed for the parties to settle. Of the cases involving female workers, 40% were postponed for settlement, in contrast to 34% of the cases involving male workers. Of the male cases, 32% were postponed due to the absence of respondents, while for females the corresponding figure is much lower, at 20%. (See Table 44.)

The numbers of female cases postponed due to the absence of both parties, due to the complainant's absence, and due to time constraints, are higher than those observed for male cases. For example, 17% of female cases were postponed as a result of the complainant's absence, as opposed to 12% of male cases. Again, 10% of female cases were postponed due to the absence of both parties in comparison to only 1% of male cases.

Table 44: SEX OF COMPLAINANT BY REASON FOR POSTPONEMENT

Sex	Complainant Absent		Respondent Absent		Both Parties Absent		To Settle		Time Constraints		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
Male	5	12	13	32	7	1	14	34	2	5	41	100
Female	5	17	6	20	3	10	12	40	4	13	30	100
Total	10	14	19	27	10	14	26	37	6	8	71	100

Table 45: SEX OF COMPLAINANT BY CASE DURATION FROM FILING TO SETTLEMENT (# working days)

SEX	1-20	21-60	61-100	101-140	141-180	181+	Total
	%	%	%	%	%	%	%
Male	10	32	27	12	8	9	100
Female	10	27	26	10	14	10	100
Total	11	31	27	12	10	10	100

The number of days taken to conclude each case (from the date of filing to settlement) was calculated to assess the duration of the survey cases, to enable an evaluation of the effectiveness of the various district labour courts. There is very little difference between female and male cases with regard to the period from filing to settlement. However, male cases tend to be completed in a slightly shorter period in contrast to female cases. For example, only 17% of male cases compared to 24% of female cases were completed in 180 or more days. Expressed differently, 42% of male cases in contrast to 37% of female cases were completed in less than 61 days or two months. Again, the two assumptions made to calculate the duration of cases from filing to settlement should be borne in mind (see Chapter 3, p.18).

7. JUDGEMENT

Overall, 30% of the survey cases involving males and 29% of those involving females were pending at the time of the survey. Hence, there was no judgement available for these cases. For both sexes, the majority of workers were granted payment. For example, 45% of female employees and 37% of male employees were granted payment. Of the male cases, 17% were dismissed, while only 7% of the female cases were dismissed. Fewer male workers (10%) than female workers (12%) withdrew their cases. (See Table 46.)

Table 46: SEX OF COMPLAINANT BY TYPE OF JUDGEMENT GRANTED

Sex	Reinstatement		Compensation		Payment		Dismissed		Withdrawn		Pending		Total	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Male	7	3	7	3	90	37	41	17	24	10	73	30	242	100
Female	4	5	2	2	39	45	6	7	10	12	25	29	86	100
Total	11	3	9	3	129	39	47	14	34	10	98	30	328	100

In 63% of the total survey cases, no payment was granted. Of these, 66% involved male workers and 54% female workers. More female workers (31%) than male workers (18%) were granted payment in the monetary category N\$1000 or less. An equal percentage of male and female workers were granted payment in the N\$1001-N\$6000 category. (See Table 47.)

Table 47: SEX OF COMPLAINANT BY SUM OF MONEY GRANTED (N\$)

Sex	None	< 1000	1001- 6000	6001- 11000	11001- 16000	16001- 21000	> 21000	Total
	%	%	%	%	%	%	%	%
Male	66	18	13	3	0	0	0	100
Female	54	31	13	1	1	0	0	100
Total	63	22	13	2	0	0	0	100

Chapter 6

SUMMARY OF FINDINGS

1. INTRODUCTION

Following is a synopsis of the main findings concerning the operation of the district labour courts in Namibia, as presented in the previous chapters.

2. GEOGRAPHICAL DISTRIBUTION

The majority of cases were surveyed at the Windhoek District Labour Court - 55.3% of the total. At 3.4%, Oshakati recorded the lowest number of survey cases. Of the 320 cases surveyed, 74% involved male complainants and 26% female complainants. The highest number of cases involving women workers (36%) was recorded for Ondangwa, and the lowest number (12%) was recorded for Okahandja.

The majority of employers were men, with women constituting only 10% of the employer sample. Swakopmund recorded the highest percentage of women employers (15%), while for the Ondangwa sample all the respondents were men.

About 54% of the employees surveyed worked in the retail, construction, hotel and transport industries. The mining, fishing and finance sectors recorded the lowest concentration of cases. The highest number of cases involving agricultural workers (33%) was recorded for the Okahandja district, and for the hotel industry an even higher percentage (50%) was recorded at Oshakati.

About 60% of the complainants in the survey had no legal representation. Trade unions represented about a fifth of the sample, while private attorneys represented 11% of the sample. The Legal Assistance Centre (LAC) also represented about 11% of the sample. Keetmanshoop and Okahandja recorded the highest levels of non-representation for complainants, while Windhoek and Walvis Bay recorded the highest levels of representation for complainants. Complainants in Walvis Bay had the highest level of representation by attorneys or paralegals of the LAC. Almost 70% of the employers in the survey represented themselves at the various district labour courts. Employers in Ondangwa and Keetmanshoop had the highest levels of self-representation.

About 82% of all the cases surveyed were in connection with unfair dismissal and unpaid salary or severance pay. Another common complaint was unpaid leave. Windhoek recorded the highest figure for unfair dismissal (45%). Swakopmund (68%) and Walvis Bay (70%) recorded the highest figures for unpaid salaries. Keetmanshoop recorded the highest figure for unpaid overtime (12%), while Oshakati recorded the highest figure for unpaid leave (19%).

The types of relief sought by complainants at the courts were as follows: payment (56%), reinstatement (24%), compensation (17%) and other (3%). The highest numbers of requests for compensation were

recorded for Oshakati and Keetmanshoop. Windhoek and Oshakati recorded the highest numbers of requests for reinstatement.

Overall, close to 60% of cases had not been postponed at all. The majority of cases were finalised at the first hearing or during the first session of the labour conference. About 93% of the cases at Ondangwa and 80% at Okahandja had not been postponed. With 75% of its cases postponed, Oshakati reported the highest number of postponements. Of all the cases postponed, 53% were postponed once, 29% twice and 18% three times or more.

The labour inspectors made almost 7 out of 10 requests for postponement, and respondents were more likely than complainants to request postponement. All requests for postponement in Keetmanshoop and Ondangwa were made by the labour inspectors. Only in Windhoek were requests for postponement made by both parties.

The majority of cases (37%) were postponed for good reason - to settle. Many postponements (27%) were due to respondents not turning up for the hearing or the labour conference. All cases in Okahandja and Walvis Bay were postponed for settlement. Of all the Oshakati cases, 60% were postponed due to time constraints. Ondangwa recorded the highest number of postponements due to the absence of complainants (33%). Half of the cases in Windhoek were postponed for settlement.

About 30% of all the cases surveyed were still pending at the time of the survey. Almost 70% of the total were finalised within less than 100 working days. Oshakati (27%) and Swakopmund (25%) recorded the highest percentages for cases concluded in less than 21 working days. Okahandja recorded the highest (29%) for cases concluded after 181 working days.

No judgement was granted in 30% of the total number of cases. Payment, which was granted in almost 40% of all cases surveyed, was the judgement most frequently granted. Of the total cases, 16% were dismissed and 9% were withdrawn. The highest numbers of pending cases were recorded for Oshakati (64%), Swakopmund (50%) and Okahandja (35%). In both Windhoek and Okahandja 24% of the cases were dismissed.

In 63% of the total number of cases, no money was awarded as judgement. Where payment was granted, the amounts were concentrated in the below N\$6000 bracket. Oshakati recorded the highest figure (82%) for no money granted, while Ondangwa recorded the highest figure for money granted in the N\$1000 and less category.

3. INDUSTRIAL DISTRIBUTION

Almost two thirds of all the cases surveyed were concentrated in only six industries: retail (19%), construction (16%), hotels (11%), transport (11%), private households with employed persons (9%) and agriculture (8%).

All workers in the agricultural, fishing and finance sectors were men. The highest concentration of female workers (67%) was found in private households with employed persons (domestic service). Close to 80% of all the female workers were concentrated in four industries: retail, private households, hotels and community. Mining (13%), construction (13%) and the public sector (9%) recorded the lowest concentrations of female workers.

Female employers as a proportion of the total employer sample are not adequately represented in almost all industries. The exception to this rule is the private households sector, where female employers constituted 52% of all cases surveyed. The manufacturing (13%), community (11%) and retail (10%) sectors were the other industries in which female employers are concentrated. The agriculture, fishing, and mining sectors were 100% dominated by male employers.

Agricultural cases were heard predominantly in Keetmanshoop (40%) and Windhoek (32%), while cases in the fishing sector were heard only in Walvis Bay (89%) and Swakopmund (11%). Almost three quarters of both the manufacturing and mining cases were heard in Windhoek. No cases were recorded for the manufacturing industry in Okahandja, Ondangwa and Oshakati. Similarly, no cases for the agricultural and private households sectors were recorded in Oshakati.

Of the workers employed in the agricultural industry, 72% were not legally represented. Of the workers in the fishing industry, 56% were represented by LAC attorneys or paralegals. Trade unionists represented a quarter (25%) of workers in the mining industry and 30% of workers in the construction industry. Public sector workers had the highest representation by private attorneys (64%). Agriculture, finance and private households were the industries with the lowest levels of legal representation for workers.

Almost all the employers in the private households (93%) and manufacturing (80%) industries represented themselves in the district labour courts. Employers in the mining sector (25%) and public service or government (18%) recorded the lowest figures for self-representation. Employers in the mining (75%) and fishing (56%) sectors recorded the highest levels of representation by a private attorney.

The majority of cases were in connection with unpaid salary or severance pay (43%) and unfair dismissal (38%). At 75% of all the cases surveyed, the mining industry recorded the highest figure for unfair dismissal. The second highest figures in this regard were recorded for the agricultural sector (39%) and private households (39%). In the fishing industry, 70% of all cases were salary disputes. The retail sector recorded the highest percentages for both unpaid overtime (18%) and unpaid leave (27%). The public sector recorded the highest figures for unpaid holiday (17%) and unfair disciplinary action (8%).

Workers sought relief as follows: payment (55%), reinstatement (24%), compensation (18%) and other (3%). Requests for payment constituted 83% and 82% of all cases in the transport and fishing industries, respectively. Close to 70% of domestic workers sought payment as relief.

Seven out of 10 workers in the agricultural, mining and finance industries lodged no monetary claims at all. Of the workers in the fishing sector, 11% made claims in the N\$11000-N\$16000 monetary cohort and 11% in the above N\$21000 cohort. About 27% of the public sector workers requested payment of more than N\$21000.

Postponements were most numerous for the community (63%), finance (57%) and fishing (56%) sectors. The number of cases not postponed was highest for the agricultural (75%), manufacturing (71%) and mining (63%) sectors. Of the cases postponed, 52% were postponed once, 29% twice and 19% three times or more. The majority of cases in the fishing (80%) and hotel (85%) industries were postponed once. Of the cases involving domestic workers, 91% were postponed twice or less.

Requests for postponement by labour inspectors were most numerous for the private households (89%), community (83%), retail (78%) and mining (67%) sectors. Slightly more than two thirds of the requests in the fishing industry were made by complainants. All the cases in the agriculture, manufacturing and

community services sectors were postponed for settlement. Similarly, 86% of the cases in the transport industry were postponed for settlement. All the cases in the finance sector and half of the cases in the fishing sector were postponed due to the absence of complainants.

Close to 70% of cases were finalised within 100 days or less. Two out of 10 cases in both the community and public sectors were finalised within 20 days or less. More than half (55%) of the cases in both the fishing and finance sectors were concluded in between 21 and 60 days. A quarter of all cases in the mining industry took between 141 and 180 days to conclude. The manufacturing sector recorded the highest percentage for cases taking too long to conclude, with about 20% of its cases concluded in not less than 181 days.

Mining recorded the highest percentage for pending cases, as half of its cases were not settled at the time of the survey. Very few cases were pending in the manufacturing and transport sectors. Of the cases in the fishing sector, 20% were withdrawn, and in the mining sector, 38% were dismissed. After mining, the construction (22%) and private households (22%) sectors recorded the highest figures for case dismissal.

Workers in manufacturing and private households were more likely to be granted payment than were workers in the other industries. More than two thirds of the complainants in the agricultural, fishing, community, public and mining sectors were granted no payment at all. Of the domestic workers, 41% received N\$1000 and less, while 40% of the workers in the manufacturing sector were granted between N\$1001 and N\$6000. Workers in the fishing sector were awarded the highest amounts in payment, with 11% of them paid in excess of N\$21000.

4. GENDER DISTRIBUTION

About 55% of the total number of survey cases were lodged at the Windhoek District Labour Court. Of these, 60% were brought by women and 54% by men. The Swakopmund court handled a larger percentage of cases involving women (10%) than cases involving men (8%). Only Windhoek, Swakopmund and Ondangwa handled a larger percentage of cases brought by women.

The geographical distribution of cases involving female and male employers follows the same pattern as that observed for employees. The largest percentages of cases involving female employers as opposed to males were handled in Windhoek (60% vs 54%) and Swakopmund (10% vs 8%). An equal representation of female to male employers was reported at the Walvis Bay labour court. No cases involving female employers were recorded at Ondangwa.

Of the cases brought by female employees, 71% originated from the retail (28%), private households (23%) and hotel (20%) industries. Close to 60% of the cases brought by male employees originated from the construction (18%), retail (16%), transport (12%) and agricultural (11%) industries. All the cases in the agricultural, fishing and finance industries involved only male workers, and the numbers of cases involving female employees in the mining and public sectors were negligible.

Of the total female employee sample, 20% were represented by trade unionists in comparison to 17% of the male employee sample. The percentage of female employees (17%) who were represented by LAC attorneys or paralegals is likewise higher than that of male employees (9%) with LAC representation. The percentage of male workers who were not legally represented is slightly higher than that of unrepresented female workers, so the latter tended to have better access than the former to legal representation. There

was very little difference in the numbers of female and male employers who had legal representation. As expected, no employer was defended by either a trade unionist or LAC practitioner.

An almost equal number of male (45%) and female (44%) employees lodged complaints in connection with unfair dismissal. More female (41%) than male (36%) cases were related to unpaid salaries. The number of female workers (7%) complaining about unpaid leave was much greater than that recorded for male workers (3%). More male workers (11%) than female workers (2%) lodged complaints with regard to unpaid overtime. Complaints regarding unpaid Sundays and public holidays were restricted to male workers, while those regarding unfair disciplinary action were restricted to female workers.

Female workers in comparison to male workers recorded the highest percentages for relief sought in the form of reinstatement (27% vs 22%) and compensation (20% vs 16%). Female workers were more likely to request reinstatement and compensation, while male workers were more likely to request payment.

The percentage of cases involving female workers which were postponed was higher than the corresponding percentage for male workers. Furthermore, postponed cases involving male workers, in contrast to those involving female workers, tended to be postponed more than once. For example, for female cases, 65% were postponed once, 25% twice and 10% three times or more, whereas for male cases, 48% were postponed once, 31% twice and 10% three times or more.

Labour inspectors requested the postponements in 75% of the cases involving female workers and in 61% of those involving male workers. Requests for postponement by complainants were more numerous for the male sample (17%) than for the female sample (8%). For the female sample, 40% of the cases were postponed for settlement, in contrast to 34% of the cases for the male sample. About 32% of the cases involving males and 20% of those involving females were postponed due to the absence of respondents. The numbers of female cases postponed due to the absence of both parties, or due to the complainant's absence, or due to time constraints, were higher than the corresponding figures observed for males.

Regarding the duration of cases from filing to settlement, the difference between cases involving women and those involving men was minimal. Cases involving men tended to be concluded in a slightly shorter period than those involving women. For example, 42% of male cases and 37% of female cases were concluded in less than 61 days or two months.

Of all the cases involving men, 30% were still pending at the time of the survey, while the corresponding figure for cases involving women was 29%. About 45% of the female employees and 37% of the male employees were granted payment in settlement. Of all the cases dismissed, 17% involved men and 7% women.

More female workers (31%) than male workers (18%) were granted payment in the monetary cohort of N\$1000 or less. An equal percentage of male and female workers were granted payment in the N\$1001-N\$6000 cohort.

5. CONCLUSION AND RECOMMENDATIONS

Nationally, only a fifth of all cases filed with the Ministry of Labour during 1994 were referred to the district labour courts, which indicates that the majority were resolved at labour conferences. This high level of conciliation and dispute resolution lessens the burden on the labour courts.

There were very few cases involving illegal strike action and few collective disputes were recorded in Namibia during 1994. Only 11 cases of collective disputes and 7 illegal strikes were recorded during the period between 1992 and 1994.

More than half of the cases filed in 1994 were referred to the Windhoek District Labour Court. Close to three quarters of all the cases surveyed involved male workers. About two thirds of all workers in the private households sector were women. Cases involving female workers occurred predominantly in the retail, private households and hotel sectors.

The majority of complainants in the survey were not legally represented. Workers in Keetmanshoop and Okahandja had the least access to legal representation. Civil servants were well-represented by attorneys, whereas farm workers, domestic workers and employees in the finance sector were not well-represented. The most common complaints were in connection with unfair dismissal and unpaid salaries or severance pay. The majority of cases involving female employees were related to unpaid salaries. In proportion to their male counterparts, more females laid complaints relating to unfair disciplinary action.

About 60% of all cases were not postponed and were usually concluded at the first court hearing. Postponements were most frequently requested at the Oshakati District Labour Court. Many cases were postponed to facilitate settlement between the parties. Almost a third of the postponements were due to the failure of parties to attend the labour conference. The issue of parties failing to appear needs urgent attention.

Almost a third of the recorded cases were still pending at the time of the survey, and more than two thirds were finalised in less than 100 days. Cases in the manufacturing sector tended to be prolonged. Cases involving men were more likely to be dismissed than were those involving women.

Urgent attention should be given to the training of presiding officers in the district labour courts, as well as to the skills and attitudes of labour inspectors, the skills and knowledge of trade union officials and certain employers, the streamlining of procedural agreements and the training of ADR users and neutrals.

The competence of presiding officers as well as that of defending parties needs to be developed. A training programme could be developed and run by the Justice Training Centre of the University of Namibia, in conjunction with the Ministry of Justice. There is also a need to re-evaluate resources made available to the district labour courts, for example, the number of court days. Appropriate sanctions should be put in place to discourage non-appearance at the labour courts.

The institution of the Labour Inspector needs careful evaluation and reorganisation. Attention should be given to improving the public image of labour inspectors, as accusations of bribery and partisan behaviour are not conducive to the operation of this important institution. Courses on conflict management should be developed for labour inspectors.

The various forms accompanying the Rules of the District Labour Court need to be revised to reflect the sex of complainants and respondents. This information is necessary for evaluating the possible differential impact of dispute resolution mechanisms on male and female workers. The clerks of the courts need to be trained to fill in the forms correctly, as very important information was unattainable from the case files surveyed due to incorrect or incomplete information on the forms.

REFERENCES

PUBLICATIONS

Central Statistics Office (CSO), *1991 Population and Housing Census: Basic Analysis with Highlights*, National Planning Commission, Windhoek, 1994.

Labour Advisory Council, *First Annual Report (6 May 1993 to 31 March 1994)*, Ministry of Labour, Windhoek, 1995.

Office of the Labour Commissioner, *Quarterly Reports (November 1992 to 31 December 1994)*, Ministry of Labour, Windhoek, 1995.

LEGISLATION

Labour Act 1992 (Act 6 of 1992), Government Gazette No. 388, National Assembly, Windhoek, 8 April 1992.

Rules of the District Labour Court, Government Gazette No. 747, National Assembly, Windhoek, 19 November 1993.

TRADE UNION INTERVIEWS

Mineworkers Union of Namibia (MUN): Elvis Katjariua
Namibia Transport and Allied Workers Union (NATAU): Abraham Onesmus; Josef Hanse
Namibian Farmworkers Union (NAFWU): Sylvester Gawaseb
Namibian Food and Allied Workers Union (NAFAU): Cauna Angula; Magdalene Iipinge
Namibian National Teachers Union (NANTU): Doufi Namalambo

EMPLOYER ORGANISATION INTERVIEWS

Coin Security (Pty) Ltd
Meatco Ltd
Namibia National Chamber of Commerce and Industries (NNCCI)
Northsea Namibia
TransNamib Ltd