STRENGTHENING JUDICIAL REFORMS IN KENYA

Volume VI

PUBLIC PERCEPTIONS OF THE ADMINISTRATIVE TRIBUNALS IN KENYA

TABLE OF CONTENTS

Acknowledgements……..

Foreword……..

Introduction…….

Qualitative Survey…….

Conclusion……

Acknowledgements

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The views in this report however are those of ICJ Kenya.

Kagwiria Mbogori
Executive Director

Foreword

This is the sixth publication in our *'Strengthening Judicial Reforms'* series of publications that endeavours to support effective interest group demand for judicial reform.

ICJ Kenya continues to perform internal analysis of the Judiciary as well as content analysis of its reform proposals and implementation, mainly to test them for parity with ICJ Kenya and other stakeholders' demands.

Under this project, ICJ Kenya has sought public perceptions to interpret reform needs and leverage reform demand. Information is gathered through quantitative and qualitative surveys carried out by ICJ Kenya on judicial corruption, efficiency and effectiveness in the Kenya Judiciary whose findings have been published in our previous reports[1].

This publication closely examines the Administrative tribunals with a view of assessing its effectiveness and efficiency in the administration of justice, as well as examining the level of corruption in the tribunals. ICJ Kenya recognises the important role that these tribunals play in the administration of justice, and also recognises that adequate and effective judicial reform can only be achieved by paying attention to these tribunals.

[1]
- Strengthening Judicial Reforms – Performance indicators: Public perceptions of the Kenya Judiciary, 2001
- Strengthening Judicial Reforms in Kenya, Volume II: The role of the Judiciary in a patronage System, 2002
- Strengthening Judicial Reforms in Kenya, Volume III: Public perceptions and proposals on the Judiciary in the new Constitution, 2002
- Strengthening Judicial Reforms in Kenya, Volume IV: Public perceptions of the Court Divisions, Children's Court and the Anti-Corruption Court, 2002
- Strengthening Judicial Reforms in Kenya, Volume V: Public perceptions of the Magistrates' Court, 2003

INTRODUCTION

ADMINISTRATIVE TRIBUNALS

Administrative tribunals are established by Acts of Parliament. An administrative tribunal is a body which is given the powers of an administrative or quasi-judicial nature. These may be regarded as a separate courts dealing with some specific rights and duties. Administrative tribunals established in Kenya include the Industrial Court and the Rent Restriction Tribunal. These are explained as under:

Kenya Industrial Court:

There is the Kenya Industrial Court which has been established in accordance with the provisions of "The Trade Dispute Act Chapter 234". The main objective of this court is to give judgements in trade disputes between employers and employees. Cases such as dismissal of employees, non-payment of dues to employees etc can be taken to the Industrial Court.

The Judge of Industrial Court is appointed by the President and four other members are appointed by the Minister for Labour. The Judge of this court is appointed by the President for a term of not less than five years. He should be an advocate of the High Court of not less than seven year's standing. It means he should posses the same qualification as that of a Judge of the High Court. The four members who are to be appointed by the Minister for Labour, should be appointed for terms of not less than three years.

The Minister for Labour appoints these members after consultation with the Minister for Finance, the Central Organisation of Trade Unions and the Federation of Kenya Employers. One of the aforesaid members is appointed by the Minister for Labour to be Deputy to the Judge. The Judge of the Court also has power to appoint two assessors, one to represent employers and one to represent employees from a panel of assessors appointed by the Minister, to assist in the determination of any trade dispute before the court. The Judge and the four members are eligible for reappointment.

The decision of Industrial Court in any trade dispute is regarded final. If any employee is dismissed without any lawful reason then the Industrial Court may order the employer to reinstate that employee. According to the Trade Disputes Act, any trade dispute must be reported in writing to the Minister for Labour by employer or employee or trade union or employers organization. The Minister can inform the concerned parties about his decision. In some cases, he can advise the concerned parties to take that dispute to the Industrial Court. If the Minister has given any decision regarding a trade dispute then an appeal can be made against this decision in the Industrial Court.

Collective agreements, i.e. any agreement between a Trade Union and an employer (or Employer's Federation) relating to terms and conditions of employment are registered with the Industrial Court. The decisions of the Industrial Court are final in the sense that they cannot be questioned or reviewed.

Rent Tribunals

Rent tribunals are established by the Rent Restriction Act (Cap. 296). The main purposes of these tribunals are to determine the reasonable rents for resodential houses and impose some restrictions on increasing such rents. These tribunals can also investigate complaints made by either tenants or the landlords relating to the tenancy of dwelling houses. A Tribunal has power to assess the standard rent of any dwelling house to which the Act applies, either on the application of any person interested or of its own motion.

A Tribunal may appoint and employ valuers, inspectors, clerks and other staff to enable it to carry out its work. A Rent Tribunal is established by the Minister for Housing in such areas as he may think fit. The Minister appoints a chairman for each Tribunal. It consists of a Chairman, Deputy Chairman and a panel of members, consisting of such number of persons as he may think fit, for each tribunal. No person is eligible for appointment as a chairman or deputy chairman of a tribunal unless he is and has been, for not less than five years, an advocate or legal practitioner in Kenya.

There is the Nairobi Rent Tribunal, the Mombasa Rent Tribunal, the Kisumu Rent Tribunal and so on. Each Tribunal has exclusive administrative jurisdiction. A member of a Tribunal holds office at the discretion of the Minister. A Tribunal is normally presided over by the Chairman or Deputy Chairman and two members selected by the permanent Secretary in charge of housing, from a panel of names approved by the Minister. Any matter before the Tribunal is decided on majority of votes of the members present. The Chairman has a casting vote in case of equality of votes. The Chairman also gives ruling on any point of law which arises.

The Business Premises Rent Tribunals:

The Business Premises Tribunals are established under section 11 of "The Landlord and Tenants (Shops, Hotels and Catering Establishments) Act (Cap. 301). This Act defines a "controlled tenancy" as a tenancy of a shop, hotel, or catering establishment, which is in written form and is for a period not exceeding five years.
The term "shop" means premises used wholly or mainly for the purposes of a retail or wholesale trade, or business, or for the purpose of rendering services for money, or money worth.

This definition is wide enough to cover offices, clinics, etc. A "hotel" is a place in which meals and/or accommodation ;ire supplied, or available for supply, to at least

five adult persons. A "catering establishment' means premises in which food or drink is sold for consumption on the premises by - persons boarding on the premises.

The Business Premises Rent Tribunals are established to set out reasonable tenancy standards and to ensure that the landlords do not charge too high rents for business premises. The powers of these tribunals are set out in section 12 of the Act.

Some important powers of the tribunals are:

(i) To determine whether or not any tenancy is a controlled tenancy.
(ii) To determine or vary the rent to be payable in respect of any controlled tenancy.
(iii) To fix the amount of service charges if required as per agreements in respect of controlled tenancy.
(iv) To make orders for the recovery of possession and for the payment of arrears of rent.
(v) To permit the levy of distress for rent.
(vi) To award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent.

Section 12 (2) of this Act provides that a Tribunal shall not have or exercise any jurisdiction in criminal matters. Appeals from the decisions of the Tribunal lie to the High Court.

Advantages and Disadvantages of Administrative Tribunals:

Administrative Tribunals have the following advantages and disadvantages:

Advantages:

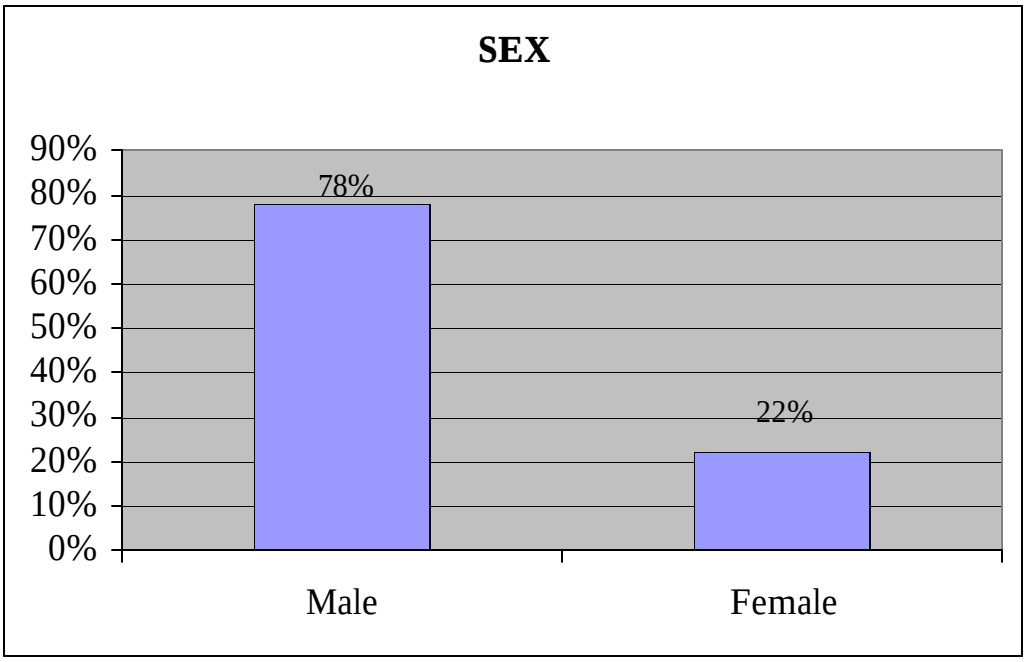
(a) The decisions are quick because these tribunals are not overburdened with work.
(b) They have some discretionary powers so they are flexible.
(c) The cost of proceedings is low.
(d) They employ experts in their respective fields.
(e) The procedure to be followed is straightforward.

Disadvantages:

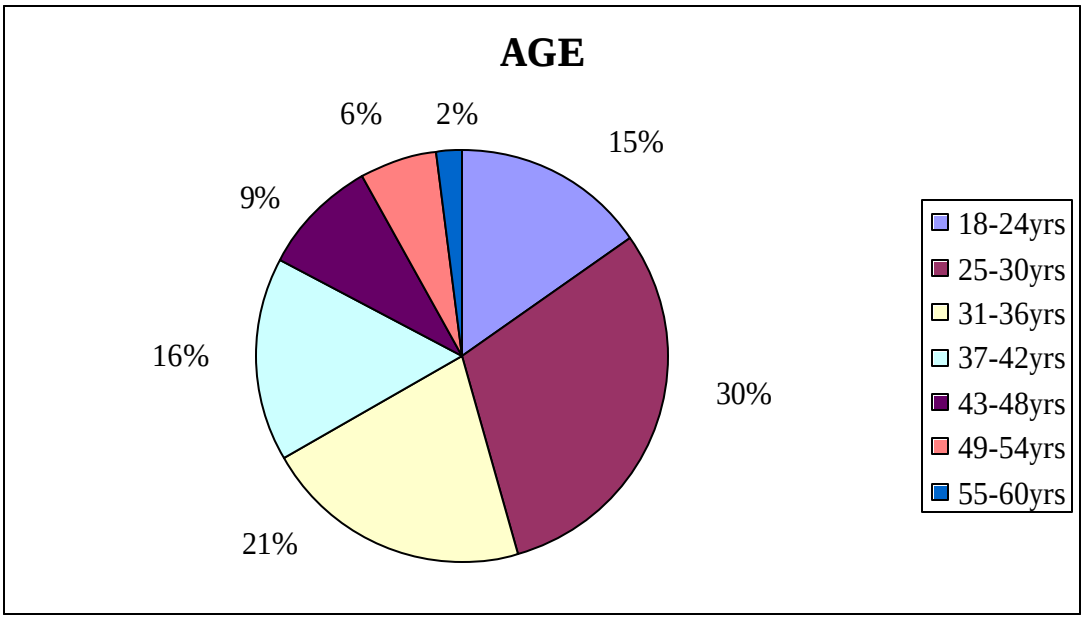
(a) These are sometimes held in private so the basic requirements for justice may not be fulfilled.
(b) The parties are sometimes not permitted to be represented by lawyers.
(c) Rights of appeal are limited in some cases.
(d) The discretion of a tribunal is sometimes so wide that the decisions may be inconsistent and illogical.
(e) The officials do not act impartially in most of the cases. [2]

[2] East African Law.com

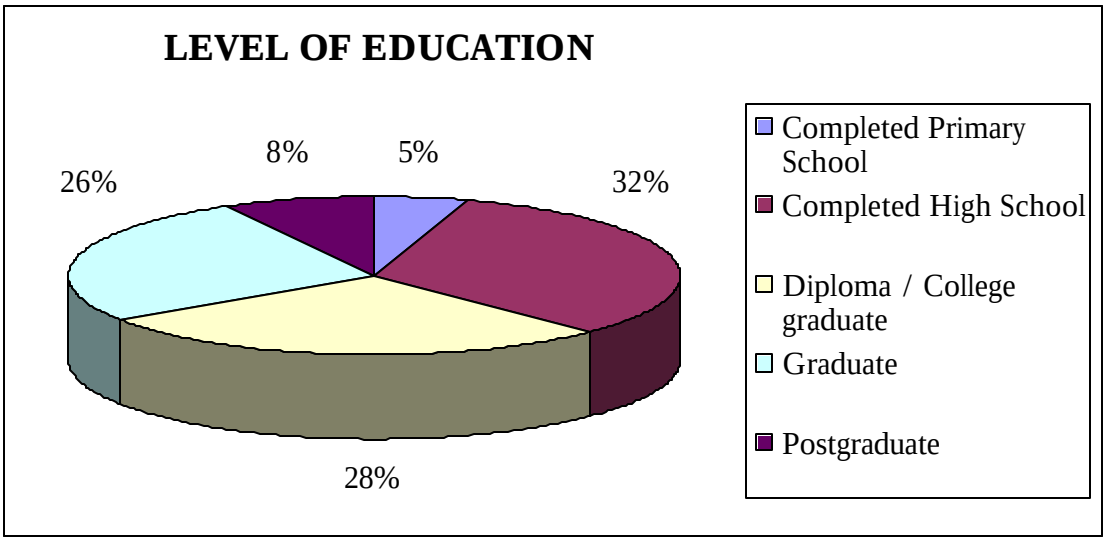
A. PARTICIPANTS INFORMATION



Majority of the respondents (78%) were male.

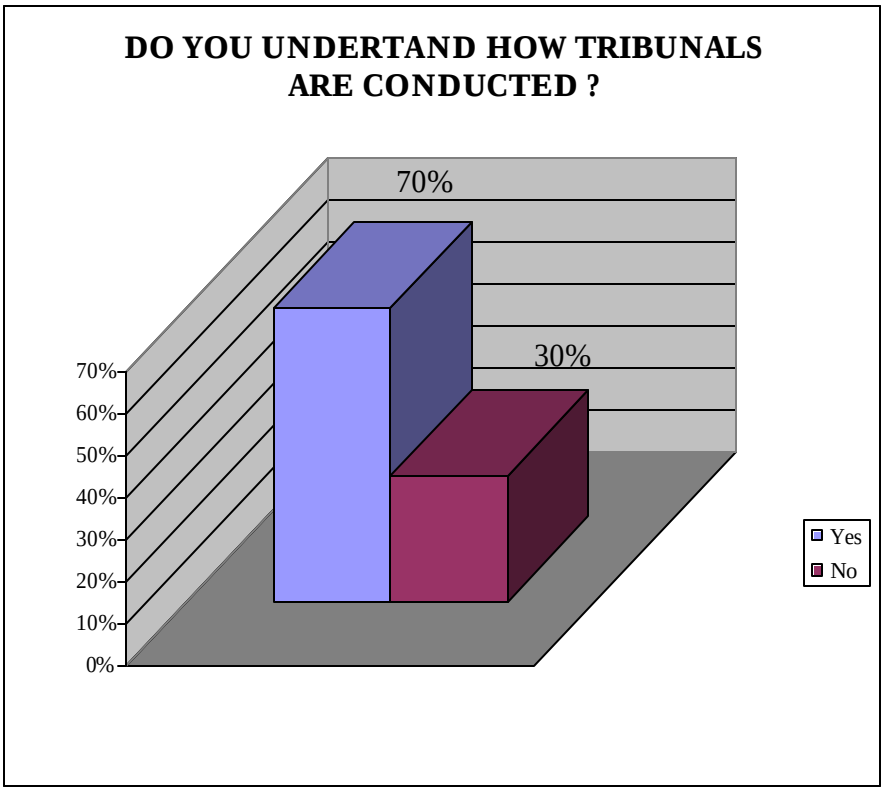


Majority of the respondents were aged between 25 and 30 years. There were no respondents aged between 67 and 72 years however there was one respondent aged between 61 and 66 years, one respondent aged below 18 years and one respondent aged over 73 years.

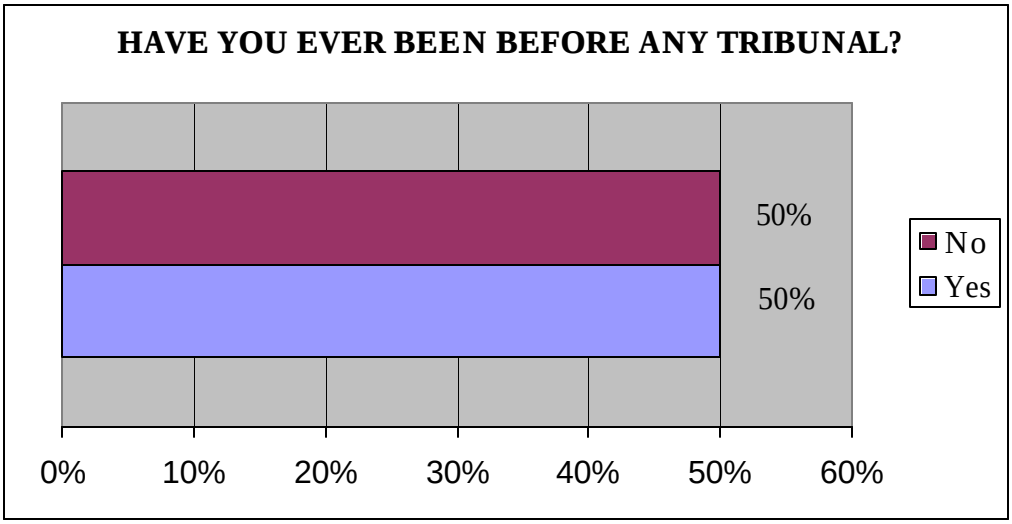


Majority of the respondents had completed high school. Two respondents had no formal education and one had a doctorate.

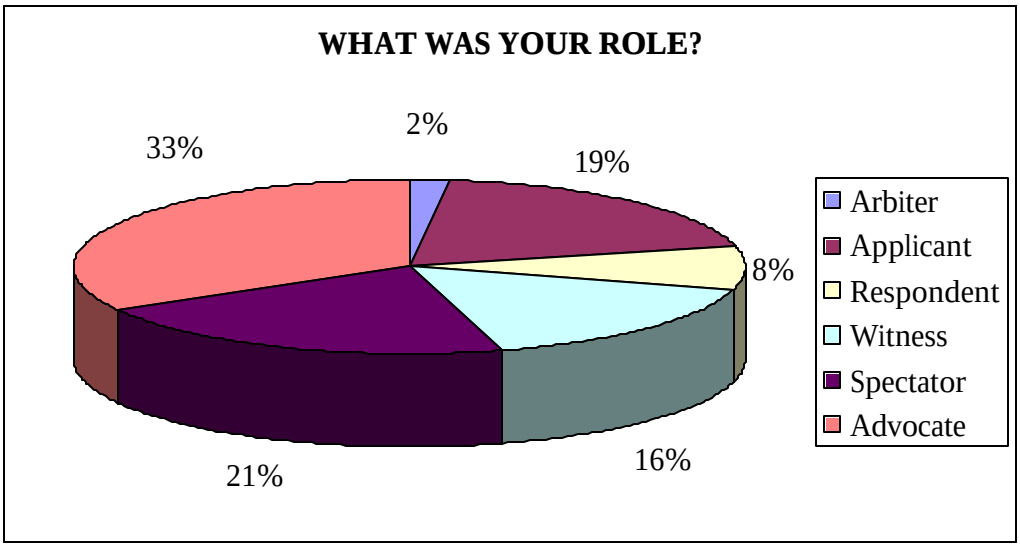
B. GENERAL PERCEPTIONS ON TRIBUNALS



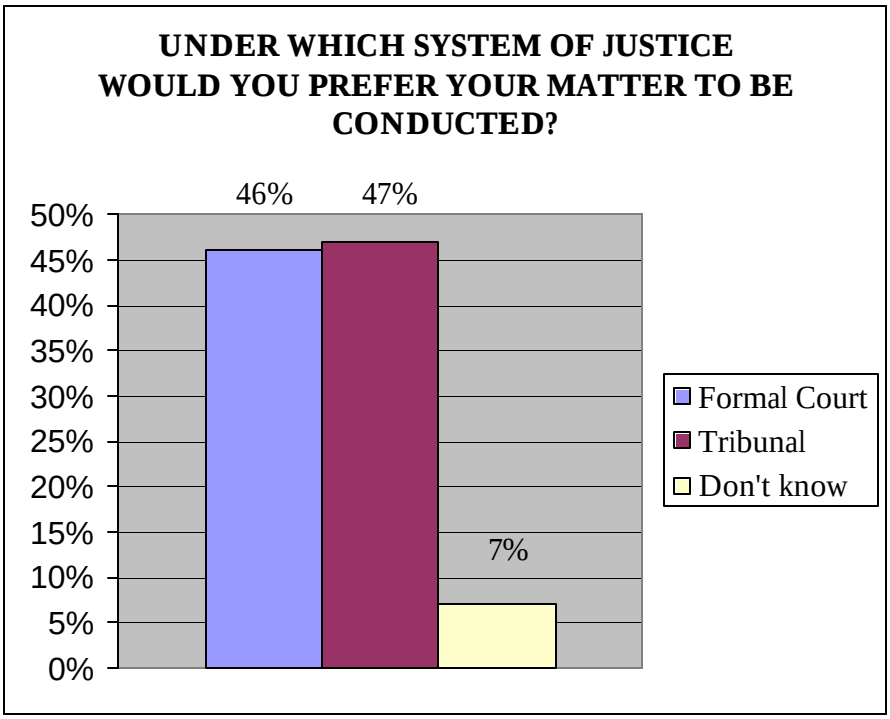
Seventy percent of the respondents understood how tribunals are conducted.



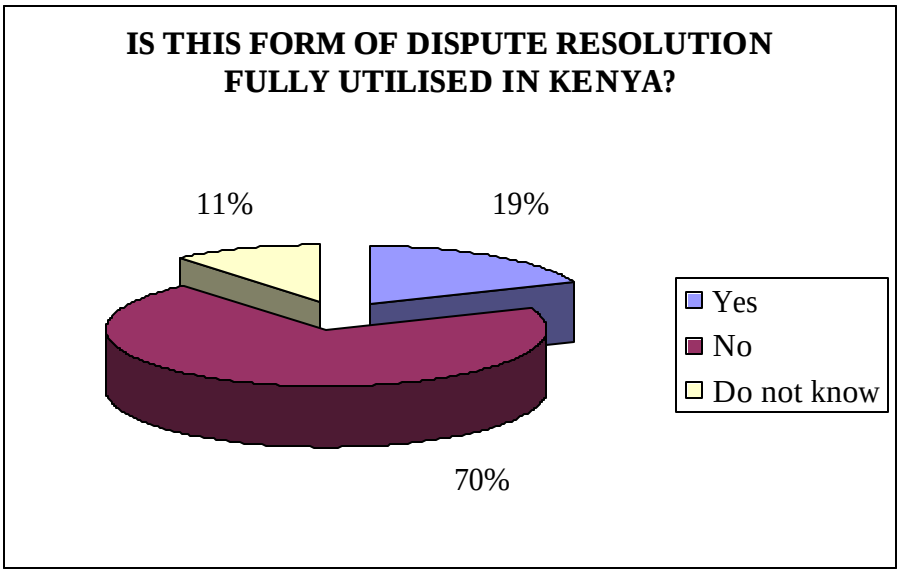
An equal number of respondents had been or not been before a tribunal.



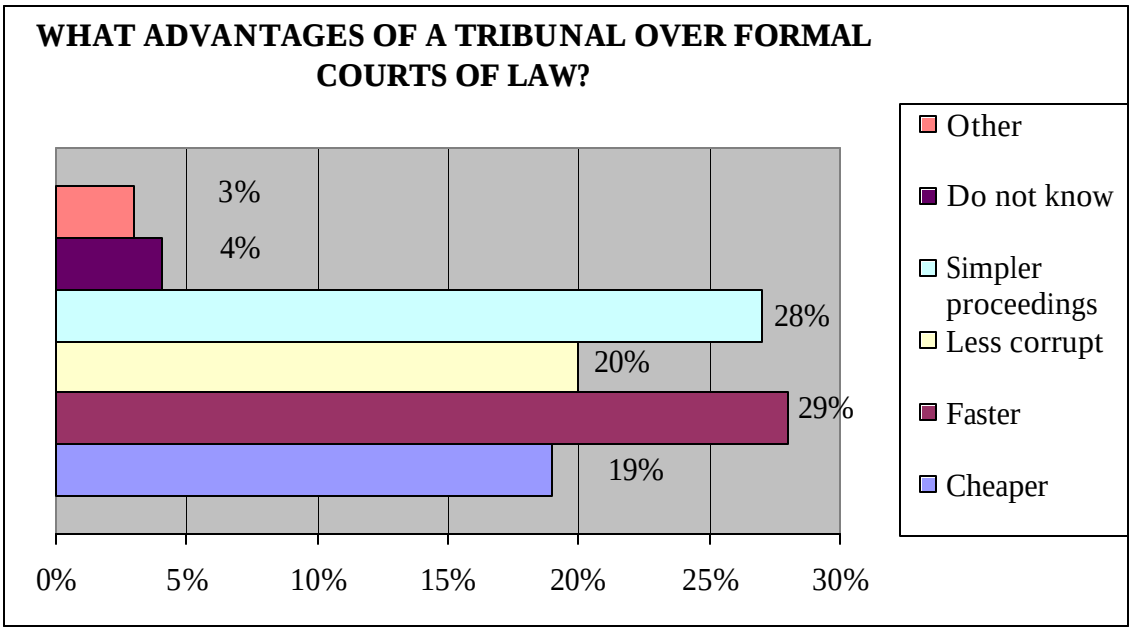
Majority of the respondents were before the tribunals as advocates. Less than one percent of the respondents were registrars and court wardens.



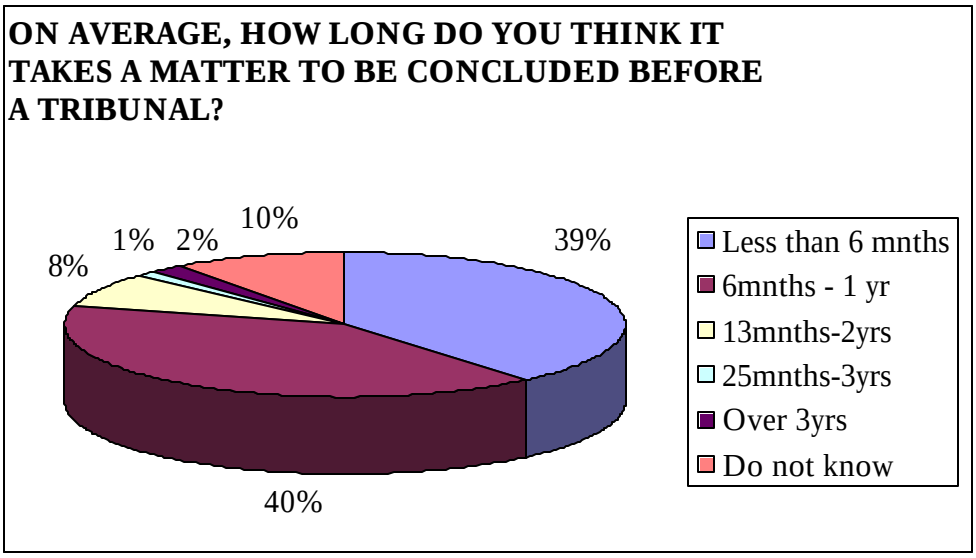
47% of the respondents said they would prefer to have their matters handled by a tribunal.



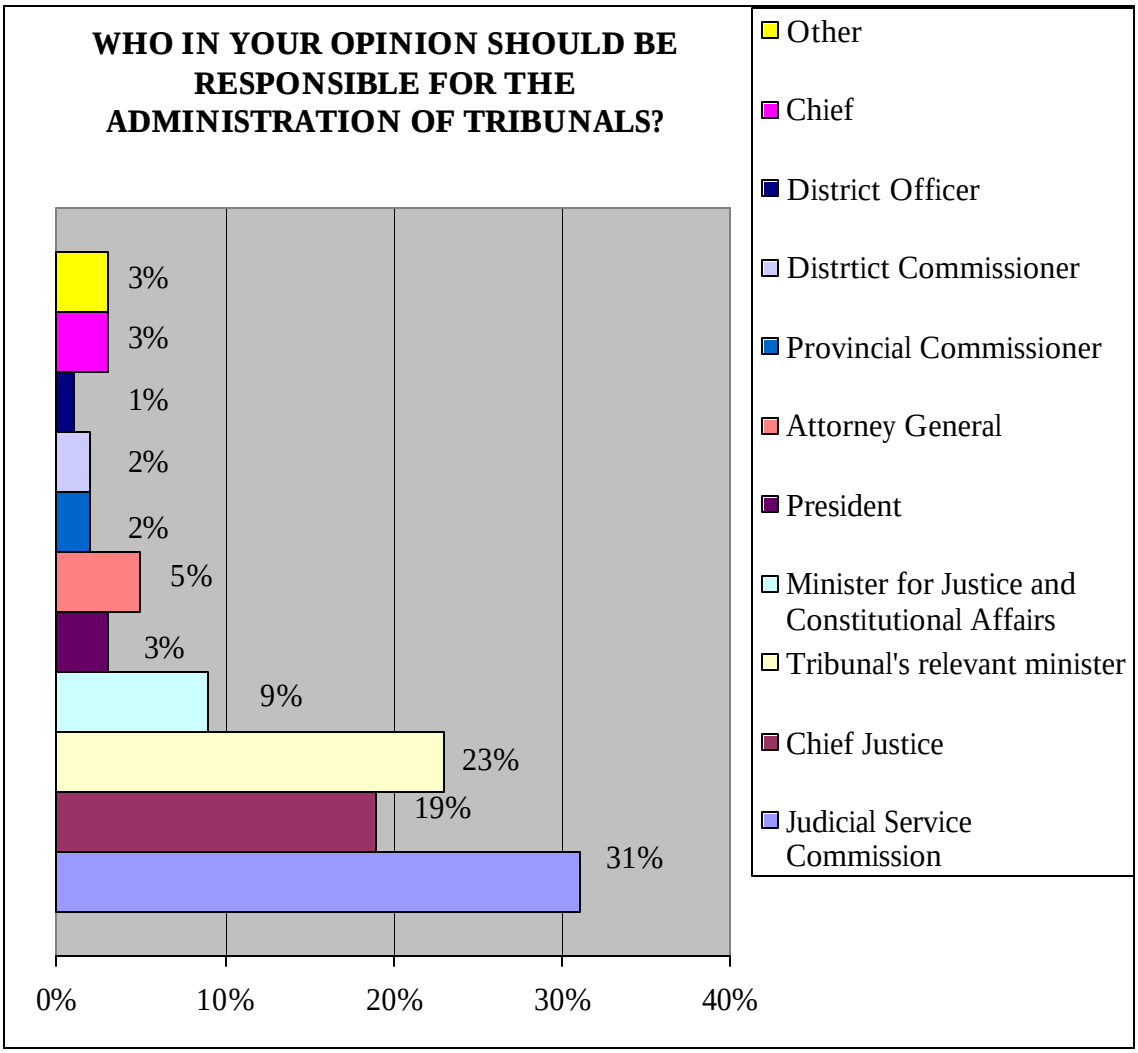
A majority of the respondents felt that tribunals as a form of dispute resolution were not being fully utilised.



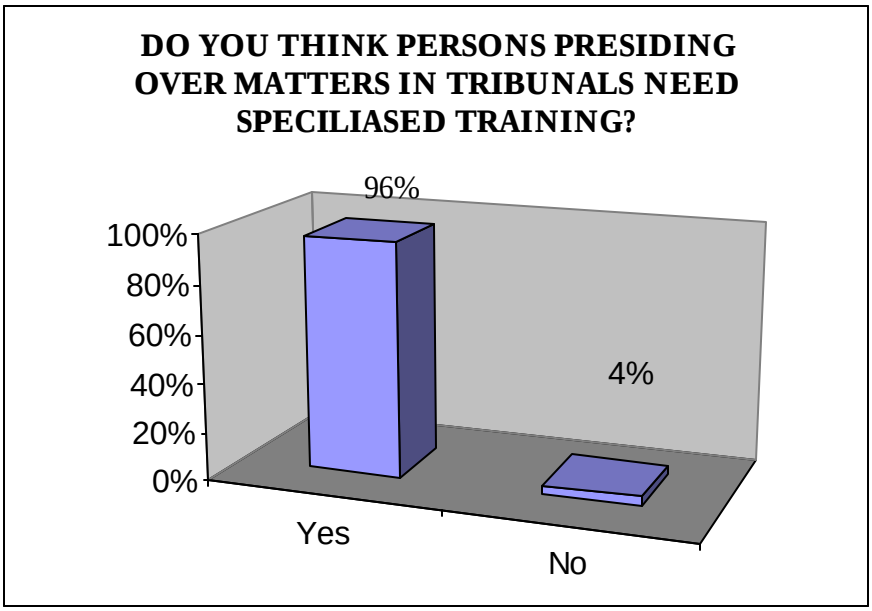
A majority of respondents felt that tribunals were faster than the formal courts. 28% of the respondents felt that tribunals had simpler procedures as compared to formal courts. 20% of the respondents viewed tribunals as less corrupt.



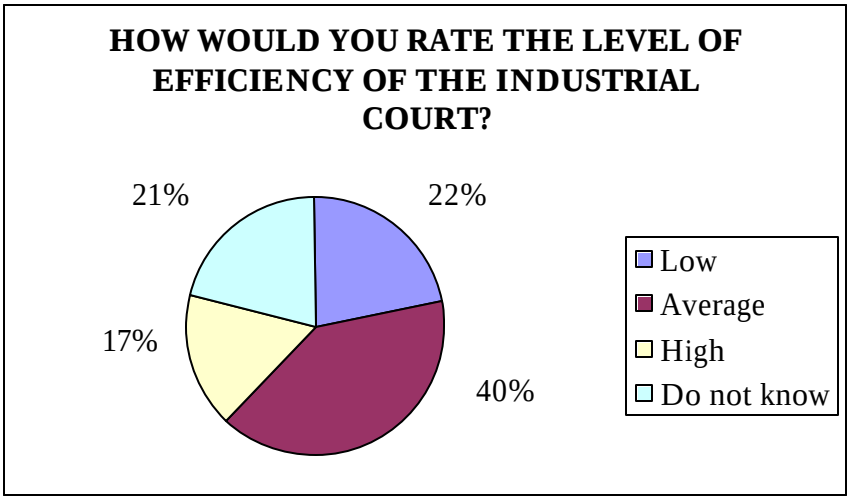
40% of the respondents felt that it took between 6 months to one year to have a matter concluded before a tribunal. One respondent felt that it took over five years.

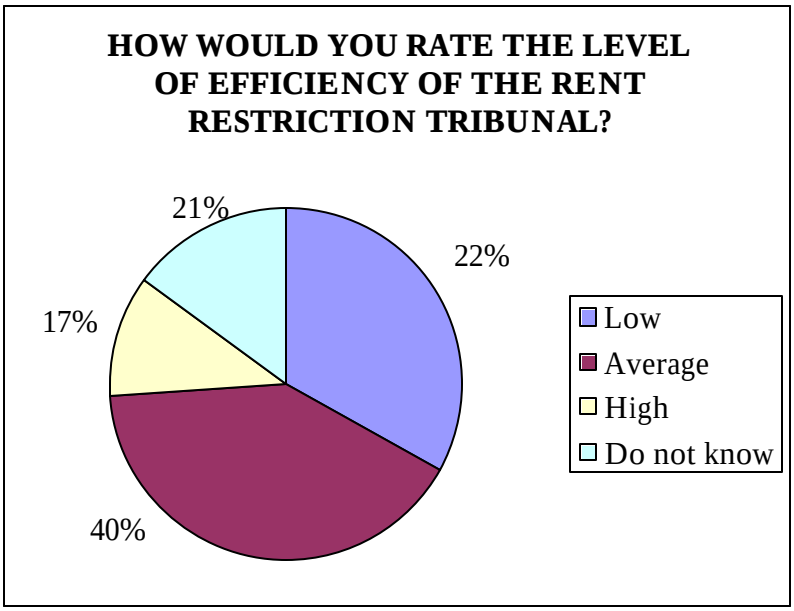


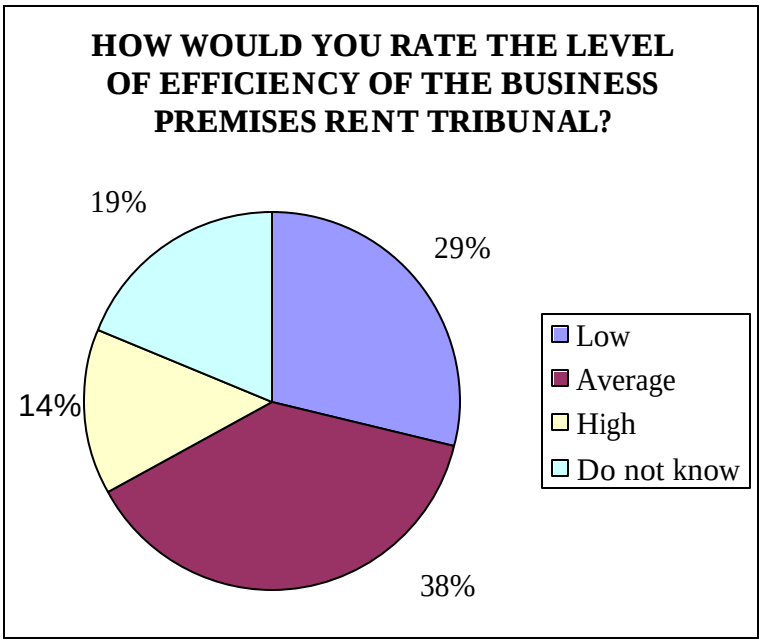
Majority of the respondents felt that the Judicial Service Commission should be responsible for the administration of tribunals.

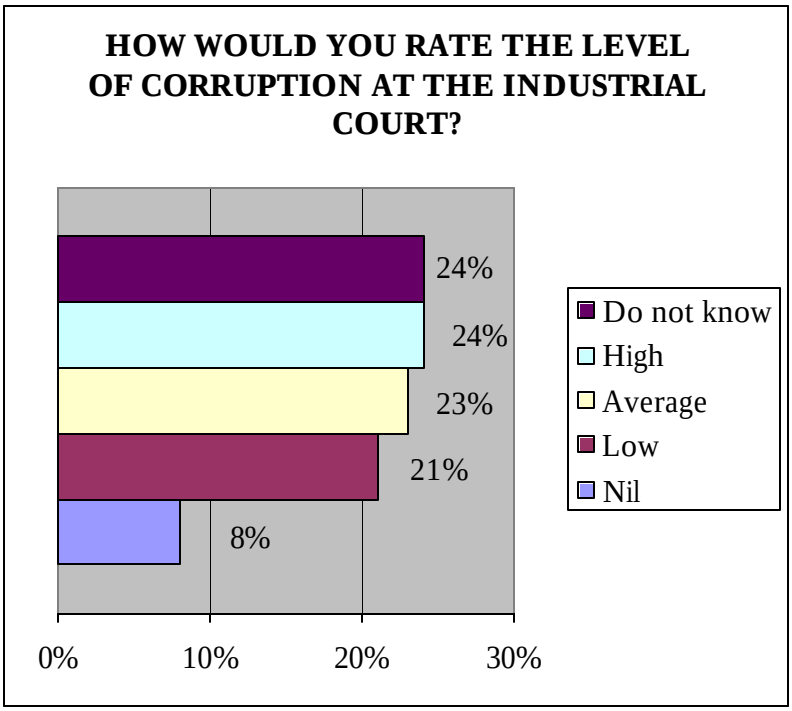


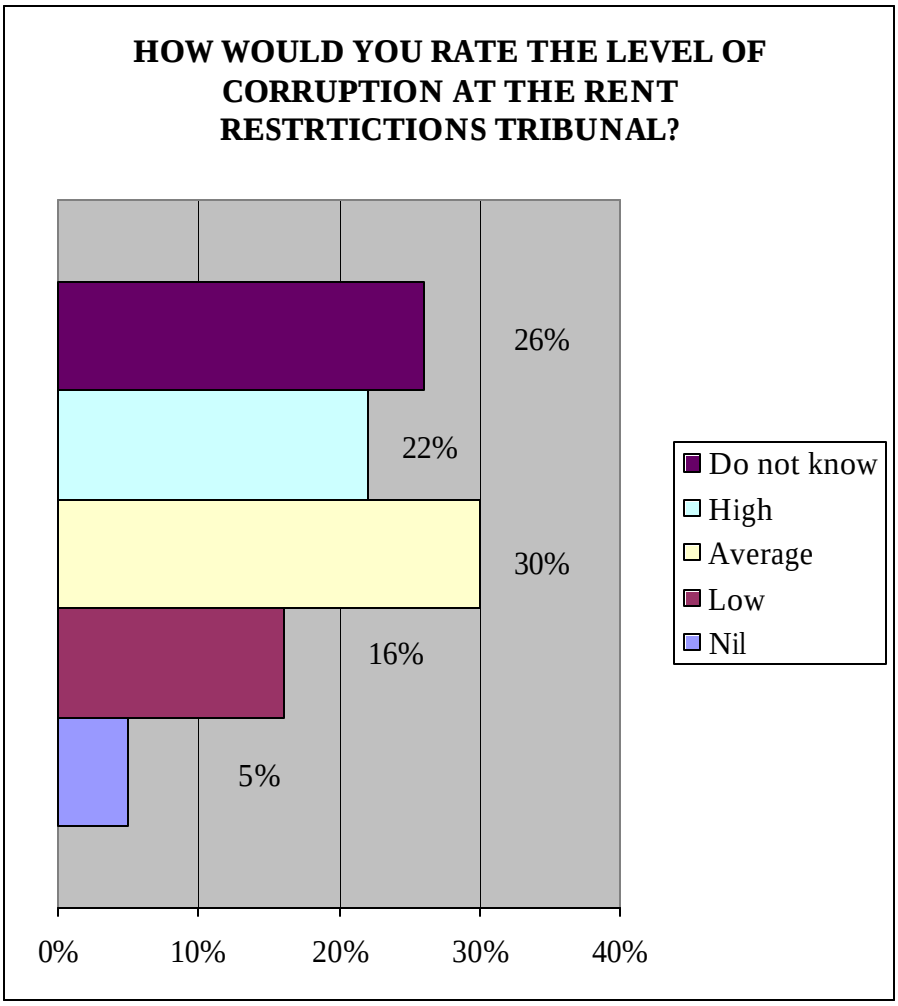
96% of the respondents felt that persons presiding over matters before tribunals need specialised training.

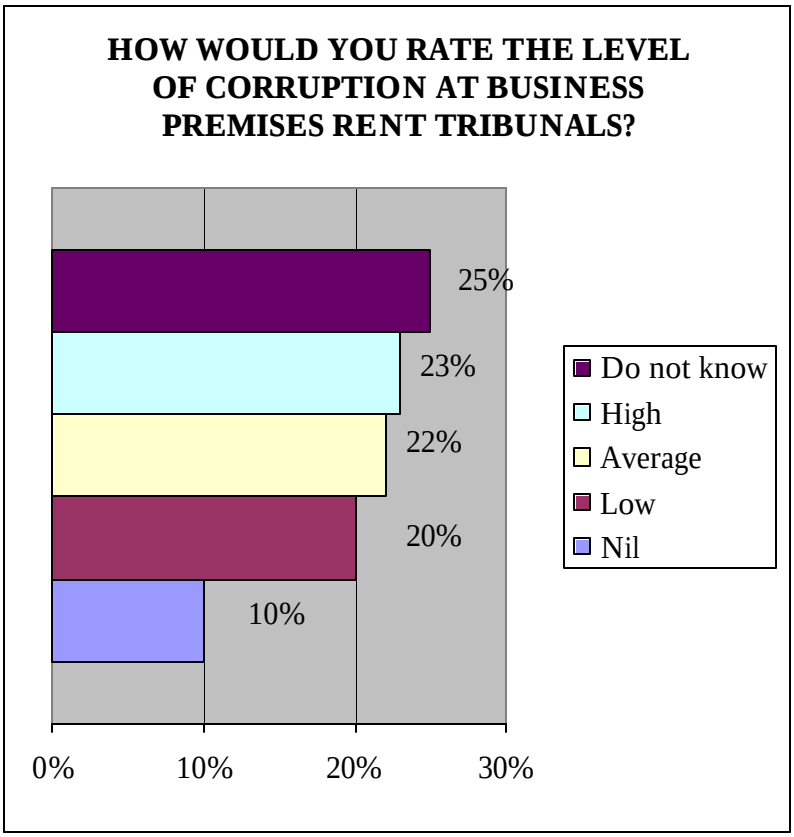


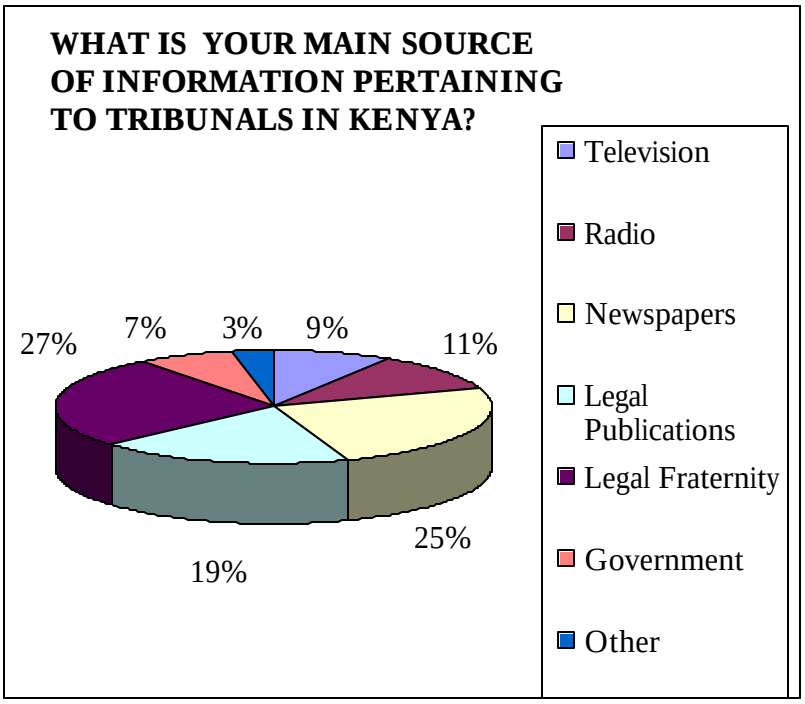

HOW WOULD YOU RATE THE LEVEL OF EFFICIENCY OF THE RENT RESTRICTION TRIBUNAL?
21%
22%
17%
40%
Low
Average
High
Do not know


HOW WOULD YOU RATE THE LEVEL OF EFFICIENCY OF THE BUSINESS PREMISES RENT TRIBUNAL?
19%
29%
14%
38%
Low
Average
High
Do not know

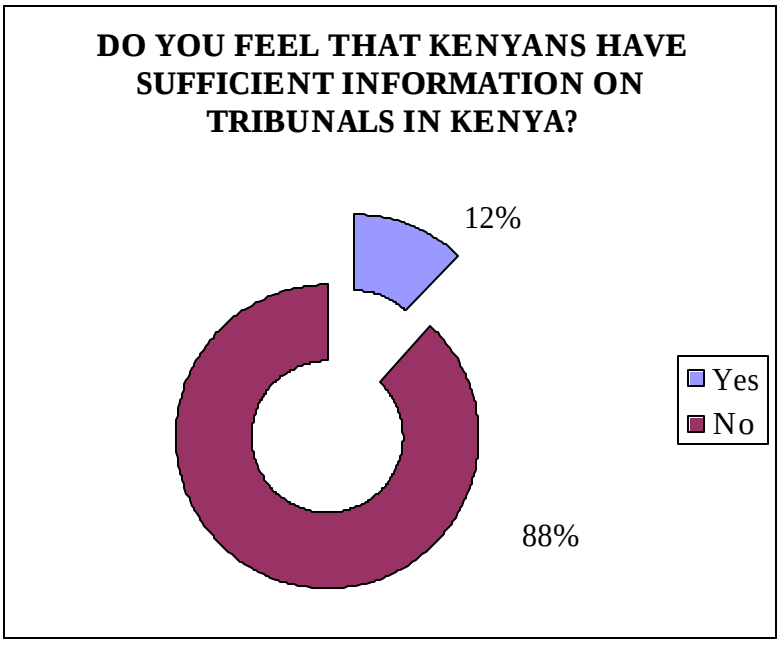

HOW WOULD YOU RATE THE LEVEL OF CORRUPTION AT THE INDUSTRIAL COURT?
24%
24%
23%
21%
8%
0%
10%
20%
30%
Do not know
High
Average
Low
Nil


HOW WOULD YOU RATE THE LEVEL OF CORRUPTION AT THE RENT RESTRTICTIONS TRIBUNAL?
26%
22%
30%
16%
5%
0%
10%
20%
30%
40%
Do not know
High
Average
Low
Nil


HOW WOULD YOU RATE THE LEVEL OF CORRUPTION AT BUSINESS PREMISES RENT TRIBUNALS?
25%
23%
22%
20%
10%
0%
10%
20%
30%
Do not know
High
Average
Low
Nil

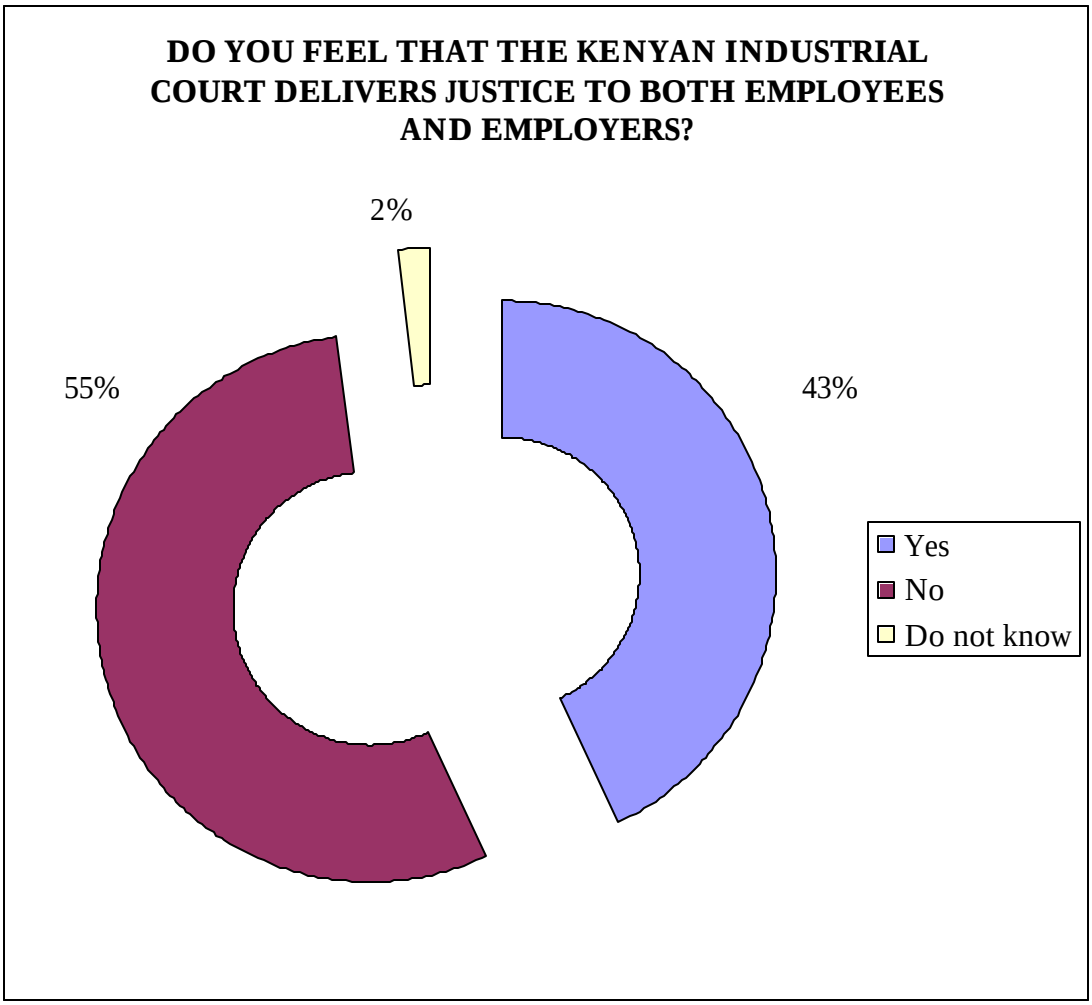


Majority of the respondents main source of information on tribunals is the legal fraternity. 25% reported that their main source of information was newspapers.

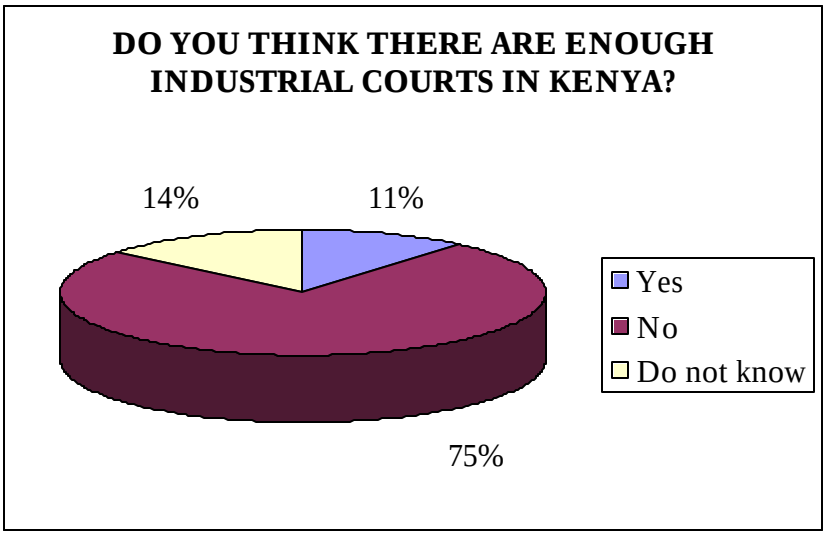


An overwhelming majority of respondents felt that Kenyans did not have sufficient information on tribunals in Kenya.

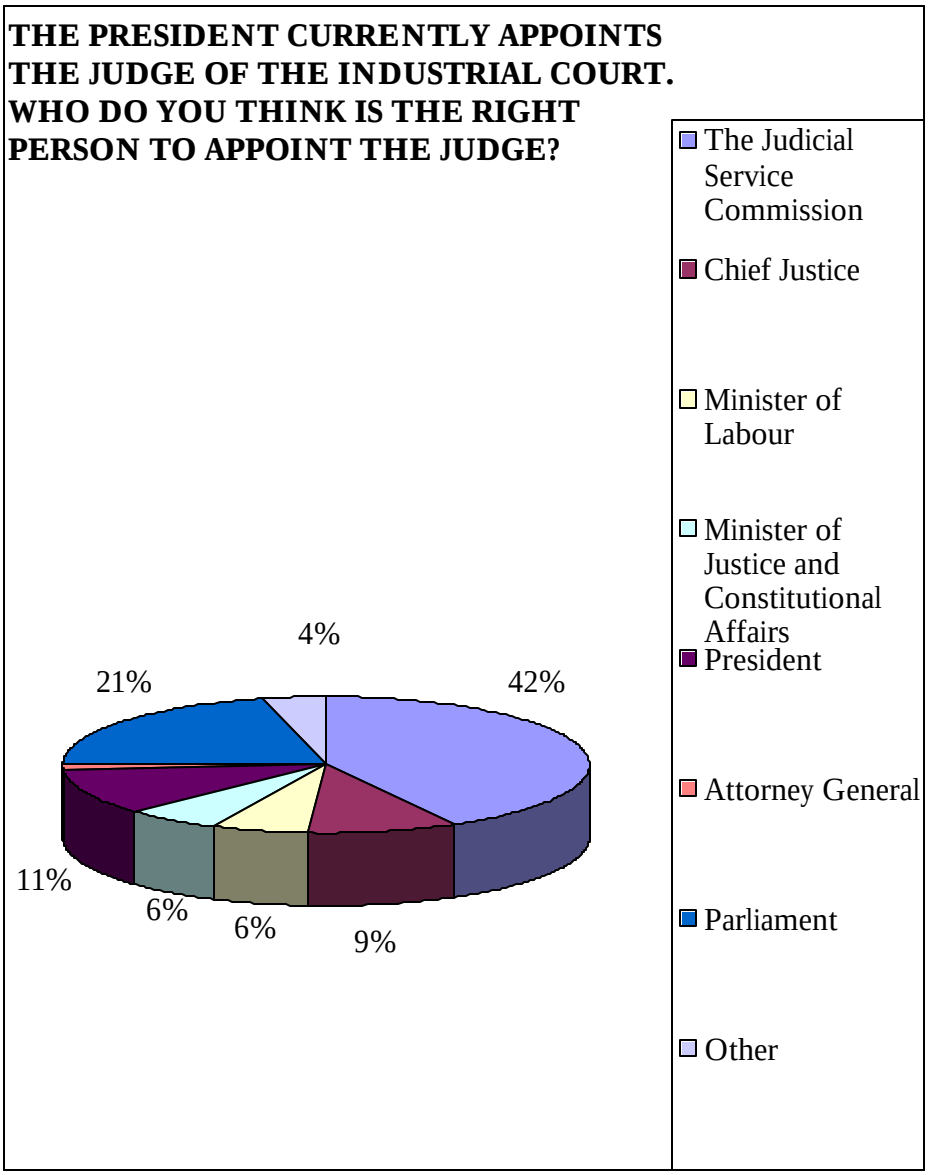
C. INDUSTRIAL COURTS



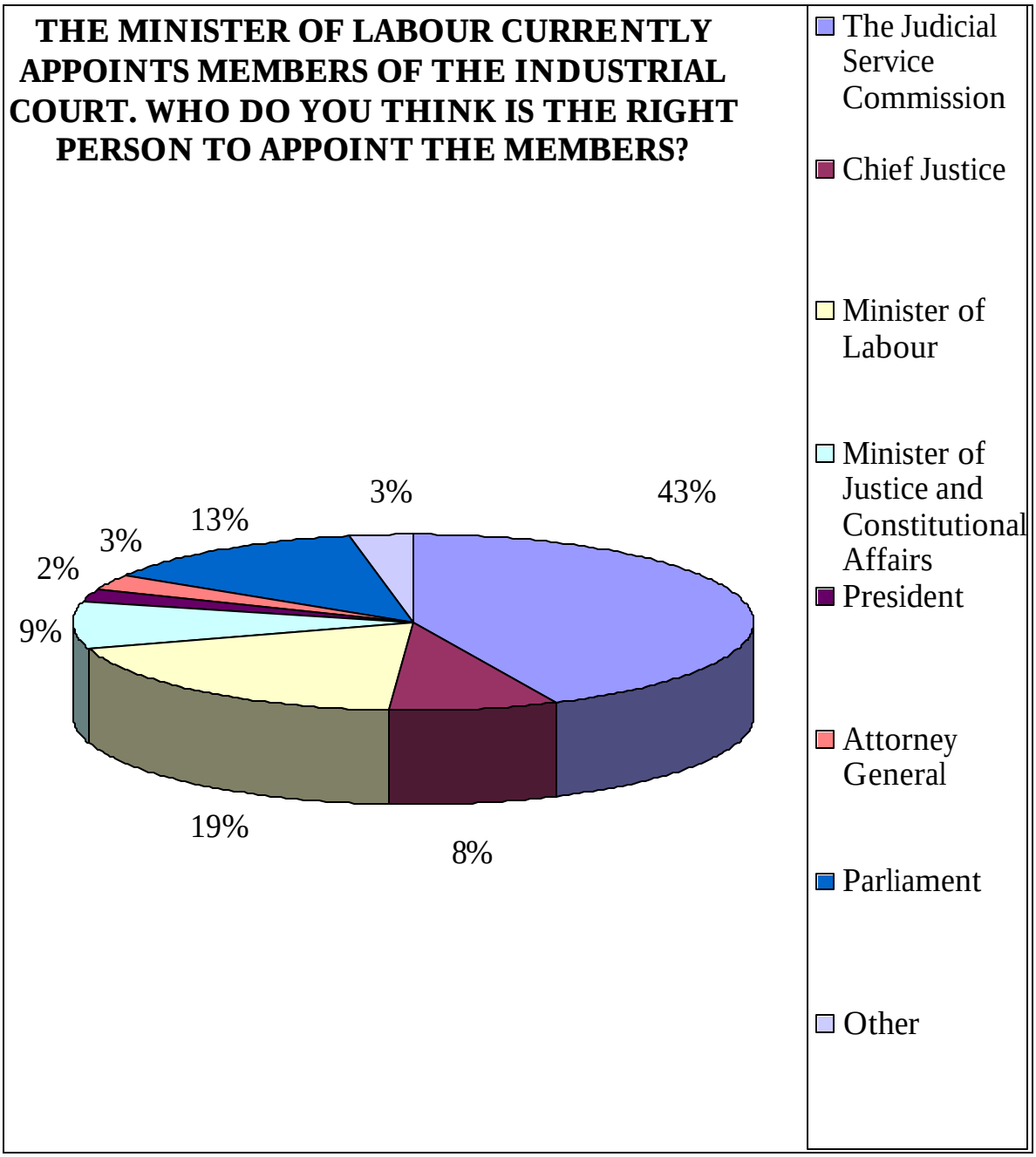
55% of the respondents felt that the Kenyan Industrial Court does not deliver justice to both employees and employers.



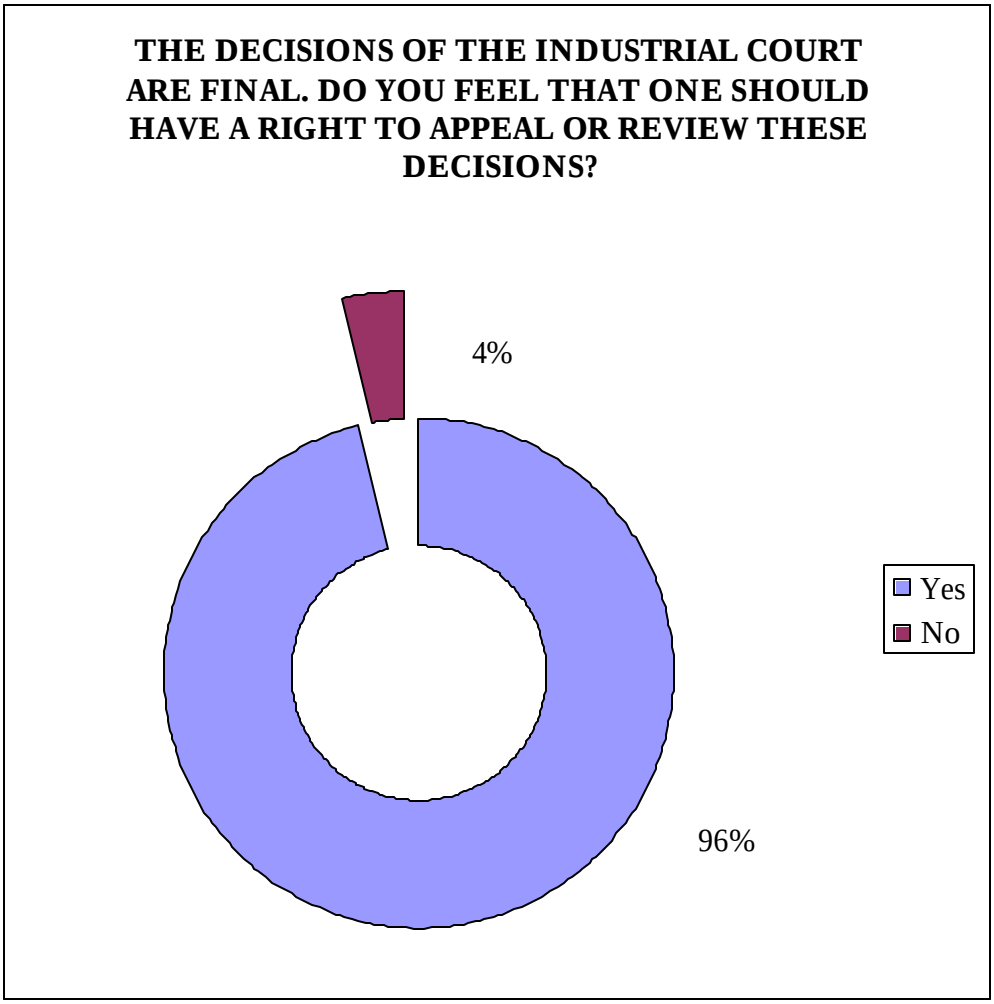
Majority of the respondents did not feel that there were enough industrial courts in Kenya.



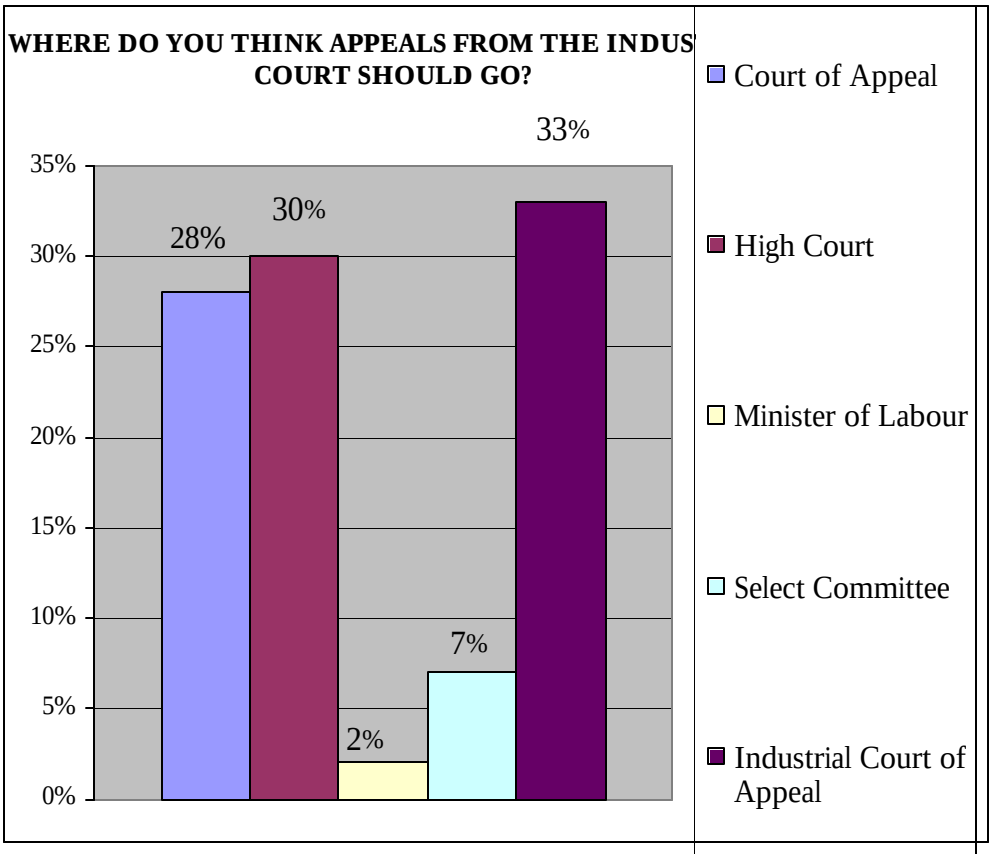
Majority of the respondents felt that the Judicial Service Commission and not the President should appoint the judge of the industrial court.



Majority of the respondents felt that the Judicial Service Commission and not the Minister of Labour should appoint the members of the industrial court.

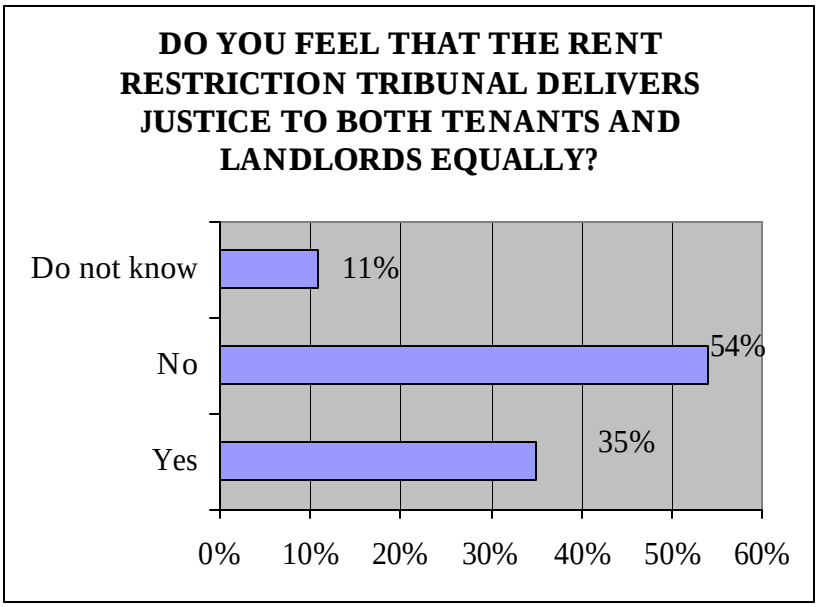


Majority of the respondents felt that the decisions of the industrial court should have a right of appeal or review.

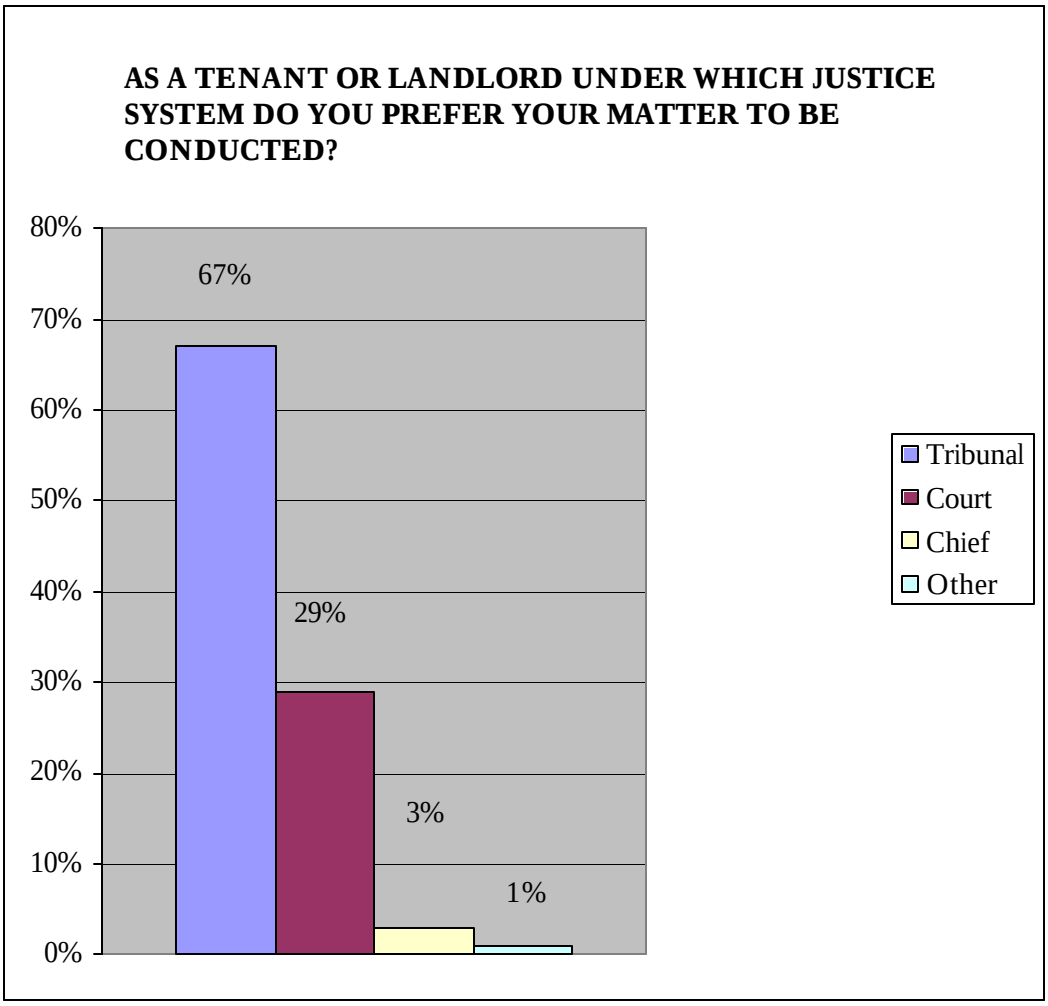


33% of the respondents felt that appeals from the industrial court should go to an industrial court of appeal.

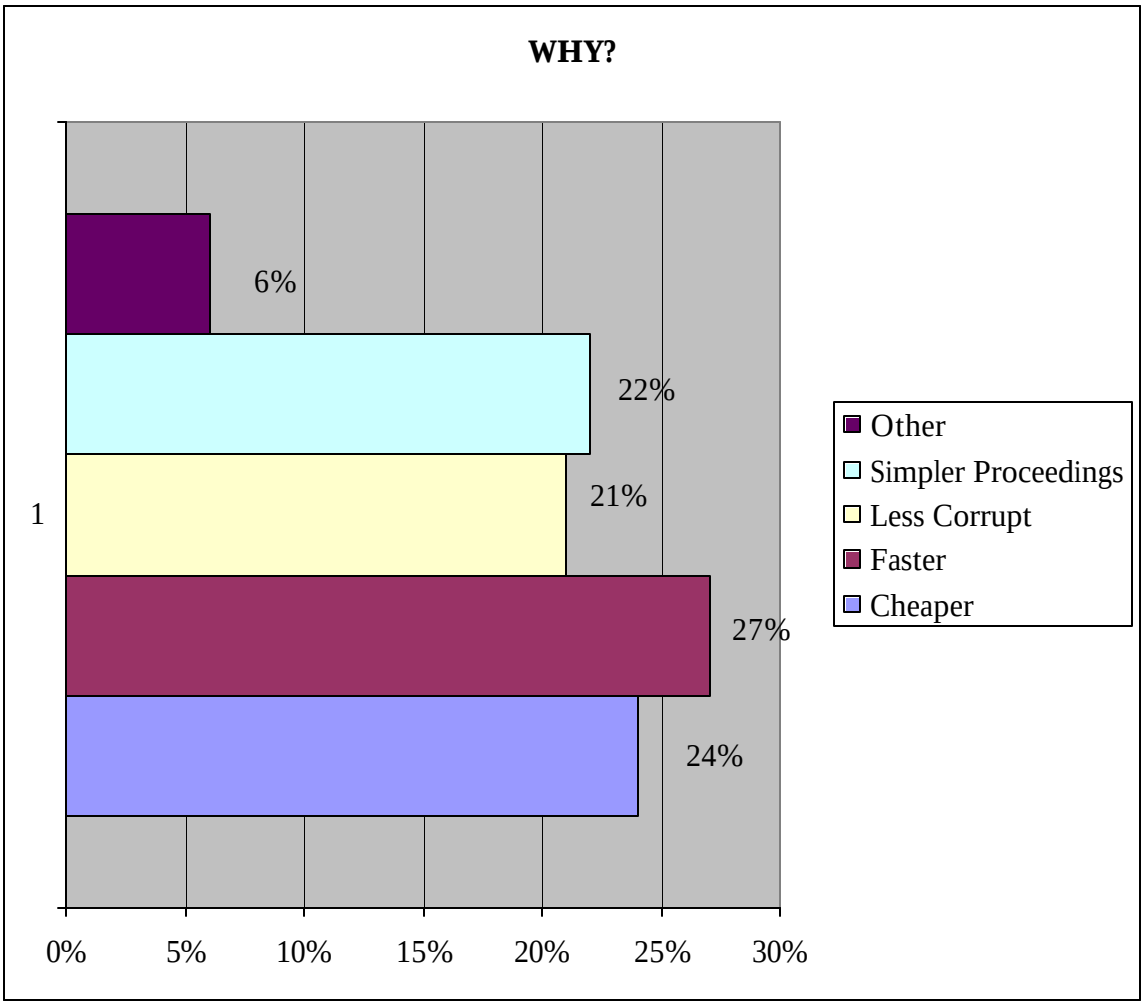
D. RENT RESTRICTION TRIBUNAL



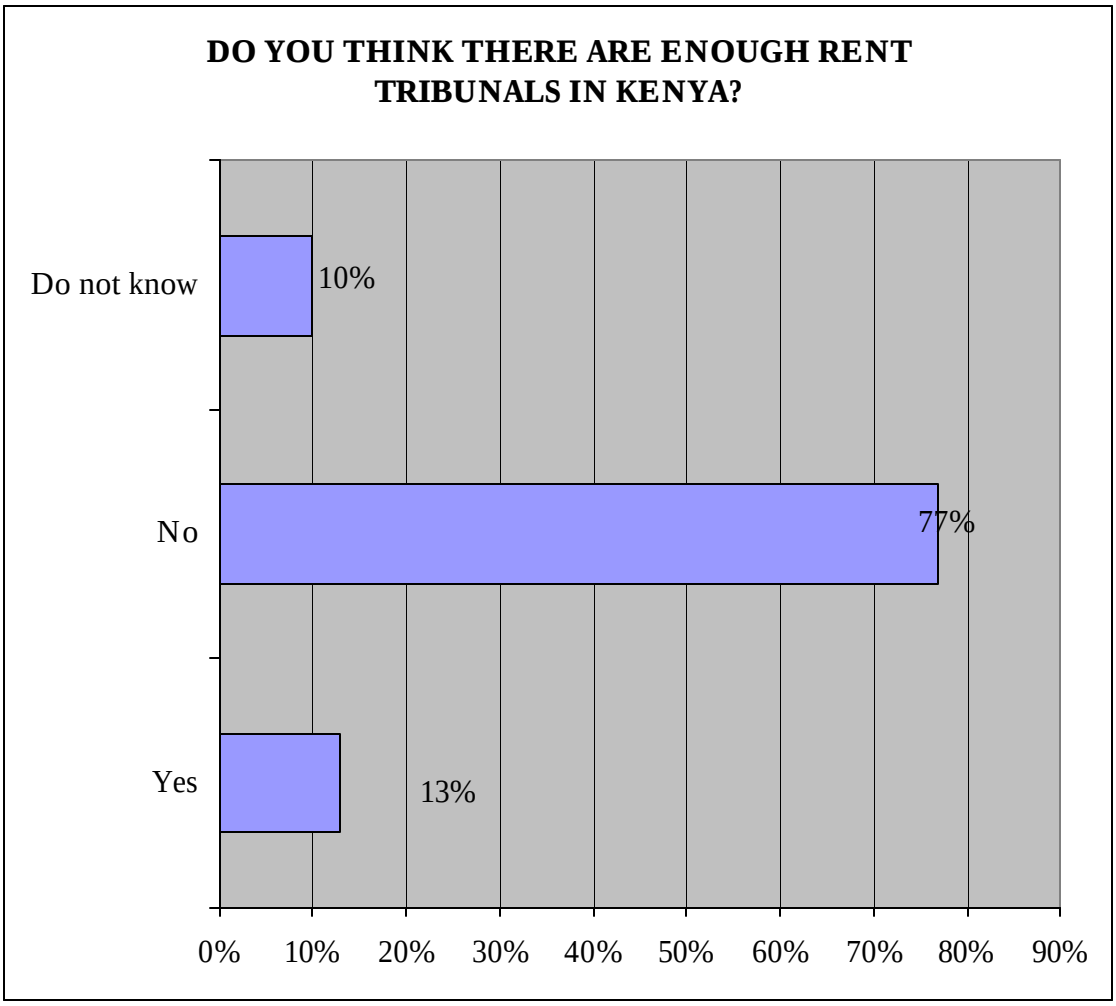
Majority of the respondents felt that the rent restrictions tribunal does not deliver justice to both tenants and landlords. Some respondents felt that the jurisdiction of the rent restrictions tribunal was limited as it is not currently open to all tenants. One respondent felt that all tenants should be protected by the tribunal regardless of the amount of rent one pays.



Majority of the respondents would prefer for their matters with regards to tenancy to be heard by a tribunal as opposed to a court.

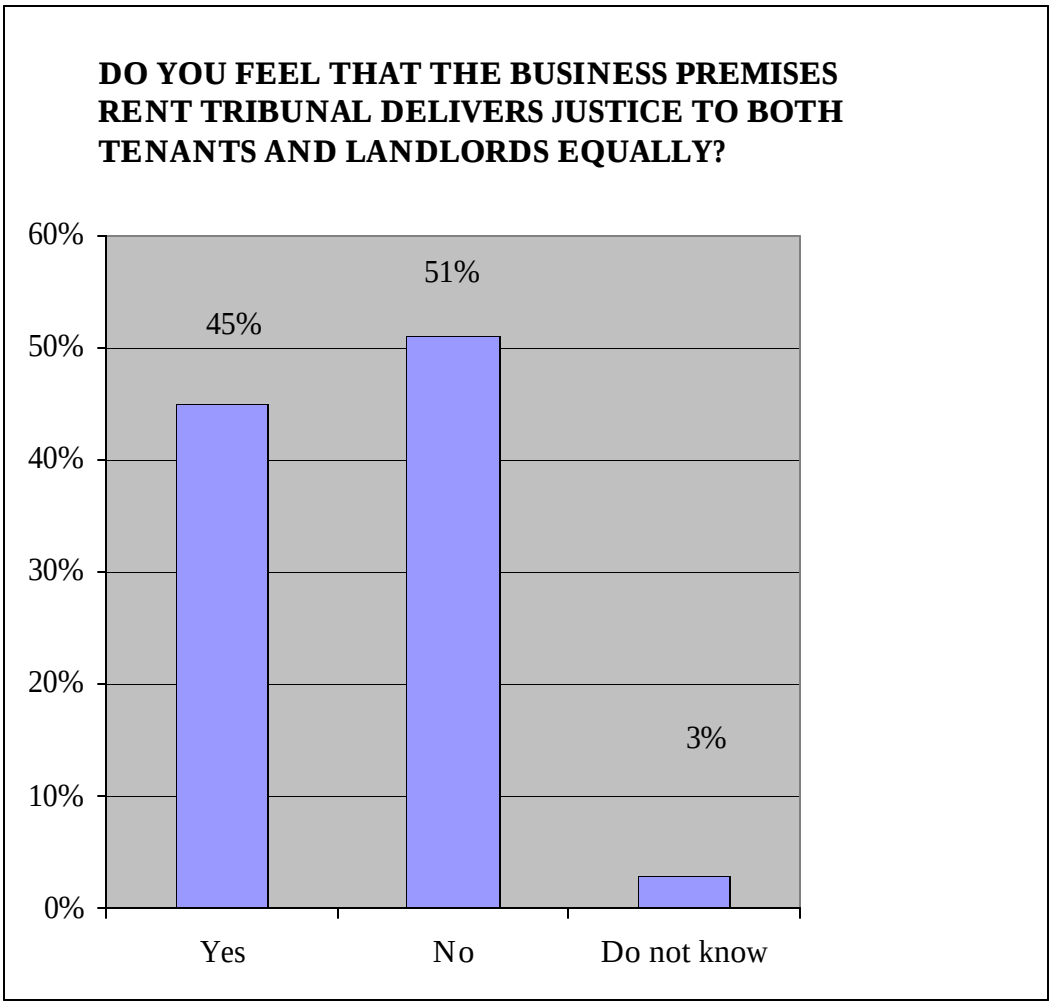


Majority of the respondents would rather have their tenancy matters handled by a tribunal as it was faster than the formal courts.

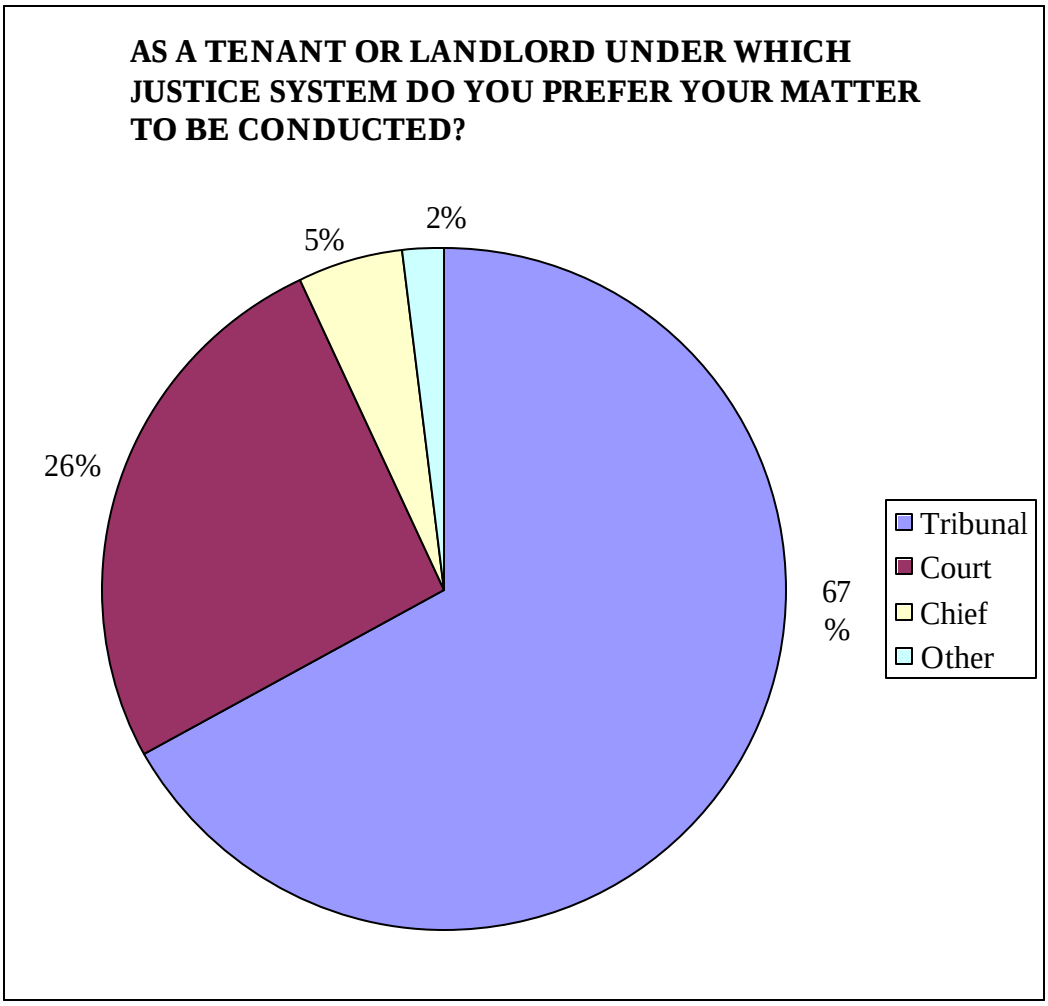


Majority of the participants did not feel that there were enough rent tribunals in Kenya.

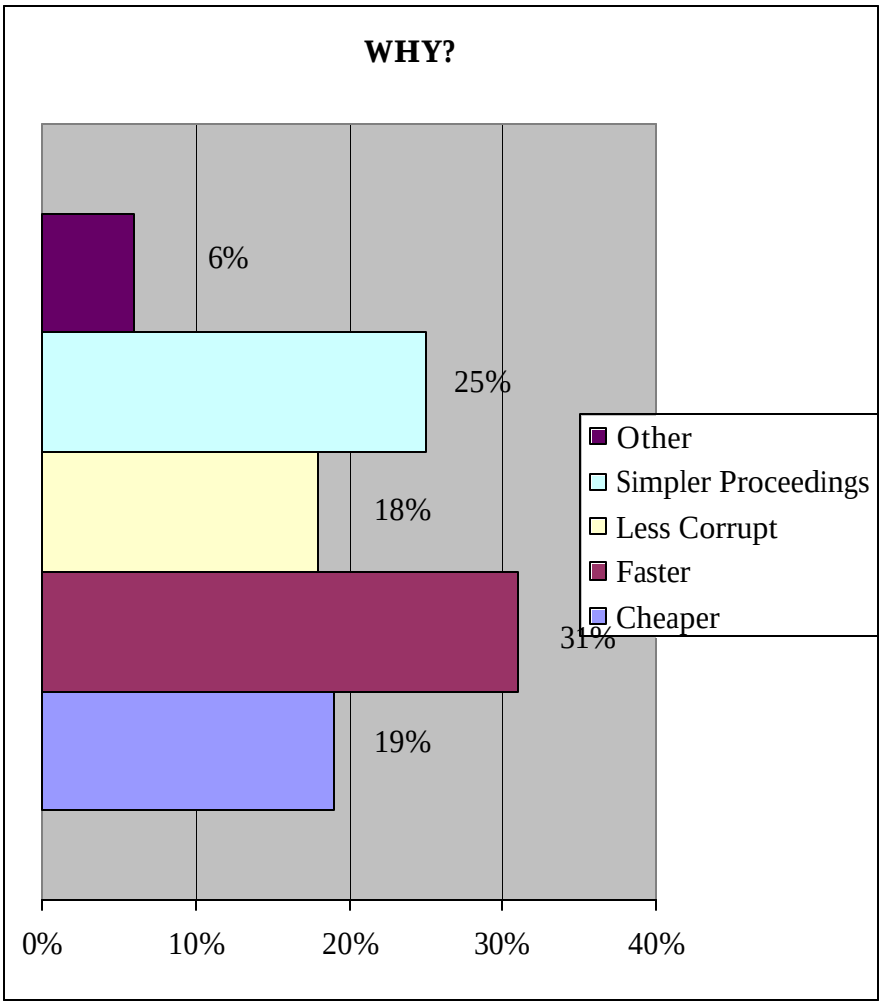
E. BUSINESS PREMISES RENT TRIBUNALS



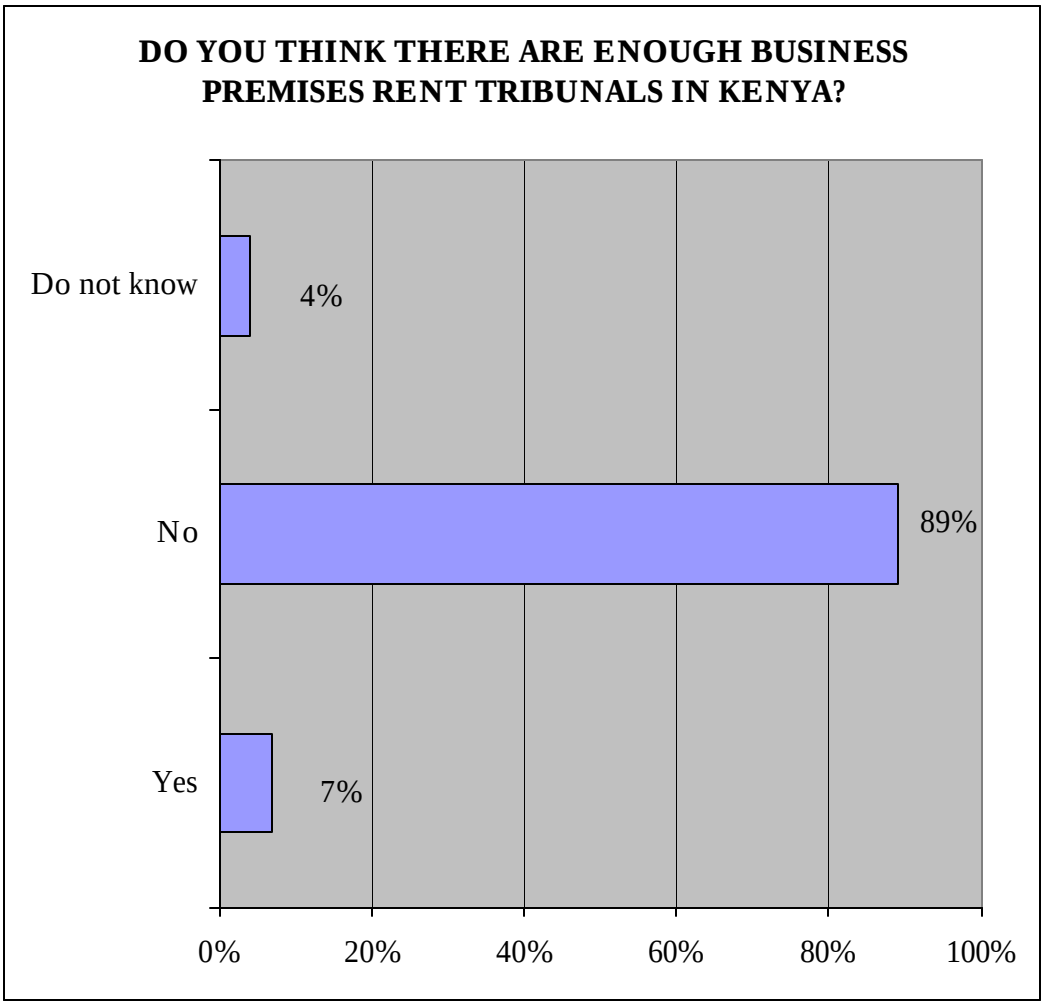
Majority of the respondents felt that the business rent tribunal did not deliver justice to both tenants and landlords equally.



67% of the respondents preferred to have their matters heard by a tribunal as opposed to a court or chief. 2% preferred to have their matters negotiated or arbitrated upon.



Majority of the respondents preferred to have their matters heard by a tribunal as opposed to a court or chief because tribunals would handle the matter faster.



Majority of the respondents felt that there were not enough business premises rent tribunals in Kenya. It was reported that the tribunals have limited jurisdiction and one magistrate who has to go round the country listening to the disputes yet there should be at least one magistrate per province as some matters were of urgency.

CONCLUSION

The establishment of administrative tribunals is aimed at ensuring that certain types of civil disputes receive specialized judicial attention, either due to their complexity, urgency, large number of cases or other unique attribute. For this reason, tribunals operate with less adherence to rules of procedure and less expense than ordinary courts However, even with these theoretical advantages over courts, the question must be asked whether tribunals are properly fulfilling the role that they have been established for.

A large majority of the respondents interviewed claimed to understand how tribunals operate, though only half of the respondents said they had ever been before a tribunal. Overall, only a slim majority of the respondents said they would rather have their matters handled by a tribunal rather than a court and this may be an indication of either some failing on the part of tribunals or the public's general preference for the formal court system. Yet the data still revealed that most respondents felt that tribunals had advantages over formal courts in terms of speed of dealing with matters, simpler proceedings and less expense.

It appears that the public would like the administration of the tribunals to be brought under the Judicial Service Commission, including the appointment of the tribunals' presiding officers. This may be an indication of the public's lack of faith in the Executive's ability to administer tribunals well and to appoint competent and accountable persons as presiding officers.

With particular regard to the Industrial Court, a majority of respondents felt that parties dissatisfied with its decisions should be given a right of appeal. Most respondents seemed to prefer the establishment of an Industrial Court of Appeal to deal with such matters, which indicates that there is a perception that the law should provide further recourse for those who think that justice has not been served in the Industrial Court.

Public perceptions are an important indicator of how well the Judiciary is serving the people and at present, the public seems to perceive great shortfalls in the way tribunals are operating. Reforming administrative tribunals should therefore be part of the agenda of the government as it goes about reforming the rest of the Judiciary to make it more efficient and accountable.